

253VA255

Supreme Court of Virginia

RECORD NO. 961088

TINA MARIE LAKE,

Appellant,

v.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER, INC.,
THOMAS H. GRESINGER, M.D.,
and
WAYNE C. CODDING,

Appellees.

APPENDIX

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. 133092

JOEL W. MATCH, M.D.,

and

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC.,

and

THOMAS H. GRESINGER, M.D.,

and

WAYNE C. CODDING,

Defendants.

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, TINA MARIE LAKE, by counsel, and for her Motion for Judgment against the Defendants, states the following:

1. Plaintiff in this case is TINA MARIE LAKE [hereafter "MS. LAKE"].
2. Defendants in this case are JOEL W. MATCH, M.D. ["DR. MATCH"], NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC. [hereafter "WOMEN'S MEDICAL CENTER"], THOMAS H. GRESINGER, M.D. ["DR. GRESINGER"], and WAYNE C. CODDING ["CODDING"] [all Defendants are collectively referred to as "DEFENDANTS"].
3. MS. LAKE is a resident of Front Royal, Warren County, Virginia.

4. In April, 1991, DR. MATCH was a physician practicing in the field of obstetrics and gynecology within Virginia and the District of Columbia, and his practice included performing abortions.

5. In April, 1991, WOMEN'S MEDICAL CENTER:

a. was a corporation which operated a clinic that performed abortions [hereafter "THE ABORTION CLINIC"] in Fairfax, Virginia.

b. operated a practice in the field of obstetrics and gynecology, which practice included performing abortions;

c. had the responsibility to assist and/or supervise DR. MATCH in his performance of medical procedures, including abortions;

d. controlled all decisions regarding the management of THE ABORTION CLINIC;

e. had the right to control the manner and methods that DR. MATCH performed his job, including abortions;

f. had the right to control the manner and methods that the nurses and other employees at THE ABORTION CLINIC performed their jobs, including with respect to abortions;

g. required DR. MATCH to follow all prescribed medical procedures at THE ABORTION CLINIC;

h. required DR. MATCH to keep appropriate written records of all medical procedures at THE ABORTION CLINIC;

i. required the nurses and other employees at THE ABORTION CLINIC to follow all prescribed procedures at THE ABORTION CLINIC;

j. required the nurses and other employees at THE ABORTION CLINIC to keep appropriate written records of all procedures at THE ABORTION CLINIC;

k. as a condition of compensating DR. MATCH, required him to perform the business of THE ABORTION CLINIC;

l. provided to DR. MATCH the tools and facilities for the performance of his work, including abortions;

m. as a condition of compensating the nurses and other employees at THE ABORTION CLINIC, required them to perform the business of THE ABORTION CLINIC;

n. provided to the nurses and other employees at THE ABORTION CLINIC the tools and facilities for the performance of their work, including with respect to abortions;

o. approved the contract of employment of DR. MATCH;

p. provided in DR. MATCH'S contract of employment that he could be discharged with or without cause;

q. approved of the care rendered by DR. MATCH with respect to MS. LAKE;

r. knowingly and negligently retained DR. MATCH, who was psychologically and otherwise unfit to be a gynecologist and who was incompetent in the performing of abortions, after he was clearly unfit and after he had already been charged with negligence in the performing of one or more abortions;

s. required and permitted DR. MATCH to perform abortions with dangerous instrumentalities;

t. permitted DR. MATCH to perform non-delegable duties, including permitting DR. MATCH to use dangerous instrumentalities;

u. permitted DR. MATCH to perform work, including abortions, which will or may in the natural course of events produce injury unless special precautions are taken;

v. should have warned MS. LAKE and other similar patients of the activities of DR. MATCH, of his psychological and other unfitness, and of his incompetence in performing abortions;

w. should have foreseen injury to MS. LAKE;

x. did not act when it was necessary to prevent fraud upon MS. LAKE;

y. [in the event that DR. MATCH is found not to have been an employee of WOMEN'S MEDICAL CENTER] created an appearance that DR. MATCH was an employee of WOMEN'S MEDICAL CENTER and/or THE ABORTION CLINIC, upon which MS. LAKE relied;

z. approved the "consent" form which purports to inform patients at THE ABORTION CLINIC of the risks and alternatives of abortion;

6. WOMEN'S MEDICAL CENTER is liable directly for its own acts and omissions and vicariously (including by estoppel) for the acts and omissions of its employees, agents and servants (not all of whom are named herein), and of its independent contractors (for the reasons described herein); these other actors include but are not limited to DR. MATCH, DR. GRESINGER, CODDING, nurses Bruton and Vandergrift, and other personnel such as Barbara Levine.

7. In April, 1991, DR. GRESINGER:

a. was a physician practicing in the field of obstetrics and gynecology, and his practice included performing abortions;

b. was the Medical Director of THE ABORTION CLINIC, and in that capacity had the responsibility to assist and/or supervise DR. MATCH in his performance of medical procedures, including abortions;

c. was a fifty-percent stockholder (as was CODDING) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC;

d. was an officer and director (as was Coddington) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC;

e. controlled (with CODDING) all decisions regarding the management of THE ABORTION CLINIC;

f. was the Medical Director of one or more other abortion clinics similarly managed and operated;

g. was a fifty-percent stockholder (as was CODDING) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

h. was an officer and director (as was Coddington) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

i. controlled (with CODDING) all decisions regarding the management of one or more other abortion clinic(s) similarly managed and operated;

j. had the right to control the manner and methods that DR. MATCH performed his job, including abortions;

k. had the right to control the manner and methods that the nurses and other employees at THE ABORTION CLINIC performed their jobs, including with respect to abortions;

l. required DR. MATCH to follow all prescribed medical procedures at THE ABORTION CLINIC;

m. required DR. MATCH to keep appropriate written records of all medical procedures at THE ABORTION CLINIC;

n. required the nurses and other employees at THE ABORTION CLINIC to follow all prescribed procedures at THE ABORTION CLINIC;

o. required the nurses and other employees at THE ABORTION CLINIC to keep appropriate written records of all procedures at THE ABORTION CLINIC;

p. as a condition of compensating DR. MATCH, required him to perform the business of THE ABORTION CLINIC;

q. provided to DR. MATCH the tools and facilities for the performance of his work, including abortions;

r. as a condition of compensating the nurses and other employees at THE ABORTION CLINIC, required them to perform the business of THE ABORTION CLINIC;

s. provided to the nurses and other employees at THE ABORTION CLINIC the tools and facilities for the performance of their work, including with respect to abortions;

t. approved the contract of employment of DR. MATCH;

u. provided in DR. MATCH'S contract of employment that he could be discharged with or without cause;

v. approved of the care rendered by DR. MATCH with respect to MS. LAKE;

w. knowingly and negligently retained DR. MATCH, who was psychologically and otherwise unfit to be a gynecologist and who was

incompetent in the performing of abortions, after he was clearly unfit and after he had already been charged with negligence in the performing of one or more abortions;

x. required and permitted DR. MATCH to perform abortions with dangerous instrumentalities;

y. permitted DR. MATCH to perform non-delegable duties, including permitting DR. MATCH to use dangerous instrumentalities;

z. permitted DR. MATCH to perform work, including abortions, which would or might in the natural course of events produce injury unless special precautions were taken;

aa. should have warned MS. LAKE and other similar patients of the activities of DR. MATCH, of his psychological and other unfitness, and of his incompetence in performing abortions;

bb. should have foreseen injury to MS. LAKE;

cc. did not act when it was necessary to prevent fraud upon MS. LAKE;

dd. [in the event DR. MATCH is found not to have been an employee of WOMEN'S MEDICAL CENTER] created an appearance that DR. MATCH was an employee of WOMEN'S MEDICAL CENTER or THE ABORTION CLINIC, upon which MS. LAKE relied;

ee. approved the "consent" form which purports to inform patients at THE ABORTION CLINIC of the risks of abortion;

8. DR. GRESINGER'S acts and omissions described herein were taken personally as well as on behalf of WOMEN'S MEDICAL CENTER, and he is liable directly for his own acts and omissions and vicariously (including by estoppel) for the acts and omissions of his employees,

agents and servants (not all of whom are named herein), and of his independent contractors (for the reasons described herein); these other actors include DR. MATCH, CODDING, nurses Bruton and Vandergrift, and other personnel such as Barbara Levine.

9. In April, 1991, CODDING:

a. was a fifty-percent stockholder (as was DR. GRESINGER) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC;

b. was an officer and director (as was DR. GRESINGER) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC;

c. was an accountant responsible for the financial direction and policies (including the number of abortions performed and to be performed) of WOMEN'S MEDICAL CENTER and THE ABORTION CLINIC;

d. controlled (with DR. GRESINGER) all decisions regarding the management of THE ABORTION CLINIC;

e. was a fifty-percent stockholder (as was DR. GRESINGER) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

f. was an officer and director (as was DR. GRESINGER) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

g. controlled (with DR. GRESINGER) all decisions regarding the management of one or more other abortion clinic(s) similarly managed and operated;

h. had the right to control the manner and methods that DR. MATCH performed his job, including abortions;

i. had the right to control the manner and methods that the nurses and other employees at THE ABORTION CLINIC performed their jobs, including with respect to abortions;

j. required DR. MATCH to follow all prescribed medical procedures at THE ABORTION CLINIC;

k. required DR. MATCH to keep appropriate written records of all medical procedures at THE ABORTION CLINIC;

l. required the nurses and other employees at THE ABORTION CLINIC to follow all prescribed procedures at THE ABORTION CLINIC;

m. required the nurses and other employees at THE ABORTION CLINIC to keep appropriate written records of all procedures at THE ABORTION CLINIC;

n. as a condition of compensating DR. MATCH, required him to perform the business of THE ABORTION CLINIC;

o. provided to DR. MATCH the tools and facilities for the performance of his work, including abortions;

p. as a condition of compensating the nurses and other employees at THE ABORTION CLINIC, required them to perform the business of THE ABORTION CLINIC;

q. provided to the nurses and other employees at THE ABORTION CLINIC the tools and facilities for the performance of their work, including with respect to abortions;

r. approved the contract of employment of DR. MATCH;

s. provided in DR. MATCH'S contract of employment that he could be discharged with or without cause;

t. approved of the care rendered by DR. MATCH with respect to MS. LAKE;

u. knowingly and negligently retained DR. MATCH, who was psychologically and otherwise unfit to be a gynecologist and who was incompetent in the performing of abortions, after he was clearly unfit and after he had already been charged with negligence in the performing of one or more abortions;

v. required and permitted DR. MATCH to perform abortions with dangerous instrumentalities;

w. permitted DR. MATCH to perform non-delegable duties, including permitting DR. MATCH to use dangerous instrumentalities;

x. permitted DR. MATCH to perform work, including abortions, which would or might in the natural course of events produce injury unless special precautions were taken;

y. should have warned MS. LAKE and other similar patients of the activities of DR. MATCH, of his psychological and other unfitness, and of his incompetence in performing abortions;

z. should have foreseen injury to MS. LAKE;

aa. did not act when it was necessary to prevent fraud upon MS. LAKE;

bb. [in the event DR. MATCH is found not to have been an employee of WOMEN'S MEDICAL CENTER] created an appearance that DR. MATCH was an employee of WOMEN'S MEDICAL CENTER or THE ABORTION CLINIC, upon which MS. LAKE relied;

cc. approved the "consent" form which purports to inform patients at THE ABORTION CLINIC of the risks of abortion;

10. CODDING'S acts and omissions described herein were taken personally as well as on behalf of WOMEN'S MEDICAL CENTER, and he is liable directly for his own acts and omissions and vicariously (including by estoppel) for the acts and omissions of his employees, agents and servants (not all of whom are named herein), and of his independent contractors (for the reasons described herein); these other actors include DR. MATCH, DR. GRESINGER, nurses Bruton and Vandergrift, and other personnel such as Barbara Levine.

11. DR. GRESINGER and CODDING controlled and operated THE ABORTION CLINIC in a negligent, illegal and fraudulent manner by misrepresenting, agreeing and conspiring to misrepresent, among other things, that second-trimester abortions were not different or more risk-laden than first-trimester abortions, that DEFENDANTS had complied with all applicable laws assuring DEFENDANTS' financial responsibility in the event of serious injury to a patient, that THE ABORTION CLINIC was operated in a safe and lawful manner in compliance with applicable legal requirements, and that other matters were true although known to be false.

12. Shortly before April 13, 1991, MS. LAKE, at her residence in Warren County, Virginia, telephoned THE ABORTION CLINIC at least twice to schedule an appointment to discuss and possibly undergo an abortion procedure.

13. Dr. Joel W. Match ("DR. MATCH") performed an abortion procedure on MS. LAKE at THE ABORTION CLINIC in Fairfax, Virginia, on April 13, 1991.

13a. As of April 13, 1991, DR. MATCH was inadequately educated, trained and skilled for the proper practice of gynecology and the performance of abortions, for the following and other reasons:

a. DR. MATCH did not possess sufficient intellect and/or academic achievements to be admitted to a medical school in the United States of America;

b. DR. MATCH attended and graduated from the "Autonomous University of Guadalajara, Mexico", an extraordinarily sub-standard "medical school";

c. DR. MATCH failed in each of two known attempts to become Board-certified in obstetrics and gynecology;

d. DR. MATCH previously committed malpractice in the performance of this same abortion procedure -- causing, as here, severe hemorrhaging and permanent injuries.

13b. At the time of MS. LAKE'S abortion on April 13, 1991, DR. MATCH had been and continued to be psychologically unfit to practice gynecology and to perform abortions on women, including MS. LAKE, and his judgment, professionalism, concentration and respect necessary for properly treating female patients, such as MS. LAKE, were severely impaired, as a result of the following and other attitudes and behaviors:

a. DR. MATCH was involved in a continuing course of physical, psychological and sexual abuse of a woman under medical care (his wife, in a marriage that lasted six months; she was under treatment for Lyme disease), including severe physical abuse within days of the

date that DR. MATCH inflicted near-fatal injuries upon MS. LAKE and then refused to examine or treat her;

b. DR. MATCH was found by this Court to have deserted/abandoned his wife and subjected her to physical cruelty [choking her, body-slammng her, kicking her, throwing her down the stairs, beating her face, pulling her hair and screaming at her], based in part upon physical attacks within several days of the date DR. MATCH abandoned MS. LAKE after inflicting severe, near-fatal injuries upon her;

c. DR. MATCH has undergone psychiatric/psychological treatment and counselling with respect to his violence and cruelty to a woman (his wife);

d. According to testimony under oath, DR. MATCH repeatedly referred to women as "cunt[s]", a vulgar pejorative referring to the bodily (genital) part of a woman that is the very subject of DR. MATCH'S supposed medical interest and purported specialty;

e. A close relative of DR. MATCH has suggested that DR. MATCH "hates women";

f. DR. MATCH'S personal and occupational attitudes and behavior toward women evidences a psychological need and desire to control and use vulnerable women or women in vulnerable positions for his own purposes, resulting in an indifference to, and reckless disregard of, the welfare of female patients.

13c. As a result of his personal problems, attitudes and behavior toward women, and his substandard education, training, care and attention, DR. MATCH: committed a battery upon MS. LAKE by consciously

disregarding the need for obtaining her fully-informed consent and instead proceeding to abort her fetus; recklessly and carelessly perforated her uterus; despite the need to monitor MS. LAKE'S post-operative care in the recovery room, completely ignored MS. LAKE and continued in his assembly-line-like performance of approximately fifteen (15) abortions in quick succession on April 13, 1991; stood drinking coffee and watching MS. LAKE suffering from severe sustained pain in the recovery room without even examining or treating her for her excessive bleeding, large blood clots and severe pain; abandoned MS. LAKE and discharged her when she was hemorrhaging and visibly suffering from shock; did not return "emergency" phone calls from a surgeon attempting to obtain critical information regarding the facts and circumstances of MS. LAKE'S injuries.

14. During MS. LAKE'S abortion procedure on April 13, 1991, DR. MATCH perforated MS. LAKE'S uterus, causing massive hemorrhaging.

15. Despite the threat to her health and life, DR. MATCH and WOMEN'S MEDICAL CENTER recommended her discharge, in fact discharged her to her home in Warren County, Virginia, and advised her to return "in 2 days".

16. Shortly after DR. MATCH and WOMEN'S MEDICAL CENTER discharged MS. LAKE, this massive hemorrhaging nearly caused her death..

17. Physicians at Warren Memorial Hospital in Front Royal saved MS. LAKE'S life, but, as a result of the severe injuries and massive hemorrhaging caused by DR. MATCH and WOMEN'S MEDICAL CENTER, MS. LAKE was forced to undergo a hysterectomy at the Hospital, which rendered this young woman permanently incapable of bearing a child.

18. At all relevant times DR. MATCH, DR. GRESINGER and WOMEN'S MEDICAL CENTER were the health-care practitioners of MS. LAKE, and accordingly each had the duty to use that degree of management, skill, expertise, abilities, diligence and care a reasonably prudent health-care practitioner in the same field of practice or specialty in this Commonwealth had the duty to use under the circumstances of this case, and further these Defendants had common-law and statutory duties of reasonable care toward MS. LAKE and others similarly situated.

19. At all relevant times when he owed the duty of care to MS. LAKE, DR. MATCH:

a. was acting in his capacity as an agent, servant and/or employee of the remaining DEFENDANTS;

b. alternatively, was acting as an independent contractor, and WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING:

1. knowingly and negligently retained DR. MATCH, who was incompetent in the performing of abortions, after he had already been charged with negligence in the performing of one or more abortions;

2. required and permitted DR. MATCH to perform abortions with dangerous instrumentalities;

3. permitted DR. MATCH to perform non-delegable duties, including permitting DR. MATCH to use dangerous instrumentalities;

4. permitted DR. MATCH to perform work, including abortions, which would or might in the natural course of events produce injury unless special precautions were taken;

5. should have warned MS. LAKE and other similar patients of the activities and psychological and other unfitness and incompetence of DR. MATCH;

6. should have foreseen injury to MS. LAKE;

7. did not act when it was necessary to prevent fraud upon MS. LAKE;

8. created an appearance that DR. MATCH was an employee of WOMEN'S MEDICAL CENTER or THE ABORTION CLINIC, upon which MS. LAKE relied.

20. MS. LAKE, DR. MATCH and WOMEN'S MEDICAL CENTER entered into express and implied agreements whereby MS. LAKE would receive competent examination, care and treatment from DR. MATCH and WOMEN'S MEDICAL CENTER.

21. As part of these express and implied agreements, and as part of their duties to patients such as MS. LAKE, DR. MATCH and WOMEN'S MEDICAL CENTER agreed to provide to MS. LAKE the degree of diligence, care, management, skill, expertise, and abilities of reasonably prudent practitioners practicing within the Commonwealth of Virginia, and otherwise agreed to perform a successful abortion.

22. Prior to the abortion procedure, DR. MATCH and WOMEN'S MEDICAL CENTER knew or should have known that MS. LAKE was in her second, and not first, trimester of pregnancy.

23. Prior to the abortion procedure, MS. LAKE was not advised of the peculiar and specific risks of a second-trimester abortion.

24. Prior to the performance of the procedure, DR. MATCH and WOMEN'S MEDICAL CENTER disclosed to MS. LAKE no facts regarding the physical and mental development of a second-trimester fetus.

25. Prior to the abortion procedure, DR. MATCH and WOMEN'S MEDICAL CENTER did not advise MS. LAKE of the risks in her individual case, the risks associated with abortion in her second trimester of pregnancy, the relative risks in her case compared to continued pregnancy, or that by law in Virginia second-trimester abortions are to be performed and are usually performed in hospitals, where the emergency facilities actually needed by MS. LAKE would have been available to her.

26. Prior to the abortion procedure, DR. MATCH and WOMEN'S MEDICAL CENTER did not advise MS. LAKE that second-trimester abortions performed by the vacuum aspiration method carried greater risks to the mother than first-trimester abortions.

27. If proper disclosure had been made to MS. LAKE concerning the nature of her condition, the nature of the proposed treatment, the alternative methods of treatment, the nature and degree of risks inherent in undergoing the proposed treatment, the law of Virginia regarding abortions generally and second-trimester abortions specifically, the purpose of that law, and the possible complications of a second-trimester abortion, and if DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING had not given MS. LAKE misstatements, misrepresentations and commercial promotion of abortion over continued pregnancy, including in the brochures and documents drafted and/or approved by DR. GRESINGER and CODDING, neither MS. LAKE nor a reasonable

person in MS. LAKE'S circumstances would have undergone this abortion procedure by DR. MATCH at the time, place and in the manner performed.

28. In addition to the above acts and omissions, DR. MATCH and WOMEN'S MEDICAL CENTER (and DR. GRESINGER and CODDING, where specifically indicated below) are guilty of the following:

a) negligently examining and failing to examine MS. LAKE, including but not limited to on or about April 13, 1991, before, during and after the abortion procedure, and negligently reviewing or failing to review pertinent medical records of MS. LAKE;

b) negligently employing less accurate and incomplete testing, and/or not employing testing, for the gestational age of the fetus;

c) negligently evaluating and acting upon those tests which were given, including those regarding the gestational age of the fetus;

d) misrepresenting, and failing to advise MS. LAKE about, the actual qualifications of the practitioners providing her care and her actual condition and injuries resulting from the abortion procedure, and actively concealing said true qualifications, condition and injuries (these acts were committed by DR. GRESINGER and CODDING as well);

e) negligently preparing MS. LAKE for the abortion procedure, and negligently performing the abortion procedure and post-procedure care, including in not using proper preparation techniques, in perforating MS. LAKE'S uterus, in improper use of abortion implements, and in continuing and concluding the abortion procedure after causing severe injury to MS. LAKE;

f) not using and not consulting with board-certified and other expert physicians, and not referring MS. LAKE to experts and to a hospital, for evaluation, examination, care and treatment for the procedure and for the post-procedure care and treatment (these acts were committed by DR. GRESINGER as well);

g) not properly diagnosing, treating, and monitoring MS. LAKE'S injuries and her condition;

h) deliberately not memorializing on their records the true nature of the events of April 13, 1991, and thereafter (these acts were committed by DR. GRESINGER as well);

i) destroying, despoiling and/or altering MS. LAKE'S medical records, including with respect to "communications" with MS. LAKE'S post-abortion emergency medical team (these acts were committed by DR. GRESINGER and CODDING as well);

j) negligently and recklessly counselling MS. LAKE, and not advising her, or not fully advising her, of her treatment options and the options for her care in the event of surgical injury or post-surgery complications, and not obtaining her fully informed consent to the treatment and to her discharge from their care (these acts were committed by DR. GRESINGER as well);

k) negligently communicating among themselves and within WOMEN'S MEDICAL CENTER regarding MS. LAKE'S history, treatment and care;

l) failing to treat MS. LAKE, refusing to treat her, and negligently discharging her, after the abortion procedure, especially given her difficulties during the procedure, the perforations of her uterus, her severe cramping and hemorrhaging, and her complaints and

physical condition (these acts were committed by DR. GRESINGER as well);

m) actually refusing to respond, and recklessly responding, to emergency telephone calls from the doctors and other practitioners at Warren Memorial Hospital in Front Royal, Virginia, who were engaged in MS. LAKE'S emergency care (shortly after DR. MATCH and WOMEN'S MEDICAL CENTER discharged her after surgery), including by refusing to answer, and directing refusals to answer, the questions of the doctors at Warren Memorial Hospital attempting to determine what had happened to MS. LAKE, what had caused her injuries, and what could be done to save her life, her capacity for child-bearing and her health (these acts were committed by DR. GRESINGER as well);

n) negligently placing concern for legal liability above concern for the patient's welfare, including by the acts and omissions described in the paragraph immediately above, by not conveying (to those in a position to care for MS. LAKE'S injuries) the facts and circumstances of her injuries, and by attempting to cover up or diminish the incident and her injuries (these acts were committed by DR. GRESINGER and CODDING as well);

o) not designing, implementing, monitoring, employing or using reasonable rules, methods, policies, practices and procedures (which MS. LAKE relied upon to her detriment), including for ensuring proper and complete examinations and tests; for performance of abortion procedures and use of abortion techniques, implements and instruments; for treatment of surgical injury and complications; and for cooperation and communication with other practitioners (within and without WOMEN'S MEDICAL CENTER) about their patients, including MS. LAKE;

p) violating the law and accepted medical and medical-office standards and internal (WOMEN'S MEDICAL CENTER'S) rules, policies and procedures (which standards, rules, policies and procedures MS. LAKE relied upon to her detriment) regarding the examination, care and/or treatment of a person in the same or similar circumstances as MS. LAKE (these acts were committed by DR. GRESINGER and CODDING as well);

q) conducting their business without required liability insurance, or with inadequate insurance (these acts were committed by DR. GRESINGER and CODDING as well);

r) negligently selecting, retaining, monitoring and using the practitioners who treated and cared for MS. LAKE, despite notice and knowledge of previous complaints (including of malpractice) against these practitioners, and despite their notice and knowledge of previous conduct and negligence in similar circumstances and/or while performing the same or similar procedures;

s) encouraging and conducting a fraudulent and reckless "revolving-door" business of abortion -- through deliberate excessive scheduling of patients and "over-booking" of patients during a given time period -- and through other means such as inadequate compensation (of employees and those working on their behalf) on a fee-per-case basis (these acts were committed by DR. GRESINGER and CODDING as well);

t) negligently managing the examination, care and treatment of MS. LAKE;

u) negligently disregarding the history, complaints, concerns, statements and signs/symptoms of MS. LAKE;

v) abandoning MS. LAKE;

w) failing to inform MS. LAKE of her treatment alternatives, and not obtaining her truly informed consent to treatment and release from treatment;

x) violating the laws of the Commonwealth of Virginia and the ordinances of Fairfax County and Fairfax City (these acts were committed by DR. GRESINGER and CODDING as well);

y) misrepresenting, and unethically "advertising", the supposed risks of continued pregnancy, and misrepresenting and unethically minimizing the actual risks of undergoing abortion, wholly or partially for commercial gain and in disregard of the patient's best interests (these acts were committed by DR. GRESINGER and CODDING as well);

z) ratifying the unauthorized and other acts of the actors named herein and of the nurses and other personnel working at THE ABORTION CLINIC.

29. As a direct and proximate result of the above-mentioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER (and of DR. GRESINGER and CODDING, where specifically indicated herein), MS. LAKE suffered and will continue to suffer serious and permanent injuries and damages, including but not limited to:

- a) bodily injuries;
- b) physical pain and mental anguish;
- c) disfigurement and deformity;
- d) inconvenience and disruption of her life and activities;
- e) continuing medical and related expenses for health care;
- f) lost wages;

- g) loss of earning capacity; and
- h) other substantial injuries and damages.

COUNT 1

NEGLIGENCE (BY DR. MATCH, WOMEN'S MEDICAL CENTER,
DR. GRESINGER AND CODDING, AS MS. LAKE'S HEALTH-CARE PROVIDERS)

30. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

31. The aforementioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING constitute medical and other health-care negligence and negligence per se in falling below that degree of management, skill, expertise, abilities, diligence and care which a reasonably prudent health-care provider/practitioner in the same field of practice or specialty in this Commonwealth had the duty to use under the circumstances of this case and under certain laws.

32. As a direct and proximate result of the aforementioned joint and several acts and omissions, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 2

GROSS NEGLIGENCE (BY DR. MATCH, WOMEN'S MEDICAL CENTER,
DR. GRESINGER AND CODDING, AS MS. LAKE'S HEALTH-CARE PROVIDERS)

33. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

34. The aforementioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING constitute medical and other health-care gross negligence and gross negligence per se in violating certain laws and in falling so far below that degree of management, skill, expertise, abilities, diligence and care that reasonably prudent

health-care providers/practitioners in the same field of practice or specialty in this Commonwealth had the duty to use under the circumstances of this case,' so as to constitute indifference to, and utter disregard of caution for, the safety of others such as MS. LAKE.

35. As a direct and proximate result of the aforementioned joint and several acts and omissions, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 3

CONSCIOUS DISREGARD OF RIGHTS OF OTHERS/RECKLESSNESS/WILLFUL AND WANTON NEGLIGENCE (BY DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING, AS MS. LAKE'S HEALTH-CARE PROVIDERS)

36. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

37. The aforementioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING evidenced a state of mind and attitude of acting consciously in disregard of others' (including MS. LAKE'S) rights or acting with a reckless indifference to the consequences to MS. LAKE when they were aware of their conduct and were also aware from their knowledge of existing circumstances and conditions that the conduct would probably result in injury to another, including MS. LAKE; these acts and omissions fell so far beneath that degree of care and diligence that reasonably prudent health care providers/practitioners had the duty to use under the circumstances of this case and under certain laws, so as to constitute willful and wanton health-care negligence/recklessness/conscious disregard of the rights of others, including MS. LAKE.

38. As a direct and proximate result of the aforementioned joint and several acts, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 4

NEGLIGENCE (BY DR. MATCH, WOMEN'S MEDICAL CENTER,
DR. GRESINGER AND CODDING)

39. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

40. The aforementioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING constitute negligence and negligence per se by virtue of DEFENDANTS' breaches of common-law and statutory duties to use reasonable care under the circumstances for MS. LAKE.

41. As a direct and proximate result of the aforementioned joint and several acts and omissions, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 5

GROSS NEGLIGENCE (BY DR. MATCH, WOMEN'S MEDICAL CENTER,
DR. GRESINGER AND CODDING)

42. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

43. The aforementioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING, while under common-law duties to use reasonable care and other legal duties, constitute gross negligence and gross negligence per se under the circumstances of this case (and under certain laws) by their indifference to, and utter disregard of caution for, the safety of others, including MS. LAKE.

44. As a direct and proximate result of the aforementioned joint and several acts and omissions, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 6

CONSCIOUS DISREGARD OF RIGHTS OF OTHERS/RECKLESSNESS/
WILLFUL AND WANTON NEGLIGENCE
(BY DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING)

45. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

46. The aforementioned acts and omissions of DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING, while under common-law duties to use reasonable care and other legal duties, evidenced a continuing state of mind and attitude of acting consciously in disregard of others' (including MS. LAKE'S) rights or acting with a reckless indifference to the consequences to another person when they were aware of their conduct and were also aware from their knowledge of existing circumstances and conditions that the conduct would probably result in injury to another; these acts and omissions constitute willful and wanton negligence/recklessness/conscious disregard of the rights of others.

47. As a direct and proximate result of the aforementioned joint and several acts, behaviors and states of mind, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 7

NEGLIGENT HIRING, SELECTION AND RETENTION
(BY WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING,
AS MS. LAKE'S HEALTH-CARE PROVIDERS)

48. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

49. WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING knew and/or should have known of the aforementioned facts and circumstances, including that DR. MATCH and other agents, servants, employees and independent contractors knew or should have known of: the unreasonableness of the abortion procedures which were to be used and were actually used; previous similar and other incidents; that DR. MATCH and others rendering care and treatment to MS. LAKE were not fit to be hired, selected and/or retained in their positions, particularly based upon previous malpractice and other similar incidents; and that DR. MATCH was psychologically and otherwise unfit to be treating women and performing abortions. Despite this knowledge, these Defendants negligently hired, selected and/or retained said persons/entities so that their conduct fell beneath the appropriate standard of care in this Commonwealth for the hiring, selection and/or retention of health-care persons/entities.

50. The aforementioned acts and omissions constitute negligence and negligence per se which falls below that degree of management, skill, expertise, abilities, diligence and care that reasonably prudent health-care providers/practitioners in the same field of practice or specialty in this Commonwealth had the duty to use under the circumstances of this case and under certain laws.

51. As a direct and proximate result of the aforementioned joint and several acts and omissions, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 8

NEGLIGENT HIRING, SELECTION AND RETENTION
(BY WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING)

52. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

53. WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING knew and/or should have known of the aforementioned facts and circumstances, including that DR. MATCH and other agents, servants, employees and independent contractors knew or should have known of: the unreasonableness of the abortion procedures which were to be used and actually were used; previous similar and other incidents; and that DR. MATCH and others rendering care and treatment to MS. LAKE were not fit to be hired, selected and/or retained in their positions, based upon previous malpractice and other similar incidents, and DR. MATCH'S psychological and other unfitness and incompetence to practice gynecology and perform abortions on women.

54. As a direct and proximate result of the aforementioned joint and several acts and omissions, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 9

BREACH OF CONTRACT (BY DR. MATCH, WOMEN'S MEDICAL CENTER,
DR. GRESINGER AND CODDING)

55. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

56. DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING breached the previously-described express and implied agreements with

MS. LAKE (and/or agreements to which MS. LAKE was a third-party beneficiary) whereby these Defendants, among other things, were to provide competent medical personnel, were to represent the truth to her and to not defraud her, were to render competent examination, care and treatment of MS. LAKE, were to obtain her fully informed consent to all procedures and actions taken with respect to her, were to act without assaulting or battering her, and were not to abandon her.

57. As a direct and proximate result of the breaches of these agreements, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 10

NEGLIGENT BREACH OF CONTRACT AND MISFEASANCE/MALFEASANCE
(BY DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING)

58. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

59. DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING breached the previously-described express and implied agreements with MS. LAKE (and/or agreements to which MS. LAKE was a third-party beneficiary) whereby these Defendants, among other things, were to provide competent medical personnel, were to represent the truth to her and to not defraud her, were to render competent examination, care and treatment of MS. LAKE, were to obtain her fully informed consent to all procedures and actions taken with respect to her, were to act without assaulting or battering her, and were not to abandon her.

60. The breaches of the agreements were committed negligently and by misfeasance/malfeasance (in DR. MATCH'S case, as evidenced by his abovementioned personal and occupational attitudes and behaviors).

61. As a direct and proximate result of the negligent breaches of these agreements, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 11

BATTERY (BY DR. MATCH AND WOMEN'S MEDICAL CENTER)

62. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

63. The aforementioned acts of DR. MATCH'S offensive touching of MS. LAKE were committed while in the scope of his duties and with the actual, apparent and inherent authority of WOMEN'S MEDICAL CENTER, were a natural incident to the carrying out of the business of WOMEN'S MEDICAL CENTER, were in furtherance of the business of WOMEN'S MEDICAL CENTER, and were ratified by WOMEN'S MEDICAL CENTER; however, these acts were without MS. LAKE'S consent, including without truly informed consent and authority, and thereby constitute common-law and statutory battery against MS. LAKE, as well as the unauthorized touching of her without her informed consent.

64. As a direct and proximate result of the aforementioned joint and several acts of DR. MATCH and WOMEN'S MEDICAL CENTER, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

COUNT 12

FRAUD AND MISREPRESENTATION

(DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING)

65. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

66. DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING falsely (intentionally, innocently and/or mistakenly) misrepresented the abovementioned and other material facts to MS. LAKE which such defendants knew were false, and also omitted stating to her material and necessary facts.

67. Such misrepresentations, whether by misstatement of facts or omissions to state material facts, were made with an intention to induce MS. LAKE to rely upon them and to undergo the abortion.

68. MS. LAKE did in fact justifiably rely on such misrepresentations to her detriment in that she did undergo an abortion procedure that she would have refused if such misrepresentations had not been made by these Defendants.

69. As a direct and proximate result of the misrepresentations and other acts and omissions by these Defendants, MS. LAKE suffered and will continue to suffer the aforementioned damages.

COUNT 13

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(BY DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER AND CODDING)

70. Plaintiff incorporates by reference herein paragraphs one (1) through twenty-nine (29) above.

71. DR. MATCH, WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING intended their conduct, and knew or should have known that their conduct would cause emotional distress to MS. LAKE.

72. Their conduct was outrageous and intolerable in that their conduct, including but not limited to their refusal to provide necessary information to doctors engaged in MS. LAKE'S emergency care, and DR.

MATCH'S refusal to examine or treat MS. LAKE in the recovery room, offended generally accepted standards of decency and morality.

73. MS. LAKE suffered 'severe emotional distress.

74. As a direct and proximate result of the aforementioned joint and several acts, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

WHEREFORE, Plaintiff TINA MARIE LAKE, by counsel, respectfully prays that judgment be granted in her favor in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) in compensatory damages and TEN MILLION DOLLARS (\$10,000,000.00) in punitive damages, and that she further be awarded her costs and, pursuant to Va. Code Ann. §8.01-382, interest on all amounts awarded from April 13, 1991, or, alternatively, from such other date as the fact-finder shall determine, including from date of verdict/judgment.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO ALL COUNTS.

TINA MARIE LAKE
By Counsel

LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
(703) 904-4333

By: 

Douglas B. Wessel
Virginia State Bar # 18672

**CIRCUIT COURT OF FAIRFAX COUNTY
COMMONWEALTH OF VIRGINIA**

O.E.I. BUSINESS FORMS 703-631-6661

RECEIPT NBR: PS-S4125337 ***** COPY A ***** PAGE: 1
TIME: 10:02 DATE RECEIPTED: 06/17/94 DATE FILED: 06/17/94
RECEIPT FOR: LAW CASE FILED
IDENTIFICATION NAME: LAKE v MATCH ET AL

	REVENUE DESCRIPTION	REVENUE CODE	REVENUE AMOUNT
CFN: L133092	WRIT TAX-LAW	0049	\$25.00
	LAW ACTIONS	0304	\$100.00
	LIBRARY TAX	0219	\$4.00
	LEGAL A99T FOR POOR	0123	\$2.00

TOTAL AMOUNT PAID:		\$131.00
CHECK NBR/HOLD CHECK: 2798 ()	CHECK AMOUNT RECEIVED:	\$131.00
CASHIER ID: WILLIAMSON. NAM CASH ()	CHANGE:	\$0.00

John T. Frey
Clerk of Circuit Court

Official Receipt

2-1-73

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY -1 PM 3:23

TINA MARIE LAKE,
Plaintiff,

CLERK OF COURT
FAIRFAX, VA

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

DEMURRER

TO THE HONORABLE, THE JUDGES OF SAID COURT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and demur to the Motion for Judgment filed herein and as grounds therefore state as follows:

1. That on or about the 17th day of June, 1994, the Plaintiff herein filed her Motion for Judgment in this Court seeking, amongst other relief, damages for purported health care negligence; health care gross negligence; conscious disregard of rights of other/recklessness/willful and wanton health care negligence; negligence; gross negligence, conscious disregard of rights of others/recklessness/willful and wanton negligence; negligent health-care hiring, selection and retention, negligent hiring, selection and retention; breach of contract; negligent breach of contract and misfeasance/malfeasance; battery; fraud and misrepresentation; and, intentional infliction of emotional distress.

2. That all thirteen (13) counts of the Motion for Judgment fail to properly state a cause of action upon which relief may be

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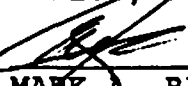
granted and are accordingly the subject of this Demurrer.

3. That your Defendants rely upon and incorporate herein by reference the attached Memorandum of Points and Authorities in Support of this Demurrer.

WHEREFORE, the Demurrer having been considered by this Court, your Defendants request that the Demurrer be sustained with prejudice and that they be awarded their attorney's fees and costs pursuant to Title 8.01, Sec. 271.1 of the Code of Virginia, 1950 ed., as amended, and for whatever other relief this Court deems mete and just under the circumstances.

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.


MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Demurrer was mailed this 12th day of March, 1995, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.


Mark A. Barondess

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEMURRER TO MOTION FOR JUDGMENT

TO THE HONORABLE, THE JUDGES OF SAID COURT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and in support of their Demurrer to the Motion for Judgment respectfully offer the following Memorandum of Points and Authorities:

1. That the instant action arises as a result of a therapeutic abortion procedure performed on the Plaintiff on the 13th day of April, 1991, at the Northern Virginia Women's Medical Center (hereinafter referred to as "The Center"). The Motion for Judgment alleges that your Defendant, Thomas H. Gresinger, M.D. (hereinafter "Gresinger") was the medical director of said center and a stockholder of the corporation which operates said center. The Motion for Judgment further alleges, in pertinent part, that Wayne C. Coddington (hereinafter "Coddington") was an officer, director and fifty percent (50%) stockholder of the corporation which owns the center. No allegations are contained in the Motion for Judgment that the Defendants Coddington and/or Gresinger actually participated

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in any respect in the medical care and treatment of the Plaintiff.

2. That the therapeutic abortion procedure performed on the Plaintiff was performed by the Defendant, Joel W. Match, M.D. (hereinafter referred to as "Match").

3. The Plaintiff, in a desperate attempt to impose liability upon the Defendants Gresinger and Coddling, alleges that the acts and omissions were taken "personally as well as on behalf of Womens Medical Center." Absent this bald allegation, there is no other factual predicate set forth in the Motion for Judgment to support this conclusion. The Plaintiff concedes that both Gresinger and Coddling were officers and directors of the Center. The Plaintiff further asserts that the Defendants were in some manner engaged in illegal conduct, but fails to set forth with any specificity the nature of the illegal conduct.

4. The Plaintiff has failed to allege any proper basis to pierce the corporate veil and impose individual liability upon the officers, directors or shareholders of the corporation in question. It is further nonsensical for the Plaintiff to allege that actions were undertaken in both a principal and agent capacity by the same party.

5. Count I of the Motion for Judgment seeks to recover damages against all of the Defendants on the basis of negligence per se as health care providers of the Plaintiff. The Motion for Judgment fails to properly allege that the Defendants Coddling or Gresinger provided any medical services to the Plaintiff.

6. That Count I of the Motion for Judgment fails to state a proper cause of action as to the Defendants Coddling and Gresinger.

7. That Count II of the Motion for Judgment alleges a cause of action based upon gross negligence. The Motion for Judgment

fails to properly allege that the Defendant Coddington or Gresinger provided any medical services to the Plaintiff.

8. That the Motion for Judgment fails to set forth a cause of action upon which relief may be granted in Count II with respect to the Defendants Coddington and Gresinger.

9. That Count III of the Motion for Judgment seeks damages from your Defendants based upon the purported cause of action of "conscious disregard of rights of others/recklessness/willful and wanton negligence." No such cause of action or tort exists in this jurisdiction as pled by the Plaintiff. In addition, said count replicates the relief already sought in Counts I and II and should be stricken.

10. That Count III of the Motion for Judgment fails to state a cause of action upon which relief may be granted as to all of the Defendants.

11. That Count IV of the Motion for Judgment pleads a cause of action against all of the Defendants on the grounds of negligence. While a Motion for Judgment based upon negligence might be proper, if properly pled, the Plaintiff has failed to properly plead negligence as to the Defendants, the Center, Gresinger and Coddington.

12. That it is uncontroverted that the Defendants Coddington and Gresinger did not participate in any respect in the care of the Plaintiff.

13. That the Motion for Judgment fails to set forth with any particularity, any negligence on the part of Northern Virginia Women's Medical Center, upon which a claim for damages might be based.

14. That Count V of the Motion for Judgment seeks damages

against your Defendants on the basis of gross negligence. This count replicates the relief sought in Count II of the Amended Motion for Judgment, and should be stricken.

15. That Count VI of the Motion for Judgment seeks damages based upon "conscious disregard of rights of others/recklessness/willful and wanton negligence." There exists no independent tort or cause of action upon said basis. Furthermore, said count replicates the relief already sought in Count III of the Motion for Judgment, and should be stricken.

16. That Count VII of the Motion for Judgment alleges a cause of action based upon "negligent health care hiring, selection and retention." No such cause of action is recognized in this jurisdiction and as such the Count fails to state a cause of action against your Defendants in either their individual or corporate capacities. Furthermore, said count is subsumed by the relief already sought in Counts I through VI of the Motion for Judgment.

17. That Count VIII of the Motion for Judgment fails to state a cause of action upon which relief may be granted for the reasons set forth in the preceding paragraph. Furthermore, said Count duplicates the relief already sought in Counts I through VII of the Motion for Judgment.

18. That Count IX of the Motion for Judgment seeks damages based upon breach of contract. While the Motion for Judgment contains general conclusory allegations as to the existence of both express and implied agreements, there is no specific pleading which sets forth the essential terms and consideration of said purported contractual relationship.

19. That incorporated by reference into the prayer set forth in the ad damnum clause are claims for punitive damages based upon

breach of contract. No such allegations are properly pled which would form a justification for an award of punitive damages for any reason, including but not limited to, breach of contract.

20. That there is no good faith allegation contained in the Motion for Judgment that Defendants Coddington and Gresinger individually entered into any contract whatsoever with the Plaintiff.

21. That Count X of the Motion for Judgment purports to allege a cause of action for "negligent breach of contract and misfeasance/malfeasance." This jurisdiction does not recognize any tort or cause of action as pled by the Plaintiff and as such this Count X of the Motion for Judgment fails to state a cause of action upon which relief may be granted.

22. That Count XI of the Motion for Judgment alleges a cause of action on the grounds of "battery." The instant case is a medical malpractice action and the tort of battery would not independently exist with the cause of action as is otherwise pled in the Motion for Judgment. Furthermore, it is not alleged with any specificity the physical acts which form the basis of said battery. Nevertheless, the defendant Clinic would not be responsible for any purported international tort committed by its alleged agent or independent contractor.

23. That Count XII of the Motion for Judgment seeks damages on the basis of "fraud and misrepresentation." That the for Judgment fails to set forth, with any specificity, the alleged fraud and misrepresentation committed by your Defendants. It is undisputed that the Defendants Coddington and Gresinger have never spoken or communicated with the Plaintiff.

24. That this jurisdiction does not recognize as an independent cause of action an innocent and/or mistaken fraudulent

misrepresentation as is otherwise pled by the Plaintiff.

25. That Count XIII of the Motion for Judgment purports to allege a cause of action for "intentional infliction of emotional distress." That the Plaintiff has failed to allege a proper set of facts upon which relief may be based upon this tort. Furthermore, it is undisputed that the Defendants Coddling and Gresinger have never spoken or communicated with the Plaintiff.

26. That the Motion for Judgment is based upon medical care and treatment received by the Plaintiff. The Motion for Judgment seeks to recover compensatory and punitive damages from the Defendants, both jointly and severally, for Fifteen Million Dollars (\$15,000,000.00). Said request for damages is in excess of the permissible amount of damages for such an action, as is otherwise set forth in Title 8.01, Sec. 581.15 of the Code of Virginia, 1950 ed., as amended.

27. That assuming arguendo, that the Plaintiff were entitled to an award of punitive damages, the request for Five Million Dollars (\$5,000,000.00) in punitive damages exceeds the statutory limitation prescribed by Title 8.01, Sec. 38.1 of the Code of Virginia, 1950 ed., as amended.

WHEREFORE, the premises considered, your Defendants, Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddling, pray that their Demurrer be sustained and that they be awarded their attorney's fees and costs pursuant to Title 8.01, Sec. 271.1 of the Code of Virginia, 1950 ed., as amended, and for whatever other relief this Court deems mete and just under the circumstances.

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, et al.
By Counsel

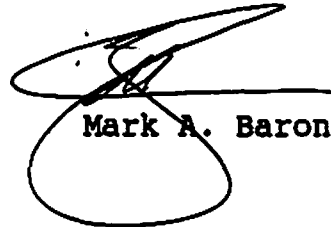
SANDGROUND BARONDESS
& WEST, P.C.



MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES was mailed this 22 day of March, 1995, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090



Mark A. Barondess

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW
~000 TOWERS CRESCENT DRIVE
SIXTH FLOOR, TYSONS CORNER
VIENNA, VA 22182
(703) 741-4200

msa\ \\lake\dem-pfs.95

C *\$*
VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE

Plaintiff

v.

JOEL W. MATCH, M.D.

Law No.: 133092

and

**NORTHERN VIRGINIA WOMEN'S MEDICAL
CLINIC, INC.**

and

THOMAS H. GRESINGER, M.D.

and

WAYNE C. CODDING

Defendants

ORDER

THIS CAUSE came on to be heard this 27th Day of January, 1995, for a Hearing on the Motion of Defendant, Joel W. Match, M.D., for entry of an Order granting Defendant's Motion To Compel Plaintiff to respond to Defendant's discovery requests; and,

THE COURT having heard the arguments of counsel and considered the matter fully; it is hereby

ORDERED that:

1. Plaintiff be, and she hereby is, Ordered to file Answers to Defendant's Interrogatories Numbered 6, 7, 14 and 15, at or before the close of business on February 27, 1995; and, further, that

2. Plaintiff be, and she hereby is, Ordered to file Responses ~~to~~ Defendant's Requests For Production numbered 4, 5 and 6, with any such response being limited to materials provided to Plaintiff's experts who will testify at trial, at or before the close of business on February 27, 1995; and, further, that

3. The discovery previously made and provided in the matter styled *Lake v. Northern Virginia Women's Medical Center, et al.*, Law No. 121123, previously filed in this Court shall be, and it hereby is, incorporated by reference herein in this action ; and, it is further,

ORDERED that, based upon the representation of counsel for Plaintiff that there is no claim for lost past or future wages being asserted in this action, the Defendant's Motion To Compel a Response to Request For Production No. 8, seeking Plaintiff's income tax returns, is **DENIED**; and, it is further,

ORDERED the remaining motions to compel set forth in Defendant's Motion To Compel are withdrawn; and, it is further,

Lake v. Match, et al.

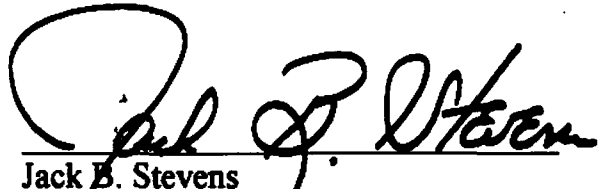
Law No.: 133092

Page 3


ORDERED that the Clerk of the Court be, and he hereby is, directed to refer this matter to the Differentiated Case Tracking Program for establishment of a date for a Status Conference for entry of a Scheduling Order in this matter; and,

THIS CAUSE IS CONTINUED.

ENTERED this 2nd ^{MARCH} day of ~~February~~, 1995.


Jack B. Stevens
Judge

I ASK FOR THIS:


Counsel for Defendant
Joel W. Match, M.D.

SEEN AND NO OBJECTION TO THE FORM OF THE ORDER:

Counsel for Plaintiff

51 57

2011-7 PM 0:57

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY
JUDICIAL DISTRICT COURT
FAIRFAX, VA

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANTS' DEMURRERS**

COMES NOW the Plaintiff, by counsel, and states the following in support of this pleading:

1. In the prior, non-suited case involving the same parties and same counsel, within several days of the discovery cut-off and less than one (1) month before trial, Plaintiff's counsel became ill during a deposition in the late morning of the final week of discovery in the case. Plaintiff's counsel was forced to cancel three (3) depositions that day, including the depositions of two (2) of the three (3) individual defendants. With Plaintiff's counsel becoming married later that week -- one (1) day after the close of discovery -- and then proceeding on a two-week honeymoon, Plaintiff was forced to non-suit the case.

2. In the non-suited case, all issues were vigorously contested. Defendants filed an initial demurrer to the first motion for judgment, which Judge Bach sustained generally on the grounds that the Court could not precisely distinguish which allegations were against which of the four (4) defendants. Plaintiff was required to file a vastly-expanded Amended Motion for

Judgment, which re-stated each allegation against each defendant, whereas previously common allegations had been stated once and thereafter incorporated by reference.

3. All defendants then filed additional demurrers to this Amended Motion for Judgment. The demurrers were accompanied by lengthy memoranda, and Plaintiff filed a lengthy memoranda in response. After these demurrers were fully argued, again before Judge Bach, the Court entered the attached Order [the attached copy is Plaintiff's counsel's copy prior to entry by Judge Bach]. Despite the large number of grounds for the demurrers cited by the defendants, with few exceptions Judge Bach overruled the demurrers.

4. After the entry of Judge Bach's Order, the matter was fully-litigated until Plaintiff's non-suit was taken (for the abovementioned reasons) within one (1) month before trial.

5. Plaintiff's Motion for Judgment in this re-filed case is almost identical to the Amended Motion for Judgment in the non-suited case.

6. Plaintiff contends that, in the interests of fairness and judicial economy, those matters fully-briefed, fully-argued and decisively ruled upon by Judge Bach, should not be re-litigated in this same suit against the same parties represented by the same counsel.

7. As an additional grounds for overruling the demurrers, despite that Defendants are the moving parties regarding their demurrers, all Defendants failed to file memoranda supporting such demurrers, in clear violation of the rules of this Court.

8. Further as to Dr. Match: Yesterday afternoon (April 6), Plaintiff's counsel called each opposing counsel, requesting verification that indeed no defendant had filed the required memorandum. Mr. Boone, representing Dr. Match was the only counsel to return Plaintiff's counsel's calls. Mr. Boone confirmed that no memorandum had been filed on behalf of Dr. Match, and, when Plaintiff's counsel stated that such failure would be one of the grounds for Plaintiff's seeking overruling of the demurrers in this responsive memorandum, Dr. Match's counsel stated that he would withdraw his notice to have the demurrers heard. In response, Plaintiff's counsel indicated that he would reserve the right to seek to have the matter decided (among other things, these demurrers were filed a considerable time ago and for some time had not been noticed for hearing by defendants). Plaintiff's counsel received today Dr. Match's Notice of withdrawal of his demurrer from the docket. Plaintiff in turn has filed the attached Notice requesting that the matter be re-placed upon the docket (for the abovementioned reasons).

9. Plaintiff's counsel's efforts to have opposing counsel agree to have the Court in this case rule consistent with Judge Bach's prior rulings were met today with something approaching acceptance by Dr. Match's counsel (Plaintiff will defer to Dr. Match's counsel's explanation of his position stated today), but were summarily and wholly rejected by Mr. Barondess, counsel for the remaining defendants.

WHEREFORE, Plaintiff, by counsel, respectfully requests this Honorable Court to overrule the demurrers, or, alternatively, to enter an Order consistent with the Order previously entered by The Honorable F. Bruce Bach in At Law No. 121123.

TINA MARIE LAKE
By Counsel

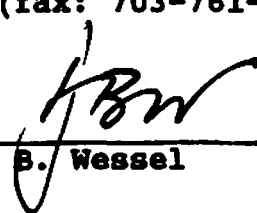
LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of April, 1995, true copies of this pleading were sent by facsimile and by first-class mail, postage prepaid, to Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel

C:\PLEADING\LAKEDEM.MEM

EXTRA
This entered on
10/29/93.
JON

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,
Plaintiff,

v.

AT LAW NO. L121123

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC., et al.,
Defendants.

ORDER

CAME on the 4th day of June, 1993, the Plaintiff, Tina Marie Lake, by counsel, and all Defendants, by counsel, upon the Demurrers filed by the Defendants, and after considering the written motions, the briefs filed by the parties, and oral argument by all counsel,

IT APPEARING TO THIS COURT that previously this Court sustained generally the demurrers to the Motion for Judgment, without ruling upon the merits of the demurrers, so as to require Plaintiff to file an amended Motion for Judgment more clearly setting forth which allegations were made against which Defendants so that this Court can rule upon the merits of these demurrers, and

IT APPEARING TO THIS COURT that Plaintiff has filed such an Amended Motion for Judgment and that this Court can consider the merits of the demurrers, and

IT APPEARING TO THIS COURT, as to Dr. Match's demurrer, that the demurrer should be overruled on all counts, with the exceptions of Counts 7 and 8, which do not apply to Dr. Match, and

Count 10, for which the demurrer should be sustained, it is therefore

ORDERED, as to Dr. Match's demurrer, that the demurrer is overruled on all counts, with the exceptions of Counts 7 and 8, which do not apply to Dr. Match, and Count 10, for which the demurrer is sustained, and

IT APPEARING TO THIS COURT, as to the demurrer of the remaining Defendants, that the demurrer should be overruled on all counts, with the exception of Count 10, for which the demurrer should be sustained, it is therefore

ORDERED, as to the demurrer of the remaining Defendants, that the demurrer is overruled on all counts, with the exception of Count 10, for which the demurrer is sustained, and

IT FURTHER APPEARING TO THIS COURT, as to the demurrer of the remaining Defendants, that Plaintiff seeks to impose liability upon these remaining defendants by "piercing the corporate veil", and that an attempt to pierce the corporate veil is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action such as a tort or breach of contract, and that therefore none of the counts in the Amended Motion for Judgment should be held to be barred and the demurrer of these remaining defendants should be overruled in this respect, it is therefore

ORDERED, as to these remaining defendants, that with respect to Plaintiff's allegations regarding "piercing the corporate veil", none of the counts in the Amended Motion for Judgment is

barred and the demurrer of these remaining defendants should be overruled in this respect (and this Court's attached June 16, 1993, letter opinion is incorporated by reference herein).

ENTERED this 29th day of October, 1993.

THE HONORABLE F. BRUCE BACH

OBJECTED TO, WITH RESPECT TO THE COURT'S RULINGS AS TO COUNT 10:

Douglas B. Wessel, Esquire
Counsel for Plaintiff

SEEN AND OBJECTED TO:

Richard W. Boone, Sr., Esquire
Counsel for Defendant Match

Mark A. Barondess, Esquire
Counsel for the remaining
Defendants



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

(703) 248-2221

Fax: (703) 385-4432

COUNTY OF FAIRFAX

CITY OF FAIRFAX

DR. MARK A. ZAFFARANO
DIRECTOR, JUDICIAL OPERATIONS

JAMES KEITH
LEWIS D. MORRIS
BURCH MILLSAP
BARNARD F. JENNINGS
LEWIS H. GRIFFITH
WILLIAM G. PLUMMER
RETIRED JUDGES

RICHARD J. JAMBORSKY
THOMAS J. MIDDLETON
F. BRUCE BACH
QUINLAN H. HANCOCK
J. HOWE BROWN
JACK B. STEVENS
THOMAS A. FORTKORT
MICHAEL P. McWEENY
ROSEMARIE ANNUNZIATA
THOMAS S. KENNY
MARCUS D. WILLIAMS
GERALD BRUCE LEE
STANLEY P. KLEIN
ROBERT W. WOOLDRIDGE, JR.
JUDGES

June 16, 1993

Douglas B. Wessel, Esq.
1801 Robert Fulton Drive, Suite 400
Reston, VA 22091

Mark A. Barondess, Esq.
8000 Towers Crescent Drive, Sixth Floor
Vienna, VA 22182

Re: Tina M. Lake v. Northern Virginia Women's Medical
Center, Inc., et al.
At Law No. 121123

Dear Counsel:

This matter was heard on June 4, 1993, on the Demurrer of the Defendants to the Amended Motion for Judgment. The Court sustained the demurrer to Lake's attempt to pierce the corporate veil. Mr. Barondess asked the Court to determine what counts are barred by this ruling.

An attempt to pierce the corporate veil is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract. 1 William M. Fletcher, Fletcher Cyclopedic of the Law of Private Corporations § 41 (perm. ed. rev. vol. 1990). Accordingly, none of the counts in the Amended Motion for Judgment are barred.

Mr. Wessel will draft an appropriate order and submit it to Mr. Barondess for endorsement.

Very truly yours,

F. Bruce Bach

cc: Richard W. Boone, Esq.

TINA M. LAKE
versus

JOEL W. MATCH, MD, et al

CASE NO. L133092

STATUS CONFERENCE ORDER

The Status Conference was held April 20, 1995. After discussing the various issues presented; it was **ORDERED** that:

A. Plaintiff's and Counter Plaintiff's experts must be identified on or before 90 days prior to trial. All opposing experts must be identified on or before 60 days prior to trial. Identification of experts must set out all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia, or the expert may not be permitted to express any non-disclosed opinions at trial. All discovery except Requests for Admissions shall be completed 30 days prior to trial.

B. A Settlement Conference Date is _____, at 8:30 a.m. A factual statement of the case must be submitted to the Case Management Office on the 5th floor of the Judicial Center no later than five days before the Settlement Conference. Lead counsel for each of the parties and the parties (or if applicable, the insurance adjuster with authority to settle) must attend the settlement conference, unless excused in advance by the Judge or Evaluator conducting the conference. However, parties (or adjusters) who reside over 50 miles from the Fairfax Courthouse may be available by phone.

C. Counsel or pro se parties shall deliver to opposing counsel or party a copy of all exhibits and a list of names of witnesses proposed to be introduced at trial, on or before 15 days prior to trial. A list of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. No exhibit or witness not so identified and filed will be received in evidence, except in rebuttal or for impeachment. Any objections to exhibits except on relevancy grounds need to be filed with the Clerk of the Court and a copy mailed to opposing counsel or pro se parties no later than five days prior to trial or the objection will be deemed waived. Objections shall be to particular exhibit numbers and must state the legal reason for the objection.

D. Counsel shall exchange and confer about proposed jury instructions in advance of the trial date. At the commencement of trial, counsel shall tender to the Court the originals of all agreed upon instructions and copies of all contested instructions with appropriate citations.

E. Deadlines established in this Order may be extended or waived by the Court for good cause shown, but only after considering the extent to which the opposing party may be prejudiced thereby.

F. The Trial date is 12-6-95 / with a Jury ☒ without a Jury ☐
Estimated trial time is 2 WKS.

G. Motions in limine which require argument exceeding five minutes shall be heard on a motions day before the trial date.

H. All dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible.

I. The Court's Case Management Instructions dated January 1, 1994 are incorporated herein by reference and the parties shall comply with each term thereof.

Entered this 20th day of April, 1995.


Counsel for Plaintiff(s)


Counsel for Defendant(s)


JUDGE

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. L133092

JOEL W. MATCH, M.D., et al.,

Defendants.

CONSENT ORDER

THIS CASE CAME BEFORE THE COURT on April 14, 1995, set for hearing on Defendants' Demurrers.

UPON THE MATTERS presented to the Court, it is ORDERED:

1. Defendant Match having withdrawn his request that his Demurrer be heard on this date, Defendant Match's Demurrer will be removed from today's docket;

2. The Demurrer of the remaining Defendants having been briefed, and argued and considered by this Court on this date, is hereby overruled in all respects (except that it is sustained as to Count 10), in conformance with the rulings of Judge Bach in the attached Order and letter incorporated by reference herein.

ENTERED this 21st day of April, 1995.


THE HONORABLE QUINLAN H. HANCOCK

Douglas B. Wessel, Esquire
Counsel for Plaintiff

Richard W. Boone, Esquire,
Counsel for defendant Match

Mark A. Barondess, Esquire,
Counsel for the remaining defendants

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VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. L133092

JOEL W. MATCH, M.D., et al.,

Defendants.


CONSENT ORDER


CAME THE PARTIES TO THIS CAUSE on this ^{19th}~~21st~~ day of ^{JUNE}~~April~~, 1995, on the motion of all parties that all discovery in the prior, non-suited case be incorporated into this case, and

IT APPEARING TO THIS COURT that incorporation of all discovery in the prior, non-suited case promotes the administration of justice and is agreed upon by the parties, it is

ORDERED that all discovery in the prior, non-suited case (At Law No. 121123) be incorporated into this case.

ENTERED this ^{19th}~~21st~~ day of ^{JUNE}~~April~~, 1995.


JUDGE


Douglas B. Wessel, Esquire
Counsel for Plaintiff

^{Rule 1:13}
Richard W. Boone, Esquire,
Counsel for defendant Match

^{Rule 1:13}
Mark A. Barondess, Esquire,
Counsel for the remaining defendants

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LAW OFFICES OF DOUGLAS B. WESSEL



V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

ORDER

THIS CAUSE CAME TO BE HEARD on this 19th day of June, 1995, upon Plaintiff's motion to prohibit Defendant Match from imposing a time limitation upon his deposition to be taken by Plaintiff's counsel, and

IT APPEARING TO THIS COURT that Defendant Match should not be heard on a Friday morning and not as part of permitted to impose unilaterally a time limitation upon his own calendar controls, deposition, it is therefore

ORDERED that:

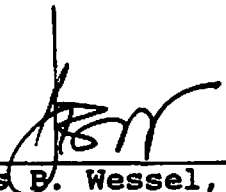
No ruling on this motion is made.

LAW OFFICES OF DOUGLAS B. WESSEL

ENTERED this 19th day of June, 1995.



JUDGE



Douglas B. Wessel, Esquire
Counsel for Plaintiff

Richard W. Boone, Esquire,
Counsel for defendant Match

Mark A. Barondess, Esquire,
Counsel for the remaining defendants

LAW OFFICES OF DOUGLAS B. WESSEL

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NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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RICHARD J. JAMBORSKY
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JANE MARUM ROUSH
M. LANGHORNE KEITH
DENNIS J. SMITH
DAVID T. STITT
JUDGES

COUNTY OF FAIRFAX

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WILLIAM G. PLUMMER
THOMAS J. MIDDLETON
THOMAS A. FORTKORT
QUINLAN H. HANCOCK
RETIRED JUDGES

July 10, 1995

Douglas B. Wessel, Esquire
Reston Town Center
Two Fountain Squiare
11921 Freedom Drive, Suite 550
Reston, VA 22090

Mark A. Barondess, Esquire
8000 Tower Crescnt Drive
Suite 600
Vienna, VA 22182

Richard W. Boone, Esquire
1497 Chain Bridge Road
Suite 200
McLean, VA 22101

RE: Tina Marie Lake v. Joel W. Match, M.D., et al.
Law No. 133092

Dear Counsel:

This is to inform you that I have been assigned to the above-styled case. Any matters pertaining to this case should be sent to my attention or placed on my docket.

Sincerely,

David T. Stitt
David T. Stitt

DTS/cw

CF

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. L133092

JOEL W. MATCH, M.D., et al.,

Defendants.

ORDER

THIS CAUSE CAME TO BE HEARD on this 14th day of July, 1995, upon Plaintiff's motions to enforce discovery agreement, to compel deposition of Defendant Match, and to award costs of motion and sanctions, and

~~IT APPEARING TO THIS COURT, based upon the memoranda and exhibits attached to same, and the argument of counsel, that Defendant Match should not be permitted to impose unilaterally a time limitation upon his own deposition, it is therefore~~

ORDERED that:

Dr. MATCH (DEFENDANT) SHALL APPEAR FOR
HIS DEPOSITION ON JULY 20, 1995, COMMENCING
AT 7:00 A.M., IN MR. WESSEL'S OFFICE, AND
SAID DEPOSITION SHALL CONTINUE ON JULY 20
UNTIL COMPLETED BY PLAINTIFF'S COUNSEL.

LAW OFFICES OF DOUGLAS B. WESSEL

AND IT IS FURTHER ORDERED that:

MR. BOONE IS SANCTIONED IN THE AMOUNT OF
\$450~~00~~, TO BE PAID TO MR. WESSEL WITHIN 60
(SIXTY) DAYS OF THE ENTRY OF THIS ORDER.

ENTERED this 14th day of July, 1995.

David T. Stitt
JUDGE

I ASK FOR THIS:


Douglas B. Wessel, Esquire
Counsel for Plaintiff

SEEN ~~OBJECTED~~ TO:


Richard W. Boone, Esquire,
Counsel for defendant Match

SEEN:

Mark A. Barondess, Esquire,
Counsel for the remaining defendants

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE

Plaintiff

v.

JOEL W. MATCH, M.D.,

Law No.: 133092

and

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC.,

and

THOMAS H. GREISINGER, M.D.

and

WAYNE C. CODDING

Defendants

ORDER

IN CONSIDERATION of the agreement of the parties, as is evidenced by the endorsement of their counsel hereupon, it is hereby

ORDERED that Paragraphs 13a, 13b and 13c, shall be, and they hereby are stricken from the Plaintiff's Motion For Judgment filed herein; and, it is further,

ORDERED that the Motion For Sanctions relating to Paragraphs 13a, 13b, and 13c shall be, and it hereby is, withdrawn; and,

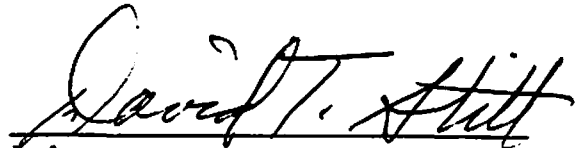
Lake v. Joel W. Match, M.D., et al.

Law No.: 133092

Page 2

THIS CAUSE is continued.

ENTERED this 17TH day of NOVEMBER, 1995.



Judge

I ASK FOR THIS:

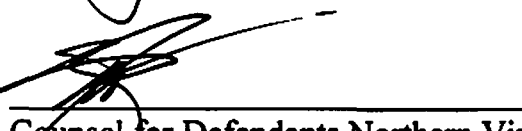


Counsel for Defendant Joel W. Match, M.D.

SEEN AND AGREED TO:



Counsel for Plaintiff



Counsel for Defendants Northern Virginia Women's
Medical Center, Inc., Thomas H. Greisinger, M.D.
And Wayne C. Coddington

✓C
VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE

Plaintiff

v.

JOEL W. MATCH, M.D.

Law No.: L133092

and

NORTHERN VIRGINIA WOMEN'S MEDICAL
CLINIC, INC.

and

THOMAS H. GREISINGER, M.D.

and

WAYNE C. CODDING

Defendants

ORDER

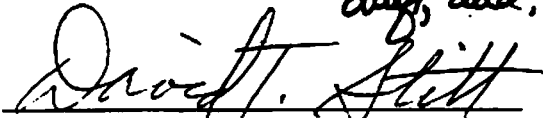
THIS MATTER having come before the Court for a hearing on the Motion In Limine filed herein by Plaintiff, Tina M. Lake which said Motion seeks, *inter alia*, to prohibit the testimony as expert witnesses on behalf of Defendant ~~Joel W. Match, M.D.~~ at the trial of this matter of ~~Elizabeth A. Garreau, M.D., Richard Stokes, M.D., John Doppelmeier, M.D., and Joel W. Match, M.D.~~ and,

THE COURT having considered the Plaintiff's written Motion, together with the written Opposition thereto filed on behalf of Defendant Joel W. Match, M.D., and having heard the arguments of counsel upon said Motion; it is therefore,

ORDERED that the Motion In Limine filed herein by Plaintiff, insofar as it seeks to exclude the testimony of ~~Elizabeth A. Garreau, M.D., Richard Stokes, M.D., John Doppelheuer, M.D., and Joel W. Match, M.D.,~~ as experts on behalf of Defendant ³Joel W.

~~Match, M.D.,~~ be, and it hereby is, DENIED; and, it is further ORDERED that the testimony of Dr. Match as to the negligence of Dr. Chauachote may not be offered affirmatively by Dr. Match during his direct case in chief; and, it is further

ENTERED this 20TH day of NOVEMBER, 1995


David T. Stitt
Judge

ORDERED that the trial of this matter is continued December 11, 1995

I ASK FOR THIS:


Counsel for Defendant Joel W. Match, M.D.

OBJECTION TO THE RULINGS!
SEEN AND NO OBJECTION TO THE FORM OF THE ORDER:


Counsel for Plaintiff


Counsel for Defendants Northern Virginia
Womens Medical Center, et al.

12-1-73
VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER,
THOMAS H. GRESINGER, M.D. AND WAYNE C. CODDING'S
MOTION TO DISMISS

TO THE HONORABLE DAVID T. STITT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and in support of their Motion to Dismiss respectfully offer the following Memorandum of Points and Authorities:

1. That this action arises as a result of alleged medical malpractice occurring during the course of a therapeutic abortion procedure which was performed on the Plaintiff on the 13th day of April, 1991, at the Northern Virginia Women's Medical Center by Defendant Joel W. Match, M.D.

2. That at all times pertinent to this lawsuit, and indeed since at least July 13, 1988, the owner and operator of Defendant Northern Virginia Women's Medical Center ("the Clinic") has been Fairfax Square Medical Associates, Inc.

3. That a Certificate verifying that Fairfax Square Medical Associates, Inc., conducts business under the name of Northern Virginia Women's Medical Center, dated July 13, 1988 is on file in the land records of this Honorable Court pursuant to §59.1-69 of the Code of Virginia, 1950 ed., as amended, and has been so at all

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times relevant to this action.

4. That despite this public record, the Plaintiff failed to name Fairfax Square Medical Associates, Inc., as a Defendant in this action, improperly naming the Clinic itself, which has no individual corporate identity.

5. That it is well-settled in Virginia that a Court is powerless to proceed with a suit unless all necessary parties are properly before the court, See Mendenhall v. Cooper, 239 Va. 71, 74, 387 S.E. 2d 468 (1990).

6. That the corporate owner and operator of the Defendant Clinic, Fairfax Square Medical Associates, Inc., is a necessary party to this action. The Mendenhall Court defined "necessary party" at page 75:

Where an individual is in the actual enjoyment of the subject matter, or has an interest in it, either in possession or expectancy, which is likely either to be defeated or diminished by the Plaintiff's claim, in such case he has an immediate interest in resisting the demand, and all persons who have such immediate interests are necessary parties to the suit.

Raney v. Four Thirty Seven Land Co., 233 Va. 513, 519-20, 357 S.E. 2d. 733, 736 (1987) (quoting Gaddess v. Norris, 102 Va. 625, 630 46 S.E. 905, 907 (1904)).

7. That as a necessary party, Fairfax Square Medical Associates, Inc., must have been named as a Defendant in order for this Court to proceed. The Supreme Court, again in Mendenhall at page 74 stated:

[a necessary party's] interests in the subject matter of the suit, and in the relief sought, are so bound up with that of the other parties, that their legal presence as parties to the proceeding is an absolute necessity, without which the Court cannot proceed.

8. That §8.01-243 of the Code of Virginia, 1950 ed., as amended, provides that every action for personal injuries shall be

brought within two years after the cause of action accrues.

9. That Plaintiff's alleged injuries occurred on or about April 13, 1991. Assuming, arguendo, that the the Plaintiff was to amend her pleadings to add a new Defendant, namely the necessary party, Fairfax Square Medical Associates, Inc., such action would now be barred by the applicable statute of limitations.

10. That if the Plaintiff were granted leave to file an amended pleading, the suit would have to be dismissed because the necessary party (Fairfax Square Medical Associates, Inc.) is not subject to the Court's jurisdiction, See Mendenhall at 75.

11. That Defendant Northern Virginia Women's Medical Center was improperly named as a party defendant and should be dismissed, since no such legal entity exists. That notwithstanding the foregoing, Fairfax Square Medical Associates, Inc., filed for protection pursuant to the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia on the 23rd day of June, 1995, Case Number 95-12723-MVB. Therefore, this action would be stayed against said party pursuant to the applicable provisions of the U.S. Bankruptcy Code.

12. That Defendants Gresinger and Coddington are stockholders of Fairfax Square Medical Associates, Inc. The Motion for Judgment fails to allege that these Defendants participated in the actual medical treatment provided to the Plaintiff.

13. That the Motion for Judgment alleges that Defendants Gresinger and Coddington performed acts and omissions both personally and on behalf of the Defendant Clinic. Plaintiff fails to allege any facts at all which support her contention that the two individual Defendants acted in their personal capacities.

14. That likewise the Plaintiff has failed to allege any

facts which would give rise to a piercing of the corporate veil and an imposition of individual liability on Defendants Gresinger and Coddington. The Supreme Court, in O'Hazza v. Executive Credit Corporation, 246 Va. 113,115, 431 S.E. 2d 318 (1993) stated that, "... one who seeks to disregard the corporate entity must show that the shareholder sought to be held personally liable has controlled or used the corporation to evade a personal obligation, to perpetrate fraud or a crime, to commit an injustice, or to gain an unfair advantage, citing Lewis Trucking Corp. v. Commonwealth, 207 Va. 23,31, 147 S.E. 2d 747, 753 (1966). The Court, further citing Lewis Trucking at 32, stated, "Piercing the corporate veil is justified when the unity of interest and ownership is such that the separate personalities of the corporation and the individual no longer exist and to adhere to that separateness would work an injustice."

15. That the Plaintiff has not and cannot allege any facts which show these individual Defendants used the corporate identity of Fairfax Square Medical Associates, Inc. to evade any personal obligation or commit fraud, crime or injustice. Defendants Gresinger and Coddington are not so intertwined with their corporate identity so as to lose their separate identity as individuals. The interest and ownership of the corporation and the individual owners are completely separate. Defendants Gresinger and Coddington have no individual liability to the Plaintiff and should be dismissed as parties.

WHEREFORE, the premises considered, your Defendants, Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddington, pray that this Court dismiss them as parties to this suit and that they be awarded their attorney's fees and costs

and for such further relief as this Court may deem proper under the circumstances.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

Mark A. Barondess/MS
MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D. AND WAYNE C. CODDING'S MOTION TO DISMISS was hand-delivered and faxed this 1st day of December, 1995, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.

Mark A. Barondess/MS
Mark A. Barondess

msa\xxxx\lake\dismiss.mot

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VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,
Plaintiff,

v.

At Law No. 133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, INC., et al.,
Defendant.

FILED
COURT RECORDS
SE DEC -1 PM 3:23

CIRCUIT COURT
FAIRFAX, VA

SERVE: TINA MARIE LAKE
c/o Douglas B. Wessel, Esquire
Two Fountain Square, 11921 Freedom Dr., Suite 550
Reston, Virginia 22090

FRIDAY MOTION'S DAY - PRAECIPE/NOTICE

Title of Motion: Motion to Dismiss X Attached Previously Filed

Moving Party: Plaintiff X Defendant Date to Be Heard (Friday): 12/8/95

*1. Time to be heard: X 10:00AM 9:00AM with a Judge 9:00AM w/o Judge

*2. Is this a motion requiring two (2) weeks notice? YES X NO

*3. This motion MUST be heard by Judge Stitt.

Reason (must check one):

 Motion involves a ruling made by this Judge after a hearing/trial.

X This Judge has been expressly assigned to this case/motion by the Chief Judge or other Judge of this Court.

*4. Case to be removed from Docket and continued to Docket.

PRAECIPE/NOTICE filed by:

Mark A. Barondess
Attorney Name

(703) 761-4200
Daytime Phone Number

8000 Towers Crescent Dr., #600
Address

24596
VSS Number

Vienna, Virginia 22182

*5. REPRESENTATION OF COUNSEL OF RECORD

I certify that: Prior to placing this matter on the Court's Docket I made a good faith effort
this matter with Counsel of Record for the opposing party; or

b 1b

 Prior to placing this matter on the Court's docket I attempted without success to
counsel to attempt to resolve this matter;

contact opposing

 There is no opposing counsel of record at this time.

I further certify that I have read each of the instructions on the reverse side of this form:

Mark A. Barondess/LKS
Counsel of Record for Moving Party

*6. CERTIFICATE OF SERVICE

I certify that I have served a copy of this PRAECIPE/NOTICE on all Counsel of Record pursuant to 1:12 of the Rules of the Supreme
Court of Virginia this 1st day of December, 1995.

Mark A. Barondess/LKS
Counsel of Record for Moving Party

* See Instructions on reverse side of form.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY: 23

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

MOTION TO DISMISS

TO THE HONORABLE DAVID T. STITT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and move this Court to enter an Order dismissing them as Defendants in this action, and in support thereof state as follows:

1. That on or about the 17th day of June, 1994, the Plaintiff herein filed her Motion for Judgment against the above-named Defendants and Defendant Joel W. Match, M.D., alleging negligent health care and other claims arising out of medical treatment she received in April, 1991.

2. That Defendants Gresinger and Coddington did not participate in the care or treatment of the Plaintiff and are merely stockholders in the corporation which owns the clinic where the Plaintiff received medical treatment.

3. That the Plaintiff has failed to name a necessary and proper party to this litigation, namely Fairfax Square Medical Associates, Inc., the Corporation which operates the above referenced health care center.

4. That your Defendants rely upon and incorporate herein by

referenced the attached Memorandum of Points and Authorities in support of this Motion to Dismiss.

WHEREFORE, this Motion having been considered by this Court, Defendants Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddling request that their Motion be granted and that they be dismissed as Defendants in this cause and for any other relief which this Court deems proper under the circumstances.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

Mark A. Baroness /s/
MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO DISMISS was faxed and hand-delivered this 1st day of December, 1995, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.

Mark A. Baroness /s/
Mark A. Baroness

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

PLAINTIFF'S MEMORANDUM IN RESPONSE TO MOTION TO DISMISS BY
DEFENDANT NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC.

COMES NOW the Plaintiff, by counsel, and states the following in support of Plaintiff's Memorandum in response to the Motion to Dismiss filed by Defendant Northern Virginia Women's Medical Center, Inc.:

The Defendants' Motion to Dismiss to be heard on the day before this trial represents a stunning, unprecedented and galling disrespect and disregard for this Court, our system of justice and Plaintiff, and arises out of intentional concealment and misrepresentation over several years.

Basic Facts of the Case

On April 13, 1991, Tina M. Lake arrived at this abortion Clinic as a healthy young woman seeking a possible abortion. During the abortion performed by Defendant Match -- who had gone to medical school at Autonomous University of Guadalajara, Mexico, and who has failed to pass his Board certifications all three (3) times -- Ms. Lake's uterus was badly perforated and she began hemorrhaging. While in the recovery room of the Clinic, she

suffered unbearable pain (despite repeated doses of strong pain medications), and she passed numerous huge blood clots.

She was told by the Clinic that she had had a "really rough time" because she had been "farther along" (in her second trimester) than the clinic had thought, and that she should go straight home and "put your feet up". Despite her horrible condition, she was discharged at the pre-designated time by Dr. Match, the Clinic and the Clinic's nurses. She was driven by her friend at speeds exceeding 90 miles per hour during a pouring rain to Warren Memorial Hospital, where nurses removed her from the back seat in an unconscious state and in a rigid fetal position.

Unable to control the bleeding from the damaged uterus and the artery and blood vessels outside the uterus, the hospital surgeon surgically removed her uterus in order to save her life.

An otherwise healthy young woman in her "twenties", she is unable to bear children and continues to suffer from depression.

The parties in this case

The Plaintiff is Tina Marie Lake.

The Defendants are Dr. Match, Northern Virginia Women's Medical Center, Inc. (the alleged operator of the abortion Clinic identified as "NOVA Women's Medical Center"), Dr. Thomas Gresinger and Wayne Coddling. Dr. Gresinger is sued in his role as Medical Director of the Clinic. Dr. Gresinger also is sued (as is Mr. Coddling) sued as the sole shareholders and officers of Northern Virginia Women's Medical Center, Inc., under the specific allegation of individual liability by piercing of the "corporate

veil" based upon their improper conduct of the corporation (Northern Virginia Women's Medical Center, Inc.'s two (2) demurrers to such allegations were overruled).

Correction of Northern Virginia Women's Medical Center, Inc.'s misstatements about the parties in its Motion to Dismiss

In paragraph no. 4 of the Motion to Dismiss, Northern Virginia Women's Medical Center, Inc., wrongly asserts that a) the Clinic itself ("NOVA Women's Medical Center") -- presumably the physical premises or the Clinic's alleged trade name -- was named as a Defendant. This contention is refuted by a simple review of the style of this case (in each of the three (3) motions for judgment filed in the non-suited case (At Law no. 121123; file located in the file room) and in the existing case (At Law no. 133092).

In paragraph 11, Northern Virginia Women's Medical Center, Inc., wrongly asserts that it does not exist as a legal entity. On each occasion when this Plaintiff's counsel called the State Corporation Commission -- on March 2, 1992; on November 2, 1992; and on December 4, 1995 (after the Motion to Dismiss was filed) - - the State Corporation Commission advised that: 1) Defendant Northern Virginia Women's Medical Center, Inc., has been an existing corporation since 1973 (except for the period 1985-1986, when it was terminated); and 2) the sole officers have been Defendants Gresinger and Coddling.

The crux of Defendant Northern Virginia Women's Medical Center, Inc.'s motion to dismiss is its contention -- raised for the first time one week before trial, after years of litigation -- is that it is not the true operator of the Clinic where Ms. Lake's abortion was performed on April 13, 1991, and that the corporation "Fairfax Square Medical Associates, Inc." is instead the true operator of the Clinic.

Defendant Northern Virginia Women's Medical Center, Inc. and Defendants Gresinger/Codding (the sole shareholders/officers of both corporations) and their counsel in this case, all have had actual notice since 1988 of the alleged corporate ownership of the Clinic by Fairfax Square Medical Associates, Inc.

By admission in its Motion to Compel, Defendants Northern Virginia Women's Medical Center, Inc. and Defendants Gresinger/Codding (the sole shareholders/officers of both corporations, per the State Corporation Commission) have known since no later than 1988 of the alleged ownership and operating of the Clinic by Fairfax Square Medical Associates, Inc. Just as importantly, on information, Mr. Barondess himself (their corporate counsel and their counsel in the non-suited and present case) was the "Assistant Secretary" of the Fairfax Square corporation at the time of the alleged filing of the alleged declaration of ownership/operation of the Clinic by Fairfax Square.

The history of the case while Northern Virginia Women's Medical Center, Inc., its owners and its counsel have known that it is not the proper defendant (if true) and that another corporation is the proper defendant (if true).

Plaintiff first filed her case in her home county of Warren County in late 1992. Defendants Northern Virginia Women's Medical Center, Inc., and its owners/officers, Defendants Gresinger and Codding, appeared and (successfully) moved to transfer venue to Fairfax County, without any mention that it had been sued wrongly.

However, at the same hearing in Warren County, these Defendants were ordered to answer all discovery (Interrogatories and Requests for Production served with the Motion for Judgment) within 21 days; instead, when the case was transferred to Fairfax

County, these Defendants filed only objections to discovery (avoiding substantive answers) and filed a demurrer to all counts, which initially was generally sustained on the sole ground that the allegations should be stated separately (and not collectively) against each Defendant. After Plaintiff filed an Amended Motion for Judgment, this Court overruled the demurrer in all respects.

Significantly, these Defendants then filed an answer which completely contradicts its instant Motion to Dismiss -- 1) affirmatively admitting that Northern Virginia Women's Medical Center, Inc., was the true operator of this Clinic where Ms. Lake's abortion was performed; and 2) affirmatively concealing from, and misrepresenting to the Court, the parties and counsel, that another corporation was the true operator:

Plaintiff alleged in its Amended Motion for Judgment that:

- . "2. Defendants in this case are NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC. [hereafter "WOMEN'S MEDICAL CENTER"] ..." -- this was admitted by Northern Virginia Women's Medical Center, Inc. (para. 1, Answer).

* * *

- . "5. In April, 1991, WOMEN'S MEDICAL CENTER:
 - a. was a corporation which operated a clinic that performed abortions [hereafter "THE ABORTION CLINIC"] in Fairfax, Virginia" - - this was admitted by Northern Virginia Women's Medical Center, Inc. (para. 4a, Answer)

* * *

- . "13. DR. MATCH, with the aid of employees of WOMEN'S MEDICAL CENTER, and with the tools and facilities of WOMEN'S MEDICAL CENTER, performed

an abortion procedure on MS. LAKE at THE ABORTION CLINIC in Fairfax, Virginia, on April 13, 1991" -- this was admitted by Northern Virginia Women's Medical Center, Inc. (para. 12, Answer)

* * *

"7. In April, 1991, DR. GRESINGER:

- b. was the Medical Director of THE ABORTION CLINIC -- this was admitted by Northern Virginia Women's Medical Center, Inc., and Gresinger (para. 6b, Answer)
- c. was a fifty-percent stockholder (as was CODDING) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC -- this was admitted by Northern Virginia Women's Medical Center, Inc., and Gresinger (para. 6c, Answer)
- d. was an officer and director (as was Coddington) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC -- this was admitted by Northern Virginia Women's Medical Center, Inc., and Gresinger (para. 6d, Answer)

Thus, Plaintiff knew from the beginning of the previous case that: the abortion Clinic where Dr. Match performed an abortion on Ms. Lake on April 13, 1991, was operated by Defendant Northern Virginia Women's Medical Center, Inc.; that Defendant Gresinger was the Medical Director of such Clinic operated by Defendant Northern Virginia Women's Medical Center, Inc.; and that Defendants Gresinger and Coddington were officers and the sole shareholders of Defendant Northern Virginia Women's Medical Center, Inc., which operated the abortion Clinic where the abortion was performed on Ms. Lake on April 13, 1991. Not only did were these facts not at issue from the beginning of the previous case; Defendant Northern Virginia Women's Medical Center, Inc., never contradicted or sought

to correct these facts until years later -- one week before the second scheduled trial in this matter.

After the date of these admissions that Ms. Lake indeed had sued the correct Defendants, Plaintiff's counsel believes that the following events transpired without the Defendants' corrections of their misrepresentations to the Court, Plaintiff and her counsel: Defendant Northern Virginia Women's Medical Center, Inc., appeared perhaps 10-15 or more times before this Court; filed many pleadings; took/defended perhaps ten (10) depositions; filed a number of pleadings to bar further prosecution (on issues unrelated to the instant motion to dismiss); engaged in settlement negotiations; and otherwise never advised this Court, the parties or counsel that an allegedly incorrect party had been sued.

Moreover, Ms. Lake's requests for production and certain discovery depositions addressed financial statements, profit and loss statements and the "incorporation" of Northern Virginia Women's Medical Center, Inc.; and never did Defendants Northern Virginia Women's Medical Center, Inc., Gresinger or Coddling mention that another corporation owned or operated the Clinic.

In fact, this supposedly incorrect corporate party was the party that produced materials such as the medical records of Ms. Lake regarding the abortion on April 13, 1991; and the Clinic's nursing manual governing all aspects of Ms. Lake's care at the Clinic.

Perhaps more importantly, this supposedly incorrect party (Northern Virginia Women's Medical Center, Inc.) objected to

Plaintiff's request for entry upon the land of these Defendants (Plaintiff identified the address of the Clinic "where the abortion was performed on Plaintiff on April 13, 1991") to inspect, photograph and videotape the premises; its objection referred to the requested entry into the abortion Clinic where Ms. Lake's abortion was performed as "[t]he requested entry upon the premises of your Defendant, Northern Virginia Women's Medical Center, Inc. [emphasis added]" (para. 3). This Court overruled the objection and ordered Defendants Northern Virginia Women's Medical Center, Inc., Gresinger and Coddington to permit such entry; and, in late 1994 Plaintiff's counsel and a videographer actually photographed/videotaped the premises of the Clinic under the supervision of Mr. Barondess and Defendant Coddington.

Now that Plaintiff is aware of the substance of the Motion to Dismiss, the cavalier attitude of Defendants Northern Virginia Women's Medical Center, Inc., Gresinger and Coddington toward this case reflects a longstanding intent to rely upon this potentially dispositive issue while concealing same to the Court, Plaintiff and her counsel.

In this re-filed case Defendants Northern Virginia Women's Medical Center, Inc., Gresinger and Coddington:

- . filed the same demurrer as in the non-suited case.
- . filed no answer.
- . propounded no additional discovery.
- . asked no questions of Plaintiff at her only deposition.
- . did not object to, and did not respond to, Plaintiff's request for supplementation of all prior discovery responses.
- . filed their expert-witness designation two (2) weeks after the deadline, and then only quoted verbatim the designations filed by Defendant Match.
- . filed no exhibits and no list of witnesses.
- . did not object to any of Plaintiff's numerous exhibits.

Plaintiff believes this cavalier representation indicates an long-held decision to rely upon this potentially dispositive issue while concealing same to the Court, Plaintiff and her counsel, while the Court, Plaintiff and her counsel prepare diligently for trial at great expense and effort.

Immediately after the last hearing before Judge Stitt -- during which the Court permitted these Defendants' late filing of expert-identifications -- in the hallway outside the courtroom Mr. Barondess extended a "final" settlement offer which he characterized as a "nuisance" settlement, and then proceeded to state that his Defendants would be raising a dispositive issue. Plaintiff's counsel responded that any such dispositive issue would not be timely raised, and then requested the specific nature of the issue; Mr. Barondess responded that he would not reveal the dispositive issue until "about three (3) days before trial". Later that day, Plaintiff's counsel sent a facsimile to Mr. Barondess in which Plaintiff's counsel again objected to such an issue being raised at this time, and again inquired as to the specific issue to be raised. Mr. Barondess again refused specify the issue. Mr. Barondess did not specify this issue until last Friday, December 1, 1995, when Plaintiff's counsel was known to be out-of-town.

Despite opposing counsel's efforts to conceal the issue from this Court and Plaintiff and her counsel, when Plaintiff's counsel returned to this area on Monday, December 4, 1995, he immediately requested and was granted a hearing before Judge Stitt on the following morning in order to discuss immediately the impact of

such a motion upon the trial date one (1) week later, so as to minimize significant costs such as expert-witness payments. Mr. Barondess objected to the time of the hearing; and, because Judge Stitt's calendar did not permit a hearing at any other time before Friday, Plaintiff's counsel's efforts to mitigate damages to all parties and the Court was unavailing.

However, Plaintiff's counsel did advise both opposing counsel on Monday, December 4, 1995, that Plaintiff could not go to trial without leave to amend to add the correct corporate defendant (after substantial discovery regarding the new party), and that Plaintiff could not proceed to two (2) separate trials because of the greatly increased costs and the higher likelihood of a verdict for all defendants in separate trials (by virtue of "finger-pointing" at the absent defendant(s) in each trial).

Based upon the admissions of Defendants, Ms. Lake does not accept that she mis-named the operator of the abortion clinic, but she ignores such possibility at her peril.

Even though the Defendants have concealed this issue until the week before trial, they have offered no proof other than their counsel's representations that the incorrect corporation has been sued. Even if they were to offer such evidence, Ms. Lake could not accept such evidence without these Defendants' compliance with written discovery and oral depositions on these issues raised for the first time.

However, at the same time, Plaintiff cannot cavalierly proceed to trial against an incorrect party; cannot avoid bringing in the

correct party, who will have potentially enhanced liability exposure and substantially greater assets or insurance.

1) The threat that adding the correct corporate defendant would result in a stay of these proceedings is of no consequence to Ms. Lake (she will wait); and 2) the threat that the statute of limitations would bar recovery against such party is premature and not before this Court.

Despite that these Defendants have known for years that they are (allegedly) the correct owners/operators of the Clinic, and that they have concealed same from Plaintiff for years, these Defendants admit that bankruptcy proceedings were not commenced until the middle of 1995. Should this action be stayed because the new party is in bankruptcy, Ms. Lake will wait in this important case, and she will not be deterred by the conniving and deception of these Defendants.

Even assuming arguendo that the statute of limitations would bar recovery against the allegedly correct party, this issue is premature and is not before this Court. Moreover, this ignores defenses to the raising of the statute of limitations such as equitable estoppel (which applies in applicable circumstances such as fraud, accident, mistake and surprise).

Still further, assuming arguendo that the incorrect corporate defendant is in the case, this Court will recognize that apparently both the corporation in the suit and the allegedly absent corporation: have owned and operated abortion clinics in Fairfax; have the same shareholders and officers; have had the same corporate counsel, Mr. Barondess; have had the same notice before the expiration of the statute of limitations of all of the

allegations of Plaintiff, and that the allegedly incorrect corporation had been sued instead of the allegedly correct corporation; have had the same notice that Plaintiff's allegations clearly were directed at the owner and operator of the abortion clinic where Ms. Lake underwent an abortion on April 13, 1991 (as had been admitted by these Defendants; see above), so that none of these Defendants could claim ignorance of such allegations prior to the expiration of the statute of limitations.

This Court should grant leave to amend to add the potentially correct corporate entity, and, because of the need for critical information at this late date and the awarding of severe sanctions, this Court should permit expansive discovery related to a) these two (2) corporate entities and their owners, finances (etc.); and related to b) the Defendants' and their counsel's knowledge and motives in concealing these matters from the Court and Plaintiff.

Under circumstances much less egregious than presented here, permitting leave to amend should be (liberally) granted. Under these unprecedented circumstances of deception, concealment and misrepresentation upon which Plaintiff and the Court relied, leave to amend must be granted, and these Defendants should be held strictly accountable for the inconvenience and increased costs to the parties, counsel and witnesses.

Moreover, liberal and expansive discovery should be granted as to the new substantive issues and as to the issue of the Defendants' and their counsel's knowledge and motives in concealing these critical matters for so long from the Court and Plaintiff.

A laundry-list of documents must be produced, and questions must be answered, under oath, and must be tested by the crucible of thorough cross-examination. For example: Is "Fairfax Square"

in fact the correct party? What is the evidence that led the current corporate defendant to admit that it operated this Clinic where Ms. Lake's abortion was performed? Is there a meaningless distinction between the two (2) corporations? Did these Defendants and their counsel misrepresent and conceal so that (as it appears), among other things, the statute of limitations would expire as to the correct party? What is the additional liability evidence against the (allegedly correct) Defendants? What additional documents will be produced by the correct party? What is the vicarious liability of the added party? What is the evidence justifying piercing the corporate veil of the "new" corporate party? What prior discovery is worthless as having been directed at the incorrect party? What are the assets and insurance of the new party? What were these Defendants trying so hard to conceal? What perjury was committed by answers under oath regarding the corporate defendant, and why was it misrepresented that the current corporate defendant operated this Clinic? When did Dr. Match or his counsel know that these Defendants had raised the issue of an incorrect party being sued? What were the effects of a zero-likelihood (assuming the wrong party has been sued) of settlement on the good-faith negotiations of Plaintiff?. What costs of Plaintiff were attributable to not being advised of this dispositive issue, and what costs will be duplicated needlessly (Plaintiff is unable to bear the costs of two trials, or a trial on insufficient evidence against a new party)? What were the

knowledge and motives of the corporations, officers and their counsel?

Plaintiff suggests that these Defendants should bear: the costs of prior discovery and proposed discovery; the costs of inconvenience to counsel and the witnesses; financial and evidentiary sanctions to be determined after full discovery on the merits and also on issues relating to sanctions; and other remedies that this Court deems just under the circumstances.

These Defendants made a calculated decision that the benefits to them of concealing the facts from this Court and Plaintiff would outweigh the risks. Plaintiff awaits this Court's response to the Defendants' open and brazen challenge to this Court.

Procedural arguments

The Motion to Dismiss begs for hearing for the benefit of all parties. However, Plaintiff objects to the hearing based upon the following procedural rules of the Supreme Court of Virginia and this Court:

. The Status Conference Order in this case (through the incorporated "CASE MANAGEMENT INSTRUCTIONS") requires that all dispositive motions "should be resolved prior to the status conference".

. The Status Conference Orders in the non-suited and present case require, respectively, that "[a]ll dispositive motions shall be completed 30 days prior to trial" (by December, 1993) and that "[a]ll dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible".

. The motion to dismiss should have been raised by a plea in bar or demurrer at the inception of each suit.

. The significance of the motion to dismiss, and Plaintiff's need for time and space to respond, require that the Briefing Schedule be utilized (but only after discovery by Plaintiff on matters which should have been known long ago regarding the corporate "parties" involved). [Alternatively] the Circuit Court Manual (Rule 4.01) provides that any motion for which a counsel wishes to file a responsive memorandum is a two-week motion.

. This motion to dismiss was filed after Plaintiff's extensive motions in limine, which in themselves would take thirty (30) minutes to hear.

. Because these Defendants filed no Answer to this Motion for Judgment, the case is not "matured for trial" under Rule 3:13, and certainly there is no cognizable issue regarding whether the corporate defendant is a proper party.

. There is no proper evidence before this Court substantiating the representations of Defendants' counsel in the Motion to Dismiss; furthermore, any such evidence should be permitted only upon thorough cross-examination after thorough discovery.

WHEREFORE, Plaintiff, by counsel, respectfully requests that the Motion to Dismiss be denied or decided at a later time; that this Court grant leave to add a new party (Fairfax Square Medical Associates, Inc., and Defendants Gresinger and Coddling with respect to such corporation); that this Court grant Plaintiff immediate expansive discovery on the merits and as to sanctions; that certain sanctions be awarded at this time, and that other sanctions await full discovery on the merits and as to sanctions; and that this Court grant such other relief as it deems just under the circumstances.

TINA MARIE LAKE
By Counsel

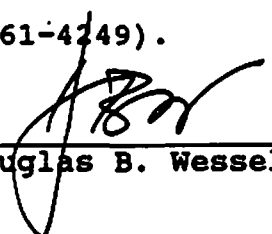
LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
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11921 Freedom Drive, Suite 550
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FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of December, 1995, the original of this pleading was filed in the Clerk's Office and true copies of this pleading were sent by facsimile to Judge Stitt's law clerk, Derek Meisner, Esquire (fax: 703-385-4432); to Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4149).



Douglas B. Wessel

C:\PLEADING\LAKDISMI.MEM

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SUPREME COURT OF VIRGINIA

RECEIVED
MAY 31 1996
RESOLVED

TINA MARIE LAKE,

Plaintiff,

-vs-

JOEL W. MATCH, M.D.,
NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER:
THOMAS H. GRESINGER, M.D., and
WAYNE CODDING,

Defendants.

RICHMOND, VIRGINIA
At Law 133092

Friday, December 8, 1995
Fairfax, Virginia

The above mentioned matter was convened before

THE HONORABLE JUDGE DAVID T. STITT

at the Fairfax County Courthouse, beginning at 10:30
a.m., reported by Devy Khou, RPR, when were present on
behalf of the respective parties:

For the Plaintiff:

DOUGLAS B. WESSEL, ESQ.
Reston Town Center
11921 Freedom Drive
Suite 550
Reston, VA 22090
(703) 904-4333

For the Defendant Joel W. Match, M.D.:

RICHARD W. BOONE, ESQ.
Law Office of Richard W. Boone
~

For the Defendants Northern Virginia Women's
Medical Center, Thomas Gresinger and Wayne
Coddling:

MARK BARONDESS, ESQ.
Sandground, Barondess & West
8000 Towers Crescent Drive
Sixth Floor
Vienna, VA

C O N T E N T S

EXAMINATION BY:

WITNESS:

Wayne Coddling

DIRECT

27

CROSS

29

1 JUDGE STITT: Actually, the Court wants to
2 know why is the motion to dismiss set for the Friday
3 before the scheduled two-week trial starting next
4 Monday?

5 MR. BARONDESS: Your Honor, we had hoped,
6 perhaps naively, that this matter would be resolved by
7 virtue of a settlement. We never envisioned that this
8 case would be tried given the very weak factual
9 predicate which was laid for the underlying claim. It
10 was a guesstimate on our part, and we were just wrong.
11 It is going to trial now, and since we were basically
12 forced to the wire, we had to go ahead and raise some
13 of these defenses, some of which, at least two of the
14 defenses had already been raised by the demurrer that
15 had previously been filed; and, of course, we were
16 dealing with the issue of the wrong party being sued
17 which was not raised and which we would have filed --
18 at the present time, we intend to file a suggestion of
19 bankruptcy regardless of the actual disposition of this
20 matter today. So that's the situation that we're faced
21 with, but I'm prepared to answer any questions that the
22 Court has before I proceed with my motion.

1 JUDGE STITT: I've got to do something with
2 Mr. Wessel first. Mr. Wessel, why have you filed a
3 motion in liminae with something like 16 different
4 points in it to be heard the Friday before trial?

5 MR. WESSEL: Judge, I think it is too long,
6 and I don't plan on even pursuing it in view of Mr.
7 Barondess' motion. I think I made that clear in my
8 brief. I think his motion is much more important, and
9 I think it's dispositive, not in the way he believes it
10 is.

11 I would have -- I told other counsel here
12 this week when I got the motion to dismiss that we
13 would not be pursuing trial because of this new
14 development and that I thought it was impossible to do
15 it for the various reasons I have outlined in my brief.
16 If I hadn't said that, I would have talked with them
17 this week about the motion in liminae, but we are not
18 pursuing those, and I made that very clear to other
19 counsel.

20 JUDGE STITT: Mr. Barondess, I'll hear you
21 on the motion to dismiss.

22 MR. BARONDESS: Thank you, Your Honor.

1 Your Honor, as you recall, this matter
2 arises as a result of the motion for judgment which was
3 filed on the 17th day of June 1994. That suit alleges
4 negligent health care and other various causes of
5 action not only against Northern Virginia Women's
6 Medical Center, Inc., but also against Dr. Match, Dr.
7 Gresinger and Mr. Coddington. For purposes of just
8 clarity, Your Honor, I think it's important to
9 understand who the parties are on the defense side.

10 Northern Virginia Women's Medical Center,
11 Inc., is a corporation which previously operated a
12 health care facility. It is not the operator of the
13 instant facility. The operator of the instant facility
14 is a company known as Fairfax Square Medical
15 Associates, Inc. I am just going to jump ahead because
16 I have already had an opportunity to review the
17 opposition which was filed and received by me last
18 night.

19 Fairfax Square Medical Associates, Inc.,
20 was, in fact, identified in this suit, and the way it
21 was identified is during the course of the discovery,
22 we were requested to provide a copy of the employment

1 contract of Dr. Match. That employment contract
2 clearly states that the employer is Fairfax Square
3 Medical Associates, Inc. It was in there and,
4 therefore, at that point in time, there was no
5 concealing, no effort to conceal whatsoever. We just
6 didn't raise this particular issue until this time.

7 With respect to the other defendants, Your
8 Honor, Dr. Match is the doctor that actually provided
9 the medical services. And Dr. Gresinger is the medical
10 director of the facility, although he did not render
11 any health care whatsoever to this patient, and he's
12 also a stockholder of this other company, Northern
13 Virginia Women's Medical Center, Inc.

14 JUDGE STITT: He is a stockholder of what?

15 MR. BARONDESS: Of Northern Virginia Women's
16 Medical Center, Inc., as well as Fairfax Square Medical
17 Associates, Inc.

18 JUDGE STITT: You say he is the director.

19 MR. BARONDESS: Medical director, but he
20 actually provided no health care services whatsoever to
21 this patient, never treated her whatsoever.

22 Mr. Coddling is a stockholder of one of the

1 companies, and he is -- he is an accountant. He is not
2 even a medical doctor or any other health care
3 provider, and there is absolutely no basis whatsoever
4 for any of the claims against him. The only way that
5 the plaintiff attempts to achieve a valid claim is to
6 pierce the corporate veil, and, as you can see from the
7 oppositions that have been filed by Mr. Wessel, he
8 acknowledges that the companies are valid companies,
9 and there is no basis to pierce the corporate veil,
10 there being no suggestion made that there are any facts
11 which would give rise to the piercing of the corporate
12 veil. There is no allegation that the company was
13 being operated as a fraud or as a sham or anything
14 along those lines.

15 Your Honor, since we're in a position that
16 Fairfax Square Medical Associates, Inc., is the actual
17 party in interest, it's imperative in accordance with
18 the case law that they be named as a party. They are
19 not named as a party. The time for naming them as a
20 party to the suit has been expired under the statute of
21 limitations, and for that reason, Your Honor, we
22 believe that the motion for judgment must fail and that

1 the motion to dismiss should be granted.

2 JUDGE STITT: How do you characterize them
3 in terms of whether they are necessary, indispensable,
4 proper party?

5 MR. BARONDESS: They are necessary,
6 indispensable, proper parties. There is no way that
7 this litigation can proceed because they are the real
8 party in interest. They are the individual -- excuse
9 me, that is the entity that operates this facility.

10 Counsel makes some suggestion of this
11 concealment issue, and I don't want to personalize this
12 --

13 JUDGE STITT: Let's not do that.

14 MR. BARONDESS: It's really been -- but
15 there is no misrepresentation here, Your Honor. Every
16 pleading that I filed has been filed as Northern
17 Virginia Women's Medical Center not Medical Center,
18 Inc., and that's because Northern Virginia Women's
19 Medical Center is a trade name on file of Fairfax
20 Square Medical Associates, Inc. That's their trade
21 name. It's a different company, though, completely
22 different company. And a company is a legal entity as

1 an individual or a person and, therefore, in order to
2 seek judgment or relief against any individual, you
3 must name that individual in the suit. That individual
4 has never been named. There is no deposition
5 testimony, there is nothing that counsel can point to
6 that would support the contention of any concealment or
7 misrepresentation.

8 So, again, I don't want to personalize it,
9 but the facts are he named the wrong party. He is not
10 entitled to the relief at this point in time. So I
11 would suggest to the court that it would be improper to
12 even entertain the notion of granting leave to amend to
13 add them as a party when, in fact, he can't proceed on
14 the claim because it's barred by the statute of
15 limitations.

16 Thank you, Your Honor.

17 JUDGE STITT: Thank you, Mr. Barondess.

18 MR. BARONDESS: I apologize. I have a bit
19 of a cold.

20 MR. WESSEL: Do you want to hear from me,
21 Judge, or Mr. Boone?

22 JUDGE STITT: I think I ought to hear from

1 you because it's Mr. Barondess's motion. If Mr. Boone
2 wants to say something, I'll give him an opportunity.

3 MR. WESSEL: Judge, have you had an
4 opportunity to review my fairly extensive brief that I
5 filed last night?

6 JUDGE STITT: Yes, sir.

7 MR. WESSEL: Well, I would follow that, but
8 try to just highlight some things. Just so we're all
9 clear on the parties, Mr. Barondess has admitted that
10 we sued, and I think it's clear from the style of the
11 case, that we sued Northern Virginia Women's Medical
12 Center, Inc. His memorandum had confused the matter by
13 suggesting we filed the clinic, meaning the premises or
14 the trade name. That is not so. He has now admitted
15 it. We filed against a corporation. That corporation
16 is still existing. That's the second correction I
17 would make from his memo. It is still existing and has
18 been in existence since 1973. It has not only existed,
19 it has the same shareholders, Mr. Gresinger and Mr.
20 Coddington. It has operated an abortion clinic since
21 1973, just like the one Mr. Barondess suggests is the
22 new party. There are no distinctions other than the

1 name.

2 Now, why did we proceed against Northern
3 Virginia Women's Medical Center, Inc., as operating
4 NOVA Women's Medical Center? In my brief on pages 5
5 and 6, Judge, and then on page 8, Mr. Barondess in his
6 pleadings has admitted operation by the corporation
7 that we sued, not just generally of any abortion
8 clinic, but if you read carefully pages 5 and 6, they
9 admitted that the defendant I sued, Northern Virginia
10 Women's Medical Center, Inc., operated the abortion
11 clinic which is defined as this abortion clinic where
12 Tina Marie Lake, my client, received an abortion, not
13 generally, not ever, but on specifically April 13,
14 1991.

15 Now, there is no way for the defendants to
16 get out of that. They admitted that where the
17 negligence occurred, where the injuries occurred on
18 April 13, 1991, that was operated not by some agency
19 called Fairfax Square, which was never a party to this,
20 and I beg to differ with Mr. Barondess that they
21 supplied an employment contract of Dr. Match which says
22 Fairfax Square Medical Associates. That was

1 specifically asked for and never provided in this
2 litigation. They said they didn't have it. Dr. Match
3 said he didn't have it. So Fairfax Square, the first
4 time it ever comes up in this litigation is one week
5 ago today.

6 Now, secondly, not only did the defendants
7 early on in the litigation -- this is 1992 we are
8 talking about, Judge, admit that the defendant I sued
9 operated this clinic where the abortion was performed
10 on April 13th of 1991, but they also admitted ownership
11 by virtue of a pleading when I asked specifically,
12 Judge, to go on the premises where this abortion was
13 performed. We are not talking about any abortion
14 clinic. Tina Marie Lake had an abortion at NOVA
15 Women's Center on April 13th. I asked to go there to
16 photograph it and videotape it, and they objected
17 referring to "an entry upon the premises of your
18 defendant, Northern Virginia Women's Medical Center,
19 Inc." That is Mr. Barondess' language in the
20 introductory paragraph in response to my request. That
21 objection was overruled, and the court required Mr.
22 Barondess and Mr. Coddington to submit to the request for

1 entry upon those premises which Mr. Barondess had said
2 were owned by Northern Virginia Women's Medical Center,
3 Inc.

4 Now, that is very, very early on in the
5 litigation, Judge. Never was there any suggestion
6 until last Friday that we had sued an incorrect party,
7 and I can tell you, Judge, and I don't want to be
8 disingenious, I suppose there is a real good possibility
9 that, in fact, Mr. Barondess was wrong and that the
10 correct party is Fairfax Square, but I sure don't know
11 and I sure can't tell in the last week.

12 And all the discovery, Judge, talking about
13 stock ownership, financial interest, profit and loss
14 statements, all of this which came in under Northern
15 Virginia Women's Medical Center, Inc., applied to them.
16 They acted as the defendant. They produced the medical
17 records, Judge, from Tina Marie Lake on April 13, 1991,
18 which was directed to Women's Medical Center, Inc., and
19 not to Fairfax Square. How did they get the medical
20 records? It's outright deception, and I'm not
21 personalizing, but I'm talking about the facts. You
22 admit the ownership, you admit the operation, and in

1 all respects, you are producing the records when the
2 defendant who all this discovery is directed at is
3 Northern Virginia Women's Medical Center, Inc.

4 Now, as I said in the brief, the behavior
5 which I think is particularly questionable of late
6 which indicates that the defendant Northern Virginia
7 Women's Medical Center, Inc., simply wanted to do this
8 at the very last minute despite the status conference
9 order, despite the rules of court requiring dispositive
10 motions to be raised as far in advance as possible,
11 speaking of that, Judge, this is 1988, middle of the
12 year when the gentleman sitting right here, Mr.
13 Coddington, behind Mr. Barondess and who was the sole
14 shareholder with Mr. Gresinger, the other defendant,
15 and Mr. Barondess who on information and belief, Judge,
16 signed in the middle of 1988 not just as counsel in
17 these cases for all of the abortion clinics and all the
18 ownership they have in the abortion clinics, but Mr.
19 Barondess signed as assistant secretary of the
20 corporation acknowledging at that point in mid 1988 the
21 ownership and operation of this clinic. And, yet, he
22 is filing pleadings in 1992 as their corporate counsel

1 and perhaps as their assistant secretary still. Not as
2 their assistant secretary but while he is also their
3 assistant secretary. I don't know that, but I would
4 guess that's also the case, saying nothing about
5 Fairfax Square and, instead, saying that Northern
6 Virginia Women's Medical Center operated it and owned
7 it. And, no, we don't want you on the premises of
8 Northern Virginia Women's Medical Center. Objection
9 overruled. We go there, we take the photographs and
10 the pictures and the videotape and we proceed.

11 Mr. Barondess, Judge, has not only -- let me
12 just say Medical Center, Inc., so we don't personalize
13 it, because they really are the party who are doing it,
14 and Mr. Coddington has, by the way, signed the answers to
15 interrogatories and so forth. He has been actively
16 involved in it. There have been countless appearances
17 before this court where this has not been raised. The
18 opportunity to file a plea and bar and a demurrer have
19 passed years ago, at least as to the non-suited case,
20 and long ago, many months ago as to this case. It was
21 never raised in any pleadings. It was never raised in
22 plea and bar and demurrer. There have been appearances

1 before Your Honor, before other judges.

2 Let me just address the one point about the
3 settlement which was Mr. Barondess' initial response as
4 to why this motion to dismiss was raised the Friday
5 before trial.

6 Judge, Mr. Barondess and the clinic did not
7 raise an issue of settlement and haven't since the case
8 was non-suited because of my illness right before trial
9 two years ago. I raised it, got no response from Mr.
10 Barondess, and at the last hearing before Your Honor,
11 when I asked that the expert witnesses be excluded
12 because the clinic had named them two weeks late and
13 Your Honor overruled that, immediately outside the
14 hearing, Mr. Barondess said, without representing to
15 you, Judge, in that hearing, that, A, the -- I'll just
16 say it's several thousand dollars.

17 MR. BARONDESS: I'm going to object, sir.

18 JUDGE STITT: Sir, keep your seat. We are
19 just having a discussion here and I'm going to hear
20 from you in a minute.

21 MR. BARONDESS: Excuse me. I was just
22 objecting to the discussion of what specific settlement

1 discussion took place. That was my only objection.

2 JUDGE STITT: I understand.

3 MR. WESSEL: I think the amount is
4 pertinent, but I'll listen to the court on whether or
5 not --

6 JUDGE STITT: I don't need to hear about it.

7 MR. WESSEL: It was considered a nuisance
8 value and it was offered, and after I had made a demand
9 and Mr. Barondess -- I said, of course, that's not
10 going to be acceptable. And Mr. Barondess at that
11 point, right after appearing before Your Honor, said,
12 Doug, there is a dispositive issue. When I asked what
13 it was, he refused to respond. He said it would be
14 raised several days before trial. I wrote him a fax
15 that day, I believe it was, and I asked for the nature
16 of that dispositive motion so all the parties could be
17 less inconvenienced, but inconvenience is small
18 potatoes when it comes to this case in terms of expert
19 witness cost, Judge, which can be huge and are huge.
20 And he refused to answer that. And the first notice I
21 got was, of course, last Friday when my office called
22 me and indicated to me -- I was in Florida for my

1 parents' anniversary, when my office called me and
2 indicated to me what Mr. Barondess' motion had said.

3 As far as a couple of the issues on -- I
4 agree with Mr. Barondess that it's not appropriate to
5 proceed with the necessary party. I think it is
6 clearly a necessary party if they are a true
7 corporation, and that's what I don't have time to find
8 out.

9 JUDGE STITT: What are you suggesting be
10 done?

11 MR. WESSEL: Well, one, that leave to amend
12 be permitted, and that doesn't mean the court is ruling
13 on the statute of limitation. That's all Mr. Barondess
14 has mentioned as a threat, if you will. That's
15 obviously premature to decide on that. The leave to
16 amend hasn't been granted, I haven't filed it. There
17 has been no defense raised. I think clearly under
18 these circumstances of concealment and affirmative
19 representation that somebody else is the operator and
20 owner, that equitable estoppel is a very good defense
21 to the statute of limitations raised, if it is.

22 So leave to amend be granted; that expansive

1 discovery be required by the court, and if there is a
2 suggestion of bankruptcy filed so there is a stay, I
3 would suggest that there ought to be expansive
4 discovery on the sanctions issue which is not just a
5 financial matter, Judge. It's why wasn't this raised
6 earlier, what's the prejudice to us? I'm very
7 concerned about whether or not these are legitimate
8 corporations, whether or not they are interlocked,
9 whether or not they are -- I'll say it -- shell
10 corporations, why they are being operated this way, why
11 they all seem to file bankruptcy, why this wasn't
12 mentioned to us.

13 JUDGE STITT: Why isn't this something that
14 you yourself had some responsibility for looking into
15 in the last six or seven years?

16 MR. WESSEL: Well, what put me on notice,
17 Judge, that somebody else besides the admitted owner
18 and operator was the owner or operator? Nothing.

19 JUDGE STITT: Do you agree that this Fairfax
20 Medical Associates, Inc., is an indispensable party?

21 MR. WESSEL: Yes. If they are the true
22 owner and operator, and that's -- I'm just relying on

1 Mr. Barondess. We haven't had any discovery on the
2 issue. I asked the proper discovery, and it was
3 answered by the current defendant after the affirmative
4 representations that I had sued the correct
5 corporation. There are all kinds of questions -- first
6 of all, Judge, I think all of the discovery, arguably,
7 that we got is useless because it was answered by
8 allegedly the incorrect corporation, if that's the
9 case. So I want to know, is this the incorrect
10 corporation, what discovery has applied, and a list --
11 a host of questions.

12 On page 13, principally, Judge, in my brief
13 -- and that's just something that I wrote down
14 hurriedly yesterday in the space of 10 or 15 minutes.
15 I've got to tell you, Judge, what I'm going to have to
16 get is an expert on these corporations, because on the
17 face of it, there is, perhaps I say, something funny
18 going on here. My question is, Judge, why does a
19 defendant come before the Court and make these
20 affirmative misrepresentations and then conceal it to
21 the last minute? Why are we here today on this? There
22 is a reason for that. It isn't -- the answer is not

!!!

1 settlement. That, I can tell you. There is a reason
2 for that, and the Court has, as I put in, I think,
3 honestly, Judge, the most open and brazen challenge to
4 the Court that I have seen ever.

5 JUDGE STITT: I'm not really interested in
6 characterizations as much as I am with what your view
7 is of the legal posture of the thing and what you are
8 asking be done.

9 MR. WESSEL: Well,, obviously, when this was
10 filed, Judge, I made it clear that if, indeed, there
11 was another party that was an indispensable party and a
12 true owner contrary to what we're told, they would be
13 necessary. There are two principal defendants, and
14 that's Dr. Match and the clinic, that is the Medical
15 Center, Inc., or Fairfax. They are the two parties.

16 My client has been challenged financially,
17 to say the least, by this medical malpractice case. We
18 cannot have multiple trials. We need one trial against
19 all defendants, and we ask that you grant leave to
20 amend. If Mr. Barondess wants to raise the stay, so be
21 it. We'll wait. That's not something that we think is
22 fair at this point, because the bankruptcy was filed

1 long after this concealment started. It was filed in
2 the middle of 1995, but we'll wait.

3 I'm not a bankruptcy attorney, Judge. I may
4 have remedies in bankruptcy. This may not even fit in
5 bankruptcy because of equitable estoppels. I don't
6 know what I'm talking about when it comes to
7 bankruptcy. I need an expert. I need an expert on
8 interlocking corporations and whether or not we have
9 been defrauded in some way. But certainly, I'd ask
10 that leave to amend be granted, and we'll see if Mr.
11 Barondess files a stay. My client will wait. My
12 client cannot go to trial against the wrong
13 corporation. If my client goes against the right
14 corporation and it is Fairfax Square, obviously, there
15 is a stay. If the Court wants to place some
16 responsibility on myself, I think we've been misled,
17 but I'll accept that. But this is, without
18 characterizing, I'll try, something that I have never
19 seen before.

20 Thank you, Judge.

21 JUDGE STITT: All right. Mr. Barondess, I
22 want to hear from you, and I also want to hear from Mr.

1 Boone on his perspective.

2 Mr. Barondess, I've got to tell you that,
3 you know, saying that you thought the case was going to
4 settle, that's awful thin for disregarding the status
5 order in this case which said all dispositive motions
6 had to be filed as early as possible, and I think there
7 was even a deadline.

8 MR. BARONDESS: Your Honor, if I can, both
9 of these corporations are corporations that really have
10 no assets. One of them is already in bankruptcy.
11 Northern Virginia Women's Medical Center, Inc., does
12 not presently operate any health care facility. It has
13 no assets. Regardless, it is the right of my client to
14 file bankruptcy if they wish to do so Monday morning
15 before the trial. I'm not their bankruptcy counsel.
16 I'm not presently their bankruptcy counsel, nor have
17 ever been.

18 JUDGE STITT: Who has filed for bankruptcy?

19 MR. BARONDESS: Fairfax Square Medical
20 Associates, Inc. They were being evicted by their
21 landlord, and they had to seek protection.

22 JUDGE STITT: Fairfax Square has filed for

1 bankruptcy. They have already filed that?

2 MR. BARONDESS: Yes.

3 JUDGE STITT: Who else?

4 MR. BARONDESS: Northern Virginia Women's
5 Medical Center, Inc., actually was previously in
6 bankruptcy but they are not at the present time in
7 bankruptcy.

8 I may potentially have made one mistake, and
9 I'm not sure if I did or not, but I just want to
10 clarify. Northern Virginia Women's Medical Center,
11 Inc., is not owned by Mr. Coddington or Mr. Gresinger,
12 and, in fact, Mr. Wessel asked Mr. Coddington at his
13 deposition if he was a shareholder in Northern Virginia
14 Women's Medical Center, Inc., and he testified that,
15 no, he was not. The problem here, Your Honor, is Mr.
16 Wessel never asked the question as to the ownership of
17 the clinic, as to what corporate entity operated that
18 facility. Now, he relies upon the contentions which
19 were set forth in the Amended Motion for Judgment but
20 if you actually look at what those contentions are,
21 it's just that Northern Virginia Women's Medical Center
22 was a corporation which operated a clinic that

1 performed abortions, no question about it. That is
2 true.

3 JUDGE STITT: What is true?

4 MR. BARONDESS: That it was a corporation
5 which operated a clinic that performed abortions in
6 Fairfax, Virginia.

7 JUDGE STITT: What entity? I'm sorry.
8 These entities, I've got to keep straight.

9 MR. BARONDESS: That's referring to Northern
10 Virginia Women's Medical Center, Inc.

11 MR. BARONDESS: He made the allegation that
12 that was a corporation which operated a clinic that
13 performed abortions in Fairfax, Virginia. That's
14 absolutely correct. It was. He never asked about
15 Fairfax Square Medical Associates. He refers to an
16 abortion clinic in Fairfax that the plaintiff had an
17 abortion performed on April 13. That's true. She did.

18 Again, Your Honor, I realize that it's a
19 distinction and we certainly don't mean to offend the
20 Court in any respect by taking this position. I don't
21 believe any discovery is required. I'm prepared to
22 call Mr. Coddling for about one minute of testimony

1 which would put an end to who the owner and operator of
2 that facility is. I mean that will put an end.

3 One other point, Your Honor. Again, I don't
4 want to misstate anything, but I believe that Mr.
5 Wessel asked for a 1099 of Dr. Match during the course
6 of the case and that we provided that, and I believe,
7 at that point, he should have been on notice again as
8 to who the owner of the clinic was because it was
9 Fairfax Square who was making the payment.

10 JUDGE STITT: Let me ask you. What I
11 understood Mr. Wessel to say is he wants the trial
12 continued and he wants leave to amend his pleadings.

13 MR. BARONDESS: To which we would object,
14 Your Honor, and this is why: Mr. Wessel, although I
15 feel it was completely without basis, named Mr. Coddington
16 and Dr. Gresinger to come as parties to this suit.
17 They are prepared to go to trial on Monday. I know Mr.
18 Boone probably wants to go to trial on Monday also.
19 Regardless of what happens with the corporate
20 defendant, that's not going to make any difference.
21 It's really not. I mean, there can be no question
22 that, after Mr. Coddington testifies that this company is

1 the operator and has always been the operator of that
2 facility at that location, that he's not going to be
3 able to overcome the hurdle of the statute of
4 limitations, and while there is a lot of language set
5 forth in the motion or the opposition that he's filed,
6 you'll note there is no case law, Your Honor, and
7 clearly the case law -- the doctrine of relating back
8 and everything else, it all applies here and there is
9 no basis. It's a separate entity. It has its own
10 obligations and rights. He cannot now -- because he
11 didn't ask the right questions during depositions, he
12 cannot now come back and say, Your Honor, let us go
13 ahead and at them.

14 So I'm prepared to call, and I'd ask the
15 Court for permission if you think it is necessary to
16 call Mr. Coddington on the stand for one minute. He'll
17 testify under oath who the operator of the clinic is,
18 and that should put an end to that issue.

19 JUDGE STITT: Go ahead and do that.
20
21
22

1 Thereupon,

2 WAYNE CODDING

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BARONDESS:

6 Q Mr. Coddington, will you state your name,
7 please?

8 A My name is Wayne Coddington.

9 Q Mr. Coddington, are you familiar with a
10 facility or company known as Fairfax Square Medical
11 Associates, Inc.?

12 A I am.

13 Q Can you tell the Court what is the business
14 of that corporation?

15 A It operates a reproductive health care
16 center.

17 Q Where is that center located?

18 A That's at 9900 Main Street, Fairfax,
19 Virginia.

20 Q Did Tina Lake, the plaintiff in this case,
21 receive medical services from that entity on April 13,
22 1991?

1 A Yes, she did.

2 Q Is the facility which is located -- I'm
3 sorry, what is the address of the facility?

4 A 9900 Main Street.

5 Q Is that facility owned or operated in any
6 respects by Northern Virginia Women's Medical Center,
7 Inc.?

8 A It is not.

9 Q Are you a shareholder of Northern Virginia
10 Women's Medical Center, Inc.?

11 A I am not.

12 Q Is Dr. Gresinger a shareholder of Northern
13 Virginia Women's Medical Center, Inc.?

14 A No, he is not.

15 MR. BARONDESS: No further questions.

16 JUDGE STITT: Cross examination, Mr. Wessel.

17 MR. WESSEL: Yes.

18 CROSS EXAMINATION

19 BY MR. WESSEL:

20 Q Mr. Coddling, you have known since 1988 of
21 this alleged true ownership and operation of Nova
22 Women's Center -- the clinic, that is -- known as

1 Fairfax Square?

2 A When you say Nova Women's Medical Center
3 clinic, which entity?

4 Q In your own mind, you have known since 1988
5 that Fairfax Square Medical Associates, Inc., owned
6 NOVA Women's Medical Center and operated it, is that
7 right?

8 A That is not correct. The two corporations
9 are very distinct.

10 Q I'm not talking about a corporation. I'm
11 talking about the clinic. Fairfax Square Medical
12 Associates, Inc., owns the clinic is what you are
13 saying, is that correct?

14 A It owns the clinic at 9900 Main Street.

15 Q And it operated the clinic?

16 A Yes, sir.

17 Q And you have known that since the middle of
18 1988?

19 A Of course.

20 Q I'm going to ask you about your clients,
21 that is the current defendant in this case, Northern
22 Virginia Women's Medical Center, Inc., that you now say

1 didn't own that clinic -- is that correct, it didn't
2 own?

3 A That's correct.

4 Q Now, you understand the allegation in
5 paragraph 2 of the Amended Motion for Judgment,
6 "defendants in this case are Northern Virginia Women's
7 Medical Center," is that correct? You admitted that,
8 is that correct, that Northern Virginia Women's Medical
9 Center was the defendant?

10 MR. BARONDESS: Your Honor, can we have Mr.
11 Coddling have a copy of the pleadings if he's going to
12 be making reference to it?

13 JUDGE STITT: Sure.

14 MR. BARONDESS: I can give him my file, Your
15 Honor.

16 BY MR. WESSEL:

17 Q Let me just ask you, Mr. Coddling, do you
18 recognize that as an Amended Motion for Judgment filed
19 in this case?

20 A It says Amended Motion for Judgment.

21 Q Does the style say Northern Virginia Women's
22 Medical Center, Inc.?

1 A Yes.

2 Q I want to read you from various portions of
3 that. First is paragraph 2, and I can bring this up to
4 you if you'd like. It says, "defendants in this case
5 are Northern Virginia Women's Medical Center, Inc."

6 Now, your counsel admitted that that was
7 true, that it was in the case. You realize that that's
8 the client that's in the case, is that right?

9 A I realize that's who you sued, was Northern
10 Virginia Women's Medical Center, Inc.

11 Q And it was called, and I'll refer you to
12 paragraph 2, it was called Women's Medical Center, is
13 that right? "Hereafter, Women's Medical Center"?

14 A That's what it says.

15 Q All right. And then, let me read you this.
16 Do you see in paragraph 5, "in April 1991 --" would you
17 tell the Court if I'm reading this correctly --
18 "Women's Medical Center," which you have admitted was a
19 short version for the current defendant, "Northern
20 Virginia Women's Medical Center, Inc., A, was a
21 corporation which operated a clinic that performed
22 abortions, hereafter the abortion clinic, in Fairfax,

1 Virginia," is that correct?

2 A That is correct, but both --

3 Q That's the answer to my question. That's
4 the answer to my question. And that was admitted as
5 well, Your Honor.

6 Next, Mr. Coddling, paragraph 13 of the
7 Amended Motion for Judgment, which was admitted by
8 Northern Virginia Women's Medical Center, Inc., the
9 current defendant. I'd ask you if this is true, and
10 I'll read it in front of you. "Dr. Match with the aid
11 of employees of Women's Medical Center," the current
12 defendant, "and with the tools and facilities of
13 Women's Medical Center, performed an abortion procedure
14 on Ms. Lake at the abortion clinic in Fairfax, Virginia
15 on April 13, 1991."

16 Now, you all admitted that. Is that true or
17 is that false?

18 A That is true that he did that, but the
19 entity was Fairfax Square Medical Associates.

20 Q No, sir. No, sir. Here, we say Women's
21 Medical Center. I just had you agree that that's what
22 we used, Women's Medical Center, to mean the current

1 defendant, Northern Virginia Women's Medical Center,
2 Inc. Now, let's look back at that again. I'll read it
3 again to you. "Dr. Match, with the aid of employees of
4 Women's Medical Center," the current defendant, "and
5 with the tools and facilities of the clinic, "that is
6 of the Women's Medical Center, the current defendant,
7 "performed an abortion procedure on Ms. Lake at the
8 abortion clinic in Fairfax, Virginia, on April 13,
9 1991."

10 Now, you admitted that in response to this
11 pleading. Is that a true statement or a false
12 statement?

13 A I don't think it's any question that is a
14 true statement of what he did on April 13th, 1991, but
15 it was not -- it was at Fairfax Square Medical
16 Associates, Inc. That's the corporation.

17 Q So this is false then. It says with the
18 employees of Women's Medical Center, the defendant, the
19 current defendant?

20 A This person, Ms. Lake, never went to
21 Northern Virginia Women's Medical Center, Inc., which
22 was a different location.

1 Q Let's try this again.

2 MR. BARONDESS: If I can just for purposes
3 of clarity, I think we are getting torn up here.
4 Fairfax Square Medical Associates, Inc., operates as a
5 registered trade name of Northern Virginia Women's
6 Medical Center. So when it's referring to Northern
7 Virginia Women's Medical Center, as it's referred to,
8 that's what Mr. Coddling is saying, yes, that's true.
9 She was there, Northern Virginia Women's Medical Center
10 is owned and operated as a registered trade name here
11 in Fairfax County, but the company is Fairfax Square
12 Medical Associates, Inc. That's where the confusion
13 is.

14 This is part of the problem. Mr. Wessel,
15 when he drafts his pleadings, has a lot of words in his
16 pleadings; and because he does that, it paints a very
17 confusing picture; and the problem is, he never went
18 back to ascertain the true meaning and that's where the
19 problem is that we're having. I don't mean to
20 interrupt, but I just --

21 MR. WESSEL: Let's go back.

22 JUDGE STITT: I'm having trouble following.

1 BY MR. WESSEL:

2 Q Let's go back. Maybe the Judge can have the
3 time to write this out. Let me be very clear. The
4 current defendant is Northern Virginia Women's Medical
5 Center, Inc., correct?

6 A I think so.

7 Q And the trade name, if you will, what the
8 clinic is known by, physical premises, is Nova Women's
9 Medical Center, is that correct?

10 A Northern Virginia Women's Medical Center,
11 Inc., is not known as NOVA.

12 Q That's not my question, sir.

13 A I thought it was.

14 Q The premises where this abortion was
15 performed is known as Nova Women's Medical Center, is
16 that correct?

17 A That is correct.

18 Q All right. Now, let's go back to paragraph
19 13. Excuse me. Let's go back to paragraph 2.
20 "Defendants in this case," naming the first one, "are
21 Northern Virginia Women's Medical Center, Inc.,
22 (hereafter Women's Medical Center)." That's what this

1 attorney is calling the current corporation. Do you
2 understand that? It's known furthermore in this
3 pleading as Women's Medical Center, not NOVA Women's
4 Medical Center. Do you understand?

5 A I'm reading the same thing you are. I see
6 what it says, yes. It says hereafter referred to for
7 brevity, I imagine.

8 Q Whenever we use Women's Medical Center in
9 this pleading, we are talking about the current
10 corporation. Do you understand that?

11 A What is the current corporation? Northern
12 Virginia Women's Medical Center, Inc.?

13 Q Yes.

14 A Yes.

15 Q Now, in April 1991, "Women's Medical
16 Center," referring to the corporation, paragraph 5,
17 "was a corporation which operated a clinic that
18 performed abortions (hereafter the abortion clinic),"
19 referring to the clinic itself. Do you understand
20 that? That's another acronym -- not an acronym, but a
21 shortened version. Do you understand what I'm talking
22 about in paragraph 2(a) about a clinic that performed

1 abortions hereafter known as the abortion clinic? Do
2 you understand? So when we are referring now to the
3 abortion clinic, we are talking about --

4 A Northern Virginia Women's Medical Center,
5 Inc., which did perform abortions.

6 Q And operated a clinic in Fairfax, Virginia?

7 A That's correct.

8 Q Now, we're going to use those same terms in
9 paragraph 13 of the Amended Motion for Judgment. Let's
10 repeat it now. Dr. Match, with the aid of employees of
11 Women's Medical Center -- that's the current
12 corporation, the shortened version, right, the current
13 defendant?

14 A The current defendant has not changed. It's
15 Northern Virginia Women's Medical Center, Inc.

16 Q And you understand from what we just went
17 over that the shortened name for that in this pleading
18 is Women's Medical Center, correct?

19 A That's what that says.

20 Q So here is the allegation, paragraph 13,
21 that you all have admitted. "Dr. Match, with the aid
22 of employees of the current corporation," Women's

1 Medical Center, "and with the tools and facilities of
2 the current corporation," Women's Medical Center,
3 "performed an abortion procedure on Ms. Lake at the
4 abortion clinic in Fairfax, Virginia, on April 13,
5 1991."

6 Now, understanding now that we are talking
7 about the current corporation, was that statement true
8 or false, according to your current testimony?

9 A That statement is true. It's a different
10 corporation, and they are not interlocking, deceitful
11 or anything. They are just two very distinct
12 corporations, and they just happen to be clinics.

13 Q You are agreeing that Dr. Match, with the
14 aid of employees of the current corporation, performed
15 an abortion on April 13, 1991, on Ms. Lake?

16 A I am saying that the -- he performed an
17 abortion at the NOVA Women's Medical Center which is a
18 trade name for Fairfax Square Medical Associates, Inc.

19 Q That's not my question, sir. You are not
20 following me. That's not my question.

21 Do you agree or disagree that Dr. Match used
22 employees of Northern Virginia Women's Medical Center,

1 Inc., to perform an abortion on Ms. Lake in 1991? Yes
2 or no?

3 A He did not.

4 Q So that statement that you admitted is
5 false?

6 A That statement of Women's Medical Center, I
7 would take to be the corporation where Dr. Match was
8 working at the time which was Fairfax Square Medical
9 Associates, Inc.

10 Q That's not what it says.

11 MR. BARONDESS: Your Honor, I would object
12 at this point. It's becoming argumentative.

13 JUDGE STITT: We are just going over the
14 same thing. This isn't going anywhere. We are also
15 over the 30 minutes.

16 MR. WESSEL: May I have one more question of
17 him?

18 JUDGE STITT: One more.

19 BY MR. WESSEL:

20 Q Mr. Barondess referred to your not having
21 any interest whatsoever in Northern Virginia Women's
22 Medical Center, Inc. Is that what your testimony was?

1 A He didn't say I didn't have an interest. I
2 think he said I did not own stock.

3 Q Isn't it true that you testified that SIGMA,
4 another corporation, owns the current defendant, isn't
5 that correct, previously in your deposition?

6 A SIGMA owns Northern Virginia Women's Medical
7 Center, Inc.

8 Q Correct. And who are the sole shareholders
9 of that corporation that owns the current defendant?

10 A There are two, Dr. Gresinger and myself.

11 MR. WESSEL: Thank you.

12 JUDGE STITT: All right. Sir, you can step
13 down. I want to hear from Mr. Boone now, briefly, and
14 then this matter is over the 30 minutes. I'm going to
15 have to kick it to the end of the docket, but I want to
16 hear from Mr. Boone.

17 MR. BOONE: I can't remember ever having
18 been in a situation where my client was not a party to
19 any of the motions, but it makes no difference who wins
20 that motion, my client loses it. Dr. Match is ready to
21 go to trial. He has no insurance. He has cleared his
22 busy practice calendar for two solid weeks to be here.

1 He has retained and paid and prepared two expert
2 witnesses. He has subpoenaed three non-party witnesses
3 and to use the venacular, if this case doesn't go to
4 trial on Monday, he is going to take a financial lick
5 and like. It's hard to describe and there's going to
6 be a profound injustice worked on him.

7 I don't know what to tell you to do, Your
8 Honor. I used to think I wanted to be a Judge on the
9 bench of this court, but this morning, I'm not so sure.
10 I don't know how you resolve this fairly to anybody or
11 everybody. All I know is that I'm ready to go to
12 trial.

13 Now, there is absolutely no question that
14 this lady, Ms. Lake, had a surgical termination of her
15 pregnancy some place on April 13th, I think it's 1991,
16 and there is no question that Joel W. Match, M.D.,
17 performed that procedure, and I don't believe there is
18 any serious dispute that the ultimate result was very
19 destructive and damaging to Ms. Lake. The real issue
20 here, I suspect, is who is responsible for that, if
21 anybody. Dr. Match wants to come in and try to prove
22 that he is not the person who was responsible. He

1 spent an awful lot of money to put himself in the
2 position to be able to do that. No matter what happens
3 here, if the trial doesn't go forward on Monday, at
4 least without some definitive resolution as to him,
5 then he's out of pocket an awful lot of money.

6 I don't know what to tell you to recommend
7 or to urge to this court to do in this situation. On
8 the one hand, if you postpone the trial and allow all
9 of this discovery, you work serious injustice on Dr.
10 Match that I'm sure you don't intend to work. On the
11 other hand, if you force the trial to go, force the
12 case to go to trial on Monday in its current posture,
13 there is a very good chance you could wind up working a
14 serious injustice on Ms. Lake which I'm sure you don't
15 intend to work. So at this particular in point, I'm
16 not sure what the resolution is.

17 I was frankly trying to think this morning
18 if there was some way that the trial could proceed next
19 week as to Dr. Match alone and leave Ms. Lake and the
20 "clinic defendants", whomever they might be, to resolve
21 their issues amongst themselves on another day, but
22 it's my understanding from what Mr. Wessel has told me

1 that he doesn't desire to do that, and I'm not really
2 sure that you can force him to do that if he doesn't
3 want to do it.

4 JUDGE STITT: Explain that to me.

5 MR. BOONE: Well, I'm sure that you can
6 always dismiss against Dr. Match or do something of
7 that nature.

8 MR. WESSEL: Your Honor, I didn't hear the
9 Court's question.

10 JUDGE STITT: I asked him to explain the
11 statement to me.

12 MR. BOONE: I suppose you could always
13 dismiss as to Dr. Match. I suppose there is at least a
14 technical possibility of another non-suit in this case,
15 though we object to it. Like I say, I have said an
16 awful lot up here, but frankly not much of it has meant
17 much and not much of it is likely to be of any help to
18 you, sir.

19 I don't know what to tell you to do in this
20 case. I just know that, no matter how this motion is
21 resolved if there isn't a trial on Monday morning, my
22 client winds up a loser. Frankly, I have spent the

1 whole week personally being very angry about all of
2 this. Not only did we have this motion to dismiss to
3 deal with, but we had Mr. Wessel's 16 count motion in
4 liminae which was an absolute nightmare to respond to
5 simply because I think on 11 of the 16 issues, I wasn't
6 sure what the question was, much less what answer I was
7 supposed to give.

8 This case procedurally is a mess, and all I
9 know right now is Joel Match didn't cause the mess and
10 that, somehow or another, you have to resolve the mess.
11 I wouldn't have your job for all the tea in China
12 because I don't know how you go about doing it.

13 MR. BARONDESS: Your Honor, if I can have 30
14 seconds. I would like to be brazen enough to suggest a
15 way to the Court to resolve this. My suggestion is
16 that this case go to trial on Monday morning. What
17 would have happened if I didn't raise this matter until
18 we got in the middle of the trial? In other words, Mr.
19 Wessel puts on evidence as far as what he thinks this
20 clinic was and what the entity was. I just let his
21 proof fail at that point, and at that point, that
22 clinic drops out. They are gone. There is no

1 amendment, no anything. They are out of there at that
2 point.

3 He is the one that named Mr. Coddington and Dr.
4 Gresinger. He asked for them individually to be tried.
5 They should go to trial on Monday. It is horribly
6 unfair to Dr. Match not to have this trial go forward
7 on Monday. So we have three defendants that Ms. Lake
8 sued. All those defendants are ready to go to trial.
9 I'll go ahead and take my chances in terms of the
10 proof. He won't be able to prove, Your Honor, that
11 Northern Virginia Women's Medical Center, Inc., is the
12 place where this clinic operated. At best, all he can
13 do is attempt to impeach Mr. Coddington or someone else by
14 virtue of the answer that had been previously filed.
15 That's all he can do. But it's -- the proof will fail,
16 and I think that will go out on a motion to strike. So
17 I see no prejudice whatsoever to Ms. Lake to do exactly
18 what she said she wanted to do, to sue those
19 defendants. Let's let her sue them. Let's go to trial
20 on Monday morning.

21 JUDGE STITT: Let's go to trial on Monday
22 morning.

1 MR. WESSEL: Judge, may I respond? Going to
2 trial Monday morning means that the case is over as of
3 right now. Ms. Lake, at my suggestion, canceled her
4 experts after we were unable to meet on Tuesday. I
5 found out about this Monday when I got back. I
6 immediately asked for a hearing before Your Honor to
7 resolve this so that we could save expert witness's
8 expenses and so forth. Your Honor was kind enough to
9 grant it, 9:00 o'clock, Tuesday. Mr. Barondess said he
10 couldn't make it. Therefore, we waited until Friday.

11 Ms. Lake is an individual who is virtually
12 unemployed in Front Royal, Virginia, with a ninth grade
13 education, and she cannot afford the 20,000 dollars we
14 already spent on this case. And in view of the fact
15 that I told other counsel this on Monday when I talked
16 to them -- and this is me talking, Judge, for the first
17 time hearing about this, not waiting years concealing
18 this. I was upfront with these gentlemen, and they
19 know that and that's the reason they're suggesting we
20 go to trial on Monday, because I told them we were
21 unable to do that, because I believe this court would
22 grant leave to amend because this came up for the first

1 time.

2 If I could respond to Mr. Boone, he made
3 some nice comments, and I appreciate it, about the
4 effect on Ms. Lake and he also talks about the effect
5 on Dr. Match. Both are harmed by this. It is not the
6 plaintiff's doing that this was brought up at this last
7 minute. This could have been prevented. The plaintiff
8 and Dr. Match are now in an untenable position, and it
9 was caused by this concealment. And you heard, Judge,
10 and I believe you followed those admissions that they
11 made and those are complete -- they are now completely
12 false but they were admitted before, assuming that the
13 correct defendant is Fairfax Square, and that was three
14 years ago, Judge.

15 Ms. Lake cannot go to trial twice. If you
16 -- this has been a long and arduous case, and Ms. Lake
17 is someone -- and I won't argue the negligence, but she
18 suffered a loss of the ability to bear children. It's
19 a very serious case, and she's spent a lot of money.
20 She cannot go against the wrong corporate defendant.

21 Judge, on piercing the corporate veil they
22 talked about, go to trial against the individual

1 defendants, that's already been brought before this
2 Court by way of a demurrer in both the non-suited case
3 and this case. The demurrer was overruled so that it
4 goes to trial on piercing the corporate veil. But
5 piercing the corporate veil with who? If we've got the
6 wrong corporation, we can't pierce the corporate veil
7 with Fairfax Square. We know nothing about Fairfax
8 Square. I haven't asked -- none of the discovery
9 applies.

10 She is in this position at this moment, and
11 it could have been prevented. We could have addressed
12 all this. You could have ordered discovery against
13 Fairfax Square. All of this could have been prevented.
14 It is not Dr. Match's fault, and I told Mr. Boone on
15 Monday that -- and we had a nice long conversation. I
16 said, Richard, I am not going to trial on Monday if we
17 can't get this squared away. It's unfair to everybody
18 to be put in this position, and I think -- well, I
19 don't want to characterize his comments. Ms. Lake
20 deserves the correct defendant, Judge.

21 JUDGE STITT: All right. I agree with some
22 of what Mr. Boone said, which is this is a procedural

1 mess, and all I know is it ain't my fault and I don't
2 think it's Dr. Match's fault, and I regret that either
3 way I go on this it's going to work a hardship on Dr.
4 Match and presumably may work a hardship on Ms. Lake.
5 But I have to tell you, Mr. Wessel, the responsibility
6 of pursuing the proper parties falls on the plaintiff,
7 and that's the beginning and end of that. And you may
8 argue some things down the line in terms of being
9 misled or anything like that but that's the plaintiff's
10 responsibility to sue the proper parties. The motion
11 to dismiss is denied, and we are going to trial Monday
12 morning.

13 MR. WESSEL: Judge, I would ask --

14 JUDGE STITT: Do you have a blank order? Do
15 you have an order prepared?

16 MR. BARONDESS: No, Your Honor.

17 MR. WESSEL: Judge, I would ask in view of
18 the circumstances that we described that you grant --

19 JUDGE STITT: Give counsel that. I'd ask
20 counsel to go to the back of the courtroom, fill that
21 out, sign it and submit it to me.

22 MR. WESSEL: Judge, I would ask as a matter

1 of your discretion that you allow a non-suit because of
2 the circumstances of this case, and I would make that
3 motion to you now. It is within your discretion, so
4 hardships are not worked. I understand what you are
5 saying about my responsibility. I'll have to suffer
6 that obviously, but Ms. Lake should not bear that
7 burden. The Court has the absolute discretion toward a
8 non-suit, and I ask the Court to do that. I plead with
9 the Court to do that.

10 MR. BARONDESS: Your Honor, Mr. Wessel --
11 Ms. Lake has already taken one non-suit. This case has
12 been going for years. I don't remember when it was
13 first filed, 1989, and now he is asking again for yet
14 another chance to get it right. I'm sorry, Your Honor.
15 Discretion, yes, you do have, but I think at this point
16 in time, given his lack of due diligence in
17 ascertaining the correct information, and there have
18 been depositions and depositions and depositions, he
19 could have done it right. And I'm sorry that he didn't
20 do it right. And because he didn't do it right, he now
21 wants Dr. Match to suffer and my clients to suffer, and
22 I don't think that that's proper. We are ready to go

1 to trial Monday morning. Let's do it.

2 JUDGE STITT: Mr. Boone? On the motion for
3 non-suit from Mr. Wessel, I'd like to hear your
4 response.

5 MR. BOONE: We object to the entry of a
6 non-suit for all the reasons I have stated before, Your
7 Honor.

8 MR. WESSEL: Your Honor, I would ask the
9 Court inquire of counsel for Dr. Match if Dr. Match or
10 his counsel was aware of this possibility of the
11 incorrect party allegedly being sued before this last
12 Friday?

13 MR. BOONE: It was, in fact, discussed but I
14 did not have any of the particulars. It had been
15 mentioned to me several weeks ago, and I don't remember
16 exactly when, but I didn't pursue it with Mr.
17 Barondess.

18 JUDGE STITT: That's not Mr. Boone's
19 problem, anyway.

20 MR. BOONE: When he told me that the wrong
21 party was being sued, I wasn't sure what he was saying
22 and I didn't think it meant much to my client, anyway.

1 JUDGE STITT: If there's been a prior
2 non-suit in this case, I'm going to deny the motion to
3 non-suit. I see you all for trial on Monday morning.

4 MR. WESSEL: Judge, I have been candid with
5 the Court all along. We will not appear. The case is
6 over, and I regret the Court's decision. We cannot go
7 forward because we had excessive expenses. We would
8 have brought this before the Court. We brought this
9 before the Court as soon as we could. We have done
10 everything we can in the last week, and we were given
11 no time. We could not bear the expense of expert
12 witnesses working on this case and adding thousands and
13 thousands of dollars when we believed, honestly, that
14 this Court would have granted us leave to add a new
15 party which we were just told about when it was
16 admitted long ago that the party we had in the suit was
17 the correct party.

18 So I would beg the Court to grant the
19 non-suit. It is a non-suit of right the first time,
20 and it was because of my illness during the last days
21 of discovery. And this would be a matter of the
22 court's discretion. It works a tremendous hardship in

1 a very legitimate case for a client that deserves to be
2 heard.

3 JUDGE STITT: Mr. Wessel, I have heard
4 everything you have said. You have said it twice. The
5 motion for non-suit is denied.

6 MR. WESSEL: I want the Court to know that
7 the trial will not happen, and I don't want to mislead
8 the Court. I think the Court could act at this point.

9 MR. BARDONESS: Your Honor, if that's the
10 case, I ask that you enter judgments for the defendants
11 on the motion for judgment.

12 MR. BOONE: I join in that motion. I'll
13 prepare the order.

14 JUDGE STITT: Motion for the defense is
15 granted. When can you give me that order?

16 MR. BOONE: Under the circumstances, I think
17 I can probably get it back this afternoon.

18 JUDGE STITT: Can you do it right now in the
19 back of the courtroom?

20 MR. BOONE: I can just handwrite it, Your
21 Honor.

22 JUDGE STITT: I want it executed by counsel.

1 You can put everything on there, Mr. Wessel.

2 MR. BOONE: May I have a blank? Maybe just
3 out of the abundance of caution, we should get another
4 blank.

5 MR. WESSEL: Your Honor, I would ask the
6 Court if we could approach the Court in the next 21
7 days with relevant motion for sanctions against Mr.
8 Barondess' clients for not bringing it up, severe
9 sanctions.

10 MR. BARDONESS: Excuse, Your Honor, if
11 judgment has been entered by the defendants --

12 JUDGE STITT: There is nothing here. There
13 is nothing here, Mr. Wessel.

14 MR. WESSEL: Sir, the judgment has not been
15 entered, and I'm asking that the Court -- the Court has
16 jurisdiction for the next 21 days. I would ask that
17 the Court consider sanctions and not ignore what their
18 clients have done to this court and to this plaintiff.
19 I have been very candid with the Court. I think this
20 issue needs to be addressed. I have never seen
21 anything like this, Judge.

22 MR. BARDONESS: Excuse me, Your Honor.

1 Judgment has been entered for the defendants. Mr.
2 Wessel is free to file any motion he wants.

3 JUDGE STITT: You can file anything you want
4 to. I'm not going to say one way or the other what I'm
5 going to do with a motion for sanctions. You've got 21
6 days to file anything you want to.

7 MR. WESSEL: All right, sir.

8 MR. BOONE: Your Honor, one last thing. I'm
9 going to ask Mr. Khou to type up the transcript of this
10 hearing this morning and file it with the Court. I
11 think what was said here this morning ought to be
12 preserved on the record.

13 JUDGE STITT: I think it would be helpful to
14 have it on the record, Mr. Boone.

15 MR. BOONE: Thank you, Your Honor.

16
17 (Thereupon, the hearing was concluded.)
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CERTIFICATE OF REPORTER

I, Devy Khou, Registered Professional Reporter, do hereby certify that the transcript is a true record of the proceedings in the case; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.


Devy Khou, Registered Professional Reporter

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Tina Lake

Plaintiff,

vs.

Joel W. Match et al

Defendant(s).

At. Law No. 133092

ORDER

This case came before the Court on December 8, 1995,
set for Defendants Northern Womens Medical Center, Inc & Thomas H. Gresinger &
Wayne C. Coddling; and upon consideration of the Motions made in upon court
Upon the matters presented to the Court, it is ORDERED:

A. The Defendants Motion to Dismiss is Denied, and this matter shall proceed
to trial Monday Dec 11, 1995.

B. The Plaintiffs Motion for a Nonsuit is Denied.

C. The Plaintiff having advised the court that she will not attend
the trial as scheduled, and the Defendants having moved for the

entry of Judgment in their behalf, Judgment is hereby entered
in favor of the Defendants Northern Virginia Womens Medical Center, Inc,
Joel Match, M.D., Wayne Coddling and Thomas Gresinger, M.D and this matter

ENTERED ON 8 DECEMBER, 1995.

is dismissed with prejudice.

COUNSEL FOR PLAINTIFF
REFUSED TO REVIEW
THIS ORDER AFTER
ARGUMENT & LEFT
THE COURTROOM WITHOUT
ENDORSEMENT IT - SIGNATURE
WAIVED - THE COURT WILL
SEE: SEE

Counsel for Plaintiff

FAX A COPY OF THIS ORDER
TO COUNSEL FOR PLAINTIFF

Circuit Court Judge

Counsel for Defendant

Counsel for Defendants
Thomas H. Gresinger

Counsel for Dr. Match

METRO REPORTERS, INC.

Serving DC, Maryland & Virginia

Karen N. McConnell, RPR-CM

Devy Khou, RPR

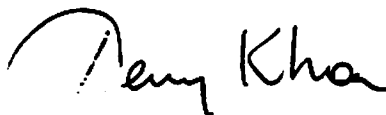
Tuesday, December 12, 1995

Dear Ms. Schnepfer:

Enclosed, please find the original transcript of the proceeding before The Honorable Judge Stitt in the Lake vs. Match case which was heard on Friday, December 8, 1995. At the request of Mr. Boone, counsel for Dr. Match, we are forwarding it to you for filing with the Court.

Should you have any questions, please feel free to contact me at the address or telephone number below. Please allow me to extend my best wishes for a Merry Christmas and a Happy New Year to you and Judge Stitt.

Sincerely,



Devy Khou

**8344 Traford Lane * Suite D-2
Springfield, Virginia 22152
(703) 644-9761**

FILED
COURT SERVICES
95 DEC 29 AM 8:14
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

**PLAINTIFF'S MOTIONS TO SET ASIDE/RECONSIDER JUDGMENT;
GRANT LEAVE TO ADD NEW PARTIES; AND MOTION FOR SANCTIONS;
AND INITIAL MEMORANDUM IN SUPPORT**

COMES NOW the Plaintiff, by counsel, and states the following in support of this pleading:

1. On Friday, December 8, 1995, in a hearing before a court reporter, this Honorable Court (The Honorable David T. Still presiding) denied Plaintiff's motion to add a "necessary" new party identified by "the Clinic defendants" one week before trial as the true owner/operator of the "Clinic" -- in violation of various orders of this Court and in contradiction of their long-standing judicial admissions that they, "the Clinic defendants", were the true owners/operators of the Clinic in question -- and this Court proceeded to enter judgment for the defendants. At such time, this Court also permitted Plaintiff to file a post-judgment motion for sanctions relating to "the Clinic Defendants'" actions.

2. Due to the unavailability of Judge Stitt to hear these motions within twenty-one (21) days after the December 8 hearing, Plaintiff filed a motion to suspend judgment pending Judge Stitt's availability and hearing of these motions; at the time of the

writing of the instant motions, it is expected that the motion to suspend judgment will be granted so that the instant motions can be heard.

3. Based upon the facts and arguments advanced in "PLAINTIFF'S MEMORANDUM IN RESPONSE TO MOTION TO DISMISS BY DEFENDANT NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC." (previously filed; attached only for Judge Stitt); at the hearing on December 8, 1995; in memoranda to be filed by the parties; and at a future hearing(s), Plaintiff respectfully requests that this Honorable Court:

a. reconsider and grant Plaintiff's motion to amend to add new parties (including based upon Rule 1:8, which provides that "[l]eave to amend shall be liberally granted in furtherance of the ends of justice"), including "Fairfax Square Medical Associates, Inc.", and existing defendants Gresinger and Coddling in their roles relative to this newly-identified corporation-owner/operator.

b. reconsider its ruling requiring Plaintiff to proceed to trial against the incorrect parties (in a costly and futile effort as a result of Defendants' concealment and misrepresentations).

c. set a schedule for filing of memoranda regarding the instant motions, and a hearing date(s) for presentation of evidence and argument on such motions.

d. permit expansive discovery on matters including the newly-identified party (and defendants Gresinger and Coddling relating to such new party), their owners, finances (etc.); the

Defendants' and their counsel's knowledge and motives in concealing these matters from the Court and Plaintiff; Defendants' knowing misstatements for years in this litigation (upon which Plaintiff detrimentally relied) admitting that the existing defendants were the true owners and operators of the Clinic in question; and the concealment since at least 1988 that the true owners/operators were a separate corporation in which the sole shareholders were the same Gresinger and Coddington; and the costs and attorney's fees associated with Plaintiff's prosecuting a case which the Defendants knew could not succeed because of their affirmative concealment and misrepresentations.

e. (in the event this Court determines that Defendant Match is unfairly prejudiced by the concealment and misrepresentation of the "Clinic" Defendants), Plaintiff moves this Court to treat the Clinic Defendants separately with respect to any or all relief warranted against the Clinic Defendants but not against Dr. Match.

WHEREFORE, Plaintiff, by counsel, respectfully requests that this Honorable Court grant the above-requested relief and such other relief as this Court deems just under the circumstances.

TINA MARIE LAKE
By Counsel

LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of December, 1995, the original of this pleading was filed in the Clerk's Office and true copies of this pleading were hand-delivered to Judge Stitt's law clerk, Derek Meisner, Esquire; to Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel

C:\PLEADING\LAKRECON.JUD

FILED
COURT SERVICES
95 DEC 29 AM 8:14
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,
Plaintiff,
v.
JOEL W. MATCH, M.D., et al.,
Defendants.

AT LAW NO. L133092

PLAINTIFF'S OBJECTIONS
TO DECEMBER 8, 1995, ORDER
AND RULINGS OF COURT

COMES NOW the Plaintiff, by counsel, and states the following in support of this pleading:

1. On Friday, December 8, 1995, in a hearing before a court reporter, this Honorable Court (The Honorable David T. Still presiding) entered the attached Order.

2. Plaintiff objects to the such Order based upon the following facts and arguments:

. those advanced in "PLAINTIFF'S MEMORANDUM IN RESPONSE TO MOTION TO DISMISS BY DEFENDANT NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC." (previously filed).

. those advanced at the hearing on December 8, 1995 (on the record).

. those advanced in Plaintiff's pleading entitled "PLAINTIFF'S MOTION TO SET ASIDE/RECONSIDER JUDGMENT ...".

. those advanced in memoranda to be filed by the parties, and at a future hearing(s).

. this Court's denial of Plaintiff's motion to add new parties based upon the "necessary" new parties identified by the

LAW OFFICES OF DOUGLAS B. WESSEL

"Clinic" Defendants one (1) week before trial after their own years-long admissions that they were the correct parties.

. this Court's requirement that Plaintiff proceed to trial on December 11, 1995, without the necessary parties newly-identified, including especially this Court's requiring Plaintiff to proceed to trial against the offending "Clinic" Defendants and not solely against Dr. Match.

. this Court's denial of Plaintiff's motions for continuance and nonsuit under the circumstances.

. this Court's granting of Defendants' motions for judgment for the Defendants.

. this Court's ruling on all matters during a limited-time of thirty (30) minutes, without permitting further hearings, evidence or Plaintiff's requested discovery on matters including the newly-identified party (and defendants Gresinger and Coddling relating to such new party), their owners, finances (etc.); the Defendants' and their counsel's knowledge and motives in concealing these matters from the Court and Plaintiff; Defendants' knowing misstatements for years in this litigation (upon which Plaintiff detrimentally relied) admitting that the existing defendants were the true owners and operators of the Clinic in question; and the concealment since at least 1988 that the true owners/operators were a separate corporation in which the sole shareholders were the same Gresinger and Coddling; and the costs and attorney's fees associated with Plaintiff's prosecuting a case which the Defendants knew could not succeed because of their affirmative concealment and misrepresentations.

.. the language at the base of the Order (referring to Plaintiff's counsel's refusal to review the draft Order), which is based upon representations by opposing counsel that are not correct. Instead, the following facts are correct: immediately after this Court's dismissal of this case, counsel for Defendant Match indicated to the Court and counsel that he would begin drafting a proposed Order in the hallway outside the Courtroom, and all counsel left the Courtroom; when Plaintiff's counsel approached opposing counsel and Defendant Coddington several minutes later in the hallway, Defendant Coddington and his counsel were laughing and joking; given the immediacy of Plaintiff's case having been dismissed under circumstances Plaintiff's counsel considered and still considers wholly unjust, Plaintiff's counsel was offended by such conduct and passed by the group of counsel and defendant, requesting that they "just fax me the [draft] Order"; Plaintiff's counsel intended and believed that other counsel as a matter of courtesy under the circumstances would "fax" a copy of the proposed Order, but instead Plaintiff's counsel first knew that the Court had entered an Order without his review when Judge Stitt arranged for a copy of such Order to be "faxed" to Plaintiff's counsel later that same day. Plaintiff's counsel sincerely regrets any offense taken by this Court and prays that any offense will not alter the Court's impartial consideration of the merits of Plaintiff's motions.

TINA MARIE LAKE
By Counsel

LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of December, 1995, the original of this pleading was filed in the Clerk's Office and true copies of this pleading were hand-delivered to Judge Stitt's law clerk, Derek Meisner, Esquire; to Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel

C:\PLEADING\LAKFINAJ.OBJ

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Tina Lake

Plaintiff,

vs.

Joel W. Makh et al

Defendant(s).

At. Law No. 133092ORDER

This case came before the Court on December 8, 1995,
 set for Defendants Northern Womens Medical Center, Inc. & Thomas H. Gersinger & Wayne C. Coddling; and upon consideration of the motions made in upon court.
 Upon the matters presented to the court, it is **ORDERED**:

A. The Defendants Motion to Dismiss is Denied, and this matter shall proceed to trial Monday Dec. 11, 1995.

B. The Plaintiffs Motion for a Nonsuit is Denied.

C. The Plaintiff having advised the court that she will not attend the trial as scheduled, and the Defendants having moved for the entry of judgment in their behalf, Judgment is hereby entered in favor of the Defendants Northern Virginia Womens Medical Center, Inc, Joel Makh, M.D., Wayne Coddling and Thomas Gersinger, M.D and this matter
 ENTERED ON 8 DECEMBER, 1995.

is dismissed with prejudice.

COUNSEL FOR PLAINTIFF
 REFUSED TO REVIEW
 THIS ORDER AFTER
 ARGUMENT & LEFT
 THE COURTROOM WITHOUT
 ENDORSING IT - SIGNATURE
 WAIVED - THE COURT WAIVED

Counsel for Plaintiff

FAV A COPY OF THIS ORDER

David T. Hill
 Circuit Court Judge

Counsel for Defendant

(Counsel for) Defendants

Counsel for Dr. Makh

THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED

Plaintiff

COURT SERVICES

Ind. Law Number: 133092

95 DEC 29 AM 10:17

Chancery Number:

Defendant

SERVE:

JOHN T. FREY
CLERK-CIRCUIT COURT
FAIRFAX, VA

FRIDAY MOTIONS DAY - PRAECISE / NOTICE

Title of Motion: PLAINTIFF'S MOTIONS TO SET ASIDE...

Attached

Previously Filed

Add New Answer; For Selections ...

Moving party: ✓ Plaintiff

Defendant

Date to Be Heard (Friday): January 12, 1978

- * 1. Time to be heard: 10:00 AM 9:00 AM with a Judge 9:00 AM without a Judge
 * 2. Is this a motion requiring two (2) weeks notice? Yes No *(Please Sign and Return to Court Clerk 1/12/96)*
 3. This motion **MUST** be heard by Judge Stitt

Reason (must check one):

- ☒ Motion involves a ruling made by this judge after a hearing/trial? ☐ YES ☐ NO ☐ EDITORIAL
This judge has been expressly assigned to this case/motion by the Chief Judge or other judge of this court.

- * 4. Case to be removed from _____ Docket and continued to _____ Docket.

PRAECIPE/NOTICE filed by:

JOSEPH B. WEISER, ESQ.

Attorney Name

11921 Freedom Dr., #550

Address

Address
BOSTON, VA 22090

(709) 904-4333

Daytime Phone Number

18672

VSB Number

- * 5. REPRESENTATION OF COUNSEL OF RECORD**
- I certify that: ☒ Prior to placing this matter on the court's docket I made a good faith effort to resolve this matter with Counsel of Record for the opposing party; or
- ☐ Prior to placing this matter on the court's docket I attempted without success to contact opposing counsel to attempt to resolve this matter; or
- ☐ There is no opposing counsel of record as of this time.

I further certify that I have read each of the instructions on the reverse side of this form.

Counsel of Record for Moving Party

- * 6. **CERTIFICATE OF SERVICE**
I certify that I have served a copy of this PRAECIPE/NOTICE on all Counsel of Record pursuant to 1:12 of the Rules of the Supreme Court of Virginia this 29th day of December, 1995.

Counsel of Record for Moving Party

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

LAKE

Plaintiff,

vs.

MATCH, ET AL.

Defendant.

At Law No. 133092

ORDER

This case came to be heard on the 29th day of DECEMBER, 1995 on the Plaintiff/Defendant's motion for SUSPENSION OF THE 12/8/95 ORDER.

Upon the matters presented to the Court at the hearing it is

ADJUDGED, ORDERED, and DECREED as follows: _____

PLAINTIFF'S MOTION TO SUSPEND THE DECEMBER
8, 1995, ORDER OF THIS COURT (THE HONORABLE DAVID
T. STITT, PRESIDING), IS GRANTED, SUCH SUSPENSION
NOT TO EXCEED FOURTEEN (14) DAYS UNLESS JUDGE
STITT EARLIER VACATES THE DECEMBER 8, 1995, ORDER.

ENTERED, this _____, 1995.

*ENTERED BY JUDGE JAMORSKY IN EX-100 SE AT 9:54 am
on 12/29/95*

SEEN:

[Signature]
Counsel for Plaintiff(s)

Circuit Court Judge

THE HONORABLE RICHARD J. JAMORSKY

[Signature]
Counsel for Defendant(s)

I am and no objection to the form of the Order.
All other objections and exceptions are preserved.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,
Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,
Defendants.

AT LAW NO. L133092

FILED
COURT SERVICES
95 DEC 20 AM 8:14
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

PLAINTIFF'S OBJECTIONS
TO DECEMBER 8, 1995, ORDER
AND RULINGS OF COURT

COMES NOW the Plaintiff, by counsel, and states the following in support of this pleading:

1. On Friday, December 8, 1995, in a hearing before a court reporter, this Honorable Court (The Honorable David T. Still presiding) entered the **attached** Order.

2. Plaintiff objects to the such Order based upon the following facts and arguments:

. those advanced in "PLAINTIFF'S MEMORANDUM IN RESPONSE TO MOTION TO DISMISS BY DEFENDANT NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC." (previously filed).

. those advanced at the hearing on December 8, 1995 (on the record).

. those advanced in Plaintiff's pleading entitled "PLAINTIFF'S MOTION TO SET ASIDE/RECONSIDER JUDGMENT ...".

. those advanced in memoranda to be filed by the parties, and at a future hearing(s).

. this Court's denial of Plaintiff's motion to add new parties based upon the "necessary" new parties identified by the

"Clinic" Defendants one (1) week before trial after their own years-long admissions that they were the correct parties.

. this Court's requirement that Plaintiff proceed to trial on December 11, 1995, without the necessary parties newly-identified, including especially this Court's requiring Plaintiff to proceed to trial against the offending "Clinic" Defendants and not solely against Dr. Match.

. this Court's denial of Plaintiff's motions for continuance and nonsuit under the circumstances.

. this Court's granting of Defendants' motions for judgment for the Defendants.

. this Court's ruling on all matters during a limited-time of thirty (30) minutes, without permitting further hearings, evidence or Plaintiff's requested discovery on matters including the newly-identified party (and defendants Gresinger and Coddington relating to such new party), their owners, finances (etc.); the Defendants' and their counsel's knowledge and motives in concealing these matters from the Court and Plaintiff; Defendants' knowing misstatements for years in this litigation (upon which Plaintiff detrimentally relied) admitting that the existing defendants were the true owners and operators of the Clinic in question; and the concealment since at least 1988 that the true owners/operators were a separate corporation in which the sole shareholders were the same Gresinger and Coddington; and the costs and attorney's fees associated with Plaintiff's prosecuting a case which the Defendants knew could not succeed because of their affirmative concealment and misrepresentations.

.. the language at the base of the Order (referring to Plaintiff's counsel's refusal to review the draft Order), which is based upon representations by opposing counsel that are not correct. Instead, the following facts are correct: immediately after this Court's dismissal of this case, counsel for Defendant Match indicated to the Court and counsel that he would begin drafting a proposed Order in the hallway outside the Courtroom, and all counsel left the Courtroom; when Plaintiff's counsel approached opposing counsel and Defendant Coddington several minutes later in the hallway, Defendant Coddington and his counsel were laughing and joking; given the immediacy of Plaintiff's case having been dismissed under circumstances Plaintiff's counsel considered and still considers wholly unjust, Plaintiff's counsel was offended by such conduct and passed by the group of counsel and defendant, requesting that they "just fax me the [draft] Order"; Plaintiff's counsel intended and believed that other counsel as a matter of courtesy under the circumstances would "fax" a copy of the proposed Order, but instead Plaintiff's counsel first knew that the Court had entered an Order without his review when Judge Stitt arranged for a copy of such Order to be "faxed" to Plaintiff's counsel later that same day. Plaintiff's counsel sincerely regrets any offense taken by this Court and prays that any offense will not alter the Court's impartial consideration of the merits of Plaintiff's motions.

TINA MARIE LAKE
By Counsel

LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of December, 1995, the original of this pleading was filed in the Clerk's Office and true copies of this pleading were hand-delivered to Judge Stitt's law clerk, Derek Meisner, Esquire; to Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel

C:\PLEADING\LAKFINAJ.OBJ

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Tina Lake

Plaintiff,

vs.

Joel W. Match et al

Defendant(s).

At. Law No. 133092ORDER

This case came before the Court on December 8, 1995,
set for Defendants Northern Virginia Women's Medical Center, Inc. & Thomas H. Grossinger & Wayne C. Coddling, and upon consideration of the Motions made in upon Court.
Upon the matters presented to the Court, it is ORDERED:

A. The Defendants Motion to Dismiss is Denied, and this matter shall proceed to trial Monday Dec. 11, 1995.

B. The Plaintiffs Motion for a Nonsuit is Denied.

C. The Plaintiff having advised the court that she will not attend the trial as scheduled, and the Defendants having moved for the entry of Judgment in their behalf, Judgment is hereby entered in favor of the Defendants Northern Virginia Women's Medical Center, Inc, Joel Match, M.D., Wayne Coddling and Thomas Grossinger, M.D and this matter

ENTERED ON 8 DECEMBER, 1995.

is dismissed with prejudice.

David T. Stett
Circuit Court Judge

COUNSEL FOR PLAINTIFF
REFUSED TO REVIEW
THIS ORDER AFTER
ARGUMENT & LEFT
THE COURTROOM WITHOUT
ENDORSEMENT IT - SIGNATURE
WAIVED - THE COURT WILL

Counsel for Plaintiff 166
FAX A COPY OF THIS

Counsel for Defendant
Counsel for Dr. Match

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

MOTION FOR SANCTIONS

TO THE HONORABLE DAVID T. STITT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and move this Court to enter an Order of Sanctions against counsel for the Plaintiff and as grounds thereof state as follows:

1. That pursuant to an Order entered by this Court on the 5th day of December, 1995, this matter was dismissed with prejudice as to all Defendants based upon the representation of counsel for the Plaintiff that he would not appear to participate in the trial of this action.

2. That on the 21st day following the entry of said Order, counsel for the Plaintiff filed a Motion for Reconsideration of said Order and his Motion for Sanctions.

3. That the filing of said Motions by counsel for the Plaintiff has been undertaken solely to harass, demean and increase the litigation costs of your Defendants. There exists no good faith basis in law or fact for the filing of said pleadings given the conduct of counsel for the Plaintiff. Accordingly, an award of sanctions is proper to be assessed against counsel for the

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Plaintiff pursuant to the dictates of Title 8.01, §271.1 of the Code of Virginia, 1950 ed., as amended.

WHEREFORE, this Motion having been considered by this Court, Defendants Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddling request that their Motion be granted and that an award of sanctions be assessed against counsel for the Plaintiff and any other relief which this Court deems proper under the circumstances.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR SANCTIONS was faxed and mailed this 18th day of January, 1996, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.

Mark A. Baroness

msa\xxxx\lake\sanction.mot

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW
4000 TOWERS CRESCENT DRIVE
SIXTH FLOOR TYSONS CORNER
VIENNA VA 22182
(703) 761-4200

1-26-16
CLERK'S
OFFICE

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

FILED
96 JAN 26 10:00 AM
CLERK'S OFFICE
FAIRFAX COUNTY

**PLAINTIFF'S COUNSEL'S AFFIDAVIT
SUPPORTING MOTION FOR SANCTIONS**

COMES NOW Plaintiff's counsel, Douglas B. Wessel, Esquire, and, in support of Plaintiff's Counsel's Affidavit Supporting Motion for Sanctions against "the Clinic Defendants" and their counsel, states the following:

1. Since April, 1991, and continuing, the undersigned attorney has acted as counsel ("this Counsel") for Plaintiff Tina Marie Lake.

2. This Counsel has reviewed the attached documents bearing "Bate-Stamp" numbers 1-146; these documents are true and accurate copies of such documents, and in fact are the documents which by title, content and date they purport to be. All assertions and purported facts in such documents generated by or on behalf of Plaintiff are, to the best of this Counsel's information and belief, true and correct.

3. The attached documents bear thick underlining [and other extraneous markings from earlier dates] of this Counsel designed to highlight to the Court the facts and arguments raised by Plaintiff in her responsive memorandum to the Clinic Defendants' motion to dismiss and at the hearings on December 8, 1995, and

LAW OFFICES OF DOUGLAS B. WESSEL

January 26, 1996. These facts and arguments include but are not limited to the following:

- a. That the Clinic Defendants knew since no later than July 13, 1988, that the true owner and operator of "NOVA Women's Medical Center" (the abortion clinic in question) was "Fairfax Square Medical Associates, Inc."
- b. That, after investigation and the admissions/misrepresentations of the Clinic Defendants, Plaintiff and her counsel believed from April, 1991, through early December, 1995 (one week before the December 11, 1995 trial, and Plaintiff alleged in these cases, that the true owner and operator of "NOVA Women's Medical Center" was "Northern Virginia Women's Medical Center, Inc."
- c. That in response to these Plaintiff's allegations, the Clinic Defendants including Northern Virginia Women's Medical Center, Inc., admitted and misrepresented that it was the true owner and operator of NOVA Women's Medical Center.
- d. That throughout these cases the Clinic Defendants repeatedly represented itself as the owner and operator of the abortion clinic, and concealed the true owner and operator.
- e. That of the four (4) defendants in these cases, the "target Defendant" was Northern Virginia Women's Medical Center, Inc. (as a result of Dr. Match's insurer's insolvency; the owner's/operator's vicarious liability for his acts; and the lesser liability of individual Defendants Gresinger and Coddington, shareholders in the corporation-owner/operator), which was admitted to be the true owner and operator of the Clinic.
- f. As reflected in the transcript of the December 8, 1995, hearing on the Clinic Defendants' motion to dismiss, Plaintiff did not proceed against such incorrect "target Defendant" as soon as the Clinic Defendants revealed the correct "target Defendant", Fairfax Square Medical Associates, Inc.; and Plaintiff never would have proceeded or continued to proceed against the incorrect "target Defendant".
- g. As a result, virtually all of Plaintiff's attached list of costs, and all of the below-mentioned hours spent by Plaintiff's counsel on this matter, were proximately caused by the intentional and knowing

concealment and misrepresentation by the Clinic Defendants regarding the correct owner/operator of the Clinic.

- h. This counsel spent hundreds of hours on this matter from April, 1991, through the present. Because this counsel handles solely personal-injury cases on a contingency basis, this counsel does not generate time records during the course of such cases, but, as in the case of a discharged counsel who is required to generate retroactively such time records based upon review of the complete file, this Counsel can accomplish same, and moves this Court for the opportunity to do so. should this Court grant Plaintiff's motion for sanctions.
- i. The attached document listing Plaintiff's expenses in this matter, as indicated thereon, is a partial listing of case expenses; again, in the event this Court grants Plaintiff's motion for sanctions, this listing can be completed.

4. Plaintiff hereby incorporates by reference, and submits to this Court as a part of the record in this case: the attached documents; the pleadings filed in the Circuit Court of Warren County; and the pleadings filed in the non-suited case and in this case in Fairfax County.


Douglas B. Wessel, Esquire

Commonwealth of Virginia
County of Fairfax, to-wit:

This 26th day of January, 1996, in my jurisdiction, personally appeared the undersigned, DOUGLAS B. WESSEL, who, first being duly sworn, made oath that the above statements in this Affidavit are true and correct to the best of his information and belief.


Notary Public

Embossed Notary Seal
Commonwealth of Virginia Notary Public Seal
My Commission Expires January 26, 1998
REBECCA D. BRIGHT

My commission expires: _____

FOR CORPORATION ONLY

CERTIFICATE REQUIRED TO BE FILED BY A CORPORATION CONDUCTING BUSINESS IN THE STATE OF VIRGINIA UNDER AN ASSUED OR FICTITIOUS NAME.

We hereby certify in accordance with the provisions of Section 59.1-69 of the 1960 Code of Virginia that we are conducting the business of providing health care services at 9900 Main Street, Suite 305, Fairfax, Virginia 22031, Virginia, under the name of NOVA WOMEN'S MEDICAL CENTER and that no other corporation or person has any interest of any kind in said business and that we are the sole owners and proprietor thereof and that our Post Office address is 9900 Main Street, Suite 305, Fairfax, Virginia 22031 and its Registered Agent's name is Mark B. Sandground and his address is 8000 Towers Crescent Drive, Suite 660, Vienna, Virginia 22180.

We further certify that we were authorized to do business in the State of Virginia on the 13 day of July, 1988.
(Note: to be used only for foreign corporations)

GIVEN Under my hand this 13 day of July, 1988.

FAIRFAX SQUARE MEDICAL ASSOCIATES, INC.
CORPORATE NAME

By: [Signature]

Title: Mark A. Baroness,
Assistant Secretary

Commonwealth of Virginia
County of Fairfax, to-wit:

I, the undersigned Deputy Clerk (Notary Public) in and for the Commonwealth and County aforesaid, do hereby certify that Mark A. Baroness, whose name is signed to the foregoing and hereunto annexed Certificate dated the 13th day of July, 1988, has this day personally appeared before me and acknowledged the same before me in my Office.

GIVEN under my hand this 17th day of July, 1988.

[Signature]
Deputy Clerk (Notary Public)

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia August 9, 1988, at 4:00 o'clock P. M., this Certificate with the Certificate of Acknowledgment annexed, was recorded and filed and admitted to record.

TESTE: Warren E. Barry, Clerk

By: [Signature]

Deputy Clerk

ACCEPTED
JOHN T. FRY, CLERK

[Signature]
Deputy Clerk

000001

RETURN TO: SANDGROUND SPIDEN BARONESS
WEST & FLEWY P.C.
8000 Towers Crescent Drive, Suite 660
Vienna, Virginia 22180.

8K0061 0427

LAW OFFICES OF
DOUGLAS B. WESSEL
ATTORNEY & TRIAL LAWYER

REPRESENTING
THE INJURED & THE ACCUSED

THE DELONG BOWMAN HOUSE
11718 BOWMAN GREEN DRIVE
RESTON, VIRGINIA 22090
(703) 689-4003

Thursday, March 5, 1992

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

AND BY HAND-DELIVERY, TO:

NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC.

(and those agents, servants and employees (express, implied or apparent) and purported "independent" contractors and others who acted on its behalf as described below regarding the examination, care and treatment of Tina Marie Lake)

2957 Prosperity Avenue
Fairfax, Virginia 22031

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

AND BY HAND-DELIVERY, TO:

JOEL W. MATCH, M.D.

1830 Town Center Parkway
Reston, Virginia

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO:

THOMAS H. GRESINGER, M.D.

12339 Hatton Point Road

Fort Washington, Maryland

(individually and as President/Director of the corporation)

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

AND BY HAND-DELIVERY, TO:

WAYNE C. CODDING

11205 Leatherwood Drive

Reston, Virginia 22091

(individually and as Secretary/Director of the corporation)

RE: NOTICE OF CLAIM OF MEDICAL MALPRACTICE

Dear Drs. Match and Gresinger, Mr. Coddington, and Northern Virginia Women's Medical Center, Inc. (as described above):

This letter is Ms. Tina Marie Lake's Notice of Claim of medical malpractice against you, her health-care providers, pursuant to the Virginia Medical Malpractice Rules of Practice, including Rule 2, and Va. Code Ann. §8.01-581.1, et seq., including §8.01-581.2, regarding "Notice of Claim for medical malpractice ...".

The below-described and other acts of malpractice commenced on approximately April 13, 1991, and continued thereafter. The acts were committed by you severally, and jointly (that is, in combination and cooperation with each other while acting as agents, servants, employees and purported independent contractors of Northern Virginia Women's Medical Center, Inc. (hereafter "Women's Medical Center").

On or before April 13, 1991, and thereafter, Ms. Lake contacted you, and presented to you, regarding a possible abortion. An abortion procedure was done at your facility on April 13, 1991. During this procedure Ms. Lake was severely injured and suffered massive hemorrhaging. Despite her condition, you recommended her discharge. Shortly after you discharged her, she became so critically ill due to these injuries and her severe hemorrhaging that she nearly died. Other physicians saved her life but, as a result of her severe injuries and hemorrhaging, were forced to perform a hysterectomy on this young woman.

Reasonable descriptions of your acts of malpractice, under the circumstances described herein, are as follows:

- 1) negligently examining Ms. Lake, including but not limited to on or about April 13, 1991, before, during and after the abortion procedure, and negligently reviewing or failing to review pertinent medical records of Ms. Lake;
- 2) negligently employing less accurate and incomplete testing, and/or not employing testing, for the gestational age of the fetus;
- 3) negligently evaluating and acting upon those tests which were given, including those regarding the gestational age of the fetus;
- 4) misrepresenting, and failing to advise Ms. Lake about, the actual qualifications of the practitioners providing her care, and her actual condition and injuries resulting from the abortion procedure, and actively concealing said true qualifications, condition and injuries;
- 5) negligently preparing Ms. Lake for the abortion procedure, and negligently performing the abortion procedure and post-procedure care, including in perforating Ms. Lake's uterus, in improper use of abortion implements, and in continuing and concluding the abortion procedure after causing severe injury to Ms. Lake;
- 6) not using and not consulting with board-certified and other expert physicians, and not referring Ms. Lake to experts and to a hospital, for evaluation, examination, care and treatment for the procedure and for the post-procedure care and treatment;

7) not properly diagnosing, treating, or monitoring Ms. Lake's injuries and her condition;

8) not memorializing on your records the true nature of the events of April 13, 1991, and thereafter;

9) destroying, despoiling and/or altering Ms. Lake's medical records;

10) negligently counselling Ms. Lake, and not advising her, or not fully advising her, of her treatment options and the options for her care in the event of surgical injury or post-surgery complications, and not obtaining her fully informed consent to the treatment and to her discharge from your care;

11) negligently communicating among yourselves and within Women's Medical Center regarding Ms. Lake's history, treatment and care;

12) failing to treat Ms. Lake and refusing to treat her, and negligently discharging her, after the abortion procedure, especially given her difficulties during the procedure, the perforations of her uterus, her severe cramping and hemorrhaging, and her complaints and physical condition;

13) refusing to respond, and negligently responding, to the doctors and other practitioners engaged in Ms. Lake's critical emergency care shortly after you knowingly discharged her after surgery;

14) not designing, implementing, monitoring, employing or using reasonable rules, methods, policies, practices or procedures (which Ms. Lake relied upon to her detriment), including for ensuring proper and complete examinations and tests; performance of abortion procedures and use of abortion implements and instruments; treatment of surgical injury and complications; and cooperation and communication with other practitioners (within and without Medical Specialists) about your patients, including Ms. Lake;

15) violating the law and accepted medical and medical-office standards and internal (Women's Medical Centers') rules, policies and procedures (which standards, rules, policies and procedures Ms. Lake relied upon to her detriment) regarding the examination, care and/or treatment of a person in the same or similar circumstances as Ms. Lake;

16) conducting your business without required liability insurance, or with inadequate insurance;

17) negligently selecting, retaining, monitoring and using

the practitioners who treated and cared for Ms. Lake, despite your knowledge of previous and then recent complaints against these practitioners, and despite your knowledge of these practitioners' previous and then recent conduct and negligence in similar circumstances and/or while performing the same or similar procedures;

18) encouraging and conducting a "revolving-door" business of abortion -- through excessive scheduling of patients and "over-booking" of patients during a given time period, and through inadequate compensation (of employees and those working on your behalf) on a fee-per-case basis, and through other means;

19) negligently managing the examination, care and treatment of Ms. Lake;

20) negligently disregarding the history, complaints, concerns, statements and signs/symptoms of Ms. Lake;

21) abandoning Ms. Lake;

22) failing to inform Ms. Lake of her treatment alternatives, and not obtaining her truly informed consent to treatment and release from treatment; and

23) misrepresenting and unethically "advertising" the supposed risks of continued pregnancy, and misrepresenting and unethically minimizing the actual risks of undergoing abortion, wholly or partially for commercial gain and in disregard of the patient's best interests.

Please immediately send a copy of this Notice of Claim to your respective underwriter(s).

We look forward to hearing from your underwriters and/or their counsel. Please note this counsel's new office address and telephone and facsimile numbers, as follows: Law Offices of Douglas B. Wessel, 1801 Robert Fulton Drive, Suite 400, Reston, Virginia 22091; telephone 703-758-3530; and facsimile 703-758-3594.

Sincerely,

Douglas B. Wessel
Counsel for Tina Marie Lake

cc: Ms. Tina Marie Lake

V I R G I N I A :

IN THE CIRCUIT COURT OF WARREN COUNTY

TINA MARIE LAKE,
Plaintiff,
v.

AT LAW NO. L92C00217

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC.

and

JOEL W. MATCH, M.D.,

and

THOMAS H. GRESINGER, M.D.,

and

WAYNE C. CODDING,

Defendants.

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, TINA MARIE LAKE (hereafter "MS. LAKE"), by counsel, and for her Motion for Judgment against the Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC. (hereafter "WOMEN'S MEDICAL CENTER"), JOEL W. MATCH, M.D. ("DR. MATCH"), THOMAS H. GRESINGER, M.D. ("DR. GRESINGER"), and WAYNE C. CODDING ("CODDING") (collectively "DEFENDANTS"), states the following:

1. Shortly before April 13, 1991, MS. LAKE, at her residence in Warren County, Virginia, telephoned DEFENDANTS at least twice to schedule an appointment to discuss and possibly undergo an abortion procedure.

2. DR. MATCH and DEFENDANTS performed an abortion procedure on MS. LAKE at WOMEN'S MEDICAL CENTER'S abortion clinic ("THE ABORTION CLINIC") in Fairfax, Virginia, on April 13, 1991.

3. During this procedure DR. MATCH and DEFENDANTS perforated MS. LAKE'S uterus, causing massive hemorrhaging.

4. Despite the threat to her health and life, DR. MATCH and DEFENDANTS recommended her discharge, in fact discharged her to her home in Warren County, Virginia, and advised her to return "in 2 days".

5. Shortly after DR. MATCH and DEFENDANTS discharged MS. LAKE, this massive hemorrhaging nearly caused her death.

6. Physicians at Warren Memorial Hospital in Front Royal saved MS. LAKE'S life, but, as a result of the severe injuries and massive hemorrhaging caused by Defendants, MS. LAKE was forced to undergo a hysterectomy at the Hospital, which rendered this young woman unable to bear children.

7. At all relevant times MS. LAKE has been an adult resident of Front Royal, Warren County, Virginia.

8. At all relevant times DR. MATCH was a physician specializing in the field of obstetrics and gynecology, and abortions, within Virginia and the District of Columbia.

9. At all relevant times WOMEN'S MEDICAL CENTER was a corporation carrying on the business of THE ABORTION CLINIC in Fairfax, Virginia.

10. At all relevant times DR. GRESINGER: was a physician specializing in the field of obstetrics and gynecology, and abortions; was the Medical Director of WOMEN'S MEDICAL CENTER and

THE ABORTION CLINIC; controlled with CODDING all decisions regarding the operation of THE ABORTION CLINIC; and was an officer, director and a fifty-percent stockholder of the corporation (WOMEN'S MEDICAL CENTER), which was operated by GRESINGER and CODDING under the corporate form of the legal entity solely to shield themselves from liability for the negligent and wrongful acts and omissions of themselves and other persons acting as the actual and apparent agents and employees of the Corporation.

11. At all relevant times CODDING: was an officer, director and fifty-percent stockholder of the corporation (WOMEN'S MEDICAL CENTER), which was operated by GRESINGER and CODDING under the corporate form of the legal entity solely to shield themselves from liability for the negligent and wrongful acts and omissions of themselves and other persons acting as the actual and apparent agents and employees of the Corporation; controlled with GRESINGER all decisions regarding the operation of THE ABORTION CLINIC; and was an accountant responsible for the financial direction and policies (including the number of abortions performed and to be performed) of WOMEN'S MEDICAL CENTER and THE ABORTION CLINIC.

12. DR. GRESINGER and CODDING controlled and operated THE ABORTION CLINIC in a negligent, illegal and fraudulent manner by misrepresenting, agreeing and conspiring to misrepresent, among other things, that second-trimester abortions were not different or more risk-laden than first-trimester abortions, that DEFENDANTS complied with all applicable laws assuring DEFENDANTS' financial responsibility in the event of serious injury to a patient, that

V I R G I N I A :

IN THE CIRCUIT COURT OF WARREN COUNTY

TINA MARIE LAKE,

Plaintiff.

v.

At Law No. L92000217

NORTHERN VIRGINIA WOMEN'S MEDICAL
CENTER, INC., et al.,

Defendants

NOTICE

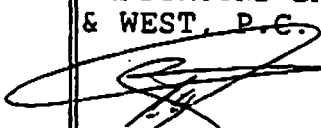
TO: Tina Marie Lake
c/o Douglas B. Wessel, Esquire
1801 Robert Fulton Drive
Suite 400
Reston, Virginia 22091

PLEASE TAKE NOTICE that on Monday, the 21st day of December,
1992, at 8:00 a.m., or as soon thereafter as counsel may be heard,
I will bring forth my motion to transfer venue and for other relief
before one of the Honorable Judges of this Court. This is to give
you notice to be present.

NORTHER VIRGINIA WOMEN'S
CENTER, INC., et al.
By Counsel

JOEL W. MATCH, M.D.
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.


MARK A. BARONDESS, ESQUIRE
YSB NO. 24596
8000 Tower Crescent Dr., #600
Vienna, Virginia 22182
Counsel for Northern Virginia
Women's Center, Inc.; Thomas
H. Gresinger, M.D.; and
Wayne C. Coddling

SANDGROUND
BARONDESS
& WEST P.C.
ATTORNEYS AT LAW
TOWERS CRESCENT DRIVE
SUITE 600, VIENNA CORNER
VIENNA, VA 22182
(703) 444-2000

Richard W. Boone
RICHARD W. BOONE, ESQUIRE
1497 Chain Bridge Road
Suite 200
McLean, VA 22101
Counsel for Joel W. Match, M.D.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice was mailed, postage pre-paid, first-class, this 24th day of November, 1992, to: Douglas B. Wessel, Esquire, 1801 ~~Robert Fulton Drive~~, Suite 400, Reston, Virginia 22091.


Mark A. Barondess

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW
TOWERS CRESCENT DRIVE
FLOOR, TYSONS CORNER
VIENNA VA 22182
(703) 761-4200

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entered on
1-5-93
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V I R G I N I A :

IN THE CIRCUIT COURT OF WARREN COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L92000217

NORTHERN VIRGINIA WOMEN'S MEDICAL
CENTER, INC., et al.,

Defendants.

MOTION TO TRANSFER VENUE AND FOR OTHER RELIEF

TO THE HONORABLE, THE JUDGES OF SAID COURT:

COME NOW YOUR DEFENDANTS, Northern Virginia Women's Medical
Center, Inc., Thomas H. Gresinger, M.D., Wayne C. Coddington and Joel
W. Match, M.D., by counsel, and respectfully move this Honorable
Court for the entry of an Order transferring venue over the subject
matter of this suit and for other relief set forth herein below and
as grounds therefore state as follows:

1. That on or about the 5th day of November, 1992, the
Plaintiff filed her Motion for Judgment in the Circuit Court of
Warren County seeking judgment against your Defendants in the sum
of Ten Million Dollars (\$10,000,000). Said action is premised, in
pertinent part, upon the purported fraudulent and grossly negligent
conduct of your Defendants.

2. That the Plaintiff in her Motion for Judgment pleads no
facts upon which the preferred or permissible venue over the
subject matter of this suit would properly lie in the Circuit Court
of Warren County.

3. That by the allegations set forth in the Motion for

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW
10 TOWERS CRESCENT DRIVE
7TH FLOOR TYSONS CORNER
VIENNA VA 22182
(703) 761-4200

VIRGINIA:

IN THE CIRCUIT COURT OF WARREN COUNTY

TINA MARIE LAKE

Plaintiff

v.

NORTHERN VIRGINIA WOMEN'S MEDICAL
CLINIC, INC.

Law No.: 92000217

and

JOEL W. MATCH, M.D.

and

THOMAS H. GREISINGER, M.D.

and

WAYNE C. CODDING

Defendants

ORDER

THIS MATTER having come before the Court for a hearing on the Defendants' joint Motion To Transfer Venue And For Other Relief; and,

THE COURT having heard the arguments of counsel and considered the pleadings and other memoranda filed by the parties herein; and,

THE COURT having found that there is no preferred venue for this action under CODE OF VIRGINIA, 1950, §8.01-261; and,

THE COURT having further found that the permissible venue for this matter may only be properly had, pursuant to CODE OF VIRGINIA, 1950, §8.01-262, in the Circuit Court Of Fairfax County; and,

THE COURT having concluded that Defendants have timely interposed their objection to venue in this forum and that this matter should be transferred to the Circuit Court Of Fairfax County pursuant to CODE OF VIRGINIA, 1950, §8.01-264; it is, therefore,

ORDERED that Defendants' objection to the venue of this Court be, and it hereby is, SUSTAINED; and, it is further,

ORDERED that Defendants' Motion To Transfer Venue And For Other Relief be, and it hereby is, GRANTED; and, it is further,

ORDERED that the Clerk of the Circuit Court Of Warren County be, and he hereby is, directed to transfer this matter to the Circuit Court Of Fairfax County pursuant to CODE OF VIRGINIA, 1950, §8.01-262 and 8.01-264; and, it is further,

ORDERED that the time allowed Defendants to respond to the Motion For Judgment, Interrogatories and Request For Production Of Documents propounded to them by Plaintiff be and it hereby is extended up to and including January 11, 1993? * /

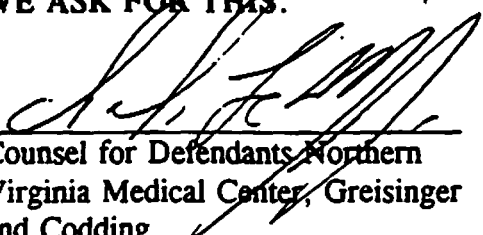
ENTERED this 21st day of December, 1992..

Judge

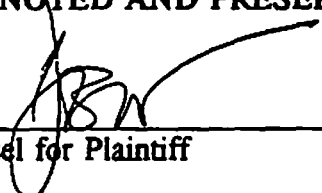
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KBN
* AND PLAINTIFF SHALL HAVE UP TO AND INCLUDING JAN 21, 1993 TO RESPOND TO DEFENDANT MATECH'S PREVIOUSLY PROPOUNDED DISCOVERY.

Lake v. Northern Virginia Women's Medical Center, Inc., et al.
Law No.: L92000217
Page 3

WE ASK FOR THIS:


Counsel for Defendants Northern
Virginia Medical Center, Greisinger
and Coddling
Counsel for Defendant Match

**SEEN AND NO OBJECTION TO THE FORM OF THE ORDER;
ALL OBJECTIONS AND EXCEPTIONS TO THE RULING
ARE NOTED AND PRESERVED:**


Counsel for Plaintiff

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. 12123

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, INC., et al.,

Defendant.

DEMURRER

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC.; THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and demur to the Motion for Judgment filed herein and as grounds therefore state as follows:

1. That on or about the 5th day of November, 1992, the Plaintiff herein filed her Motion for Judgment in the Circuit Court of Warren County, Virginia, seeking, amongst other relief, damages for purported health care negligence; health care gross negligence; conscious disregard of rights of other/recklessness/willful and wanton health care negligence; negligence; gross negligence, conscious disregard of rights of others/recklessness/willful and wanton negligence; negligent health-care hiring, selection and retention, negligent hiring, selection and retention; breach of contract; negligent breach of contract and misfeasance/malfeasance; battery; fraud and misrepresentation; and, intentional infliction of emotional distress.

2. Pursuant to an Order entered on the 21st day of December, 1992, the Circuit Court of Warren County granted the Defendant's Motion to Transfer Venue to this Court.

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW
3 TOWERS CRESCENT DRIVE
7TH FLOOR, TYSONS CORNER
VIENNA, VA 22182
(703) 761-4200

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. _____

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, INC., et al.,

Defendant.

ANSWERS TO INTERROGATORIES

COME NOW your Defendants, NOVA Women's Medical Center, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, after being duly sworn under oath and do respond to Plaintiff's First Set of Interrogatories earlier propounded upon them and do state as follows:

1. Do you deny in whole or in part any of the legal or factual allegations in MS. LAKE'S Motion for Judgment? If so, as to each such legal or factual allegation which you deny, identify the allegation by the paragraph number (and letter, if appropriate), and as to each such numbered/lettered allegation, separately state all facts and identify all persons, witnesses, documents, tangible, items and medical sources or authorities, supporting your denial.

ANSWER

Objection. This interrogatory in its present form is overly broad and is invasive of the Attorney Work Product Doctrine as established by the Rules of this Court. Without waiving said objection, your Defendants respond to said Interrogatory, in part, as follows: The Answer to be filed by the Defendants upon hearing of the Demurrer filed herein will set forth each and every allegation which has been denied in whole or in part. Generally, your Defendants deny each and every allegation which alleges that the Defendants deviated in any respect from the applicable standards of care with respect to the medical services provided to the Plaintiff. The Defendants further deny each and every

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• WEST P. C.

ATTORNEYS AT LAW

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allegation contained in the Complaint which asserts any fraudulent conduct or other misrepresentations, or any conspiracy to commit the same. The Defendants Gresinger and Coddling specifically deny that the Defendant, NOVA Women's Medical Center, has ever been operated in a negligent, illegal or fraudulent manner. Your Defendants intend to call upon the following individuals in support of the denial of any and all factual and legal allegations set forth in the Plaintiff's Motion for Judgment:

Thomas H. Gresinger, M.D.
916 West Broad Street
Falls Church, Virginia

Wayne C. Coddling
916 West Broad Street
Falls Church, Virginia

Nancy Dickinson, R.N.
9900 Main Street, #305
Fairfax, Virginia

Joel Match, M.D.
9900 Main Street, #305
Fairfax, Virginia

Mary Norine Vandergroift
9900 Main Street, #305
Fairfax, Virginia

Peggy Bruton
9900 Main Street, #305
Fairfax, Virginia

Barbara Levine
9900 Main Street, #305
Fairfax, Virginia

Burt Barnow
9300 Lee Highway
Third Floor
Fairfax, Virginia 22031

Your Defendants intend to rely upon the medical chart of the Plaintiff as maintained by NOVA Women's Medical Center, as well as rely upon any and all documents which may be produced during the course of discovery in this suit. The applicable standards for the care and treatment which support the denial of any medical malpractice in this case are set forth in various articles, treatises, textbooks and other publications much too numerous to name. At such time as the Defendants' expert witnesses have identified which treatise, article or textbook upon which they will rely upon in support of their opinions, this interrogatory answer will be

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and prognosis(es); and

d. What your treatment plan was, how it was to be carried out, how it was or was not carried out, and why.

ANSWER

Objection. Please see response to Interrogatory No. 3. Without waiving said objection in whole or in part, your Defendants respond as follows: The Defendant NOVA Women's Medical Center never reached any impression as to a diagnosis, differential, or otherwise as to the Plaintiff. ~~NOVA Women's Medical Center merely provided the health care facility where the operative procedure was performed by the independent contractor physician.~~ NOVA Women's Medical Center further provided counseling and other support services relative to the medical services which were provided to the Plaintiff. An investigation into this matter continues and this interrogatory answer may be supplemented at a later date. Notwithstanding the foregoing, the Plaintiff appeared at the Defendant's facility for purposes of receiving a therapeutic abortion.

5. Identify (by name of publication, publisher, author, editor, edition and page numbers) all medical sources (in your custody, possession, control, or at your access, on or after the first date of your communications with, care, treatments or examinations of MS. LAKE) which discuss or refer in any way to abortion, whether or not you actually rely/relied upon them or actually consider/considered them to be "authoritative".

ANSWER

Objection. The scope of this Interrogatory is overly broad and the Rules of the Court do not require the information sought by this Interrogatory. Notwithstanding said objection, your Defendant responds as follows:

As was otherwise set forth in response to Interrogatory No. 1 numerous authoritative medical sources are available concerning the subject matter of the issues presented in this suit. At such time as the Defendants' expert witnesses have identified which treatise, article, or textbook which they will rely upon in support of their opinions, this interrogatory answer will be supplemented. There is no obligation incumbent upon your Defendants to produce copies of medical sources and authorities which may be referenced

in the Answers to Interrogatories. Notwithstanding said objection, no such medical sources or authorities have been designated as of the present time.

6. Identify (by stating the full name, business and home addresses, occupation, title and area of specialization) each person whom you expect to call as an expert witness at the trial of this action, and as to each person, identify any curriculum vitae in your possession or control, specify the subject matter of his or her expected testimony, state the substantive facts and all opinions as to which the expert is expected to testify at the trial of this action and give a summary of the grounds for each separate opinion.

ANSWER

No decision has been made as to what expert witnesses may be called by the Defendants at the trial of this action, and the filing of an appropriate statement. As soon as such a determination has been made, this interrogatory answer will be supplemented by the filing of an appropriate statement in accordance with any Status Conference Orders which may be issued by this Court.

7. If you contend that a person (including yourself, any health care practitioner or any other person), entity, condition or thing caused, contributed to cause or aggravated any injury or damage to MS. LAKE or her condition, state all facts and identify all persons, witnesses, documents, tangible items and medical sources and authorities supporting your contention.

ANSWER

At the present time, the Defendants are not in a position to assert, under oath, whether or not the Plaintiff, or any other party or person to this action, caused or contributed to the purported injury of the Plaintiff. Clearly, the Plaintiff was fully and completely advised of all potential risks involved with the operative procedures and assumed those risks. Therefore, the Plaintiff may be contributorily negligent if, in fact, any injuries

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10. TO DEFENDANTS MATCH, CODDING and GRESINGER ONLY:
chronologically date and identify by name, address and telephone number, each employment or occupation of yours since your commencement of undergraduate school, and as to each also state your job position, duties and responsibilities, and the name, address and telephone number of each supervisor or boss.

ANSWER

Objection. Since the Complaint filed herein does not allege that the Defendants Coddington and Gresinger rendered any of the medical care which was alleged to be negligent, the information sought by this interrogatory is irrelevant and not germane to any issue which is presented in the underlying suit. Furthermore, the information which is sought cannot be reasonably calculated to lead to any relevant or admissible evidence.

11. State what, if anything, you or anyone or any entity communicated to MS. LAKE relating in any way to this matter (including but not limited to communications about abortion, the procedures of abortion, its risks, or her condition), and state when, why, by whom and in whose presence each such communication was made.

ANSWER

Objection. This interrogatory in its present form is overly broad and seeks to elicit from third parties information which is outside the scope of the knowledge of the Defendants. Without waiving said objection in whole or in part, your Defendants do not have any information concerning the substance of any and all communications between any agent or employee of NOVA Women's Medical Center and the Plaintiff during the Plaintiff's visit or any time thereafter. An investigation in that regard is continuing and this interrogatory answer may be supplemented at a later date. Your defendants are aware from a review of the medical chart herein, that the Plaintiff was fully advised as to a complete disclosure of risks, benefits, and alternatives concerning her therapeutic abortion and that the Plaintiff participated in counseling services provided by the defendant, NOVA Women's Medical Center.

12. With respect to each physician, nurse, medical technician, or assistant, who participated in the care, treatment or examination of MS. LAKE at NOVA Women's Medical Center:

a. state such person's full name, present residence address, and present place of employment;

b. state such person's employer and the person's relationship to NOVA Women's Medical Center, as of April 13, 1991;

c. if you contend that any such person was not an employee or agent (of NOVA Women's Medical Center) working within the scope of his or her employment with respect to the care, treatment, or examination of MS. LAKE, state all facts and identify all persons, witnesses, documents, tangible items and medical sources or authorities, supporting your contention.

ANSWER

Joel Match, M.D.
(an independent contractor to
NOVA Women's Medical Center)

Nancy Dickinson, R.N.
9900 Main Street, #305
Fairfax, Virginia
(an employee of NOVA
Women's Medical Center)

Mary Norine Vandergroft
9900 Main Street, #305
Fairfax, Virginia
(an employee of NOVA
Women's Medical Center)

Peggy Bruton
9900 Main Street, #305
Fairfax, Virginia

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the total of all such policies);

(b) The name of the company issuing each policy;

(c) The policy number;

(d) The complete wording relating to the named insureds on each policy and occurrences covered.

ANSWER

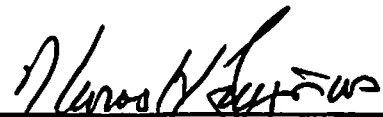
Objection. Since the Motion for Judgment herein does not allege any medical negligence on the part of the Defendant Gresinger, the production of his professional liability policy is irrelevant and is not germane to any issue which is presented in the underlying suit. The Defendant Coddling is not a physician and therefore carried no professional liability insurance. ~~The Defendant, NOVA Women's Medical Center does not maintain independent professional liability insurance.~~

17. If you contend that MS. LAKE was negligent, contributorily negligent, assumed the risk of her injuries, failed to mitigate her damages, or in any way was at fault for her alleged injuries or damages, identify the legal principle(s) and for each such legal principle separately state all facts and identify all persons, documents, tangible items and medical sources or authorities supporting each such principle.

ANSWER

Objection. This interrogatory in its present form is overly broad and is invasive of the attorney work product doctrine. Without waiving said objection, your Defendants respond as follows: See response to Interrogatory No. 7.

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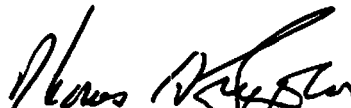

THOMAS H. GRESINGER, M.D.
Individually

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Personally appeared before me, a Notary Public, in and for the
aforementioned jurisdiction, THOMAS H. GRESINGER, M.D., and he
swore on oath that the foregoing is true and accurate to the best
of his knowledge and belief this 11th day of January, 1993.


Notary Public

MY COMMISSION EXPIRES: 7/31/95

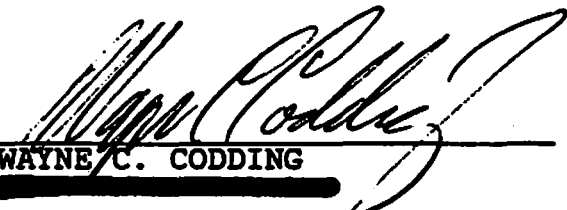

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER
BY THOMAS H. GRESINGER, M.D.

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Personally appeared before me, a Notary Public, in and for the
aforementioned jurisdiction, THOMAS H. GRESINGER, M.D., President
of NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, and he swore on oath
that the foregoing is true and accurate to the best of his
knowledge and belief this 11th day of January, 1993.


Notary Public

MY COMMISSION EXPIRES: 7/31/95


WAYNE C. CODDING

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• WEST P. C.
ATTORNEYS AT LAW
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VIENNA, VA 22182
(703) 761-4200


COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Personally appeared before me, a Notary Public, in and for the
aforementioned jurisdiction, WAYNE C. CODDING, and he swore on oath
that the foregoing is true and accurate to the best of his
knowledge and belief this 11th day of January, 1993.


Notary Public

MY COMMISSION EXPIRES: 7/31/95

SANDGROUND BARONDESS
& WEST, P.C.


~~MARK A. BARONDESS, ESQUIRE~~
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWERS TO
INTERROGATORIES was mailed this 11th day of January, 1993, postage
pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain
Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B.
Wessel, Esquire, 1801 Robert Fulton Drive, Suite 400, Reston,
Virginia 22091.


Mark A. Barondess

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BARONDESS
& WEST P. C.
ATTORNEYS AT LAW

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msa\Sxxx\Lake\Interrog.Ans

VIRGINIA :
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,
Plaintiff,

v.

At Law No. _____

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC., et al.,
Defendant.

PRAECIPE

THE CLERK of the Court will please note that the Defendant's
Answers to Interrogatories were mailed this 11th day of January,
1993, and their First Request for Production of Documents was
mailed on the 8th day of January, 1993, first-class, postage pre-
paid, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite
200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, 1801
Robert Fulton Drive, Suite 400, Reston, Virginia 22091.

NOVA WOMEN'S
MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

MARK A. BARONDESS, ESQUIRE
VSB NO. 24596
Counsel for NOVA WOMEN'S
MEDICAL CENTER, INC.
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PRAECIPE
was mailed this 11th day of January, 1993, postage pre-paid, first
class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road,
Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire,
1801 Robert Fulton Drive, Suite 400, Reston, Virginia 22091.

Mark A. Barondess

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FILED

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. L121123

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC., et al.,

Defendants.

AMENDED MOTION FOR JUDGMENT

COMES NOW the Plaintiff, TINA MARIE LAKE, by counsel, and for her Motion for Judgment against the Defendants, states the following:

1. Plaintiff in this case is TINA MARIE LAKE [hereafter "MS. LAKE"].

ADMITTED

2. Defendants in this case are NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC. [hereafter "WOMEN'S MEDICAL CENTER"], JOEL W. MATCH, M.D. ["DR. MATCH"], THOMAS H. GRESINGER, M.D. ["DR. GRESINGER"], and WAYNE C. CODDING ["CODDING"] [all Defendants are collectively referred to as "DEFENDANTS"].

3. MS. LAKE is a resident of Front Royal, Warren County, Virginia.

4. In April, 1991, DR. MATCH was a physician practicing in the field of obstetrics and gynecology within Virginia and the District of Columbia, and his practice included performing abortions.

5. In April, 1991, WOMEN'S MEDICAL CENTER;

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a. ~~was a corporation which operated a clinic that performed abortions [hereafter "THE ABORTION CLINIC"] in Fairfax, Virginia.~~ **ADMITTED**

b. operated a practice in the field of obstetrics and gynecology, which practice included performing abortions;

c. had the responsibility to assist and/or supervise DR. MATCH in his performance of medical procedures, including abortions;

d. controlled all decisions regarding the management and operation of THE ABORTION CLINIC;

e. had the right to control the manner and methods that DR. MATCH performed his job, including abortions;

f. had the right to control the manner and methods that the nurses and other employees at THE ABORTION CLINIC performed their jobs, including with respect to abortions;

g. required DR. MATCH to follow all prescribed medical procedures at THE ABORTION CLINIC;

h. required DR. MATCH to keep appropriate written records of all medical procedures at THE ABORTION CLINIC;

i. required the nurses and other employees at THE ABORTION CLINIC to follow all prescribed procedures at THE ABORTION CLINIC;

j. required the nurses and other employees at THE ABORTION CLINIC to keep appropriate written records of all procedures at THE ABORTION CLINIC;

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u. permitted DR. MATCH to perform work, including abortions, which will or may in the natural course of events produce injury unless special precautions are taken;

D
v. should have warned MS. LAKE and other similar patients of the activities of DR. MATCH;

D
w. should have foreseen injury to MS. LAKE;

D
x. did not act when it was necessary to prevent fraud upon MS. LAKE;

y. [in the event that DR. MATCH is found not to have been an employee of WOMEN'S MEDICAL CENTER] created an appearance that DR. MATCH was an employee of WOMEN'S MEDICAL CENTER or THE ABORTION CLINIC, upon which MS. LAKE relied;

A
z. approved the "consent" form which purports to inform patients at THE ABORTION CLINIC of the risks of abortion;

D
6. WOMEN'S MEDICAL CENTER is liable directly for its own acts and omissions and vicariously (including by estoppel) for the acts and omissions of its employees, agents and servants (not all of whom are named herein), and of its independent contractors (for the reasons described herein); these other actors include DR. MATCH, DR. GRESINGER, CODDING and various nurses and other personnel.

7. In April, 1991, DR. GRESINGER:

A
a. was a physician practicing in the field of obstetrics and gynecology, and his practice included performing abortions;

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b. was the Medical Director of THE ABORTION CLINIC, and in that capacity had the responsibility to assist and/or supervise DR. MATCH in his performance of medical procedures, including abortions;

A
c. was a fifty-percent stockholder (as was CODDING) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC; **ADMITTED**

A
d. was an officer and director (as was Coddington) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC; **ADMITTED**

D
e. controlled (with CODDING) all decisions regarding the management and operation of THE ABORTION CLINIC;

D
f. was the Medical Director of one or more other abortion clinics similarly managed and operated;

D
g. was a fifty-percent stockholder (as was CODDING) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

h. was an officer and director (as was Coddington) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

i. controlled (with CODDING) all decisions regarding the management and operation of one or more other abortion clinic(s) similarly managed and operated;

j. had the right to control the manner and methods that DR. MATCH performed his job, including abortions;

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8. DR. GRESINGER'S acts and omissions described herein were taken personally as well as on behalf of WOMEN'S MEDICAL CENTER, and he is liable directly for his own acts and omissions and vicariously (including by estoppel) for the acts and omissions of his employees, agents and servants (not all of whom are named herein), and of his independent contractors (for the reasons described herein); these other actors include DR. MATCH, CODDING and various nurses and other personnel.

9. In April, 1991, CODDING:

A

a. was a fifty-percent stockholder (as was DR. GRESINGER) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC; **ADMITTED**

A

b. was an officer and director (as was DR. GRESINGER) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC; **ADMITTED**

☆ (2)

c. was an accountant responsible for the financial direction and policies (including the number of abortions performed and to be performed) of WOMEN'S MEDICAL CENTER and THE ABORTION CLINIC.

d. controlled (with DR. GRESINGER) all decisions regarding the management and operation of THE ABORTION CLINIC;

e. was a fifty-percent stockholder (as was DR. GRESINGER) of one or more other corporations that operated an abortion clinic(s) similarly managed and operated;

to be false. In order to prevent fraud upon the patients of WOMEN'S MEDICAL CENTER, including MS. LAKE, the corporate veil of WOMEN'S MEDICAL CENTER should be "pierced" and these persons held jointly and severally liable to MS. LAKE.

12. Shortly before April 13, 1991, MS. LAKE, at her residence in Warren County, Virginia, telephoned THE ABORTION CLINIC at least twice to schedule an appointment to discuss and possibly undergo an abortion procedure.

13. DR. MATCH, with the aid of employees of WOMEN'S MEDICAL CENTER, and with the tools and facilities of WOMEN'S MEDICAL CENTER, performed an abortion procedure on MS. LAKE at THE ABORTION CLINIC in Fairfax, Virginia, on April 13, 1991.

14. During this procedure DR. MATCH perforated MS. LAKE'S uterus, causing massive hemorrhaging.

15. Despite the threat to her health and life, DR. MATCH and WOMEN'S MEDICAL CENTER recommended her discharge, in fact discharged her to her home in Warren County, Virginia, and advised her to return "in 2 days".

16. Shortly after DR. MATCH and WOMEN'S MEDICAL CENTER discharged MS. LAKE, this massive hemorrhaging nearly caused her death.

17. Physicians at Warren Memorial Hospital in Front Royal saved MS. LAKE'S life, but, as a result of the severe injuries and massive hemorrhaging caused by DR. MATCH and WOMEN'S MEDICAL CENTER, MS. LAKE was forced to undergo a hysterectomy at the Hospital, which rendered this young woman unable to bear children.

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18. At all relevant times DR. MATCH, DR. GRESINGER and WOMEN'S MEDICAL CENTER were the health-care practitioners of MS. LAKE, and accordingly each had the duty to use that degree of management, skill, expertise, abilities, diligence and care a reasonably prudent health-care practitioner in the same field of practice or specialty in this Commonwealth had the duty to use under the circumstances of this case, and further the Defendants had common-law and statutory duties of reasonable care toward MS. LAKE and others similarly situated.

19. At all relevant times when he owed the duty of care to MS. LAKE, DR. MATCH:

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a. was acting in his capacity as an agent, servant and/or **Employee of the remaining DEFENDANTS** **ADMITTED**

b. alternatively, was acting as an independent contractor and WOMEN'S MEDICAL CENTER, DR. GRESINGER and CODDING:

1. knowingly and negligently retained DR. MATCH, who was incompetent in the performing of abortions, after he had already been charged with negligence in the performing of one or more abortions;

2. required and permitted DR. MATCH to perform abortions with dangerous instrumentalities;

3. permitted DR. MATCH to perform non-delegable duties, including permitting DR. MATCH to use dangerous instrumentalities;

23. Prior to the abortion procedure, MS. LAKE was not advised of the peculiar and specific risks of a second-trimester abortion.

24. Prior to the performance of the procedure, DR. MATCH and WOMEN'S MEDICAL CENTER disclosed to MS. LAKE no facts regarding the physical and mental development of a second-trimester fetus. *but admit this was no disclosure to P*

25. Prior to the abortion procedure, DR. MATCH and WOMEN'S MEDICAL CENTER did not advise MS. LAKE of the risks in her individual case, the risks associated with abortion in her second trimester of pregnancy, the relative risks in her case compared to continued pregnancy, or that by law in Virginia second-trimester abortions are to be performed and are usually performed in hospitals, where the emergency facilities actually needed by MS. LAKE would have been available to her.

26. Prior to the abortion procedure, DR. MATCH and WOMEN'S MEDICAL CENTER did not advise MS. LAKE that second-trimester abortions performed by the vacuum aspiration method carried greater risks to the mother than first-trimester abortions.

27. If proper disclosure had been made to MS. LAKE concerning the nature of her condition, the nature of the proposed treatment, the nature and degree of risks inherent in undergoing the proposed treatment, the law of Virginia regarding abortions generally and second-trimester abortions specifically, the purpose of that law, and the possible complications of a second-trimester abortion, and if DR. MATCH, WOMEN'S MEDICAL

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74. As a direct and proximate result of the aforementioned joint and several acts, MS. LAKE suffered and will continue to suffer the aforementioned injuries and damages.

WHEREFORE, Plaintiff TINA MARIE LAKE, by counsel, respectfully prays that judgment be granted in her favor in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) in compensatory damages and FIVE MILLION DOLLARS (\$5,000,000.00) in punitive damages, and that she further be awarded her costs and, pursuant to Va. Code Ann. §8.01-382, interest on all amounts awarded from April 13, 1991, or, alternatively, from such other date as the fact-finder shall determine, including from date of verdict/judgment.

PLAINTIFF DEMANDS TRIAL BY JURY AS TO ALL COUNTS.

TINA MARIE LAKE
By Counsel

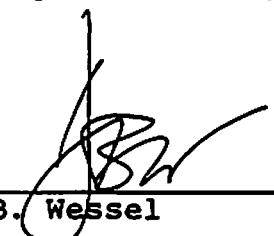
LAW OFFICES OF DOUGLAS B. WESSEL
1801 Robert Fulton Drive, Suite 400
Reston, Virginia 22091
(703) 758-3530

By: 
Douglas B. Wessel
Virginia State Bar # 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of February, 1993, the undersigned counsel filed the original of this pleading in the Clerk's Office of the Circuit Court of Fairfax County, and that on the same date the undersigned sent copies of same by mail, first-class, postage prepaid, to Richard W. Boone, Sr., Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101, counsel for

defendant Match, and to Mark A. Barondess, Esquire, 8000 Towers Crescent Drive, Sixth Floor, Vienna, Virginia 22182, counsel for the remaining defendants.



Douglas B. Wessel

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

VERSUS

CASE NO. L121123

WOMEN'S MEDICAL CLINIC, et al.

STATUS CONFERENCE ORDER

The Status Conference was held 5/4/93. After discussing the various issues presented; it was ORDERED that:

A. All discovery must be initiated on or before 60 days prior to trial. Plaintiff's experts must be identified on or before 90 days prior to trial. All opposing experts must be identified on or before 75 days prior to trial. All discovery without exception shall be completed 30 days prior to trial. Requests for Admissions of newly discovered material will be permitted for five days after completion of all discovery. Identification of experts must comply with all information required under Rule 4:1(4) (A) (i).

Dec 9 1993

B. A Settlement Conference Date is -----, at 8:30 a.m. A factual statement of the case and a statement of the amount of offer must be submitted to the Case Management Office on the 5th floor of the Judicial Center no later than five days before the Settlement Conference. (Counsel shall be present with their clients or with authority to settle).

C. Counsel or pro se parties shall deliver to opposing counsel or party a copy of all exhibits and a list of names of witnesses proposed to be introduced at trial on or before 15 days prior to trial. A list of exhibits shall be filed with the Clerk of the Court simultaneously therewith. No exhibit or name of witness not so identified and filed will be received in evidence, except in rebuttal or for impeachment. Any objections to exhibits including objections on the grounds of relevancy need to be filed with the Clerk of the Court and a copy mailed to opposing counsel or pro se parties no later than five days prior to trial. Exhibits not objected to in writing will be admissible at trial, except relevancy will be determined at trial. Objections shall be to particular numbers and must state the reason for the objection.

D. Jury instructions which include cites shall be filed with the Clerk of the Court on or before 5 days prior to trial with copies mailed to the opposing counsel or pro se parties. A copy of the instructions without cites shall be brought to Court on the day of trial.

E. The Trial date is Jan 10 1994. / with a Jury ☒ without a Jury ☐

F. Estimated trial time is 5 DAYS

G. Motions in limine which exceed 5 minutes shall be heard before the trial date. All dispositive motions shall be completed 30 days prior to trial.

ENTERED this 4 day of May, 1993.

Arthur R. Bell
Counsel for Plaintiff(s)

Arthur R. Bell
Counsel for Defendant(s)

Arthur R. Bell
James Beck

Richard Jones
JUDGE

Deanna T. Leung
June 4 1993
207

000036

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE

Plaintiff

v.

NORTHERN VIRGINIA WOMEN'S MEDICAL
CLINIC, INC.

Law No.: L121123

and

JOEL W. MATCH, M.D.

and

THOMAS H. GREISINGER, M.D.

and

WAYNE C. CODDING

Defendants

MEMORANDUM OF LAW IN SUPPORT OF AMENDED DEMURRER OF
DEFENDANT JOEL W. MATCH, M.D. TO PLAINTIFF'S AMENDED
MOTION FOR JUDGMENT

I. INTRODUCTION.

In this action Plaintiff, Tina Marie Lake, (hereafter simply "Plaintiff"), seeks damages for injuries which she claims to have sustained as the result of Defendants' alleged negligent performance of a voluntary termination of her fourth pregnancy. She has named as Defendants Joel W. Match, M.D., ("Dr. Match"), the surgeon who performed the procedure; The Northern Virginia Women's Medical, Inc., ("Clinic"), the surgery center where the procedure was

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performed; Thomas H. Greisinger, M.D., ("Dr. Greisinger"), one of the alleged owners of the Clinic; and, finally, Wayne C. Coddington, ("Mr. Coddington"), also alleged to be an owner of the Clinic.

In her Motion For Judgment, originally filed in the Circuit Court For Warren County, Ms. Lake asserted her right of recovery in thirteen Counts: "Health-Care Negligence," (Count 1); "Health-Care Gross Negligence," (Count 2); "Conscious Disregard Of Rights Of Others/Recklessness/Willful And Wanton Health-Care Negligence, (Count 3); "Negligence," (Count 4); "Gross Negligence," (Count 5); "Conscious Disregard Of Rights Of Others/Recklessness/Willful And Wanton Negligence, (Count 6); "Negligent Health-Care Hiring, Selection And Retention," (Count 7); "Negligent Hiring, Selection And Retention," (Count 8); "Breach Of Contract," (Count 9); "Negligent Breach Of Contract And Misfeasance/Malfeasance," (Count 10); "Battery," (Count 11); "Fraud And Misrepresentation," (Count 12); and, finally, "Intentional Infliction Of Emotional Distress," (Count 13). All Defendants filed timely responsive pleadings including, *inter alia*, both general demurrers and demurrers to specific Counts of Ms. Lake's Motion For Judgment. She requested that she be awarded \$5,000,000 in compensatory damages and an additional \$5,000,000 in punitive damages against all four Defendants jointly and severally.

Counsel for the Defendants also jointly filed a Motion requesting that the case be transferred from Warren County, (Ms. Lake's county of Residence), to Fairfax County, (where all of the defendants could be found and where all of the alleged negligence occurred), pursuant

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,
Plaintiff,

v.

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC., et al.,

Defendants.

AT LAW NO. L121123

ORDER

CAME on the 4th day of June, 1993, the Plaintiff, Tina Marie Lake, by counsel, and all Defendants, by counsel, upon the Demurrers filed by the Defendants, and after considering the written motions, the briefs filed by the parties, and oral argument by all counsel,

IT APPEARING TO THIS COURT that previously this Court sustained generally the demurrers to the Motion for Judgment, without ruling upon the merits of the demurrers, so as to require Plaintiff to file an amended Motion for Judgment, more clearly setting forth which allegations were made against which Defendants so that this Court can rule upon the merits of these demurrers, and

IT APPEARING TO THIS COURT that Plaintiff has filed such an Amended Motion for Judgment and that this Court can consider the merits of the demurrers, and

IT APPEARING TO THIS COURT, as to Dr. Match's demurrer, that the demurrer should be overruled on all counts, with the exceptions of Counts 7 and 8, which do not apply to Dr. Match, and

Count 10, for which the demurrer should be sustained, it is therefore

ORDERED, as to Dr. Match's demurrer, that the demurrer is overruled on all counts, with the exceptions of Counts 7 and 8, which do not apply to Dr. Match, and Count 10, for which the demurrer is sustained, and

IT APPEARING TO THIS COURT, as to the demurrer of the remaining Defendants, that the demurrer should be overruled on all counts, with the exception of Count 10, for which the demurrer should be sustained, it is therefore

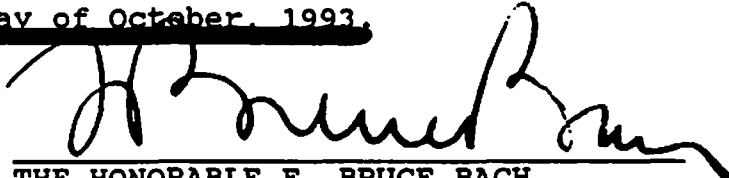
ORDERED, as to the demurrer of the remaining Defendants, that the demurrer is overruled on all counts, with the exception of Count 10, for which the demurrer is sustained, and

IT FURTHER APPEARING TO THIS COURT, as to the demurrer of the remaining Defendants, that Plaintiff seeks to impose liability upon these remaining defendants by "piercing the corporate veil", and that an attempt to pierce the corporate veil is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action such as a tort or breach of contract, and that therefore none of the counts in the Amended Motion for Judgment should be held to be barred and the demurrer of these remaining defendants should be overruled in this respect, it is therefore

ORDERED, as to these remaining defendants, that with respect to Plaintiff's allegations regarding "piercing the corporate veil", none of the counts in the Amended Motion for Judgment is

barred and the demurrer of these remaining defendants should be
overruled in this respect (and this Court's attached June 16,
1993, letter opinion is incorporated by reference herein).


ENTERED this 29th day of October, 1993.



THE HONORABLE F. BRUCE BACH

OBJECTED TO, WITH RESPECT TO THE COURT'S RULINGS AS TO COUNT 10:


Douglas B. Wessel, Esquire
Counsel for Plaintiff

SEEN AND OBJECTED TO: FOR ALL THOSE REASONS STATED
IN OPEN COURT


Richard W. Boone, Sr., Esquire
Counsel for Defendant Match


Mark A. Barondess, Esquire
Counsel for the remaining
Defendants



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

(703) 246-2221

Fax: (703) 385-4432

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STANLEY P. KLEIN
ROBERT W. WOOLDRIDGE, JR.
JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

DR. MARK A. ZAFFARANO
DIRECTOR, JUDICIAL OPERATIONS

JAMES KEITH
LEWIS D. MORRIS
BURCH MILLSAP
BARNARD F. JENNINGS
LEWIS H. GRIFFITH
WILLIAM G. PLUMMER
RETIRED JUDGES

June 16, 1993

Douglas B. Wessel, Esq.
1801 Robert Fulton Drive, Suite 400
Reston, VA 22091

Mark A. Barondess, Esq.
8000 Towers Crescent Drive, Sixth Floor
Vienna, VA 22182

Re: Tina M. Lake v. Northern Virginia Women's Medical
Center, Inc., et al.
At Law No. 121123

Dear Counsel:

This matter was heard on June 4, 1993, on the Demurrer of the Defendants to the Amended Motion for Judgment. The Court sustained the demurrer to Lake's attempt to pierce the corporate veil. Mr. Barondess asked the Court to determine what counts are barred by this ruling.

An attempt to pierce the corporate veil is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract. 1 William M. Fletcher, Fletcher Cyclopedica of the Law of Private Corporations § 41 (perm. ed. rev. vol. 1990). Accordingly, none of the counts in the Amended Motion for Judgment are barred.

Mr. Wessel will draft an appropriate order and submit it to Mr. Barondess for endorsement.

Very truly yours,

F. Bruce Bach

cc: Richard W. Boone, Esq.

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COPI

1

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3

4

5 TINA MARIE LAKE,

6 Plaintiff,

7 vs.

At Law No. L121123

8 ~~NORTHERN VIRGINIA WOMEN'S~~

9 ~~MEDICAL CENTER, INC.~~ et al.,

10 Defendants.

11

12 The videotaped deposition of THOMAS H.

13 GRESINGER, M.D., was taken on Wednesday, ~~October~~

14 ~~20, 1993~~, commencing at 9:30 a.m., at 1801 Robert

15 Fulton Drive, Suite 400, Reston, Virginia, before

16 Ryan C. Jackson, Notary Public.

17

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22

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A P P E A R A N C E S

(continued)

ON BEHALF OF THE DEFENDANT (THOMAS H. GRESINGER,
M.D.):

MARK BARONDESS, ESO.

Sandground, Barondess & West

8000 Towers Crescent Drive, Suite 600

Vienna, Virginia 22182

(703) 761-4200

ALSO PRESENT:

Daniel J. Rogers, videographer

Tina Marie Lake

Wayne Coddling

(Index appears following the transcript.)

BOSSARD ASSOCIATES, INC.

(202) 842-3300

1 BY MR. WESSEL:

2 Q. Dr. Gresinger, would you please state your
3 full name and where you reside.

4 A. Thomas Hamlin Gresinger. I live at 12339
5 Hatton Point Road in Fort Washington, Maryland.

6 Q. How do you spell Hatton Point?

7 A. H A T T O N.

8 Q. And what's the zip code?

9 A. 20744.

10 Q. Do you have any other residences?

11 A. No.

12 Q. Who do you reside there with?

13 A. My wife and children.

14 Q. And what is your business residence? ~~What~~

15 ~~Is your business address~~

16 A. ~~9900 Main Street, Suite 205, Fairfax,~~

17 ~~Virginia.~~

18 Q. Do you have any other business addresses?

19 A. No.

20 Q. You don't have a business address at an
21 abortion clinic in Washington, D.C.?

22 MR. BARONDESS: I'm going to object to the

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1 businesses?"

2 MR. WESSEL: It means what I said.

3 Mark, if you want to make some objections,
4 that's fine. But I'm not going to repeat the
5 question for you.

6 MR. BARONDESS: Ask the questions
7 intelligent and articulate. Don't ask questions
8 along "what other businesses."

9 Ask him "Do you have an interest in any
10 other business enterprises?" Ask "Do you have an
11 interest in any other women's health facilities."
12 But don't ask him a general question that I can't
13 even understand.

14 BY MR. WESSEL:

15 Q. Do you have any other businesses, sir?

16 MR. BARONDESS: Don't answer the question.

17 MR. WESSEL: Mark the transcript, please.

18 BY MR. WESSEL:

19 Q. ~~Do you have any other locations where you do~~
20 ~~business?~~

21 A. ~~I practice medicine at Fairfax Hospital, the~~
22 ~~clinic at 9900 Main Street, and at the clinic in~~

1 I joined the Falls Church Medical Center on
2 Arlington Boulevard in Falls Church.

3 Q. When is the first time you had any
4 relationship in any way with conducting of
5 abortions?

6 A. During residency.

7 Q. And was that in '63 to '66?

8 A. Yes, it was.

9 Q. When did you first have any business
10 interest in any abortion clinic or health facility
11 which conducted abortions?

12 A. Oh, I believe 1972 to 3. I don't know, one
13 of those years.

14 Q. And what was that interest?

15 A. That was when we opened up the Northern
16 Virginia Women's Medical Center.

17 Q. When was the next time you had any business
18 interest in an abortion facility or a facility at
19 which they conducted abortions?

20 A. I've had interests ever since.

21 Q. Other than the Northern Virginia Women's
22 Medical Center?

1 A. We opened a clinic in Rockville, Maryland.
2 We had a clinic in Florida, Fort Lauderdale. And
3 we have had -- I have had a partial interest in
4 clinics in Phoenix, Arizona; El Paso, Texas; New
5 Orleans, Louisiana; and Pearl City, Hawaii.

6 Q. Over what period of time did you have an
7 interest in a facility at which abortions were
8 conducted in Rockville?

9 A. I believe it began in late '73, early '74,
10 and terminated my relationship with the clinic -- I
11 really -- '82 I think it was.

12 Q. Same question for Fort Lauderdale?

13 A. Became involved with Fort Lauderdale in, I
14 believe, '74 or 5, and terminated that relationship
15 in early '80s. I don't remember the exact year.

16 Q. Same question for Phoenix?

17 A. ~~We did the same things with all the clinics.~~

18 ~~We had them and either sold them or closed them.~~

19 ~~The last one I would suspect to be in '82.~~

20 Q. So Rockville, Fort Lauderdale, Phoenix, El
21 Paso, and Pearl City were all in '74 to '75 and
22 early '80s time frame?

1 A. Yes.

2 Q. ~~And when you say, "we," who do you mean?~~

3 A. ~~We had partners that were the partners of~~
4 ~~Cigna Centers of America~~, and a group who was also
5 partners headed by Ben Derrickson from Maryland,
6 from outside of Baltimore.

7 Q. Did you have any -- strike that.

8 Did you perform abortions at each of these
9 clinics?

10 A. ~~No. I was an owner.~~

11 THE REPORTER: Please repeat.

12 THE WITNESS: ~~No. It was only in the~~
13 ownership.

14 BY MR. WESSEL:

15 Q. You have performed abortions personally; is
16 that correct?

17 A. Yes, I have.

18 Q. Over what period of time?

19 A. Since the mid-'60s to the present time.

20 Q. And where are you presently conducting
21 abortions?

22 A. I work now at the clinic on Main Street and

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1 Q. Is that the nearest hospital?

2 A. It is.

3 Q. And was it less than 10 minutes away as of
4 April 13 of 1991?

5 A. It was.

6 Q. ~~With respect to the Northern Virginia~~
7 ~~Women's Clinic, you had an ownership interest?~~

8 A. ~~Yes.~~

9 Q. ~~And were you co-owner with Mr. Coddington here?~~

10 A. ~~Yes.~~

11 Q. ~~Over what period of time?~~

12 A. ~~For the past 10 years.~~

13 Q. And can you give me years, specific years?

14 A. I would be inaccurate when it started, but I
15 would think that it would have been around 1983.

16 Q. And how long have you been medical director
17 of Fairfax Women's Clinic?

18 MR. BARONDESS: What's Fairfax Women's
19 Clinic?

20 BY MR. WESSEL:

21 Q. ~~What do you call the clinic on Main Street?~~

22 A. ~~The one on Main Street, the Northern.~~

1 ~~Virginia one.~~

2 Q. I'm sorry, you call it what? The Northern
3 Virginia --

4 ~~Women's Medical Center~~

5 ~~I have been medical director since its~~
6 ~~inception.~~

7 Q. And who determined that you would be medical
8 director?

9 A. I did.

10 Q. And what have you done as medical director?
11 What is that role? What does that responsibility
12 mean to you?

13 MR. BARONDESS: Well, let me object to the
14 form of the question. Are you asking him what he
15 perceives his duties to be at the present time, or
16 are you asking at a prior time, or --

17 MR. WESSEL: I'll ask another question.

18 BY MR. WESSEL:

19 Q. Has your role as medical director changed in
20 any way, in any substantial way, since you first
21 became medical director of the Northern Virginia
22 Women's Medical Center?

1 MR. WESSEL: Are you instructing him not to
2 answer?

3 MR. BARONDESS: If he thinks that it's a
4 common term applied to his facilities? It requires
5 him to have knowledge of what other people say
6 outside his presence.

7 Yes, I'm instructing him not to answer.

8 MR. WESSEL: Just mark all the instructions
9 if you would. Give me the last question before
10 Mr. Barondess made that comment.

11 If you'll listen to this, Dr. Gresinger.

12 (The record was read as requested.)

13 BY MR. WESSEL:

14 Q. Go ahead and answer, sir.

15 MR. BARONDESS: He's not answering that
16 question. I already told you, if you want to make
17 a reference to medical facilities that he's
18 participated in, you may ask him that question.

19 BY MR. WESSEL:

20 Q. Sir, if you're not referring to a specific
21 name of a clinic at which abortions are done, how
22 do you phrase that? ~~What is it if you don't refer~~

1 ~~to the specific name?~~ What do you call it?

2 A. ~~We usually call it by specific name.~~

3 Q. But if you don't and you talk about them
4 generically, what do you call them?

5 A. Refer to them as the Falls Church clinic,
6 the Rockville clinic.

7 Q. And you don't call them abortion clinics or
8 abortion facilities or something of that nature to
9 refer to the fact that abortions are done there?

10 A. No.

11 Q. All right.

12 Well, should we call them facilities?

13 A. Fine with me.

14 Q. Are you comfortable with that? Okay.

15 ~~Tell me, once you set up the Northern~~

16 Virginia Women's Medical Center and you began

17 focusing on being medical director, ~~not just~~

18 ~~setting it up,~~ but your responsibility as a medical
19 director, what were those responsibilities as you
20 perceive them?

21 A. They include the day-to-day monitoring of
22 the level of medical care, the keeping track of the

1 Q. Where is that?

2 A. CIA.

3 Q. And at what facility?

4 A. I'm sorry?

5 Q. Which facility? Which CIA facility?

6 A. As far as I know, there's only one CIA.

7 Q. Langley?

8 A. I haven't the foggiest notion.

9 Q. And do you know where he lives?

10 A. No, I don't.

11 Q. Sir, I'd like you to look through this
12 Gresinger Number 1 that I gave you to the extent
13 necessary in answering this question:

14 ~~As of April 13, 1993, who performed what~~
15 ~~role at the Northern Virginia Women's Center?~~

16 MR. BARONDESS: On that particular day?

17 BY MR. WESSEL:

18 Q. As of that time. Not necessarily with
19 respect to Ms. Lake on that day.

20 A. All right.

21 Q. Okay.

22 A. What roles had you in mind?

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1 Q. Any roles that were being performed of
2 anyone that you selected or hired.

3 MR. BARONDESS: He wants to know who the
4 nurses were, things like that, what they were
5 doing.

6 BY MR. WESSEL:

7 Q. And, again, let me emphasize: As of April
8 13th, 1991, at this point not necessarily with
9 Ms. Lake specifically.

10 Do you understand my question?

11 A. No.

12 ~~Q. AS OF APRIL 13 OF 1991, WHAT PERSONNEL~~

13 ~~PLAYED WHAT ROLES AT THE FACILITY, GENERALLY?~~

14 ~~FOR EXAMPLE, YOU WERE THE MEDICAL DIRECTOR,~~

15 ~~RIGHT?~~

16 A. ~~I WAS THE MEDICAL DIRECTOR.~~ Dr. Match was
17 the surgeon who was working that day. The
18 counseling nurse was Barbara Levine. I don't know
19 who did the lab work. It's just a set of initials,
20 and I can't -- I don't know who that is.

21 The anesthetist, it looks like Anita --
22 embarrassingly, I don't know Anita's last name.

1 Q. Does she still work at the clinic?

2 A. Yes, she does. I cannot see -- I cannot
3 read the recovery room nurse's signature.

4 Q. What page are you on, sir? On the lower
5 right-hand corner.

6 A. On 282.

7 Q. Okay. You can't read who?

8 A. The recovery room nurse's. Up in the top at
9 the square box, that's RN signatures.

10 Q. Is that Ms. Vandergroift?

11 A. It probably is, yeah. She's the nurse who
12 worked at the clinic.

13 Peggy Bruton has some notes following on the
14 15th. She's the head nurse. And then there are
15 some preform notes by Nancy Dickenson, who was the
16 administrator. And I believe that's all there is
17 on the chart that has to do with personnel.

18 Q. Okay.

19 Now, you've mention several roles --
20 surgeon, medical director, counselor, anesthetist,
21 so forth and so on.

22 Are there any other basic roles that were

1 being played by any personnel as of April 13 of
2 1991 in the facility, regardless of whether or not
3 they were specifically involved in the care of
4 Ms. Lake?

5 A. No.

6 There were only two functions,
7 administrative and medical. And the medical
8 functions are performed by doctors, nurses. And
9 lab work is usually performed either by a nurse or
10 a lab technician.

11 Q. What role did Mr. Coddington, who's sitting
12 here today, play in the setting up or designing or
13 operation of the facility?

14 A. He was not involved with the setting up and
15 designing at all.

16 Q. Is his sole involvement, as far as you know,
17 co-ownership?

18 A. Co-ownership and administration.

19 Q. And administration?

20 A. Yes.

21 Q. What is his role in administration?

22 A. Just that. The specifics you'll have to ask

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1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3

4

5 TINA MARIE LAKE,)

6 Plaintiff,)

7 vs.) At Law No. L121123

8 NORTHERN VIRGINIA WOMEN'S)

9 MEDICAL CENTER, INC., et al.,)

10 Defendants.)

11

12 The hearing in the above-entitled matter was
13 taken on Friday, October 29, 1993, commencing at
14 12:40 p.m., at Fairfax County Circuit Court.

15

16

17 BEFORE: HONORABLE F. BRUCE BACH

18 REPORTED BY: RYAN C. JACKSON, Notary Public

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1 THE COURT: And you've got the owners of the
2 clinic; is that right?

3 MR. BARONDESS: Yes, sir.

4 THE COURT: I'm just trying to figure out
5 who's involved.

6 MR. WESSEL: So my first request is that you
7 order, particularly because of discovery deadline,
8 within seven days they respond to that request for
9 production of documents.

10 They've had it all along. They've had legal
11 notice of it in a number of ways. Each of the
12 three have been served in November of '92.
13 Dr. Match gave his responses in January, mailed a
14 copy to Mr. Barondess. And I have nothing at all.
15 And we're in the process of discovery deposition
16 the last 30 days.

17 THE COURT: Mr. Barondess, what about that?

18 MR. BARONDESS: Very simply, Your Honor, we
19 never received them.

20 We received the interrogatories. We filed
21 responses to them in complete, strict accordance
22 with the Rules of this court.

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1 We asked questions to find out if they can
2 provide support for our allegations. We're not
3 forced to accept their version that they provided
4 no medical care.

5 I think the evidence in this case is going
6 to be clear, Judge, they just don't have a house, a
7 facility, where an abortion occurs; they've got a
8 medical director as one defendant, and they've got
9 nursing staff that are employees that are
10 fundamentally involved in this.

11 THE COURT: ~~Answer anything that your people~~
12 ~~did for this woman.~~

13 MR. BARONDESS: That wasn't the question
14 that he asked, Your Honor.

15 THE COURT: You're saying that your people
16 did nothing for her?

17 MR. BARONDESS: No. We answered in there
18 what they did. And I put in -- I referenced the
19 medical records which specifically set forth what
20 these people did.

21 It's all in the records, Your Honor. I
22 don't know what else I can say other than to repeat

1 verbatim the medical records here. And that
2 shouldn't have to be done. I've incorporated that
3 by reference in here, and I've set forth exactly
4 what they did.

5 I can't say what did one person say to the
6 other. That's why he wants to take the discovery
7 depositions of those people. It requires
8 Dr. Gresinger, who answers this on behalf of the
9 clinic, to speculate as to what took place when he
10 wasn't even there.

11 **MR. WESSEL:** Judge, are they saying that
12 there's going to be no testimony that goes beyond
13 the specifics of what the medical records say? Is
14 that what they're saying?

15 **THE COURT:** Is that what you're saying?

16 **MR. BARONDESS:** Your Honor.

17 What we're saying is, I don't even have
18 these people at the present time. We are going to
19 be taking their depositions. ~~When that's taken~~
20 ~~I'll know, at the same time Mr. Wessel knows what~~
21 ~~these people are going to say.~~

22 I don't even know right now because I

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L121123

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC., et al.,

Defendant.

GROUND OF DEFENSE

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL
CENTER, INC., THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by
Counsel, and file their Grounds of Defense to the Amended Motion
for Judgment filed against them and state as follows:

FIRST DEFENSE

That the Amended Motion for Judgment fails to state a cause of
action upon which relief may be granted.

SECOND DEFENSE

That the Amended Motion for Judgment is barred by the doctrine
of assumption of risk.

THIRD DEFENSE

That the Plaintiff contributed to the negligence of which she
complains.

FOURTH DEFENSE

The Plaintiff has failed to mitigate her damages.

FIFTH DEFENSE

That the acts or omissions of third persons caused the
occurrence of which the Plaintiff complains.

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW

3000 TOWERS CRESCENT DRIVE
SIXTH FLOOR, PYSONS CORNER
VIENNA, VA 22182
(703) 781-4200

SIXTH DEFENSE

That your Defendants reserve any and all legal or equitable defenses which they may raise as a result of the discovery connected with this suit.

SEVENTH DEFENSE

That in specific response to the allegations contained in the Amended Motion for Judgment your Defendants state as follows:

1. That your Defendants admit the allegations contained in Paragraphs 1 and 2.

2. That your Defendants are without information or knowledge as to the allegations contained in Paragraph 3.

3. That your Defendants admit the allegations contained in Paragraph 4.

4. That your Defendants respond to the allegations contained in Paragraph 5 as follows with reference to each subparagraph:

- a. The allegations are admitted;
- b. The allegations are admitted;
- c. The allegations are denied;
- d. The allegations are denied;
- e. The allegations are denied;
- f. The allegations are denied;.
- g. The allegations are denied;
- h. The allegations are admitted;
- i. The allegations are denied;
- j. The allegations are admitted;
- k. The allegations are admitted;

- l. The allegations are admitted;
- m. The allegations are admitted;
- n. The allegations are admitted;
- o. The allegations are admitted;
- p. The allegations are admitted;
- q. The allegations are denied;
- r. The allegations are denied;
- s. The allegations are denied;
- t. The allegations are denied;
- u. The allegations are admitted;
- v. The allegations are denied;
- w. The allegations are denied;
- x. The allegations are denied;
- y. The allegations are denied; and
- z. The allegations are admitted.

5. The allegations contained in Paragraph 6 as pled are denied.

6. Your Defendants respond to the allegations contained in Paragraph 7 with reference to each subparagraph contained therein as follows:

- a. The allegations are admitted;
- b. The allegation that Dr. Gresinger was the medical director of the facility is admitted and the remaining allegations contained therein are denied;
- c. The allegations are admitted;
- d. The allegations are admitted;

ee. The allegations are admitted.

7. That your Defendants deny the allegations contained in Paragraph 8.

8. Your Defendants respond to the allegations contained in Paragraph 9 with reference to each subparagraph contained therein as follows:

a. The allegations are admitted;

b. The allegations are admitted;

c. The allegations as pled are denied;

d. The allegations as pled are denied;

e. The allegations as pled are denied;

f. The allegations as pled are denied;

g. The allegations as pled are denied;

h. The allegations as pled are denied;

i. The allegations as pled are denied;

j. The allegations as pled are denied;

k. The allegations as pled are denied;

l. The allegations as pled are denied;

m. The allegations as pled are denied;

n. The allegations as pled are denied;

o. The allegations as pled are denied;

p. The allegations as pled are denied;

q. The allegations as pled are denied;

r. The allegations are admitted;

s. The allegations are admitted;

t. The allegations as pled are denied;

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- u. The allegations are denied;
- v. The allegations are denied;
- w. The allegations are denied;
- x. The allegations are admitted;
- y. The allegations are denied;
- z. The allegations are denied;
- aa. The allegations are denied;
- bb. The allegations are denied; and
- cc. The allegations are admitted.

9. That your Defendants deny the allegations contained in paragraph 10.

10. That your Defendants deny the allegations contained in paragraph 11.

11. That your Defendants are without information or knowledge as to the allegations in Paragraph 12.

12. That your Defendants admit the allegations contained in Paragraph 13.

13. That your Defendants deny the allegations as pled in Paragraph 14.

14. That your Defendants deny the allegations as pled in Paragraph 15.

15. That your defendants deny the allegations as pled in Paragraph 16.

16. That your Defendants are without information or knowledge as to the allegations in Paragraph 17.

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17. That your Defendants deny the allegations as pled in Paragraph 18.

18. That your Defendants respond to Paragraph 19 and the subreferences therein as follows:

a. The allegations are denied;

b. The allegations are admitted insofar as the Defendant Match has acted as an independent contractor of the Corpora-
tion.

b(1) The allegations are denied;

b(2) The allegations are denied;

b(3) The allegations are denied;

b(4) The allegations are admitted;

b(5) The allegations are denied;

b(6) The allegations are denied;

b(7) The allegations are denied;

b(8) The allegations are denied;

19. That your Defendants deny the allegations contained in Paragraph 20.

20. That your Defendants deny the allegations as pled in Paragraph 21.

21. That your Defendants deny the allegations contained in Paragraph 22.

22. That your Defendants deny the allegations as pled in Paragraph 23 since the Plaintiff was not in her second trimester of pregnancy.

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23. That your Defendants admit the allegations contained in Paragraph 24.

24. That your Defendants deny the allegations as pled in Paragraph 25 but admit that they made no statements to the Plaintiff regarding the performance of second trimester abortions.

25. That your Defendants admit the allegations contained in Paragraph 26.

26. That your Defendants deny the allegations as pled in Paragraph 21. 3/27

27. Your Defendants respond to the allegations contained Paragraph 28 and the subreferences therein as follows:

- a. The allegations are denied;
- b. The allegations are denied;
- c. The allegations are denied;
- d. The allegations are denied;
- e. The allegations are denied;
- f. The allegations are denied;
- g. The allegations are denied;
- h. The allegations are denied;
- i. The allegations are denied;
- j. The allegations are denied;
- k. The allegations are denied;
- l. The allegations are denied;
- m. The allegations are denied;
- n. The allegations are denied;
- o. The allegations are denied;

48. That your Defendants deny the allegations contained in Paragraphs 59, 60, and 61.

49. That Paragraph 62 requires no pleading on the part of your Defendants.

50. That your Defendant deny the allegations contained in Paragraphs 63 and 64.

51. That Paragraph 65 requires no pleading on the part of your Defendants.

52. That your Defendants deny the allegations contained in Paragraphs 66, 67, 68, and 69.

53. That Paragraph 70 requires no pleading on the part of your Defendants.

54. That your Defendants deny the allegations contained in Paragraphs 71, 72, 73, and 74.

WHEREFORE, the premises considered, ~~your Defendants~~ respectfully pray that the Amended Motion for Judgment be dismissed, and that they be awarded their attorney's fees and costs pursuant to Title 8.01, Section 271.1 of the Code of Virginia, 1950 ed. as amended, and for whatever other relief this Court deems meet and just under the circumstances.

~~NORTHERN VIRGINIA WOMEN'S~~
~~MEDICAL CENTER, INC.~~
WAYNE C. CODDING, and
THOMAS H. GRESINGER, M.D.

By Counsel

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SANDGROUND BARONDESS
& WEST, P.C.


MARK A. BARONDESS, ESQUIRE

VSB NO. 24596

IRVE CHARLES LE MOYNE, JR., ESQUIRE

VSB No. 32687

Counsel for NORTHERN VIRGINIA

WOMEN'S MEDICAL CENTER

THOMAS H. GRESINGER, M.D.

WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing GROUNDS OF DEFENSE was mailed this 10 day of November, 1993, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, 1801 Robert Fulton Drive, Suite 400, Reston, Virginia 22091.


Mark A. Barondess

msa\5xxx\Lake\Defense

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L121123

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

DESIGNATION OF EXPERTS

COME NOW the Defendants, Northern Virginia Women's Medical Center, Inc., Thomas H. Gresinger, M.D., and Wayne C. Coddington, pursuant to the Status Conference Order entered herein on the 4th day of May, 1993, and designates the following experts for trial:

1. William Ledger, M.D. New York Hospital, Cornell Medical Center, 530 East 70th Street, New York, New York. The subject matter and grounds of this expert's testimony include: expert qualifications including education and experience of the various experts of the parties in this matter; a review of the record with respect to the Plaintiff and the injuries allegedly received, including any incident reports, medical records, pleadings, and deposition or trial testimony; female anatomy and physiology with respect to the Plaintiff's pregnancy and any medical conditions which may have affected the therapeutic procedures in this case; fetal development; knowledge of the industry and relevant industry standards; history of Ms. Lake; any and all examinations of Ms. Lake, including any findings, diagnoses, treatments, and prognoses; causation by the Defendants; the appropriate standard(s) of care

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and the proximate causation of the alleged injuries.

Dr. Ledger will review various records reflecting the care and treatment received by Ms. Lake at the Northern Virginia Women's Center and Warren Memorial Hospital. Based upon his review, Dr. Ledger is expected to testify that in his opinion, with a reasonable degree of medical certainty, the care and treatment provided to Ms. Lake by the Defendants, their agents, employees, or other representatives, was appropriate and conformed to the applicable standard of medical care. Specifically, Dr. Ledger is expected to opine that the Defendants, their agents, employees, or other representatives, performed or ordered all of the appropriate scientific and laboratory tests which were required in Ms. Lake's case according to the applicable standard of medical care. Further, Dr. Ledger is expected to testify that in his opinion it was appropriate to perform the specific procedure upon Ms. Lake at Northern Virginia Women's Medical Center, based upon the patient history and other information available at the time the procedure was performed. Dr. Ledger is also expected to testify that in his opinion the aforementioned procedure was performed properly and within the applicable standard of care.

Dr. Ledger is expected to testify that in his opinion the outcome of the procedure performed upon Ms. Lake was not the result of negligence and is a known complication of this procedure as listed in the Northern Virginia Women's Medical Center's preoperative disclosure statement regarding the risks and complications associated with this procedure. Further Dr. Ledger

industry and relevant industry standards; history of Ms. Lake; any and all examinations of Ms. Lake, including any findings, diagnoses, treatments, and prognoses; causation by the Defendants; the appropriate standard(s) of care and the proximate causation of the alleged injuries.

Dr. Stokes is also familiar with the facilities of the Defendants and their operative procedures.

Dr. Stokes will review various records reflecting the care and treatment received by Ms. Lake at the Northern Virginia Women's Center and Warren Memorial Hospital. Based upon his review, Dr. Stokes is expected to testify that in his opinion, with a reasonable degree of medical certainty, the care and treatment provided to Ms. Lake by the Defendants, their agents, employees, or other representatives, was appropriate and conformed to the applicable standard of medical care. Specifically, Dr. Stokes is expected to opine that the Defendants, their agents, employees, or other representatives, performed or ordered all of the appropriate scientific and laboratory tests which were required in Ms. Lake's case according to the applicable standard of medical care. Further, Dr. Stokes is expected to testify that in his opinion it was appropriate to perform the specific procedure upon Ms. Lake at Northern Virginia Women's Medical Center, based upon the patient history and other information available at the time the procedure was performed. Dr. Stokes is also expected to testify that in his opinion the aforementioned procedure was performed properly and within the applicable standard of care.

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Dr. Stokes is expected to testify that in his opinion the outcome of the procedure performed upon Ms. Lake was not the result of negligence and is a known complication of this procedure as listed in the Northern Virginia Women's Medical Center's preoperative disclosure statement regarding the risks and complications associated with this procedure. Further Dr. Stokes is expected to offer his opinion that it is not negligence for the Defendants, their agents, employees, or other representatives, not to have discovered the perforation or hemorrhage based upon the location of the perforation and the hemorrhage. It is expected that Dr. Stokes will offer his opinion, after reviewing the relevant medical records, that due to the location of the perforation the hemorrhage was undetectable until the patient's condition was sufficiently acute so as to require her to seek further medical attention.

Dr. Stokes is expected to opine that the counseling and pre-operative disclosure was sufficient to enable the Plaintiff to undergo the procedure with the proper informed consent.

Dr. Stokes is a board certified physician, familiar with the applicable standards of care relevant to the instant case. A copy of Dr. Stokes' curriculum vitae will be provided in response to the Plaintiff's Request for Production of Documents.

3. Richard S. Guy, M.D., 3101 Appleton Street, N.W., Washington, DC 20008. The subject matter and grounds of this expert's testimony include: expert qualifications including education and experience of the various experts of the parties in

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this matter; a review of the record with respect to the Plaintiff and the injuries allegedly received, including any incident reports, medical records, pleadings, and deposition or trial testimony; female anatomy and physiology with respect to the Plaintiff's pregnancy and any medical conditions which may have affected the therapeutic procedures in this case; fetal development; knowledge of the industry and relevant industry standards; history of Ms. Lake; any and all examinations of Ms. Lake, including any findings, diagnoses, treatments, and prognoses; causation by the Defendants; the appropriate standard(s) of care and the proximate causation of the alleged injuries.

Dr. Guy is also familiar with the facilities of the Defendants and their operative procedures.

Dr. Guy will review various records reflecting the care and treatment received by Ms. Lake at the Northern Virginia Women's Center and Warren Memorial Hospital. Based upon his review, Dr. Guy is expected to testify that in his opinion, with a reasonable degree of medical certainty, the care and treatment provided to Ms. Lake by the Defendants, their agents, employees, or other representatives, was appropriate and conformed to the applicable standard of medical care. Specifically, Dr. Guy is expected to opine that the Defendants, their agents, employees, or other representatives, performed or ordered all of the appropriate scientific and laboratory tests which were required in Ms. Lake's case according to the applicable standard of medical care. Further, Dr. Guy is expected to testify that in his opinion it was

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appropriate to perform the specific procedure upon Ms. Lake at Northern Virginia Women's Medical Center, based upon the patient history and other information available at the time the procedure was performed. Dr. Guy is also expected to testify that in his opinion the aforementioned procedure was performed properly and within the applicable standard of care.

Dr. Guy is expected to testify that in his opinion the outcome of the procedure performed upon Ms. Lake was not the result of negligence and is a known complication of this procedure as listed in the Northern Virginia Women's Medical Center's preoperative disclosure statement regarding the risks and complications associated with this procedure. Further Dr. Guy is expected to offer his opinion that it is not negligence for the Defendants, their agents, employees, or other representatives, not to have discovered the perforation or hemorrhage based upon the location of the perforation and the hemorrhage. It is expected that Dr. Guy will offer his opinion, after reviewing the relevant medical records, that due to the location of the perforation the hemorrhage was undetectable until the patient's condition was sufficiently acute so as to require her to seek further medical attention.

Dr. Guy is expected to opine that the counseling and pre-operative disclosure was sufficient to enable the Plaintiff to undergo the procedure with the proper informed consent.

Dr. Guy is a board certified physician, familiar with the applicable standards of care relevant to the instant case. A copy of Dr. Guy's curriculum vitae will be provided in response to the

Plaintiff's Request for Production of Documents.

4. Michael A. Jackson, M.D., 3020 Pennsylvania Avenue, S.E., Washington, D.C. 20020, The subject matter and grounds of this expert's testimony include: expert qualifications including education and experience of the various experts of the parties in this matter; a review of the record with respect to the Plaintiff and the injuries allegedly received, including any incident reports, medical records, pleadings, and deposition or trial testimony; female anatomy and physiology with respect to the Plaintiff's pregnancy and any medical conditions which may have affected the therapeutic procedures in this case; fetal development; knowledge of the industry and relevant industry standards; history of Ms. Lake; any and all examinations of Ms. Lake, including any findings, diagnoses, treatments, and prognoses; causation by the Defendants; the appropriate standard(s) of care and the proximate causation of the alleged injuries.

Dr. Jackson is also familiar with the facilities of the Defendants and their operative procedures.

Dr. Jackson will review various records reflecting the care and treatment received by Ms. Lake at the Northern Virginia Women's Center and Warren Memorial Hospital. Based upon his review, Dr. Jackson is expected to testify that in his opinion, with a reasonable degree of medical certainty, the care and treatment provided to Ms. Lake by the Defendants, their agents, employees, or other representatives, was appropriate and conformed to the applicable standard of medical care. Specifically, Dr. Jackson is

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expected to opine that the Defendants, their agents, employees, or other representatives, performed or ordered all of the appropriate scientific and laboratory tests which were required in Ms. Lake's case according to the applicable standard of medical care. Further, Dr. Jackson is expected to testify that in his opinion it was appropriate to perform the specific procedure upon Ms. Lake at Northern Virginia Women's Medical Center, based upon the patient history and other information available at the time the procedure was performed. Dr. Jackson is also expected to testify that in his opinion the aforementioned procedure was performed properly and within the applicable standard of care.

Dr. Jackson is expected to testify that in his opinion the outcome of the procedure performed upon Ms. Lake was not the result of negligence and is a known complication of this procedure as listed in the Northern Virginia Women's Medical Center's preoperative disclosure statement regarding the risks and complications associated with this procedure. Further Dr. Jackson is expected to offer his opinion that it is not negligence for the Defendants, their agents, employees, or other representatives, not to have discovered the perforation or hemorrhage based upon the location of the perforation and the hemorrhage. It is expected that Dr. Jackson will offer his opinion, after reviewing the relevant medical records, that due to the location of the perforation the hemorrhage was undetectable until the patient's condition was sufficiently acute so as to require her to seek further medical attention.

Dr. Jackson is expected to opine that the counseling and pre-operative disclosure was sufficient to enable the Plaintiff to undergo the procedure with the proper informed consent.

Dr. Jackson is a board certified physician, familiar with the applicable standards of care relevant to the instant case. A copy of Dr. Jackson's curriculum vitae will be provided in response to the Plaintiff's Request for Production of Documents.

5. Burton Barnow, Ph.D., 9300 Lee Highway, Third Floor, Fairfax, Virginia 22031. The subject and grounds of this expert witness's testimony include: the past, present, and future earning potential of the Plaintiff; any pleadings, interrogatories, depositions, or documents produced in discovery; analysis of the economic damages suffered by the Plaintiff; expert qualifications of experts called by any party to this case, including their education and experience; review of records as to the Plaintiff.

Dr. Barnow is expected to be called to rebut any and all economic claims made by the Plaintiff. As these claims have not yet been identified, it is impossible to state the specific substance of said testimony.

6. Any witnesses identified or called by any other party to this case, including but not limited to witnesses identified as expert witnesses.

7. Joel Match, M.D., Co-Defendant in the instant suit. The subject matter and grounds of this expert's testimony include: expert qualifications including education and experience of the various experts of the parties in this matter; a review of the

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record with respect to the Plaintiff and the injuries allegedly received, including any incident reports, medical records, pleadings, and deposition or trial testimony; female anatomy and physiology with respect to the Plaintiff's pregnancy and any medical conditions which may have affected the therapeutic procedures in this case; fetal development; knowledge of the industry and relevant industry standards; history of Ms. Lake; any and all examinations of Ms. Lake, including any findings, diagnoses, treatments, and prognoses; causation by the Defendants; the appropriate standard(s) of care and the proximate causation of the alleged injuries.

Dr. Match is also familiar with the facilities of the Defendants and their operative procedures.

Dr. Match will review various records reflecting the care and treatment received by Ms. Lake at the Northern Virginia Women's Center and Warren Memorial Hospital. Based upon his review, Dr. Match is expected to testify that in his opinion, with a reasonable degree of medical certainty, the care and treatment provided to Ms. Lake by the Defendants, their agents, employees, or other representatives, was appropriate and conformed to the applicable standard of medical care. Specifically, Dr. Match is expected to opine that the Defendants, their agents, employees, or other representatives, performed or ordered all of the appropriate scientific and laboratory tests which were required in Ms. Lake's case according to the applicable standard of medical care. Further, Dr. Match is expected to testify that in his opinion it

was appropriate to perform the specific procedure upon Ms. Lake at Northern Virginia Women's Medical Center, based upon the patient history and other information available at the time the procedure was performed. Dr. Match is also expected to testify that in his opinion the aforementioned procedure was performed properly and within the applicable standard of care.

Dr. Match is expected to testify that in his opinion the outcome of the procedure performed upon Ms. Lake was not the result of negligence and is a known complication of this procedure as listed in the Northern Virginia Women's Medical Center's preoperative disclosure statement regarding the risks and complications associated with this procedure. Further Dr. Match is expected to offer his opinion that it is not negligence for the Defendants, their agents, employees, or other representatives, not to have discovered the perforation or hemorrhage based upon the location of the perforation and the hemorrhage. It is expected that Dr. Match will offer his opinion, after reviewing the relevant medical records, that due to the location of the perforation the hemorrhage was undetectable until the patient's condition was sufficiently acute so as to require her to seek further medical attention.

Dr. Match is expected to opine that the counseling and pre-operative disclosure was sufficient to enable the Plaintiff to undergo the procedure with the proper informed consent.

Dr. Match is a board certified physician, familiar with the applicable standards of care relevant to the instant case. A copy

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of Dr. Match's curriculum vitae will be provided in response to the Plaintiff's Request for Production of Documents.

8. Thomas H. Gresinger, M.D., 916 W. Broad Street, Falls Church, VA 22042. The subject matter and grounds of this expert's testimony include: expert qualifications including education and experience of the various experts of the parties in this matter; a review of the record with respect to the Plaintiff and the injuries allegedly received, including any incident reports, medical records, pleadings, and deposition or trial testimony; female anatomy and physiology with respect to the Plaintiff's pregnancy and any medical conditions which may have affected the therapeutic procedures in this case; fetal development; knowledge of the industry and relevant industry standards; history of Ms. Lake; any and all examinations of Ms. Lake, including any findings, diagnoses, treatments, and prognoses; causation by the Defendants; the appropriate standard(s) of care and the proximate causation of the alleged injuries.

Dr. Gresinger is also familiar with the facilities of the Defendants and their operative procedures.

Dr. Gresinger will review various records reflecting the care and treatment received by Ms. Lake at the Northern Virginia Women's Center and Warren Memorial Hospital. Based upon his review, Dr. Gresinger is expected to testify that in his opinion, with a reasonable degree of medical certainty, the care and treatment provided to Ms. Lake by the Defendants, their agents, employees, or other representatives, was appropriate and conformed to the

applicable standard of medical care. Specifically, Dr. Gresinger is expected to opine that the Defendants, their agents, employees, or other representatives, performed or ordered all of the appropriate scientific and laboratory tests which were required in Ms. Lake's case according to the applicable standard of medical care. Further, Dr. Gresinger is expected to testify that in his opinion it was appropriate to perform the specific procedure upon Ms. Lake at Northern Virginia Women's Medical Center, based upon the patient history and other information available at the time the procedure was performed. Dr. Gresinger is also expected to testify that in his opinion the aforementioned procedure was performed properly and within the applicable standard of care.

Dr. Gresinger is expected to testify that in his opinion the outcome of the procedure performed upon Ms. Lake was not the result of negligence and is a known complication of this procedure as listed in the Northern Virginia Women's Medical Center's preoperative disclosure statement regarding the risks and complications associated with this procedure. Further Dr. Gresinger is expected to offer his opinion that it is not negligence for the Defendants, their agents, employees, or other representatives, not to have discovered the perforation or hemorrhage based upon the location of the perforation and the hemorrhage. It is expected that Dr. Gresinger will offer his opinion, after reviewing the relevant medical records, that due to the location of the perforation the hemorrhage was undetectable until the patient's condition was sufficiently acute so as to

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require her to seek further medical attention.

Dr. Gresinger is expected to opine that the counseling and pre-operative disclosure was sufficient to enable the Plaintiff to undergo the procedure with the proper informed consent.

Dr. Gresinger is a board certified physician, familiar with the applicable standards of care relevant to the instant case. A copy of Dr. Gresinger's curriculum vitae will be provided in response to the Plaintiff's Request for Production of Documents.

9. Dr. Joseph Novello, 3301 New Mexico Ave., NW, Suite 305 Washington, D.C. 20016. This expert is expected to testify with respect to averments regarding the psychological harm suffered by Plaintiff. As Plaintiff has not yet been deposed, nor has she provided any medical records to support these averments, the specific substance of this expert's testimony cannot be identified as yet.

Dr. Novello is a board certified psychiatrist. A copy of Dr. Novello's curriculum vitae will be provided in response to the Plaintiff's Request for Production of Documents.

10. Any rebuttal witnesses necessitated by the testimony of the Plaintiff's witnesses.

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC
WAYNE C. CODDING
THOMAS H. GRESINGER, M.D
By Counsel

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Sandground Barondess
& West, P.C.


Mark A. Barondess

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Counsel for Defendants Northern Virginia
Women's Medical Clinic, Wayne C. Coddling
and Thomas H. Gresinger, M.D.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Designation of Expert Witnesses was faxed and mailed this 5th day of November, 1993, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, 1801 Robert Fulton Drive, Suite 400, Reston, Virginia 22091.


Mark A. Barondess

msa\Sigaa\Lake\experts.2

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1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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5 TINA MARIE LAKE,)

6 Plaintiff,)

7 vs.)

At Law No. L121123

8. NORTHERN VIRGINIA WOMEN'S)

9 MEDICAL CENTER, INC., et al.,)

10 Defendants.)

11

12 The deposition, Volume II of THOMAS H.

13 GRESINGER, M.D., was taken on Wednesday, November

14 10, 1993, commencing at 9:45 a.m., at 1801 Robert

15 Fulton Drive, Suite 400, Reston, Virginia, before

16 Ryan C. Jackson, Notary Public.

17

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22

Bossard Associates, Inc.

REGISTERED PROFESSIONAL REPORTERS

1023 Fifteenth Street, N.W.
Second Floor
Washington, D.C. 20005
(202) 842-3300

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A P P E A R A N C E S

(cont'd)

ON BEHALF OF THE DEFENDANT (THOMAS H. GRESINGER,
M.D.):

MARK BARONDESS, ESO.

Sandground, Barondess & West

8000 Towers Crescent Drive, Suite 600

Vienna, Virginia 22182

(703) 761-4200

ALSO PRESENT:

Tina Marie Lake

Wayne Godding

Honorable F. Bruce Bach

(For conference call only.)

(Index appears following the transcript.)

BOSSARD ASSOCIATES, INC.

(202) 842-3300

1 As you may recall, two weeks ago you ruled
2 in plaintiff's favor on almost every motion to this
3 fundamental interrogatories and request for
4 production and you continually ruled in our favor
5 because nothing of any substance had been provided.

6 At that time you ruled that ~~several days~~
7 ~~after they would have to produce expert Answers to~~
8 ~~Interrogatories. They were late on that.~~
9 Mr. Barondess made an ex parte appearance before
10 you, and you granted him several more days for him
11 to produce expert answers.

12 You also said two weeks ago, and I think
13 you'll probably recall this, we had a discussion
14 about Request for Production being served on his
15 clients a year ago. ~~No objections have been filed~~
16 You are aware from me that ~~one of the specific~~
17 ~~three defendants had been served~~ It turns out --
18 or one of the four defendants that Mr. Barondess
19 represents.

20 ~~It turns out that three of the four had been~~
21 ~~served a year ago, and that's in the file.~~ You
22 said at first that he was to produce all the

1 documents, period. And then he said, Look, I won't,
2 make many objections, Judge. Please let me just
3 state some objections. And you said words to the
4 effect that there better not be many, and you were
5 very stern about it.

6 I got 27 of 41 document requests objected
7 to. That's 27 of 41, Judge. And the documents
8 which were to be produced at a given time were not
9 produced at all. What was produced was the
10 objections. And the other responses said, This has
11 already been provided. So I have 27 of 41
12 objections with nothing produced.

13 Apparently, some documents at this
14 deposition are being produced. I'm deposing the
15 main defendant here, and I haven't even seen the
16 documents they've just now given to me five minutes
17 ago.

18 So my request to you is that our plaintiff's
19 deposition be postponed until such time as the
20 orders that you've made with respect to,
21 particularly, the Center defendants and, also,
22 Mr. Boone's clients because we're not able to get a

1 motion to compel heard against him very well until
2 such time as those documents are produced and I can
3 prepare my client with them that that deposition
4 not be held.

5 MR. BARONDESS: Judge Bach, this is Mark
6 Barondess. May I be heard, sir?

7 THE COURT: Sure.

8 MR. BARONDESS: Judge, certainly I did go
9 through and review all of the document requests
10 that had been propounded upon my client. And while
11 it is true that there were 27 objections that were
12 taken, what Counsel was not telling you is that a
13 ~~majority of those I also put after the objection~~
14 ~~without waiving the objection, this is the~~
15 ~~situation with respect to the documents.~~

16 It is not a blanket statement in any respect
17 that we're not producing any of the documents in
18 those 27 categories. Rather, ~~we were preserving~~
19 ~~our objection and then agreeing to produce the~~
20 ~~documents at a mutually convenient date and time.~~

21 I went down the list and said what documents
22 we would produce. I have brought with us here

1 today in advance of this deposition some of the
2 documents. They should not in any way impact upon
3 the examination.

4 The discovery that has been propounded upon
5 us by Mr. Wessel in this case has been beyond
6 burdensome and overly broad. And I think if the
7 Court were just to go down even a few of the
8 document requests, the Court would agree with the
9 statement that it is almost impossible to, one,
10 understand some of the requests that he has made
11 and, two, to comply with them would be absolutely
12 outside the scope of Rule 4:1.

13 We've done everything that we possibly can,
14 and there is no reason why the deposition of the
15 plaintiff should be postponed given the fact that
16 he alleges some of the discovery documents that he
17 needs have not been produced. That does not impact
18 upon our deposition of his client.

19 We have produced our clients for deposition.
20 We're ready to go forward. We've already done it
21 once. We're here again so we can finish another
22 day. And we've done everything that we possibly

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000091

1 can. It's just a very difficult situation.

2 And I think, most respectfully, that many of
3 the representations which Mr. Wessel makes are
4 simply inaccurate. I can't question his intent
5 when he's making these statements, but some of them
6 are just patently false.

7 MR. WESSEL: Judge, the last couple weeks
8 I've gotten basically two ex parte appearances
9 against me; I've gotten, the night before,
10 Dr. Gresinger's deposition postponed by
11 Mr. Barondess; I've gotten expert answers -- the
12 time has passed and he had to appear before you ex
13 parte to get that extended; ~~I've gotten the~~
14 ~~Response to Request for Production, simply a~~
15 ~~written document saying they'll be produced at a~~
16 ~~mutually convenient time when you ordered that~~
17 ~~they already be produced.~~ Nothing is happening.

18 The only thing I'm getting is
19 Dr. Gresinger's deposition. And I can understand
20 why because I don't even have all the documents to
21 depose him with. And I just don't think it's fair
22 that with all the discovery responses that we've

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1 Whereupon --

2 THOMAS H. GRESINGER, M.D.,
3 a witness, called for examination, having been
4 previously sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MR. WESSEL:

8 Q. Dr. Gresinger, you understand you're still
9 under oath for your testimony?

10 A. Fine.

11 Q. Since we last spoke, Dr. Gresinger, your
12 counsel has filed a paper entitled ~~Examination of~~
13 ~~Experts on which your prospective expert testimony~~
14 ~~is based.~~ Have you read that document?

15 A. Yes.

16 Q. And do you agree with everything that's said
17 in there about your testimony?

18 A. Substantially, yes.

19 Q. What do you not agree with?

20 A. Well, nothing I disagree with. But, you
21 know, I can't say that every, you know, comma and
22 period is exactly the way I would like it. It

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1 is that "The care and treatment provided to
2 Ms. Lake by ~~the defendants~~, their agents,
3 employees, or other representatives ~~was appropriate~~
4 and conform to the applicable standard of medical
5 care."

6 ~~Do you agree with that?~~

7 A. ~~Yes.~~

8 Q. And what do you mean when you say that?

9 A. What I mean is that the treatment that she
10 received at the clinic was appropriate.

11 Q. By whom?

12 A. By the clinic and by Dr. Match.

13 Q. What treatment was provided by the clinic?

14 A. Well, the clinic -- I misspoke myself. Of
15 course, the clinic provides no treatment. The
16 physician does the treating. The clinic supplies
17 the facility in which the treatment is undertaken.

18 Q. So, then, you disagree with the statement
19 that the care and treatment provided to Ms. Lake by
20 the defendants was appropriate, excluding
21 Dr. Match?

22 A. I'm not sure, Mr. Wessel. It just seems to

1 Make sure at the end of this deposition I
2 get this back. This is Gresinger Number 1.

3 MR. BARONDESS: Why don't you hold on to it.

4 MR. WESSEL: Then, with permission of
5 Counsel, I'd like to have this marked collectively
6 as Number 3, these three, and just copies. Okay?

7 MR. BARONDESS: Yeah.

8 MR. WESSEL: So I'll keep the records so
9 that I don't get in trouble with Warren Memorial
10 Hospital.

11 (Gresinger Deposition Exhibit Number 3 was
12 marked for identification.)

13 BY MR. WESSEL:

14 Q. All right.

15 ~~"Now I'd like to go over the documents that~~
16 ~~"we were just talking about that your counsel has~~
17 ~~provided,"~~ and I'd just like to identify them. I
18 probably won't go over them too much individually.

19 The first one is Report Of Induced
20 Termination Of Pregnancy. Is that the form that
21 you use generally? Is this the so-called death
22 certificate that you were talking about?

1 (Discussion off the record.)

2 BY MR. WESSEL:

3 Q. Next is your curriculum vitae. We're going
4 to make that Exhibit 5. We'll copy that.

5 A. You don't need a copy. That's yours.

6 Q. I understand, but I'm going to have to make
7 copies so that there will be copies in the
8 deposition.

9 (Gresinger Deposition Exhibit Number 5 was
10 marked for identification.)

11 BY MR. WESSEL:

12 Q. Next, in the upper right-hand corner I'll
13 put Exhibit 6. ~~NOVA Women's Medical Center, First~~
14 ~~Established Women's Clinic In Virginia.~~ Is that
15 what this says?

16 A. This is our clinic brochure.

17 (Gresinger Deposition Exhibit Number 6 was
18 marked for identification.)

19 BY MR. WESSEL:

20 Q. And was that existing on April 13, 1991?

21 A. Yes.

22 Q. Was that in the waiting room or something?

1 A. Yes.

2 MR. WESSEL: Okay. Now, this next one I'll
3 mark as Exhibit 7 in the upper right-hand corner.
4 It says Time Street

5 (Gresinger Deposition Exhibit Number 7 was
6 marked for identification.)

7 BY MR. WESSEL:

8 Q. And what is this, sir?

9 A. I don't know. I haven't seen it. I don't
10 know whether I've seen this form before or not.

11 This is, obviously, an administrative form
12 that I am not familiar with. But it is fairly --
13 You know, this is, I would suspect, has to do with
14 payroll records because it has a list of the days
15 and a list of the docs and a list of the nurse
16 anesthetists and it lists what particular
17 procedures were done by each of us.

18 For instance, on the 15th of April of 1991,
19 I did four abortions under general anesthesia, two
20 abortions under local anesthesia. The next day I
21 did a coposcopy. I didn't do any cryosurgery that
22 day. Dr. Match wasn't working that day.

1 (Gresinger Deposition Exhibit Number 8 was
2 marked for identification.)

3 BY MR. WESSEL:

4 Q. It appears to be a Yellow Page type of
5 advertisement?

6 A. Yes.

7 Q. And was this during the relevant time
8 period, April 13, 1991?

9 A. I can't see from here.

10 MR. BARONDESS: Doug, look up at the top
11 right-hand corner of the page which indicates the
12 date.

13 MR. WESSEL: All right.

14 THE WITNESS: Well, it says 1993...

15 MR. BARONDESS: That's right. I don't think
16 we have any documents that are responsive for the
17 year 1991.

18 BY MR. WESSEL:

19 Q. Does this look like the same ad that was
20 operative in April of 1991?

21 A. I don't look at our ads. Mr. Coddington does
22 all of the ads.

1 Q. Do you see anything different from the ad
2 that was existing in April of '91?

3 A. I never look at them.

4 Q. Okay.

5 Number 9 is listed in the upper right-hand
6 corner as 1992. And if you'll permit me, I'm going
7 to circle "NOVA Women's Medical Center." Is that
8 okay?

9 A. Sure.

10 Q. Or I'll put a bigger box around it. And
11 this one says "NOVA Women's Medical Center." I put
12 a black box around it.

13 (Gresinger Deposition Exhibit Number 9 was
14 marked for identification.)

15 BY MR. WESSEL:

16 Q. Can you tell whether that ad was existing
17 essentially in that form in April of 1991?

18 A. I really can't, because this is dated April
19 1992.

20 Q. I understand.

21 A. So I guess we must have taken a bigger ad in
22 '93.

1 individual counseling of risks.

2 A. Because we feel that in this particular
3 situation that it is more beneficial for the
4 patient to be with the group of people who are in
5 the same situation for reinforcement.

6 Our other clinics -- one of our other
7 clinics does not do this. So there is a divergence
8 of opinion on this.

9 Q. Which clinic is that?

10 A. Commonwealth Clinic does only individual
11 counseling.

12 Q. And are you the medical director there?

13 A. Yes.

14 Q. How is that decision made there?

15 A. We just decide to try it each way to see
16 which way works out. And it's sort of a push. We
17 really can't decide which one way is better than
18 the other, so we do them both.

19 Q. All right.

20 BY MR. WESSEL:

21 Q. Exhibit 10, Doctor, appears to be, on the
22 first page, the license of Dr. Match?

1 A. I think he's implying that it happened
2 later. You'd have to ask him what "later" means.
3 I just have to take it on the face.

4 Q. Do you interpret that as anything indicating
5 an exoneration of him in some way, shape, or form,
6 an explanation for what happened or an exoneration?

7 A. I certainly see nothing indicting in there.

8 Q. But is that a comment by him that is somehow
9 positive to him in some way?

10 MS. ROBIN: I'm going to object to this
11 gentleman's being asked to interpret what
12 Mr. Match, if it was Dr. Match making these
13 utterances, meant by or intended by them.

14 BY MR. WESSEL:

15 Q. Go ahead, sir.

16 A. I think it's simply a statement of what
17 happened in his own words. You've got to ask him.

18 MR. WESSEL: Can you tell me, Mark, where
19 this document came from or what it is?

20 MR. BARONDESS: I believe those are copies
21 of documents. You asked for the personnel file.
22 These are documents that were contained in the

1 personnel file.

2 MR. WESSEL: Okay. Thank you.

3 BY MR. WESSEL:

4 Q. Tell you what we'll do. In the lower
5 right-hand corner I'm going to number these pages
6 consecutively. 1 and 2 for the curriculum vitae, 3
7 for the Consultant Information Form, 4 is the
8 second page Consultant Information, 5 was the
9 document with the cases that we just were talking
10 about. Is that right, Doctor?

11 A. Uh-huh.

12 Q. 6 is Commonwealth Of Virginia Department Of
13 Health Professions.

14 And these are his -- what are these?

15 A. First one is license to practice medicine.
16 And the second one is his license to dispense
17 controlled and to prescribe controlled substances.

18 Q. And what is this marked number 7 in the
19 lower left-hand corner? Controlled Substances
20 Registration Certificate.

21 A. This probably is the state certificate, and
22 this is probably the federal certificate.

1 So this is for 1993 to 1994. You don't have
2 another policy other than this one coverage sheet?

3 MR. BARONDESS: We've given you everything
4 that's in his file, his personnel file.

5 MR. WESSEL: All right. That's number 11.

6 BY MR. WESSEL:

7 Q. This blue, looks like, elementary school
8 book, as I recall from ancient history, has
9 entitled on the outside Nursing Manual.

10 What is this, Doctor?

11 A. The procedures and protocols were requested,
12 and this is what we have.

13 Q. And were these in effect April 13, '91?

14 A. Yes.

15 Q. And did this cover the Northern Virginia
16 Women's Medical Center clinic?

17 A. Yes.

18 Q. I'm not going to mark on your book. Let's
19 call that Number 12. And I'll try to get somebody
20 copying these right away.

21 (Gresinger Deposition Exhibit Number 12 was
22 marked for identification.)

VIRGINIA

IN CIRCUIT COURT OF FAIRFAX COUNTY

ANNA L. LAKE
versus

JOEL W. MATCH, MD, et al

CASE NO. L133092

STATUS CONFERENCE ORDER

The Status Conference was held April 20, 1995. After discussing the various issues presented; it was ORDERED that:

A. Plaintiff's and Counter Plaintiff's ^{10/6/95}experts must be identified on or before ^{9/7/95}90 days prior to trial. All opposing experts must be identified on or before 60 days prior to trial. Identification of experts must set out all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia, or the expert may not be permitted to express any non-disclosed opinions at trial. All discovery except Requests for Admissions shall be completed 30 days prior to trial.

B. A Settlement Conference Date is 11/6/95, at 8:30 a.m. A factual statement of the case must be submitted to the Case Management Office on the 5th floor of the Judicial Center no later than five days before the Settlement Conference. Lead counsel for each of the parties and the parties (or if applicable, the insurance adjuster with authority to settle) must attend the settlement conference, unless excused in advance by the Judge or Evaluator conducting the conference. However, parties (or adjusters) who reside over 50 miles from the Fairfax Courthouse may be available by phone.

C. Counsel or pro se parties shall ^{12/6/95}deliver to opposing counsel or party a copy of all exhibits and a list of names of witnesses proposed to be introduced at trial, on or before ^{11/27/95}15 days prior to trial. A list of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. No exhibit or witness not so identified and filed will be received in evidence, except in rebuttal or for impeachment. Any objections to exhibits except on relevancy grounds need to be filed with the Clerk of the Court and a copy nailed to opposing counsel or pro se parties no later than five days prior to trial or the objection will be deemed waived. Objections shall be to particular exhibit numbers and must state the legal reason for the objection.

D. Counsel shall exchange and confer about proposed jury instructions in advance of the trial date. At the commencement of trial, counsel shall tender to the Court the originals of all agreed upon instructions and copies of all contested instructions with appropriate citations.

E. Deadlines established in this Order may be extended or waived by the Court for good cause shown, but only after considering the extent to which the opposing party may be prejudiced thereby.

F. The Trial date is 12-11-95 ^(per Order 11/29/95) with a Jury ☒ without a Jury ☐
Estimated trial time is 2 WKS.

G. Motions in limine which require argument exceeding five minutes shall be heard on a motions day before the trial date.

H. All dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible.

I. The Court's Case Management Instructions dated January 1, 1994 are incorporated herein by reference and the parties shall comply with each term thereof.

Entered this 20th day of April, 1995.

Counsel for Plaintiff(s)

275

JUDGE

Counsel for Defendant(s)

000104

2/1/94

**FAIRFAX CIRCUIT COURT
CASE MANAGEMENT INSTRUCTIONS**

I. THE STATUS CONFERENCE

1. Status conferences will be scheduled on a Tuesday or Thursday at 8:30 a.m. in one of three courtrooms on the fifth floor of the Judicial Center. Courtroom assignments will be posted on the bulletin board on the fifth floor. Counsel and all unrepresented parties are to appear promptly at 8:30 a.m. or the conference may occur in their absence.

2. A judge of the Court will have reviewed each of the files in advance of the status conference and will have noted (a) any failures to effect service on all defendants; (b) whether any defendant is in default; (c) whether any dispositive motions are pending. If service is not complete the status conference will be conducted by a judge in one of the jury rooms.

3. All other status conferences will commence in one of the three designated courtrooms and will be conducted by a law clerk or other Judicial Operations staff person.

4. At the status conference, a trial date will be set, unless all Defendants are in default, and a settlement conference may be set with either a judge or a Neutral Case Evaluator chosen by the Court.

5. All law clerks and other Judicial Operations personnel conducting status conferences will set trial dates within twelve months of the filing of the Motion for Judgment unless the pre-screening judge has waived this requirement.

6. The law clerk or other Judicial Operations person conducting a status conference will set a settlement conference if the judge who has pre-screened the file has determined that a settlement conference should be held. The pre-screening judge will also determine whether the settlement conference should be conducted by (1) a judge or (2) a Neutral Case Evaluator.

7. Motions for default judgment, demurrers, pleas in bar and other outstanding dispositive motions, should be resolved prior to the status conference. If they have not been, a hearing date for them will be set at the status conference.

8. If an attorney or unrepresented party disagrees with any determination made by the pre-screening judge, or if counsel asserts that the trial will take four or more days, or is such an unusually complex case that the court should designate one judge to hear all matters in the case, the law clerk or other Judicial Operations person conducting the status conference shall send the parties to a judge to consider these matters. In addition, all parties who seek to then present a final Order disposing of the case, or who seek a continuance of the status conference, shall also be referred to a judge.

9. Available trial dates to be used that day will be posted on the two counsel tables. Counsel for the parties in each case should review the available trial dates and should attempt to agree on a trial date within twelve months of the date of filing.

II. PROVISIONS OF THE STATUS CONFERENCE ORDER

1. Plaintiff and Counter Plaintiff must designate all expert witnesses to be called by that party no later than 90 days before the trial date established in the status conference order. Defendant and 000105

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L121123

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

FIRST SET OF INTERROGATORIES TO PLAINTIFF

TO: TINA MARIE LAKE
c/o Richard W. Boone, Esquire
1497 Chain Bridge Road, Suite 200
McLean, Virginia 22101
and
Douglas B. Wessell, Esquire
1801 Robert Fulton Drive
Suite 400
Reston, Virginia 22091

The following Interrogatories are directed to you pursuant to the Rule 4:8 of the Rules of the Supreme Court of Virginia, as amended. You are hereby required to answer the following questions separately, in writing and under oath, and to serve a copy of your answers upon counsel for Plaintiff within twenty-one (21) days after service hereof upon you.

INSTRUCTIONS

1. In answering these Interrogatories, the Defendant is required to furnish, under oath, all information that is in her possession or available to him.

2. Each Interrogatory shall be accorded a separate answer, and each sub-part of an Interrogatory shall be accorded a separate answer.

3. Estimates of approximations should be given when, but

INTERROGATORY NO. 25:

In paragraphs 31, 34, 37, 40, 43, 46, and 50 of the Motion for Amended Judgment, you allege that the Defendants, that the Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC., Gresinger, and Coddling, were negligent, grossly negligent, and acting in conscious disregard, or reckless indifference to the Plaintiff, were wilfully and wantonly negligent, negligent per se or otherwise fell below the degree of management, skill, expertise, abilities, diligence, and care with respect to the Plaintiff. Please set forth in detail, with specificity, each and every act by the Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC., Gresinger, and Coddling, which you maintain or contend was negligent, grossly negligent, and acting in conscious disregard, or reckless indifference to the Plaintiff, were wilfully and wantonly negligent, negligent per se or otherwise fell below the degree of management, skill, expertise, abilities, diligence, and care with respect to the Plaintiff; the date said act(s) was committed; and the names, addresses, and telephone numbers of all witnesses to said act(s) or other persons who have knowledge of the facts and circumstances surrounding said alleged acts.

SANDGROUND
BARONDESS
& WEST P. C.
ATTORNEYS AT LAW
3000 TOWERS CRESCENT DRIVE
SIXTH FLOOR, TYSONS CORNER
VIENNA, VA 22182
(703) 781-4200

and engaged in a course of conduct which was outrageous, intolerable, and the Defendants knew or should have known would cause emotional distress to the Plaintiff. Please set forth, with specificity, each and every act which you allege to be outrageous or intolerable; the date said act(s) was committed, the person(s) who committed said act(s); each and every fact upon which you rely to support your allegations contained in paragraph 71 of your Amended Motion for Judgment that the Defendants Northern Virginia Women's Medical Clinic, Inc., Gresinger and Coddling knew or should have known that the acts would cause emotional distress to Ms. Lake; and each and every generally accepted standard of decency and morality you maintain was offended by the aforementioned act(s). Please include the names, addresses and telephone numbers of all witnesses to said act(s) or other persons who have knowledge of the facts and circumstances surrounding said allegations.

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VIENNA, VA 22182
(703) 761-4200

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC
WAYNE C. CODDING
THOMAS H. GRESINGER, M.D.
By Counsel

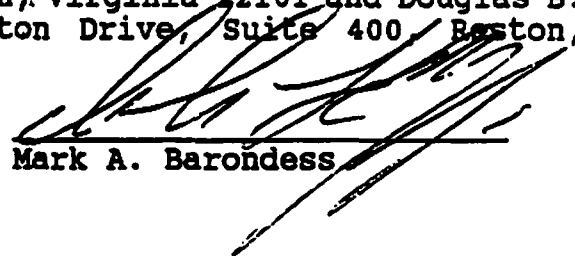
Sandground Barondess
& West, P.C.



Mark A. Barondess
D.C. Bar No. 391597
8000 Towers Crescent Drive
Sixth Floor, Tysons Corner
Vienna, Virginia 22182
(703) 761-4200
Counsel for Defendant Northern Virginia
Women's Medical Clinic, Wayne C. Coddling
and Thomas H. Gresinger, M.D.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing First Set of Interrogatories to Plaintiff was mailed this ~~25th~~ day of October, 1993, postage pre-paid, first class, to: Richard W. Boone, Esquire, 149 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, 1801 Robert Fulton Drive, Suite 400, Boston, Virginia 22091.


Mark A. Barondess

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

CONSENT ORDER

CAME THE PARTIES TO THIS CAUSE on this ^{19th}~~21st~~ day of ^{JUNE}~~April~~, 1995, on the motion of all parties that all discovery in the prior, non-suited case be incorporated into this case, and

IT APPEARING TO THIS COURT that incorporation of all discovery in the prior, non-suited case promotes the administration of justice and is agreed upon by the parties, it is

ORDERED that all discovery in the prior; non-suited case (At Law No. 121123) be incorporated into this case.

ENTERED this ^{19th}~~21st~~ day of ^{JUNE}~~April~~, 1995.

JUDGE

Douglas B. Wessel, Esquire
Counsel for Plaintiff

Rule 1:13
Richard W. Boone, Esquire,
Counsel for defendant Match

Rule 1:13
Mark A. Barondess, Esquire,
Counsel for the remaining defendants

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JBW

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

**PLAINTIFF'S FORMAL REQUEST FOR SUPPLEMENTATION
OF ALL DISCOVERY RESPONSES PURSUANT TO
RULES 4:1(e) (1, 2 and 3)**

TO: ALL DEFENDANTS

COMES NOW the Plaintiff, by counsel, pursuant to Rules 4:1(e) (1, 2 and 3) of the Supreme Court of Virginia, and requests that each of the Defendants supplement all previous discovery responses (including discovery in this case and discovery incorporated into this case from the prior, non-suited case) by filing complete written Responses in the Clerk's Office and by serving Plaintiffs' counsel within 21 days after service of this pleading (or earlier if agreed upon by the parties or so ordered by the Court).

As to Rule 4:1(e) (3), the request in this document constitutes the "new requests for supplementation of prior responses" which is specified in such Rule and which exceeds the much narrower scope of supplemental responses required under Rules 4:1(e) (1 and 2).

Pursuant to the Rules of Court, to the extent that any request is objected to by you, please identify each such discovery request, cite the basis for your objection, and then proceed to respond to the request.

TINA MARIE LAKE
By Counsel

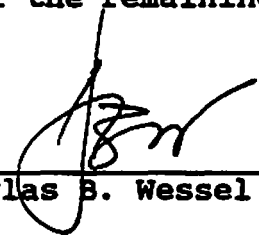
LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of October, 1995, true copies of this pleading were sent by facsimile (without attachments, which Defendants possess) and by first-class mail (without attachments), postage prepaid, to Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel

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REC'D BY
MAIL, 10/19/95
LATE!

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

DESIGNATION OF EXPERT WITNESSES

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL
CLINIC, WAYNE CODDING and THOMAS H. GRESINGER, M.D., and submit the
following list of experts to be called for testimony at the trial
of this action:

1. Thomas H. Gresinger, M.D.
9900 Main Street, Suite 205
Fairfax, VA 22031

Dr. Gresinger is a physician and surgeon licensed to practice medicine in the Commonwealth of Virginia and elsewhere. He specializes in the practice of obstetrics and gynecology. A summary of his qualification has been previously provided. In addition, Dr. Gresinger is familiar, both from his training and from his own experience, with the performance of the various examinations, services and procedures performed on the Plaintiff by the Defendants.

Dr. Gresinger has been provided with the following materials to review in this case:

1. Medical Records for treatment provided to Tina M. Lake by Northern Virginia Women's Medical Center.
2. Medical Records for treatment provided to Tina M. Lake by Warren Memorial Hospital.

SANDGROUND
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WEST P. C.
ATTORNEYS AT LAW

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dates and the age determined by physical examination which would have required the performance of an ultrasound evaluation to confirm the gestational age. Since Ms. Lake was otherwise in good health, there was no medical or legal contraindication to the performance of the procedure which she was requesting.

Dr. Gresinger is further expected to testify that it is his considered professional opinion, within a reasonable degree of medical certainty, that Dr. Match performed the procedure upon Ms. Lake in an appropriate manner consistent with good medical practice and the applicable standards of medical care. Specifically, Dr. Gresinger is expected to testify that the inadvertent perforation of the wall of Ms. Lake's uterus, if such a perforation occurred, was a usual and expected complication of the type of surgery being performed upon her. Because of the physiology of the gravid uterus, perforation of the uterine wall during a dilation and curettage can occur even under ideal circumstances and the fact that a perforation occurred in this instance, if true, is no indication of negligence or lack of care and skill on the part of the surgeon performing the procedure.

Dr. Gresinger is further expected to testify that it is his considered professional opinion, within a reasonable degree of medical certainty, that the Defendants care of the Plaintiff, Tina M. Lake, during the post-operative recovery period on April 13, 1991, was appropriate and conformed to the applicable standards of medical care. Specifically, Dr. Gresinger is of the opinion that Ms. Lake's vital signs were stable and actually improving during her stay in the recovery room. Her single documented complaint of pain and cramping was within the range of symptoms that can be expected post-operatively in cases such as Ms. Lake's and she was

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confirm the gestational age. Since Ms. Lake was otherwise in good health, there was no medical or legal contraindication to the performance of the procedure which she was requesting.

Dr. Stokes is further expected to testify that it is his considered professional opinion, within a reasonable degree of medical certainty, that Dr. Match performed the procedure upon Ms. Lake in an appropriate manner consistent with good medical practice and the applicable standards of medical care. Specifically, Dr. Stokes is expected to testify that the inadvertent perforation of the wall of Ms. Lake's uterus, if such a perforation occurred, was a usual and expected complication of the type of surgery being performed upon her. Because of the physiology of the gravid uterus, perforation of the uterine wall during a dilation and curettage can occur even under ideal circumstances and the fact that a perforation occurred in this instance, if true, is no indication of negligence or lack of care and skill on the part of the surgeon performing the procedure.

Dr. Stokes is further expected to testify that it is his considered professional opinion, within a reasonable degree of medical certainty, that the Defendants care of the Plaintiff, Tina M. Lake, during the post-operative recovery period on April 13, 1991, was appropriate and conformed to the applicable standards of medical care. Specifically, Dr. Stokes is of the opinion that Ms. Lake's vital signs were stable and actually improving during her stay in the recovery room. Her single documented complaint of pain and cramping was within the range of symptoms that can be expected post-operatively in cases such as Ms. Lake's and she was observed for a sufficient length of time following that complaint, with no apparent recurrence to have made it appropriate to have discharged

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relative to the care and treatment of the Plaintiff. Dr. Stokes will further testify that the informed consent disclosures provided to the Plaintiff, and executed by her, were sufficient and met the applicable standards with respect to the disclosure of all reasonable risks attendant to the operative procedure.

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, et al.
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

Mark A. Barondess/URS
MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing DESIGNATION OF EXPERT WITNESSES was mailed this 16th day of October, 1995, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.

Mark A. Barondess/URS
Mark A. Barondess

msa\xxxx\lake\designat.exp

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L. OFFICES OF DOUGLAS B. W. JEL
REPRESENTING INJURED PERSONS

November 8, 1995

STATEMENT OF COSTS IN
TINA LAKE V. MATCH, ET AL.

1. OFFICE CHECKING ACCOUNT

(THRU 8-12-94; AND 1-4-95 THRU 6-12-95)

3-5-92	OMEGA COURIER	20.00
5-12-92	OMNI OFFICES	22.50
11-2-92	WARREN CIRCUIT	131.00
11-2-92	SHERIFF	60.00
1-15-93	FX. CIRCUIT COURT	106.00
6-8-93	DR. SPECKHARD	2,318.75
8-18-93	GLOVER REPORTERS; HEARING	33.50
9-30-93	SONIC COURIER	10.00
10-2-93	DR. HERN (EXPERT)	1,500.00
10-2-93	KINKO'S (COPIES, MED'S. FOR EXPERTS, ETC.)	134.68
10-2-93	U.S. POSTAL SERVICE	51.10
10-6-93	DR. NATHANSON (EXPERT)	1,000.00
10-6-93	KINKO'S (MED'S FOR EXPERTS)	117.84
10-12-93	DR. NATHANSON (EXPERT)	1,050.50
10-12-93	DR. SPECKHARD (EXPERT)	400.00
12-9-93	CIRCUIT COURT	20.00
12-10-93	ADVANCED PROCESS	85.00
1-4-94	DR. SPECKHARD	693.75
3-17-94	BOSSARD REPORTERS (GRESINGER DEPO)	583.35
6-11-94	SONIC COURIER	27.50
6-11-94	CIRCUIT COURT (FILING)	131.00
8-94	RAY BROWN & ASSOC. (PARTIAL PAY. RE GRESINGER VIDEO)	125.00
10-26-94	LASER COURIER (SERVICE ON MATCH RE SANCTIONS)	14.00
10-26-94	CLERK, FAIRFAX CIRC. COURT (SDT ON MATCH RE SANCTIONS)	5.00
		<u>8,640.47</u>

SUBTOTAL

\$ 8,640.47

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REPRESENTING INJURED PERSONS

2. A. PERSONAL CHECKING ACCOUNT (12/8/93 - 8/12/94)

12-10-93	SIMONS (PROC. SERVER)	85.00
12-13-93	FOTOMAT (PHOTOS, CLINIC)	<u>12.16</u>
		97.16
SUBTOTAL		\$ 8,737.63

B. PERSONAL CHECKING ACCOUNT (1/6/95 - 11-8-95)

1-26-95	LASER COURIER (AI'S TO BOONE)	10.63
2-3-95	SHERIFF (SERVICE, MFJ)	15.00
4-17-95	RAY BROWN (BALANCE, 10-20-93 VIDEO OF GRESINGER)	357.50
7-18-95	BOSSARD REPORTERS (11-14-94 SANCTIONS HEARING)	306.90
7-20-95	ASSOCIATED VIDEO (VIDEO OF DEPOSITION OF DR. MATCH)	<u>630.00</u>
		1,320.03

SUBTOTAL \$10,057.66

3. ITEMS BILLED AND DUE FOR PAYMENT (THRU 7-31-95)

2-17-93	ISRAELSON ET AL. LAW FIRM (COPIES, PRIOR MATCH DEPOSITION)	14.00
10-13-93	"ABORTION PRACTICE" (HERN)	35.00
10-20-93	RAY BROWN (VIDEO; DR. GRESINGER)	482.50
10-29-93	BOSSARD REPORTERS (DEPOSITION)	317.25
11-5-93	BOSSARD REPORTERS (APPEARANCE)	100.00
11-10-93	BOSSARD REPORTERS (DEPOSITION)	650.05
11-12-93	BOSSARD REPORTERS (DEPOSITION)	303.20
11-17-93	BOSSARD REPORTERS (DEPOSITION)	647.02
11-18-93	BOSSARD REPORTERS (DEPOSITION)	924.00
11-19-93	BOSSARD REPORTERS (DEPOSITION)	238.00
12-3-93	BOSSARD REPORTERS (APPEARANCE)	140.00
12-10-93	BOSSARD REPORTERS (APPEARANCE)	250.50
12-15-93	BOSSARD REPORTERS (APPEARANCE)	120.00
11-4-94	BOSSARD REPORTERS (APPEARANCE)	140.00
11-7-94	ADVANCED PROCESS (SERVICE, MATCH)	40.00
7-17-95	JOHNSON REPORTERS (7-13-95 APPEARANCE FEE)	100.00
7-31-95	ACCURATE STENO. (7-20-95 DEPO. OF DR. MATCH, APPEAR. FEE)	<u>235.00</u>
		4,736.52

SUBTOTAL \$14,794.18

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LAW OFFICES OF DOUGLAS B. WESSEL
REPRESENTING INJURED PERSONS

4. PHOTOCOPIES (THRU 5-20-95 HQ BILLING)

4/91: 33
5/91: 2
10-19-92: 142
11-2-92: 453
12-15-92: 40
1-15-93: 165
1-22-93: 53
9-30-93: 925
10-1-93: 302
10-2-93: 950
10-13-93: 205
10-29-93: 120
11-11-93: 530
12-2-93: 45
2-20-95: 317 (HQ; THRU 2-20-95)
4-20-95: 50 (HQ; THRU 4-20-95)
5-20-95: 20 (HQ; THRU 5-20-95)
6-20-95: 20
7-20-95: 191
9-20-95: 20

4,583 COPIES @ \$.15 =

\$ 687.45

SUBTOTAL

\$15,481.63

5. A. FACSIMILES SENT (THRU 5-20-95 HQ BILLING)

NOT YET CALCULATED

B. FACSIMILES RECEIVED (THRU 5-20-95 HQ BILLING)

NOT YET CALCULATED

6. LONG-DISTANCE TELEPHONE CALLS (THRU 5-20-95 HQ BILLING)

NOT YET CALCULATED

7. TRAVEL (THRU 6-12-95)

NOT YET CALCULATED

AMOUNT DUE TO LAW OFFICES OF
DOUGLAS B. WESSEL

\$15,481.63++

++ THE "AMOUNT DUE" OF \$15,481.63 DOES NOT INCLUDE THE FOLLOWING
ADDITIONAL ITEMS/AMOUNTS WHICH WILL BE CALCULATED/PAID AT
A LATER TIME:

1. Expenses paid via office checking account, 8/12/94 -
1/4/95

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L. OFFICES OF DOUGLAS B. W. EL
REPRESENTING INJURED PERSONS

2. Expenses paid via personal checking account, pre-12/8/93 and 8/12/94 - 1/6/95
3. All facsimiles sent and received (see 5A-B above)
4. All long-distance telephone charges (see 6 above)
5. All travel (see 7 above)
6. Certain miscellaneous and omitted expenses, including but not limited to expenses incurred after April, 1995

Time
for

**LAKE OFFICES OF DOUGLAS B. WESSEL
REPRESENTING INJURED PERSONS**

FACSIMILE TRANSMISSION

FACSIMILE SENT TO:

**THE ATTENTION OF:
RICHARD W. BOONE, ESQ. (703-847-5264);
MARK A. BARONDESS, ESQ. (703-761-4249)
RE: LAKE VS. MATCH, ET AL.
DATE: NOVEMBER 20, 1995
TIME: 3:20 P.M.
NO. OF PAGES, INCLUDING "FAX" COVER SHEET: 2**

FACSIMILE SENT FROM:

**DOUGLAS B. WESSEL, ESQ.
LAW OFFICES OF DOUGLAS B. WESSEL
RESTON TOWN CENTER
11921 FREEDOM DRIVE, SUITE 550
RESTON, VIRGINIA 22090
TEL: 703-904-4333
FAX: 703-904-4399**

NOTES FROM MR. WESSEL TO MESSRS. BOONE & BARONDESS:

REGARDING SETTLEMENT, THIS CONFIRMS THAT:

- 1. MR. BARONDESS ADVISED ME THIS MORNING THAT HIS CLIENTS WOULD OFFER NO MORE THAN APPROXIMATELY \$5,000 IN SETTLEMENT OF THIS CASE.**
- 2. MR. BOONE HAS SENT TO ME TODAY A "FAX" IN WHICH HE EXTENDED AN OFFER OF \$5,000 TO SETTLE THE CASE AGAINST DR. MATCH.**

I HAVE SPOKEN TO MS. LAKE, AND SHE REJECTS DR. MATCH'S OFFER AND MR. BARONDESS' "SUGGESTED" OFFER.

IN A TELEPHONE CALL WITH MR. BOONE DURING THE WRITING OF THIS "FAX", I INDICATED MS. LAKE'S REJECTION OF THE \$5,000 OFFER; I EXPLAINED OUR POSITION AND THE REASONS THEREFOR; AND I EXTENDED ONCE AGAIN (UNTIL 4:00 P.M. TOMORROW, NOVEMBER 21) OUR OFFER TO SETTLE THIS MATTER FOR \$25,000 (WITH THE SAME REMAINING TERMS). I BELIEVE THAT DR. MATCH HAS TAKEN THIS AS A "FIRST" OFFER AND HAS MISINTERPRETED THE REASONS FOR OUR HAVING EXTENDED THIS OFFER IN THE FIRST PLACE. MR. BOONE HAS TOLD ME THAT THE \$5,000 OFFER DOES NOT REPRESENT THE TRUE EVALUATION OF THE CASE BY HIM, BUT RATHER REPRESENTS WHAT DR. MATCH BELIEVES THAT HE CAN AFFORD TO PAY.

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L.A. OFFICES OF DOUGLAS B. WESSEL
REPRESENTING INJURED PERSONS

IF THE CLINIC DEFENDANTS' "OFFER" SIMILARLY REPRESENTS NOT THEIR TRUE EVALUATION BUT RATHER WHAT THEY CAN AFFORD TO PAY, THEN THE CASE WILL AND SHOULD BE TRIED. I WOULD URGE MR. BARONDESS TO CALL ME IN AN EFFORT TO ENGAGE IN SERIOUS NEGOTIATIONS REFLECTIVE OF THE FACTS OF THIS CASE. IF I DO NOT HEAR FROM MR. BARONDESS IN WRITING BY CLOSE OF BUSINESS TOMORROW, I WILL ASSUME THAT THE \$5,000 "OFFER" ACCURATELY CONVEYS HIS CLIENTS' INTENTIONS REGARDING SETTLEMENT AND THAT THE MATTER WILL BE TRIED AT LEAST AS TO HIS CLIENTS.

IN ADDITION, MR. BARONDESS ADVISED ME AFTER COURT THIS MORNING THAT HE INTENDS TO RAISE A DISPOSITIVE MATTER THAT IS "CONCLUSIVE" AND WILL FREE HIS CLIENTS OF LIABILITY; AND THAT HE WOULD NOT DISCLOSE THE SUBSTANCE OF THE MATTER UNTIL "3 DAYS BEFORE TRIAL". ASSUMING ARGUENDO THAT MR. BARONDESS' COMMENT IS BOTH SINCERE AND MERITORIOUS, I WOULD REMIND MR. BARONDESS THAT NEITHER THE COURT NOR PLAINTIFF HAS EVER BEEN ADVISED OF ANY SUCH DISPOSITIVE MATTER. ACCORDINGLY, I WOULD REQUEST THAT MR. BARONDESS ADVISE THE COURT AND COUNSEL BY NO LATER THAN CLOSE OF BUSINESS TOMORROW OF ANY SUCH DISPOSITIVE MATTER, SO AS TO MITIGATE HIS CLIENTS' FAILURE TO COMPLY WITH COURT-IMPOSED REQUIREMENTS TO BRING SUCH DISPOSITIVE MATTERS BEFORE THE COURT; SO AS TO AVOID CONTINUING EXPENDITURES WHICH CAN BE ASSESSED AGAINST HIS CLIENTS AS SANCTIONS FOR NOT BRINGING SUCH MATTER BEFORE THE COURT IN A TIMELY WAY; AND SO THAT THE MATTER CAN BE HEARD AS SOON AS POSSIBLE. IF I DO NOT HEAR FROM MR. BARONDESS IN WRITING BY CLOSE OF BUSINESS TOMORROW REGARDING THE PRECISE SUBSTANCE OF THE MATTER AND HIS CLIENTS' PLANS TO BRING THE MATTER BEFORE THE COURT, I WILL ASSUME THAT PERHAPS WE HAVE A BIT OF HYPERBOLE HERE, THAT NO SUCH DISPOSITIVE MATTER EXISTS, AND THAT NO SUCH MATTER WILL BE BROUGHT BEFORE THE COURT AT A LATER TIME. PLEASE BE ON NOTICE THAT I OBJECT TO THE RAISING OF ANY "DISPOSITIVE" MATTER AT THIS JUNCTURE AND WILL SEEK SUCH OTHER RELIEF AS THE COURT DEEMS APPROPRIATE IF SUCH MATTER IS RAISED.

I LOOK FORWARD TO HEARING FROM YOU BOTH.

DOUGLAS B. WESSEL, ESQ.

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Hand-D'D
12/1/95

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

MOTION TO DISMISS

TO THE HONORABLE DAVID T. STITT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D.; and WAYNE C. CODDING, by Counsel, and move this Court to enter an Order dismissing them as Defendants in this action, and in support thereof state as follows:

1. That on or about the 17th day of June, 1994, the Plaintiff herein filed her Motion for Judgment against the above-named Defendants and Defendant Joel W. Match, M.D., alleging negligent health care and other claims arising out of medical treatment she received in April, 1991.

2. That Defendants Gresinger and Coddington did not participate in the care or treatment of the Plaintiff and are merely stockholders in the corporation which owns the clinic where the Plaintiff received medical treatment.

3. That the Plaintiff has failed to name a necessary and proper party to this litigation, namely Fairfax Square Medical Associates, Inc., the Corporation which operates the above referenced health care center.

4. That your Defendants rely upon and incorporate herein by

referenced the attached Memorandum of Points and Authorities in support of this Motion to Dismiss.

WHEREFORE, this Motion having been considered by this Court, Defendants Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddling request that their Motion be granted and that they be dismissed as Defendants in this cause and for any other relief which this Court deems proper under the circumstances.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

Mark A. Baroness / per
MARK A. BARONDESS ESQUIRE
VSB NO. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO DISMISS was faxed and hand-delivered this 1st day of December, 1995, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.

Mark A. Baroness / per
Mark A. Baroness

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SANDGROUND
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& WEST P. C.
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VIENNA, VA 22182
703 251-4200

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

NORTHERN VIRGINIA WOMEN'S
MEDICAL CLINIC, et al.,

Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER,
THOMAS H. GRESINGER, M.D. AND WAYNE C. CODDING'S
MOTION TO DISMISS

TO THE HONORABLE DAVID T. STITT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and in support of their Motion to Dismiss respectfully offer the following Memorandum of Points and Authorities:

1. That this action arises as a result of alleged medical malpractice occurring during the course of a therapeutic abortion procedure which was performed on the Plaintiff on the 13th day of April, 1991, at the Northern Virginia Women's Medical Center by Defendant Joel W. Match, M.D.

2. That at all times pertinent to this lawsuit, and indeed since at least July 13, 1988, the owner and operator of Defendant Northern Virginia Women's Medical Center ("the Clinic") has been Fairfax Square Medical Associates, Inc.

3. That a Certificate verifying that Fairfax Square Medical Associates, Inc., conducts business under the name of Northern Virginia Women's Medical Center, dated July 13, 1988 is on file in the land records of this Honorable Court pursuant to §59.1-69 of the Code of Virginia, 1950 ed., as amended, and has been so at all

times relevant to this action.

4. That despite this public record, the Plaintiff failed to name Fairfax Square Medical Associates, Inc., as a Defendant in this action, improperly naming the Clinic itself, which has no individual corporate identity.

5. That it is well-settled in Virginia that a Court is powerless to proceed with a suit unless all necessary parties are properly before the court, See Mendenhall v. Cooper, 239 Va. 71, 74, 387 S.E. 2d 468 (1990).

6. That the corporate owner and operator of the Defendant Clinic, Fairfax Square Medical Associates, Inc., is a necessary party to this action. The Mendenhall Court defined "necessary party" at page 75:

Where an individual is in the actual enjoyment of the subject matter, or has an interest in it, either in possession or expectancy, which is likely either to be defeated or diminished by the Plaintiff's claim, in such case he has an immediate interest in resisting the demand, and all persons who have such immediate interests are necessary parties to the suit.

Raney v. Four Thirty Seven Land Co., 233 Va. 513, 519-20, 357 S.E. 2d. 733, 736 (1987) (quoting Gaddess v. Norris, 102 Va. 625, 630 46 S.E. 905, 907 (1904)).

7. That as a necessary party, Fairfax Square Medical Associates, Inc., must have been named as a Defendant in order for this Court to proceed. The Supreme Court, again in Mendenhall at page 74 stated:

[a necessary party's] interests in the subject matter of the suit, and in the relief sought, are so bound up with that of the other parties, that their legal presence as parties to the proceeding is an absolute necessity, without which the Court cannot proceed.

8. That §8.01-243 of the Code of Virginia, 1950 ed., as amended, provides that every action for personal injuries shall be

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VIENNA, VA 22182
703-4200

brought within two years after the cause of action accrues.

9. That Plaintiff's alleged injuries occurred on or about April 13, 1991. Assuming, arguendo, that the the Plaintiff was to amend her pleadings to add a new Defendant, namely the necessary party, Fairfax Square Medical Associates, Inc., such action would now be barred by the applicable statute of limitations.

10. That if the Plaintiff were granted leave to file an amended pleading, the suit would have to be dismissed because the necessary party (Fairfax Square Medical Associates, Inc.) is not subject to the Court's jurisdiction, See Mendenhall at 75.

11. That Defendant Northern Virginia Women's Medical Center was improperly named as a party defendant and should be dismissed, since no such legal entity exists. That notwithstanding the foregoing, Fairfax Square Medical Associates, Inc., filed for protection pursuant to the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia on the 23rd day of June, 1995, Case Number 95-12723-MVB. Therefore, this action would be stayed against said party pursuant to the applicable provisions of the U.S. Bankruptcy Code.

12. That Defendants Gresinger and Coddington are stockholders of Fairfax Square Medical Associates, Inc. The Motion for Judgment fails to allege that these Defendants participated in the actual medical treatment provided to the Plaintiff.

13. That the Motion for Judgment alleges that Defendants Gresinger and Coddington performed acts and omissions both personally and on behalf of the Defendant Clinic. Plaintiff fails to allege any facts at all which support her contention that the two individual Defendants acted in their personal capacities.

14. That likewise the Plaintiff has failed to allege any

facts which would give rise to a piercing of the corporate veil and an imposition of individual liability on Defendants Gresinger and Coddling. The Supreme Court, in O'Hazza v. Executive Credit Corporation, 246 Va. 113,115, 431 S.E. 2d 318 (1993) stated that, "... one who seeks to disregard the corporate entity must show that the shareholder sought to be held personally liable has controlled or used the corporation to evade a personal obligation, to perpetrate fraud or a crime, to commit an injustice, or to gain an unfair advantage, citing Lewis Trucking Corp. v. Commonwealth, 207 Va. 23,31, 147 S.E. 2d 747, 753 (1966). The Court, further citing Lewis Trucking at 32, stated, "Piercing the corporate veil is justified when the unity of interest and ownership is such that the separate personalities of the corporation and the individual no longer exist and to adhere to that separateness would work an injustice."

15. That the Plaintiff has not and cannot allege any facts which show these individual Defendants used the corporate identity of Fairfax Square Medical Associates, Inc. to evade any personal obligation or commit fraud, crime or injustice. Defendants Gresinger and Coddling are not so intertwined with their corporate identity so as to lose their separate identity as individuals. The interest and ownership of the corporation and the individual owners are completely separate. Defendants Gresinger and Coddling have no individual liability to the Plaintiff and should be dismissed as parties.

WHEREFORE, the premises considered, your Defendants, Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddling, pray that this Court dismiss them as parties to this suit and that they be awarded their attorney's fees and costs

and for such further relief as this Court may deem proper under the circumstances.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.

Mark A. Barondess / MK
MARK A. BARONDESS, ESQUIRE
VSB NO. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D. AND WAYNE C. CODDING'S MOTION TO DISMISS was hand-delivered and faxed this 1st day of December, 1995, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.

Mark A. Barondess / MK
Mark A. Barondess

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BARONDESS
& WEST P. C.
TORNEYS AT LAW
TOWERS CRESCENT DRIVE
FLOOR. TYSONS CORNER
VIENNA, VA 22182
761-4200

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

PLAINTIFF'S MEMORANDUM IN RESPONSE TO MOTION TO DISMISS BY
DEFENDANT NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC.

COMES NOW the Plaintiff, by counsel, and states the following in support of Plaintiff's Memorandum in response to the Motion to Dismiss filed by Defendant Northern Virginia Women's Medical Center, Inc.:

The Defendants' Motion to Dismiss to be heard on the day before this trial represents a stunning, unprecedented and galling disrespect and disregard for this Court, our system of justice and Plaintiff, and arises out of intentional concealment and misrepresentation over several years.

Basic Facts of the Case

On April 13, 1991, Tina M. Lake arrived at this abortion Clinic as a healthy young woman seeking a possible abortion. During the abortion performed by Defendant Match -- who had gone to medical school at Autonomous University of Guadalajara, Mexico, and who has failed to pass his Board certifications all three (3) times -- Ms. Lake's uterus was badly perforated and she began hemorrhaging. While in the recovery room of the Clinic, she

suffered unbearable pain (despite repeated doses of strong pain medications), and she passed numerous huge blood clots.

She was told by the Clinic that she had had a "really rough time" because she had been "farther along" (in her second trimester) than the clinic had thought, and that she should go straight home and "put your feet up". Despite her horrible condition, she was discharged at the pre-designated time by Dr. Match, the Clinic and the Clinic's nurses. She was driven by her friend at speeds exceeding 90 miles per hour during a pouring rain to Warren Memorial Hospital, where nurses removed her from the back seat in an unconscious state and in a rigid fetal position.

Unable to control the bleeding from the damaged uterus and the artery and blood vessels outside the uterus, the hospital surgeon surgically removed her uterus in order to save her life.

An otherwise healthy young woman in her "twenties", she is unable to bear children and continues to suffer from depression.

The parties in this case

The Plaintiff is Tina Marie Lake.

The Defendants are Dr. Match, Northern Virginia Women's Medical Center, Inc. (the alleged operator of the abortion Clinic identified as "NOVA Women's Medical Center"), Dr. Thomas Gresinger and Wayne Coddling. Dr. Gresinger is sued in his role as Medical Director of the Clinic. Dr. Gresinger also is sued (as is Mr. Coddling) sued as the sole shareholders and officers of Northern Virginia Women's Medical Center, Inc., under the specific allegation of individual liability by piercing of the "corporate

veil" based upon their improper conduct of the corporation (Northern Virginia Women's Medical Center, Inc.'s two (2) demurrers to such allegations were overruled).

Correction of Northern Virginia Women's Medical Center, Inc.'s misstatements about the parties in its Motion to Dismiss

In paragraph no. 4 of the Motion to Dismiss, Northern Virginia Women's Medical Center, Inc., wrongly asserts that a) the Clinic itself ("NOVA Women's Medical Center") -- presumably the physical premises or the Clinic's alleged trade name -- was named as a Defendant. This contention is refuted by a simple review of the style of this case (in each of the three (3) motions for judgment filed in the non-suited case (At Law no. 121123; file located in the file room) and in the existing case (At Law no. 133092).

In paragraph 11, Northern Virginia Women's Medical Center, Inc., wrongly asserts that it does not exist as a legal entity. On each occasion when this Plaintiff's counsel called the State Corporation Commission -- on March 2, 1992; on November 2, 1992; and on December 4, 1995 (after the Motion to Dismiss was filed) - - the State Corporation Commission advised that: 1) Defendant Northern Virginia Women's Medical Center, Inc., has been an existing corporation since 1973 (except for the period 1985-1986, when it was terminated); and 2) the sole officers have been Defendants Gresinger and Coddington.

The crux of Defendant Northern Virginia Women's Medical Center, Inc.'s motion to dismiss is its contention -- raised for the first time one week before trial, after years of litigation -- is that it is not the true operator of the Clinic where Ms. Lake's abortion was performed on April 13, 1991, and that the corporation "Fairfax Square Medical Associates, Inc." is instead the true operator of the Clinic.

Defendant Northern Virginia Women's Medical Center, Inc. and Defendants Gresinger/Codding (the sole shareholders/officers of both corporations) and their counsel in this case, all have had actual notice since 1988 of the alleged corporate ownership of the Clinic by Fairfax Square Medical Associates, Inc.

By admission in its Motion to Compel, Defendants Northern Virginia Women's Medical Center, Inc. and Defendants Gresinger/Codding (the sole shareholders/officers of both corporations, per the State Corporation Commission) have known since no later than 1988 of the alleged ownership and operating of the Clinic by Fairfax Square Medical Associates, Inc. Just as importantly, on information, Mr. Barondess himself (their corporate counsel and their counsel in the non-suited and present case) was the "Assistant Secretary" of the Fairfax Square corporation at the time of the alleged filing of the alleged declaration of ownership/operation of the Clinic by Fairfax Square.

The history of the case while Northern Virginia Women's Medical Center, Inc., its owners and its counsel have known that it is not the proper defendant (if true) and that another corporation is the proper defendant (if true).

Plaintiff first filed her case in her home county of Warren County in late 1992. Defendants Northern Virginia Women's Medical Center, Inc., and its owners/officers, Defendants Gresinger and Codding, appeared and (successfully) moved to transfer venue to Fairfax County, without any mention that it had been sued wrongly.

However, at the same hearing in Warren County, these Defendants were ordered to answer all discovery (Interrogatories and Requests for Production served with the Motion for Judgment) within 21 days; instead, when the case was transferred to Fairfax

County, these Defendants filed only objections to discovery (avoiding substantive answers) and filed a demurrer to all counts, which initially was generally sustained on the sole ground that the allegations should be stated separately (and not collectively) against each Defendant. After Plaintiff filed an Amended Motion for Judgment, this Court overruled the demurrer in all respects.

Significantly, these Defendants then filed an answer which completely contradicts its instant Motion to Dismiss -- 1) affirmatively admitting that Northern Virginia Women's Medical Center, Inc., was the true operator of this Clinic where Ms. Lake's abortion was performed; and 2) affirmatively concealing from, and misrepresenting to the Court, the parties and counsel, that another corporation was the true operator:

Plaintiff alleged in its Amended Motion for Judgment that:

- . "2. Defendants in this case are NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC. [hereafter "WOMEN'S MEDICAL CENTER"] ..." -- this was admitted by Northern Virginia Women's Medical Center, Inc. (para. 1, Answer).

* * *

- . "5. In April, 1991, WOMEN'S MEDICAL CENTER:
 - a. was a corporation which operated a clinic that performed abortions [hereafter "THE ABORTION CLINIC"] in Fairfax, Virginia" - - this was admitted by Northern Virginia Women's Medical Center, Inc. (para. 4a, Answer)

* * *

- . "13. DR. MATCH, with the aid of employees of WOMEN'S MEDICAL CENTER, and with the tools and facilities of WOMEN'S MEDICAL CENTER, performed

an abortion procedure on MS. LAKE at THE ABORTION CLINIC in Fairfax, Virginia, on April 13, 1991" -- this was admitted by Northern Virginia Women's Medical Center, Inc. (para. 12; Answer)

* * *

"7. In April, 1991, DR. GRESINGER:

- b. was the Medical Director of THE ABORTION CLINIC -- this was admitted by Northern Virginia Women's Medical Center, Inc., and Gresinger (para. 6b, Answer)
- c. was a fifty-percent stockholder (as was CODDING) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC -- this was admitted by Northern Virginia Women's Medical Center, Inc., and Gresinger (para. 6c, Answer)
- d. was an officer and director (as was Coddington) of the corporation (WOMEN'S MEDICAL CENTER) that operated THE ABORTION CLINIC -- this was admitted by Northern Virginia Women's Medical Center, Inc., and Gresinger (para. 6d, Answer)

Thus, Plaintiff knew from the beginning of the previous case that: the abortion Clinic where Dr. Match performed an abortion on Ms. Lake on April 13, 1991, was operated by Defendant Northern Virginia Women's Medical Center, Inc.; that Defendant Gresinger was the Medical Director of such Clinic operated by Defendant Northern Virginia Women's Medical Center, Inc.; and that Defendants Gresinger and Coddington were officers and the sole shareholders of Defendant Northern Virginia Women's Medical Center, Inc., which operated the abortion Clinic where the abortion was performed on Ms. Lake on April 13, 1991. Not only did were these facts not at issue from the beginning of the previous case; Defendant Northern Virginia Women's Medical Center, Inc., never contradicted or sought

to correct these facts until years later -- one week before the second scheduled trial in this matter.

After the date of these admissions that Ms. Lake indeed had sued the correct Defendants, Plaintiff's counsel believes that the following events transpired without the Defendants' corrections of their misrepresentations to the Court, Plaintiff and her counsel: Defendant Northern Virginia Women's Medical Center, Inc., appeared perhaps 10-15 or more times before this Court; filed many pleadings; took/defended perhaps ten (10) depositions; filed a number of pleadings to bar further prosecution (on issues unrelated to the instant motion to dismiss); engaged in settlement negotiations; and otherwise never advised this Court, the parties or counsel that an allegedly incorrect party had been sued.

Moreover, Ms. Lake's requests for production and certain discovery depositions addressed financial statements, profit and loss statements and the "incorporation" of Northern Virginia Women's Medical Center, Inc.; and never did Defendants Northern Virginia Women's Medical Center, Inc., Gresinger or Coddington mention that another corporation owned or operated the Clinic.

In fact, this supposedly incorrect corporate party was the party that produced materials such as the medical records of Ms. Lake regarding the abortion on April 13, 1991; and the Clinic's nursing manual governing all aspects of Ms. Lake's care at the Clinic.

Perhaps more importantly, this supposedly incorrect party (Northern Virginia Women's Medical Center, Inc.) objected to

Plaintiff's request for entry upon the land of these Defendants (Plaintiff identified the address of the Clinic "where the abortion was performed on Plaintiff on April 13, 1991") to inspect, photograph and videotape the premises; its objection referred to the requested entry into the abortion Clinic where Ms. Lake's abortion was performed as "[t]he requested entry upon the premises of your Defendant, Northern Virginia Women's Medical Center, Inc. [emphasis added]" (para. 3). This Court overruled the objection and ordered Defendants Northern Virginia Women's Medical Center, Inc., Gresinger and Coddington to permit such entry; and, in late 1994 Plaintiff's counsel and a videographer actually photographed/videotaped the premises of the Clinic under the supervision of Mr. Barondess and Defendant Coddington.

Now that Plaintiff is aware of the substance of the Motion to Dismiss, the cavalier attitude of Defendants Northern Virginia Women's Medical Center, Inc., Gresinger and Coddington toward this case reflects a longstanding intent to rely upon this potentially dispositive issue while concealing same to the Court, Plaintiff and her counsel.

In this re-filed case Defendants Northern Virginia Women's Medical Center, Inc., Gresinger and Coddington:

- . filed the same demurrer as in the non-suited case.
- . filed no answer.
- . propounded no additional discovery.
- . asked no questions of Plaintiff at her only deposition.
- . did not object to, and did not respond to, Plaintiff's request for supplementation of all prior discovery responses.
- . filed their expert-witness designation two (2) weeks after the deadline, and then only quoted verbatim the designations filed by Defendant Match.
- . filed no exhibits and no list of witnesses.
- . did not object to any of Plaintiff's numerous exhibits.

Plaintiff believes this cavalier representation indicates an long-held decision to rely upon this potentially dispositive issue while concealing same to the Court, Plaintiff and her counsel, while the Court, Plaintiff and her counsel prepare diligently for trial at great expense and effort.

Immediately after the last hearing before Judge Stitt -- during which the Court permitted these Defendants' late filing of expert-identifications -- in the hallway outside the courtroom Mr. Barondess extended a "final" settlement offer which he characterized as a "nuisance" settlement, and then proceeded to state that his Defendants would be raising a dispositive issue. Plaintiff's counsel responded that any such dispositive issue would not be timely raised, and then requested the specific nature of the issue; Mr. Barondess responded that he would not reveal the dispositive issue until "about three (3) days before trial". Later that day, Plaintiff's counsel sent a facsimile to Mr. Barondess in which Plaintiff's counsel again objected to such an issue being raised at this time, and again inquired as to the specific issue to be raised. Mr. Barondess again refused specify the issue. Mr. Barondess did not specify this issue until last Friday, December 1, 1995, when Plaintiff's counsel was known to be out-of-town.

Despite opposing counsel's efforts to conceal the issue from this Court and Plaintiff and her counsel, when Plaintiff's counsel returned to this area on Monday, December 4, 1995, he immediately requested and was granted a hearing before Judge Stitt on the following morning in order to discuss immediately the impact of

such a motion upon the trial date one (1) week later, so as to minimize significant costs such as expert-witness payments. Mr. Barondess objected to the time of the hearing; and, because Judge Stitt's calendar did not permit a hearing at any other time before Friday, Plaintiff's counsel's efforts to mitigate damages to all parties and the Court was unavailing.

However, Plaintiff's counsel did advise both opposing counsel on Monday, December 4, 1995, that Plaintiff could not go to trial without leave to amend to add the correct corporate defendant (after substantial discovery regarding the new party), and that Plaintiff could not proceed to two (2) separate trials because of the greatly increased costs and the higher likelihood of a verdict for all defendants in separate trials (by virtue of "finger-pointing" at the absent defendant(s) in each trial).

Based upon the admissions of Defendants, Ms. Lake does not accept that she mis-named the operator of the abortion clinic, but she ignores such possibility at her peril.

Even though the Defendants have concealed this issue until the week before trial, they have offered no proof other than their counsel's representations that the incorrect corporation has been sued. Even if they were to offer such evidence, Ms. Lake could not accept such evidence without these Defendants' compliance with written discovery and oral depositions on these issues raised for the first time.

However, at the same time, Plaintiff cannot cavalierly proceed to trial against an incorrect party; cannot avoid bringing in the

correct party, who will have potentially enhanced liability exposure and substantially greater assets or insurance.

1) The threat that adding the correct corporate defendant would result in a stay of these proceedings is of no consequence to Ms. Lake (she will wait); and 2) the threat that the statute of limitations would bar recovery against such party is premature and not before this Court.

Despite that these Defendants have known for years that they are (allegedly) the correct owners/operators of the Clinic, and that they have concealed same from Plaintiff for years, these Defendants admit that bankruptcy proceedings were not commenced until the middle of 1995. Should this action be stayed because the new party is in bankruptcy, Ms. Lake will wait in this important case, and she will not be deterred by the conniving and deception of these Defendants.

Even assuming arguendo that the statute of limitations would bar recovery against the allegedly correct party, this issue is premature and is not before this Court. Moreover, this ignores defenses to the raising of the statute of limitations such as equitable estoppel (which applies in applicable circumstances such as fraud, accident, mistake and surprise).

Still further, assuming arguendo that the incorrect corporate defendant is in the case, this Court will recognize that apparently both the corporation in the suit and the allegedly absent corporation: have owned and operated abortion clinics in Fairfax; have the same shareholders and officers; have had the same corporate counsel, Mr. Barondess; have had the same notice before the expiration of the statute of limitations of all of the

allegations of Plaintiff, and that the allegedly incorrect corporation had been sued instead of the allegedly correct corporation; have had the same notice that Plaintiff's allegations clearly were directed at the owner and operator of the abortion clinic where Ms. Lake underwent an abortion on April 13, 1991 (as had been admitted by these Defendants; see above), so that none of these Defendants could claim ignorance of such allegations prior to the expiration of the statute of limitations.

This Court should grant leave to amend to add the potentially correct corporate entity, and, because of the need for critical information at this late date and the awarding of severe sanctions, this Court should permit expansive discovery related to a) these two (2) corporate entities and their owners, finances (etc.); and related to b) the Defendants' and their counsel's knowledge and motives in concealing these matters from the Court and Plaintiff.

Under circumstances much less egregious than presented here, permitting leave to amend should be (liberally) granted. Under these unprecedented circumstances of deception, concealment and misrepresentation upon which Plaintiff and the Court relied, leave to amend must be granted, and these Defendants should be held strictly accountable for the inconvenience and increased costs to the parties, counsel and witnesses.

Moreover, liberal and expansive discovery should be granted as to the new substantive issues and as to the issue of the Defendants' and their counsel's knowledge and motives in concealing these critical matters for so long from the Court and Plaintiff.

A laundry-list of documents must be produced, and questions must be answered, under oath, and must be tested by the crucible of thorough cross-examination. For example: Is "Fairfax Square"

in fact the correct party? What is the evidence that led the current corporate defendant to admit that it operated this Clinic where Ms. Lake's abortion was performed? Is there a meaningless distinction between the two (2) corporations? Did these Defendants and their counsel misrepresent and conceal so that (as it appears), among other things, the statute of limitations would expire as to the correct party? What is the additional liability evidence against the (allegedly correct) Defendants? What additional documents will be produced by the correct party? What is the vicarious liability of the added party? What is the evidence justifying piercing the corporate veil of the "new" corporate party? What prior discovery is worthless as having been directed at the incorrect party? What are the assets and insurance of the new party? What were these Defendants trying so hard to conceal? What perjury was committed by answers under oath regarding the corporate defendant, and why was it misrepresented that the current corporate defendant operated this Clinic? When did Dr. Match or his counsel know that these Defendants had raised the issue of an incorrect party being sued? What were the effects of a zero-likelihood (assuming the wrong party has been sued) of settlement on the good-faith negotiations of Plaintiff?. What costs of Plaintiff were attributable to not being advised of this dispositive issue, and what costs will be duplicated needlessly (Plaintiff is unable to bear the costs of two trials, or a trial on insufficient evidence against a new party)? What were the

knowledge and motives of the corporations, officers and their counsel?

Plaintiff suggests that these Defendants should bear: the costs of prior discovery and proposed discovery; the costs of inconvenience to counsel and the witnesses; financial and evidentiary sanctions to be determined after full discovery on the merits and also on issues relating to sanctions; and other remedies that this Court deems just under the circumstances.

These Defendants made a calculated decision that the benefits to them of concealing the facts from this Court and Plaintiff would outweigh the risks. Plaintiff awaits this Court's response to the Defendants' open and brazen challenge to this Court.

Procedural arguments

The Motion to Dismiss begs for hearing for the benefit of all parties. However, Plaintiff objects to the hearing based upon the following procedural rules of the Supreme Court of Virginia and this Court:

. The Status Conference Order in this case (through the incorporated "CASE MANAGEMENT INSTRUCTIONS") requires that all dispositive motions "should be resolved prior to the status conference".

. The Status Conference Orders in the non-suited and present case require, respectively, that "[a]ll dispositive motions shall be completed 30 days prior to trial" (by December, 1993) and that "[a]ll dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible".

. The motion to dismiss should have been raised by a plea in bar or demurrer at the inception of each suit.

. The significance of the motion to dismiss, and Plaintiff's need for time and space to respond, require that the Briefing Schedule be utilized (but only after discovery by Plaintiff on matters which should have been known long ago regarding the corporate "parties" involved). [Alternatively] the Circuit Court Manual (Rule 4.01) provides that any motion for which a counsel wishes to file a responsive memorandum is a two-week motion.

. This motion to dismiss was filed after Plaintiff's extensive motions in limine, which in themselves would take thirty (30) minutes to hear.

. Because these Defendants filed no Answer to this Motion for Judgment, the case is not "matured for trial" under Rule 3:13, and certainly there is no cognizable issue regarding whether the corporate defendant is a proper party.

. There is no proper evidence before this Court substantiating the representations of Defendants' counsel in the Motion to Dismiss; furthermore, any such evidence should be permitted only upon thorough cross-examination after thorough discovery.

WHEREFORE, Plaintiff, by counsel, respectfully requests that the Motion to Dismiss be denied or decided at a later time; that this Court grant leave to add a new party (Fairfax Square Medical Associates, Inc., and Defendants Gresinger and Coddington with respect to such corporation); that this Court grant Plaintiff immediate expansive discovery on the merits and as to sanctions; that certain sanctions be awarded at this time, and that other sanctions await full discovery on the merits and as to sanctions; and that this Court grant such other relief as it deems just under the circumstances.

TINA MARIE LAKE
By Counsel

LAW OFFICES OF DOUGLAS B. WESSEL
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Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

LAW OFFICES OF DOUGLAS B. WESSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of December, 1995, the original of this pleading was filed in the Clerk's Office and true copies of this pleading were sent by facsimile to Judge Stitt's law clerk, Derek Meisner, Esquire (fax: 703-385-4432); to Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel

C:\PLEADING\LAKDISMI.MEM

Tina M. Lake,
Plaintiff,
v.
Joel W. Match, M.D.,
Defendant.

FILED
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FBI - WASH DC

AFFIDAVIT OF JOHN NORMILE

I, John Normile, do state on this 2nd day of April, 1996, that the foregoing is true to the best of my knowledge:

I am president and C.E.O. of Beta Reporting, Inc. Beta Reporting is a legal support service corporation serving the D.C. Metropolitan Area. Among other services, we offer stenographic and court reporting services associated with legal proceedings.

Sometime in January 1996, our office was contacted by Douglas Wessel, Esquire, for the purposes of scheduling a court reporter to record and transcribe the above hearing.

On January 26, 1996, I believe that an independent contractor for Beta Reporting attended a hearing of above captioned case for the purpose of recording and transcribing this hearing.

After a good faith investigation, Beta Reporting at this point has not been able to obtain the entire transcript of the hearing on January 26, 1996, which was recorded by an independent contractor for Beta Reporting.

It is my understanding, based on conversations with the reporter that the judge presiding over the hearing on January 26, 1996, made no ruling on merits of this case. At that hearing the judge continued the matter until February 23, 1996. An independent contractor for Beta Reporting recorded and transcribed the hearing on February 23, 1996, and Beta Reporting has forwarded a copy of the transcript to Douglas Wessel, Esquire.

Signed,



John J. Normile
President, Beta Reporting, Incorporated
910 17th St. Suite 200
Washington, D.C. 20006

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RICHMOND, VIRGINIA

Defendant.

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: Law No.
: 133092

Friday, January 26, 1996

JUDGE STITT

319

BETA

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE
Plaintiff,

VS.

MATCH, et al.
Defendant.

LAW
Chancery No. 133092

ORDER

This case came to be heard on the 26th day of JANUARY, 1996 on the Plaintiff's motion for SANCTIONS.

Upon the matters presented to the Court at the hearing it is

ADJUDGED, ORDERED, and DECREED as follows:

1. THIS MATTER IS CONTINUED FOR HEARING ON THESE MOTIONS

ON FEBRUARY 9, 1996, AT 10:00 A.M., AND THE SUSPENSION OF FINAL JUDGMENT IS CONTINUED THROUGH SUCH DATE.

2. IF DEFENDANTS (NOT DR. MATCH) WISH TO FILE A RESPONSE TO PLAINTIFF'S SUBMISSIONS OF JANUARY 26, THEY SHALL DO SO ON OR BEFORE FEBRUARY 2, 1996.

ENTERED, this 26 JANUARY, 1996.

David T. Stitt
Circuit Court Judge

SEEN AND AGREED:
JBL
Counsel for Plaintiff(s)

[Signature]
Counsel for Defendant(s)

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
23 FEB -2 AM 11:33
CLERK OF CIRCUIT COURT
FAIRFAX, VA

TINA MARIE LAKE,

Plaintiff,

v.

At Law No. L133092

JOEL W. MATCH, et al.,

Defendants.

OPPOSITION TO MOTION FOR SANCTIONS

TO THE HONORABLE DAVID T. STITT:

COME NOW your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, THOMAS H. GRESINGER, M.D., and WAYNE C. CODDING, by Counsel, and oppose the Plaintiff's Motion for Sanctions and as grounds thereof state as follows:

1. That your Plaintiffs incorporate by reference herein all facts set forth in their Motion for Sanctions previously filed in this action.

2. Counsel for the Plaintiff in this action continues to attempt to obfuscate the true facts giving rise to the dismissal of the underlying suit. The instant action was dismissed by this Court solely because Plaintiff's counsel indicated that he would not be proceeding to trial because he had released his own expert witnesses. This Court specifically denied the Motion to Dismiss filed by your Defendants. Plaintiff's counsel could have proceeded to trial against all of the Defendants named in this suit, but voluntarily elected not to do so. Plaintiff's counsel cannot now complain of a judgment entered on behalf of the Defendants because of his own reluctance to proceed to trial.

3. Counsel for the Plaintiff has appended to his Affidavit for Sanctions a series of documents in support of his Motion. Although voluminous, your Defendants will attempt to address each group of documents by reference to the "bate stamp" numbers:

1. Fairfax Square Medical Associates, Inc. filed their fictitious name certificate on behalf of NOVA Women's Medical Center on July 13, 1988. Plaintiff's counsel failed to conduct any inquiry of the records of this Court in order to determine the proper party to be sued in this litigation.

2-5 Plaintiff's counsel has appended the Notice of Claim of Medical Malpractice transmitted to Northern Virginia Women's Medical Center, Inc. The significance of the attachment of this document is unknown since no response was made to said letter by your Defendants. Northern Virginia Women's Medical Center, Inc., is a totally separate corporate entity from Fairfax Square Medical Associates, Inc.

6-8 These documents represent a portion of the Motion for Judgment originally filed against Northern Virginia Women's Medical Center, Inc., in the Circuit Court of Warren County. The suit seeks judgment against the Defendants named and provides no probative value to the instant Motion.

9-11 The Notice and Motion to Transfer Venue filed on behalf of Northern Virginia Women's Medical Center, Inc., and the other Defendants again provide no insight or probative value relative to the instant Motion. Northern Virginia Women's Medical Center, Inc. was the party named in the litigation and there was nothing inappropriate about filing the Motion on behalf of the Defendants.

12-14 The Order transferring venue of this action is not probative of any issue presented.

15. The cover page of the Demurrer in the law suit first non-suited by Plaintiff's counsel provides no probative value to the instant Motion.

16-25 The Answers to Interrogatories of the Defendants do not contain any misrepresentation of fact regarding Northern Virginia Women's Medical Center, Inc. All references in the Interrogatory responses are to NOVA Women's Medical Center. All responses contained in the Interrogatories are truthful and were sworn under oath by Thomas H. Gresinger, M.D., on behalf of Northern Virginia Women's Medical Center.

26-35 The Amended Motion for Judgment in the prior litigation which was non-suited by Plaintiff's counsel is not probative of any issue in this case. Mr. Coddling has already testified under oath that all Answers previously filed relative to "the abortion clinic" were referring to NOVA Women's Medical Center, not NOVA Women's Medical Center, Inc. This testimony was not controverted in any respect. It should further be noted that the convoluted pleadings filed by

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& WEST P. C.

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Plaintiff's counsel further add to the confusion in responding to said pleadings.

36. This Order is not relevant to the instant Motion. Although a dispositive Motion might have been filed in the first law suit, three other Defendants remained parties to the action besides Northern Virginia Women's Medical Center, Inc.

37-38 This pleading, styled "Memorandum of Law in Support of Amended Demurrer of Defendant Joel W. Match, M.D. to Plaintiff's Motion for Judgment" is not probative of any issue. Counsel for Dr. Match has inadvertently indicated that "The Northern Virginia Women's Medical, Inc." was the surgery center where the operative procedure was performed. The undersigned counsel had no responsibility for that inadvertent statement.

39-42 The Letter Opinion and subsequent Order of Judge Bach are not probative of any issue in the instant motion.

43-57 The deposition excerpts from Thomas H. Gresinger, M.D., in the first action non-suited by Plaintiff's counsel are not relevant or probative to the instant motion, except to clearly indicate that Plaintiff's counsel never made inquiry as to the proper corporate identity of the real party in interest. All information testified to by Dr. Gresinger was and remains accurate.

58-61 The excerpts from the transcript of proceedings before Judge Bach in the first action non-suited by Plaintiff's counsel are not relevant. The inquiry by Judge Bach to the undersigned was "and you've got the owners of the clinic; is that right?" The undersigned responded yes to that inquiry since I did in fact represent the true owner of the clinic by virtue of the representation of Dr. Gresinger and Mr. Coddington and their other corporate interests.

62-70 The Grounds of Defense filed on behalf of Northern Virginia Women's Medical Center, Inc., Thomas Gresinger, M.D. and Wayne C. Coddington have already been addressed in response to pages 26 through 35. All statements contained in the Answer remain accurate.

71-85 The Designation of Experts contains no information which is probative of the instant motion. All information contained in the Designation was and remains accurate.

86-103 These excerpts from the second deposition of Dr. Gresinger in the prior litigation non-suited by Plaintiff's counsel are not probative of any issue. However, it is again demonstrated that Plaintiff's counsel never made proper inquiry as to the real party in interest in this suit.

104-105 The Status Conference Order in the instant case is not relevant to this argument to the instant motion. Even if a dispositive Motion had been filed by the corporate defendant, three other defendants, two of which were represented by the undersigned counsel, would have proceeded to trial. The decision to file the Motion to Dismiss in this case proved to be fruitless, since it was denied by this Court.

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106-112 These discovery pleadings are not relevant to any issue presented by the instant motion.

113-116 The Designation of Experts contains no information which is probative of the instant motion. All information contained in the Designation was and remains accurate.

117-120 The Statement of Costs incurred by Plaintiff's counsel with respect to his decision to prosecute this case of little merit is not relevant to any issue in this case. Again, Plaintiff's counsel could have proceeded to trial against all of the Defendants in this case. He simply chose not to do so.

121-122 This memo from Plaintiff's counsel to defense counsel regarding settlement provides no insight relative to the matters at issue, except to demonstrate the unilateral dictates which were frequently made by Plaintiff's counsel during the course of this litigation.

123-146 The Motion to Dismiss and Opposition thereto have already been ruled upon by this Court and were denied in favor of the Plaintiff. These pleadings are of no significance to the instant motion for sanctions.

4. Title 8.01, §271.1 of the Code of Virginia, 1950 ed., as amended, provides for sanctions based upon the filing of a pleading which is not well grounded in fact. An overview of all of the documents submitted by Plaintiff's counsel fails to indicate any such document which was filed and not well grounded in fact. There is no document which contains any misrepresentation.

5. The undersigned counsel has been forced to expend considerable time to respond to the libelous charges contained in the Plaintiff's Motion for Sanctions. The bare essence of his dilemma can be stated as follows:

a. A public document was on record which indicated one of the proper parties to be sued, to wit, Fairfax Square Medical Associates, Inc.¹

1

During the course of this litigation Fairfax Square Medical Associates, Inc., filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of Virginia. The matter is presently under consideration by the Court and liquidation will occur. At the present time, the owners of that entity do not

b. Plaintiff's counsel failed to conduct any discovery which directly inquired as to the true owner of the business with the fictitious name, NOVA Women's Medical Center.

c. Defendants' Motion to Dismiss this action for the reasons set forth in their Motion was denied by this Court.

d. The Plaintiff's counsel requested a Motion for Leave to Amend pleadings which was denied.

e. The Plaintiff's counsel requested a Motion for Nonsuit which was denied.

f. This Court ordered that the trial was to commence on the day previously scheduled against all named Defendants.

g. The Plaintiff's counsel advised the Court that he had released all of his expert witnesses and would therefore not appear for trial.

h. All Defendants moved for judgment based upon the Plaintiff's counsel's representations that he would not appear for the trial of the action. Judgment for the Defendants was entered, without opposition from Plaintiff's counsel.

i. Plaintiff's counsel filed a Motion for Reconsideration which was denied.

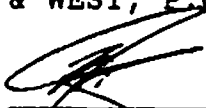
6. The Motion filed by the Plaintiff is without merit and should accordingly be denied. Since the Motion was filed in bad faith without any justification in law and fact, your Defendants' Motion for Sanctions should be granted.

believe there will be any assets available for distribution to creditors. Therefore, any claim made by Plaintiff's counsel that it did not make sense to proceed to trial if the wrong party had been named was without merit, as no recovery would have been possible because of the bankruptcy filing.

WHEREFORE, this Opposition to Motion for Sanctions having been considered by this Court, Defendants Northern Virginia Women's Medical Center, Thomas H. Gresinger, M.D. and Wayne C. Coddington request that the Plaintiff's Motion be denied and that an award of sanctions be assessed against counsel for the Plaintiff and any other relief which this Court deems proper under the circumstances.

NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING
By Counsel

SANDGROUND BARONDESS
& WEST, P.C.



MARK A. BARONDESS, ESQUIRE
VSB No. 24596
Counsel for NORTHERN VIRGINIA
WOMEN'S MEDICAL CENTER
THOMAS H. GRESINGER, M.D.
WAYNE C. CODDING

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSITION TO MOTION FOR SANCTIONS was faxed and mailed this 2nd day of February, 1996, postage pre-paid, first class, to: Richard W. Boone, Esquire, 1497 Chain Bridge Road, Suite 200, McLean, Virginia 22101 and Douglas B. Wessel, Esquire, Two Fountain Square, 11921 Freedom Dr., Suite 550, Reston, Virginia 22090.



Mark A. Barondess

aaa\xxx\lake\sanction.opp

SANDGROUND
BARONDESS
& WEST P. C.
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5000 TOWERS CRESCENT DRIVE
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VIENNA, VA 22182
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1
VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

) At Law No. 133092

Plaintiff,

)

VERSUS

)

JOEL W. MATCH, ET AL,

)

Defendant.

)

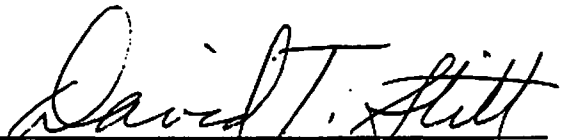
ORDER

UPON CONSIDERATION of the oral Motion of the Defendants, Northern Virginia Woman's Medical Center, Inc., Thomas H. Gresinger, M.D., and Wayne C. Coddington, to continue the hearing presently scheduled for February 9, 1996; upon consideration of there being no opposition thereto; it is by this Court

ORDERED that the hearing previously scheduled for February 9, 1996, be and it hereby is continued to February 23, 1996, at 10:00 a.m.; and it is further

ORDERED that the final judgment be and it hereby is further suspended until further order of this Court on or before February 23, 1996.

ENTERED this 9TH day of February, 1996.


JUDGE DAVID T. STITT

Signatures of counsel and parties are waived pursuant to Rule 1:13.

FILED
23 FEB 22
CIRCUIT COURT
FAIRFAX, VA
FRI 11:34

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

JOEL W. MATCH, M.D., et al.,

Defendants.

AT LAW NO. L133092

PLAINTIFF'S TABLE OF CONTENTS FOR BOOK OF DOCUMENTS
PREVIOUSLY SUBMITTED, AND MEMORANDUM OF LAW ON SANCTIONS

COMES NOW the Plaintiff, by counsel, and states the following
in support of Plaintiff's Motion for Sanctions:

The Law Governing Sanctions

Section 8.01-271.1 of the Code of Virginia provides in
pertinent part:

The signature of an attorney or party constitutes a
certificate by him that (i) he has read the pleading,
motion, or other paper, (ii) to the best of his
knowledge, information and belief, formed after
reasonable inquiry, it is well grounded in fact... and
(iii) it is not interposed for any improper purpose, such
as ... to cause unnecessary delay or needless increase
in the cost of litigation.

* * *

[The statute then provides that (ii) and (iii) above also
govern oral motions of each counsel and party.]

If a pleading, motion, or other paper is signed or made
in violation of this rule, the court, upon motion or upon
its own initiative, shall impose upon the person who
signed the paper or made the motion, a represented party,
or both, an appropriate sanction, which may include an
order to pay to the other party ... the amount of the
reasonable expenses incurred because of the filing of the
pleading, motion or other paper or making of the motion,
including a reasonable attorney's fee.

In Oxenham v. Johnson, 241 Va. 281, 286, 402 S.E.2d 1 (1991), the Supreme Court reviewed "some of the policy considerations in sanction cases:

[S]anctions can be used to protect courts against those who would abuse the judicial process... [and] one purpose of Code Section 8.01-271.1 [is] reducing the volume of unnecessary litigation.

Plaintiff claims that since 1992-3, all of Plaintiff's efforts, attorney's time and expenses in the two (2) cases against the incorrect corporation sued -- which was admitted to be the correct corporation -- were inevitably and completely unnecessary and fruitless.

The Oxenham Court also held that:

The duty of 'reasonable inquiry' arises each time a lawyer files a 'pleading, motion or other paper' or makes 'an oral motion'. Code Section 8.01-271.1. If [the sanctioned lawyer] had filed any paper or made any motion in the case after he knew, or reasonably should have known, that [his position was not well-grounded in fact], the court would have been justified in imposing a sanction against him.

Oxenham at 288.

It is admitted by counsel Barondess that he knew since 1988 that the correct owner/operator of the Clinic was a certain corporation which was not the corporation sued by Plaintiff.

In Nedrich v. Jones, 245 Va. 465, 472, 429 S.E.2d 201 (1993), the Supreme Court held that the test for determining whether an attorney or party violates Section 8.01-271.1 is not a subjective test of what was in the mind of the attorney/party, but rather an "objective standard of reasonableness" [citing County of Prince William v. Rau, 239 Va. 616, 620, 391 S.E.2d 290, 292 (1990)], that

is, whether the attorney or party "could have formed a reasonable belief" that the pleading or motion was well-grounded in fact or warranted by existing law.

As we know, Virginia Code Section 8.01-271.1 is based upon and parrots Federal Rule 11. Local federal decisions interpreting Rule 11 are thus instructive and persuasive.

The proper inquiry in ruling on Rule 11 motions is whether "a reasonable attorney in like circumstances would believe his actions to be factually and legally justified". Cabell v. Petty, 810 F.2d 463, 466 (4th Cir. 1987). If the actions of an attorney or party fail to meet this standard, an award of sanctions is mandatory. Cabell, 810 F.2d at 466. Where responses in a defendant's answer to a complaint have "no reasonable basis in law or fact", they merit the imposition of sanctions. Artco v. Lynnhaven Dry Storage, 898 F.2d 953 (4th Cir. 1990). Especially in a case in which that counsel was versed in the facts [counsel Barondess was "Assistant Secretary of the correct corporation; and had been counsel for both the incorrect and correct corporations for many years preceding this litigation] not simply "shortly before he filed the answer", and his knowledge was based "not solely on knowledge gained from a cursory investigation of the facts", as in the case of an attorney "unfamiliar with the case", sanctions are appropriate. Artco, supra.

In Brubaker v. City of Richmond, 943 F.2d 1363 (4th Cir. 1991), the Court discussed the method of determining the amount of

a sanction. First, the court:

should bear in mind that the purposes of Rule 11 include 'compensating the victims of the rule 11 violation, as well as punishing present litigation abuse, streamlining court dockets and facilitating court management'. The amount of a monetary sanction, however, should always reflect the primary purpose of Rule 11 -- deterrence of future litigation abuse. Accordingly, the district court should expressly consider the four factors adopted by this circuit in In re Kuntsler: '(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation [citations omitted].

It is appropriate for the Court to award sanctions against counsel for an entire time period during which it was known that a claim was not "well grounded in fact" (until dismissal of the case). Meadow Ltd. Partnership v. Heritage, 118 F.R.D. 432 (1987) (finding that the duty to inquire into facts is a "continuing duty" (Id. at 434); \$10,000.00 sanction awarded for three-month period during which attorneys should have known their position was not "well grounded in fact") (aff'd, Fahrenz v. Meadow Farm Partnership, 850 F.2d 207 (4th Cir. 1988)).

Counsel for the Clinic Defendants continues to focus upon alleged mistakes of Plaintiff (in not initially naming the correct corporate Defendant), as if an incorrect allegation removes their own legal obligation to answer allegations in the complaint truthfully; to respond to discovery truthfully; and not to conceal that which has been affirmatively sought by Plaintiff. Plaintiff seeks sanctions for that time period after the Clinic Defendants' were required to respond fully and truthfully to Plaintiff's

allegations and interrogatories about the correct owner and operator of this abortion clinic. Plaintiff rightfully declined to proceed through a lengthy and costly trial against the incorrect, target corporate Defendant, when years before the Clinic Defendants had been obligated to respond truthfully, but decided consciously not to do so for their own improper gain (which has succeeded to date by dismissal of the case against them). Plaintiff contends that it is time for the Clinic Defendants to suffer the proper consequences of their conscious misdeeds against Plaintiff and this Court.

At a previous hearing Plaintiff's counsel indicated that he may file a "Table of Contents" for the Book of Documents previously submitted in support of the motion for sanctions; attached is such Table of Contents, with page-location and commentary regarding each document.

WHEREFORE, Plaintiff, by counsel, respectfully requests that the Motion for Sanctions be granted, either at this time or after discovery as to the proper amount of sanctions; the Court again reconsider both its denial of the motion to add the correct corporate Defendant and its related dismissal of the case for failure to proceed against the incorrect corporate Defendant; and that this Court grant such other relief as it deems just under the circumstances.

TINA MARIE LAKE
By Counsel

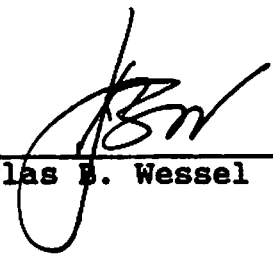
LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 1996, the original of this pleading was filed in the Clerk's Office and true copies of this pleading were hand-delivered to Judge Stitt's law clerk, Derek Meisner, Esquire (fax: 703-385-4432); and were sent by facsimile to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the Clinic defendants (fax: 703-761-4249).



Douglas B. Wessel

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Table of Contents

Book of Records
Supporting Plaintiff's Motion for Sanctions
(Previously Submitted)

<u>Page</u>	<u>Contents</u>
1	7/13/88 Certificate of correct corporation, "Fairfax Square Medical Associates, Inc.", permitting it to conduct business under the fictitious name, "NOVA Women's Medical Center", and certifying that "sole owners and proprietor" of THE ABORTION CLINIC at 9900 Main Street in Fairfax is the correct corporation which was not later sued, "Fairfax Square Medical Associates, Inc." (not "Northern Virginia Women's Medical Center, Inc.", the incorrect corporation actually sued); attested to by Mark A. Barondess, "Assistant Secretary".
2-5	3/5/92 Medical malpractice Notice of Claim by Tina Lake against the incorrect corporation, "Northern Virginia Women's Medical Center, Inc." "and those agents ... and employees ... who acted on its behalf ... regarding ... Tina Marie Lake"; claiming abortion done on Ms. Lake "at your [the incorrect corporation's] facility on April 13, 1991".
6-8	1992 Motion for Judgment against the incorrect corporation, "Northern Virginia Women's Medical Center, Inc.", filed in Warren County.
7	Alleges that the incorrect corporation, "Northern Virginia Women's Medical Center, Inc." "was a corporation carrying on the business of THE ABORTION CLINIC" where the abortion on Ms. Lake was conducted in Fairfax on 4/13/91. See paras. 2 and 9.
7-8	Alleges that Defendants Gresinger and Coddling operated "THE ABORTION CLINIC" [where the abortion on Ms. Lake was conducted in Fairfax on 4/13/91] and each owned 50% interest in the (incorrect) "corporation" which operated the Clinic. See paras. 2, 10, 11.
9-11	11/24/92: First appearance in case by the incorrect corporation, "Northern Virginia Women's Medical Center, Inc." and its attorneys, Sandground, Barondess & West.

- 12 12/21/92 Order requiring all defendants (including the incorrect corporation, "Northern Virginia Women's Medical Center, Inc.") to "respond to the Motion for Judgment, Interrogatories and Request for Production of Documents...[by] January 11, 1993" [and transferring venue to Fairfax County].
- 15 1/8/93 Demurrer by the incorrect corporation, "Northern Virginia Women's Medical Center, Inc.", to Motion for Judgment [without demurring on basis of suit against incorrect corporation].
- 16-25 1/11/93 (more than 3 months before the expiration of the statute of limitations) Answers to Interrogatories by Defendants "Northern Virginia Women's Medical Center, Inc." (the incorrect corporation), Gresinger and Coddling, signed under oath; when asked to identify which allegations of Motion for Judgment are denied, Defendants do not deny (and never deny) allegations (see pgs. 7-8) that the incorrect corporation, "Northern Virginia Women's Medical Center, Inc.", was the correct corporation ("was a corporation carrying on the business of THE ABORTION CLINIC" where the abortion on Ms. Lake was conducted in Fairfax on 4/13/91).
- 16 Instead, Defendants state (p. 16) that the Answer filed after the demurrer "will set forth each and every allegation which has been denied in whole or in part"; in that later Answer (pp. 62-70) (see further explanation below), Defendants never deny, and instead, falsely admit, that the incorrect corporation owned and operated THE ABORTION CLINIC where the abortion was performed on Ms. Lake on April 13, 1991.
- 17-25 Despite that suit is against the incorrect corporation, "Northern Virginia Women's Medical Center, Inc.", Defendants repeatedly falsely refer to themselves, the Defendants sued, as "the Defendant, NOVA Women's Medical Center", the true certified fictitious name which the correct corporation not sued, "Fairfax Square Medical Associates, Inc.", was permitted to use.

Thus: the Defendants falsely admitted, and never denied, that the correct corporate name had been sued; the Defendants also used in this case the correct (fictitious) name of the correct corporation not sued; the Defendants nevertheless later contended that the correct corporation had not been sued despite the admissions of the correct corporation being

sued and the use of the fictitious name of the correct corporation. Despite same, the Court later denied Plaintiff's motion to add the correct corporation as a Defendant.

Defendants admit that "the Defendant, NOVA Women's Medical Center" (the fictitious name for the correct corporation not sued), maintained "the medical chart of the Plaintiff" (p. 2); "provided the health care facility where the operative procedure was performed" on Ms. Lake (p. 6); provided "counseling services" to Ms. Lake (p. 20); employed the nurses who cared for Ms. Lake (p. 10); did not provide liability insurance for this matter (p. 22).

Defendant Gresinger attests to the Answers as "President" of the incorrect corporation sued, "Northern Virginia Women's Medical Center" (p. 23).

26-35

2/11/93 (p. 34) Amended Motion for Judgment against Defendants Gresinger, Coddling and the incorrect corporation, "Northern Virginia Women's Medical Center, Inc." (for allegations admitted, see pp. 62-70, discussed below).

Defendants admit that the incorrect corporation sued, "Northern Virginia Women's Medical Center, Inc.", is the Defendant and that its short-hand name in the Amended Motion for Judgment shall be "WOMEN'S MEDICAL CENTER" (p. 26).

Defendants admit that in April, 1991, the incorrect corporation sued operated "THE ABORTION CLINIC" (p. 27).

Defendants admit that Gresinger and Coddling each were 50% stockholders, and were officers and directors, of the incorrect corporation sued that operated THE ABORTION CLINIC (that performed the abortion on Ms. Lake on April 13, 1991) (pp. 29-30).

Defendants admit that Defendant Hatch and "the employees of" the incorrect corporation sued, with "the tools and facilities of" the incorrect corporation sued, "performed an abortion procedure on Ms. Lake at THE ABORTION CLINIC in Fairfax, Virginia, on April 13, 1991" (p. 31).

Defendants admit that before the abortion was performed, the incorrect corporation sued failed to disclose certain facts to Ms. Lake regarding a second-trimester abortion (p. 33).

- 36 5/4/93 Status Conference Order requires the incorrect corporation sued to ensure that "[a]ll dispositive motions shall be completed 30 days prior to trial" (p. 36) [the case was non-suited 3 weeks prior to trial without Defendant's filing (or even raising the possibility of) any motion to dismiss or other dispositive motion regarding the incorrect defendant having been sued].
- 39-42 10/29/93 Order inter alia denying the attempt of the incorrect corporation sued to preclude Plaintiff from "piercing the corporate veil of the incorrect corporation sued" [while Defendants concealed from the Court and counsel that this corporation sued was not the correct corporation].
- 43-57 10/23/93 deposition (portions) of Defendant Gresinger, under oath and in presence of Defendant Coddington and counsel Barondess (p. 44).
- Defendant Gresinger testifies that he and Defendant Coddington (not the correct corporation not sued) each were a "co-owner" of THE ABORTION CLINIC where Ms. Lake's abortion was performed (pp. 50, 57).
- 58-61 10/29/93 hearing before Judge Bach.
- Judge Bach asks counsel Barondess if he represents "the owners of the clinic", and Barondess replies, "Yes, sir"; and Judge Bach then states that, "I'm just trying to figure out who's involved" (p. 59) [clearly, Judge Bach was not attempting to find out, as counsel Barondess states (see Opposition, paras. 58-61), the identities of other, non-involved clients that Mr. Barondess represents in his practice).
- Judge Bach ordered that counsel Barondess and the Defendants "[a]nswer [discovery] anything that your people did for this woman". When Barondess questions the ruling, Judge Bach asks facetiously, "You're saying that your people did nothing for her?"; and counsel Barondess replies, "No. We answered in there [answers to interrogatories; see above] what they did ... I referenced the medical records which specifically set forth what these people did" (p. 60). Counsel Barondess thus affirmatively and falsely states that the incorrect corporation sued treated Plaintiff, etc., and conceals that the incorrect corporation sued did

nothing at all for Plaintiff and has nothing whatsoever to do with the case.

62-70 11/4/93 Grounds of Defense of "your Defendants, NORTHERN VIRGINIA WOMEN'S MEDICAL CENTER, INC." [the incorrect corporation sued] to Amended Motion for Judgment (see pp. 26-35 above for admitted allegations), filed by counsel Barondess as attorney for the incorrect corporation sued, "Northern Virginia Women's Medical Center, Inc."

71-85 11/5/93 Designation of Experts filed by counsel Barondess on behalf of the incorrect corporation sued, "Northern Virginia Women's Medical Center, Inc."

Counsel Barondess reiterates that the incorrect corporation sued, "Northern Virginia Women's Medical Center, Inc.", is one of "the Defendants", and then repeatedly and consistently states that six (6) of the Defendants' expert witnesses (including Defendant Gresinger) will testify that: "the care and treatment provided to Ms. Lake by the Defendants..."; "the Defendants ... ordered all of the appropriate ... tests which were required in Ms. Lake's case"; "[the expert is] familiar with the facilities of the Defendants [which includes the incorrect corporation sued]".

Counsel Barondess maintains in his Opposition (paras. 71-85) that these statements are true, thus again misstating that the incorrect corporation sued treated Plaintiff and was the correct defendant to be sued.

86-103 11/10/93 (second) deposition (portions) of Defendant Gresinger, under oath and in presence of Defendant Coddington and counsel Barondess (p. 87).

Defendant Gresinger testifies that the (above-described) Designation of Experts contains "nothing I disagree with" (p. 93) (thus expressly agreeing that the incorrect corporate Defendant sued treated Plaintiff and was the correct corporate Defendant, and specifically:

- he agrees with the statement in the Designation that "The care and treatment to Ms. Lake by the Defendants [which includes the incorrect corporation sued] ... was appropriate..." (p. 94).

- he identifies as records produced by the Defendants (including the incorrect corporation

sued) the payroll records -- of the Defendant-incorrect corporation sued -- regarding the employees involved in Plaintiff's care (p. 97).

- he identifies documents produced by the incorrect corporation sued (and not by the correct corporation): the Clinic brochure (p. 96) and an advertisement for THE ABORTION CLINIC (pp. 98-9) that performed Ms. Lake's abortion.

Counsel Barondess affirms that these Defendants (including the incorrect corporation sued) -- supposedly not the correct corporation not sued -- produced the following documents (this Court may be interested to know how an incorrect corporation sued produced these corporate records; Plaintiff's counsel contends that these documents had to have been produced by the correct corporation not sued, all the while it and the incorrect corporation (Defendants Coddling and Gresinger were the only shareholders of both corporations) concealed that the incorrect corporation had been sued):

- the documents contained in the personnel file of Defendant Dr. Match (pp. 101-3) as the doctor who performed the abortion on Plaintiff.
- the "Nursing Manual" reflecting "procedures and protocols" covering this abortion clinic (p. 103) as of the time of Ms. Lake's abortion.

104-5 4/20/95 Status Conference Order requiring the incorrect corporation sued to ensure that [despite counsel Barondess' knowledge of the correct corporate owner/operator of the Clinic since 1988 (see p. 1), he raised the issue of the incorrect Defendant (by a motion to dismiss the case) for the first time 10 days before the trial (with the motion being heard on the day before trial)]:

- "[a]ll dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible" (p. 104).
- "dispositive motions should be resolved prior to the status conference" (p. 105) [prior to 4/20/95, not in December, 1995, as counsel Barondess did].

106-109 10/25/95 Interrogatories by the Clinic Defendants requesting Plaintiff to identify: 1) all negligent acts by the incorrect corporation sued ("NORTHERN VIRGINIA

- WOMEN'S MEDICAL CENTER, INC.") (p. 107) (thus continuing to falsely portray the incorrect corporate Defendant as correct); and 2) all other certain acts of this same incorrect corporate Defendant (p. 108).
- 110 6/19/95 Consent Order incorporating all discovery (including the above-described) from the non-suited case into the present case, so that the Clinic Defendants are bound by their discovery responses in the prior case.
- 111-2 10/6/95 "Plaintiff's Formal Request for Supplementation of All Discovery Responses...".
- . All prior discovery had been incorporated into this case by the above-described 6/19/95 Order.
 - . In this new request for supplementation -- despite the Clinic Defendants' prior Answer admitting that the incorrect corporation sued was the correct corporation, and despite that prior answers to interrogatories requested (but did not obtain any) facts supporting any denial of the allegation that the corporation sued was the correct corporate owner/operator -- the Clinic Defendants did not object or respond to this new request in any way, and persisted in concealing the correct corporate Defendant until 10 days before trial.
- 113-116 10/16/95 Designation of Experts filed by counsel Barondess on behalf of the incorrect corporation sued.
- See the Clinic Defendants' Designation in the prior case (pp. 71-85). This 10/16/95 Designation once again reiterates on behalf of the incorrect corporation sued, as one of "the Defendants", that experts would testify: "the Defendants' care of the Plaintiff" was appropriate (pp. 114-5).
- 117-120 Plaintiff's statement of costs incurred through 11/8/95 (not complete as to some costs; see pp. 119-120). See Plaintiff's attached discussion of the law of sanctions, including awarding costs and attorney's fees.
- 121-122 11/20/95 Fax of Plaintiff's counsel to counsel Barondess confirming Barondess' claim of a non-specified "dispositive" issue; his refusal to disclose same; Plaintiff's request to disclose same; and the admonition regarding sanctions for failure to disclose same.
- 123-129 12/1/93 Clinic Defendants' "Motion to Dismiss", for first time claiming incorrect corporate Defendant sued and naming correct corporate Defendant; and claiming that the

correct Defendant is "a necessary party" which "must be named as a Defendant in order for this Court to proceed" (p. 126). The Clinic Defendants' contradicted this claim at the hearing by moving that the trial proceed, which motion was granted by this Court; Plaintiff then confirmed that the correct corporation was a necessary party so that she could not proceed, which drew Defendants' motion to dismiss and the dismissal of the case.

130-146 12/7/95 Plaintiff's opposition to Motion to Dismiss: discussing the Clinic Defendants' concealment and misstatements regarding the correct corporation Defendant; moving this Court to add the new, necessary, correct corporation as a Defendant; and moving for discovery, sanctions and such other relief as this Court deems just (p. 145).

CLERK
SUPERIOR COURT OF VIRGINIA

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RICHMOND, VIRGINIA

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1 APPEARANCES:

2 On behalf of Plaintiff:

3 DOUGLAS B. WESSEL, ESQUIRE
4 Law Office of Douglas B. Wessel
5 11921 Freedom Drive, Suite 550
6 Reston, Virginia 22090
7 (703) 904-4333

8 ON BEHALF OF DEFENDANTS *NORTHERN VIRGINIA
9 WOMEN'S MEDICAL CENTER, INC., GRESINGER
10 AND CODDING:

11 MARK A. BARONDESS, ESQUIRE
12 8000 TOWER CRESCENT DRIVE, SUITE 600
13 VIENNA, VA 22182
14 SANDGROUND, BARONDESS & LWEET

15 ALSO ~~DEFENDANTS~~ PRESENT
16 DEFENDANT THOMAS GRESINGER
17 DEFENDANT WAYNE CODDING
18
19
20
21
22

P R O C E E D I N G S

JUDGE ~~WILLIAMS~~ ^{STITT}: This is Lake v.

Match. It's Law No. 133092. We have before us today Plaintiff's motion for sanctions against Virginia Medical Center, Inc., Gressinger and Kotting, and the Defendant's motions for sanctions.

Mr. Wessel.

MR. WESSEL: Yes, thank you, Judge. Doug Wessel for Tina Lake.

As you know, this is the motion for sanction against -- with respect to the failure to tell us on a timely basis about the incorrectness of the Defendant's suit and the correctness of another corporation, which did indeed own and operate this clinic in question.

I'll just remind the Court of a couple of things. Mr. Boone is out of the case, so it's nothing pertaining to him. If the Court needs or wants to do anything after today, we would have to have another suspension because the suspension ~~number~~ ^{ORDER} doesn't conclude

BETA REPORTING

(202) 638-2400

1-800-522-2382

(703) 684-2382

1 that.

2 To summarize my arguments, Judge,
3 based on the documents submitted previously and
4 the documents I submitted yesterday, there are
5 several things that I'd like to say first.

6 These parties and Mr. ^{BARONDESS KNEW} ~~is now~~ since
7 July of 1988, that the correct owner-operator
8 of the clinic in question was Fairfax Square
9 Medical. I'll call them Fairfax Square.

10 The second I'd like to make is that,
11 from a very early time -- in 1992 -- all the
12 parties and counsel knew that we were alleging
13 that the owner-operator was not Fairfax Square.,
14 Fairfax Square never came into question during
15 the entire case until 10 days before the second
16 scheduled trial date.

17 We were alleging that the
18 owner-operator of this clinic was very close to
19 the name of the clinic -- the name of the
20 clinic being Nova Women's Center, Medical
21 Center. And we alleged that the correct
22 corporation was Nova -- excuse me -- Nova

1 Women's Medical Center, Inc., which was indeed
2 an operating abortion clinic, which indeed had
3 the same shareholders -- Mr. Gressinger, Mr.
4 ~~Ketting~~^{Coddin}, who are here today -- which indeed
5 were represented by Mr. ~~Barones~~^{Barondess} as well; which
6 were filed with the State Corporation
7 Commissioner, et cetera, et cetera.

8 What my office failed to do, as I've
9 admitted previously, is check with the land
10 records to see who actually owned and operated
11 that clinic.

12 Mr. ~~Barones~~^{Barondess}, 10 days before trial,
13 provided that it was Fairfax Square -- again,
14 for the first time since almost four years of
15 litigation. Mr. ~~Barones~~^{Barondess}, in the last argument,
16 emphasized, quite a bit, the alleged legal
17 malpractice of my firm. And I emphasize to the
18 Court that the allegations of the incorrect
19 corporation were made well before the statute
20 of limitations.

21 As a matter of fact, Mr. ~~Barones~~^{Barondess}
22 alleged that the suit was not filed until the

1 very last minute. And I think you've now seen
2 a document which is the notice of claim that
3 starts the malpractice case, which was filed
4 more than one year before the statute of
5 limitations would expire in March of 1992,
6 where this incident was in March of 1991 --
7 excuse me -- April of 1991. So it was filed
8 within a year of the cause of action arising.

9 I think one of the major points I
10 would like to emphasize, Judge, is that there
11 appears to be this emphases by Mr. ^{Barondess} ~~Barones~~ that
12 if my office made a mistake, then we have no
13 complaint. The matter should have been
14 dismissed. And it was as if his office and his
15 clients, when allegations were made, had no
16 duty to respond truthfully to those
17 allegations.

18 I dispute that with all the force
19 that I can, Judge. As you know, when an
20 allegation is made in a motion for judgment,
21 there is a response that's required under the
22 law that must be truthful.

1 And if an incorrect corporation is
2 alleged -- and it's clear -- the question is if
3 there's another corporation that owns and
4 operates the clinic, in this case, then you
5 cannot admit that the incorrect corporation
6 owns and operates this clinic, as they did.

7 And you can't continually, during the
8 course of this litigation, not reveal that
9 incorrect corporation and continue to represent
10 the incorrect corporation and say all the
11 things that were said on the pleadings under
12 oath.

13 And if the Court does award
14 sanctions, I'd like to discuss later who they
15 should be against, and why, and in what amount.

16 The first point, Judge, is the point
17 that the Defendants and Mr. ^{Barondess}~~Barones~~ knew, since
18 1988, that the correct owner and operator of
19 this clinic was Fairfax Square. I think that's
20 uncontested. The certificate is filed.

21 The thing that's most interesting
22 about the certificate, Judge -- that's the

1 first document in the book of records -- is
2 that Mr. ^{Baroness}~~Barones~~ himself was the assistant
3 secretary of the correct corporation in 1988,
4 and represented, in all these years, the
5 incorrect corporation and the correct
6 corporation, and knew well, from the moment
7 this notice of claim was filed in March of
8 1992, that this claim -- not even one year
9 after the cause of action arose -- was not
10 against the correct corporation, but rather was
11 against the incorrect corporation, within which
12 his clients were also the only shareholders.

13 And of course, since Mr. ^{Codling}~~Ketting~~ and
14 Dr. Gressfinger were the sole shareholders of
15 both the incorrect and the correct corporation,
16 they knew as well, from the very first moment
17 that notice of claim was served upon them, that
18 the incorrect corporation was being sued.

19 There was never any suggestion -- not
20 to be redundant, Judge -- about Fairfax Square
21 Medical associates ever being involved in this
22 case, as they should have been.

1 Now, the second main point I would
2 like to make, as I've said, is that they knew
3 the allegation from the beginning was that this
4 Defendant in this case was owned and operated
5 the clinic. Fairfax Square was never
6 mentioned, but ~~was~~ the only Defendant,
7 corporation Defendant, which we alleged had
8 ownership and operation of this clinic,
9 Northern Virginia Women's Medical Center, Inc.

10 That cannot be confused with Fairfax
11 Square Medical Associates, Inc. They are not
12 even close to the same thing. They knew that
13 it was the wrong corporation from the
14 beginning.

15 Now, they cannot say when they
16 admitted ownership and operation that they
17 thought the case was about the Fairfax Square.
18 Fairfax Square was not sued. They were not a
19 Defendant. The name doesn't sound any like
20 Fairfax Square.

21 They cannot claim that we had sued
22 the clinic building, if you will, Judge. The

1 building was not a Defendant -- the facility
2 itself. What we needed in this case was the
3 correct owner and operator, or probably just
4 the correct operator, and we allege that to be
5 Northern Virginia Women's Medical Center, Inc.

6 By the way, when we say it was clear
7 that Northern Virginia Women's Medical Center,
8 Inc., was the corporation sued, it was in
9 notice of claim in March of '92. It was in the
10 motion for judgment in 1992. It was in the
11 ~~Amended~~ ~~admitted~~ motion for judgment in February of
12 1993. All three were well before the statute
13 of limitations would run out on April 13, 1993.

14 Secondly, not only did the pleadings
15 show that their allegations were against this
16 particular Defendant, Northern Virginia Women's
17 Medical Center, Inc., but all the Defendant's
18 pleading and response show that Fairfax Square
19 was never involved.

20 From the very first appearance in
21 this case, Mr. ~~Barones~~ ^{Barontess} motion to transfer
22 venue, because this was filed initially in

1 Warren County, where Ms. Lake lived, was in
2 November of 1992. That was when he first made
3 his appearance in the case, although they've
4 had nine months before, or eight months before
5 the notice of claim served upon them. Northern
6 Virginia Women's Medical Center, Inc., was the
7 Defendant and not Fairfax Square.

8 So all of the Defendants knew, since
9 no later than March 5, 1992, that the incorrect
10 corporation was being sued, and that,
11 therefore, could not admit ownership and
12 operation, was alleged against Fairfax Square.
13 That was impossible. There was no way they
14 could have believed that.

15 Now, the next point I'd like to make,
16 Judge, is that the Defendants and Mr. ^{Barondess}~~Barones~~
17 had a duty to respond truthfully to allegations
18 when made. The whole purpose of allegations
19 being made in a Motion for Judgment are to find
20 out what are issues in the case.

21 You allege "X". They say admitted.
22 At that point, Judge -- and I'll be more

1 specific to this case -- we allege ownership
2 and operation by the Defendant in this case, as
3 we did the incorrect Defendant, and they
4 admitted it is no longer an issue. Mr. ^{Baroness} ~~Barones~~
5 has told you, I think -- not correctly -- that
6 we did not ask in interrogatories -- we did --
7 that we did not ask in deposition -- we did, in
8 fact -- who the owner and operator was. But,
9 that was not necessary. We did it, and we got
10 no answers regarding Fairfax Square.

11 But the point is, from the beginning
12 of the case, when the ~~issues~~ were framed, that
13 we think they admitted -- and they did -- that
14 the owner and operator of this clinic was
15 Northern Virginia Women's Medical Center, Inc.

16 Yes, we did. They alleged it. They
17 admitted it. And those are the documents that
18 I cited in the -- they're in the book of
19 records.

20 Not only did we -- did they admit in
21 their answer, Judge, that Northern Virginia
22 owned and operated it, but they also admitted

1 that Dr. Match and the employees and the
2 facilities were employees and facilities of the
3 corporate Defendant that was sued, not some
4 other Defendant, like some -- not some other
5 entity like Fairfax Square, Judge.

6 Now, beyond the main pleadings
7 framing the issues, in terms of discovery,
8 Judge, the very first question we asked in our
9 interrogatories, Judge -- which, by the way,
10 were served on the Defendants with the motion
11 for judgment, not later.

12 So they were served way back in 1992.
13 And the very first interrogatory, Judge, is,
14 "Is there anything you deny in the motion for
15 judgment, and if so, state the facts why."

16 Well, they never brought up -- if
17 they had mistakenly admitted that the Defendant
18 sued was the owner and operator -- and I don't
19 think that's possible -- but even if they could
20 argue that it was a mistaken admission, why did
21 they not come at some point in time, in the
22 next three or four years, and say, "Look, we

1 made a mistake, and we want to deny now that
2 the owner and operator was the current
3 Defendant"? And so, we do that, and so here
4 are the facts supporting that.

5 What would they have been required to
6 do at that point, Judge? When I asked for
7 facts supporting a denial, they would had to
8 have said, "Fairfax Square is the owner and
9 operator. We were wrong." When we admitted
10 that the current Defendant is the owner and
11 operator, we were wrong. Fairfax Square is."

12 And at that point, all of the
13 expense, all of the attorney time would not
14 have had to have happened. We could have had
15 other litigation against the correct Defendant.
16 Or, at a minimum, Judge, not spent all of the
17 time and effort and expense.

18 Now, I'll try to hurry it a little
19 bit, Judge. In Dr. Gressinger's Deposition, he
20 was asked by me on pages 50 and 57, "Who is the
21 owner?" Dr. Gressinger did not say Fairfax
22 Square; he said, "I am, along with Mr.

1 ~~Ketting~~^{Coddling}." That's not true, Judge. They're
2 shareholders.

3 Since 1992, they've known that -- and
4 I don't accuse Dr. Gressinger, by the way, of
5 intentionally lying, but we're relying on
6 these. I asked the question in deposition.
7 And the answer was, "Yes, I'm a co-owner with
8 Mr. ~~Ketting~~^{Coddling}." And it wasn't Fairfax Square as
9 the owner.

10 Not only that, but Dr. Gressinger
11 identified documents, Judge, which are
12 corporate documents being produced, that relate
13 to this case, which had to be produced by
14 Fairfax Square, that was not a Defendant.

15 And how were they being produced,
16 Judge? They were being requested and they were
17 being ordered by the Court to be produced by
18 this Defendant.

19 When I get all the proper records,
20 Judge, the appropriate records from this
21 Defendant in this case, what am I to suspect?
22 That somebody else -- it was another

1 corporation that was not a Defendant and is the
2 true owner and operator -- there's no way any
3 reasonable attorney would suspect it.

4 First of all, I had the admission. I
5 had all the discovery, and nothing was
6 mentioned Fairfax Square. Now, I'm getting all
7 the corporate records from this corporate
8 Defendant that has admittedly, now, no
9 relationship to this case whatsoever. It owned
10 and operated another abortion clinic in Fairfax
11 County, not the one where my client went to.

12 Another one that I failed to give, in
13 the book of records, Judge, that's mentioned in
14 several of my pleadings is the request for
15 entry. When I made a request for entry on this
16 man, of this corporation, of this Defendant in
17 the case, and I looked at the incorrect
18 Defendant, the incorrect corporation, they
19 responded that, you know, okay, you're going to
20 be allowed to go on the land of these
21 Defendants, which means that incorrect
22 corporation, which was not true.

1 It was the property of a
2 non-Defendant, 'Fairfax Square, and here are the
3 terms and conditions. We had an order entered,
4 and we ~~won~~^{went} on that land. And so, obviously,
5 I'm thinking, at that point, this is the land
6 of the corporation that I've sued.

7 And we went to the expense of filming
8 that and taking pictures, and none of that
9 would have been necessary, I suppose it would
10 be necessary for a case if the corporation
11 was --

12 The expert designations, Judge, as
13 you have probably seen, over eight pages, six
14 experts said it was a -- that the Defendants in
15 this case -- meaning the incorrect corporate
16 Defendants -- sued, treated my client. Not
17 true.

18 We relied upon -- and these are
19 the -- and Dr. ~~Salis~~^{Stokes} was familiar with the
20 facilities of this corporate Defendant. Not
21 true.

22 It was another corporation's

1 facilities that he was familiar with. And I
2 asked Dr. Gressinger directly in his
3 Deposition, "Do you agree with these expert
4 designations?"

5 He said, "Generally, yes." There was
6 a general question and he said yes. Then I
7 asked a specific question and I asked him, "Is
8 it true that the Defendant's care and treatment
9 was appropriate, in your opinion?"

10 "Yes," he said. It was the
11 Defendant's, not the care and treatment of
12 Fairfax Square.

13 During the same deposition -- and I
14 can cite all these pages if the Court wants
15 these pages, in the book of records -- and Mr.
16 Barones has provided, personally provided,
17 corporate records. Once again, they're under
18 the guise of this Defendant who has been sued,
19 the incorrect corporation, not some other
20 corporation.

21 So, I want to get these records from
22 Mr. ~~Barones~~^{Barondess}, and their personnel files, the

1 nursing manual of the corporation. No one is
2 telling me these are coming from the
3 corporation not sued. The request for
4 production is directed at the Defendant, not a
5 non-Defendant. And we're responding to the
6 request for production.

7 Another point, Judge, is following my
8 discovery that talks about Northern Virginia
9 Women's Medical Center, Inc., the incorrect
10 Defendant, that Mr. ^{Barondess} ~~Barones~~ has presented
11 interrogatories to me asking me for facts
12 supporting the allegations that Northern
13 Virginia Women's Medical Center, Inc., the
14 incorrect Defendant, was negligent in this way
15 or that. This is another way in which he's
16 telling me, "You've got the correct Defendant,
17 but tell me how we were negligent."

18 And finally, Judge, in terms of
19 discovery and hearings before the Court, is
20 the -- I'm sure you're familiar with -- and I
21 must take great exception to, opposing Mr.
22 ^{Barondess} ~~Barones~~' interpretation -- where Judge Bach

1 specifically asked him, directed the question
2 directly at him, at the beginning of the
3 hearing, you've got the owners in the case,
4 right And Mr. ^{Baroness}~~Barones~~ says yes. And Judge Bach
5 said --

6 ~~STITT~~
JUDGE ~~WILLIAMS~~: He said, "Yes, sir."

7 MR. WESSEL: Yes, sir. I'm not
8 reading. I'm paraphrasing from my notes.

9 ~~STITT~~
JUDGE ~~WILLIAMS~~: I'm reading it.

10 MR. WESSEL: Okay. And then he said
11 something to the effect of, "I'm just trying to
12 figure out who's involved."

13 And at that point, Judge, when Judge
14 Bach says that, ~~X~~I must differ with Mr.

15 ~~BARONESS~~
~~Barones~~, ~~X~~ Mr. ~~Barones~~ ^{BARONESS} says, "I also have
16 clients who are not involved in the case."

17 He's saying that to himself. I think
18 that -- I respectfully suggest that that's
19 disingenuous, Judge.

20 Judge Bach is asking who is involved
21 in this case as owners. And that's another
22 point where Mr. ^{Baroness}~~Barones~~ -- as an officer of the

1 court -- I think, an obligation to tell the
2 Court -- well, Judge, that's not quite true.
3 Fairfax Square is the owner and operator of
4 this clinic. And I think that I'll let the
5 Court make an interpretation as to why that was
6 not said to Judge Bach.

7 Now, Judge, in terms of my supporting
8 my contention that these matters were concealed
9 until the last minute for certain purposes,
10 first of all, as I pointed out in the briefs,
11 there were two conference orders of the
12 respective cases requiring the -- admissions to
13 be filed, on one case, as soon as possible.

14 As far as possible, in the other
15 case, no later than 30 day before trial, I
16 think it is -- obviously, in both cases, those
17 were disregarded by Mr. ^{Barondess}~~Barones~~, someone who is
18 clearly -- filed the motion dealing with
19 dismissal of the Defendant.

20 Another point I'd like to make,
21 Judge, is that Judge Bach ruled that Mr.
22 ^{Barondess}~~Barones~~' claim -- "We cannot pierce the

1 corporate veil" -- would not stand. Without
2 claim, that -- 'note that he was saying, Judge,
3 I don't think Mr. Wessel ought to be able to
4 pierce the corporate veil, without telling the
5 Court or me, that there's -- what's the point?

6 It's a wholly incorrect -- Defendant
7 -- corporate Defendant even in the case. So
8 why are talking about piercing the corporate
9 veil?

10 Obviously, I think, his obligation at
11 that point was -- Judge, not only did he not
12 pierce the corporate veil, he hasn't even got
13 the right corporation. As I said, in the
14 motion for judgment discovery, never was there
15 any mention of Fairfax Square.

16 Another thing that I was reluctant to
17 tell the Court today -- but I frankly point it
18 out -- is that Mr. Boone has made
19 representation to Judge Jamborsky, in the
20 presence of Mr. ~~Barones~~^{Barondoss}, that he was told
21 months before about the incorrect Defendant.

22 He said, before -- and Mr. ~~Barones~~^{Barondoss},

1 correct me if I'm wrong -- you used the term,
 2 in the fall of the year, and that was the
 3 hearing, I think, in December of 1995.

4 ^{Barondess}
 Mr. ~~Barones~~ told him that he had --
 5 that his filed -- was in motion related to --
 6 ^{THIS DISPOSITIVE}
 he had ~~these files at~~ issue that would get his
 7 corporate Defendant out of the case and related
 8 the correctness of the corporation.

9 And I would ask the Court, why the ,
 10 Plaintiff's counsel, who was spending time and
 11 effort and expense -- forget about all the
 12 previous time -- was not told at that point.

13 Next, Judge, I was told at a hearing,
 14 as we got out of the hearing, that Mr. ^{Barondess}~~Barones~~,
 15 in essence -- not in essence -- well, I don't
 16 know the exact words, but "We've got ^{THIS}~~these~~
 17 ^{DISPOSITIVE}~~files at~~ issue, Mr. Wessel, that we're going to
 18 raise."

19 And I said, "Well, Mark, can you tell
 20 me what it is?" I said, "You've got an
 21 obligation to tell me at least ~~Tony~~."

22 He said, "I'm not going to tell you

1 until three days before trial."

2 That's not just my testimony, Judge,
3 which might be inappropriate, but I put that in
4 a fax which is in the book of records. Mr.
5 ~~Barones~~^{Baroness} responded to that by saying, "I don't
6 have any obligation to tell you that."

7 And another couple of weeks, I think,
8 passed by, and then he filed that motion to
9 dismiss, which, for the first time, indicated
10 what the ~~discovery~~^{DISPOSITIVE} issue was, which was that
11 you got the wrong corporation. And the first
12 time, again -- for the first time, the correct
13 corporation is Fairfax Square.

14 And so, the first notice I had was on
15 exactly December 1, 1993, and trial was
16 December 11, 19 -- I'm sorry, Judge -- December
17 1, 1995, when trial is 10 days later, on
18 December 11, 1995.

19 So, the question I would ask the
20 Court is when they knew who the correct
21 Defendant was, in 1988, and they knew, in March
22 of 1992, that the incorrect corporation had

1 been sued.

2 Why was it until December 1, 1995,
3 after all the allegations were made and all the
4 answers and all the discovery, that we were for
5 the first time told about the incorrect
6 corporation and the correct corporation?

7 Judge, again, the issue is not
8 whether an initial mistake was made by this
9 firm, for purposes of sanctions. The question
10 is how much time and effort and expense was
11 spent after they had an obligation to tell the
12 Court, much less Plaintiff's counsel, the
13 correct Defendant.

14 And one of the -- as you'll see in
15 some of the cases that I submitted, yesterday,
16 on the law on sanctions -- one of the very
17 purposes is, of sanctions, is to prevent
18 unnecessary litigation. And it's my strong
19 contention, Judge, that this litigation against
20 these Defendants -- the target being the
21 corporation -- was completely fruitless.

22 There can be no argument that this

1 litigation was not completely fruitless and
2 unnecessary from a very early time, to the
3 knowledge of Plaintiff's counsel.

4 That's my argument at this time,
5 Judge.

6 ~~JUDGE WILLIAMS~~ ^{STITT}: Why don't you go
7 ahead and address his motion.

8 MR. WESSEL: Well, the only thing I
9 can say about his motion, Judge, other than I
10 have facts supporting my motion, is that I
11 think -- I respectfully suggest the
12 countermotion for sanctions is an attempt to
13 level the playing field, rather than admitting
14 error.

15 ~~JUDGE WILLIAMS~~ ^{STITT}: All right, thank
16 you, Mr. Wessel.

17 ~~Mr. Barones~~ ^{Barondess}, give me just a minute.

18 ~~Mr. Barones~~ ^{Barondess}, when did you first
19 become aware that Mr. Wessel had sued the wrong
20 entity?

21 ~~MR. BARONES~~ ^{BARONDESS}: At the very beginning,
22 Your Honor.

1 ~~STITT~~
 JUDGE ~~WILLIAMS~~: So, that would have
 2 been when?

3 ~~BARONDESS~~
 MR. ~~BARONES~~: When the first law suit
 4 was filed. I believe it was 1992, Your Honor.

5 ~~STITT~~
 JUDGE ~~WILLIAMS~~: In 1992? All right.
 6 The first time that it was brought to

7 anyone's attention was whenever this was --

8 ~~BARONDESS~~
 MR. ~~BARONES~~: The Motion to Dismiss
 9 would have been filed.

10 ~~STITT~~
 JUDGE ~~WILLIAMS~~: And when was that
 11 filed?

12 ~~BARONDESS~~
 MR. ~~BARONES~~: That was the motion
 13 that was -- the depositive motion, 11 days
 14 before the trial.

15 ~~STITT~~
 JUDGE ~~WILLIAMS~~: Do you remember what
 16 month that was?

17 ~~BARONDESS~~
 MR. ~~BARONES~~: It was December 1, '95,
 18 Judge.

19 ~~STITT~~
 JUDGE ~~WILLIAMS~~: December 1. All
 20 right.

21 ~~DEFENSE~~
 In the grounds of ~~Defendants~~, in the
 22 prior non-suit ~~of the~~ case, the Defendant,

1 Northern Virginia Women's Medical Center, Inc.
2 admitted Plaintiff's allegation that it was
3 corporation which operated a clinic that
4 performed abortions in Fairfax, Virginia?

5 ^{Baroness}
MR. BARONES: It did. That's
6 critical.

7 ^{Shift}
JUDGE WILLIAMS: And the reason it
8 was truthful was because you were referring to
9 another Plaintiff?

10 ^{Baroness}
MR. BARONES: Yes, sir, another
11 entity.

12 ^{Shift}
JUDGE WILLIAMS: All right.

13 And then, also in the grounds of
14 defense, where Northern Virginia Women's
15 Medical Center, Inc., admitted that Dr. Match,
16 with the aid of employees of -- and then it
17 says "Women's Medical Center" because,
18 apparently, at the beginning, they had -- at
19 the beginning of the ^{Amended} ~~admitted~~ motion for
20 judgment, it said "Northern Virginia Women's
21 Medical Center, Inc." and then brackets,
22 hereafter, "Women's Medical Center."

~~DARONDETS~~

1 MR. ~~WESSEL~~: That's what Mr. ~~CODD~~ing
2 testified before you several weeks ago, as far
3 as the basis for the answer. I don't remember
4 if it was the original motion for judgment,
5 Your Honor, or if was the second, the amended.
6 It was approximately 32 pages in length,
7 single-spaced. And it was a very difficult
8 ~~PLEADING~~
~~plea in~~ which to respond to.

9 And if there was, in any way,
10 inadvertent oversight, that's not going to
11 excuse the points that I would like to address
12 the Court when we --

13 ~~STITT~~
JUDGE ~~WILLIAMS~~: You're going to get
14 a chance to in a minute. I've just got a few
15 more to ask you about. But, basically, why is
16 that a truthful answer -- that you admitted
17 that Dr. Match, with the aid of employees of
18 the Women's Medical Center, and with the tools
19 and facilities of the Women's Medical Center,
20 performed an abortion procedure on Ms. Lake?

21 I guess, it says -- is that the
22 abortion clinic?

~~BARONDESS~~

1 MR. ~~WESSEL~~ Your Honor, I believe
2 that's inaccurate also.

3 This was a multiple-abortion
4 recipient. I believe she had four abortions
5 before this abortion. And I believe that, in
6 fact -- she had, in fact, received it.

7 Now, I'm not trying to cloud the
8 issue here by saying that, because I think, at
9 that point, that was more of a problem than the
10 32-page pleading and a mistake being made
11 within the context of the pleading. So I don't
12 want to -- I'm not going to relate one to the
13 other, although it may, in fact, still be a
14 truthful statement.

15 May I continue, Your Honor?

~~STITT~~

16 JUDGE ~~WILLIAMS~~: Yes, sure.

~~BARONDESS~~

17 MR. ~~WESSEL~~ My clients are the ones
18 that provided a facility where this took place.
19 And I think I have to fast-forward it just
20 little bit, Your Honor, because I think we
21 ultimately have to be concerned with is the
22 ultimate prejudice.

1 Number one, Northern Virginia Women's
2 Medical Center, Inc., no longer operates. It
3 hasn't operated for a period of time.

4 ~~STITT~~
JUDGE ~~WILLIAMS~~: Let me ask you one
5 more before you get into that.

6 The status conference order said all
7 the files, the motions shall be presented to
8 the Court for hearing as far as in advance of
9 the trial date as possible. That clearly was
10 not done here.

11 ~~BARONDESS~~
MR. ~~BARONES~~: And you denied it by
12 motion, Your Honor. You denied the depositive
13 motion. You said, "No, we're going to trial."

14 If I would have prevailed in the
15 depositive motion, it would have been something
16 completely different. But you denied it; you
17 said, "I'm not going to grant you this relief.
18 We're going to trial."

19 I mean, that's --

20 ~~STITT~~
JUDGE ~~WILLIAMS~~: Go ahead, Mr.

21 ~~Baroness~~
~~Barones~~. Let's hear your argument.

22 ~~BARONDESS~~
MR. ~~BARONES~~: Your Honor, what we

1 have here is a situation where the client's in
2 question, number one, on Northern Virginia
3 Women's Medical Center, Inc., they are
4 presently -- they have not been operating the
5 business for quite some time.

6 The second entity is Fairfax Square
7 and Medical Associates' name. That business
8 went out of business completely in October --
9 excuse me -- yes, they closed down in October
10 of 1995. They filed a bankruptcy in July of
11 1995. There would be no recovery against the
12 Defendants in this case.

13 Mr. Wessel never asked the question,
14 "Who are the owners of the clinic?" He points
15 to the testimony of Dr. Gressinger.

16 Was he a co-owner? Yes, he was, he
17 testified. He didn't ask Mr. ^{Coddin} ~~Kotting~~ or Dr.
18 Gressinger, "Is there a corporation involved?
19 Is Northern Virginia Women's Medical Center,
20 Inc., the corporation that was involved with
21 this particular abortion?" It was never asked.

22 Now, all along, Your Honor, there was

1 no file or document -- which Mr. Wessel
2 eventually did go and pull, but it was
3 subsequent to the depositive motion -- which
4 indicated, as a matter of public record, that
5 Fairfax Square Medical Associates, Inc., had
6 the trade name -- the fictitious name -- of
7 Nova Women's Medical Center.

8 It has been on file all the time.
9 All he had to do was look at it. Now, he
10 complains that we're under some sort of ethical
11 obligation to tell him who the proper party is
12 to be sued. Your Honor, I submit to you that
13 there's not one ethical opinion that Mr. Wessel
14 can rely upon that says that.

15 In fact, probably the worst thing
16 that I did in the case was ever to file the
17 depositive motion. I should have let him go to
18 trial and fail to meet his burden of proof.

19 And Mr. Wessel decided to something
20 entirely different. What he decided to do,
21 Your Honor, is, when this was going to be
22 tried, he said, "I'm not going to try the

1 case." And was it because Northern Virginia
2 Women's Medical Center, Inc., or Fairfax Square
3 Medical Associates, Inc., had liability
4 insurance. And all of a sudden he lost the
5 liability insurance.

6 He knew all along, from Dr.
7 Gressinger and Mr. ^{Codling}~~Kotting~~'s testimony, that
8 there was no medical malpractice insurance
9 associated with these facilities. So they're
10 not the real ones -- excuse me -- the entities,
11 the corporations, themselves, are worthless.
12 They're shells.

13 That was why he was trying to pierce
14 the corporate veil. And if he would have, in
15 fact, pierced the corporate veil of either one
16 of the entities, guess what he would have
17 gotten? He would have gotten Dr. Gressinger
18 and Mr. Kotting. And that is why we're here
19 today.

20 They still were in the case. Not
21 only that, the most important Defendant, of
22 all, was Dr. Match. He was the one that

1 actually performed the operative procedure.
2 And what does Mr. Wessel decide to do on the
3 eve of trial? He says, "I'm not even going to
4 pursue Dr. Match."

5 Now, this is someone who he alleges
6 actually performed -- as he has called it
7 throughout the course of the litigation -- the
8 botched abortion. He was the one that
9 purportedly perforated this client's uterus,
10 resulting in her having a hysterectomy. He let
11 him go entirely. He said, "I'm not going to
12 pursue you." And he does it, because I'm
13 saying he has got the wrong Defendant.

14 When I went through these pleadings,
15 I saw exactly what you saw in terms of that one
16 paragraph, admitting that Northern Virginia was
17 the treating. I saw that. And then I thought
18 to myself, "That's probably what I would be
19 stuck with at trial" -- in other words, that
20 client was going to get the judgment against
21 them, because I already admitted it.

22 All he had to do was to proceed to

1 trial. And you probably would have barred me
2 from putting on evidence -- Fairfax Square. It
3 wouldn't have made any difference to me in
4 terms of the overall result because they're
5 both shells. It wouldn't have made any
6 difference. The only difference is Fairfax
7 Square is in bankruptcy and Northern Virginia
8 is not. But they don't operate a facility at
9 the present time. It's an empty corporation.

10 But that's probably what would have
11 happened. You would have said -- and you did
12 say -- "Go to trial. Try the case."

13 And Mr. Wessel, on his own, said,
14 "No, I'm not going to go to trial." Now, what
15 did he do by doing that, Your Honor? What he
16 did was to prejudice himself of exactly what
17 he's complaining of right now.

18 He has got all these costs that he
19 says he has incurred. Well, he still had three
20 viable Defendants in the suit. As a matter of
21 fact, he probably would have four, because I
22 don't think you were going to let me go ahead

1 and change Defendants at that time.

2 After I saw that there was a
3 pleading -- in paragraph 13, or whichever
4 paragraph it was -- I mean, I saw the exact
5 same thing.

6 This is not a case of
7 misrepresentation, Your Honor. I've practiced
8 before this Court for over 11 years, and I've
9 never been accused of misrepresentation.
10 Never.

11 And Your Honor, to me, I have to
12 control my rage in dealing with this issue,
13 because I understand what's really at stake
14 here. Mr. Wessel is the one that made a
15 mistake. He did not live up to the standard of
16 care in terms of conducting research and
17 discovery, as to the proper in litigation.

18 But that was just one of four
19 parties. He still had on the hook Dr.
20 Gressinger, who is also the medical director;
21 Mr. ^{Coddins} ~~Kotting~~, one of the owners of the facility;
22 and the doctor himself, who performed the

1 surgical procedure -- all entirely proper
2 parties in this litigation. He decided not to
3 go forward.

4 Your Honor, I just want to make I've
5 covered all the points that I wanted. As I
6 said, Your Honor, if you look to the issue of
7 prejudice to Mr. Wessel, or to his client,
8 there is none. There would have been no
9 recovery against the corporate Defendants. It
10 just would not have happened. Even in the
11 event that you assume that he would have
12 prevailed upon his negligence claim, there
13 wouldn't have been any.

14 And I submit to the Court another
15 reason why sanctions are wholly inappropriate,
16 in this case, is because, in any type of case
17 like this, he would still have to prove that he
18 was entitled to the relief. And he simply
19 would not have been able to meet that burden,
20 either.

21 The main reason why he can't meet
22 that burden as to the professional standard of

1 care, medical services being provided, is that
2 he elected not to go to trial. And the minute
3 he made that decision not to go to trial, he
4 forever lost his opportunity to collect
5 anything that would have been related to this
6 case.

7 Your Honor, I have filed a motion for
8 sanctions in this case. And I only wish it was
9 to level the playing field. That's not what
10 it's about. Your Honor, I have had to come
11 back to Court on three, maybe four occasions
12 now, relating to this motion for sanctions
13 filed by Mr. Wessel.

14 You remember, Your Honor, when Mr.
15 Wessel was walking out of the Court room, he
16 said, "Can I file another motion? Can I file
17 something?" And you said, "You can file
18 whatever you want."

19 Now, from that, it blossomed into
20 this whole horrendous situation. And the
21 allegations that have taken place in this
22 contentious litigation, Your Honor, I submit

1 are wholly unfounded.

2 And Mr. Wessel, since it was his own
3 conduct, his own decision, not to proceed to
4 trial whether that would have been against
5 Fairfax Square, or whether it would have been
6 against Northern Virginia Women's Medical
7 Center, Inc., because that was the admitted
8 party in that one answer, he could have done
9 that. And he decided not to do it.

10 And by him not doing it, with no
11 justification, whatsoever, he gave up the right
12 to collect damages from Dr. Match, from Dr.
13 Gressinger, from Dr. -- excuse me -- from Mr.
14 ^{Coddins}~~Ketting~~, and, also -- if the Court would have
15 permitted -- against Northern Virginia Women's
16 Medical Center, Inc. That was his decision.
17 He can't complain to me about that.

18 If he would have asked the right
19 questions and if he would have been precise,
20 this wouldn't have happened. But, in any
21 event, even if it did happen, it doesn't make
22 any difference.

1 Thank you, Your Honor.

2 JUDGE ^{STITT}~~WILLIAMS~~: All right. Thank
3 you, Mr. ^{Baroness}~~Barones~~.

4 Mr. Wessel, I'll give you the last
5 word.

6 MR. WESSEL: I just have two points,
7 Judge.

8 Judge, I think the salient admission
9 by Mr. ^{Baroness}~~Barones~~ is -- response to what I think
10 was your very first question, "When were you
11 first aware that you had sued the wrong
12 entity?" And he said, "Sometime in 1992."

13 I would point out, Judge, in the
14 ^{NOTICE}~~notes~~ of claim, I believe it was March 5, 1992,
15 -- I don't know if I can it real quickly, but I
16 believe we hand-delivered that to the
17 Defendants. But whatever is on pleadings is
18 what we did. So that would be the inception
19 date on the one being sued.

20 Secondly, Judge, on page 31, of the
21 book of records, which you've already pointed
22 out, is just one example of how I think Mr.

~~Baroness~~

~~Barones~~' position is not appropriate.

Dr. Match, with the aid of the employees of Women's Medical Center -- which is shorthand version for the incorrect corporation -- and with the tools and facilities of Women's Medical Center, performed an abortion procedure on this lady at the abortion clinic in Fairfax, Virginia, on April 13, 1991.

I believe, Your Honor, that you heard Mr. ~~Baroness~~ ~~Barones~~ say that Ms. Lake had other abortions. And maybe we thought Mr. Wessel was talking about other abortions at this abortion clinic, which is what the allegation was. I don't think so.

Thirdly, I would remind the Court of -- again, of Judge Bach's colloquy with Mr. ~~Baroness~~ ~~Barones~~.

And fourth, I would say, Judge, when Mr. ~~Baroness~~ ~~Barones~~ said, "Well, what would have been the point of filing a depositive motion because we would have lost anyway?" when would I have

1 known that Fairfax Square was the correct
2 Defendant?

3 I think the first status conference
4 says "^{THIRTY}~~three~~ days before filing." It says, "as
5 far as in advance" -- I'm not sure what -- it
6 may say, "as far as in advance as possible."
7 That would have been no later than sometime in
8 1993. That would have saved immense effort,
9 expense, and concern for myself and my client.

10 And number five. Judge, I have
11 submitted, out of this case, a distillation of
12 a huge number of documents to tell you how
13 consistently this has been concealed and
14 misrepresented. To Mr. ^{Barnless}~~Barnes~~, in response to
15 this, you don't have one single document
16 indicating Fairfax Square should have been
17 named, or anything opposing this. Nothing.

18 ^{STITT}
JUDGE WILLIAMS: All right, this
19 comes on cross motions for sanctions. And I've
20 given this case a great deal of thought
21 because, frankly, it has bothered me about what
22 happened here. It has taken a while to sort it

1 out and try to figure out what did happen.

2 I've looked at it from the
3 perspective of whether there was contempt of
4 court that would warrant the imposition of
5 sanctions. And there were some real problems
6 with getting to contempt of court.

7 And Mr. Wessel, you've been very
8 candid, but, related to your failure to check
9 the land records, that was a problem. And it
10 was also a problem how the case was terminated.

11 I directed that the matter go to
12 trial. You indicated that you were not
13 prepared to go to trial, and, accordingly, I
14 dismissed the case. I think that affects the
15 legal posture of the case.

16 Also, in looking at the case law, the
17 case law on sanctions seems to relate --
18 certainly predominantly, if not exclusively --
19 to Rule 11 violations, or violations of the
20 Virginia equivalent, which is ^{8.01-}~~8.01-~~271.1. A lot
21 of the cases cited -- and this is not a rule.
22 I don't think it's a Rule 11 case, or the

1 Virginia equivalent. I just don't think that's
2 what we're talking about here.

3 Also, a number of federal cases were
4 cited. I'm just not sure that the contempt
5 authority or the manner in which the federal
6 courts exercise that authority is directly
7 comparable to what we've got here in the state
8 system.

9 There's also -- in terms of trying to
10 think about sanctions, if you were able to get
11 to the point where I felt that there had been
12 contempt of court, which would warrant the
13 sanctions, then there are just massive problems
14 with how you would assess damages. And I
15 couldn't find any guidance at all in the case
16 decisions as to how that might be accomplished.
17 Just to measure damages is unclear.

18 I think -- and I think both of you
19 have -- you know, whether there's an ethical
20 obligation to tell the other side that they
21 sued the wrong party, much less --

22 ^{Barondess}
Mr. ~~Barones~~, I've got to tell you

1 this. As an officer of the Court, I think if I
2 were to try to put a favorable light on your
3 conduct, I really think you were flirting --
4 and, again, this is in the best light -- I
5 think you were flirting with the line between
6 appropriate and inappropriate behavior here.

7 Having said that, I think that if
8 there is anything that was violated here -- and
9 I'm not making a determination one way or the
10 other that there was, because I don't think
11 it's my determination to make -- I think that
12 if anything occurred here, it relates to
13 ethical obligations and, accordingly, an
14 ethical violation.

15 Mr. Wessel, the only thing I can tell
16 you at this point is that your remedy is to
17 report it to the state Bar of Disciplinary
18 Authorities, if that's the course of action you
19 wish to take.

20 ^{Baroness}
Mr. ~~Barones~~, do you have an order
21 prepared, denying the Plaintiff's motion for
22 sanctions? I'm also denying the Defendant's

1 motion for sanctions.

2 Do you have one denying his motion
3 for sanction?

4 ~~MR. BARONES~~ ^{BARONDESS} I think it would be
5 easy to do.

6 Did I submit one at the time of the
7 original opposition, Your Honor?

8 ~~JUDGE WILLIAMS~~ ^{STITT} It might be just as
9 fast -- in fact, you can do them both on the
10 same sheet.

11 ~~MR. WESSEL~~ ^{BARONDESS} Your Honor, if I can
12 just for the record. I respect what the Court
13 is saying, but I feel compelled that I have to
14 say something in response to what the Court
15 just said.

16 ~~JUDGE WILLIAMS~~ ^{STITT} Well, I'll let
17 either one of you have about a minute and a
18 half because I've got another case to deal
19 with. It's 2:30 a.m., and we've been going
20 since 10:00 a.m. this morning.

21 Go ahead.

22 ~~MR. BARONES~~ ^{BARONDESS} I just wanted to

1 represent to this Court that I very much
2 cherish my ethical obligations. But there is
3 no requirement -- no matter how close to the
4 line I came, I never crossed a line, nor would
5 I ever, for any client, cross any line that
6 compromised by own individual integrity.

7 I respect what the Court has done,
8 but I just feel compelled to tell you, since
9 I'll be practicing before you on many other
10 occasions, that that is not the way I do
11 business. And --

12 ~~STUTT~~
JUDGE WILLIAMS: Well, I don't know.
13 Depending on what Mr. Wessel does, you may get.
14 an opportunity to debate the issue further down
15 the line. But I appreciate what you said.

16 MR. WESSEL: Judge, the only thing I
17 have to say is because, in part of your ruling,
18 I -- except to the ruling, I accept it. But I
19 did want to say that I did provide, in a brief,
20 some law on how to assess damages.

21 If the Court --

22 ~~STUTT~~
JUDGE WILLIAMS: No. I looked at it.

1 I read the cases. I just did not feel that I
2 had good guidance assuming the contempt of
3 court were to be found in this type of
4 situation, as to how to assess.

5 And you're right. Some of the
6 Federal Cases, particularly, they take a
7 three-month period, and just walk off with
8 attorneys fees and say you that owe them.
9 There were some substantial amounts of money
10 that changed hands in some of those federal
11 cases, and I know they do that.

12 I just didn't feel it was
13 particularly helpful in figuring this one out.
14 But that's also beside the point, because I was
15 unable to find that there had been contempt of
16 court.

17 ~~MR. BARONES~~ ^{WESSEL} May I just say, Judge,
18 that I didn't think contempt was the standard, /
19 although I think that it was not in response to
20 Judge Bach's question.

21 ~~JUDGE WILLIAMS~~ ^{STITT} I'm not sure what
22 other authority I have to impose these kinds of

1 sanctions if it were not contempt of court.

2 ~~WESSEL~~
~~ATTORNEY:~~ All right, sir. I'll
3 accept the ruling. I think we can have the
4 order present in just a few minutes.

5 ~~STITT~~
JUDGE ~~WILLIAMS~~: All right, I've got
6 to take this other one. If you get it done,
7 bring it back on in.

8 ~~BARONDESS~~
~~ATTORNEY:~~ Thank you, Judge.

9 ~~ATTORNEY:~~ Thank you for all the time
10 ~~WESSEL~~
you gave.

11 ~~STITT~~
JUDGE ~~WILLIAMS~~: Well, thank you,
12 Counselor. I understand this is not pleasant,
13 but I think you all have dealt with it.

14 (Whereupon, at 2:30 p.m., the
15 hearing was adjourned.)

16 * * * * *

17 RULE 5:11 CERTIFICATION

18 5/24/96 David T. Stitt
19
20
21
22

VIRGINIA;

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

LAKE

Plaintiff,

vs.

MATCH, ET AL.

Defendant(s).

At Law No. 133092

ORDER

This case came before the Court on 2/23, 1996, set
for PLAINTIFFS AND DEFENDANTS' MOTIONS FOR SANCTIONS

Upon the matters presented to the Court, it is ORDERED:

· THAT FOR THE REASONS STATED ON THE RECORD,
PLAINTIFFS AND DEFENDANTS' MOTIONS FOR
SANCTIONS ARE DENIED.

ENTERED ON 23 FEBRUARY, 1996

David T. Hitt
Circuit Court Judge

SEEN AND OBJECTED TO, FOR
ALL REASONS ADVANCED, IN WRITING AND ORALLY,

[Signature]
Counsel for the Plaintiff

[Signature]
Counsel for the Defendant

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. 133092

JOEL W. MATCH, M.D.,

and

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC.,

and

THOMAS H. GRESINGER, M.D.,

and

WAYNE C. CODDING,

Defendants.

FILED
SERVICES
26 APR 1996 PM 3:51
CLERK OF COURT
FAIRFAX, VA

PLAINTIFF'S/APPELLANT'S RULE 5:11(d)
OBJECTIONS TO TRANSCRIPTS

COMES NOW the Plaintiff/Appellant, by counsel, pursuant to Rule 5:11(d) of the Rules of the Supreme Court of Virginia, and states the following objections to the transcripts which she requested to be filed by the one court reporting service in question:

A. Plaintiff/Appellant requested that the court reporting service (Beta Reporting) which reported both the January 26, 1996, and February 23, 1996, hearings on sanctions, file in the Clerk's Office of this Court complete transcripts of the above hearings.

B. As reflected in an affidavit filed by the owner of such reporting service, said service was unable to locate or file the

complete transcript of the January 26 hearing. Plaintiff objects to such failure. However, the January 26 hearing on sanctions was comprised solely of argument by counsel, without testimonial evidence, and without any rulings by the Court other than continuing the matter for re-argument (heard on February 23) so that the Court and opposing counsel could review prior to the hearing a book of documents submitted by Plaintiff just prior to the January 26 hearing. On February 23, re-argument was heard and the Court made its rulings on sanctions, as reflected in the complete transcript of the February 23 hearing which was filed in this case. Plaintiff does not believe that the January 26 transcript is necessary for the appeal, but Plaintiff will move this Court (Judge Stitt, who presided over both hearings) to certify to the incompleteness and to the lack of evidence or material rulings during such hearing.

C. Plaintiff further objects to the following errors in the transcript of the February 23, 1996, hearing:

1. the uniform reference to the presiding judge as "Judge Williams", when the presiding judge was Judge Stitt.
2. the absence of references on page 2 to the presence of opposing counsel and his client(s).
3. p. 3, line 14.
4. p. 3, l. 22.
5. p. 4, l. 6.
6. references to Defendant Coddington as "Kotting".
7. references to Mr. Barondess as "Barones".
8. p. 9, l. 6-9.
9. p. 10, l. 4.
10. p. 10, l. 11.
11. p. 11, l. 11-13.
12. p. 16, l. 15-22.
13. p. 17, l. 4.

14. p. 17, l. 11.
15. p. 17, l. 19.
16. p. 20, l. 13-16.
17. p. 22, l. 1-12.
18. p. 23, l. 4-8.
19. p. 23, l. 16-18.
20. p. 23, l. 21.
21. p. 24, l. 10.
22. p. 26, l. 13-14.
23. p. 27, l. 21.
24. p. 27, l. 22.
25. p. 28, l. 9.
26. p. 28, l. 19.
27. p. 29, l. 1.
28. p. 30, l. 1.
29. p. 30, l. 17.
30. p. 41, l. 14.
31. p. 43, l. 4.
32. p. 43, l. 14.
33. p. 47, l. 11.
34. p. 48, l. 16-20.
35. p. 49, l. 17.
36. p. 52, l. 2.
37. p. 52, l. 9.

TINA MARIE LAKE
By Counsel

LAW OFFICES OF DOUGLAS B. WESSEL
Reston Town Center
Two Fountain Square
11921 Freedom Drive, Suite 550
Reston, Virginia 22090
TEL: 703-904-4333
FAX: 703-904-4399



Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of April, 1996, the original of this pleading was filed in the Office of the Clerk of the Circuit Court of Fairfax County, and true copies of this pleading were served by first-class mail, postage prepaid, on Richard W. Boone, Esquire, Suite 660, International Gateway, 8100 Boone Boulevard, Vienna, VA 22182, counsel for defendant Match (fax: 703-847-5264), and to Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel
Counsel for Plaintiff/
Appellant

C:\PLEADING\LAKTRANS.OBJ

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY.

TINA MARIE LAKE

Plaintiff

v.

JOEL W. MATCH, M.D.

Law No.: L133092

and

**NORTHERN VIRGINIA WOMEN'S MEDICAL
CLINIC, INC.**

and

THOMAS H. GREISINGER, M.D.

and

WAYNE C. CODDING

Defendants

STIPULATION AND ORDER

IN CONSIDERATION of the Stipulation And Agreement of the parties to this action, as is more fully evidenced by the endorsement of their respective Counsel hereupon; it is hereby,

ORDERED that Defendant Joel W. Match, M.D., is no longer a party to any further proceedings in this matter; and, it is further,

Lake v. Northern Virginia Women's Medical Center, Inc., et al.


Law No.: L133092

Page 2

ORDERED that Defendant Joel W. Match, M.D., be, and he hereby is, excused from any further participation in this matter; and, it is further,

ORDERED that the remaining parties to this action shall be, and they hereby are, excused from any requirement to serve pleadings or other papers in this matter upon Defendant Joel W. Match, M.D.

APPROVED AND ENTERED this 15TH day of MAY, 1996.


Judge

I ASK FOR THIS:


Counsel for Defendant Joel W. Match, M.D.

SEEN AND AGREED TO:


Counsel for Plaintiff


Counsel for Defendants Northern Virginia
Womens Medical Center, et al.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
96
PM 3 10
CLERK OF CIRCUIT COURT
FAIRFAX, VA

TINA MARIE LAKE,

Plaintiff,

v.

AT LAW NO. 133092

JOEL W. MATCH, M.D.,

and

NORTHERN VIRGINIA WOMEN'S
MEDICAL CENTER, INC.,

and

THOMAS H. GRESINGER, M.D.,

and

WAYNE C. CODDING,

Defendants.

**PLAINTIFF'S/APPELLANT'S MOTION FOR COURT TO RULE UPON
HER RULE 5:11(d) OBJECTIONS TO TRANSCRIPTS
AND TO CERTIFY TRANSCRIPTS**

COMES NOW the Plaintiff/Appellant, by counsel, pursuant to
Rule 5:11(d) of the Rules of the Supreme Court of Virginia:

1. Plaintiff moves this Court to:
 - a. sustain her "...RULE 5:11(D) OBJECTIONS TO TRANSCRIPTS" filed on April 17, 1996,
 - b. make the requested corrections and/or additions.
 - c. certify that the January 26, 1996, hearing transcript cannot be produced, as a result of the court reporter, and not Plaintiff.

- d. further certify that the January 26, 1996, hearing was comprised solely of counsel's argument, without any evidence or rulings by the Court (except that the Court continued the matter); and that a transcript of the January 26 would not be necessary for appeal.
- e. sign and certify the transcripts previously identified by Plaintiff, including the transcript of the December hearing.

2. All concerned will please note that:

- a. On April 17, 1996, Plaintiff filed her above-described objections to transcripts.
- b. On April 18, 1996, Plaintiff's counsel spoke with the Law Clerk of Judge Stitt, who advised that Judge Stitt was unavailable (as a result of out-of-town commitments) to rule on Plaintiff's objections until May 24, 1996.

TINA MARIE LAKE
By Counsel

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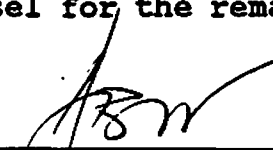


Douglas B. Wessel, Esquire
Virginia State Bar No. 18672

LAW OFFICES OF DOUGLAS B. WESSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of April, 1996, the original of this pleading was filed in the Office of the Clerk of the Circuit Court of Fairfax County, and true copies of this pleading were served by facsimile and by first-class mail, postage prepaid, on Mark A. Barondess, Esquire, 8000 Tower Crescent Drive, Suite 600, Vienna, VA 22182, counsel for the remaining defendants (fax: 703-761-4249).



Douglas B. Wessel
Counsel for Plaintiff/
Appellant

C:\PLEADING\LAKTRANS.OB2

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

LAKE

Plaintiff,

vs.

MATCH, ET AL.,

Defendants.

At Law No. 133092

ORDER

This case came to be heard on the 24th day of MAY, 1996 on the Plaintiff/Defendant's motion for Court To Certify Transcripts.

Upon the matters presented to the Court at the hearing it is

ADJUDGED, ORDERED, and DECREED as follows:

1. THE TRANSCRIPTS OF HEARINGS ON 12/8/95 AND 2/23/96 ^(AS CORRECTED) ARE HEREBY CERTIFIED IN ACCORDANCE WITH RULE 5:11.
2. AS TO THE TRANSCRIPT OF THE HEARING ON 1/26/96, THE TRANSCRIPT COULD NOT BE PROVIDED BY THE COURT REPORTING SERVICE BUT THERE WAS NO EVIDENCE TAKEN AND THERE WERE NO RULINGS MADE.
3. AS TO THE 12/8/95 HEARING, BOTH FORMATS OF THE 12/8/95 TRANSCRIPTS WHICH APPEAR IN THE RECORD ARE HEREBY CERTIFIED INCLUDING THE FORMAT FILED ON 1/26/96.

ENTERED, this MAY 24, 1996.

David T. Stitt
Circuit Court Judge

SEEN:

[Signature]
Counsel for Plaintiff(s)

[Signature]
Counsel for Defendant(s)

Assignments of Error

Regarding Concealment of the Indispensable Party

1. The trial court erred in not granting Ms. Lake's (Appellant's) motion to continue the trial.
2. The trial court erred in not granting Ms. Lake's (Appellant's) motion to continue the trial for additional time for the Court and the parties to investigate and discover matters relating to the concealed, newly-identified indispensable party.
3. The trial court erred in not granting Ms. Lake's motion for leave to amend to add as a new party-defendant the true owner-operator of the abortion clinic (Fairfax Square Medical Associates, Inc.) that Defendants had concealed.

4. The trial court erred in not granting Ms. Lake's motion for nonsuit.

5. The trial court erred in forcing Ms. Lake to proceed to trial without the new corporate defendant that had been concealed, particularly in light of the agreement of all counsel that the new party is a "necessary and indispensable party".

6. The trial court erred in dismissing with prejudice Ms. Lake's case against the defendants.

7. The trial court erred in denying the motion for reconsideration, particularly without consideration of oral argument or other discovery or evidence regarding the concealed indispensable party defendant.

Regarding Sanctions

8. The trial court erred in holding that the only remedy for the conduct in question is to report the Clinio Defendants' counsel to the Virginia State Bar disciplinary authorities.

9. The trial court erred in holding that contempt of court is the only ground for awarding sanctions against parties or counsel.

10. The trial court erred in holding that there was no contempt of court in this case.

11. The trial court erred in finding that Section 8.01-271.1 did not govern, and offered no remedies for, the egregious conduct in this case.

12. The trial court erred in not finding that the conduct in question was governed by, and was sanctionable under, Section 8.01-271.1.

13. The trial court erred in not complying with Section 8.01-271.1, which required an award of sanctions for written and oral pleadings not well-grounded in fact or law.

14. The trial court erred in not assessing sanctions against the Clinic Defendants (Appellees) and their counsel.

15. The trial court erred in holding that there is no legal standard in Virginia for assessing monetary sanctions for improper conduct under the circumstances in this case.