

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

VIRGINIA L. SKILES, as Personal Representative of
the Estate of MARVIN E. SKILES,

CASE NO:
502014CA006618XXXXMBAG

Plaintiff,

v.

BOCA RATON REGIONAL HOSPITAL, INC.; and
ANDREW ZWICK, M.D.,

Defendant.

NOTICE OF FILING /SUBSTITUTION OF THIRD AMENDED COMPLAINT

Plaintiff, VIRGINIA L. SKILES, as Personal Representative of the Estate of MARVIN E. SKILES, by and through its undersigned counsel, gives notice of filing the attached Substitution of *proposed* Third Amended Complaint.

1. On April 10, 2017, Plaintiff filed her Motion for Leave to Amend the Second Complaint and filed a proposed Third Amended Complaint therewith.

2. Since that time, Plaintiff has now settled with Defendant, Dr. Zwick. Accordingly, Plaintiff has revised the Third Amended Complaint to remove reference to Dr. Zwick as a defendant, and to further refine allegations of negligence specific to the remaining Defendant, Boca Raton Regional Hospital, Inc. Plaintiff hereby substitutes this revised Third Amended Complaint for the draft attached to Plaintiff's Motion for Leave to Amend Second Complaint filed on April 10, 2017.

3. Plaintiff requests that this Honorable Court consider the substituted Third

Amended Complaint as the relevant and operative Complaint for purposes of ruling on Plaintiff's Motion for Leave to Amend the Second Complaint filed on April 10, 2017.

Respectfully submitted,



STEPHAN LeCLAINCHE, ESQ.
Florida Bar No.: 441635
sleclainche@cohenmilstein.com
Cohen Milstein Sellers & Toll, PLLC
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
(561) 515-1400

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2017, I electronically filed a true and correct copy of the foregoing via the Florida Courts E-Filing Portal with the Clerk of the Court and served upon those listed below via the Florida Courts E-Filing Portal:

Steven M. Lury, Esq.

slury@srcke.com;

yfinkelstein@srcke.com;

jking@srcke.com

Sonneborn Rutter & Cooney, P.A.

1400 Centrepark Blvd, Suite 400

West Palm Beach, FL 33401

Phone: (561)-684-2000

Attorneys for Boca Raton Community Hospital d/b/a Diagnostic Center of Boca Raton Regional Hospital

Barbara W. Sonneborn, Esq.

bws@srcke.com;

yfinkelstein@srcke.com;

agibel@srcke.com;

jking@srcke.com

Timothy D. Kenison, Esq.

tkenison@srcke.com; agibel@srcke.com

*Cohen Milstein Sellers & Toll, PLLC
2925 PGA Boulevard, Suite 200, Palm Beach Gardens, FL 33410
Telephone: (561) 515-1400 Facsimile (561) 515-1401*

Sonneborn Rutter & Cooney, P.A.
1400 Centrepark Boulevard
Suite 400

West Palm Beach, FL 33401

Phone: (561)-684-2000

Fax: (561)-684-2312

Attorneys for Boca Raton Community Hospital d/b/a Diagnostic Center of Boca Raton Regional Hospital

Joseph R. Johnson, Esq.

jjohnson@babbitt-johnson.com

Babbitt Johnson, PA

P.O. Box 4426

West Palm Beach, FL 33402-4426

Phone: (561) 684-2500

Fax: (561) 684-6308

Attorneys for Co-Counsel for Plaintiff

Robert E. Paradela, Esq.

ftlertpleadings@wickersmith.com

Wicker Smith O'Hara McCoy & Ford, P.A.

515 E. Las Olas Boulevard

SunTrust Center, Suite 1400

Ft. Lauderdale, FL 33301

Phone: (954) 847-4800

Fax: (954) 760-9353

Attorneys for South Palm Ambulatory Surgery Center, LLC and Andrew Zwick, M.D.

Cohen Milstein Sellers & Toll, PLLC

2925 PGA Boulevard, Suite 200

Palm Beach Gardens, FL 33410

(561) 515-1400

(561) 515-1401 (facsimile)

By: 

STEPHAN LeCLAINCHE, ESQ.

Florida Bar No.: 441635

sleclainche@cohenmilstein.com

PROPOSED
THIRD AMENDED COMPLAINT

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

VIRGINIA L. SKILES, as Personal Representative of
the Estate of MARVIN E. SKILES,

CASE NO:
502014CA006618XXXXMBAG

Plaintiff,

v.

BOCA RATON REGIONAL HOSPITAL, INC.,

Defendant.

THIRD AMENDED COMPLAINT

Plaintiff VIRGINIA L. SKILES, as Personal Representative of the Estate of MARVIN E. SKILES, by and through her undersigned attorneys, hereby brings this action against the Defendant BOCA RATON REGIONAL HOSPITAL, INC., and alleges:

JURISDICTION

1. This is an action for damages that exceed \$15,000, exclusive of interest and costs.
2. Plaintiff Virginia L. Skiles is the duly appointed Personal Representative of the Estate of Marvin E. Skiles, deceased, and brings this action on behalf of the Estate, as well as on behalf of the sole statutory survivor, to wit: Virginia L. Skiles, as the surviving spouse of Marvin E. Skiles.
3. Defendant Boca Raton Regional Hospital, Inc., is a Florida Non-Profit Corporation with its principal place of business in Palm Beach County, Florida. At times material to this action, the Hospital was doing business under the fictitious name of The Diagnostic Center of BRCH.

4. At all times material to this action, the decedent, Marvin E. Skiles, was a resident and citizen of Palm Beach County, Florida.

GENERAL ALLEGATIONS

5. On or about October 16, 2012, Mr. Skiles underwent a colonoscopy procedure at the South Palm Ambulatory Surgery Center that was performed by Andrew H. Zwick, M.D. (“Dr. Zwick”).

6. Following the colonoscopy procedure, Mr. Skiles developed a distended abdomen, pain and discomfort, as well as nausea and retching.

7. Because of a concern that Mr. Skiles’s symptoms were due to a perforated bowel, which is a medical emergency that requires immediate surgical treatment to avoid sepsis/blood infection that can cause death, Dr. Zwick issued an order for Mr. Skiles to undergo an X-ray on an emergency/STAT basis, in order to determine whether there was evidence of a bowel perforation. As he needed the X-ray results on an emergency basis, Dr. Zwick wrote his cell phone number on the order.

8. Despite Mr. Skiles’s need for the X-ray on an emergency basis, Defendant Boca Regional Hospital, Inc. did not perform the X-ray ordered by Dr. Zwick.

9. Mr. Skiles was transported back to Defendant South Palm Ambulatory Surgery Center LLC, where Dr. Zwick was notified that the X-ray was not done. Despite receiving such notice, Dr. Zwick discharged Mr. Skiles.

10. Mr. Skiles's inability to receive the X-ray delayed a diagnosis that he was indeed suffering from a bowel perforation until several hours later, when Mr. Skiles's condition had drastically deteriorated, making the diagnosis self-evident.

11. Upon diagnosis, Mr. Skiles underwent surgery, but the efforts to save his life were ultimately unsuccessful.

12. The Plaintiff has fully complied with the applicable Florida Statutes regarding pre-suit screening and has sent appropriate notices of intent to the Defendant herein, and the pre-suit screening period has expired, thereby allowing the initiation of this action. Furthermore, the Plaintiff has complied with all conditions precedent to the initiation of this action.

COUNT I
MEDICAL NEGLIGENCE AGAINST BOCA RATON REGIONAL HOSPITAL

13. Plaintiff realleges paragraphs 1-12, as though fully set forth herein.

14. This is a claim for medical negligence against the Defendant, Boca Raton Regional Hospital, Inc.

15. On or about October 16, 2012, Defendant Boca Raton Regional Hospital, Inc. was negligent and careless and such negligence and carelessness constituted a breach of the prevailing professional standard of care in that it was contrary to the acceptable level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognizable as acceptable and appropriate by reasonably prudent healthcare providers to include, without limitation, the following:

- a. By failing to confirm with Mr. Skiles health insurer, Care Plus, that Mr. Skiles was eligible to have the STAT x-ray performed at its outpatient radiology facility;

- b. By failing to honor and comply with the contract entered into between Boca Raton Regional Hospital, Inc. and Care Plus, pursuant to which Mr. Skiles was eligible to have the STAT x-ray performed at its outpatient radiology facility. A copy of the contract is not attached per agreement of counsel;
- c. By failing to follow Medicare rules which required it to perform the x-ray at its outpatient radiology facility since it was written as a STAT x-ray order by Dr. Zwick;
- d. By failing to follow its own Policies and Procedures regarding the performance of a STAT x-ray. Copies of Boca Raton Regional Hospital, Inc.'s Policies and Procedures are not attached per agreement of counsel;
- e. By failing to follow its own Policies and Procedures regarding communication and documentation in the event of a question or concern by employees regarding Mr. Skiles eligibility and/or insurance coverage in order to have the x-ray performed at its outpatient radiology facility. Copies of the Policies and Procedures are not attached per agreement of counsel;
- f. By inappropriately and incorrectly concluding that this Defendant did not accept/take the health insurance of Mr. Skiles or that a prescription from his primary care physician was necessary before the subject emergency x-ray could, and would, be performed;

- g. By failing to accurately relay to Mr. Skiles's health insurer the information provided by Dr. Zwick when ordering the emergency X-ray on an emergency/STAT basis;
 - h. By refusing and failing to perform the STAT X-Ray as ordered by Dr. Zwick, in order to rule out a potentially life threatening emergency;
 - i. By failing to advise Mr. Skiles's health insurer that Dr. Zwick determined the X-ray was needed on an emergency/STAT basis in order to determine whether Mr. Skiles was suffering from a bowel perforation;
 - j. By failing to notify a radiologist, radiology technician and/or medically trained individual at its outpatient radiology facility of the STAT x-ray order issued by Dr. Zwick to confirm that it could and should be performed given the emergent nature of the order;
 - k. By failing to contact Dr. Stuart Himmelstein regarding the STAT x-ray order issued by Dr. Zwick; and,
 - l. By failing to contact Dr. Zwick regarding the STAT x-ray order issued by Stuart Himmelstein.
16. As a direct and proximate result of Defendant Boca Raton Regional Hospital Inc.'s negligence, the emergency X-ray was not performed and Mr. Skiles's bowel perforation was not timely diagnosed and treated, ultimately resulting in his death.
17. Any and all conditions precedent to bringing this action have been met or waived.

18. As a direct and proximate result of Defendant Boca Raton Regional Hospital Inc.'s negligence, Defendant Boca Raton Regional Hospital Inc. is responsible for the death of Marvin E. Skiles and for the damages set forth below:

- a. Virginia K. Skiles, the surviving wife of Marvin E. Skiles, has suffered and will continue to suffer the loss of her husband's support and services, companionship, and protection; has experienced mental pain and suffering in the past and will continue to suffer such losses in the future; and has incurred medical and funeral expenses due to her husband's death; and,
- b. The Estate of Marvin E. Skiles has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

19. As a direct and proximate result of the negligent conduct of Defendant Boca Raton Regional Hospital, Inc., the Estate of Marvin E. Skiles and the surviving spouse of Marvin E. Skiles were obligated to retain attorneys to represent their interests in this matter, to whom they have agreed to pay reasonable attorneys' fees and costs.

WHEREFORE, Virginia K. Skiles, as personal representative of the Estate of Marvin E. Skiles and the surviving spouse of Marvin E. Skiles, demands judgment for compensatory damages and costs, including pre-judgment interest on all out-of-pocket damages, against Defendant Boca Raton Regional Hospital, Inc., and for whatever further relief this Court deems appropriate.

COUNT II
COMMON LAW NEGLIGENCE AGAINST BOCA RATON REGIONAL HOSPITAL

20. Plaintiff realleges paragraphs 1-12, as though fully set forth herein.
21. This is a claim for common law negligence against the Defendant Boca Raton Regional Hospital, Inc.
22. On or about October 16, 2012, Defendant Boca Raton Regional Hospital, Inc. was negligent and careless to include, without limitations, the following actions or inactions:
- a. By failing to confirm with Mr. Skiles health insurer, Care Plus, that Mr. Skiles was eligible to have the STAT x-ray performed at its outpatient radiology facility;
 - b. By failing to honor and comply with the contract entered into between Boca Raton Regional Hospital, Inc. and Care Plus, pursuant to which Mr. Skiles was eligible to have the STAT x-ray performed at its outpatient radiology facility. A copy of the contract is not attached per agreement of counsel;
 - c. By failing to follow Medicare rules which required it to perform the x-ray at its outpatient radiology facility since it was written as a STAT x-ray order by Dr. Zwick;
 - d. By failing to follow its own Policies and Procedures regarding the performance of a STAT x-ray. Copies of Boca Raton Regional Hospital, Inc.'s relevant Policies and Procedures are not attached per agreement of counsel;
 - e. By failing to follow its own Policies and Procedures regarding communication and documentation in the event of a question or concern by employees regarding Mr. Skiles eligibility and/or insurance coverage in order to have the x-ray

- performed at its outpatient radiology facility. Copies of the Policies and Procedures are not attached per agreement of counsel;
- f. By inappropriately and incorrectly concluding that this Defendant did not accept/take the health insurance of Mr. Skiles or that a prescription from his primary care physician was necessary before the subject emergency x-ray could, and would, be performed;
 - g. By failing to accurately relay to Mr. Skiles's health insurer the information provided by Dr. Zwick when ordering the emergency X-ray on an emergency/STAT basis;
 - h. By refusing and failing to perform the STAT X-Ray study as ordered by Dr. Zwick, in order to rule out a potentially life threatening emergency;
 - i. By failing to advise Mr. Skiles's health insurer that Defendant Dr. Zwick determined the X-ray was needed on an emergency/STAT basis in order to determine whether Mr. Skiles was suffering from a bowel perforation;
 - j. By failing to notify a radiologist, radiology technician and/or medically trained individual at its outpatient radiology facility of the STAT x-ray order issued by Dr. Zwick to confirm that it could and should be performed given the emergent nature of the order;
 - k. By failing to contact Dr. Stuart Himmelstein regarding the STAT x-ray order issued by Dr. Zwick; and,

1. By failing to contact Dr. Zwick regarding the STAT x-ray order issued by Stuart Himmelstein.
23. As a direct and proximate result of Defendant Boca Raton Regional Hospital, Inc.'s negligence, the emergency X-ray was not performed and Mr. Skiles's bowel perforation was not timely diagnosed and treated, ultimately resulting in his death.
24. Any and all conditions precedent to bringing this action have been met or waived.
25. As a direct and proximate result of Defendant Boca Raton Regional Hospital, Inc.'s negligence, Defendant Boca Raton Regional Hospital is responsible for the death of Marvin E. Skiles and for the damages set forth below:
 - a. Virginia K. Skiles, the surviving wife of Marvin E. Skiles, has suffered and will continue to suffer the loss of her husband's support and services, companionship, and protection; has experienced mental pain and suffering in the past and will continue to suffer such losses in the future; and has incurred medical and funeral expenses due to her husband's death; and,
 - b. The Estate of Marvin E. Skiles has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.
26. As a direct and proximate result of the negligent conduct of Defendant Boca Raton Regional Hospital, Inc., the Estate of Marvin E. Skiles and the surviving spouse of Marvin E. Skiles were obligated to retain attorneys to represent their interests in this matter, to whom they have agreed to pay reasonable attorneys' fees and costs.

WHEREFORE, Virginia K. Skiles, as personal representative of the Estate of Marvin E. Skiles and the surviving spouse of Marvin E. Skiles, demands judgment for compensatory damages and costs, including pre-judgment interest on all out-of-pocket damages, against Defendant Boca Raton Regional Hospital, Inc., and for whatever further relief this Court deems appropriate.

I HEREBY CERTIFY that I have made a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that the Defendant named herein has acted negligently as it relates to its care or treatment of Marvin Skiles and that such reasonable investigation has given rise to a good faith belief that grounds exist for this action against the Defendant and that appropriate notices of intent to bring this action were timely sent/served by certified mail, and that the requisite necessary time to allow for the filing of this suit has expired.

DATED this ___ day of June, 2017.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all matters triable as of right by a jury.

Respectfully submitted,

/s/ Stephan Le Clainche
STEPHAN LECLAINCHE, ESQ.
Florida Bar No.: 441635
sleclainche@cohenmilstein.com
NICHOLAS C. JOHNSON, ESQ.
Florida Bar No.: 041227
njohnson@cohenmilstein.com

Cohen Milstein Sellers & Toll, PLLC
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
(561) 515-1400
Fax: (561) 515-1401
Attorneys (Co-Counsel) for Plaintiff

Joseph R. Johnson, Esq.
jjohnson@babbitt-johnson.com
Babbitt Johnson, PA
P.O. Box 4426
West Palm Beach, FL 33402-4426
Phone: (561)-684-2500
Fax: (561)-684-6308
Attorneys (Co-Counsel) for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 2017, I electronically filed a true and correct copy of the foregoing via the Florida Courts E-Filing Portal with the Clerk of the Court and served upon those listed below via the Florida Courts E-Filing Portal:

Barbara W. Sonneborn, Esq.
bws@sonnebornrutter.com;
yfinkelstein@sonnebornrutter.com;
agibel@sonnebornrutter.com;
jking@sonnebornrutter.com
Timothy D. Kenison, Esq.
tkenison@sonnebornrutter.com;
agibel@sonnebornrutter.com
Sonneborn Rutter & Cooney, P.A.
1400 Centrepark Boulevard
Suite 400
West Palm Beach, FL 33401
Phone: (561) 684-2000
Fax: (561) 684-2312
Attorneys for Boca Raton Community Hospital
d/b/a Diagnostic Center of Boca Raton Regional Hospital

Steven M. Lury, Esq.
slury@sonnebornrutter.com;
yfinkelstein@sonnebornrutter.com;
jking@sonnebornrutter.com
Sonneborn Rutter & Cooney, P.A.
1400 Centrepark Blvd, Suite 400
West Palm Beach, FL 33401
Phone: (561) 684-2000
Attorneys for Boca Raton Community Hospital
d/b/a Diagnostic Center of Boca Raton Regional Hospital

Robert E. Paradelo, Esq.
Lori B. Lewellen, Esquire
Llewellen@wickersmith.com
CElliott@wickersmith.com
flertpleadings@wickersmith.com
rparadela@wickersmith.com
Wicker Smith O'Hara McCoy & Ford, P.A.
515 E. Las Olas Boulevard
SunTrust Center, Suite 1400
Ft. Lauderdale, FL 33301
Phone: (954) 847-4800
Fax: (954) 760-9353
Attorneys for Andrew Zwick, M.D.

Co-Counsel for Plaintiff
Joseph R. Johnson, Esq.
jjohnson@babbitt-johnson.com;
dcodding@babbitt-johnson.com
Babbitt Johnson, PA
P.O. Box 4426
West Palm Beach, FL 33402-4426
Phone: (561) 684-2500
Fax: (561) 684-6308
Attorneys for Co-Counsel for Plaintiff

/s/ Stephan Le Clainche
STEPHAN LECLAINCHE, ESQ.
Florida Bar No.: 441635
sleclainche@cohenmilstein.com
NICHOLAS C. JOHNSON, ESQ.
Florida Bar No.: 041227

njohnson@cohenmilstein.com
Cohen Milstein Sellers & Toll, PLLC
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
(561) 515-1400
Fax: (561) 515-1401
Attorneys (Co-Counsel) for Plaintiff

JOSEPH R. JOHNSON, ESQ.
jjohnson@babbitt-johnson.com
Babbitt Johnson, PA
P.O. Box 4426
West Palm Beach, FL 33402-4426
Phone: (561)-684-2500
Fax: (561)-684-6308
Attorneys (Co-Counsel) for Plaintiff