

LO8-11182

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
Civil Division

FILED

ROCHELLE Y. SMITH
:
:
Plaintiff, :
:
v. :
:
MOHAMED BOUKADOUM, M.D., et al. :
:
Defendants. :

MAY 11 2009
CLERK OF THE CIRCUIT COURT
FOR PRINCE GEORGES COUNTY, MD.
CAL 08-11182

**MOTION FOR ORDER COMPELLING DISCOVERY AND EXTENDING
DISCOVERY DEADLINE OF DEFENDANTS MOHAMED BOUKADOUM, M.D.,
DRS. GROOVER CHRISTIE & MERRITT, P.C., SOUTHERN MARYLAND
HOSPITAL, INC., SOUTHERN MARYLAND HOSPITAL CENTER LIMITED
PARTNERSHIP, AND SOUTHERN MARYLAND PROFESSIONAL RADIOLOGY,
INC., d/b/a MAMMOGRAPHY CENTER OF SOUTHERN MARYLAND**

The Defendants, Mohamed Boukadoum, M.D., Drs. Groover, Christie & Merritt, P.C.
("GCM"), Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited
Partnership, and Southern Maryland Professional Radiology, Inc., d/b/a Mammography Center
of Southern Maryland, through their undersigned counsel, respectfully submit this Motion For
Order Compelling Discovery And Extending Discovery Deadline. As grounds, the Defendants
present the following:

1. This is a medical malpractice case arising out of an alleged failure to diagnose
and treat the Plaintiff breast cancer in a timely manner. The Plaintiff served her Designation of
Experts on December 30, 2008 for purposes of identifying nine (9) expert witnesses. See
Exhibit No. 1.

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See Exhibit Nos. 2 - 11.

Plaintiff's Counsel failed to produce his experts despite the efforts described above. When it became apparent that Plaintiff's Counsel would not be producing his experts on the dates noted for depositions the following additional steps were taken:

- (a) Letter to Plaintiff's Counsel re-requesting expert depositions dated April 23, 2009;
- (b) Letter to Plaintiff's Counsel dated April 24, 2009 confirming availability for expert depositions on multiple dates (Although Plaintiff's Counsel supplied dates for three of his experts on one occasion, he failed to confirm his experts' availability for specific dates after several alternate dates were cleared with defense counsel);
- (c) Email to Plaintiff's Counsel dated April 30, 2009 reminding that confirmation was still needed; and
- (d) Letter to Plaintiff's Counsel dated May 1, 2009 requesting deposition dates.

See Exhibit Nos. 12 – 15.

In addition to all of the efforts described above, counsel for these Defendants have had discussions with Plaintiff's counsel on numerous occasions about the subject of Plaintiff's expert's depositions. Most recently, counsel for Dr. Boukadoum and GCM spoke with Plaintiff's counsel's office on May 7, 2009 about the subject of expert depositions, and counsel was advised that there would be clarification on the morning of May 8, 2009 about the availability of the three experts referenced in the letter dated April 24, 2009. *See Exhibit No.*

14. However, the undersigned received no clarification before the service of this motion late on the afternoon of May 8th.

Despite the efforts described above none of the Plaintiff's Experts have been deposed, and only one, Willie Blair, M.D. who is a treating physician, is currently scheduled to be deposed. Consequently, the Defendants have been significantly prejudiced, and they respectfully request an Order under MD R. Civ. P. 2-432 compelling Plaintiff to produce her experts for deposition promptly and no later than thirty (30) days following this Court's Order.

3. Discovery is currently scheduled to close on June 15, 2009, and the Pretrial Conference is scheduled for August 17, 2009. As a result, the Defendants respectfully request that the discovery deadline in this case be extended under MD R. Civ. P. 1-204 through August 1, 2009.

4. Based on the foregoing, the Defendants respectfully request that this motion be granted. A proposed Order is attached.

POINTS AND AUTHORITIES

1. The record herein.
2. MD Rs. Civ. P. 1-204 and 2-432.

Respectfully submitted,

HAMILTON ALTMAN CANALE & DILLON, LLC



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Counsel for Mohamed Boukadoum, M.D.

and Drs. Groover, Christie & Merritt, P.C.

BONNER KIERNAN TREBACH & CROCIATA

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Ronald G. Guziak, Esquire

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*Counsel for Southern Maryland Hospital, Inc. and
Southern Maryland Professional Radiology, Inc. d/b/a
Mammography Center of Southern Maryland*

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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
Civil Division

ROCHELLE Y. SMITH
3823 St. Barnabas Road, #201
Suitland, MD 20746

Plaintiff

v.

CAL 68-11182

✓ MOHAMMED BOUKADOUM, M.D.
7501 Surratts Road, #104
Clinton, MD 20735

and

MAMMOGRAPHY CENTER OF
SOUTHERN MARYLAND
7501 Surratts Road, #104
Clinton, MD 20735

SERVE

Richard G. McAlee
Resident Agent
7503 Surratts Road
Clinton, MD 20735

and

SOUTHERN MARYLAND HOSPITAL
INC.
7503 Surratts Road
Clinton, MD 20735

✓ **SERVE**

Richard G. McAlee
Resident Agent
7503 Surratts Road
Clinton, MD 20735

and

✓ SOUTHERN MARYLAND HOSPITAL
CENTER LIMITED PARTNERSHIP
7503 Surratts Road
Clinton, MD 20735

COMPLAINT
AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, Rochelle Y. Smith, by and through her attorneys, Jeffery G. Ashin and John F.X. Costello and sues the Defendants, Mohammed Boukadoum, M.D., Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., Drs. Groover, Christie & Merritt, P.C., Harold Alexander, M.D. and Ophnell A. Cumberbatch, M.D., and as grounds therefore states:

COUNT I
(Medical Malpractice)

1. That the Plaintiff, Rochelle Y. Smith, is a citizen of the United States residing in Prince George's County, Maryland.

2. That the Defendants, Mohammed Boukadoum, M.D., Ophnell Cumberbatch, M.D., Harold Alexander, M.D., are adult citizens of the United States carrying on a regular avocation in Prince George's County, Maryland.

3. That the Defendants, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., and Drs. Groover, Christie & Merritt, P.C., are legal entities, carrying on a regular business in Prince George's County, Maryland.

4. That the facts giving rise to the instant occurrence took place in Prince George's County, Maryland.

5. That on and before September 20, 2004, the Plaintiff, Rochelle Y. Smith, was a patient of the Defendants, Ophnell Cumberbatch, M.D. and/or Harold Alexander, M.D.

6. That at all material times Dr. Cumberbatch and Dr. Harold Alexander willfully undertook the medical care of the Plaintiff, Rochelle Y. Smith, and in so doing, had a duty to provide medical care to her in accordance with the applicable standards of care.

7. That the Defendants, Dr. Cumberbatch and Dr. Harold Alexander, regularly performed, or had performed, upon their patient, Rochelle Y. Smith, annual physicals, which intermittently included mammograms.

8. That in that regard, the Defendant, Dr. Boukadoum, individually and as servant, agent and employee of the Defendants, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., and/or Drs. Groover, Christie and Merritt, P.C., and other servants, agents or employees of Defendants, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., and/or Drs. Groover,

Christie & Merritt, P.C., at the request of Dr. Cumberbatch and/or Dr. Harold Alexander, performed a mammogram upon the Plaintiff, Rochelle Y. Smith, on or about September 20, 2004, at the Mammography Center of Southern Maryland, owned and/or operated by the Mammography Center of Southern Maryland, and/or Southern Maryland Hospital, Inc., and/or Southern Maryland Hospital Center Limited Partnership, and/or Southern Maryland Professional Radiology, Inc., and/or Drs. Groover, Christie and Merritt, P.C.

9. That in performing the aforesaid mammogram, and in interpreting the same, the Defendants, Dr. Mohammed Boukadoum, and other servants, agents and employees of the Defendants, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., and/or Drs. Groover, Christie and Merritt, P.C., had a duty to inform the Plaintiff, Rochelle Y. Smith and/or Dr. Ophnell Cumberbatch and/or Dr. Harold Alexander, of the results thereof.

10. That other servants, agents and employees of the Defendants, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., and/or Drs. Groover, Christie & Merritt, P.C., also had a

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duty to inform the Plaintiff, Rochelle Y. Smith, and/or Dr. Ophnell Cumberbatch and/or Dr. Harold Alexander, of the results thereof.

11. That all Defendants had a duty to follow up on the test results of the mammogram of September 20, 2004, to advise the Plaintiff of the results thereof, to advise the Plaintiff's treating physicians, Dr. Ophnell Cumberbatch, M.D., and/or Dr. Harold Alexander, of the results thereof, individually, and through their co-employees, and all Defendants furthermore had a duty to follow up on the results of the mammogram of September 20, 2004, advise the Plaintiff of the same, to notify Plaintiff's treating physicians of the same for further testing based upon the results thereof and generally follow up on the results thereof, including but not limited to referring the Plaintiff to additional surgeons and treating physicians as a result thereof.

12. Notwithstanding the aforesaid duty, the Defendants, and all of them, including but not limited to Mohammed Boukadam, M.D., Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., Drs. Groover, Christie & Merritt, P.C., Dr. Ophnell Cumberbatch, and Dr. Harold Alexander, negligently

failed to advise the Plaintiff of the results of the September 20, 2004 mammogram, negligently failed to advise each other of the results thereof, negligently failed to follow up on the results thereof and negligently failed to refer the Plaintiff for further treatment on the basis of the results thereof, and were otherwise negligent in the care and treatment of the Plaintiff.

13. That as a result of the aforesaid negligence of the Defendants without any negligence on the part of the Plaintiff contributing thereto, the Plaintiff was not advised of the results of the mammogram of September 20, 2004, which indicated that there was a group of pleiomorphic micro-calcifications appearing in her right lower breast which were new since her previous exam of July 9, 2001.

14. That Dr. Mohammed Boukadam arrived at the impression that there was in fact a new worrisome group of micro-calcifications in the right inner lower breast for which spot magnification views were recommended.

15. That all of the Defendants, including Dr. Mohammed Boukadam, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., Drs. Groover, Christie & Merritt, P.C., Dr. Ophnell Cumberbatch and Dr. Harold Alexander, as well as other

servants, agents and employees of the aforesaid entities, failed to advise the Plaintiff of the aforesaid diagnosis and further negligently failed to perform or recommend the performance of the spot magnification views and other further care and treatment.

16. That as a result of the Defendants' aforesaid negligent failure to appropriately contact the Plaintiff, as well as the Plaintiff's treating physicians, and to notify her of the results thereof, as a result of their further negligent failure to perform additional tests and additional treatment, the Plaintiff's condition worsened, resulting in painful and permanent injury of body and her mind.

17. That on or about December 14, 2005, Dr. Ophnell Cumberbatch again referred the patient to the Mammography Center of Southern Maryland for an additional mammogram which was again performed by Dr. Boukadam, individually and as servant, agent and employee of the Defendants, Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., Drs. Groover, Christie & Merritt, P.C.

18. That Dr. Mohammed Boukadam found that there was a new, smaller group of micro-calcifications more anteriorly

located in the right inner lower breast since the examination of September, 2004.

19. That Dr. Mohammed Boukadam arrived at the conclusion that two groups of the micro-calcifications were highly suspicious and warranted surgical consultation.

20. That at that time, for the first time, the Defendants, or some of them, advised the Plaintiff of the findings of the two aforesaid mammograms.

21. That the Plaintiff did not discover, nor could she have discovered the aforesaid negligence of the Defendants before December, 2005.

22. That as a result of the aforesaid delay in the diagnosis and treatment of the Plaintiff's breast condition, the Plaintiff was caused to suffer severe, painful and permanent injuries of body and mind, including but not limited to the spread of cancer, which has necessitated substantial medical treatment and will subject the Plaintiff to years of suffering and ultimate death as a result of the aforesaid negligence of the Defendants without any negligence on the part of the Plaintiff contributing thereto.

23. That as a result of those injuries the Plaintiff has and will in the future be caused to incur substantial medical expense, has and will in the future be caused to suffer a loss of the ordinary pleasures of life and further has and will in

the future be caused to suffer severe, painful and permanent fatal injuries.

WHEREFORE, Plaintiff, Rochelle Y. Smith, sues the Defendants, Mohammed Boukadam, M.D., Ophnell Cumberbatch, M.D., Harold Alexander, M.D., Mammography Center of Southern Maryland, Southern Maryland Hospital, Inc., Southern Maryland Hospital Center Limited Partnership, Southern Maryland Professional Radiology, Inc., Drs. Groover, Christie & Merritt, P.C., and demands judgment against them jointly and severally in an amount in excess of the required jurisdictional limits.

CHRISTIAN, ASHIN & BROWN, P.C.

By: 

Jeffery G. Ashin
7305 Baltimore Avenue
Suite 305
College Park, MD 20740

JOHN F.X. COSTELLO & ASSOCIATES, LLC

By: 

John F.X. Costello
9500 Arena Drive, Suite 370
Largo, MD 20774
(301) 925-9080

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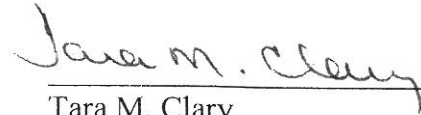
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2009, a copy of the foregoing was mailed first class, postage paid to:

John F.X. Costello, Esquire
John F.X. Costello & Associates, LLC
9500 Arena Drive
Suite 370
Largo, MD 20774

Ronald Guziak, Esquire
1233 20th Street, N.W.
Suite 800
Washington, D.C. 20036

Andrew James Spence, Esquire
10306 Eaton Place, Suite 200
Fairfax, VA 22030



Tara M. Clary

SCANNED

108-11182

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

CASE NAME: Rochelle Smith v. Mohammed Boukadoum, MD, et al

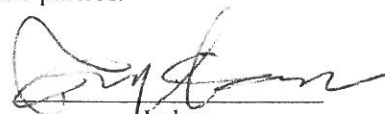
CASE NUMBER: CAL08-11182

ORDER FOR CIVIL ALTERNATIVE DISPUTE RESOLUTION CONFERENCE

It is this 14th day of July, 2009 in the Circuit Court for Prince George's County, Maryland hereby ORDERED;

- ☐ The ADR conference was cancelled at the request of all parties. The case shall proceed to trial as scheduled.
- ☐ The ADR conference is continued to _____. A notice to be sent to all parties
- ☐ The ADR conference was held. Please schedule a follow-up ADR conference for _____.
- ☐ The ADR conference was held. The case did not settle and shall proceed to trial as scheduled.
- ☐ The ADR conference was held. The parties reached the attached agreement. It is ORDERED, that all claims are hereby dismissed without prejudice and closed statistically with each party to bear its own costs unless otherwise agreed, in which event the costs shall be adjusted between the parties. The entry of this order is without prejudice to the right of a party to move for good cause with in Thirty (30) days to reopen this action if settlement is not consummated.
- ☒ The case settled prior to the scheduled ADR conference. Line of settlement attached. It is hereby ORDERED, that all claims are hereby dismissed without prejudice and closed statistically with each party to bear its own costs unless otherwise agreed, in which event the costs shall be adjusted between the parties. The entry of this order is without prejudice to the right of a party to move for good cause with in Thirty (30) days to reopen this action if settlement is not consummated.
- ☐ The parties are submitting all claims to binding arbitration. Line of arbitration is attached. ORDERED, that all claims are hereby dismissed without prejudice and closed statistically pending the conclusion of arbitration with each party to bear its own costs unless otherwise agreed, in which event the costs shall be adjusted between the parties.

July 14, 2009
Date


Judge

Copies sent to:
Plaintiff's Attorney
Defendant's Attorney

J. Payne 7/14/09
ADR Coordinator Date

7/16/09
ENTERED

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