

In The Circuit Court for Baltimore City  
**CIVIL**

*T-2691  
02-10-22-44*

*Presented to J. Hollander*

In the Matter of

MICHAEL DEON TIMMONS, A MINOR, BY  
CHERYL ALLEN, HIS MOTHER AND NEXT  
FRIEND, ETAL

VS

THE JOHNS HOPKINS HOSPITAL

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DATE	DOCKET ENTRIES	NO.
8-29-89	Letter of Judge Kaplan Retracting Case to Judge Hollander	12
9-14-89	Pliff's Request for Production of Documents and Tangible items filed.	13
1-12-90	Def't's Motion for Partial Summary Judgment heard and held sub-curia.	
1-12-90	Def't. to file post trial brief by 2/12/90 and Pliff. to file response by 2/26/90.	
3/12/90	Def't Supplemental memo in sup- part of partial summary judgment, Request for hearing	14
3/2/90	Pliff's (Simmons) memo in response to motion for partial summary judgment	13A
3-15-90	Scheduling Order signed, 12/20/89 (Hollander Jr.)	15
4/16/90	Def't Response to Request for	16
4/16/90	Def't's notice to take deposition fd	17
10/2/89	Def't's Answers to Interrogatories fd.	13B
8-20-90	Memorandum Opinion and Order of Court "Denying" Defendants Motion for Partial Summary Judgment. Hollander Jr	18
8-1-90	Scheduling Order fd. (Hollander Jr)	17A
11-14-90	Dismissed with Prejudice. Order fd. (cler)	

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY OTORT

CASE NO. 89075003/CL94437

PAGE 1 of     

PARTIES	ATTORNEY(S)
<p>MICHAEL DEON TIMMONS, A MINOR, BY CHERYL ALLEN, HIS MOTHER AND NEXT FRIEND</p> <p>CHERYL ALLEN</p> <p>VS</p> <p>THE JOHNS HOPKINS HOSPITAL</p>	<p>EDWARD T. PINDER <sup>912626</sup> marc n. Peiterson</p> <p><sup>447887</sup> P. Dale Adkins, III Barbara McC. Stanley</p>

DATE	DOCKET ENTRIES	NO.
3/16/89	COMPLAINT, EJT AND INTERROGATORIES.	1
"	SUMMONS ISSUED.	
5/1/89	App. of P. Dale Adkins, III for Deft. same day answer.	2
5/1/89	Deft's interrogatories on to Plff.	3
*5/1/89	Deft's motion to dismiss & remove.	4
5/1/89	Deft's notice to take deposition.	5
5-4-89	Order Trial of the Verdict set & D	6
5-24-89	Deft's Motion to Dismiss <sup>Count II of complaint</sup> as being "Quoted". Credul. (Ward J) <del>(over)</del>	7
5-24-89	<del>judgment in favor of deft for costs.</del> Entered in error	
6-2-89	<del>Ordered</del> <sup>amended</sup> that Count II of the complaint is dismissed without leave to amend (Ward J)	8
6/26/89	Plff answers to Interrogatories	9
8-1-89	Deft motion for partial summary judgment (orig law 8-22-89)	10
8/18/89	Plff's response to Motion for partial summary judgment, Request for hearing ( <del>CFR</del> <del>NOT</del> )	11

MICHAEL DEON TIMMONS,  
A Minor, by Cheryl Allen,  
his Mother and Next Friend

Plaintiff

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY

\* 89075003/CL94437

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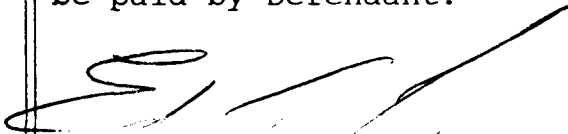
\* LIBRA \$5.00

\* CHECK \$15.00

STIPULATION OF DISMISSAL

Dear Clerk:

The Parties, by their undersigned counsel agree and stipulate that this matter be dismissed with prejudice. Costs to be paid by Defendant.



Edward T. Pinder, Esquire  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
(301)687-7878

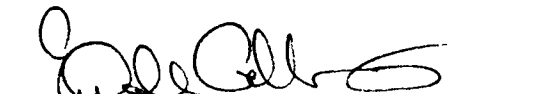


E. Dale Adkins, III  
Suite 2000  
201 N. Charles Street  
Baltimore, Maryland  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing Stipulation of Dismissal was mailed to: Edward T. Pinder, Esquire, 628 Eastern Boulevard, Baltimore, Maryland 21221.

11-12-90  
Dated

  
E. Dale Adkins, III

**FILED**

**NOV 14 1990**

CIRCUIT COURT FOR  
BALTIMORE CITY

18

MICHAEL D. TIMMONS,  
A Minor, by Cheryl Allen,  
His Mother and Next Friend

Plaintiff

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\* \* \* \* \*

\* IN THE  
\* CIRCUIT COURT

\* FOR  
\* BALTIMORE CITY

\* Case No. 89075003/CL94437

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Factual Background

On March 16, 1989, Michael Deon Timmons ("Timmons"), a minor, instituted this medical malpractice suit against Johns Hopkins Hospital ("Hopkins" or the "Hospital"), by his mother and next friend, Cheryl Allen ("Allen").<sup>1</sup> Plaintiff alleges negligence and gross negligence in connection with his birth and the care he received afterwards.

In the early morning hours of June 25, 1970, the hospital admitted Allen, a pregnant 13-year-old who had not been registered for prenatal care. Timmons, who was a breech presentation, was delivered by a partial breech extraction. Because Timmons was delivered prematurely, he was placed in an incubator, where he was treated with oxygen through an arterial catheter.

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1. Allen was originally a named Plaintiff, but her claim for damages was dismissed by Judge Thomas Ward on June 2, 1989.

Plaintiff alleges that the delivery by breech extraction was contrary to the proper and accepted standards of medical care for premature infants. Furthermore, Plaintiff alleges that the arterial catheter which measured oxygen was negligently positioned, and that hospital personnel failed to give proper medical attention to Plaintiff.

Timmons contends that he suffered permanent serious neurological, ophthalmological and other injuries as a direct and proximate result of Defendant's negligence. Plaintiff also claims that because he is blind, he cannot obtain a job to support himself. He seeks compensatory damages in the amount of ten million dollars (\$10,000,000), and punitive damages in the amount of twenty million dollars (\$20,000,000).

The Hospital has filed a Motion for Partial Summary Judgment (the "Motion") as to the claim for punitive damages. Defendant's Motion is premised on the case of Miller v. Schaefer, 80 Md. App. 60 (1989), which holds that a plaintiff in a medical malpractice action must prove "actual malice" in order to recover punitive damages.<sup>2</sup> Defendant argues that Timmons has not alleged actual malice on the part of the Hospital or its employees, so that the Hospital is entitled to

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2. Actual malice is defined as "the performance of an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff." H & R Block, Inc. v. Testerman, 275 Md. 36, 43 (1975). Facts to show actual malice must be alleged with specificity. Smith v. Gray Concrete Pipe Co., 267 Md. 149, 168 (1972).

judgment as a matter of law with respect to punitive damages. Plaintiff vigorously contends that Defendant's reliance on Miller is misplaced. Timmons argues that he must prove only "implied malice" on the part of Hopkins in order to recover punitive damages,<sup>3</sup> and that the Motion must fail.

## II. Discussion

### A) The Recovery of Punitive Damages

Punitive or exemplary damages are allowed in pure tort cases because "they operate to punish reprehensible and outrageous conduct and to set an example which will serve to deter the wrongdoer and others from engaging in such conduct in the future." General Motors Corp. v. Piskor, 281 Md. 627, 638 (1977). But punitive damages are not recoverable in breach of contract cases. Id. at 638-39.

A...reason for prohibiting recovery for punitive damages in pure contract cases is that the mere availability of such a remedy would severely jeopardize the stability and predictability of commercial transactions, so vital to the smooth and efficient operation of the modern American economy.

Id. at 639.

Exemplary damages are available for the so-called "torts arising out of contractual relations." They constitute "a class of actions that lies somewhere in the gray area

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3. Implied malice is defined as "conduct of an extraordinary nature characterized by a wanton or reckless disregard for the rights of others." Wedeman v. City Chevrolet Co., 278 Md. 524, 532 (1976).

separating pure torts from contract cases." Id.<sup>4</sup> While often bearing a close resemblance to actions for pure breach of contract, this category of torts frequently "involve conduct of the most opprobrious kind, which society might well seek to punish and deter by means of exemplary damages." Id.

In H & R Block, Inc. v. Testerman, 275 Md. 36 (1975), the Court held that actual malice must be proven in order to recover punitive damages in a tort action arising out of a contractual relationship. Moreover, the contractual relationship must precede the tortious conduct. Wedeman v. City Chevrolet Co., 278 Md. 524, 529 (1976). For an alleged wrong to constitute a tort arising out of a contractual relationship, there must also be "a direct nexus between the tortious act and performance or breach of the terms and conditions of the parties' underlying contract." Piskor, supra, 281 Md. at 640. Accord, Wedeman, supra. See also, K & K Management, Inc. v. Lee, 316 Md. 137, 174-176 (1989).

The Court in Piskor explained the genesis of the rule enunciated in Testerman as follows:

Recognizing that torts arising out of contractual relationships exhibit characteristics of both tort and contract actions, we sought in Testerman to fashion a workable rule governing the recovery of punitive damages which would be more stringent than that applied in pure tort cases, but which at the same time would allow

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4. As the Court stated in Miller Bldg. Supply v. Rosen, 305 Md. 341, 349 (1986):

Perhaps the clearest applications of [this] principle occur when the plaintiff and the tortfeasor are in privity and the conduct of the tortfeasor may properly be pleaded alternatively...as a breach of contract and as a tort.



the possibility of recovery where the particular conduct clearly warranted the imposition of such damages.

281 Md. at 639.

In Miller v. Schaefer, supra, the Court of Special Appeals extended the Testerman doctrine to medical malpractice actions. Miller involved a doctor's negligence in performing surgery on a patient without informed consent. The Court analyzed the relationship between a physician and patient as generally a consensual one, arising out of an express or implied contract, and explained:

[W]hen the professional services of a physician are accepted by another person for the purposes of medical or surgical treatment, the relation of physician and patient is created. The relation is a consensual one wherein the patient knowingly seeks the assistance of a physician and the physician knowingly accepts him as a patient. The relationship between a physician and a patient may result from an express or implied contract, either general or special, and the rights and liabilities of the parties thereto are governed by the general law of contract, although the existence of the relation does not need to rest on any express contract between the physician and the person treated.

80 Md. App. at 73-74 (citation omitted).

The Court found that, in agreeing to elective cataract surgery, the Plaintiff patient, an adult, had entered into a voluntary contractual agreement with the physician, with whom she had a longstanding prior relationship. 80 Md. App. at 68. The tort complained of "consisted of nothing more than an allegedly negligent performance of contract obligations." Id. at 76 (quoting Piskor, supra, 281 Md. at 637). As a result, the Court reversed the judgment for punitive damages, because the plaintiff had not proven the doctor's actual malice.

B) The Relationship Between The Parties

There is no absolute requirement for a contractual relationship between a health care provider and a patient in order to recover for malpractice. "The relationship of physician to patient on which malpractice depends need not be created by contract." 70 C.J.S., Physicians and Surgeons, Sec. 63 (1987). See also, Ryans v. Lowell, 197 N.J. Super. 266, 484 A.2d 1253, 1257 (1984). See generally, Annotation, What Constitutes Physician-Patient Relationship for Malpractice Purposes, 17 A.L.R. 4th 132 (1982). In the absence of a contract between Timmons and Hopkins, or Allen and Hopkins, the reasoning of Miller cannot apply insofar as punitive damages is concerned. Accordingly, the precise basis of the relationship between the parties must be ascertained to determine whether or not Testerman and Miller apply here.<sup>5</sup>

Clearly, the relationship between the parties in the instant case differs in several important respects from prior cases that have addressed the Testerman doctrine. In

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5. Analysis of the case law dealing with medical malpractice during pregnancy and childbirth shows that the specific legal basis of the physician's relationship to the fetal or newborn infant patient has not been the subject of much attention. Almost all discussion has focused on the adult parent patient. See generally, Annotation, Liability of Physician or Surgeon for Injury to Child in Pregnancy and Childbirth Cases, 99 A.L.R.2d 1398 (1965); Annotation, What Constitutes Physician-Patient Relationship for Malpractice Purposes, supra.

Testerman, itself, the plaintiffs hired the defendant to prepare their tax returns. As adults, they knowingly and voluntarily entered into an express contractual arrangement with the defendant. Similarly, the plaintiff in Miller was an adult who entered into a voluntary agreement with the defendant physician to perform elective surgery. In contrast, Timmons was plainly not an adult who knowingly, voluntarily, or expressly contracted with Hopkins. Moreover, Timmons' mother, Allen, was herself only a minor at the relevant time.<sup>6</sup>

1) Contract Entered By Timmons?

Defendant argues that Timmons had the capacity to contract and that a contract existed between Timmons and Defendant at the time of the alleged negligence. Defendant bases its contention on the principle that a minor has the capacity to enter into a contract. See Monumental Bldg. Ass'n v. Herman, 33 Md. 128, 131-32 (1870); Anderson v. Smith, 33 Md. 465 (1871); McBriety v. Spear, 191 Md. 221 (1947); Crown Cork & Seal Co. v. Frankhanel, 49 F.Supp. 611 (D.Md. 1943).

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6. Courts have often implicitly assumed a general duty of physician to fetus or newborn while dealing with other issues. See, e.g., Hetrick v. Weimer, 67 Md. App. 522, 541 (1986), rev'd, Weimer v. Hetrick, 309 Md. 536 (1987) (assuming a "physician's duty to his patient" in course of analyzing causation); Bergstreser v. Mitchell, 577 F.2d 22 (8th Cir. 1978) (holding that infant stated cause of action under Missouri law against physicians and hospital based upon defendants' negligent performance of Caesarean section); Nemmers v. United States, 612 F.Supp. 928 (C.D. Ill. 1985), vacated, 795 F.2d 628 (7th Cir. 1987) (analyzing deviations from the standard of care and proximate causation components of negligence in holding United States liable to child under Maryland law with respect to obstetrical care).

For certain contracts, such as those for necessities, a minor will be bound to his contract. Monumental, supra. "Where the Court can see that the contract is to the infant's prejudice, it is void; but where for his benefit, or uncertain in its nature, it is valid or voidable only at the election of the infant when of age." Id. at 132. Accordingly, a doctor's emergency services reasonably required by a minor have been deemed necessities for which a minor may bind himself and his estate. 42 Am. Jur. 2d, Infants, Sec. 72 (1969). See generally, Annotation, Infant's Liability for Medical, Dental, or Hospital Services, 53 A.L.R. 4th 1249 (1987). Assuming, arguendo, that Timmons had the capacity to contract, and that the services were necessities, the material question here is whether he did contract with Hopkins.

In Madison General Hosp. v. Haack, 124 Wis. 2d 398, 369 N.W. 2d 663 (1985), the court dealt with a hospital's claim for payment of the costs of medical care provided to a minor defendant mother who disputed any agreement to pay for obstetrical costs. At trial, the defendant testified that she was very ill when she entered the hospital, and in no condition to agree to anything. The Supreme Court of Wisconsin agreed that the defendant never contracted to pay. It concluded that the common law doctrine that a minor may be liable for necessities furnished on the credit of the minor was not applicable under such circumstances, and therefore that no

recovery would lie. Id<sup>7</sup>.

A similar analysis was employed in Westrate v. Schipper, 284 Mich. 383, 279 N.W. 870 (1938), where an injured minor was taken unconscious to the hospital. The court held that there could be no recovery based on a theory of express or implied contract between the physician and minor, and rejected the premise that a person in such condition could make any kind of agreement. 284 Mich. at 385-86.

Notwithstanding the doctrine of necessities, Haack and Westrate present compelling arguments as to why the minor Plaintiff in this case should not be deemed to have entered into a contractual relationship, express or implied, with Defendant for his medical care.<sup>8</sup> If the minor in Haack, indigent and ill as she might have been, was held not to have contracted for medical care, how could a fetus be deemed to have contracted for its own birth or care?

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7. Based on the facts of the case, the court also rejected the hospital's argument that the minor defendant was liable on a theory of unjust enrichment based on a quasi-contractual obligation imposed by law. Even assuming, arguendo, a basis for imposition of quasi-contractual liability here, this court will not extend Testerman to torts arising out of a quasi-contractual obligation.

8. This same analysis would seem to apply, by analogy, to any argument advanced by Defendant that Timmons consented to treatment pursuant to Md. Code, Health-Gen. Art., Sec. 20-102(b). This section provides:

Emergency Treatment -- A minor has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

The issue is whether such consent has been given, rather than the capacity to consent.

Similarly, if the minor in Westrate was found not to have contracted, because unconscious, it would seem illogical to maintain that there was any enforceable agreement on the part of a baby in the very process of being born. This court finds persuasive the analyses set forth above and the conclusion they mandate that the doctrine of necessities is inapplicable to establish a contract between Timmons and Hopkins.<sup>9</sup>

2) Contract Entered By Allen?

Defendant contends that although Allen was only 13 years old at the time of Plaintiff's birth, she had the legal capacity to give consent for medical treatment on Plaintiff's behalf. The Hospital claims that Allen had both the legal obligation to seek medical care for her child and the legal capacity to give consent for such care, and that she should be held to have contracted with Hopkins on Plaintiff's behalf.

A parent is responsible by law for the support, care and welfare of her minor child. Md. Code, Health-Gen. Art., Sec. 5-203(b)(1). See generally, 67A C.J.S., Parent and Child, Sec. 11 (1978). This legal obligation includes the duty to obtain medical care. See, e.g., Craig v. State, 220 Md. 590, 596 (1959); Robey v. State, 54 Md. App. 60, cert. denied, 296 Md. 224 (1983).

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9. Even if the doctrine of necessities applied, Defendant has not met the requirement under Wedeman, supra, that the contractual relationship "precede" the alleged tortious conduct; Timmons was not yet born at the time of the alleged negligence with respect to his delivery.

In addition, a "parent...may speak and act for his child when the child is legally incapable of acting for himself, and others may properly rely on the action of the parent in such circumstances." 59 Am. Jur. 2d, Parent and Child, Sec. 9 (1987).<sup>10</sup> A minor also has the same capacity as an adult to consent to medical treatment if the minor is the parent of a child. Md. Code, Health-Gen. Art., Sec. 20-102(a)(2).

In accord with these principles, an infant is bound by the assumption of risk of its parents in securing treatment at a hospital. Weston's Adm'x v. Hospital of St. Vincent, 131 Va. 587, 592-93, 107 S.E. 785 (1921). In Doyle v. Giuliucci, 62 Cal. 2d 606, 43 Cal. Rptr. 697, 401 P.2d 1 (1965), the court held that a contract entered by an infant's father for medical care was binding on the infant. The court found that "the power to enter into a contract for medical care...is implicit in a parent's right and duty to provide for the care of his child." 401 P.2d at 3. The court stated:

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10. As to contracts generally,

"[t]he parent of a minor child, although its natural guardian, is not, merely by reason of the parent-child relation, the agent of the child. And no presumption of the parent's agency arises merely from the relationship. By force of his relationship merely, a parent cannot bind his minor child by contracts made in his behalf."

Id. (footnotes omitted).

There are compelling reasons for recognizing that power. Since minors can usually disaffirm their own contracts to pay for medical services, it is unlikely that medical groups would contract directly with them. They can be assured the benefits of group medical service only if parents can contract on their behalf. Unless such contracts unreasonably restrict minors' rights, they should be sustained.

Id. (citation omitted).

In a related context, it has been held under the doctrine of informed consent that a surgeon generally must obtain the informed consent of a parent of a minor for the minor's medical care. See 61 Am. Jur. 2d. Physicians and Surgeons Sec. 178 (1981); see generally, Annotation, Medical Practitioner's Liability for Treatment Given Child Without Parent's Consent, 67 A.L.R.4th 511 (1989). As the court stated in Roberts v. Patel, 620 F.Supp. 323, 324 (C.D. Ill. 1985), "[t]his court is at a loss to say who may consent to the treatment of an unborn fetus if not the unborn fetus' parent." If a parent is not able to give consent on behalf of a child, the court explained, "any non-emergency surgical procedures performed would constitute a battery upon the infant, subjecting physicians...to intentional tortious liability." Id. at 324-25, n.1.<sup>11</sup>

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11. Where there is a medical emergency making it impractical or dangerous to delay treatment in order to obtain parental consent, the courts have sometimes held that implied consent is present. See Annotation, Medical Practitioner's Liability for Treatment Given Child Without Parent's Consent, supra, 67 A.L.R.4th 511 at section 5. However, Professors Prosser and Keeton object to this implied consent theory in emergency situations, explaining that "such lawful action is more satisfactorily explained as a privilege" which would allow a physician to avoid liability for his action on the basis of its being unauthorized due to its being justified. Prosser and Keeton, The Law of Torts, Sec. 118 (5th ed. 1984).



Although Allen may have had the capacity to enter into a contract for Timmons' medical care, it is a factual question as to whether such a contract was formed. Relying on Haack and Westrate, supra, this court cannot say whether Allen contracted with Defendant. Such material questions of fact are not addressed by the parties or the pleadings. If no such contract was entered, the alleged tortious conduct clearly did not arise out of any contractual relationship.

3) Alternative Bases of Healthcare Provider-Patient Relationship

Defendant suggests, erroneously, that the relationship between Allen/Timmons and Hopkins was, by definition, contractual in nature. Consequently, Hopkins argues that the analysis of Miller applies for purposes of punitive damages. But Plaintiff argues that this case is distinguishable from Miller because Defendant is not a physician, but a hospital.<sup>12</sup>

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12. The general principles governing in negligence cases apply to medical malpractice claims involving hospitals. Shilkret v. Annapolis Emerg. Hosp., 276 Md. 187, 190, 201 (1975); Benson v. Mays, 245 Md. 632, 636 (1967), "[A] hospital is required to use the degree of care and skill which is expected of a reasonably competent hospital in the same or similar circumstances". Shilkret, 276 Md. at 202. See also, Fleming v. Prince George's County, 277 Md. 655 (1976); Hahn v. Suburban Hosp. Ass'n, 54 Md. App. 685 (1983). These general standards apply in the area of obstetrical malpractice. See generally, Annotation, Hospital's Liability for Injury or Death in Obstetrical Cases, 37 A.L.R.2d 1284 (1954).

It is clear that hospitals are subject to extensive licensing and regulatory schemes. See, e.g., Code, Health-Gen. Sec. 19-318-330 (licensing requirements and procedure); Code, Health-Gen. Sec. 19-345 (restricting the transfer or discharge of a patient from a medicaid certified facility); Code, Health-Gen. Sec. 19-351 (requiring hospitals to provide for use of facilities and staff privileges for qualified podiatrists and dentists). Nevertheless, a private hospital is not under a common law duty to serve everyone who seeks treatment. In the absence of statute, a hospital may accept or reject applications for treatment. Levin v. Sinai Hosp. of Balto., 186 Md. 174, 180 (1945). No statutory or other authority has been produced to show that Defendant was required to accept Allen as a patient, due to her medical condition or otherwise.<sup>13</sup> But if Defendant had no right to refuse treating Allen, this fact might cast doubt on the existence of a contractual relationship between the parties, and remove this case from the ambit of the Testerman doctrine.<sup>14</sup>

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13. Presumably, at trial, Plaintiff will attempt to show state or federal statutes or regulations, provisions of Defendant's own charter or bylaws, hospital accreditation standards, and/or the generally recognized standards of care existing at the time of the occurrence, to establish such an obligation. Cf. Hahn v. Suburban Hosp. Ass'n, 54 Md. App. 685 (1983).

14. Of course, even if the hospital had no obligation to accept Allen as a patient, this does not mean that Defendant would necessarily avoid liability, because both Allen and Timmons did actually receive medical treatment from Defendant.

Moreover, an obligation independent of contract may well apply here. The law imposes upon a health care provider a duty to a patient to exercise ordinary care and skill, and this duty arises regardless of whether the services are being rendered gratuitously or for consideration. Benson, supra, 245 Md. at 636, n.2. The rule was set out more fully in the case of Hoover v. Williamson, 236 Md. 250, 253-54 (1964):

[A] physician may incur a tort obligation which is nonconsensual and independent of contract. This is the general rule that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all.

As noted previously, the courts applying these principles in medical malpractice cases involving pregnancy and childbirth have not always analyzed or articulated the bases of a health care provider's duty to a fetus or infant. But courts have consistently concluded that a direct and independent duty exists to protect the rights of the fetus or infant through the application of general principles of negligence law. As the court stated in Criss v. Angelus Hosp. Ass'n of Los Angeles, 13 Cal. App. 2d 412, 56 P.2d 1274, 1278 (1936):

[W]e do not understand that when an obstetrician undertakes to deliver a woman of a child, he may order the child trundled off without a spank or a preliminary look and devote his entire attention at the time and during the hospital confinement to the mother alone.

See, also, Summerfield v. Superior Court, Maricopa Cty., 144 Ariz. 467, 698 P.2d 712, 715 (1985) (defendant physicians "had undertaken a direct duty of care to the fetus as well as

to the mother"); Roberts v. Patel, supra, (physicians of child's mother owed duty of informed disclosure not only to mother but to child as well); Hughson v. St. Francis Hosp. of Port Jervis, 92 A.D.2d 131, 459 N.Y.S.2d 814 (1983) (obligation of physician to obtain informed consent from parent encompassed within independent duty flowing between doctor and infant in utero). See generally, Annotation, Liability of Physician or Surgeon for Injury to Child in Pregnancy and Childbirth Cases, supra,; Annotation, Liability for Prenatal Injuries, 40 A.L.R.3d 1222, Sec. 9, (1971).

This analysis demonstrates that there are bases, other than contractual, upon which the relationship between health care provider and patient may be predicated. While the parties in the instant case may have contracted for medical treatment, with Allen acting on behalf of Timmons, this is not necessarily so, and resolution involves questions of fact not yet addressed. Further, even if no such contractual relationship existed, other grounds may establish Hopkins' duty to Plaintiff, independent of contract, for which punitive damages may be recoverable.<sup>15</sup> The critical question at trial regarding this issue will involve the precise basis of the relationship between Hopkins and Timmons in this case.

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15. Defendant's contention that Timmons must be deemed to have "ratified" a contract with the Hospital by bringing this action must fail. There may have been a duty, independent of contract, due him from the Hospital. Since this action would not necessarily fail even if no contractual relationship was created, it cannot be said as a matter of law that Timmons ratified a contract by filing suit.

Since this question must await the resolution of genuinely disputed material facts, Defendant's Motion cannot succeed on this ground.

C) Sufficiency of Allegations of Malice

Defendant's remaining contention can be dealt with more briefly. Relying on Smith v. Gray Concrete Co., 267 Md. 149 (1972), Defendant argues that even if Plaintiff is required to prove only implied malice to support punitive damages, Plaintiff has failed to allege with the requisite sufficiency facts to support such malice. This contention has little merit.

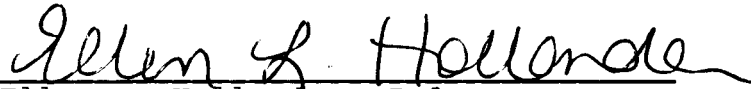
In Smith, the Court set forth the level of particularity of pleading necessary in a case for punitive damages: "No bald or conclusory allegations of 'wanton or reckless disregard for human life,' or language of similar import, shall withstand attack on grounds of insufficiency...[F]ar greater specificity will be required...." 267 Md. at 168. See also, Nast v. Lockett, 312 Md. 343, 370 (1988). The allegations relied upon by the plaintiff and approved by the Court in Smith were spelled out in considerable detail. See 267 Md. at 168-71. The complaint there set forth several specific acts or omissions of the defendant employer in negligently entrusting a truck to an employee, and several specific aspects in which this conduct deviated from the standard of care to which it was required to adhere. See id.

In the instant case, Defendant claims that Plaintiff merely recites bald and conclusory language in support of this claim for punitive damages. This contention is erroneous.

The Complaint contains a Statement of Facts which presents the essential events at issue surrounding Timmons' birth and treatment immediately thereafter. Additionally, Plaintiff specifically sets forth five grounds on which he bases his claim that Defendant violated the standard of care due him. Complaint at 3. It is only then that Plaintiff alleges that the conduct spelled out constituted reckless and gross indifference to human life. As a result, this court finds that Plaintiff has met the pleading requirements enunciated in Smith.

Therefore, for the foregoing reasons, it is this 20<sup>th</sup> day of August, 1990, by the Circuit Court for Baltimore City,

ORDERED that Defendant's Motion for Partial Summary Judgment be, and the same hereby is, DENIED.

  
Ellen L. Hollander, Judge

cc: E. Dale Adkins, III, Esquire  
Edward T. Pinder, Esquire

17A

MICHAEL DEON TIMMONS	*	IN THE
a minor, by Cheryl Allen,	*	CIRCUIT COURT
his mother and next friend	*	
and	*	FOR
CHERYL ALLEN	*	BALITMORE CITY
Plaintiffs	*	
v.	*	Case No. 89075003/CL94437
THE JOHNS HOPKINS HOSPITAL	*	
Defendant	*	
* * * * *		

SCHEDULING ORDER

Counsel for both parties participated in a scheduling conference on Friday, July 20, 1990. Accordingly, it is hereby ORDERED by the Circuit Court for Baltimore City as follows:

I. Discovery

Discovery shall continue immediately and shall be completed by all parties by Monday, October 22, 1990. All interrogatories, depositions and requests for documents shall be filed so that responses will be completed by that date under the Maryland Rules.

Motions to compel answers or further answers to interrogatories or answers or further answers to requests for production shall be filed within 10 days of the filing of the answers or objections, or if not so filed, shall be deemed to have been waived. Any such motions must be accompanied by a certificate of compliance with Md. Rule 2-431. Any motion without such certification shall be denied. Any response to discovery motions must be filed within five days after the service of the motions.

This Court will thereafter rule on the Motion to Compel on the papers submitted, unless the Court orders that a hearing be held.

Plaintiff shall furnish Defendant with the names of all expert witnesses by July 30, 1990. Defendant shall provide Plaintiff with the name of all expert witnesses by September 4, 1990.

II. Pre-trial Filings

Any motion, including a Motion for Summary Judgment, shall be filed on or before November 5, 1990. Any response to that Motion shall be filed on or before Monday, November 19, 1990. Any reply to the response shall be filed on or before Thursday, November 29, 1990. A hearing shall be held at 10:00 a.m. on December 5, 1990.

III. Pre-trial Conference

A pre-trial conference will be held at 4:00 p.m. on Wednesday, December 19, 1990.

A pre-trial order must be submitted to the Court on or before Friday, October 5, 1990. Counsel are reminded to comply with the requirements of Md. Rule 2-504. The proposed pre-trial Order shall be drafted by counsel for the Plaintiff and submitted to counsel for the Defendant for revision, review and execution.

Proposed pre-trial orders shall not be submitted in separate parts but shall be the joint product of the efforts of all counsel after they have conferred at sufficient length. It



shall be signed by the attorneys for all parties. Attorneys shall obtain prior authority from clients to enter into stipulations as to as many facts and issues as may be practicable.

An attorney who will actually participate and who is familiar with all aspects of the case shall appear and participate in the pre-trial conference.

Any voir dire, jury instructions, pre-trial memoranda and motions in limine shall be submitted no later than Friday, December 14, 1990. Pursuant to the Agreement of counsel, the parties need not exchange proposed jury instructions until such time as the Court deems it necessary in order to discuss the content of the jury instructions.

#### IV. Trial

The trial of this case will begin at 10:00 a.m. on January 8, 1991. Four weeks have been scheduled for the trial of the case. If additional time or lesser time is necessary, or if the case is to be tried other than by jury, counsel should inform the Court immediately.

#### V. Changes in Schedule

The dates ordered in the Scheduling Order shall control the pre-trial preparation and trial of this case. Variations, adjustments or changes in the schedule, without prior concurrence of the Court, will not be permitted. The dates herein shall become final and binding upon all parties unless written exception(s) has been taken within seven days of this date.

VI. Filings

A copy of all motions or other filings in this case which have been filed with the Clerk's Office shall be filed in the chambers of this Court simultaneously (with the exception of discovery).

SO OREDERED, this 1<sup>st</sup> day of August, 1990.

**JUDGE ELLEN LIPTON HOLLANDER**

---

Ellen L. Hollander, Judge

cc: E. Dale Adkins, III, Esquire  
Edward T. Pinder, Esquire  
Clerk, Circuit Court for Baltimore City

LAW OFFICES

ANDERSON, COE & KING

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HUGH CROPPER, IV  
DEBRA L. WYNNE  
JILL R. LEINER  
DEBORAH J. CLARKE  
JAMES S. AIST

May 7, 1990

Edward T. Pinder, Esquire  
628 Eastern Boulevard  
Baltimore, Maryland 21221

RE: Michael Deon Timmons, et al.  
v. Johns Hopkins Hospital

Dear Mr. Pinder:

Notice to Take Deposition and Subpoena Duces Tecum have been served upon Dr. Abramson in reference to this matter. In the past, I have had Subpoenas served on Dr. Abramson yet he consistently has refused to produce the requested records.

If any objections are to be raised regarding the Subpoena, I request that you raise them now and petition for whatever protective measures you desire. If objections are to be raised I want a hearing before Judge Hollander before the deposition so that we do not waste time at the deposition or have to reconvene the deposition.

Unless I hear from you, I will assume that no objections are made to the Subpoena and that all documents will be produced at the deposition.

Thank you for your consideration in this matter.

Very truly yours,

E. Dale Adkins, III

EDA, III:sma

cc: The Honorable Ellen Hollander

MICHAEL DEON TIMMONS	*	IN THE
a minor, by Cheryl Allen,	*	CIRCUIT COURT
his mother and next friend	*	
and	*	FOR
CHERYL ALLEN	*	BALITMORE CITY
Plaintiffs	*	
v.	*	Case No. 89075003/CL94437
THE JOHNS HOPKINS HOSPITAL	*	
Defendant	*	

\* \* \* \* \*

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Proposed pre-trial orders shall not be submitted in separate parts but shall be the joint product of the efforts of all counsel after they have conferred at sufficient length. It

shall be signed by the attorneys for all parties. Attorneys shall obtain prior authority from clients to enter into stipulations as to as many facts and issues as may be practicable.

An attorney who will actually participate and who is familiar with all aspects of the case shall appear and participate in the pre-trial conference.

Any voir dire, jury instructions, pre-trial memoranda and motions in limine shall be submitted no later than Friday, December 14, 1990. Pursuant to the Agreement of counsel, the parties need not exchange proposed jury instructions until such time as the Court deems it necessary in order to discuss the content of the jury instructions.

#### IV. Trial

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#### V. Changes in Schedule

The dates ordered in the Scheduling Order shall control the pre-trial preparation and trial of this case. Variations, adjustments or changes in the schedule, without prior concurrence of the Court, will not be permitted. The dates herein shall become final and binding upon all parties unless written exception(s) has been taken within seven days of this date.

VI. Filings

A copy of all motions or other filings in this case which have been filed with the Clerk's Office shall be filed in the chambers of this Court simultaneously (with the exception of discovery).

SO ORDERED, this 1<sup>st</sup> day of August, 1990.

  
\_\_\_\_\_  
Ellen L. Hollander, Judge

cc: E. Dale Adkins, III, Esquire  
Edward T. Pinder, Esquire  
Clerk, Circuit Court for Baltimore City

10/2/89 <sup>Def's</sup> Plaintiff's Answers to  
Interrogatories



FILED

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MICHAEL DEON TIMMONS,  
a minor, by Cheryl Allen  
his mother and next friend

CIRCUIT COURT FOR  
BALTIMORE CITY

IN THE  
CIRCUIT COURT  
FOR BALTIMORE CITY

Plaintiffs

v.

:

89075003/CL94437

THE JOHNS HOPKINS HOSPITAL

:

Defendant

:

ANSWERS TO INTERROGATORIES

TO: Michael Deon Timmons, a minor, by Cheryl Allen, his mother and next friend

FROM: The Johns Hopkins Hospital, Defendant

a. The information supplied in these Answers is not based solely on the knowledge of the executing party, but includes the knowledge of the party's agents, representatives and attorney, unless privileged.

b. The word usage and sentence structure is that of the attorney and does not purport to be the exact language of the executing party.

Interrogatory 1: State the title, the name of the author, page reference, publisher, and the date of publication of each medical book, journal, magazine, newsletter or other medical publication referred to or relied on in treating the Plaintiff, Michael Deon Timmons, or in forming an opinion concerning his diagnosis and treatment, the information sought or relied on, and the reason for referring to that publication.

Answer: Defendant objects to this interrogatory and respectfully refuses to answer on the grounds that the information sought is admissible only on cross-examination and therefore is outside the scope of permissible discovery. Nolan v. Dillon, 261 Md. 516 (1971). Without waiving this objection, the physicians involved cannot recall with any specificity the use of reference materials, including whether such materials were used, or if so, the reference.

Interrogatory 2: For each x-ray taken, state who performed the x-ray, who interpreted each x-ray, the number and view of each x-ray, a description of the findings made from each x-ray, the time and date of each evaluation of each x-ray and who performed the evaluation, and state their business and residential addresses.

*W*

Answer: During the June 25, 1970 admission, the following x-rays were performed:

6-25-70 at 9:10 AM - 1 AP chest film ordered by Dr. Bartholome; report filed 6-29-70 by Dr. Dorst. A description of the findings is contained in the x-ray report, a copy of which is in the medical records, and incorporated as further answer to this interrogatory.

6-25-70 at 9:20 AM - 2 views AP chest film ordered by Dr. Valle; report filed on 6-29-70 by Dr. Dorst. A description of the findings is contained on the report, a copy of which is in the medical records, and incorporated as further answer to this interrogatory.

6-26-70 at 11:00 AM - 1 view AP chest ordered by Dr. Valle; report filed 6-29-70 by Dr. Fisher. A description of the findings is contained in the report, a copy of which is contained in the medical records, and incorporated as further answer to this interrogatory.

6-27-70 at 9:40 AM - 2 views AP chest ordered by Dr. Valle; report filed on 6-29-70 by Dr. Fisher. A description of the findings is contained in the report, a copy of which is contained in the medical records, and incorporated as further answer to this interrogatory.

6-27-70 at 9:55 AM - 1 view AP chest ordered by Dr. Valle; report filed 6-29-70 by Dr. Fisher. A description of the

findings is contained in the report, a copy of which is contained in the medical records, and incorporated as further answer to this interrogatory.

6-29-70 (time unknown) - 1 view AP chest ordered by Dr. Valle; report filed 6-29-70 by Dr. Sanwalani. A description of the findings is contained in the report, a copy of which is contained in the medical records, and incorporated as further answer.

7-10-70 at 10:05 AM - 2 views AP chest ordered by Dr. Arkans; report filed 7-13-70 by Dr. Ensor. A description of the findings is contained in the report, a copy of which is contained in the medical records, and incorporated as further answer.

Interrogatory 3: Describe in detail the assimilation of information regarding Plaintiff Cheryl Allen's medical history, pregnancy and circumstances surrounding the pre-delivery, delivery, and post-delivery stages of medical care, identifying each source of the information and what information in particular led to the diagnosis, care and treatment of Michael Deon Timmons.

Answer: Nineteen years later, it is impossible to "describe in detail the assimilation" of information which led to the diagnosis, care and treatment of the patient. However, the information sought in this Interrogatory is contained in the medical records. Briefly, Ms. Allen presented on June 25, 1970 as a 13 year old, unregistered (ie, no prenatal care) patient with an estimated date of confinement of October, 1970. Plaintiff was a spontaneous breech delivery, born out of asepsis ("B.O.A.") with forcep extraction of the head. Birth weight was 1155 gms which was small for gestational age by dates, apgars of 4 and 4. Plaintiff was grunting, flaring and retracting, which are

signs of respiratory distress and had respiratory acidosis. The baby was placed in oxygen via hood and was closely monitored with arterial blood gases. There were episodes of apnea associated with color change. As the Plaintiff's respiratory condition improved, the oxygen was discontinued. Antibiotics were administered because the baby was B.O.A. and had an umbilical catheter. The Plaintiff also experienced hyperbilirubinemia (peak of 15.2) and anemia of prematurity (HCT as low as 26) which required transfusions. Eye examination revealed changes consistent with retinopathy of prematurity (R.O.P.) and follow-up exams were conducted by Dr. John Payne. Defendant incorporates the medical records relating to Plaintiff and Mrs. Allen as further answer to this Interrogatory.

Interrogatory 4: Indicate whether there has been any oral or written communication or report between yourself and any other person covering the diagnosis, care or treatment of the Plaintiff, Michael Deon Timmons and, if so, identify the person, the person's business and residential address, date, extent and content of each such communication or report.

Answer: Health Care Provider objects to this interrogatory and respectfully refuses to answer to the extent that the overly broad interrogatory clearly calls for information such as correspondence between counsel and client, memoranda, and other information protected by the attorney-client privilege, attorney work product privilege, or information produced in anticipation of litigation. The interrogatory also calls for information, if any exists, which is undiscoverable and inadmissible in a civil action pursuant to Md. Health Occ. Art.

Code Ann., § 14-601 and §14-510. Without waiving these objections, no such non-privileged communications exist.

Interrogatory 5: State why or why not you now believe that the diagnosis and treatment rendered to Plaintiff, Michael Deon Timmons was correct.

Answer: The minor Plaintiff was a premature infant experiencing respiratory distress for which oxygen was needed and closely monitored. The oxygen was adjusted according to the baby's condition. There were episodes of apnea and periodic breathing some with color change. Plaintiff also experienced hyperbilirubinemia (peak of 15.2), and anemia of prematurity requiring transfusions. All of these actions were within the acceptable standards of care.

Interrogatory 6: State whether David Valle, M.D., A. J. Friedler, M.D., Saul Brusilow, M.D., were agents, representatives or employees of The Johns Hopkins Hospital at the time of the occurrence, and if you contend any were not, state what their relationship to The Johns Hopkins Hospital at the time of the occurrence was.

Answer: Each of the named individuals were agents, representatives, or employees of The Johns Hopkins Hospital at the time of the occurrence.

Interrogatory 7: If you admit that David Valle, M.D., or A. J. Friedler, M.D., or Saul Brusilow, M.D., were agents, representatives or employees of The Johns Hopkins Hospital at the time of the occurrence, state if, when and for what reason, each or any of them terminated such relationship with The Johns Hopkins Hospital.

Answer: David Valle, M.D. and Saul Brusilow, M.D. remain agents, representatives, or employees of The Johns Hopkins Hospital. Information concerning Dr. Friedler's departure is being gathered.

Interrogatory 8: Was the condition of Plaintiff Michael Deon Timmons discussed with Plaintiff Cheryl Allen or was she informed of plaintiff Michael Deon Timmons' diagnosis and treatment plan and if so, indicate what was discussed and by whom, the date and place of each discussion, and who witnessed such discussions.

Answer: Mrs. Allen was informed of Mr. Timmon's diagnosis and treatment plan.

Dr. David Valle spoke to Mrs. Allen and the baby's father, James Bishop, in the nursery sometime in June, 1970. He does not recall the specific conversation other than a discussion of the baby's condition at that time. As it occurred in the nursery, other nursery personnel may have been present for all or part of that conversation.

Dr. A. Zurburna spoke to Mrs. Allen and her then 18 year old sister on August 14, 1970. He discussed the ophthalmologic examination under anesthesia and the possible need for photocoagulation or kryotherapy.

Dr. Zurburna discussed the treatment plan with the baby's grandmother on August 21, 1970. It is believed that Mrs. Allen was present at that discussion. Dr. Zurburna made them aware of the eye problems and told them that the ultimate outcome for sight was still uncertain but that treatment may be possible.

The mother made several visits to the nursery and it is believed that she spoke to both medical and/or nursing personnel on these visits. The dates of visits are believed to have been June 27, August 1, August 5, August 13, August 16, August 29, and

September 1. There may have been other visits the dates of which are unknown to the Defendant. It is not known what discussions occurred during those visits or with whom.

It is believed that Gail Shapiro, M.D. informed the mother of the vision problems and that the ultimate outcome for vision was uncertain. Dr. Shapiro also gave Mrs. Allen a premature follow-up clinic appointment for two weeks from the date of the baby's discharge to be seen by Dr. Shapiro. In addition, she gave Mrs. Allen an ophthalmological examination appointment for September 17, 1970 with Dr. John Payne.

Defendant believes that there were other communications not presently known to this Defendant. This Answer will be supplemented when this information is learned.

Interrogatory 9: If any medical personnel, including nurses, physicians, technicians, or radiologists were instructed as to the testing, treatment and care to be provided to Plaintiff Michael Deon Timmons, please provide each person's name, residential and business address, job title and the name, and residential and business addresses of the person who provided the instructions.

Answer: Health Care Provider objects to this Interrogatory to the extent that it is unclear what information is sought by this Interrogatory. If the Interrogatory requests information concerning the qualifications of the Health Care Providers caring for Plaintiff Michael Timmons, Defendant state that each medical personnel was fully licensed according to the laws and regulations of the State of Maryland.

Interrogatory 10: State whether David Valle, M.D., or A. J. Friedler, M.D., or Saul Brusilow, M.D. have had any formal or informal complaint, claim or legal action brought against him/them including the name and address of the complaining party, the date of any action, the medical or legal body before whom the complaint was brought, the nature and factual basis of the complaint and the legal status of said complaint as of this date.

Answer: Health Care Provider objects to this Interrogatory and respectfully refuses to answer to the extent that the information called for is undiscoverable and inadmissible pursuant to Md. Health Occ. Art. Code Ann. §14-510. It further objects as the information sought is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objections, no legal claims have been brought.

Interrogatory 11: State the names, business and residential addresses of all persons not heretofore named in your answers to these Interrogatories who have personal knowledge of facts concerning this matter.

Answer: None other than those persons identified in these Answers to Interrogatories or the medical records relating to Plaintiff Michael Timmons.

Interrogatory 12: Please state the name, business and residential addresses and area of expertise of each expert witness whom you intend to call upon at a hearing or trial in this action, and please attach a copy of any report prepared for you by said expert.

Answer: No experts have been named as of yet. This Interrogatory will be amended when their identities are known.

Interrogatory 13: Describe in detail the rules, procedures, guidelines and directives given to David Valle, M.D., A. J. Friedler, M.D., Saul Brusilow, M.D., concerning their duties, responsibilities and conduct while working at The Johns Hopkins Hospital during the time of this occurrence.

Answer: Health Care Provider is uncertain whether there were any written "rules, procedures, guidelines and directions" given to these physicians. There may have been general rules or policies that did not establish the standard of care applicable to this case. Health Care Provider is searching for any such policies and this answer will be supplemented.



Interrogatory 14: State the name of the people who were the supervising and attending physicians at the time of this occurrence, their titles, medical specialty and whether they were consulted concerning the Plaintiff Michael Deon Timmons' condition.

Answer: It is believed that Dr. Saul Brusilow was the attending physician for the nursery in either August or September, 1970. He had no contact with this case prior to that time.

It is believed that Dr. William O'Dell, pediatrics, was the attending physician in June, 1970 and that he was aware of and consulted concerning the Plaintiff's condition.

Dr. John Payne was the attending ophthalmologist. Dr. Payne was consulted concerning the Plaintiff's condition.

Interrogatory 15: If you contend that the Plaintiff Cheryl Allen caused or contributed to the negligent conduct complained of, state the factual basis for such contention.

Answer: As the cause of Retinopathy of Prematurity (ROP) is multi-faceted, Mrs. Allen may have caused or contributed to the injuries to the extent that she was a thirteen year old mother who sought no prenatal care. As discovery is continuing, this Defendant reserves the right to supplement this answer.

Interrogatory 16: Set forth in specific detail all of those facts upon which you rely in denying liability to the Plaintiffs.

Answer: The cause of Retinopathy of Premature (ROP) is multi-faceted. Defendant's agents and employees acted with reasonable care and diligence, keeping within the applicable standard of care, in the care and treatment rendered to the minor

Plaintiff. However, the minor Plaintiff was a premature infant experiencing respiratory distress for which oxygen was needed and closely monitored. The oxygen was adjusted according to the baby's condition. Plaintiff experienced hyperbilirubinemia and anemia of prematurity for which blood transfusions were necessary to maintain his hematocrit.

Interrogatory 17: If you contend that either of the Plaintiffs have made any admission or statement against interest in reference to the above captioned case, please describe in detail the nature and substance of any such alleged admission or statement against interest, and if such admission or statement is in writing, attach a copy of any such admission or statement to your answers.

Answer: No such contention is made at this time.

Interrogatory 18: Please identify and describe any and all medical records, hospital records, and x-rays which you contend are in any way related to your defense of the claim in the above captioned case, and identify the present custodian of such records or x-rays.

Answer: Defendant objects to this Interrogatory and respectfully refuses to answer to the extent that it calls for attorney work product. Without waiving this objection, Defendant states that all medical records relating to the minor Plaintiff and his mother are relevant.

Interrogatory 19: If you contend that any other person acted in such a manner as to cause or contribute to the occurrence complained of, identify any such person and give a concise statement of the facts upon which you rely on your contention.

Answer: No such contention is made.

Interrogatory 20: Identify each person, other than expert witnesses, whom you intend to call as witnesses on any question at the hearing of this case.

Answer: Defendant objects to this Interrogatory and respectfully refuses to answer on the grounds that it exceeds the permissible scope of discovery. The Interrogatory seeks the attorney's work product and trial strategy.

Interrogatory 21: Set forth in specific detail, all those facts upon which you rely in denying liability for the actions of David Valle, M.D., A. J. Friedler, M.D., and Saul Brusilow, M.D.

Answer: See Answer to Interrogatory No. 16.

I, Hamilton Moses, III, representative of Johns Hopkins Hospital, solemnly affirm under the penalties of perjury that the contents of the foregoing Answers to Interrogatories are true to the best of my knowledge, information and belief.

*Hamilton Moses, III*

Representative of Johns Hopkins Hospital

*E. Dale Adkins, III*  
E. Dale Adkins, III *Adkins*

*Barbara McC. Stanley*  
Barbara McC. Stanley  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this *28<sup>th</sup>* day of *September*, 1989, a copy of the foregoing Answers to Interrogatories were mailed to: William J. Blondell, Jr., Esquire and Edward J. Pinder, Esquire, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*Barbara McC. Stanley*  
Barbara McC. Stanely

7600B

MICHAEL D. TIMMONS  
a minor, by Cheryl Allen,  
his mother and next friend

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITALS  
Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* 89075003/CL94437

17  
ac

FILED  
APR 16 1990  
CIRCUIT COURT FOR  
BALTIMORE CITY

NOTICE TO TAKE DEPOSITION

You are hereby notified that Johns Hopkins Hospital, Defendant desires to the terms and provisions of the Maryland Rules, to take the deposition on oral examination of the following named person on the date and at the time indicated below, before a Notary Public, or any other Notary qualified to take depositions, at 4010 Linnean Avenue, North West, Washington, D.C., 20008 or other proper place; said deposition to be continued from time to time until completed.

Name: David Abramson, M.D.

Address: 4010 Linnean Avenue, N.W.  
Washington, D.C. 20008

Date and Time: June 5, 1990 at 9:00 a.m.

*E. Dale Adkins, III*

E. Dale Adkins, III *Bms*

*Barbara McC. Stanley*

Barbara McC. Stanley  
201 North Charles Street  
Suite 2000  
Baltimore, Maryland 21201  
752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of April, 1990, a copy of the foregoing Notice to Take Deposition and Subpoena Duces Tecum were mailed to: Edward T. Pinder, Esquire and Marc N. Peitersen, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*Barbara McC. Stanley*  
Barbara McC. Stanley



REQUEST 5: All purchase orders concerning the arterial catheter, used on Michael Deon Timmons.

RESPONSE 5: No such documents have been identified.

REQUEST 6: All diagrams and charts or x-rays relating to the arterial catheter placement in Michael Deon Timmons.

RESPONSE 6: The Johns Hopkins Hospital medical records for June 25, 1970 pertaining to Michael Deon Timmons contains notations as well as x-ray reports which relate to the arterial catheter placement. In addition, Defendant is in possession of x-rays pertaining of the placement of the arterial catheter and will make those x-rays available to Claimant, at his expense, if copies have not already been obtained.

*E. Dale Adkins, III*  
\_\_\_\_\_  
E. Dale Adkins, III *BMES*

*Barbara McC. Stanley*  
\_\_\_\_\_  
Barbara McC. Stanley  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 1990, a copy of the foregoing Response to Request for Production of Documents was mailed to Edward T. Pinder, Esquire and Marc N. Peitersen, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*Barbara McC. Stanley*  
\_\_\_\_\_  
Barbara McC. Stanley



15 ←

MICHAEL DEON TIMMONS \* IN THE  
a minor, by Cheryl Allen, \* CIRCUIT COURT  
his mother and next friend \*  
and \* FOR  
CHERYL ALLEN \* BALTIMORE CITY  
Plaintiffs \* Case No. 89075003/CL94437  
v. \*  
THE JOHNS HOPKINS HOSPITAL \*  
Defendant \*  
\* \* \* \* \*

SCHEDULING ORDER

Counsel for both parties participated in a scheduling conference on Friday, December 15, 1989. Accordingly, it is hereby ORDERED by the Circuit Court for Baltimore City as follows:

I. Motion for Partial Summary Judgment

A hearing on the pending Motion for Partial Summary Judgment ("Motion") will be held on Friday, January 12, 1990 at 9:30 a.m. in Courtroom 420.

II. Discovery

Discovery shall continue immediately and shall be completed by all parties by Friday, August 10, 1990. All interrogatories, depositions and requests for documents shall be filed so that responses will be completed by that date under the Maryland Rules.

Motions to compel answers or further answers to interrogatories or answers or further answers to requests for

production shall be filed within 10 days of the filing of the answers or objections, or if not so filed, shall be deemed to have been waived. Any such motions must be accompanied by a certificate of compliance with Md. Rule 2-431. Any motion without such certification shall be denied. Any response to discovery motions must be filed within five days after the service of the motions. This court will thereafter rule on the Motion to Compel on the papers submitted, unless the court orders that a hearing be held.

Plaintiff shall furnish Defendant with the names of all expert witnesses by March 12, 1990. Defendant shall provide Plaintiff with the name of all expert witnesses by May 25, 1990.

### III. Pre-trial Filings

Any motion, including a Motion for Summary Judgment, shall be filed on or before Friday, August 24, 1990. Any response to that Motion shall be filed on or before Monday, September 10, 1990. Any reply to the response shall be filed on or before Thursday, September 20, 1990. A hearing shall be held at 10:00 a.m. on September 26, 1990.

### IV. Pre-trial Conference

A pre-trial conference will be held at 4:00 p.m. on Thursday, October 11, 1990.

A pre-trial order must be submitted to the Court on or before Friday, October 5, 1990. Counsel are reminded to comply with the requirements of Md. Rule 2-504. The proposed pre-trial Order shall be drafted by counsel for the Plaintiff

and submitted to counsel for the Defendant for revision, review, and execution.

Proposed pre-trial orders shall not be submitted in separate parts but shall be the joint product of the efforts of all counsel after they have conferred at sufficient length. It shall be signed by the attorneys for all parties. Attorneys shall obtain prior authority from clients to enter into stipulations as to as many facts and issues as may be practicable.

An attorney who will actually participate and who is familiar with all aspects of the case shall appear and participate in the pre-trial conference.

Any voir dire, jury instructions, pre-trial memoranda and motions in limine shall be submitted no later than Monday, October 8, 1990. Pursuant to the agreement of counsel, the parties need not exchange proposed jury instructions until such time as the court deems it necessary in order to discuss the content of the jury instructions.

V. Trial

The trial of this case will begin at 10:00 a.m. on October 15, 1990. Four weeks have been scheduled for the trial of the case. If additional time or lesser time is necessary, or if the case is to be tried other than by jury, counsel should inform the Court immediately.

VI. Changes in Schedule

The dates ordered in the Scheduling Order shall control the pre-trial preparation and trial of this case. Variations,

adjustments or changes in the schedule, without prior concurrence of the Court, will not be permitted. The dates herein shall become final and binding upon all parties unless written exception(s) has been taken within seven days of this date.

VII. Filings

A copy of all motions or other filings in this case which have been filed with the Clerk's Office shall be filed in the chambers of this court simultaneously (with the exception of discovery).

SO ORDERED, this 20<sup>m</sup> day of December, 1989.

  
\_\_\_\_\_  
Ellen L. Hollander, Judge

cc: E. Dale Adkins, III, Esquire  
Edward T. Pinder, Esquire  
Clerk, Circuit Court for Baltimore City

E

FILED

MAR 2 1980

CIRCUIT COURT FOR BALTIMORE CITY

13A

MICHAEL D. TIMMONS  
a minor, by Cheryl Allen,  
his mother and next friend

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

IN THE  
CIRCUIT COURT

FOR  
BALTIMORE CITY

Case No. 89075003/CL94437

\* \* \* \* \*

PLAINTIFF'S MEMORANDUM IN RESPONSE TO MOTION  
FOR PARTIAL SUMMARY JUDGMENT

Now comes the Plaintiff, Michael Timmons, by his attorneys, Edward T. Pinder and William J. Blondell, Jr., Chartered, and in response to the supplemental memorandum in support of partial summary judgment, hereby responds:

1. The issue before the court is whether Michael Timmons is limited to compensatory damages for injuries received as a result of Johns Hopkins' alleged gross negligence.

2. The injuries were sustained by Michael Timmons at the time of his birth.

I. LAW

Maryland Law is well settled that a contract is a deliberate engagement between competent parties. Miller v. Palmer, 58 Md. 451 (1882). By entering into a contract, those competent parties agree to define their relationship in economic terms, and therefore, in an action for pure breach of contract, the motive of the breaching party is irrelevant, as punitive damages cannot be awarded. Siegman v. Equitable Trust, 267 Md. 314, 297 A.2d 785 (1972). Maryland Law, however, allows punitive damages where the

tort arises out of the contractual relationship is actual malice can be showed. The Maryland Court of Appeals in Knickerbacker v. Gardnier, 107 Md. 556, 69 A. 405 (1908) explains that "when the object of the breach was merely to benefit itself, although the Plaintiff would be thereby injured, there would be no more reason for allowing such damages than there would be in a suit by one party to a contract against the other for breach of it."

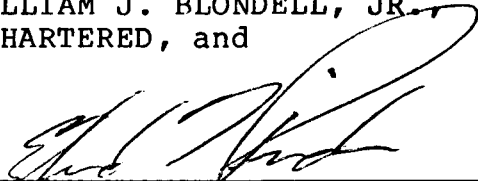
Therefore, the law contemplates that the competent party makes a knowing and voluntary decision to limit his right. The Plaintiff in the case at bar can certainly not be held to have made that deliberate decision to limit his rights.

Indeed, there has been no showing that at the time of the alleged acts of malpractice, the minor Plaintiff had any mental capacity. In Sewesterate v. Schipper, 279 N.W. 870, 284 Mich. 383, the Michigan Court held that medical services rendered to an infant who is unconscious could not be held to be in agreement for necessities, as there cannot be an agreement with a person admittedly unconscious. In the case at bar, where you have a struggling newborn infant, it certainly cannot be argued that there was any mental capacity on behalf of the minor Plaintiff.

At the very least, it would seem to be a factual question as to whether the negligent performance of medical services is a benefit to the minor Plaintiff. Further, it also seems to be a factual question as to whether the Plaintiff ratified any contract by filing an action for medical malpractice. As mentioned in Plaintiff's initial response, the nature of the Defendant's duties could spring not only from contract, but from those voluntarily

assumed, or those assigned by statute. As the Plaintiff, Michael Timmons lacked any mental capacity, there could have been no contractual agreement, and therefore the Defendant's motion must be dismissed.

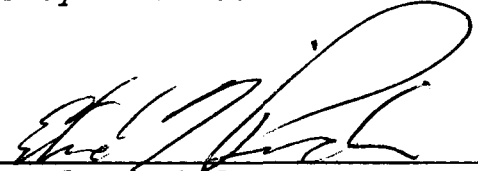
WILLIAM J. BLONDELL, JR.  
CHARTERED, and



---

Edward T. Pinder  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
687-7878  
Attorneys for Plaintiffs

I HEREBY CERTIFY, that on this 1<sup>st</sup> day of March, 1990,  
a copy of the foregoing Plaintiff's Memorandum in Response to  
Motion for Partial Summary Judgment was mailed to: E. Dale Adkins,  
III, Esquire and Barbara McC. Stanley, Esquire, Anderson, Coe &  
King, 2000 Central Savings Bank Building, 201 North Charles Street,  
Baltimore, Maryland 21201, Attorneys for Defendant.



---

Edward T. Pinder  
Attorney for Plaintiff

ETP:lmc  
3/1/90

MICHAEL D. TIMMONS  
a minor, by Cheryl Allen,  
his mother and next friend

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* 89075003/CL94437  
\*  
\*

SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF PARTIAL SUMMARY JUDGMENT

14  
JD

Defendant, Johns Hopkins Hospital, by its attorneys, E. Dale Adkins, III and Barbara McC. Stanley, submits its supplemental memorandum of law in support of its motion for partial summary judgment on the issue of punitive damages.

Plaintiff filed an action alleging medical negligence against Johns Hopkins Hospital ("Hospital") for alleged acts and omissions of the Hospital's physicians. In the action, Plaintiff sought punitive, as well as compensatory, damages. At the time of the alleged negligence, Plaintiff was a minor.

The Hospital filed a Motion for Partial Summary Judgment as to the punitive damages. As grounds, Defendant asserted that there was no evidence of actual malice by the Hospital or its employees. Furthermore, even assuming a lesser standard could support punitive damages, Plaintiff failed to allege with specificity such facts to show implied malice.

In Miller v. Schaefer, 80 Md. App. 60 (1989), the Maryland Court of Special Appeals reaffirmed earlier holdings that actual malice is a prerequisite for the recovery of punitive damages where



the tort is one which arises out of a contractual relationship. See, H & R Block, Inc. v. Testerman, 275 Md. 36 (1975); Henderson v. Maryland Nat'l. Bank, 278 Md. 514 (1976); General Motors Corp. v. Piskor, 281 Md. 627 (1977). The Miller court, analyzing the patient-physician relationship as one based on contract, either implied or express, held that plaintiff failed to prove the requisite actual malice.

In our matter, the Court expressed concern whether a contractual relationship existed in this matter as the Plaintiff, at the time of the alleged negligence, was a minor. The Court hypothesized that, if the Plaintiff was a minor without capacity to contract, then the tort alleged could not have arisen from a contract, thus punitive damages could be recovered on a showing of implied malice. However, it is respectfully suggested that the Court confuses whether a contract exists with whether a contract is enforceable against the Plaintiff.

A minor can enter into a contract. And, certain contracts are binding against a minor, for example, a contract for necessities. Anderson v. Smith, 33 Md. 465 (1871); Monumental Bld. Ass'n No. 2 v. Herman, 33 Md. 128 (1870). Likewise, although a contract to an infant's prejudice is void, one to this benefit is good; but, if a contract is of an uncertain nature as to benefit or prejudice, it is voidable only, at the election of the infant. Levering v. Heighe, 2 Md.Ch. 81 (1850).

These cases point out two facts in law. First, an infant can contract. Second, there is a distinction between the

existence of a contract and the legal right to enforce such a contract. In this case, it should be clear that a contract existed. It is probable that the contract was enforceable against the minor as the medical care rendered was essential to the child's well-being and, as such, was a necessity. At the very least, however, a contract did exist.

Indeed, a contract must be found in order for Plaintiff's action to be heard. "Before a physician may be found liable for an act of malpractice, it is essential that a patient-physician relationship be in existence at the time the alleged act occurred." Miller v. Schaefer, 80 Md. App. 60, 73 (1989) (emphasis supplied). The Miller court set out the general rule, citing 61 Am.Jur.2d Physicians, Surgeons, Etc., §158 (1981):

A physician is under no obligation to engage in practice or to accept professional employment, but when the professional services of a physician are accepted by another person for the purposes of medical or surgical treatment, the relation of physician and patient is created. The relation is a consensual one where in the patient knowingly seeks the assistance of a physician and the physician knowingly accepts him as a patient. The relationship between the physician and patient may result from an express or implied contract, either general or special, and the rights and liabilities of the party thereto are governed by the general law of contract, although the existence of the relation does not need to rest on any express contract between the physician and the person treated. However, the voluntary acceptance of the physician-patient relationship by the affected parties creates a prima facie presumption of a contractual relationship between them. Id. (footnotes omitted).

Section 158 continues in the next sentence: "[i]t is not material that the patient has not the ability to make a legally binding contract because of his infancy." Id., (emphasis supplied).

It is obvious from Miller and §158 that a contractual relationship existed at the time of the alleged negligence even if the contract was not otherwise enforceable by the physician due to the infancy of the Plaintiff.

The Court also expressed concern whether Cheryl Allen, the mother of the Plaintiff and herself a minor at the time, had capacity to contract on behalf of the infant. By statute, a parent has the legal obligation to seek medical care for her child. Maryland Code Ann., art. 72A, §1 (now Family Law Article, §5-203). See also, Craig v. State, 220 Md. 590 (1959) (medical care is embraced within the scope of the language of the statute). Furthermore, Maryland Code Ann., art. 43, §135 provides that a minor has the capacity to consent to medical treatment as an adult if the minor is a parent of a child. (Now Health General Article, §20-102(a)(2)). Therefore, Mrs. Allen had both the legal obligation to seek medical for her child as well as the legal capacity to give consent for that medical treatment.

Finally, a contract can be enforced against a minor if the contract is ratified by the minor after reaching the age of majority. In filing an action for medical malpractice, the Plaintiff ratified the implied contract which existed in 1970. In filing the action, the Plaintiff seeks to enforce the duties and obligations which naturally flowed from the very contractual relationship that the Plaintiff denies existed. "The relationship between a physician and patient is a consensual one arising out of

an express or implied contract." Miller v. Schaefer, 80 Md. App. 60 (1989), citing 10 Williston, Contracts 3rd ed., §1286A, p. 946 (1967). Professional negligence is the alleged negligent breach of a contractual duty. Miller v. Schaefer, 80 Md. App. 60 (1989) (medical negligence); Flaherty v. Weinberg, 303 Md. 116 (1985) (legal negligence). It is the contract which defines the duties owed Plaintiff.

Plaintiff should not be permitted, on the one hand, to bring an action for Defendant's alleged failure to meet the duties arising out of the contractual relationship while, on the other hand, alleging that such a contractual relationship did not exist. Therefore, as in Miller, Plaintiff must show actual malice in order to recover punitive damages in this matter.

Even if one were to assume, however, that a contractual relationship did not exist, Plaintiff's action for punitive damages must fail.

In his complaint, Plaintiff alleges that the Hospital's physicians "recklessly, and with gross, indifference to human life, acted or failed to act according to any standard of reasonable medical care, despite knowledge of the permanent dangers which the minor Plaintiff was exposed to." However, such bald and conclusory allegations will not withstand attack on grounds of insufficiency. Smith v. Gray Concrete Pipe Co., 267 Md. 149 (1972).

In Gray Concrete, the allegations set forth in the complaint were in considerable detail and with great specificity. Plaintiff's Complaint, however, does not meet this standard.

Instead, Plaintiff merely recites bald and conclusory language in support of his claim for punitive damages. No facts are cited, let alone with any specificity, to support such an award. On the basis of Gray Concrete, Plaintiff's action for punitive damages must be denied.

WHEREFORE, Defendant respectfully requests this Court to grant its Motion for Partial Summary Judgment on the issue of punitive damage.

*E. Dale Adkins, III*

E. Dale Adkins, III *Adkins*

*Barbara McC. Stanley*

Barbara McC. Stanley  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 1990, a copy of the foregoing Supplemental Memorandum in Support of Partial Motion for Summary Judgment was mailed to Edward T. Pinder, Esquire, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*Barbara McC. Stanley*  
Barbara McC. Stanley

BMS:18

MICHAEL D. TIMMONS  
a minor, by Cheryl Allen,  
his mother and next friend

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* 89075003/CL94437  
\*  
\*

REQUEST FOR HEARING

Johns Hopkins Hospital, by its attorneys, E. Dale Adkins, III and Barbara McC. Stanley, respectfully requests a hearing on its Supplemental Memorandum in Support of Partial Summary Judgment.

*E. Dale Adkins, III*  
\_\_\_\_\_  
E. Dale Adkins, III *BMS*

*Barbara McC. Stanley*  
\_\_\_\_\_  
Barbara McC. Stanley  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 1990, a copy of the foregoing Request for Hearing was mailed to Edward T. Pinder, Esquire, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*Barbara McC. Stanley*  
\_\_\_\_\_  
Barbara McC. Stanley

BMS:18

*Blondell*

**FILED**

**SEP 14 1989**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

MICHAEL DEON TIMMONS \*  
a minor, by Cheryl Allen, \*  
his mother and next friend \*

IN THE  
CIRCUIT COURT

and \*

FOR  
BALTIMORE CITY

CHERYL ALLEN \*

Plaintiffs \*

CASE NO.: 89075003/  
CL94437

v. \*

THE JOHNS HOPKINS HOSPITAL \*

Defendant \*

\* \* \* \* \*

REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE ITEMS

Now comes Michael Deon Timmons, Plaintiff, by Edward T. Pinder, Marc N. Peitersen and William J. Blondell, Jr., Chartered, his attorneys pursuant to Maryland Rule of Procedure 2-422 and requests the Johns Hopkins Hospital to respond within thirty (30) days to the following request:

That the Johns Hopkins Hospital produce and permit the Plaintiff and his attorney to inspect and to copy or photograph at the offices of William J. Blondell, Jr., Chartered, 628 Eastern Boulevard, Baltimore, Maryland 21221, each of the following:

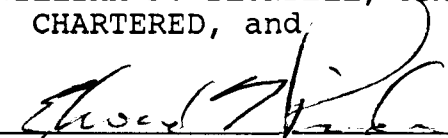
1. The arterial catheter, or an exemplar arterial catheter of the one used to monitor the oxygen concentration in Michael Deon Timmons blood during the time he was treated with oxygen in the incubator.
2. All sales receipts for the arterial catheter used on Michael Deon Timmons.
3. All instruction manuals concerning the use of the arterial catheter used on Michael Deon Timmons.

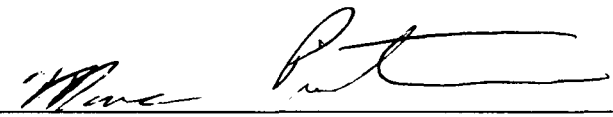
4. All written warranties concerning the arterial catheter used on Michael Deon Timmons.

5. All purchase orders concerning the arterial catheter, used on Michael Deon Timmons.

6. All diagrams and charts or x-rays relating to the arterial catheters placement in Michael Deon Timmons.

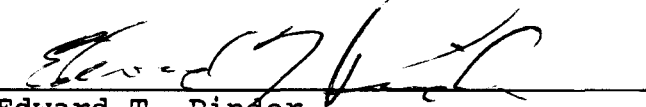
WILLIAM J. BLONDELL, JR.,  
CHARTERED, and

  
Edward T. Pinder

  
Marc N. Peitersen  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
687-7878  
Attorneys for Plaintiffs

CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 15<sup>th</sup> day of September, 1989, a copy of the Request for Production of Documents was mailed to E. Dale Adkins, III, Esquire, Barbara McC. Stanley, Esquire, Anderson, Coe, & King, 2000 Central Savings Bank Building, 201 North Charles Street, Baltimore, Maryland 21201, attorneys for Defendant.

  
Edward T. Pinder

ETP:MNP:d1m  
9/5/89



12

Circuit Court  
for  
Baltimore City

111 NORTH CALVERT STREET  
BALTIMORE, MARYLAND 21202

JOSEPH H. H. KAPLAN  
ADMINISTRATIVE JUDGE

August 29, 1989

396-5080  
City Deaf TTY 396-4930

Edward T. Pinder, Esquire  
628 Eastern Avenue  
Baltimore, MD 21221

E. Dale Adkins, III, Esquire  
Suite 2000  
201 N. Charles Street  
Baltimore, MD 21201

Re: Timmons v. Johns Hopkins Hospital  
Case No. 89075003/CL94437

Dear Counsel:

Following our conference of this morning, I have designated the above captioned case a protracted matter and have assigned same to Judge Ellen L. Hollander who will hear all future proceedings. Judge Hollander will contact you regarding scheduling the various aspects of this case leading up to the trial date of October 1, 1990. The estimated length of the trial is four weeks.

Sincerely yours,

Joseph H. H. Kaplan  
Administrative Judge

kah  
cc: Judge David Ross, JICC  
Judge Ellen L. Hollander  
James V. Campbell  
Frank Sherry

FILED

AUG 18 1980

MICHAEL DEON TIMMONS,  
A Minor, by Cheryl Allen,  
his Mother and Next Friend

and

CHERYL ALLEN

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

IN THE

CIRCUIT COURT FOR  
BALTIMORE CITY

FOR

BALTIMORE CITY

CASE NO. 89075003/  
CL94437

*H.D.*

\* \* \* \* \*

RESPONSE TO DEFENDANT'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT

Now come the Plaintiffs, Michael Deon Timmons, and Cheryl Allen, by their attorneys, Edward T. Pinder, Marc N. Peitersen and William J. Blondell, Jr., Chartered, and in response to the Defendant's Motion for Partial Summary Judgment hereby state:

1. That the Defendant is not entitled to summary judgment on the issue of punitive damages as a matter of law.


2. That there are genuine disputes between the parties as to material facts, including whether a contractual relationship existed between the parties at the time the tort, and the nature of the duty owed to the minor Plaintiff.

*AL*

3. Plaintiff hereby incorporates by reference those grounds as more fully set out in the attached Memorandum of law.

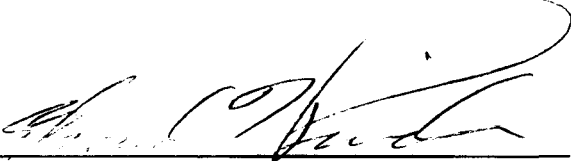
WILLIAM J. BLONDELL, JR.,  
CHARTERED, and

  
\_\_\_\_\_  
Edward T. Pinder

  
\_\_\_\_\_  
Marc N. Peitersen  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
687-7878  
Attorneys for Plaintiffs

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of August, 1989, a copy of the foregoing Response to Defendant's Motion for Partial Summary Judgment, Memorandum of Law in Opposition to Defendant's Motion for Partial Summary Judgment, Request for Hearing and Order was mailed to E. Dale Adkins, III, Esquire, Anderson, Coe & King, 2000 Central Savings Bank Building, 201 North Charles Street, Baltimore, Maryland 21201.

  
\_\_\_\_\_  
Edward T. Pinder

  
\_\_\_\_\_  
Marc N. Peitersen

ETP:MNP:dml  
8/16/89

MICHAEL DEON TIMMONS, A Minor, by Cheryl Allen, his Mother and Next Friend	*	IN THE
	*	CIRCUIT COURT
and	*	FOR
CHERYL ALLEN	*	BALTIMORE CITY
Plaintiffs	*	CASE NO. 89075003/ CL94437
v.	*	
THE JOHNS HOPKINS HOSPITAL	*	
Defendant	*	

\* \* \* \* \*

MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Now come the Plaintiffs, Michael Deon Timmons and Cheryl Allen, by Edward T. Pinder, Marc N. Peitersen, and William J. Blondell, Jr., Chartered, their attorneys, and submit the following Memorandum of Law in support of its Opposition to Defendant's Motion for Partial Summary Judgment.

FACTS

Plaintiffs filed a Complaint in the Circuit Court for Baltimore City alleging medical negligence and gross negligence at the time of Plaintiff, Michael Deon Timmons birth on June 25, 1970. The Complaint seeks punitive damages from the Defendant.

Defendant has filed a Motion for Partial Summary Judgment on the issue of punitive damages.

ARGUMENT

Summary Judgment is proper only when there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law. Md. Rule 2-501. All inferences

which may be drawn from the pleadings must be resolved against the moving party. Merchants Mtg. Co. v. Lubow, 275 Md. 208 (1975).

The Defendant has erroneously relied on H & R Block v. Testerman, 275 Md. 36, 338 A.2d 48 (1975). In Wedeman v. City Chevrolet Co., 278 Md. 524 (1976) and General Motors Corp. v. Piskor, 281 Md. 627 (1977), however, the Court of Appeals limited the Testerman holding by finding that only where a Tort arises a contractual relationship, which pre-exists the tortious conduct and where there is a direct nexus between the tortious act and the performance or breach of the contract, will actual malice be a prerequisite to the awarding of actual damages.

In Testerman, the Plaintiffs, a married couple entered into an express contract with the Defendant to prepare tax returns. The Plaintiffs were adults who freely, knowingly and voluntarily entered into a contractual arrangement with the Defendant.

In Wedeman, the Court found Testerman to be inapplicable since the tort, fraud, pre-existed the contractual relationship. Similarly, in Piskor the Court found that the Torts alleged, false imprisonment and battery, were collateral to the contractual agreement. As Testerman is limited to the facts of that case, this Court should not follow that reasoning under the facts at bar.

Likewise, the Court of Special Appeals decision in Miller v. Schaefer, Md. 163 September term, 1988, filed June 30, 1989, is of little guidance to the case at bar. In Miller, the Plaintiff, an adult women, entered into a voluntary agreement with the Defendant, a physician, to have elective surgery performed on her eyes. The

Court in Miller reasoned that since the physician was under no obligation to engage in practice or to accept employment, where a person knowingly seeks the assistance of a physician and that physician knowingly accepts that person as a patient, a consensual and therefor contractual relationship exists.

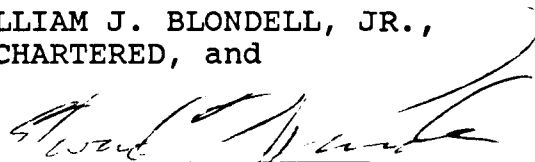
The Defendant here is not a physician but a hospital. Duties and obligations of a hospital are not merely contractual or consensual in nature but may also be statutory. (See Annotated Code of Maryland, Health General Article § 19-319, requiring standards for licensing. See also Health General Article § 19-345 restricting the transfer or discharge of a patient from a medicaid certified facility).

In the case at bar the Plaintiffs have alleged that the Defendant knowingly used methods which were contrary to accepted standards of practice for the care of premature infants. Plaintiffs have further alleged that Defendant knew, or should have known that use of these methods could result in almost certain harm to the Plaintiff, a premature infant.

The facts of this case are more analogous to those of Smith v. Gray Concrete, 267 Md. 149, 297 A.2d 721 where the court found that the Defendants knowledge of the dangerous condition of the vehicle and the unqualified driver equalled a "wanton disregard for human life." The Courts holding was based, in part, upon the danger of the conduct and the knowledge by the Defendant that the conduct could result in almost certain harm to others.

In the case at bar, there remain disputes as to the authority of the hospital to refuse to care for Michael Timmons. A juror may find that the basis for Johns Hopkins duty was statutory, or voluntary but not arising from a contract. If so then the standard to apply would be the "implied malice" standard of Smith v. Gray Concrete, and not the oppressive "actual malice" standard of Testerman.

WILLIAM J. BLONDELL, JR.,  
CHARTERED, and



---

Edward T. Pinder



---

Marc N. Peitersen  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
687-7878  
Attorneys for Plaintiffs

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of August, 1989, a copy of the foregoing Response to Defendant's Motion for Partial Summary Judgment, Memorandum of Law in Opposition to Defendant's Motion for Partial Summary Judgment, Request for Hearing and Order was mailed to E. Dale Adkins, III, Esquire, Anderson, Coe & King, 2000 Central Savings Bank Building, 201 North Charles Street, Baltimore, Maryland 21201.

\_\_\_\_\_  
Edward T. Pinder

  
\_\_\_\_\_  
Marc N. Peitersen

ETP:MNP:dln  
8/16/89





MICHAEL DEON TIMMONS,  
A Minor, by Cheryl Allen,  
his Mother and Next Friend

and

CHERYL ALLEN

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\* \* \* \* \*

IN THE  
CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO. 89075003/  
CL94437

ORDER

This matter having come to a hearing, after consideration of the pleadings and the arguments of counsel it is hereby this \_\_\_ day of \_\_\_\_\_, 1989 by the undersigned, a Judge for the Circuit Court for Baltimore City,

ORDERED, that the Motion for Partial Summary Judgment filed by the Defendant be, and the same is hereby Denied.

\_\_\_\_\_  
JUDGE

FILED

10 J.

AUG 1

CIRCUIT COURT FOR BALTIMORE CITY

MICHAEL DEON TIMMONS, et al \* IN THE  
 Plaintiffs \* CIRCUIT COURT  
 v. \* FOR  
 THE JOHNS HOPKINS HOSPITAL \* BALTIMORE CITY  
 Defendant \* CASE NO. 89075003/CL94437

\* \* \* \* \*  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, The Johns Hopkins Hospital, by its attorneys, E. Dale Adkins, III and Barbara McC. Stanley, moves for partial summary judgment on the issue of punitive damages pursuant to Maryland Rule 2-501, on the grounds that there is no dispute as to a material fact and Defendant is entitled to judgment as a matter of law.

These grounds are set out more fully in the attached Memorandum of Law.

E. Dale Adkins, III *smccs*  
 E. Dale Adkins, III, Esquire

Barbara McC Stanley  
 Barbara McC. Stanley Esquire  
 Anderson, Coe & King  
 Suite 2000  
 201 N. Charles Street  
 Baltimore, Maryland 21202  
 (301) 752-1630

Attorneys for Defendant

*Handwritten mark*

MICHAEL DEON TIMMONS, et al \* IN THE  
Plaintiffs \* CIRCUIT COURT  
v. \* FOR  
THE JOHNS HOPKINS HOSPITAL \* BALTIMORE CITY  
Defendant \* CASE NO. 89075003/CL94437

\* \* \* \* \*  
MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY JUDGMENT

Defendant, The Johns Hopkins Hospital, by its attorneys,  
E. Dale Adkins, III and Barbara McC. Stanley, submits the  
following Memorandum of Law in support of its motion for partial  
summary judgment.

FACTS

Plaintiff filed a Complaint in the Circuit Court for  
Baltimore City against The Johns Hopkins Hospital alleging medical  
negligence at the time of the minor plaintiff's birth on June 25,  
1970. The Complaint seeks punitive damages from the health care  
provider.

Defendant denies that it was negligent and further denies  
that punitive damages are recoverable in this action.

ARGUMENT

Summary judgment is proper when there is no genuine  
dispute as to any material fact. Keesling v. State, 288 Md. 579  
(1980). All inferences which may be drawn from the pleadings,  
affidavits, and admissions must be resolved against the moving  
party. Merchants Mtg. Co. v. Lubow, 275 Md. 208 (1975). However,  
a dispute as to a fact which is not material to the outcome of the  
case does not preclude an entry of summary judgment. Lynx, Inc.

v. Ordnance, Prods., Inc., 273 Md. 1 (1974). A material fact is one the resolution of which will somehow affect the outcome of the case. Id. In Miller v. Schaefer, No. 163, September term, 1988, filed June 30, 1989 and attached as Exhibit A, the Court of Special Appeals makes clear that punitive damages are not available in a medical malpractice action unless there is a showing of actual malice. Id., page 19.

In H & R Block v. Testerman, 275 Md. 36 (1975), the Court of Appeals held that actual malice is a prerequisite to the recovery of punitive damages where the tort is one which arises out of a contractual relationship. Subsequent cases clarified Testerman. In Wademan v. City Chevrolet Co., 278 Md. 524 (1976), it was held that the contractual relationship must pre-exist the tortious conduct in order for the tort to be characterized as arising out of the contractual relationship. Also there must be a "direct nexus between the tortious act and performance or breach of the terms and conditions of the parties' contract." General Motors Corp. v. Piskor, 281 Md. 627 (1977).

In reversing the judgment for punitive damages, the Miller court reasoned that the relationship between a physician and patient resulted from an expressed or implied contract. Because no duty arises until the relationship is formed, a health care provider's alleged tortious conduct arises out of a pre-existing contractual relationship between the parties. Finally, the court found sufficient nexus as the tort complained of was the negligent breach of a duty arising from the contractual

relationship. "[T]he tort consisted of nothing more than an allegedly negligent performance of contract obligations . . . in one form or another, then the tort arose directly from the performance or breach of the contract." Miller v. Schaefer, No. 163, September term, 1988, filed June 30, 1989, citing General Motors Corp. v. Piskor, 281 Md. 627, 367 (1977).

Actual malice is defined as "the performance of an act without legal justification or excuse, with an evil or rancorous motive influenced by hate, the purpose being to deliberately and wilfully injure the plaintiff." H & R Block, Inc. v. Testerman, 275 Md. 36, 43 (1975). In contrast, implied malice is "conduct of an extraordinary nature characterized by wanton or reckless disregard for the rights of other." Wedeman v. City Chevrolet Co., 278 Md. 524, 532, (1976).

As actual malice is a pre-requisite showing in order to recover punitive damages in a medical negligence action, it is a material fact. Plaintiff failed to meet this burden. There are no facts in this case to show actual malice by this Defendant.

To support an award of punitive damages, Plaintiff must allege with specificity those allegations of malice. "No bald or conclusory allegations of 'wanton or reckless disregard for human life,' or language of similar import, shall withstand attack on grounds of insufficiency. . . . [F]ar greater specificity will be required." Smith v. Gray Concrete Pipe Co., 267 Md. 149, 168 (1972).

As there is no dispute as to a material fact, and Defendant is entitled to judgment as a matter of law, Defendant respectfully requests this Court to grant partial summary judgment in favor of Defendants on the issue of punitive damages.

Respectfully submitted,

*E. Dale Adkins, III*

E. Dale Adkins, III *smc*

*Barbara McC. Stanley*

Barbara McC. Stanley  
Anderson, Coe & King  
Suite 2000  
201 N. Charles Street  
Baltimore, Maryland 21202  
(301) 752-1630

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 1989, a copy of the foregoing Motion for Partial Summary Judgment and Memorandum of Law in Support of Motion for Partial Summary Judgment was mailed to William J. Blondell, Jr., Esquire and Edward J. Pinder, Esquire, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*Barbara McC. Stanley*

Barbara McC. Stanley

MICHAEL DEON TIMMONS, et al

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\* IN THE

\* CIRCUIT COURT

\* FOR

\* BALTIMORE CITY

\* CASE NO. 89075003/CL94437

\* \* \* \* \*

ORDER

Upon consideration of Defendant's, The Johns Hopkins Hospital's, Motion for Partial Summary Judgment, it is this \_\_\_\_\_ day of \_\_\_\_\_, 1989,

ORDERED that partial summary judgment be granted in favor of Defendant on the issue of punitive damages.

\_\_\_\_\_  
JUDGE



EXHIBIT A

REPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1630 .

September Term, 1988

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GERALD A. MILLER

v.

AMELIA R. SCHAEFER

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Gilbert, C. J.,  
Karwacki,  
Wenner,

JJ.

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Opinion by Karwacki, J.  
Concurring Opinion by Gilbert, C.J.

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Filed: June 30, 1989

On October 1, 1984, the appellee, Amelia R. Schaefer filed a medical malpractice claim in the Health Claims Arbitration Office against the appellant, Gerald A. Miller, M.D. A hearing was held in October, 1987, before a Health Claims Arbitration panel which resulted in a unanimous award against the appellant for \$1.00 in compensatory damages and \$25,000 in punitive damages. Both parties rejected that award and brought actions to nullify the award in the Circuit Court for Baltimore City.

On June 16, 1988, a jury returned a verdict in favor of appellee in the amount of \$350,000 in compensatory damages and \$750,000 in punitive damages. Appellant filed a motion for judgment notwithstanding the verdict or for a new trial on June 24, 1988. The trial court denied appellant's motion for judgment notwithstanding the verdict but granted the motion for a new trial unless appellee consented to a remittitur of compensatory damages from \$350,000 to \$50,000. Appellee filed a consent to the remittitur and judgment was entered on August 5, 1988, against the appellant for \$50,000 in compensatory damages and \$750,000 in punitive damages. Appellant filed a timely appeal from the judgment for punitive damages. He poses two questions for our review:

- 1.) Whether the judgment for punitive damages should be reversed because the tort in this case arose out of a contractual relationship and there is no evidence of actual malice?
- 2.) Whether the trial court erred in denying appellant's motion for a mistrial and a new trial on punitive damages sought on the ground that appellee's counsel impermissibly injected the issue of religion into the proceedings?

Because we answer appellant's first question in the affirmative and reverse the judgment entered against him for punitive damages, we need not address appellant's second contention.

#### F A C T S

Viewing the evidence in a light most favorable to the appellee, as we must in reviewing the denial of a motion for judgment notwithstanding the verdict pursuant to Rule 2-532, Impala Platinum v. Impala Sales, 283 Md. 296, 327 (1978); New Summit Associates v. Nistle, 73 Md. App. 351, 356 (1987); Hamilton v. Ford Motor Credit Co., 66 Md. App 46, 59 (1986), we conclude that the following facts were proven at trial.

The appellee began regularly seeing appellant, a board certified ophthalmologist, for annual eye check-ups in 1973. In June, 1982, when appellee was 72 years old, she complained to appellant that she was having difficulty

reading newspaper print. Appellant examined her eyes and determined that she was developing a cataract in her right eye. Appellant prescribed stronger lenses for appellee's eyeglasses. The new prescription improved her vision and appellee was satisfied with the glasses.

One year later, on July 6, 1983, appellee saw appellant for her regular eye examination. She again complained that she was having trouble reading. Without conducting an examination of the eye and without testing the appellee's vision,<sup>1</sup> appellant advised appellee that the cataract in her right eye needed to be removed. At trial, appellee testified that appellant did not describe the procedure which would be employed in removing the cataract or the risks involved in that surgery. Her only knowledge of cataract operations consisted of what she had seen on a public broadcasting television program two months earlier. After consulting with a friend who had accompanied her to

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<sup>1</sup> There was a sharp conflict in the evidence as to these facts. Appellant claimed to have performed an acuity check on that date, a check of the binocularity of the eyes, and a glaucoma test, the results of which he purported to have written down contemporaneously on his medical records. He testified that her vision had slipped from 20-40 to 20-80 in the right eye. Appellee contended the notes of that July 6, 1983 visit were written by the appellant much later and that no visual acuity test, nor any other tests, were performed on her that day.

appellant's office, appellee agreed to have appellant perform a cataract operation on her right eye on an out patient basis at St. Agnes Hospital.

The surgery was performed on July 27, 1983. Appellant removed the cataract in appellee's right eye and implanted an intraocular lens<sup>2</sup> in that eye. The operation went smoothly and appellee went home that same day. The hospital pathology report confirmed the existence of the cataract and noted "considerable opacity" of the lens appellant removed from appellee's right eye.

Appellee's testimony was that she knew nothing prior to surgery about an intraocular lens implant and was willing only to undergo a simple cataract removal. An informed

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<sup>2</sup> The intraocular lens cataract operation was developed in the 1970's and experimentally tested for several years. Pursuant to federal statute, the Food and Drug Administration issued regulations in effect from January 13, 1978 through December 31, 1982, closely governing its use. These regulations required that the patient be informed, inter alia, that intraocular lenses were experimental and were being investigated for safety and effectiveness. The required consent form spelled out the possible complications of the operation and provided for the signature of the patient. Prior to the expiration of the law, the American Academy of Ophthalmology adopted the federal requirement as a standard for all ophthalmologists and that standard was in effect at the time of appellee's operation. Both parties' experts at trial testified that by December 31, 1982, when the federal regulations expired, intraocular lens implantation as part of cataract surgery was no longer experimental and was overwhelmingly successful.

consent form for cataract operation and the implantation of an intraocular lens purportedly signed by appellee was produced by appellant at trial. Appellee, however, vehemently disputed that she signed any such document.

The informed consent form that was introduced in evidence contained the appellee's printed name and the date of July 27, 1983 (both written by the appellant). The form provided for the signature of the patient, the doctor and a witness. Both the doctor and witness signature blanks were signed by appellant. The portions of the form for noting the time and place of obtaining the consent were not completed. Appellee denied signing that form or seeing any consent form whatsoever. This consent form was not part of appellee's hospital records at St. Agnes. It was produced by appellant when appellee requested that he turn over her medical records.<sup>3</sup>

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<sup>3</sup> The appellee also offered evidence that in 1978 appellant was accused of rewriting office records and forging a patient's signature to an informed consent form for an intraocular implant. See *Medical Mut. Liab. Ins. v. Miller*, 52 Md. App. 602 (1982). Appellant admitted these actions and was sanctioned by the Commission of Medical Discipline of Maryland in 1985. The Commission ordered that the appellant's license to practice medicine be suspended unless he complied with certain conditions, including having in each operative patient's chart a copy of an informed consent form which had been dated, signed and witnessed by a third party.

Three days after surgery, on July 30, 1983, appellee felt pain and telephoned appellant. Appellant saw appellee and determined that her right eye was infected. He admitted her to the hospital that day, treated her with antibiotics and scheduled her for a vitrectomy (removal of pus from the eye) on July 31, 1983. The next day, however, appellee was not taken for the surgery nor did the appellant see her. Rather, appellee was informed that her surgery had been rescheduled for August 1, 1983.

The vitrectomy results revealed a significant quantity of purulent material in the eye. Appellee was prescribed antibiotics and not discharged from the hospital until August 14, 1983. During this period, she suffered constant pain and was unable to see out of her right eye.

On August 24, 1983, appellee returned to appellant's office. He again determined that her right eye was "full of infection." There, appellant treated her with 187 shots of laser therapy. Appellant treated appellee on two subsequent visits with laser shots to open up the membrane of the eye that was blocking her vision. Following the last treatment on November 12, 1983, appellant told appellee she had 20/40 vision in her right eye.

Appellee again visited appellant's office on November 28, 1983, at which time she received a new prescription for eyeglasses. After this visit, appellee sought the opinions



of other ophthalmologists, including Dr. Dennis A. Gleicher, appellee's expert witness at trial. Dr. Gleicher opined that appellee's chronic pain, retinal degeneration, decreased visual acuity and light sensitivity were all caused by appellant's failure to comport with the required standards of care for obtaining informed consent and treating appellee's postoperative infection.

At trial, the jury by special verdict pursuant to Rule 2-522(c) found: 1) that appellant did not "comply with the standards of care applicable to him in making adequate disclosure of material facts to the [appellee] relative to the treatment she underwent" and that appellee did not "knowingly and intelligently agree to the procedure being done," 2) that appellant did not "comply with the standards of care applicable to him in all his preoperative procedures and postoperative care with respect to the [appellee]" and, 3) that appellant's negligence was the proximate cause of appellee's injury.

In his brief to this Court, appellant concedes that the evidence produced at trial was sufficient to establish his negligence in appellee's postoperative care. Appellant does not contest the award of compensatory damages.

#### ISSUE PRESENTED

The central issue in this appeal is whether H&R Block, Inc. v. Testerman, 275 Md. 36 (1975), required appellee to

prove actual malice as a prerequisite to the recovery of punitive damages in her medical malpractice action against appellant. Appellant contends that he and the appellee entered into a contractual relationship whereby appellee agreed to have him perform cataract surgery on her right eye. Hence, any negligence incident to that agreement constituted a tort arising out of a contractual relationship subject to the rule of Testerman. We agree. A review of Testerman and its progeny is instructive.

In Testerman, a married couple sought punitive damages from their tax consultant who negligently prepared their income tax return. The trial court, dismissing the plaintiffs' request for punitive damages, limited their recovery to compensatory damages. The Court of Appeals affirmed, holding that actual malice is a prerequisite to the recovery of punitive damages where the tort is one which arises out of a contractual relationship between the parties. Id. at 44; See also, Henderson v. Maryland Nat'l Bank, 278 Md. 514, 519 (1976). The Court characterized actual malice as "the performance of an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff." Testerman, supra, 275 Md. at 43. Since the plaintiffs in Testerman had contracted with H&R Block for the preparation of their tax return, they

were not entitled to punitive damages in the absence of evidence that H&R Block's employees acted with actual malice in failing to prepare their tax return properly.

In a succession of subsequent cases, the contours of the Testerman holding have been outlined. In Wedeman v. City Chevrolet Co., 278 Md. 524, 529 (1976), the Court of Appeals held that before a tort can be characterized as arising out of a contractual relationship, the contractual relationship must preexist the tortious conduct. There, a purchaser bought a used automobile that the seller had expressly represented as never having been involved in an accident. When the purchaser later discovered the falsity of the seller's representation, she brought an action for fraud. Based upon these facts, the jury awarded the purchaser punitive damages. The Court agreed, holding that "since the fraud committed here did not arise out of a contractual relationship, but instead induced [purchaser] to enter into the contract, this case is not within the ambit of the Testerman holding." Wedeman, supra, 278 Md. at 529-30. The tort must find its source in the contract without which the wrong could not be committed. Id. at 529.

If the fraud alleged does not arise out of a contract between the parties, a lesser requirement for an award of punitive damages applies. The injured party does not have to prove actual malice, but instead will establish his claim

if he shows implied malice. Id. at 530. See also, Aeropesca Ltd. v. Butler Aviation, 44 Md. App. 610, 625 (1980), cert. denied, 287 Md. 749 (1980). Implied malice is defined as conduct of an extraordinary nature characterized by wanton or reckless disregard for the rights of others. Wedeman, supra, 278 Md. at 532; Cf. Smith v. Gray Concrete Pipe Co., 267 Md. 149, 168 (1972).

Based upon Wedeman, in National Micrographics v. Oce-Industries, 55 Md. App. 526, 543 (1983), we held that:

[W]hen one party fraudulently induces another to enter into a contract, proof of implied malice may permit recovery of punitive damages. This standard applies even if the parties had a prior contractual relationship that is not the subject of the fraud claim.

We determined that even though the parties were acting under a prior contractual agreement, a second contract, induced by fraud, was executed. Therefore, to obtain punitive damages on their fraud claim, the plaintiffs needed only to prove implied malice. Id. at 544.

The Court of Appeals added another requirement to the definition of tort arising out of a contract in General Motors Corp. v. Piskor, 281 Md. 627 (1977). The Court held that an employer's unlawful detention of an employee suspected of theft did not arise out of a contractual relationship. Judge Levine, speaking for the Court, stated:

In order, then, for an alleged wrong to constitute a "tort arising out of a contractual relationship," thereby necessitating proof of common law actual malice to permit recovery of punitive damages, we require that there be a direct nexus between the tortious act and performance or breach of the terms and conditions of the parties' underlying contract. (Emphasis supplied.)

Id. at 640. The Court found that the torts complained of in Piskor -- false imprisonment and assault -- were collateral to the employment contract. Id. at 639. In order for the Testerman rule to apply, the tortious conduct and the contract must be so intertwined that one cannot be viewed in isolation from the other. See First National Bank v. Shpritz, 63 Md. App. 623, 644 (1985) cert. denied, 304 Md. 297 (1985); American Laundry Mach. v. Horan, 45 Md. App. 97, 112-13 (1980); Strausberg, A Roadmap Through Malice, Actual or Implied: Punitive Damages in Torts Arising Out of Contract in Maryland, 13 U. of Balt. L. Rev. 274, 283 (1984).

In its most recent decision revisiting Testerman, the Court of Appeals explained:

Perhaps the clearest applications of the Testerman principle occur when the plaintiff and the tortfeasor are in privity and the conduct of the tortfeasor may properly be pleaded alternatively (whether or not actually pleaded), as a breach of contract and as a tort.

Miller Building Supply v. Rosen, 305 Md. 341, 349 (1986). In Miller, a retailer of appliances sued two of its former salesmen for breach of fiduciary duty, fraud, and civil conspiracy. A jury awarded the retailer both compensatory and punitive damages. The trial judge, however, granted the salesmen's motion for judgment notwithstanding the verdict on punitive damages. We affirmed, Miller Building Supply v. Rosen, 61 Md. App. 187 (1985), as did the Court of Appeals. The fraud in that case arose when the salesmen violated their duties of loyalty owed to the retailer by virtue of their employment contract. We held that since the tortious conduct arose out of the employer-employee contract and no actual malice was proven by the retailer, punitive damages were not available. Id. at 199.

In this Court appellee argues that appellant committed three distinct torts: fraud, battery and negligence. First, with respect to fraud, appellee contends that the situation in the instant case is analogous to the facts in Wedeman. She claims that appellant fraudulently induced her to undergo the cataract surgery/intraocular lens implant procedure when it was not necessary. Therefore, like the buyer in Wedeman, appellant's representation (that she needed surgery) was the reason appellee entered into the contract. Since this representation was false, she argues, no contractual relationship was created. Secondly, appellee

argues that by implanting an intraocular lens without any consent to do so, appellant committed a battery upon her. Thirdly, she maintains that appellant's postoperative care of her eye infection fell below accepted standards of care.

Appellee's complaint which was filed in the circuit court on November 25, 1987 contains no allegations of fraud<sup>4</sup> or battery.<sup>5</sup> Her action was grounded upon two theories of negligence: 1) that appellant performed the surgery on appellee without informed consent, and 2) that appellant failed to comport with the applicable standards of care in appellee's preoperative and postoperative treatment. Furthermore, the trial judge only instructed the jury on the applicable standards for determining negligence vel non:

This case then is simply a claim of negligence by a patient against her doctor and as I indicated to you at the outset of the trial, the words medical malpractice should be of no concern to you and is simply a term often used to describe a negligence action against a health care provider. What we are concerned about is simply whether or not

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<sup>4</sup> Further, appellee failed to produce evidence at trial of the five essential elements of fraud. See Wedeman, supra, 278 Md. at 532, n.5; James v. Goldberg, 256 Md. 520, 528-29 (1970).

<sup>5</sup> Maryland follows the "prevailing view that a cause of action under the informed consent doctrine is properly cast as a tort action for negligence, as opposed to battery or assault." Sard v. Hardy, 281 Md. 432, 440 n.4 (1977). See discussion infra.

the defendant was negligent in any way with respect to the plaintiff.

Appellee's counsel made no exceptions to the court's instructions. The issues, as framed for the jury and approved by counsel on the special verdict sheet, were couched in terms of whether appellant conformed with the required standards of care in his treatment of appellee. Since the torts of battery and fraud were never asserted below, appellee's arguments related thereto will not be addressed for the first time on appeal. Rule 8-131(a). Thus, our focus in the case sub judice is whether the two counts of negligence actually litigated by the appellee arose out of a contractual relationship. We hold that they did.

The relationship between a physician and patient is a consensual one arising out of an express or implied contract. 10 Williston, Contracts 3rd ed., § 1286A, p. 946 (1967). Before a physician may be found liable for an act of medical malpractice, it is essential that a patient-physician relationship be in existence at the time the alleged act occurred. Establishment of this relationship must generally be a result of mutual consent. M. McCafferty and S. Meyer, Medical Malpractice Bases of Liability, § 1.02 (1985). The general rule is stated in 61 Am. Jur. 2d, Physicians, Surgeons, Etc., § 158 (1981):



A physician is under no obligation to engage in practice or to accept professional employment, but when the professional services of a physician are accepted by another person for the purposes of medical or surgical treatment, the relation of physician and patient is created. The relation is a consensual one wherein the patient knowingly seeks the assistance of a physician and the physician knowingly accepts him as a patient. The relationship between a physician and patient may result from an express or implied contract, either general or special, and the rights and liabilities of the parties thereto are governed by the general law of contract, although the existence of the relation does not need to rest on any express contract between the physician and the person treated. However, the voluntary acceptance of the physician-patient relationship by the affected parties creates a prima facie presumption of a contractual relationship between them. (Footnotes omitted.)

The defective performance of a contractual undertaking may give rise to an action both in tort or in contract. Bocchini v. Gorn Management Co., 69 Md. App. 1, 16 (1986). See also, Prosser and Keaton, The Law of Torts, 5th ed., § 92, p. 663-667 (1984). Recovery for malpractice or professional negligence against a physician is allowed only:

[W]here there is a relationship of doctor and patient as a result of a contract, express or implied, that the doctor will treat the patient with proper professional skill and the patient will pay for such treatment, and there has been a breach of professional duty to the patient.

Hoover v. Williamson, 236 Md. 250, 253 (1964); See also Dashiell v. Griffith, 84 Md. 363, 380-81 (1896). While the underlying relationship is contractual, "malpractice is predicated upon the failure to exercise requisite medical skill and, being tortious in nature, general rules of negligence apply in determining liability." Benson v. Mays, 245 Md. 632, 636 (1967) (footnote omitted). In Benson, the Court of Appeals held that although an action for malpractice can be based on both contract and tort theories, for purposes of venue the suit shall be considered an action ex delicto instead of ex contractu. Id. at 638.

Likewise, actions for professional malpractice against an attorney have been held to allege the negligent breach of a contractual duty. Flaherty v. Weinberg, 303 Md. 116, 134 (1985); Roebuck v. Steuart, 76 Md. App. 298, 314 (1988). Such suits may be brought in either contract or tort. Flaherty, supra, 303 Md. at 134; Mumford v. Staton, Whaley & Price, 254 Md. 697, 708 (1969). In Roebuck, supra, 76 Md. App. at 314-15, we unequivocally held, based on Testerman, that actual malice was a requirement for the recovery of punitive damages in an attorney malpractice action.

In the instant case, there was an underlying doctor-patient relationship of some ten years standing between the appellee and appellant. Appellee concededly agreed, as her counsel argued to the jury, to "put her future in

[appellant's] hands." She contends, however, that since her consent was not informed as to the particular type of cataract operation performed, i.e., the intraocular implant, there was no contract out of which the tort arose, and thus Testerman did not apply.

The trial judge agreed and instructed the jury that they could award appellee punitive damages if they found that appellant acted with implied malice. He stated:

Punitive damages may only be awarded if you find that the defendant was not merely negligent, but acted with malice. That is, he acted so recklessly or outrageously as to indicate a wanton disregard for the rights, health or safety of the plaintiff or with a callous indifference to the consequences.

We disagree.

In the instant case a contractual relationship between the parties arose when appellee accepted appellant's diagnosis that the cataract in her right eye had to be removed. Based on this consensual agreement, certain obligations were created, including appellant's duty to inform appellee of the procedure to be used and the risks involved as well as his duty to treat her properly. Roebuck v. Steuart, supra, 76 Md. App. at 325. See also Miller v. Kennedy, 522 P.2d 852, 860 (Wash. App. 1974), aff'd per curiam, 530 P.2d 334 (Wash. 1975); Woods v. Brunlop, 377 P.2d 520, 524 (N.M. 1962).

In Sard v. Hardy, 281 Md. 532, 440 n.4 (1971), the Court of Appeals explained the doctrine of informed consent recognizing that a claim under that doctrine is a claim of negligence. See also, Zeller v. Greater Baltimore Med. Center, 67 Md. App. 75, 84 (1986). The doctrine of informed consent

imposes on a physician, before he subjects his patient to medical treatment, the duty to explain the procedure to the patient and to warn him of any material risks or dangers inherent in or collateral to the therapy, so as to enable the patient to make an intelligent and informed choice about whether or not to undergo such treatment. (Citations omitted.)

Sard, supra, 281 Md. at 439. In the instant case, the jury determined that appellant did not give appellee sufficient information in order to make an intelligent and knowing decision to have the cataract operation. This breach of appellant's duty to inform however, does not vitiate the contractual relationship between the parties. The lack of sufficient information renders the consent ineffectual as a defense to negligence, id. at 438 n.3, but does not change the contractual nature of the doctor-patient relationship. Therefore, we hold that appellant's tortious conduct arose out of the preexisting contractual relationship between appellant and appellee. Wedeman, supra.

Next, we must determine if there existed a sufficient nexus between appellant's negligent acts and the contractual relationship out of which they arose. Piskor, supra. The instant case is a clear application of this "nexus" principle. Since the parties had a doctor-patient relationship and the tort complained of was the negligent breach of a duty arising from that contractual relationship, this requirement is easily satisfied. "[T]he tort consisted of nothing more than an allegedly negligent performance of contract obligations.... In one form or another, then, the tort arose directly from the performance or breach of the contract." Piskor, supra, 281 Md. at 637.

Based on their contractual relationship, in order to recover punitive damages for the negligence committed, appellee needed to prove actual malice. Testerman, supra. Appellee has not and cannot point to any evidence which established that appellant acted "with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure" appellee. Testerman, supra, 275 Md. at 43. Therefore, the judgment against the appellant for \$750,000 in punitive damages must be reversed.

JUDGMENT FOR PUNITIVE  
DAMAGES REVERSED;

COSTS TO BE PAID BY  
THE APPELLEE.

REPORTED  
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1630

September Term, 1988

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GERALD A. MILLER

v.

AMELIA R. SCHAEFER

---

Gilbert, C.J.  
Karwacki,  
Wenner,

JJ.

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CONCURRING OPINION BY GILBERT, C.J.

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Filed: June 30, 1989

I concur in the decision of the majority, as expressed by Judge Karwacki. I do so, however, with great reluctance.

What the Court holds today virtually eliminates punitive damages in suits against professionals for malpractice absent a showing of actual malice. This is true because almost all claims grounded in negligence against professionals arise out of a contractual relation, express or implied.

Why negligence arising out of a contract is so sacrosanct that the negligent party is insulated against punitive damages eludes me. Nevertheless, the Court of Appeals, starting with H & R Block, Inc. v. Testerman, 275 Md. 36, 338 A.2d 48 (1975), followed by Wedeman v. City Chevrolet Co., 278 Md. 524, 366 A.2d 7 (1976), and then General Motors Corp. v. Piskor, 281 Md. 627, 381 A.2d 16 (1977), has articulated that there can be no recovery of punitive damages in tort actions, in the absence of actual malice, if the action arose out of a contract.

So long as Testerman, Wedeman, and Piskor remain the law of Maryland, this Court, of course, is obligated to adhere to their holdings.

It is, in my opinion, a strange doctrine that precludes recovery of punitive damages for negligence arising out of contract unless actual malice is proven, irrespective of the degree of negligence involved.

Testerman, the first of the trilogy of cases to announce the ban on punitive damages in torts arising out of contracts, was decided in 1975. Insofar as we have been able to determine, not one other State has chosen to adopt the reasoning of Testerman or its siblings. No other jurisdiction has opted to march to the Testerman drum beat, dance to Wedeman's tune, or vocalize Piskor lyrics.

Fourteen years have passed since Testerman was decided. Perhaps, in light of the fact that its doctrine seems to have been implicitly rejected by the other forty-nine States and the District of Columbia, the Court should reexamine its position.



99 FILED  
JUN 26 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

MICHAEL DEON TIMMONS,  
A Minor, by Cherly Allen,  
his Mother and Next Friend

\*  
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IN THE  
CIRCUIT COURT

and

\*

FOR

CHERYL ALLEN

\*

BALTIMORE CITY

Plaintiffs

\*

CASE NO. 89075003/  
CL94437

v.

\*

THE JOHNS HOPKINS HOSPITAL

\*

Defendant

\*

\* \* \* \* \*

ANSWERS TO INTERROGATORIES

Now comes Michael Deon Timmons, Plaintiff, by his attorney, Edward T. Pinder and William J. Blondell, Jr., Chartered, and for Answers to Interrogatories propounded by the Defendant, respectfully states:

A. The information supplied in these answers is not based solely on the knowledge of the executing party but includes the knowledge of the party, agents, representatives and attorneys unless privileged.

B. The word usage and sentence structure may be that of the attorney assisting in the preparation of these answers and thus does not necessarily purport to be the precise language of the executing party.

INTERROGATORY NUMBER 1:

State your full name, address, date and place of birth, marital status, and social security number.

ANSWER NUMBER 1:

Michael Deon Timmons, A/K/A Michael Allen, 1620 Hopewell Avenue, Baltimore, Maryland 21221, D/O/B: June 25, 1970, Johns Hopkins Hospital, single, S.S.#.: 215-04-0334.

INTERROGATORY NUMBER 2:

List all other addresses at which you have lived for the past fifteen years, giving street numbers, city and state and dates of residence.

ANSWER NUMBER 2:

1620 Hopewell Avenue, Baltimore, Maryland 21221.

INTERROGATORY NUMBER 3:

State the names, date of birth and status of all dependents.

ANSWER NUMBER 3:

None.

INTERROGATORY NUMBER 4:

State the name and address of each of your employers for the past five (5) years and give a description of your occupation and duties, setting forth the inclusive dates of employment with each.

ANSWER NUMBER 4:

Plaintiff was employed at Hardees for approximately two months in 1987. Duties included clean-up and hamburger topping preparations. Plaintiff was also employed at the County Ridge Bakery in 1988 for a period of approximately four weeks. Duties included general clean-up of the bakery.

INTERROGATORY NUMBER 5:

State concisely how you contend the events giving rise to your claim against this Defendant occurred.

ANSWER NUMBER 5:

On June 25, 1970, the minor Plaintiff, Michael Deon Timmons, son of the Plaintiff, Cheryl Allen, was born at Johns Hopkins Hospital. At 3:40 a.m., June 25, 1970, the attending physician was called to Cheryl Timmons' room at which time a large breech was noted. A partial breech extraction was performed and a large infant delivered. Michael was delivered prematurely, therefore he had to be placed in an incubator. While in the incubator, Michael was treated with oxygen, through an arterial catheter which was not positioned properly. The minor Plaintiff, Michael, has sustained serious neurologic, ophthalmologic and other injuries as a result of the negligent placement of the arterial catheter and in the negligent performance of the breech extraction as well as other acts of negligence.

INTERROGATORY NUMBER 6:

List each act or omission on the part of this Defendant and/or his/its agents, servants or employees which you contend constituted a departure from the applicable standards of care (i.e. negligence) and describe who committed the act or omission and where and when such act or omission occurred. (This Interrogatory requests specific enumerations of the departures from standards you allege and does not request general legal and conclusory allegations e.g.

"the Defendant failed to monitor, the Defendant failed to diagnose, the Defendant improperly performed surgery, etc.).

ANSWER NUMBER 6:

The hospital's agents, servants, and employees performed a partial breech extraction. The Hospital failed to properly direct, instruct and supervise its agents, servants, and employees in the management of premature breech presentation infants. The breech extraction method of delivery was contrary to the standard of care due to the minor Plaintiff under the circumstances. The Hospital's agents, servants, and employees did not properly position the arterial catheter for the oxygen treatment and therefore, improperly administered high concentrations of oxygen therapy shortly after the Plaintiff's birth. The Hospital's agents, servants, and employees failed to properly monitor the oxygen level or to properly mix the oxygen with air so as to avoid the known complication of RLF (retrolental fibroplasia). The Hospital's agents, servants, and employees, among other acts or omissions on the part of the Hospital and its agents, servants, and employees, failed to have closer monitoring by a neonatal ophthalmologist, failed to administer proper incubation treatment for a premature infant, and failed to conform their conduct to the reasonable standards of medical care.

INTERROGATORY NUMBER 7:

For each alleged departure from accepted standards of care enumerated in the preceding Answer state what you contend the applicable standard of care required with regard to the

circumstances with which this Defendant and/or his/its agents, servants or employees were confronted.

ANSWER NUMBER 7:

Premature breech extraction was no longer acceptable by 1970. It was outrageously substandard to accept anything but a complete or frank breech by 1970. It was also substandard to accept catheter placement in the ductus. The applicable standard of care would have consisted of the proper administration of oxygen therapy and correct positioning of the catheter, as well as not accepting anything but a complete or frank breech.

INTERROGATORY NUMBER 8:

Identify each person who has or claims to have personal knowledge of the occurrence and/or damages and injuries of which you complain and specify which area each particular person has knowledge of.

ANSWER NUMBER 8:

Cheryl Allen - mother of the minor Plaintiff, Michael Timmons.

Agents, servants, and employees of Johns Hopkins Hospital who treated Michael Timmons. This information can be found in the medical records.

INTERROGATORY NUMBER 9:

Identify each person who investigated the circumstances of the alleged malpractice in this case for you or on your behalf.

ANSWER NUMBER 9:

Edward T. Pinder, William J. Blondell, Jr., Chartered, 628 Eastern Boulevard, Baltimore, Maryland 21221.

INTERROGATORY NUMBER 10:

Identify each person you may call as an expert witness in the trial of this case and state the subject matter on which the expert is expected to testify, the substance of the findings and opinions to which that expert is expected to testify and summarize the grounds for each opinion held by that expert. If that expert has prepared a written report concerning his findings and opinions attach to your Answers to Interrogatories a copy of that report.

ANSWER NUMBER 10:

David Abramson, M.D., Emergency Medicine, Pediatrics and Reproductive Medicine, 4010 Linnean Avenue, N.W., Washington, D.C. 20008. Subject matter - breech extraction, malposition of the catheter, and departure from the reasonably prudent standard of care that existed for hospitals and their agents, servants, and employees in 1970.

INTERROGATORY NUMBER 11:

For each of the experts listed in your Answer to the preceding Interrogatory state whether or not they base their opinions on personal knowledge of the facts of this case or a review of documents, and other items of tangible evidence. If such experts have reviewed documents and other items of tangible evidence please enumerate with respect to each expert the documents or other items they have reviewed and summarize the information communicated to them upon which they base their opinion.

ANSWER NUMBER 11:

Expert's opinions based on review of x-rays, medical records of Michael Timmons, and mother's birth records.

INTERROGATORY NUMBER 12:

Attach exact copies of all written statements, reports, transcribed statements or recorded statements which have been prepared, given or signed by the Defendants or persons whom you allege to be their agents, servants or employees.

ANSWER NUMBER 12:

None.

INTERROGATORY NUMBER 13:

Identify the nature and subject matter of each picture, diagram, document, x-ray, or other objects (real evidence), which is known to you and which is relevant to this occurrence or its consequences.

ANSWER NUMBER 13:

X-rays of Michael Timmons; x-rays of Cheryl Allen.

INTERROGATORY NUMBER 14:

Identify and give the substance of each statement, action or admission against interest, declaration against interest, or otherwise, whether oral, written, by conduct, silent or otherwise, which you contend was made by the Defendant or by any person whom you allege to be the agent, servant and/or employee of this Defendant.

ANSWER NUMBER 14:

The minor Plaintiff contends that admissions against interest are contained in the medical records as to the happening of the

event. The minor Plaintiff further contends that oral declarations against interest were made by the agents, servants, and employees of Johns Hopkins Hospital who assured the minor Plaintiff's mother, Cheryl Allen, that the infant would do fine and that she should not worry about him.

INTERROGATORY NUMBER 15:

With reference to the above Interrogatory, identify the name of each person who has personal knowledge of the making of each such statement, and state the place and date when each such statement was made.

ANSWER NUMBER 15:

Each of the agents, servants, and employees of Johns Hopkins Hospital.

INTERROGATORY NUMBER 16:

If you contend that at any portion of any medical record, chart or report prepared by this Defendant or his/its agents, servants or employees is either inaccurate, false, or has been altered, please specify which such record, chart or report you refer to and that part of it which you contend is inaccurate, false, or has been altered.

ANSWER NUMBER 16:

The minor Plaintiff, at this time, is not basing his claim on inaccurate, false, or altered medical records, charts, or reports prepared by Johns Hopkins Hospital. In the course of discovery, however, should such information surface, pointing to inaccurate,



false or altered medical records, the minor Plaintiff will amend his claim.

INTERROGATORY NUMBER 17:

Name all hospitals and physicians or any other person or institution who have rendered treatment to you as a result of the occurrence for which this suit is brought and state the dates and nature of all such treatments.

ANSWER NUMBER 17:

Dr. Gail Shapiro, Dr. Saul Brusilow, Dr. Milton Schwarz, Dr. B. Mishra, Dr. William MacLean, Dr. David Valle, Dr. Howard Arkans, Dr. Alan Zuckerman - Johns Hopkins Hospital, June 25, 1970 to September 1, 1970, admission for birth, premature care; September 25, 1970, comparative growth x-ray report and testing; October 5 - 7, 1970, progress testing; October 15, 1970, newborn follow-up; October 29, 1970, newborn follow-up; November 5, 1970, newborn follow-up; Johns Hopkins Hospital, November 23, 1970, eye consultation; January 13, 1971, radiology report of skull x-ray; Johns Hopkins Hospital, Dr. Payne, March 10, 1971, eye exam; April 1, 1971, RLF evaluation examination; Johns Hopkins Hospital, December 30, 1973, eye exam; January 8, 1974, eye consultation; Johns Hopkins Hospital, Dr. Kenyon, III, October 15, 1974, eye consultation; Mercy Hospital, Dr. Renee Lerner, June 17, 1988, surgery for removal of a cataract on the left eye; Dr. Vinod Lakhanpal, surgery for holes in the retina of the left and right eyes and detached retina in the left eye. Other institution that rendered treatment include: Wilmar Eye Clinic; Penn Optical, 1984

or 1985, eyeglasses; The Optical Center at Eastpoint, eyeglasses; 20/20 Vision Center, July 14, 1986, eyeglasses; this list, however, is not exclusive.

INTERROGATORY NUMBER 18:

Describe all injuries which you contend you have sustained as a result of the occurrence for which this suit was brought and state which you contend are permanent.

ANSWER NUMBER 18:

Permanently and legally blind and unable to perform normal daily activities because of his blindness. The minor Plaintiff can not drive and cannot obtain a job to support himself.

INTERROGATORY NUMBER 19:

Identify every physician or other health care provider who has treated you and any hospital to which you have been admitted for the past twenty five years.

ANSWER NUMBER 19:

Johns Hopkins Hospital; Dr. Gail Shapiro; Dr. Saul Brusilow; Dr. Milton Schwarz; Dr. B. Mishra; Dr. William MacLean; Dr. David Valle; Dr. Howard Arkans; Dr. Alan Zuckerman; Dr. Payne; Dr. Johnson; Dr. Thomas Hoffman; Dr. Renee Lerner; Dr. Vinod Lakhanpal; Mercy Hospital; Wilmer Eye Clinic; Penn Optical; The Optical Center at Eastpoint; 20/20 Vision Center; this list, however, is not exclusive.

INTERROGATORY NUMBER 20:

For each instance stated in the preceding Interrogatory describe the nature of the treatment or examination, the cause of

receiving such treatment or examination, and the date, or approximate date, of such treatment or examination.

ANSWER NUMBER 20:

Dr. Gail Shapiro, Dr. Saul Brusilow, Dr. Milton Schwarz, Dr. B. Mishra; Dr. William MacLean, Dr. David Valle, Dr. Howard Arkans, Dr. Alan Zuckerman - Johns Hopkins Hospital, June 25, 1970 to September 1, 1970, admission for birth, premature care; September 9, 1970, premature follow-up; September 25, 1970, comparative growth x-ray report and testing; October 5 - 7, 1970, progress testing; October 15, 1970, newborn follow-up; October 29, 1970, newborn follow-up; November 5, 1970, newborn follow-up; November 23, 1970, eye consultation; January 5, 1971, radiology report of lung x-ray; January 13, 1971, radiology report of skull x-ray;

Johns Hopkins Hospital, Dr. Payne, March 10, 1971, eye exam; April 1, 1971, RLF evaluation examination.

Johns Hopkins Hospital, April 1, 1971, skin burn to forehead; June 26, 1971, radiology report of lung x-ray; March 6, 1972, physical examination; Johns Hopkins Hospital, Dr. Johnson, July 2, 1972, physical examination and radiology report of chest x-ray; Johns Hopkins Hospital, Dr. Thomas Hoffman, November 15, 1972, emergency room, pneumonia; November 22, 1972, emergency room pneumonia.

Johns Hopkins Hospital, April 7, 1973, chicken pox; December 30, 1973, pneumonia; December 30, 1973, eye exam; January 8, 1974, eye examination; September 19, 1974, physical examination; September 20, 1974, physical examination, testing, radiology report

of chest x-ray, pneumonia; September 21, 1974, follow-up physical examination; Johns Hopkins Hospital, Dr. Kenyon, III, October 15, 1974, eye consultation;

Johns Hopkins Hospital, January 31, 1976, physical examination, infected umbilical cord; May 10, 1976 and May 27, 1976, splinter in foot, radiology report of foot x-ray;

Wilmer Eye Clinic; Penn Optical, 1984 or 1985, eyeglasses; The Optical Center at Eastpoint, eyeglasses; 20/20 Vision Center, eyeglasses;

Mercy Hospital, Dr. Renee Lerner, June 17, 1981, surgery for removal of a cataract on left eye; Dr. Vinod Lakhonpal, surgery for holes in the retina of the left and right eyes detached retina in the left eye; this list, however, is not exclusive.

INTERROGATORY NUMBER 21:

If you have ever made claim for any benefits under any insurance policy, or against any person, firm or corporation, for personal injuries or physical condition which you have not heretofore listed in your Answers to these Interrogatories, state the injuries or conditions for which such claim was made, the name and address of the person, firm or corporation to whom or against whom it was made, the nature and amount of any payment received therefore, and the date it was made.

ANSWER NUMBER 21:

None.

INTERROGATORY NUMBER 22:

Give the date, circumstances and injuries sustained with relation to any occurrence or accident in which you were involved in the last seven years in which you sustained any bodily injury.

ANSWER NUMBER 22:

January 1989 - sprained ankle; September 1986 - separated shoulder; 1987 - sprained thumb; nosebleeds since birth; various minor injuries such as cuts, falling down stairs, etc.

INTERROGATORY NUMBER 23:

With respect to each of the past five years, state your yearly gross income, yearly net income, and the name and address of the person, firm or corporation having custody of any papers pertaining to your income.

ANSWER NUMBER 23:

Plaintiff has begun to receive Social Security Disability as of January 1989 at \$368.00 per month.

INTERROGATORY NUMBER 24:

With respect to the injuries alleged in the Complaint, list all current and anticipated medical expenses for the treatment of said injuries, including lost wages and other expenses.

ANSWER NUMBER 24:

As to current medical expenses, the Plaintiff is attempting to gather the records and receipts of such. As to anticipated medical expenses and lost wages, it must be acknowledged that the Plaintiff is permanently blind and has been since the occurrence. The Plaintiff through his life, past, present, and future, was,

is, and will be forced to forego normal daily activities due to his permanent blindness. The Plaintiff is now over 18 years of age and unable to earn a living because of his permanent blindness. In addition, the Plaintiff will be forced to seek further medical observation and treatment for his eye condition resulting from his injuries stated in the complaint.

INTERROGATORY NUMBER 25:

If you intend to rely upon or use either in direct examination, cross-examination or otherwise, any medical articles, treatises, textbooks, or other publications, give the title of each such publication, the journal, magazine, or series wherein each was published; the name and address of the publisher; the date of publication; the name of the author; and the volume and page or section reference.

ANSWER NUMBER 25:

The Plaintiff objects to the portion of this interrogatory that seeks information regarding cross-examination. Such information is not discoverable as it is sought solely to avoid impeachment.

Medical texts have not been determined at this time. Such medical texts will be determined by the medical expert.

INTERROGATORY NUMBER 26:

Itemize the nature and amount of all expenses made or incurred by you, or for which you intend to make claims as a result of the Defendant's alleged negligence, including all hospital and doctor

bills and specifying which of the above expenses have been paid and when and by whom they were paid.

ANSWER NUMBER 26:

As to the amount of expenses, the Plaintiff is currently gathering the records. The fact that the medical expenses are, or will be paid by someone other than the Plaintiff, or are gratuitous, should not be considered, and the Plaintiff refuses to answer that portion of the Interrogatory. Plank v. Summers, 203 Md. 552, 102 A.2d 262 (1954).

INTERROGATORY NUMBER 27:

If you have arrived with any settlement or other agreement with any other party who may be responsible for any of the injuries for which you claim damages in this case specify the date of the settlement or agreement, the amount of consideration paid for that settlement or agreement and identify the party with whom the settlement or agreement was reached.

ANSWER NUMBER 27:

None.

INTERROGATORY NUMBER 28:

Identify all crimes of which you have been convicted other than minor traffic offenses.

ANSWER NUMBER 28:

None.

INTERROGATORY NUMBER 29:

Please list every person, firm, partnership, corporation or other legal entity which you contend was an agent, servant or

employee of this Defendant and which you contend departed from accepted standards of care resulting in injury to you.

ANSWER NUMBER 29:

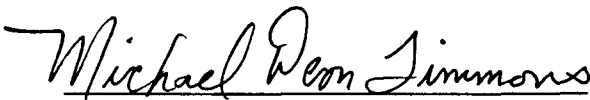
The doctors and nurses performing the procedures as well as other agents, servants, and employees of Johns Hopkins Hospital listed in the medical records.

INTERROGATORY NUMBER 30:

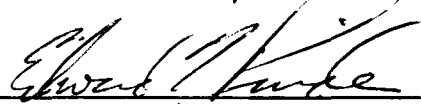
With regard to every conversation you have ever had with the Defendant, or any person you contend to be his/her agent, please state the date, time and place of that conversation, all persons present during any part of that conversation and the substance, including everything you said and everything anyone else present during that conversation said, to the best of your recollection.

ANSWER NUMBER 30:

Plaintiff does not recall any conversations.

  
Michael Deon Timmons  
A/K/A Michael Allen

WILLIAM J. BLONDELL, JR.,  
CHARTERED, and

  
Edward T. Pinder  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
(301) 687-7878  
Attorneys for Plaintiffs



I solely declare and affirm under the penalties of perjury that the facts and information contained in the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information, and belief.

Michael D. Timmons  
Michael Deon Timmons  
A/K/A Michael Allen

I HEREBY CERTIFY, that on this <sup>23</sup>~~16~~ day of June, 1989, a copy of the foregoing Answers to Interrogatories was mailed to E. Dale Adkins, III, Esquire, Anderson, Coe & King, 2000 Central Savings Bank Building, 201 North Charles Street, Baltimore, Maryland 21201.

Edward T. Pinder  
Edward T. Pinder

ETP:CG:d1m  
5/15/89

LAW OFFICES  
WILLIAM J. BLONDELL, JR., CHARTERED  
628 EASTERN BOULEVARD  
BALTIMORE, MARYLAND 21221-4992

WILLIAM J. BLONDELL, JR.  
STEPHEN W. LAFFERTY  
CHRISTOPHER A. KING  
EDWARD T. PINDER

June 9, 1989

TELEPHONE  
(301) 687-7878  
FAX NUMBER  
(301) 687-4657

Saundra E. Banks, Clerk  
Circuit Court for Baltimore City  
Civil Division, Room 462  
111 North Calvert Street  
Baltimore, Maryland 21202

Re: Timmons, et al v. The Johns Hopkins Hospital  
89075003/CL94437

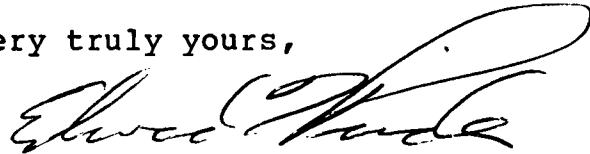
Dear Ms. Banks:

I am in receipt of your statement of costs in the above captioned case. I believe, however, there has been some mistake. This case is still pending, as Judge Thomas Ward dismissed Count Two of the Plaintiffs' Complaint. Count One of the Complaint remains in effect and has not been dismissed.

If this statement of costs is for some reason other than the case being dismissed, please contact me immediately.

Thank you very much for your cooperation and attention to this matter.

Very truly yours,



Edward T. Pinder

ETP:ddm

Enclosure

*Judgment entered in error. Statement sent prematurely.*

**IMPORTANT**

Please Remit  
With Payment

**STATEMENT OF COSTS**

SAUNDRA E. BANKS, CLERK  
CIRCUIT COURT FOR BALTIMORE CITY  
CIVIL DIVISION — ROOM 462  
111 N. CALVERT STREET  
BALTIMORE, MD. 21202

N<sup>o</sup> 48173

Date 5/30/89  
Case No. 89075003/CL 94437

Michael D. Simmons et al  
vs.  
The Johns Hopkins Hospital.

TO: Edward J. Pender  
628 Eastern Ave.  
Baltimore, Md. 21221

Clerk	10	00
Bar Library	5	00
Sheriff - City		
Sheriff - Counties		
Total	15	00

Make Payment By:  
Money Order or 10000000  
Certified Check  
No Personal Checks Accepted

By J. Pender  
Deputy Clerk

MICHAEL DEON TIMMONS, et al

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

\*

\*

\*

\*

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

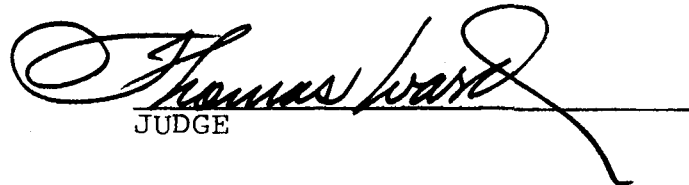
Case No. 89075003/CL94437

(8)

AMENDED ORDER

Upon consideration of Defendant's, Johns Hopkins Hospital's,  
Motion to Dismiss Count II of the Complaint, it is this 2  
day of June, 1989

ORDERED, that Count II of the Complaint is dismissed  
without leave to amend.

  
JUDGE

LAW OFFICES  
ANDERSON, COE & KING

SUITE 2000  
CENTRAL SAVINGS BANK BUILDING  
201 N. CHARLES STREET  
BALTIMORE, MARYLAND 21201  
AREA CODE 301-752-1630

JOHN F. KING  
FRANK J. VECELLA  
ROBERT H. BOUSE, JR.  
JAMES S. MAFFITT  
E. DALE ADKINS, III  
JAMES A. ROTHSCHILD  
M. BRADLEY HALLWIG  
J. MICHAEL SLONEKER  
G. MACY NELSON  
JEANETTE A. PLANTE  
PATRICIA M. O'CONNOR

CABLE ADDRESS  
ABKO  
FAX DIRECT DIAL:  
(301) 752-0085

G. C. A. ANDERSON  
(1898-1985)  
COUNSEL  
WARD B. COE, JR.

May 30, 1989

FILED  
MAY 31 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

E. PHILIP FRANKE, III  
LYNNE B. MALONE  
T. MICHAEL PRESTON  
FAITH E. THOMAS  
GREGORY L. VANGEISON  
PHILIP C. JACOBSON  
WENDY L. SHIFF  
MELISSA J. MULLADY  
CONSTANCE D. BURTON  
BARBARA MCC. STANLEY  
MATTHEW T. ANGOTTI  
HUGH CROPPER, IV  
DEBRA L. WYNNE

Honorable Thomas Ward  
Circuit Court for Baltimore City  
Courthouse East  
111 N. Calvert Street  
Baltimore, Maryland 21202

Re: Michael Deon Timmons v. The Johns Hopkins Hospital  
Case No. 89075003/CL94437

Dear Judge Ward:

I am in receipt of your Order of May 24, 1989 granting Defendant's Motion to Dismiss Count II in the above-captioned case. Although the motion was to dismiss Count II, the Order indicates that Count I of the Complaint would be dismissed without leave to amend.

Therefore, I have enclosed an Amended Order indicating that Count II of the Complaint is dismissed without leave to amend.

Thank you for your consideration in this matter.

Very truly yours,

Barbara McC. Stanley

BMS/slt  
Enclosure

cc: William J. Blondell, Jr., Esquire  
Edward T. Pinder, Esquire  
✓ Clerk of the Circuit Court for Baltimore City

21717

..



CM

MICHAEL DEON TIMMONS, et al.

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

FILED  
MAY 1 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: 98075003/CL94437

4  
*[Signature]*

MOTION TO DISMISS

Johns Hopkins Hospital, Defendant, by its attorney, E. Dale Adkins, III, pursuant to Md. R. 2-322(b), moves that Count II of the Complaint be dismissed, and for reasons state:

1. Count II fails to state a cause of action upon which relief can be granted and is barred by the applicable statute of limitations.

WHEREFORE, Defendant moves that Count I of the Complaint be dismissed without leave to amend.

*E. Dale Adkins, III*

E. Dale Adkins, III *smcs*  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 1989, a copy of the foregoing Motion to Dismiss and Supporting Papers were mailed to: William J. Blondell, Jr., Esquire and Edward T. Pinder, Esquire, 628 Eastern Boulevard, Baltimore, Maryland 21221.

*E. Dale Adkins, III*

E. Dale Adkins, III *smcs*

6603B

*Granted.*  
*Thomas Ward - 27 May 1989.*

MICHAEL DEON TIMMONS, et al.           \*       IN THE  
  \*       CIRCUIT COURT  
  \*       FOR  
v.   \*       BALTIMORE CITY  
THE JOHNS HOPKINS HOSPITAL           \*       CASE NO: 98075003/CL94437  
  \*         
  \*       \*       \*

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Johns Hopkins Hospital, Defendant, by its attorney, E. Dale Adkins, III, submits it Memorandum in Support of its Motion to Dismiss.

The Complaint, filed by Cheryl Allen, next friend of Michael Deon Timmons and individually, is in two counts. The operative allegations of fact are contained in the statement of facts in which it is stated that the Minor Plaintiff was born on June 25, 1970. It is alleged that the delivery by breech extraction was contrary to the standard of care. It is further alleged that an arterial catheter which measured oxygen was negligently positioned. As a result of allegedly wrongful conduct, Plaintiffs claim damages on behalf of the Minor Plaintiff (Count One) and Individually (Count Two).

ARGUMENT

In order to state a cause of action which will survive a motion to dismiss, plaintiff must allege facts which, if proven, would entitle him to relief. Hooke v. Equitable Credit Corp., 42 Md. App. 610 (1979). Faced with a motion to dismiss, the Court is



required to accept as true all well-pleaded facts and any reasonable inferences which may be drawn therefrom. Schwartz v. Merchant's Mortgage Co., 272 Md. 305 (1974). Plaintiff, individually, failed to state a cause of action in Count Two and Count Two is barred by the applicable statute of limitations.

I. Count Two fails to state a cause of action for solatium.

In the Complaint, the Individual Plaintiff claims that, due to the alleged acts of negligence, she was "deprived of the love, affection, companionship, society, protection, and parental care which would inure to her as a parent." See Paragraph 13 of the Complaint. Maryland does not recognize a cause of action for solatium except in a wrongful death action. In this case, Plaintiff does not allege the death of Michael Deon Timmons nor does she bring an action under the wrongful death statute. The allegations of Count Two are insufficient to state a cause of action for solatium.

II. Count Two is barred by the applicable statute of limitations.

In addition to the damages claimed for solatium in Count Two, the Individual Plaintiff seeks damages for the medical expenses necessitated by the alleged acts of negligence. A parent's action for medical expenses is a separate and distinct ground for recovery which is vested in the parent. Hudson v. Hudson, 226 Md. 521 (1961); Herbert v. Whittle, 69 Md. App. 273 (1986).

A cause of action for medical expenses is governed by the general statute of limitations stated in Md. Ann. Code Art. 57, § 1. (1972) Under that provision, the individual Plaintiff had three years from the date the cause of action accrued in which to bring suit.

From the face of the Complaint, the cause of action accrued at the birth of Michael Deon Timmons, on or about June 25, 1970. The individual Plaintiff then had three years in which to bring the suit. However, suit was not filed until 1989, eighteen years later.

It is obvious from the face of the Complaint, that the Individual Plaintiff's action is barred by the applicable statute of limitations. When a complaint shows on its face that no relief can be granted because the claim is barred by limitations, the defense of limitations may be raised by motion to dismiss. Antigua Condo. Ass'n v. Melba Investors Atl., Inc., 65 Md. App. 726 (1986); Md. R. 2-322(b).

Because the allegations of Count Two are insufficient to state a cause of action for solatium, and because Count Two is barred by the applicable statute of limitations, Count Two should be dismissed without leave to amend.

WHEREFORE, Defendant, The Johns Hopkins Hospital, respectfully request this Court to grant its Motion to Dismiss on the grounds that Count Two fails to state a cause of action upon which relief can be granted and is barred by the applicable statute of limitations.

Respectfully submitted by,

*E. Dale Adkins, III*

---

E. Dale Adkins, III *SRCS*  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201

6603B

2

FILED

MAY 4 1989

MICHAEL DEON TIMMONS, et al. \*

IN THE

Plaintiffs \*

CIRCUIT COURT

CIRCUIT COURT FOR  
BALTIMORE CITY

v. \*

FOR

THE JOHNS HOPKINS HOSPITAL \*

BALTIMORE CITY

Defendant \*

CASE NO: 98075003/CL94437

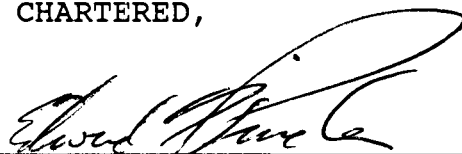
\* \* \* \* \*

MOTION TO PLACE ON CONSOLIDATED JURY TRIAL DOCKET

Mr. Clerk:

The Plaintiffs request that the above captioned matter be placed on the Consolidated Jury Trial Docket.

WILLIAM J. BLONDELL, JR.  
CHARTERED,

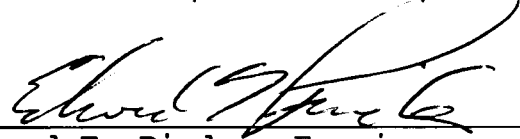


Edward T. Pinder, Esquire  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
(301)687-7878

ETP:llf

5-3-89

I HEREBY CERTIFY THAT on this 3<sup>rd</sup> day of May 1989, a copy of the foregoing Motion to Place on Consolidated Jury Trial Docket was mailed to: E. Dale Adkins, III, Esquire, 2000 Central Savings Bank Building, 201 North Charles Street, Baltimore, Maryland 21201.



Edward T. Pinder, Esquire  
Attorney for Plaintiff

ETP:llf

MICHAEL DEON TIMMONS, et al.

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

FILED  
MAY 1 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: 98075003/CL94437

NOTICE TO TAKE DEPOSITION

You are hereby notified that Defendant desires, pursuant to the terms and provisions of the Maryland Rules, to take the deposition on oral examination of the following named person on the date and at the time indicated below, before a Notary Public, or any other Notary qualified to take depositions, in the offices of Anderson, Coe & King, 2000 Central Savings Bank Building, 201 North Charles Street, Baltimore, Maryland 21201; said deposition to be continued from time to time until completed.

Name: Michael Deon Timmons

Address: 1620 Hopewell Avenue  
Baltimore, Maryland 21221

Date and Time: Tuesday, May 30, 1989 at 10:00 a.m.

E. Dale Adkins, III  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 1st day of May, 1989, a copy of the foregoing Notice to Take Deposition was mailed to: William J. Blondell, Jr., Esquire and Edward T. Pinder, Esquire 628 Eastern Boulevard, Baltimore, Maryland 21221.

*E. Dale Adkins, III*  
E. Dale Adkins, III *smccs*

6620B

MICHAEL DEON TIMMONS, et al.

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

CIRCUIT COURT FOR BALTIMORE CITY

MAY 1 1989

FILED

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: 98075003/CL94437

NOTICE TO TAKE DEPOSITION

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Name: Cheryl Allen

Address: 1620 Hopewell Avenue  
Baltimore, Maryland 21221

Date and Time: Tuesday, May 30, 1989 at 11:00 a.m.

*E. Dale Adkins, III*

E. Dale Adkins, III  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 1st day of May, 1989, a copy of the foregoing Notice to Take Deposition was mailed to: William J. Blondell, Jr., Esquire and Edward T. Pinder, Esquire 628 Eastern Boulevard, Baltimore, Maryland 21221.



*E. Dale Adkins, III*  
E. Dale Adkins, III *Bmes*

6620B

MICHAEL DEON TIMMONS, et al.

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

3

IN THE  
 CIRCUIT COURT  
 FOR  
 BALTIMORE CITY  
 CASE NO: 98075003/CL94437

FILED  
 MAR 1 1989  
 CIRCUIT COURT FOR  
 BALTIMORE CITY

INTERROGATORIES

TO: Michael Deon Timmons, Plaintiff

BY: The Johns Hopkins Hospital, Defendant

NOTICE: That pursuant to the Rules of Practice and Procedure you are required to answer, under oath, the following Interrogatories within thirty (30) days after service of this notice.

(a) These Interrogatories are continuing so as to require supplemental answers if you obtain further or different information before the time of trial.

(b) Where the name or identity of a person is requested, please state the full name, home address, and, if known, business address.

(c) Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrence mentioned or complained of in the pleadings.

(d) Where knowledge or information in the possession of a party is requested, such request includes knowledge of the party's agents, representatives, and, unless privileged, his attorneys, state the name, address, and title of the person supplying the information and making the affidavit and the source of his information.

(e) Where the identity of statements and reports is requested, state the name of the person who gave or made the statement or report, the date it was made and its present custodian.

(f) Where the description of real evidence is requested, name the present custodian and the date such object was produced or obtained.

(g) Where the identity of expert witnesses is requested, state the area of expertise; education; qualification, experience and field of practice of each.

(h) Where the identity of experts' memoranda, reports, and records, etc., is requested, state the name of the person who prepared such report, and its present custodian.

(i) In a case involving a claim for damages as a result of a person's death, the pronoun "you" refers to the decedent unless otherwise specified in these Interrogatories.

1. State your full name, address, date and place of birth, marital status, and social security number.

2. List all other addresses at which you have lived for the past fifteen years, giving street numbers, city and state and dates of residence.

3. State the names, date of birth and status of all dependents.

4. State the name and address of each of your employers for the past five (5) years and give a description of your occupation and duties, setting forth the inclusive dates of employment with each.

5. State concisely how you contend the events giving rise to your claim against this Defendant occurred.

6. List each act or omission on the part of this Defendant and/or his/its agents, servants or employees which you contend constituted a departure from the applicable standards of care (i.e. negligence) and describe who committed the act or omission and where and when such act or omission occurred. (This Interrogatory requests specific enumerations of the departures from standards you allege and does not request general legal and

conclusory allegations e.g. "the Defendant failed to monitor, the Defendant failed to diagnose, the Defendant improperly performed surgery, etc.).

7. For each alleged departure from accepted standards of care enumerated in the preceding Answer state what you contend the applicable standard of care required with regard to the circumstances with which this Defendant and/or his/its agents, servants or employees were confronted.

8. Identify each person who has or claims to have personal knowledge of the occurrence and/or damages and injuries of which you complain and specify which area each particular person has knowledge of.

9. Identify each person who investigated the circumstances of the alleged malpractice in this case for you or on your behalf.

10. Identify each person you may call as an expert witness in the trial of this case and state the subject matter on which the expert is expected to testify, the substance of the findings and opinions to which that expert is expected to testify and summarize the grounds for each opinion held by that expert. If that expert has prepared a written report concerning his findings and opinions attach to your Answers to Interrogatories a copy of that report.

11. For each of the experts listed in your Answer to the preceding Interrogatory state whether or not they base their

opinions on personal knowledge of the facts of this case or a review of documents, and other items of tangible evidence. If such experts have reviewed documents and other items of tangible evidence please enumerate with respect to each expert the documents or other items they have reviewed and summarize the information communicated to them upon which they base their opinion.

12. Attach exact copies of all written statements, reports, transcribed statements or recorded statements which have been prepared, given or signed by the Defendants or persons whom you allege to be their agents, servants or employees.

13. Identify the nature and subject matter of each picture, diagram, document, x-ray, or other objects (real evidence), which is known to you and which is relevant to this occurrence or its consequences.

14. Identify and give the substance of each statement, action or admission against interest, declaration against interest, or otherwise, whether oral, written, by conduct, silent or otherwise, which you contend was made by the Defendant or by any person whom you allege to be the agent, servant and/or employee of this Defendant.

15. With reference to the above Interrogatory, identify the name of each person who has personal knowledge of the making of each such statement, and state the place and date when each such statement was made.



16. If you contend that at any portion of any medical record, chart or report prepared by this Defendant or his/its agents, servants or employees is either inaccurate, false, or has been altered, please specify which such record, chart or report you refer to and that part of it which you contend is inaccurate, false, or has been altered.

17. Name all hospitals and physicians or any other person or institution who have rendered treatment to you as a result of the occurrence for which this suit is brought and state the dates and nature of all such treatments.

18. Describe all injuries which you contend you have sustained as a result of the occurrence for which this suit was brought and state which you contend are permanent.

19. Identify every physician or other health care provider who has treated you and any hospital to which you have been admitted for the past twenty five years.

20. For each instance stated in the preceding Interrogatory describe the nature of the treatment or examination, the cause of receiving such treatment or examination, and the date, or approximate date, of such treatment or examination.

21. If you have ever made claim for any benefits under any insurance policy, or against any person, firm or corporation, for personal injuries or physical condition which you have not heretofore listed in your Answers to these Interrogatories, state the injuries or conditions for which such claim was made, the name

and address of the person, firm or corporation to whom or against whom it was made, the nature and amount of any payment received therefore, and the date it was made.

22. Give the date, circumstances and injuries sustained with relation to any occurrence or accident in which you were involved in the last seven years in which you sustained any bodily injury.

23. With respect to each of the past five years, state your yearly gross income, yearly net income, and the name and address of the person, firm or corporation having custody of any papers pertaining to your income.

24. With respect to the injuries alleged in the Complaint, list all current and anticipated medical expenses for the treatment of said injuries, including lost wages and other expenses.

25. If you intend to rely upon or use either in direct examination, cross-examination or otherwise, any medical articles, treatises, textbooks, or other publications, give the title of each such publication, the journal, magazine, or series wherein each was published; the name and address of the publisher; the date of publication; the name of the author; and the volume and page or section reference.

26. Itemize the nature and amount of all expenses made or incurred by you, or for which you intend to make claims as a result of the Defendant's alleged negligence, including all hospital and doctor bills and specifying which of the above expenses have been paid and when and by whom they were paid.



27. If you have arrived with any settlement or other agreement with any other party who may be responsible for any of the injuries for which you claim damages in this case specify the date of the settlement or agreement, the amount of consideration paid for that settlement or agreement and identify the party with whom the settlement or agreement was reached.

28. Identify all crimes of which you have been convicted other than minor traffic offenses.

29. Please list every person, firm, partnership, corporation or other legal entity which you contend was an agent, servant or employee of this Defendant and which you contend departed from accepted standards of care resulting in injury to you.

30. With regard to every conversation you have ever had with the Defendant, or any person you contend to be his/her agent, please state the date, time and place of that conversation, all persons present during any part of that conversation and the substance, including everything you said and everything anyone else present during that conversation said, to the best of your recollection.

*E. Dale Adkins, III*

E. Dale Adkins, III <sup>Business</sup>  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201  
(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 1st day of May, 1989, a copy of the foregoing Interrogatories was mailed to: William J. Blondell, Jr., Esquire and Edward T. Pinder, Esquire 628 Eastern Boulevard, Baltimore, Maryland 21221.

*E. Dale Adkins, III*  
E. Dale Adkins, III *Smcs*

6620B

MICHAEL DEON TIMMONS, et al. \*

Plaintiff \*

v. \*

THE JOHNS HOPKINS HOSPITAL \*

Defendant \*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: 98075003/CL94437

FILED  
MAY 1 1989  
CIRCUIT COURT FOR  
BALTIMORE CITY

2  
*[Signature]*

ANSWER

Johns Hopkins Hospital, Defendant, by its attorney, E. Dale Adkins, III, for Answer to Plaintiffs' Complaint, states as follows:

GENERAL DENIAL

Pursuant to Md. R. 2-323(d), Defendant generally denies all allegations of negligence and wrong-doing as asserted in Count One of the Complaint.

DEFENSES

1. Defendant is protected by the doctrine of charitable immunity.
2. The Complaint is barred by the applicable statute of limitations.
3. The Complaint is barred by Plaintiffs' contributory negligence.
4. The Complaint is barred by Plaintiffs' assumption of risk.
5. Plaintiffs lack the capacity to sue.
6. Plaintiffs lack the authority to sue in a representative capacity.

*E. Dale Adkins, III*

E. Dale Adkins, III *Smiles*  
Anderson, Coe & King  
2000 Central Savings Bank Bldg.  
201 North Charles Street  
Baltimore, Maryland 21201

(301)752-1630

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 1st day of May, 1989, a copy of the foregoing Answer was mailed to: William J. Blondell, Jr., Esquire and Edward T. Pinder, Esquire 628 Eastern Boulevard, Baltimore, Maryland 21221.

*E. Dale Adkins, III*  
E. Dale Adkins, III *mees*

6620B



FILED

MAR 16 1989

CIRCUIT COURT FOR BALTIMORE CITY

MICHAEL DEON TIMMONS,  
a minor, by Cheryl Allen,  
his mother and next friend  
1620 Hopewell Avenue  
Baltimore, Maryland 21221

and

CHERYL ALLEN  
1620 Hopewell Avenue  
Baltimore, Maryland 21221

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL  
600 N. Wolfe Street  
Baltimore, Maryland 21205

Serve On:  
W. Thomas Barnes  
Resident Agent  
600 North Wolfe Street  
Baltimore, Maryland 21205

Defendant

\* \* \* \* \*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY  
CIVIL  
LIBRA  
CHECK

89075003

CL 94437

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#0000003

\$80.00

\$5.00

\$85.00

COMPLAINT  
PRAYER FOR JURY TRIAL

Michael Deon Timmons, a minor by Cheryl Allen, his mother and next friend, and Cheryl Allen, individually, by William J. Blondell, Jr., Edward T. Pinder and William J. Blondell Jr., Chartered, their attorneys, and sues Johns Hopkins Hospital, and for cause states that:

INTRODUCTION

1. The venue of this claim is proper in Baltimore City, Maryland pursuant to Maryland Courts & Judicial Proceeding, Section 6-201, since the Defendant is located and carries on a regular

business in Baltimore City.

STATEMENT OF FACTS

2. The Plaintiff, Michael Deon Timmons, is a minor residing in Baltimore City.

3. The Defendant, Johns Hopkins Hospital is a business with principal offices located in Baltimore City.

4. That on June 25, 1970, the minor Plaintiff, minor Michael Deon Timmons, son of the Plaintiff, Cheryl Allen, was born at Johns Hopkins Hospital.

5. That because Michael was a breech presentation, that is as a fetus his head and shoulders were not in a position to come out first during birth, he was delivered by breech extraction.

6. That when Michael was born, this breech extraction method of delivery was contrary to the standard of care due him under the circumstances.

7. That because Michael was delivered prematurely he had to be placed in an incubator.

8. That while in the incubator, Michael was treated with oxygen, which was measured by a negligently positioned arterial catheter, and otherwise the treatment was negligent.

9. The minor Plaintiff has sustained serious neurological, opthamalogical and other injuries as result of the negligent acts.

COUNT ONE

Now comes the Plaintiff, Michael Deon Timmons, a minor by his mother and next friend, Cheryl Allen, and sues the Defendant, Johns Hopkins Hospital and allegations and incorporates by reference all

those facts and allegations as are set forth in the Statement of Facts above and avers further:

10. That a medical injury was inflicted upon the minor child as a result of the medical negligence and gross negligence of Johns Hopkins Hospital in that they:

a. failed to properly direct, instruct and supervise agents, servants and employees in the management of premature breech presentation infants;

b. negligently delivered Plaintiff by the method of breech extraction;

c. failed to render the necessary treatment and care required to treat the claimant;

d. negligently administered excessive amounts of oxygen to the Claimant during treatment by failure to properly place the catheters;

e. knew or should have known that the absence and failure to administer proper incubation treatment for a premature infant would increase the potential risks of serious harm to the Plaintiff;

f. and in other respects failed to conform their conduct to the reasonable standards of medical care.

g. recklessly, and with gross, indifference to human life, acted or failed to act according to any standard of reasonable medical care, despite knowledge of the permanent dangers which the minor Plaintiff was exposed to.

11. As direct and proximate result of the medical negligence



and gross negligence of the Defendant, The Johns Hopkins Hospital, the minor Plaintiff was seriously painfully and permanently injured in the he:

a. suffered and sustained and will continue to suffer and sustain a severe, permanent and irreversible shock to his nerves and nervous system and great physical pain and mental anguish:

b. was, is and will be required to undergo extensive medical treatment in attempted alleviation of his infirmities which result from his injuries;

c. was, is and will be precluded from engaging in a child's normal activities and pursuits for the remainder of life;

d. was, is and will be precluded from enjoying the normal life of a growing child;

e. and was, is and will be otherwise hurt, injured, wounded, damaged and caused to sustain losses.

12. The Plaintiff, Michael Deon Timmons, a minor by his mother and next friend, Cheryl Allen, alleges that all of his losses, past, present and prospective were, are and will be due solely to the negligence and gross negligence of the Defendant, The Johns Hopkins Hospital, without any negligence or want of due care on his part contributing thereto.

WHEREFORE, this Plaintiff, claims compensatory damages in the amount of Ten Million Dollars (\$10,000,000.00) and Punitive damages in the amount of Twenty Million Dollars (\$20,000,000.00).

COUNT TWO

Now comes the Plaintiff, Cheryl Allen, and sues the Defendant, Johns Hopkins Hospital and incorporates all those facts and allegations set forth in the Statement of Facts and Paragraphs Nine through Seventeen above, and avers further:

13. That a medical injury was inflicted upon her minor child, Michael Deon Timmons due to the medical negligence and gross negligence of The Johns Hopkins Hospital so that the Plaintiff is, was and will be for an indefinite period of time deprived of the love, affection, companionship, society, protection and parental care which would inure to her as a parent.

14. That as a direct and proximate result of these deprivations, the Plaintiff was seriously, painfully and permanently injured in that she:

a. suffered and sustained and will continue to suffer and sustain severe, permanent and irreversible shock to her nerves and nervous system and great physical pain and mental anguish;

b. was, is, and will be forced to become obligated for necessary medical expenses to alleviate her minor child's injuries, pain and suffering;

c. was, is, and will be caused to suffer great mental anguish, emotional pain and suffering.

d. was, is and will be precluded from enjoying the normal growth of her child;

15. That this Plaintiff alleges that all damages, past, present and prospective are a direct and proximate result of the

medical negligence and gross negligence of the Defendant, Johns Hopkins Hospital without any negligence or want of due care on her part contributing thereto,

16. That a medical injury was inflicted upon her minor child, Michael Deon Timmons due to the medical negligence and gross negligence of The Johns Hopkins Hospital, so that the Plaintiff is, was and will be for an indefinite period of time deprived of the love, affection, companionship, society, protection and parental care which would inure to her as a parent.

17. That as a direct and proximate result of these deprivations, the Plaintiff was seriously, painfully and permanently injured in that she:

a. suffered and sustained and will continue to suffer and sustain severe, permanent and irreversible shock to her nerves and nervous system and great physical pain and mental anguish;

b. was, is, and will be forced to become obligated for necessary medical expenses to alleviate her minor child's injuries, pain and suffering;

c. was, is, and will be caused to suffer great mental anguish, emotional pain and suffering;

d. was, is and will be precluded from enjoying the normal growth of her child;

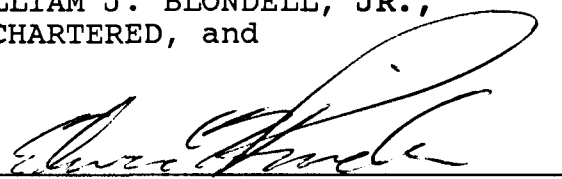
e. and was, is, and will be otherwise hurt, injured, wounded, damaged and caused to sustain losses.

18. That this Plaintiff alleges that all damages, past,

present and prospective are a direct and proximate result of the medical negligence and gross negligence of the Defendant, The Johns Hopkins Hospital, without any negligence of want of due care on her part contributing thereto.

WHEREFORE, the Claimant, Cheryl Allen claims damages in excess of One Million Dollars (\$1,000,000.00) compensatory, Ten Million Dollars (\$10,000,000.00) punitive.

WILLIAM J. BLONDELL, JR.,  
CHARTERED, and



---

Edward T. Pinder  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
687-7878  
Attorneys for Plaintiffs

ETP:EFV:llf:ams  
3/8/89

MICHAEL DEON TIMMONS,  
a minor, by Cheryl Allen,  
his mother and next friend

and

CHERYL ALLEN  
1620 Hopewell Avenue  
Baltimore, Maryland 21221

Plaintiffs

v.

THE JOHNS HOPKINS HOSPITAL

Defendant

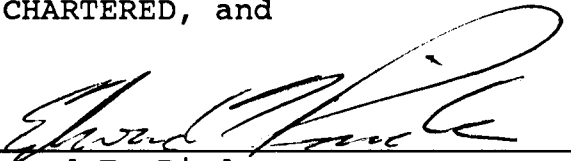
\* \* \* \* \*

PRAYER FOR JURY TRIAL

Mr. Clerk:

The Plaintiff elect and pray to have this case tried before  
a jury.

WILLIAM J. BLONDELL, JR.,  
CHARTERED, and

  
Edward T. Pinder  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
687-7878  
Attorney for Plaintiffs

MICHAEL DEON TIMMONS,  
a minor, by Cheryl Allen,  
his mother and next friend  
1620 Hopewell Avenue  
Baltimore, Maryland 21221

\*  
\*  
\*

IN THE  
  
CIRCUIT COURT

and

\*

CHERYL ALLEN  
1620 Hopewell Avenue  
Baltimore, Maryland 21221

\*  
\*

FOR

Plaintiffs

\*

BALTIMORE CITY

vs.

\*

THE JOHNS HOPKINS HOSPITAL  
600 N. Wolfe Street  
Baltimore, Maryland 21205

\*  
\*

Serve On:  
W. Thomas Barnes  
Resident Agent  
600 North Wolfe Street  
Baltimore, Maryland 21205

\*  
\*  
\*  
\*

Defendant

\*

\* \* \* \* \*

INTERROGATORIES

TO: THE JOHNS HOPKINS HOSPITAL, Defendant

FROM: Michael Deon Timmons, a minor, by Cheryl Allen, his mother  
and next friend.

The Plaintiffs, pursuant to the Rules of Procedure, propound  
the following Interrogatories, which shall be continuing in  
character.

A. Where addresses are requested, please state both home and  
business addresses, if known.

B. Unless otherwise indicated, these Interrogatories refer  
to the time, place, and circumstances of the occurrence complained

of in the pleadings.

C. Where knowledge or information of a party is requested, such request includes knowledge of the party's agents, representatives, and, unless priveleged, its attorneys.

D. The pronoun "you" refers to the party to whom these Interrogatories are addressed, and the persons mentioned in clause "C".

E. These Interrogatories are to be answered by a person who has the proper authority to bind the Johns Hopkins Hospital, and said party shall identify himself by name, address, title, and capacity served with the Johns Hopkins Hospital.

1. State why or why not you now believe that the diagnosis and treatment rendered to Plaintiff, Michael Deon Timmons was correct.

2. State whether David Valle, M.D., A.J. Friedler, M.D., Saul Brisilow, M.D., were agents, representatives or employees of The Johns Hopkins Hospital at the time of the occurrence, and if you contend any were not, state what their relationship to The Johns Hopkins Hospital at the time of the occurrence was.

3. If you admit that David Valle, M.D., or A.J. Friedler, M.D., or Saul Brisilow, M.D., were agents representatives or employees of the Johns Hopkins Hospital at the time of the occurrence, state if, when, and for what reason, each or any of them terminated such relationship with The Johns Hopkins Hospital.

4. Was the condition of Plaintiff Michael Deon Timmons discussed with Plaintiff Cheryl Allen or was she informed of

Plaintiff Michael Deon Timmon's diagnosis and treatment plan and if so, indicate what was discussed and by whom, the date and place of each discussion, and who witnessed such discussions.

5. If any medical personnel, including nurses, physicians, technicians, or radiologists were instructed as to the testing, treatment and care to be provided to Plaintiff Michael Deon Timmons, please provide each person's name, residential and business addresses, job title and the name, and residential and business addresses of the person who provided the instructions.

6. State whether David Valle, M.D., or A.J. Friedler, M.C., or Saul Brisilow, M.D. have had any formal or informal complaint, claim or legal action brought against him/them including the name and address of the complaining party, the date of any action, the medical or legal body before whom the complaint was brought, the nature and factual basis of the complaint and the legal status of said complaint as of this date.

7. State the names, business and residential addresses of all persons not heretofore named in your answers to these Interrogatories who have personal knowledge of facts concerning this matter.

8. Please state the name, business and residential addresses and area of expertise of each expert witness whom you intend to call upon at a hearing or trial in this action, and please attach a copy of any report prepared for you by said expert.

9. Describe in detail the rules, procedures, guidelines and directives given to David Valle, M.D., A.J. Friedler, M.D.,



Saul Brisilow, M.D., concerning their duties, responsibilities and conduct while working at The Johns Hopkins Hospital during the time of this occurrence.

10. State the name of the people who were the supervising and attending physicians at the time of this occurrence, their titles, medical specialty and whether they were consulted concerning the Plaintiff Michael Deon Timmons' condition.

11. If you contend that the Plaintiff Cheryl Allen caused or contributed to the negligent conduct complained of, state the factual basis for such contention.

12. If you contend that either of the Plaintiffs have made any admission or statement against interest in reference to the above captioned case, please describe in detail the nature and substance of any such alleged admission or statement against interest, and if such admission or statement is in writing, attach a copy of any such admission or statement to your answers.


13. Please identify and describe any and all medical records, hospital records, and x-rays which you contend are in any way related to your defense of the claim in the above captioned case, and identify the present custodian of such records or x-rays.


14. Identify each person, other than expert witnesses, whom you intend to call as witnesses on any question at the hearing of this case.

15. Do you claim that a person or persons other than those named in this complaint are responsible for the injuries of Michael Deon Timmons? Please state the name, address and the

factual basis for your belief that those person(s) are responsible.

WILLIAM J. BLONDELL, JR.,  
CHARTERED, and

  
William J. Blondell, Jr.

  
Edward T. Pinder  
628 Eastern Boulevard  
Baltimore, Maryland 21221  
(301)687-7878  
Attorneys for Plaintiffs

Copy of the foregoing Interrogatories mailed this 9<sup>th</sup>  
day of March 1989 to  
The John Hopkins Hospital  
600 N. Wolfe Street  
Baltimore, Maryland 21205  
W. Thomas Barnes  
Resident Agent

ETP:EFV:llf:ams  
3/8/89

LAW OFFICES  
WILLIAM J. BLONDELL, JR., CHARTERED  
628 EASTERN BOULEVARD  
BALTIMORE, MARYLAND 21221-4992

WILLIAM J. BLONDELL, JR.  
STEPHEN W. LAFFERTY  
CHRISTOPHER A. KING  
EDWARD T. PINDER

PHONE (301) 687-7878

March 10, 1989

Clerk, Circuit Court of  
Baltimore City  
Courthouse  
111 North Calvert Street  
Baltimore, Maryland 21202

Re: Michael Deon Timmons v. The Johns Hopkins Hospital

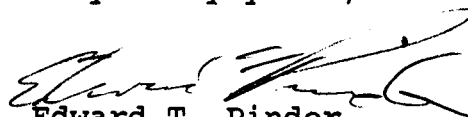
Dear Sir or Madam:

Enclosed herewith please find a check in the amount of Eighty-Five (\$85.00) Dollars to cover the cost of filing the enclosed Complaint Prayer For Jury Trial, and Interrogatories.

Please return a Writ of Summons to this office for service by private process.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Edward T. Pinder

ETP:ams

Enclosures

D. Lee  
2-1-10  
Image 163

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**MSA SC 5458-82-150**

**Dates:** 1989-1994

**Description:** Circuit Court for Baltimore City, Cases # 94004032; 94018024

scan whole case with following sequential file numbers

msa\_sc5458\_82\_150\_[full case number]-####

upload pdfs per usual

Cases 94004032 and 94018024 scanned and uploaded by Ray C. on 1/25/10.

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WOODLIFF VS SEC. OF PUBLIC SAFETY Box 84 Case No. 89047041 [MSA T2691-2720, OR/10/21/82]

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TIMMONS V JOHNS HOPKINS HOSPITAL Box 130 Case No. 89075003 [MSA DL 2-1-10 Image 163 T2691-2766, OR/10/22/44]

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SIMMS VS SEC OF PUB SAFETY Box 276 Case No. 89142059 [MSA T2691-2912, OR/11/2/22]

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BERMAN VS BOARD OF APPEALS, ET AL Box 319 Case No. 89164046 [MSA T2691-2955, OR/11/2/65]

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TROY VS ALLSTATE INS Box 355 Case No. 89184050 [MSA T2691-2991, OR/11/3/17]

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HIRSCHFIELD VS BD OF MUNICI APL Box 367 Case No. 89194041 [MSA T2691-3003, OR/11/3/29]

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FAISON VS JEFFERSON Box 385 Case No. 89207040 [MSA T2691-3021, OR/11/3/47]

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MITCHELL VS PROVIDENT BANK Box 389 Case No. 89209043 [MSA T2691-3025, OR/11/3/51]

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