

CAUSE NO. 096 189799 01

PAUL ROUNTREE

Plaintiff

v.

TLC THE LASER CENTER (INSTITUTE) INC.,  
STEVEN ANDERSON, O.D., and  
ROBERT LEHMANN, M.D.

Defendants

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IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Paul Rountree (hereinafter sometimes referred to as "Plaintiff"), complaining of TLC The Laser Center (Institute) Inc., Steven Anderson, O.D., and Robert Lehmann (hereinafter collectively referred to as "Defendants"), and for such cause of action would respectfully show the Court the following:

I.

**DISCOVERY CONTROL PLAN**

Plaintiff intends to conduct discovery in this case under Level 2 of Rule 190 (Rule 190.3) of the Texas Rules of Civil Procedure.

II.

**PARTIES**

1. Plaintiff is an individual residing in Mansfield, Texas.
2. Defendant TLC The Laser Center (Institute) Inc. ("Defendant TLC") is a Delaware corporation that is qualified to do business in the State of Texas and maintains a registered agent in Texas for service of process. Therefore, Defendant TLC may be served with

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process through its registered agent in Texas, CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

3. Defendant Steven Anderson, O.D. ("Defendant Anderson") is an individual and a therapeutically certified optometrist duly licensed to practice in the State of Texas. Defendant Anderson practices optometry in Arlington, Tarrant County, Texas and may be served with process at his place of business, 1416 S. Hwy 360, Arlington, Texas 76010 or any other location where Defendant Anderson may be found.

4. Defendant Robert Lehmann, M.D. ("Defendant Lehmann") is an individual duly licensed to practice in the State of Texas. Defendant Lehmann practiced in Arlington, Tarrant County, Texas at the time of this incident and may be served with process at his place of business, 5300 North Street, Nacogdoches, Texas 75961 or any other location where Defendant Lehmann may be found.

### III.

#### VENUE

Venue is proper in this Court and in Tarrant County pursuant to Texas Civil Practice and Remedies Code §15.002(a)(1) as it is the county in which this medical negligence occurred.

### IV.

#### FACTS

In or around the fall of 1999, Plaintiff contemplated LASIK eye surgery and met with Defendant Anderson at a free seminar at Defendant TLC designed to market and recruit potential patients. At that time, Plaintiff stated that he felt as if there was something in his eye. Defendant Anderson told Plaintiff that he might have corneal erosion and that he could not have the laser surgery with that condition. Plaintiff followed up that visit with visits to two other doctors for

second opinions and both doctors informed Plaintiff that he did not have corneal erosion. Plaintiff then went back to Defendant Anderson and shared the opinions of the two other doctors with him. Upon examination of Plaintiff, Defendant Anderson did indeed find a small foreign body under Plaintiff's eyelid and removed it. Plaintiff experienced immediate relief.

On October 13, 1999, Plaintiff returned to Defendant Anderson who assured Plaintiff that both eyes were fine and that he was a good candidate for the LASIK procedure. Plaintiff had the LASIK surgery performed by Defendant Lehmann at Defendant TLC on October 15, 1999. As a result of the surgery, Plaintiff has experienced, among other things, incapacitating and excruciating pain in his eyes as well as poor and deteriorating vision. Plaintiff has also experienced incapacitating dry eyes which have required him to put in drops throughout the day and night since the day of the surgery. To help treat the condition, in January 2000, Plaintiff was forced to have permanent plugs placed in both his eyes by other doctors at Defendant TLC. These plugs have proved largely unsuccessful. The injuries suffered by Plaintiff are permanent, disabling, and incapacitating.

V.

FIRST CAUSE OF ACTION: NEGLIGENCE

Defendants each violated a duty of care to Plaintiff to exercise the ordinary standard of care and diligence which they have a duty to provide and which duty is exercised by other health care providers in the same or similar circumstances.

Defendant TLC, by and through its actual, constructive, and ostensible agents, employees, vice principals, and borrowed servants, failed to use the ordinary care in providing treatment for Plaintiff that reasonable and prudent treatment centers of the same or similar level of certification should have and would have employed under the same or similar circumstances

by, among other acts and omissions, failing to develop, employ, monitor, and follow appropriate policies and procedures with regard to the assessment, treatment, management, care and oversight of patients such as Plaintiff, and by failing to properly train, employ, and provide appropriate personnel to properly perform and carry out such policies and procedures. In addition, Defendant TLC is liable for the acts and omissions of Defendant Lehmann and/or Defendant Anderson to the extent that they were the actual, apparent, constructive, and ostensible agents of Defendant TLC and were practicing under Defendant TLC's apparent direction, control, and auspices. Moreover, Defendant TLC, Defendant Lehmann, and Defendant Anderson knew or should have known how to properly assess and evaluate whether Plaintiff was an appropriate candidate for the LASIK procedure and to competently perform such procedure and follow-up care and/or treatment.

In particular, Defendants, together or individually, failed to exercise the accepted standard of care owed to Plaintiff and were guilty of various acts and omissions constituting negligence, which were the proximate cause of the incidents in question and the resulting injuries and damages caused to Plaintiff. Those acts include, but are not limited to, the following:

1. Failing to properly assess and/or evaluate Plaintiff's candidacy for the LASIK procedure;
2. Failing to properly and/or adequately perform the LASIK procedure;
3. Failing to properly perform other procedure(s) necessary to treat Plaintiff;
4. Failing to observe the variables and factors which were necessary and important to proper treatment of Plaintiff;
5. Failing to correctly use reasonable skill, care, and diligence to correctly prevent and/or diagnose and treat Plaintiff's resulting conditions; and
6. Failing to properly instruct and supervise Defendant TLC's personnel in the care and treatment of patients with symptoms experienced by Plaintiff.

Each and every of the above-referenced acts and/or omissions, singularly or in connection with each other, constitute negligence which proximately caused Plaintiff's injuries and damages as set forth herein.

## VI.

### DAMAGES

As a direct and proximate result of Defendants' negligent acts specified herein above, Plaintiff suffered severe and permanent injuries, impairment, and trauma to his eyes. The impairment from these injuries appears to be permanent in nature and the injuries have had and will continue to have a serious effect on Plaintiff's health and well-being.

Plaintiff has also suffered great physical pain and suffering and mental anguish, and, in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not permanently. At the time of the incident made the basis of this action, Plaintiff was an otherwise healthy adult. In addition, Plaintiff has been caused to suffer loss of enjoyment of life in the past, and will, in all reasonable probability, continue to suffer the same in the future.

As a further result of Defendants' negligence, Plaintiff has incurred lost wages in the past and will, in all reasonable probability, experience a loss of earning capacity in the future as his injuries have been of a disabling nature. Plaintiff further sues for past and future disfigurement.

By reason of the injuries described above, Plaintiff has suffered losses and damages in a reasonable sum, which far exceed the minimum jurisdictional limits of the Court, for which Plaintiff now sues.

## VII.

As a further result of the above and foregoing, Plaintiff has incurred expenses for medical care, treatment, and attention in excess of the minimum jurisdictional limits of this Court. These

expenses have been incurred for the necessary care and treatment of Plaintiff's injuries which resulted from the incidents made the basis of this lawsuit. The charges are and were reasonable and were the usual and customary charges for such services in the county of such service. As a result of the injuries sustained by Plaintiff, there is a reasonable probability that he will require further medical care and attention and will, thus, incur future reasonable expenses for his necessary medical care, treatment, and attention, all in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues.

### VIII.

#### EXEMPLARY DAMAGES

Plaintiff hereby incorporates by reference the factual allegations contained in the preceding Paragraphs as if set forth verbatim. The wrong done by Defendants was aggravated by the kind of conduct for which the law allows the imposition of exemplary damages in that Defendants' conduct was willful and/or malicious or, when viewed objectively from their standpoint at the time of the conduct, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and Defendants were actually, subjectively aware of the risks involved, but nevertheless proceeded with wanton and/or conscious indifference to the rights, health, safety, and welfare of Plaintiff and others. Plaintiff, therefore, requests that exemplary damages be assessed against Defendants.

### IX.

#### NOTICE OF CLAIMS PROVIDED

Plaintiff has given Defendants written notice of the claims sued on by certified mail, return receipt requested, as required by Article 4590i, Section 4.01(a) of the Medical Liability

and Insurance Improvement Act. Plaintiff has otherwise complied with all the provisions of Section 4.01 of Article 4590i of the Act.

X.

**JURY DEMAND AND PRAYER**

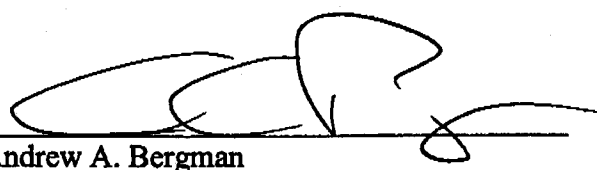
Plaintiff demands a jury trial in this cause.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully requests that Defendants be cited to appear and answer herein and that, upon final trial, Plaintiff have judgment against Defendants in the following manner:

1. Actual damages in a sum in excess of the minimum jurisdictional limits of the Court;
2. Exemplary damages;
3. Pre- and post-judgment interest at the maximum rate allowable by law;
4. Costs of suit; and
5. Such other and further relief, in law and in equity, to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,

**BERGMAN, STEIN & BIRD, L.L.P.**



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