

ANTHONY KLAY and KAREN KLAY, husband and wife,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
Plaintiffs	:	
	:	
vs.	:	NO. 01-01,522
	:	
JAN K. HILLIKER, M.D. and BERNSTEIN/HILLIKER/HARTZELL EYE CENTER,	:	CIVIL ACTION - LAW
	:	
	:	
Defendants	:	PRELIMINARY OBJECTIONS

**Date: May 24, 2002**

**OPINION AND ORDER**

This decision is entered in disposition of the Preliminary Objections to Plaintiffs' Complaint filed by Defendants on October 9, 2001. The Preliminary Objections that relate to a demurrer and Motion to Strike concerning pleadings in the Complaint in paragraphs 21 and 22 which refer to unidentified agents will be granted without objection by Plaintiffs. (See Plaintiffs' Brief filed November 21, 2001 which notes that based upon the discovery provided by Defendants that Plaintiffs are willing to amend the Complaint in this regard.)

The remaining Preliminary Objection is also in the nature of a Motion to Strike as would relate to paragraphs 17.6 and 24.6 in the Complaint which assert that as grounds for negligence Defendant Jan K. Hilliker, M.D., failed to review or appreciate a May 12, 2000 topography “. . . and other test results showed keratoconous in both eyes, . . .” The Court believes that the reference to “other test results” may not in and of itself be objectionable under the *Connor* doctrine that is asserted by Defendant. (See the reasons advanced in Plaintiffs' Brief). The significant reason for this conclusion is that Defendant would typically be aware as to the nature of the tests. Also by alleging to the fact that Defendant ignored “other tests”

revealing keratoconus does not assert a different cause of action. In other words this pleading typically would be specific enough to allow the defendant to respond.

Nevertheless, upon reviewing the entire Complaint the Court believes that it is appropriate to sustain the preliminary objection and require plaintiff to replead to specify whether these tests were ones that were occurring in connection with the direct treatment of Plaintiff by Defendants, or, perhaps some other test with which Defendant should have been aware through records or other things provided to him from a third source. In addition, the Court believes there is an ambiguity in the pleadings as would relate to whether these “other tests” were performed by Defendants on or after their initial treatment of Plaintiff on May 12, 2000 or refer, perhaps, to some pre-existing tests.

The Court does recognize that Defendants might easily obtain the information to be repleaded or otherwise limit the pleadings through appropriate discovery. Nevertheless, due to the fact that Plaintiffs have agreed to file an amended complaint and inasmuch as we believe that the amended complaint can easily more narrowly limit the “other tests,” specifying by whom performed and timeframe, it is appropriate to direct Plaintiff to so amend.

Accordingly, the following Order will be entered.

**ORDER**

In accordance with the foregoing Opinion the Preliminary Objections filed by Defendants on October 9, 2001 to Plaintiffs' Complaint are SUSTAINED. Plaintiffs shall have a period of twenty days following notice of this Order in which to file an amended complaint.

BY THE COURT,

William S. Kieser, Judge

cc: C. Scott Waters, Esquire  
C. Edward S. Mitchell, Esquire  
Judges  
Gary L. Weber, Esquire (Lycoming Reporter)