

**Commonwealth of Massachusetts
BERKSHIRE SUPERIOR COURT
Case Summary
Civil Docket**

Leal et al v Northern Berkshire Ob-Gyn Inc et al

Details for Docket: BECV1999-00176

Case Information

Docket Number:	BECV1999-00176	Caption:	Leal et al v Northern Berkshire Ob-Gyn Inc et al
Filing Date:	06/03/1999	Case Status:	Disposed: after rescript
Status Date:	03/20/2006	Session:	Civil A - CtRm 1
Lead Case:	NA	Case Type:	Most

Tracking Deadlines

TRK:	A	Discovery:	11/22/2001
Service Date:	09/01/1999	Disposition:	
Rule 15:	08/26/2000	Rule 12/19/20:	10/31/1999
Final PTC:	07/22/2002	Rule 56:	03/22/2002
Answer Date:	10/31/1999	Jury Trial:	YES

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Rule 15:	08/26/2000	Rule 12/19/20:	10/31/1999
Final PTC:	07/22/2002	Rule 56:	03/22/2002
Answer Date:	10/31/1999	Jury Trial:	YES

Parties Involved

5 Parties Involved in Docket: BECV1999-00176

Party Involved:		Role:	Defendant
Last Name:	Herr MD	First Name:	Bonnie H
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Party Involved:		Role:	Defendant
Last Name:	Lister MD	First Name:	Joan E
Address:		Address:	
City:		State:	

Zip Code:
Telephone:

Zip Ext:

Party Involved:
Last Name: Northern Berkshire Ob-Gyn Inc
Address:
City:
Zip Code:
Telephone:

Role: Defendant
First Name:
Address:
State:
Zip Ext:

Party Involved:
Last Name: Leal
Address:
City:
Zip Code:
Telephone:

Role: Plaintiff
First Name: Manuel A
Address:
State:
Zip Ext:

Party Involved:
Last Name: Leal
Address:
City:
Zip Code:
Telephone:

Role: Plaintiff
First Name: Maria C
Address:
State:
Zip Ext:

Attorneys Involved

6 Attorneys Involved for Docket: BECV1999-00176

Attorney Involved:
Last Name: Kennedy
Address: 1500 Main Street
City: Springfield
Zip Code: 01115
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Fascimile: 413-785-5060

Firm Name: BULK01
First Name: Mary Jo
Address: PO Box 15507
State: MA
Zip Ext: 5507
Tel Ext:
Representing: Northern Berkshire Ob-Gyn Inc,
(Defendant)

Attorney Involved:
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Fascimile: 413-739-3125

Firm Name: MORR10
First Name: Dennis R
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State: MA
Zip Ext: 5387
Tel Ext:
Representing: Lister MD, Joan E (Defendant)

Attorney Involved:
Last Name: Miles

Firm Name: GREE10
First Name: Harry L

Address: 77 Pleasant Street
City: Northampton
Zip Code: 01061
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Attorney Involved:

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Attorney Involved:

Last Name: Giordano
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Attorney Involved:

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Zip Code: 01201
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Fascimile: 413-443-7694

Address: Box 210
State: MA
Zip Ext: 0210
Tel Ext:
Representing: Leal, Maria C (Plaintiff)

Firm Name: GREE10
First Name: Harry L
Address: Box 210
State: MA
Zip Ext: 0210
Tel Ext:
Representing: Leal, Manuel A (Plaintiff)

Firm Name: KEYE01
First Name: Kevin C
Address:
State: MA
Zip Ext:
Tel Ext:
Representing: Herr MD, Bonnie H (Defendant)

Firm Name: CAIN01
First Name: John A
Address: 3rd floor
State: MA
Zip Ext:
Tel Ext:
Representing: Herr MD, Bonnie H (Defendant)

Calendar Events

7 Calendar Events for Docket: BECV1999-00176

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	11/20/2001	14:00	Motion/Hearing: miscellaneous	A	Event held as scheduled
2	11/20/2002	14:00	Conf: final pre-trial	A	Event held as scheduled
3	08/04/2003	09:00	TRIAL: by jury	A	Event held as scheduled
4	08/05/2003	09:00	TRIAL: by jury	A	Event held as scheduled
5	08/06/2003	09:00	TRIAL: by jury	A	Event held as scheduled
6	08/07/2003	09:00	TRIAL: by jury	A	Event held as scheduled
7	08/08/2003	09:00	TRIAL: by jury	A	Event held as scheduled

Full Docket Entries

160 Docket Entries for Docket: BECV1999-00176

Entry Date:	Paper No:	Docket Entry:
06/03/1999		Original: OR=1 TY=B06 TRK=A.
06/14/2000		Stat at cnvrnsn to cmputr 06/14/2000.
06/14/2000		(see docket book for previous docket entries).
07/13/2001	15	Motion to Extend Discovery Deadline (Assented To) to December 1,
07/13/2001	15	2001, with certificate of service, filed.
07/17/2001		Motion (P#15) MotionTo Extend Discovery Deadline. Allowed-discovery
07/17/2001		to end 11/22/01, all other dates extended an identical 4 months
07/17/2001		(Curley, J.) Notices mailed July 17, 2001 to counsel.
11/09/2001	16	List of Documents with Certificate of Service, filed.
11/09/2001	17	MOTION Plaintiff's Motion to Compel Defendant, Joan Lister, M.D. to
11/09/2001	17	Appear for Deposition or, in the alternative, be defaulted, with
11/09/2001	17	Certificate of Service, filed.
11/13/2001	18	Affidavit of Elisabeth O'Brien, filed.
11/13/2001	19	Affidavit of compliance with Superior Court Rule 9A with Certificate
11/13/2001	19	of Service, filed.
11/13/2001	20	Notice of Filing, filed.
11/16/2001		Motion (P#17) allowed - the defendant shall appear to be deposed on
11/16/2001		November 20, 2001 (Daniel A. Ford, Justice) Notices mailed to counsel.
11/16/2001		Notice sent to appear on Tuesday, November 20, 2001 at 2:00 p.m. for
11/16/2001		a Deposition Hearing.
10/17/2002		Notice sent to appear for pre-trial conference on Wednesday, November
10/17/2002		20, 2002 at 2:00 pm mailed to counsel.
10/25/2002	21	Atty John A Agostini's withdrawal of appearance requested
10/25/2002	22	Atty Kevin C Giordano's notice of appearance for Bonnie H Herr MD
11/20/2002	23	Joint pre-trial memorandum filed
11/20/2002	24	PRE-TRIAL ORDER after conference, filed. Case ordered First Case Out
11/20/2002	24	August 2003 (Ford, J). Certified copy to counsel.
06/20/2003	25	Notice of change of address of Kevin C. Giordano, Esq., filed.
07/24/2003	26	Stipulation of partial dismissal as to defendant, NORTHERN BERKSHIRE
07/24/2003	26	OB-GYN INC., only, with prejudice, filed.
07/30/2003	27	SERVICE RETURNED (subpoena duces tecum) re: Maria C Leal keeper of
07/30/2003	27	records for Berkshire Medical Center
07/30/2003	28	SERVICE RETURNED (subpoena duces tecum) re: Maria C Leal and Manuel
07/30/2003	28	A. Leal keeper of record of North Adams Regional Hospital
07/30/2003	29	SERVICE RETURNED (subpoena duces tecum) re: Maria C Leal & Manuel A.
07/30/2003	29	Leal To: Keeper of Records for Williamstown Anesthesiology Assoc.
08/04/2003	30	Plaintiffs Motion in limine to preclude argument, filed.
08/04/2003	31	Plaintiffs' Motion for Voir Dire, filed.
08/04/2003	32	Defendant, Joan E Lister, MD's motion in limine to preclude the
08/04/2003	32	plaintiffs' expert, Timothy Vinceguerra, MD from offering opinion
08/04/2003	32	testimony beyond the scope of his designated opinion, filed.
08/04/2003	33	Defendant, Joan E. Lister MD's motion in limine to preclude the
08/04/2003	33	disclosure of any other failed sterilization procedures by Joan E
08/04/2003	33	Lister MD, filed.
08/04/2003	34	Defendant, Joan E Lister MD's Motion in Limine to preclude evidence
08/04/2003	34	of other medical malpractice claims against the defendant, filed.
08/04/2003	35	Defendant, Joan E Lister MD's Motion in Limine for pre-trial charge

08/04/2003	35	to the Jury, filed.
08/04/2003	36	Defendant, Joan E Lister MD's Motion in Limine to preclude the
08/04/2003	36	plaintiffs from offering testimony or evidence regarding their
08/04/2003	36	conversations with Dr. John Buoni, filed.
08/04/2003	37	Defendant, Joan E Lister MD's Motion to permit voir dire of
08/04/2003	37	prospective jurors, filed.
08/04/2003	38	Defendant, Bonnie H Herr MD's Motion in Limine to redact portions of
08/04/2003	38	medical records, filed.
08/04/2003	39	Defendant, Bonnie H Herr MD's Motion in Limine to Limit Expert
08/04/2003	39	Testimony, filed.
08/04/2003	40	Defendant, Bonnie H Herr MD's Motion in Limine to exclude evidence of
08/04/2003	40	prior malpractice actions, filed.
08/04/2003	41	Defendant, Bonnie H Herr MD's Motion in Limine to Limit Evidence of
08/04/2003	41	Damages to those elements identified in Burke v. Rivo 406 Mass 764
08/04/2003	41	(1990), filed.
08/04/2003		Case called for Trial before (Ford, J).
08/04/2003		MOTION (P#30)-Denied, (Daniel A. Ford, Justice).
08/04/2003		MOTION (P#32)-Allowed, (Ford, J).
08/04/2003		MOTION (P#33)-Allowed, (Daniel A. Ford, Justice).
08/04/2003		MOTION (P#34) -Allowed, (Daniel A. Ford, Justice).
08/04/2003		MOTION (P#35) -Denied,(Daniel A. Ford, Justice).
08/04/2003		MOTION (P#36)-Allowed by Agreement, (Daniel A. Ford, Justice).
08/04/2003		MOTION (P#38)-Allowed, (Daniel A. Ford, Justice).
08/04/2003		MOTION (P#39)-Allowed, (Daniel A. Ford, Justice).
08/04/2003		MOTION (P#40)-Allowed, (Daniel A. Ford, Justice).
08/04/2003	42	List of witnesses of the defendant, Bonnie H. Herr, MD.,filed.
08/04/2003		Jury impanelled and sworn. Juror #3-4 David Fisher, Foreman.. Jurors
08/04/2003		excused for the day.
08/04/2003	43	List of Jurors, filed.
08/05/2003		Trial continues before (Ford, J). Plaintiff makes opening 9:12 -
08/05/2003		9:27 am; Deft. Lister's opening 9:27 -9:52 a.m.; Deft. Herr's opening
08/05/2003		9:52 - 10:07 a.m.
08/06/2003		Trial continues before (Ford, J).
08/07/2003		Trial continues before (Ford, J).
08/07/2003	44	Defendant, Bonnie H Herr MD's motion for directed verdict at the
08/07/2003	44	close of plaintiffs case, filed - Count 6 was voluntarily dismissed
08/07/2003	44	before trial. Count 5 was voluntarily dismissed after the plaintiff's
08/07/2003	44	opening statement. As to Counts 2,3 and 4, the motion is ALLOWED. As
08/07/2003	44	to count I, the motion is DENIED (Ford, J).
08/07/2003	45	Defendant, Joan Lister MD's motion for directed verdict at close of
08/07/2003	45	the plaintiff's case filed and DENIED (Ford, J).
08/07/2003	48	Defendant, Bonnie H Herr's Motion for directed verdict at the close
08/07/2003	48	of all evidence, filed and DENIED (Ford, J).
08/07/2003	49	Defendant Joan Lister MD's motion for directed verdict at close of
08/07/2003	49	all evidence, filed and DENIED (Ford, J).
08/07/2003	46	Defendant, Joan Lister MD's motion for directed verdict at the close
08/07/2003	46	of plaintiffs' case as to loss of consortium claim of Manuel Leal,
08/07/2003	46	filed and ALLOWED (Ford, J).
08/07/2003	47	Defendant, Joan Lister MD's motion for directed verdict at close of
08/07/2003	47	plaintiff's case regarding binding contract, mutual promises and

	47	breach of contract, filed and ALLOWED, (Ford, J).
08/08/2003		Closing arguments of the plaintiff and defendants heard. Judges
08/08/2003		instructions to the Jury 10:15-11:06 a.m. Court officer Sean Lennon
08/08/2003		sworn with the Jury. Jury begins deliberations at 11:06 a.m.
08/08/2003		Trial continues before (Ford, J).
08/08/2003	50	Plaintiff's Motion for Jury Instruction, filed.
08/08/2003	51	Plaintiffs' second motion for jury instruction, filed.
08/08/2003	52	Defendant, Bonnie H Herr, MD's Jury instructions, filed.
08/08/2003	53	Defendant, Joan E Lister MD's jury instructions, filed.
08/08/2003	54	List of exhibits, filed.
08/08/2003	55	Judgment on Directed Verdict: for the defendant, Bonnie H Herr, MD at
08/08/2003	55	the close of plaintiffs case as to Counts 2, 3 and 4, entered (Ford,
08/08/2003	55	J).
08/08/2003	56	Judgment on Directed Verdict: for the defendant, Joan E. Lister, MD
08/08/2003	56	as to the count of Manuel A. Leal for loss of consortium, entered
08/08/2003	56	(Ford, J).
08/08/2003	57	Judgment on Directed Verdict: for the defendant, Joan E Lister,MD as
08/08/2003	57	to binding contract, as to terms and conditions of mutual promises
08/08/2003	57	and terms of contract, entered (Ford, J).
08/08/2003	58	Verdict of jury for defendants' returned, affirmed and filed.
08/13/2003	59	JUDGMENT on jury verdict for the defendant(s), Bonnie H Herr MD and
08/13/2003	59	Joan E Lister, MD as to negligence on Count I of plaintiffs
08/13/2003	59	complaint, entered. Certified copy to counsel on 8/13/2003.
08/13/2003	60	FINAL JUDGMENT, entered (Ford, J). Certified copy mailed to counsel.
09/04/2003	61	Plaintiff's Motion for New Trial, Motion for Permission to inquire of
09/04/2003	61	juror and supporting memorandum of law with request for hearing,
09/04/2003	61	filed.
09/04/2003	62	Opposition of defendant, Joan Lister MD and Bonnie Herr MD to
09/04/2003	62	plaintiffs' motion for post trial relief, filed.
09/04/2003	63	Affidavit of compliance with Superior Court Rule 9A stating
09/04/2003	63	opposition was received to Plaintiffs Motion for new trial, filed.
09/04/2003	64	Affidavit of compliance with Rule 9C, filed.
09/04/2003	65	Notice of filing of Plaintiffs' Motion for New Trial, Motion for
09/04/2003	65	permission to inquire of juror and supporting memorandum of law,
09/04/2003	65	filed.
09/04/2003	66	List of Documents, filed.
02/13/2004		Plaintiff's motion for a new trial pursuant to Mass.R.Civ. P. 59(a),
02/13/2004		motion for permission to inquire of juror, -1) I do not agree that
02/13/2004		the verdict was against the weight of the evidence. 2) There is
02/13/2004		absolutely no indication that the jury was subject to any extraneous
02/13/2004		influences or information, and I shall not permit inquiry into the
02/13/2004		mental processes of the jury. The motion is DENIED. I apologize to
02/13/2004		counsel for the delay, but the Clerk did not bring this matter to my
02/13/2004		attention until today (Ford, J.). Copies certified to counsel.
02/27/2004	67	Plaintiff's notice of appeal filed.
03/29/2004		Certification of transcript ordered from Court Reporters Heather
03/29/2004		Davis, Deborah Pularo and Susan Mitchell.
07/30/2004		Transcript of proceedings received (for August 5, 2003 of trial
07/30/2004		proceedings) from Court Reporter Deborah A. Pularo.
08/20/2004		Transcript of proceedings received (for August 4, 7 & 8, 2003 of

		trial proceedings) from Court Reporter Heather J. Davis
11/01/2004		Transcript of proceedings received (for August 6, 2003 of trial
11/01/2004		proceedings) from Court Reporter Susan Mitchell.
11/10/2004		Notice sent to clerk of Appeals Court that record is assembled
11/23/2004	68	Notice of docket entry received from Appeals Court, filed.
01/28/2005	69	Plaintiffs' Motion to Copy Exhibits for Inclusion in the Record
01/28/2005	69	(Assented to), filed.
02/14/2005		MOTION (P#69)-Allowed, (Daniel A. Ford, Justice). Notices mailed on
02/14/2005		2/16/2005.
03/20/2006	70	Rescript received from the Appeals Court; judgment AFFIRMED - Order
03/20/2006	70	denying motion for new trial AFFIRMED, entered (Laurence, Kantrowitz
03/20/2006	70	& Cowin, JJ). Certified copy mailed to counsel on 3/20/06.
03/20/2006	71	JUDGMENT after rescript: entered.. Copies mailed on 3/20/2006.
