

SUMMONS

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

DAVID W. NELSON and
VICTORIA J. NELSON, his wife,

Plaintiffs,

v.

Civil Action No. 15-C-220

Judge: RAB

RALEIGH RADIOLOGY, INC.
a West Virginia corporation;
PAUL D. RATCLIFF, JR., DO; and
C. RICHARD DANIEL, JR., M.D.

Defendants.

To: Raleigh Radiology, Inc.
4504 Starkey Rd, Ste 200
Roanoke, VA 24108

To the above-named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon **Katz, Kantor, Stonestreet & Buckner, PLLC**, whose address is **207 South Walker Street, Princeton, WV 24740**, an answer, including any related counterclaim you may have, to the Complaint filed in the above-styled action, a true copy of which is herewith delivered to you. You are required to serve your answer within **thirty (30) days** after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 3-20-15

Paul H. Flanagan
Clerk of the Circuit Court of Raleigh County, WV

By: Amy Couch

Deputy

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Judge: RAB

RALEIGH RADIOLOGY, INC.
a West Virginia corporation;
PAUL D. RATCLIFF, JR., DO; and
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Defendants.

TO: Paul D. Ratcliffe, Jr., DO
1710 Harper Rd
Beckley, WV 25801

To the above-named Defendant:

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DATED: 3-20-15

Paul H. Flanagan
Clerk of the Circuit Court of
Raleigh County, West Virginia

By: Amy Cochran

Deputy

SUMMONS

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

DAVID W. NELSON and
VICTORIA J. NELSON, his wife,

Plaintiffs,

v.

Civil Action No. 15-C-020

Judge: RAB

RALEIGH RADIOLOGY, INC.
a West Virginia corporation;
PAUL D. RATCLIFF, JR., DO; and
C. RICHARD DANIEL, JR., M.D.

Defendants.

TO: C. Richard Daniel, Jr., MD
1710 Harper Rd
Beckley, WV 25801

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DATED: 3-20-15

Paul H. Flanagan

Clerk of the Circuit Court of
Raleigh County, West Virginia

By: Amy Crouch

Deputy

SUMMONS RETURN

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

DAVID W. NELSON and
VICTORIA J. NELSON, his wife,

Plaintiffs,

v.

Civil Action No. 15-C-220

Judge: RAB

RALEIGH RADIOLOGY, INC.
a West Virginia corporation;
PAUL D. RATCLIFF, JR., DO; and
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Defendants.

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1710 Harper Rd
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SUMMONS RETURN

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**DAVID W. NELSON and
VICTORIA J. NELSON, his wife,**

Plaintiffs,

v.

Civil Action No. 15-C-220

Judge: RAB

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a West Virginia corporation;
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Defendants.

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SUMMONS RETURN

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**DAVID W. NELSON and
VICTORIA J. NELSON, his wife,**

Plaintiffs,

v.

Civil Action No. 15-C-220

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a West Virginia corporation;
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DATED: 3-20-15

Paul H. Flanagan
Clerk of the Circuit Court of Raleigh County, WV

By: Amy Crach

Deputy

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

RALEIGH COUNTY
RECEIVED AND FILED

DAVID W. NELSON and
VICTORIA J. NELSON, his wife, 2015 MAR 20 A 10:13

Plaintiffs, PAUL H. FLANAGAN

v.

CIRCUIT CLERK Civil Action No. 15-C-220

Judge: RAB

RALEIGH RADIOLOGY, INC.
a West Virginia corporation;
PAUL D. RATCLIFF, JR., DO; and
C. RICHARD DANIEL, JR., M.D.

Defendants.

COMPLAINT

NOW COME Plaintiffs David W. Nelson and Victoria J. Nelson, his wife, by counsel, Eric J. Buckner of Katz, Kantor, Stonestreet & Buckner, PLLC and Mark R. Staun, of Hartley & O'Brien, PLLC, and for their Complaint against defendants, state as follows:

PARTIES AND JURISDICTION

1. Plaintiff David W. Nelson is and was at all times relevant to the events underlying this Complaint, a citizen and resident of Raleigh County, West Virginia and is the husband of Plaintiff, Victoria J. Nelson;

2. Plaintiff Victoria J. Nelson is and was at all times relevant to the events underlying this Complaint, a citizen and resident of Raleigh County, West Virginia and is the wife of Plaintiff, David W. Nelson;

3. Defendant Raleigh Radiology, Inc. (hereinafter "Raleigh Radiology"), is a West Virginia Corporation and is the employer of Paul D. Ratcliff, Jr., D.O. (hereinafter "Dr. Ratcliff") and C. Richard Daniel, Jr., M.D. (hereinafter "Dr. Daniel");

4. Dr. Ratcliff is a Doctor of Osteopathic Medicine and Dr. Daniel is a Doctor of Medicine. Both physicians practice diagnostic radiology at Raleigh General Hospital in Beckley, Raleigh County, West Virginia;

5. At all times relevant to the events underlying this Complaint, Raleigh Radiology is a for profit corporation licensed to do business and doing business in the State of West Virginia with a principal office address located at 1710 Harper Road, Beckley, West Virginia 25801. According to the West Virginia Secretary of State, Raleigh Radiology may be served with process at 4504 Starkey Road, Suite 200, Roanoke, Virginia 24108;

6. Defendant, Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel, is vicariously liable for the acts and/or failures to act and negligence of these physicians, as is alleged, *infra*;

7. Jurisdiction and venue are proper in the Circuit Court of Raleigh County, West Virginia as all defendants routinely conduct business in Raleigh County, West Virginia and the acts and/or failures to act that have been alleged giving rise to this action occurred in Raleigh County, West Virginia;

OPERATIVE FACTS

10. On or about December 26, 2011, Plaintiff David W. Nelson was emergently transported by ambulance to Raleigh General Hospital Emergency Department due to back spasms and chest pain that was so severe that he was unable to change position or walk;

11. Plaintiff presented to Raleigh General Hospital Emergency Department on December 26, 2011 and informed the treating physician, Dr. Cordell Rivera Honrado, that he was having severe back spasms with pulling sensations in the ribs and back to the point that it hurt to breath and that such symptoms were worsened with any change of position;

12. The Raleigh General Hospital Emergency Provider Record dated December 26, 2011 documented that Mr. Nelson fell approximately one month ago and fractured the 7th, 8th, and 9th right rib and two weeks ago developed pain in the left chest;

13. The Raleigh General Hospital Emergency Provider Record dated December 26, 2011 further documents that Mr. Nelson had complaints with sharp chest pain that radiated into his back that was worsened by changes of position;

13. Due to the Plaintiff David Nelson's symptoms, the treating emergency department physician, Dr. Cordell Rivera Honrado, ordered a chest CTA scan and a chest AP/PA and Lateral x-ray/ribs AP/PA and oblique x-ray on December 26, 2011;

14. Plaintiff David Nelson underwent the chest CTA scan and the chest AP/PA and Lateral x-ray/ribs AP/PA and oblique x-ray at Raleigh General Hospital on December 26, 2011 pursuant to Dr. Honrado's orders;

15. The chest CTA scan was read and interpreted by Defendant, Dr. Ratcliff;

16. The chest AP/PA and Lateral x-ray/ribs AP/PA and oblique x-ray was read and interpreted by Defendant, Dr. Daniel;

17. The Chest CTA scan performed on December 26, 2011 demonstrated that Mr. Nelson had a fracture at T-8;

18. However, the Diagnostic Imaging Report (Exam No. 001614105) interpreting the Chest CTA and read by Dr. Ratcliff, makes no mention of a T8 fracture or deformity;

19. Dr. Ratcliff's Diagnostic Imaging Report reflects that he looked at the thoracic spine, noting "degenerative changes about the thoracic spine.";

20. Dr. Ratcliff missed the T8 fracture as contained in the Chest CTA scan performed on December 26, 2011;

21. The Chest AP/PA and Lateral x-ray/ Ribs AP/PA and Oblique x-ray performed on Plaintiff, David Nelson also demonstrated a fracture at T8;

22. The Diagnostic Report (Exam No. 001624055 and 001614061) interpreting the Chest AP/PA and Lateral x-ray/ Ribs AP/PA and Oblique x-ray and read by Dr. Daniel, makes no mention of a T8 fracture or deformity;

23. Dr. Daniel missed the T8 fracture as contained in the Chest AP/PA and Lateral x-ray/ Ribs AP/PA and Oblique x-ray on December 26, 2011;

24. Plaintiff was discharged home from Raleigh General Hospital on or about December 26, 2011 with a clinical impression of chest pain;

24. For the next year, Plaintiff David Nelson continued to suffer from back spasms and back pain that did not resolve;

25. Due to these persistent problems, Dr. Adnan Silk ordered x-rays of Plaintiff David Nelson's thoracic spine;

25. On December 28, 2012, pursuant to Dr. Silk's order, Plaintiff underwent a thoracic spine AP/LAT/S x-ray at Raleigh General Hospital;

26. Defendant, Dr. Ratcliff read and interpreted this thoracic spine AP/LAT/S x-ray (Exam No. 001744343) and compared it to the Chest radiograph dated December 26, 2011.

27. In reading the December 28, 2012 AP/LAT/S x-ray, Defendant Dr. Ratcliff sees the T8 fracture and comments on the progression of the fracture in relation to the previous study performed on December 26, 2011 in the Impression section of the report where he states: "Anterior wedge compression deformity of T8. There has been worsening over the past year. An MRI of the thoracic spine may provide further information."

28. On January 3, 2013 Plaintiff David Nelson followed up with his treating physician, Dr. Silk, for the results of the December 28, 2012 thoracic spine x-ray;

29. During this January 3, 2013 appointment, Plaintiff David Nelson learned for the first time that he had a compression fracture of T8;

30. Dr. Silk informed Mr. Nelson that the compression fracture of T8 was due to the back injury he had last year and that it had worsened over the last year;

31. As a direct and proximate result of the Defendants, Dr. Ratcliff and Dr. Daniel's failure to diagnose the T8 fracture on December 26, 2011 and report such fracture to the Plaintiff and his treating physicians, Plaintiff David Nelson lost the chance to undergo surgical options to correct and/or repair the T-8 fracture and further deprived him of the chance of recovery;

32. When Plaintiff, David Nelson's T-8 fracture was first diagnosed and reported to him, there were no surgical remedies available to him;

33. As a direct and proximate result of the Defendants, Dr. Ratcliff and Dr. Daniel's failure to diagnose the T8 fracture on December 26, 2011 and report such fracture

to the Plaintiff and his treating physicians Plaintiff, David Nelson lives with constant pain and requires the use of a back brace, must undergo non-surgical medical treatments including, but not limited to, pain management, therapy, regular visits to physicians and ongoing diagnostic studies to determine the stability of the fracture;

34. As a direct and proximate result of the Defendants, Dr. Ratcliff and Dr. Daniel's failure to diagnose the T8 fracture on December 26, 2011 and report such fracture to the Plaintiff and his treating physicians Plaintiff, David Nelson's activities of daily living are restricted and he is no longer to perform household services due to his severe pain and discomfort;

COUNT I

NEGLIGENCE OF DEFENDANTS RALEIGH RADIOLOGY, AS THE EMPLOYER OF DEFENDANTS DR. RATCLIFF AND DR. DANIEL AND NEGLIGENCE OF DEFENDANTS DR. RATCLIFF AND DR. DANIEL.

35. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and the plaintiffs further complain and say as follows:

36. The standard of care requires that radiologists appropriately and accurately read and interpret diagnostic images, including but not limited to, Chest CTA Scans and Chest AP PA and Lateral x-ray/ Ribs AP/PA and Oblique x-rays and report such findings to the ordering physician and/or the patient's treating physician;

37. Dr. Ratcliff's failure to accurately and appropriately read the Chest CTA Scan performed on December 26, 2011, which clearly demonstrated that Mr. Nelson was suffering from a T8 fracture, was a deviation from the appropriate standard of care;

38. Dr. Ratcliff was acting in the scope of his employment with Raleigh Radiology when he failed to accurately and appropriately read the Chest CTA Scan on December 26, 2011.

39. Dr. Daniel's failure to accurately and appropriately read the Chest AP/PA and Lateral x-ray/ Ribs AP/PA and Oblique x-ray on December 26, 2011, which clearly demonstrated that Mr. Nelson was suffering from a T-8 fracture, was a deviation from the appropriate standard of care;

40. Dr. Daniel was acting in the scope of his employment with Raleigh Radiology when he failed to accurately and appropriately read the Chest AP/PA and Lateral x-ray/ Ribs AP/PA and Oblique x-ray on December 26, 2011;

45. Defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's failure to follow the accepted standard of care deprived Mr. Nelson of the chance to undergo surgical options to correct and/or repair the T-8 fracture and further deprived him of the chance of recovery and increased the risk of harm to him, which was a substantial factor in bringing about Mr. Nelson's ultimate injury and damages;

46. As a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to act and negligence, Mr. Nelson has to wear a back brace, has had to undergo continuous medical treatment, pain management, numerous additional diagnostic studies and other treatment;

47. As a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to

act and negligence, Mr. Nelson has suffered permanent and irreversible damage to his back, including but not limited to, constant pain and spasms and instability of the spine that requires continuous medical monitoring;

48. As a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to act and negligence, plaintiff David Nelson has incurred substantial medical expenses for his care and treatment and will continue to incur medical expenses into the future;

49. As a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to act and negligence, plaintiff David Nelson has suffered enormous pain and suffering including mental and emotional distress and a loss of enjoyment of life and will continue to endure such damages into the future;

50. As a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to act and negligence, plaintiff David Nelson has incurred other related expenses, including but not limited to, loss of household services, and will continue to incur other related expenses into the future;

COUNT II

LOSS OF CONSORTIUM – ALL DEFENDANTS

52. Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and the plaintiffs further complain and say as follows:

52. At all times material hereto, Plaintiff, Victoria J. Nelson was the wife of David W. Nelson;

53. At all times material hereto, David W. Nelson was the household service provider for Plaintiff, Victoria J. Nelson, and as a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to act and negligence, Plaintiff Victoria J. Nelson lost the support, general services, companionship and society of her husband;

54. As a direct and proximate result of defendants Raleigh Radiology, as the employer of Drs. Ratcliff and Daniel and Drs. Ratcliff and Daniel's acts and/or failures to act and negligence, plaintiff Victoria J. Nelson has rendered physical support services and other services to her husband, which she otherwise would not have had to render except for his injuries;

WHEREFORE, Plaintiffs demand compensatory and punitive damages from defendants, in an amount in excess of this court's jurisdictional minimum, to be determined by the trier of fact. Plaintiffs further demand prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFFS DEMAND A TRIAL BY JURY UPON ALL ISSUES TRIABLE BY A JURY AND RAISED HEREIN.

**DAVID W. NELSON and
VICTORIA J. NELSON, his wife,**

Plaintiffs,



Eric J. Buckner (WV Bar# 9578)


KATZ KANTOR STONESTREET & BUCKNER, PLLC

207 S Walker St

Princeton, West Virginia 24740

(304) 431-4054

Fax: (304) 431-4060



Mark R. Staun (WV Bar #5728)

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Wheeling, West Virginia 26003

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Co-Counsel for Plaintiffs