

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

01122628

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Frank Cilione,

Plaintiff

-against-

Ophthalmic Consultants/Corneal and  
Refractive Surgery Associates, P.C.,  
Laser and Corneal Surgery Associates  
and P.C. and Mark G. Speaker, M.D., PH.D

Index No.:

Plaintiff designates  
New York County as the  
place of trial

The basis of the venue  
is Plaintiff's Residence

SUMMONS

Defendant(s)

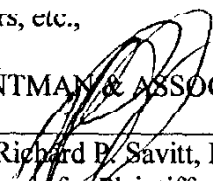
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To the above named Defendant(s):

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the state of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
December 3, 2001

Yours, etc.,

HANTMAN & ASSOCIATES

By:  Richard B. Savitt, Esq.  
Attorney for Plaintiff  
65 Bleecker Street  
New York, NY 10012  
(212) 228-2600

FILED  
DEC 04 2001  
NEW YORK  
COUNTY CLERK'S OFFICE

TO: Mark G. Speaker, M.D. PH.D  
and Laser and Corneal Surgery Associates, P.C.  
115 East 57<sup>th</sup> Street, 10<sup>th</sup> Floor,  
New York, NY 10022

Ophthalmic Consultants/Corneal  
And Refractive Surgery Associates, P.C.,  
310 East 14<sup>th</sup> Street,  
New York, NY 10003

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
Index No.

Frank Cilione

Plaintiff,

VERIFIED COMPLAINT,

Against

Ophthalmic Consultants/Corneal and  
Refractive Surgery Associates, P.C.,  
Laser and Corneal Surgery Associates  
and P.C. and Mark G. Speaker, M.D., PH.D

01122628

Defendants  
-----X

Plaintiff, Frank Cilione, by his attorney Richard P. Savitt  
of Hantman and Associates, complaining of the Defendants, Ophthalmic  
Consultants/Corneal And Refractive Surgery Associates, P.C., Laser and  
Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D  
respectfully alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, the plaintiff  
Frank Cilione is an individual who lawfully resides at

2. Upon information and belief, at all relevant times  
hereinafter mentioned, the defendant Mark G. Speaker, M.D. PH.D was and  
is a physician duly licensed to practice medicine in the State of New  
York and Ophthalmic Consultants/Corneal And Refractive Surgery  
Associates, P.C., Laser and Corneal Surgery Associates, P.C. were duly  
licensed corporations recognized as such by the Secretary of State of  
the State of New York.

3. Upon information and belief, at all relevant times hereinafter mentioned, the defendant's, Mark G. Speaker, M.D. PH.D and Laser and Corneal Surgery Associates, P.C. maintain an office for the practice of medicine at 115 East 57<sup>th</sup> Street, 10<sup>th</sup> Floor, New York, NY 10022 and Ophthalmic Consultants/Corneal And Refractive Surgery Associates, P.C., maintains an office for the practice of medicine at 310 East 14<sup>th</sup> Street, New York, NY 10003.

4. Upon information and belief, at all relevant times hereinafter mentioned, defendants held themselves out to be skilled in the field of ophthalmology, including, but not limited to, diagnosis, surgery, treatment, and after-care management.

5. At all times hereinafter mentioned, the plaintiff was a patient of defendant's and under their care, supervision and control with respect to his medical condition commencing on or about April 7, 1994.

6. On December 4, 1997, the plaintiff was admitted to the Laser and Corneal Surgery Associates, P.C. offices for the LASIK eye procedure under the medical diagnosis, care and treatment of the defendant's, Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D.

7. That said surgical procedures, upon information and belief, were performed based upon the defendant's preoperative diagnosis of nearsightedness in both eyes and astigmatism in the left eye.

8. The Plaintiff had follow-up treatments with the defendant's, Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D. from December 4, 1997 through May 19, 1998

9. On May 19, 1998, the plaintiff had follow-up medical diagnosis, care and treatment from the defendant's, Laser and Corneal

Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D. to further correct the vision of the plaintiff.

10. That said surgical procedures, upon information and belief, were performed based upon the defendant's preoperative diagnosis of nearsightedness in both eyes and astigmatism in the left eye.

11. That the plaintiff remained under the continuous diagnosis, care and treatment of the defendants Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D., through July 1999, and as a result of the foregoing medical diagnosis, care and treatment, including, but not limited to, the diagnosis, surgeries, discharge, aftercare management and follow-up medical treatment, the plaintiff was caused to sustain severe injuries and complications, including but not limited to: loss of vision, thin dense scar of OS severe (DLK) diffuse lamellar keratitis with (corneal) melt-3 episodes of DLK, esotropia, severe herpes scar and decentered small ablation of OD. The plaintiff is legally blind in his left eye with his vision at 20/400.

12. Said occurrence was due to the carelessness and negligence and/or departed from good medical practice of the defendant's, Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D., in that said medical services were performed in a careless and unskilled manner and/or that defendants failed to reasonably perform said necessary medical services constituting professional negligence and/or departed from good medical practice resulting in serious and permanent injuries to the plaintiff.

13. That the defendant's negligence and/or departed from good medical practice performance of those medical services, included but was not limited to, an examination of plaintiff which was

inadequate, insufficient, and below the accepted standard of care imposed upon the defendant with regard to the proper treatment and care of the plaintiff.

14. Further, that said surgical procedure and follow-up performed upon plaintiff by defendant was inappropriate, contraindicated, unnecessary, and the result of a misdiagnosis by the defendant.

15. Further, those defendants, Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D. failed to perform standard and necessary follow-up care.

16. Those defendants, Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D. had unskilled and unsupervised non-physicians perform all post surgery treatment and follow-up care of the plaintiff all to his detriment.

17. That defendant's failed to see the plaintiff or even schedule an appointment for him for over six (6) months after his second LASIK surgery on May 19, 1998.

18. The defendants, Laser and Corneal Surgery Associates and P.C. and Mark G. Speaker, M.D., PH.D., did not see the plaintiff again until November 24, 1998.

19. That as a proximate result of the professional negligence and/or departed from good medical practice of the defendants, the plaintiff, Frank Cilione, has been seriously, painfully and grievously injured in a necessary and vital part of his body with destruction and impairment of a part of his anatomy which is essential for normal functioning, rendering him sick, sore and disabled; plaintiff was required to obtain necessary further surgical, medical and nursing aid, attention and treatment; plaintiff has suffered physical pain and great mental anguish; plaintiff has suffered a loss

and impairment of a body system or function and psychological injuries with sequelae therefore; plaintiff was incapacitated from performing his usual duties; plaintiff has suffered a loss of enjoyment and quality of life, and substantial medical expenses; plaintiff's ability to perform ordinary and routine duties has been impaired; plaintiff has lost considerable amount of time from work and the future ability to earn a living and plaintiff's injuries are permanent and lasting, either in their nature or their effects.

20. That all of the above occurred through no fault or lack of care on the part of the plaintiff herein.

21. That by reason of the foregoing, the plaintiff, Frank Cilione sustained and suffered serious and severe injuries and complications as a result of the defendant's negligence and/or departed from good medical practice, all to his damage in a sum which exceeds the monetary jurisdictional limits of all courts of inferior jurisdiction of the state.

AS AND FOR A SECOND CAUSE OF ACTION

22. Plaintiff repeats and realleges each and every allegation contained within paragraphs "1" through "24" with the same force and effect as if set forth herein.

23. As a result of the failure to properly diagnose and treat plaintiff's ophthalmological condition by way of the accepted medical procedure and in performing such treatment in such a negligent and/or departed from good medical practice and careless manner, the plaintiff Frank Cilione was caused to sustain severe and permanent injuries.

24. That the defendants were negligent and/or departed from good medical practice as set forth below:

- a. In that they failed to take care in their efforts to test, treat and cure plaintiff;
- b. In that they carelessly and recklessly failed to provide reasonable and proper medical care and skill, and further failed to provide subsequent medical care and skill, and further failed to provide medical aftercare and treatment that was accepted and proper in such circumstances; which failure and neglect thereafter caused plaintiff to become severely and permanently injured;
- c. In that the defendants failed to exercise the knowledge, skill and diligence which as a physician he should have possessed and exercised on plaintiff's behalf;
- d. In that defendants failed to use and employ all referral procedures medically accepted under the circumstances and failed/refused to properly consult with other health care providers;
- e. In that defendants failed to perform the necessary tests and procedure in the accepted manner appropriate to the true condition of the plaintiff;
- f. That the defendants, in fact, negligence and/or departed from good medical practice misdiagnosed the plaintiff's true condition and then performed the an operation upon the person of the plaintiff and engaged in a course of treatment which was contraindicated.
- g. In that defendants, who held themselves out as having skills of a specialist in ophthalmological care and

treatment, failed to perform the skills required of him by accepted medical practice during and following the treatment of plaintiff's condition and in all of these respects failed to use due, reasonable and proper skill and care.

25. That by reason of the foregoing, the plaintiff Frank Cilione sustained and suffered serious and severe injuries and complications as a result of the defendant's malpractice; all to his damage in a sum which exceeds the monetary jurisdictional limits of all courts of inferior jurisdiction of the state.

AS AND FOR A THIRD CAUSE OF ACTION

26. Plaintiff repeats and realleges each and every allegation contained within paragraphs "1" through "25" with the same force and effect as if stated herein.

27. Defendants failed to inform the plaintiff of the risks, hazards and alternatives connected with the procedures utilized in connection with ophthalmological surgical procedure involved herein and the possible sequelae therefrom, so that an informed consent could be given.

28. Reasonably prudent persons in the plaintiff's position would not have consented to the procedures utilized in connection with the ophthalmological surgery involved herein and/or the post-operative course of care and treatment for the complications which arose therefrom, if they had been fully informed of the risks, hazards and alternatives connected with said procedures and such aftercare treatment.

29. The failure to adequately and fully inform the plaintiff of the risks, hazards and alternatives of the procedures and aftercare treatment utilized in connection with the ophthalmological surgical procedures performed by defendant and its sequellae is a proximate cause of the injuries sustained by the plaintiff.

30. As a consequence of the foregoing, there was no informed consent to the surgical procedures and aftercare treatment plan utilized by the defendant in connection with the diagnosis, testing examination, surgery, treatment plan and the complications, which arose therefrom.

31. That by reason of the foregoing, the plaintiff, Frank Cilione sustained and suffered serious and severe injuries and complications as a result of the defendant's malpractice, all to his damage in a sum which exceeds the monetary jurisdictional limits of all courts of inferior jurisdiction of the state.

WHEREFORE,

A) Count 1: Plaintiff demands judgment against the defendant in such a sum as a jury would find fair, adequate and just, but in an amount not less than <sup>five</sup> ~~one~~ million dollars (\$<sup>5</sup>~~1~~,000,000.00).

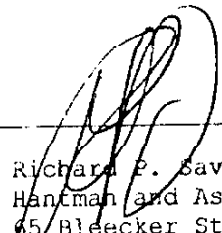
B) Count 2: Plaintiff demands judgment against the defendant in such a sum as a jury would find fair, adequate and just, but in an amount not less than <sup>five</sup> ~~one~~ million dollars (\$<sup>5</sup>~~1~~,000,000.00).

C) Count 3: Plaintiff demands judgment against the defendant in such a sum as a jury would find fair, adequate and just, but in an amount not less than <sup>five</sup> ~~one~~ million dollars (\$<sup>5</sup>~~1~~,000,000.00).

Dated: New York, New York  
December 3, 2001

Yours, etc.

By: \_\_\_\_\_



Richard P. Savitt  
Hantman and Associates  
65 Bleecker Street, 4<sup>th</sup> Floor  
New York, NY 10012  
212.228.2600