IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS. NO.

, M.D. and , M.D. DEFENDANTS

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Plaintiff, , through counsel, responds to the Motion for Summary Judgment filed herein by Defendant, , M.D., as follows:

I. THE MOTION FOR SUMMARY JUDGMENT IS INSUFFICIENT AS A MATTER or LAW

A party moving for summary judgment has the responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrates the absence of a genuine issue of material fact. 11 Atchison. Toneka and Santa Fe RV. Co. v. Buell, 107 S.Ct. 1410, 1417 n.15 (1987).

has failed to discharge this responsibility in the Motion for Summary Judgment he/she has filed with the Court. The Motion does not set forth the basis upon which seeks a summary judgment. Rather the Motion states only "...that there is no genuine issue as to any material fact herein and that Movant is entitled to a judgment as a matter of law." Motion for Summary Judgment should be denied.

II. STANDARD OF CARE

Accordingly, the

The evidence in this case establishes that the injury to Mr./Mrs. may have occurred as a result of several factors. These factors include the positioning of Mr./Mrs. 's arm during the surgical procedure and premature discharge from the hospital.

- Dr. testified that the injury may have occurred as a result of the positioning of Mr./Mrs. 's arm during the surgical procedure. (p.). This would certainly be the responsibility of , the surgeon.
- Dr. testified that the injury may have occurred due to arm positioning following discharge from the hospital which may have been adversely affected due to the fact that the block had not worn off prior to discharge from the hospital. (p.) Again, was responsible for the discharge of Mr./Mrs.

The evidence presently before the Court establishes that the treatment afforded by may have been a factor in the injury to Mr./Mrs. . This issue must ultimately be

determined by a jury after consideration of all of the evidence. has failed to his/her burden of proving that there is no genuine issue of material fact and that he/she is entitled to a judgment as a matter of law.

III. INFORMED CONSENT

Mississippi has adopted the so-called "prudent patient" standard for informed consent cases. Reikes V. Martin, 471 So.2d 385, 392 (Miss. 1985); Phillins V. Hull, 516 So 2d 488, 493

(Miss. 1987). Under this standard, the physician must disclose those known risks which would be material to a prudent patient in determining whether or not to undergo the suggested treatment."

471 So. 2d at 392. The factors to be considered, include the following:

- (1) diagnosis (i.e., the patient's condition or problem)
- (2) nature and purpose of the proposed treatment
- (3) risks and consequences of the proposed treatment
- (4) probability that the proposed treatment will be successful
- (5) feasible treatment alternatives
- (6) prognosis if the proposed treatment is not given

493 So. 2d at 493.

According to the testimony of Mr./Mrs. , assured him/her that there was a % chance that the surgery would correct the problem with his/her hand. (p.) Further, did not advise Mr./Mrs. of any risks associated with the procedure, anesthesia or otherwise. (p.) did not provide Mr./Mrs. with any treatment alternatives, nor did he/she provide Mr./Mrs. with a prognosis if he/she did not undergo the recommended surgical procedure. This evidence clearly establishes that did not obtain the informed consent of Mr./Mrs.

The memorandum brief refers to the consent form signed by Mr./Mrs. . This type of consent form has been criticized by the Mississippi Supreme Court. Barner V Gorman, 605 So.2d 805, 808 (Miss. 1992). The consent form is insufficient as a matter of law.

IV. ITEMS RELIED UPON BY

In addition to those matters relied upon by Dr. , Mr./Mrs. relies upon the following:

- 1. Deposition excerpts from as Exhibit " ";
- 2. Deposition excerpts from as Exhibit "

3.	Deposition excerpts from	as Exhibit "	"; and
4.	Deposition excerpts from	as Exhibit "	".
WHEREFORE, PREMISES CONSIDERED, Plaintiff, , respectfully submit the Court should deny the Motion for Summary Judgment filed herein by Defendant, M.D.			
	Respectfully submitted,		
		Attorney for	ſ
Of Co	unsel:		
Telepl MSB # Attorn	#		

CERTIFICATE OF SERVICE

	5		e this day sent via facsimile and United States mail py of the above and foregoing Response to Motion fo
		correct co	py of the above and foregoing Response to Motion to
Summary Judgmen	it to:		
This abo	d t	20	
This the	day of	, 20	•