

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
CIVIL DIVISION

FILED
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TERRI A. WOLAVER, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO

EDWIN J. VANCE, et. al. *
Plaintiffs *
-vs- *

Case No. 2016 CV:0623
(Judge Stephen A. Wolaver)

GERALD D. KELBLE, et. al. *
Defendants *

PLAINTIFFS' MOTION TO
STRIKE AFFIRMATIVE DEFENSE

* * * * *
Plaintiffs on September 20, 2016 filed their Complaint containing Plaintiff Edwin J. Vance's
claims for personal injuries and Plaintiff Martha Vance's claim for loss of consortium.

Thereafter, Defendant Kelble through counsel served his answer on December 27, 2017,
raising a number of affirmative defenses. In particular, Defendant in his Sixteenth Defense set forth:

SIXTEENTH DEFENSE

Answering Defendant alleges that the Plaintiffs' Complaint, by
containing run-on sentences, multiple allegations in the same
paragraph, conclusions, verbose exaggerations, and "stream of
consciousness" rhetoric, violates Rule 8 of the Ohio Rules of Civil
Procedure and should, therefore, be stricken in its entirety.

Plaintiffs pursuant to Rule 12(F) of the Ohio Rules of Civil Procedure now move to strike
Defendant's Sixteenth Defense for the reasons set forth in the attached Memorandum.


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MEMORANDUM

So defense counsel Nick Subashi files an affirmative defense criticizing my pleading for
having verbose exaggerations and using run-on sentences and "stream of consciousness" rhetoric and

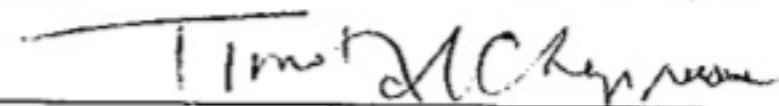
what I'd like to know is who does he think he is simply because he represents a major insurance company and can do anything he wants well I'll tell you I don't feel the same way and I think my pleading was perfectly fine after all all I'm doing is representing my clients who have a gigantic 8-figure claim no exaggeration and also particularly since I have extensively researched the defense in this case as demonstrated by the attached scholarly article and I don't understand why the system rises-up to resist a meritorious claim when in actuality Plaintiffs have fully complied with the Ohio Rules of Civil Procedure based on notice pleading because the Second District Court of Appeals has made clear that at least in our appellate district trial courts are not to apply the heightened pleading standards the United States Supreme Court adopted in Bell Atlantic Corp. v. Twombly 550 U.S. 544 (2007) and Ashcroft v. Iqbal 129 S.Ct. 1937 (2009) in its decision in Sacksteder v. Senney 2012- Ohio-4552 and extensive discussion therein at ¶¶ 14-47 and Plaintiffs were trying to avoid any argument that they had to set forth their claims with particularity and also Sacksteder reminded everyone in ¶ 45 that Civil Rule 8(F) requires a court to liberally construe all pleadings as to do substantial justice but in actuality Subashi's bold accusations and his outrageous Sixteenth Defense probably all stem from the time he beat me in a jury trial in Montgomery County but that was years ago and I bet any number of other defense lawyers could have gotten the same result when after all there was only a fairly trivial impact in that case and my client who was a doctor and should have known better didn't seek any treatment until weeks after the accident and even at that the jury gave us at least some money when Mr. Hotshot Subashi was arguing that there should be no award and besides it was all probably because the jury was taken with his co-counsel Anne Keeton and Subashi had little to do with the outcome but I suppose we will never know now Brian Wildermuth of that office is an excellent lawyer and a real professional and he would never file such an affirmative defense and I know that because I have another case going on with him and he did not raise that affirmative defense although he did ruin my vacation when he caused me to come 450 miles for the deposition of his client last year and then he

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cancelled it at the last minute but I suppose that was not his fault at least he returns his phone calls and responds to e-mails unlike the other lawyers from Cleveland and Columbus in the case but in any event I can't believe that defense counsel in this case thinks that I would resort to stream of consciousness and verbosity or use run-on sentences he probably thinks he is really cool because he practically lives in the gym and he's into rock-climbing and mountaineering like he's the next Reinhold Messner making the first unaided ascent of Everest without supplemental oxygen and gets to go on these adventure trips out west when I'm stuck in the office responding to a defendant's third set of discovery requests and attending multi-hour depositions of witnesses when they should only take thirty minutes and the witnesses are not important to the case anyway but I suppose that is what defense counsel has to do to get paid but in any event I hope the Judge does not allow Defendant to prevail on this affirmative defense which is as worthless as his other defenses and they should just pay the dough because I just would never resort to stream of consciousness or use run-on sentences or otherwise be verbose but I suppose that's why we have judges who have to make tough decisions and I feel sorry for the Judge anyway because he is a Browns' fan and suffers like everyone else who has the misfortune to follow that inept team for decades and decades and things never improve but speaking of losers did you see that Ohio State offense and no matter how bad things get it can't be that bad but they were probably overrated anyway and after all spring training is around the corner but the main thing is that I hope the Court understands that I would never be verbose or use run-on sentences or put stream of consciousness into a pleading particularly since I have practiced over 38 years and my consciousness is getting pretty impaired and no one pays attention to what I say anyway....



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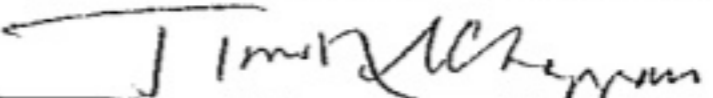
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon **Nicholas E. Subashi, Esq., SUBASHI & WILDERMUTH**, The Greene Town Center, 50 Chestnut St., Ste. 230, Dayton, OH 45440, Attorney for Defendant Gerald Kelble and **Vaseem S. Hadi, Esq., GIBSON KOLB, PSC**, 8914 Stone Green Way, Louisville, KY 40220, Attorney for Defendant Humana Financial Recovery & Subrogation, by electronic transmission and/or regular U.S. Mail this 5th day of January 2017.


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