

LAW OFFICES OF SAMUEL F. KAFRISSEN, P.C.

By: Samuel F. Kafrissen, Esquire

ID#: 0047612

4 Greentree Centre, Suite 201

Marlton, New Jersey 08053

Phone: 856-988-1300

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

REBECCA GOETZ and JOHN RUZISKEY, h/w
Administrators of the Estate
of Collin John Ruziskey, deceased and
REBECCA GOETZ and JOHN RUZISKEY

v.

CAPITAL HEALTH SYSTEMS, INC.
and CAPITAL HEALTH SYSTEMS SERVICES d/b/a
CAPITAL HEALTH SYSTEMS and d/b/a
CAPITAL HEALTH SYSTEMS AT MERCER
and DANIEL SMALL, M.D. and
WILLIAM STANELL, M.D. and LAWRENCE
OB-GYN ASSOCIATES, P.C. and LABORATORY
CORPORATION OF AMERICA (HOLDINGS)
d/b/a LABCORP

:
: CIVIL ACTION

:
: NO.: 04-cv-1662

(MLC)

RECEIVED

JUN 28 2004

AT 8:30

WILLIAM T. WALSH
CLERK

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MOTION TO VACATE ORDER DISMISSING COMPLAINT

Plaintiffs, by and through their attorneys, Samuel F. Kafrissen, P.C., hereby move this Honorable Court to vacate the Order of May 28, 2004, dismissing plaintiffs' Complaint for lack of jurisdiction and in support thereof respectfully represent as follows:

1. On June 24, 2004 plaintiffs received for the first time, an Order dismissing plaintiffs' Complaint for failure of the plaintiffs to respond to the Court's Order to show cause why the Complaint should not be dismissed for lack of jurisdiction.
2. Plaintiffs never received the Order to show cause until June 25, 2004, after notifying the Court that they never received any of the Court's Orders.

3. Plaintiffs believe that they should properly be permitted to show cause why their Complaint should not be dismissed for lack of jurisdiction and plaintiffs are prepared to file an amended Complaint stating to the Court's satisfaction the basis of jurisdiction for all parties.

WHEREFORE, plaintiffs respectfully request that this Honorable Court enter an Order vacating the Order dismissing plaintiffs' action and permitting plaintiffs to show cause why their Complaint and/or file their amended Complaint.

Respectfully yours,


SAMUEL F. KAPRISEN
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I do hereby certify that on this 25th day of June, 2004, a true and correct copy of the within Motion to Vacate was sent to the following via regular mail, postage pre-paid on the above date addressed as follows:

United States District Court
District of New Jersey
Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Capital Health Systems, Inc.
446 Bellevue Avenue
Trenton, New Jersey 08607

Capital Health Systems Services d/b/a
Capital Health Systems and d/b/a
Capital Health Systems at Mercer
446 Bellevue Avenue
Trenton, New Jersey 08607

Daniel Small, M.D.
123 Franklin Corner, Suite 214
Trenton, New Jersey 08648

William Stanell, M.D.
123 Franklin Corner, Suite 214
Trenton, New Jersey 08648

Lawrence OB-GYN Associates, P.C.
123 Franklin Corner, Suite 214
Trenton, New Jersey 08648

Laboratory Corporation of America (Holding) d/b/a LabCorp
1447 York Court
Burlington, North Carolina 27215


SAMUEL F. KAFRISSEN
Attorney for Plaintiffs

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Attorney for Plaintiff

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO
VACATE ORDER DISMISSING COMPLAINT

Plaintiffs incorporate by reference all the facts set forth in plaintiffs' Motion to Vacate Order Dismissing Complaint attached hereto as though the same were fully set forth herein at length.

Following review of plaintiffs' Complaint, this Court entered an Order, *sua sponte*, for the plaintiffs to show cause why their Complaint should not be dismissed for lack of jurisdiction. Plaintiffs were ordered to respond by May 13, 2004. Unfortunately, plaintiffs did not receive any documents from the Court until June 24, 2004. Plaintiffs were unaware of the original Court

Order as well as the Order dismissing the matter for failure to respond.

For the reasons set forth above it would be fundamentally unfair to deny the plaintiffs the opportunity to respond by showing good cause not to dismiss plaintiffs' Complaint and/or permitting plaintiffs to file an amended Complaint.

In this case, plaintiffs did not negligently ignore an Order of the Court. Rather, plaintiffs never received any of the documents and were totally unaware of them.

For the reasons set forth above, plaintiffs respectfully request that the Order of the Court be vacated and that the plaintiffs be permitted to respond and/or file an Amended Complaint within such time as the Court deems proper.

Respectfully submitted:


SAMUEL F. KAFRIESEN
Attorney for Plaintiffs

BY THE COURT:

J.