IN THE SUPREME COURT OF FLORIDA

CASE NO. SC08-2087
Lower Tribunal No.: 2D07-233

CHRISTY AILLS,

Petitioner,
vs.

LUCIANO BOEMI, M.D. and
LUCIANO BOEMI, M.D., P.A.,

Respondents.
_____/

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL OF FLORIDA, SECOND DISTRICT

PETITIONER'S REPLY BRIEF ON THE MERITS

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I. STATEMENT OF THE CASE AND FACTS

A. The Court has jurisdiction. Dr. Boemi's opening gambit -- which betrays considerable anxiety over the strength of his position on the merits -- is a request that the Court change its mind and decline to entertain Christy's case altogether. In an unconventional "Introduction" to his brief, he contends that our *brief on the merits* does not contain a demonstration of "express and direct conflict." Of course, our *brief on jurisdiction* contains an ample demonstration of conflict, as the Court previously determined when it rejected the very arguments that Dr. Boemi has resurrected here, so the contention is misplaced. In any event, both our brief on jurisdiction and our brief on the merits provide an ample demonstration of conflict sufficient to support this Court's exercise of jurisdiction.

Because Dr. Boemi's brief devotes roughly 16 of its 28 pages to an entirely new issue in the nature of a cross-petition for review (on an issue not even addressed in the district court's decision), we simply do not have the space to make that demonstration again. If the Court is at all concerned about its jurisdiction, we refer it to our brief on jurisdiction, confident that the Court has jurisdiction to resolve the undeniable conflicts presented by the district court's decision.**B. Dr. Boemi's "Statement of the Facts" is neither accurate nor fair.** The bulk of Dr. Boemi's restatement of the case and facts, which is advanced as background to his claim of entitlement to a directed verdict, is neither accurate nor fair. His statement of the procedural background to his "cross-issue" is incomplete and therefore inaccurate by omission. His statement of the factual background to his "cross-issue" impermissibly ignores all of the evidence supporting the jury's finding of liability -- evidence that all four judges who considered the issue below found sufficient to support the verdict -- and it is therefore unfair. Although it will

require us to use a considerable amount of the very limited 15 pages allotted to us here, we will restate the procedural and factual background accurately and fairly in connection with our argument on Dr. Boemi's "cross-issue."[1/]

II. ARGUMENT

A. The district court erred in ordering a new trial of all issues on a ground that was not presented to the trial court at any time prior to verdict. In life, truth is often elusive . . . and ambiguity can make it more so. In the appellate process, however, the truth is readily ascertainable because there is a written record of it. The written record says what it says -- nothing more, nothing less. And there is no excuse for misrepresenting that record to an appellate court.

In the motion for rehearing we directed to the district court, and in our initial brief in this Court, we challenged Dr. Boemi's counsel to point to some place, any place, in the record of the trial where counsel ever objected on the ground upon which the district court bottomed its reversal -- that Christy's counsel's closing argument was "disturbing and inflammatory" on an issue not pled in the complaint. Unwilling to concede what the record reflects in black and white -- that no such objection was ever raised before verdict -- Dr. Boemi's counsel has tried to plant the suggestion of such an objection in the Court's mind by repeating the phrase "neither pled nor tried," or some variant thereof, no less than 14 times in the answer brief (Respondents' brief, pp. 7, 8 (twice), 9 (twice), 10, 11 (twice), 12, 17 (twice)

[1/] Although Dr. Boemi fought us tooth and nail on our request that the record be supplemented with the transcript of the August 14, 2006, hearing held on Dr. Boemi's motions in limine, the Court granted our motion to supplement shortly before this brief was prepared. The representations made at page 9 of our initial brief are therefore now fully supported by the record before the Court.

19, 20, 28).

But recognizing that at least some record reference was required to support these repeated assertions, counsel has offered the Court the following sentence spoken by defense counsel at trial: "To argue that the postoperative care was negligent and that there was evidence to support that it would have made a difference, *there's no basis in the record*." (Respondents' brief, p. 15; emphasis in original). Appellate counsel then elaborates (*Id*.):

> In the context of the time, place, circumstance, and need for brevity which defines a sidebar objection conference during trial, however, the district court quite properly understood the phrase "no basis in the record" to be a short-hand reference to the absence of a pleading, notice that the issue was being tried, proof, or expert testimony on the standard of care . . .

Most respectfully, that is an *awful* lot to read into the six-word phrase which counsel has wrestled out of a context that says something *entirely* different.

We do not play these types of games with the Court. In the interest of the truth, our initial brief quoted the *entire* objection -- and it is worth repeating (T6: 931-32):

> MR. MANGAN: Judge, my objection to this line of argument is that there is no expert testimony that more likely than not Ms. Aills' outcome would have been avoided with any care after the surgery. Witnesses commented that maybe they could have tried something different, maybe they would have approached it differently, but not a single witness was asked more likely than not would the outcome have been different. In fact, Dr. Glat said I can't say there would have been a difference. To argue that the postoperative care was negligent and that there was evidence to support that it would have made a difference, there's no basis in the record. So, my objection is that there is no evidence to support the argument of closing.
>
> . . . .

> MR. MANGAN: I think Mr. Garvin has just made my point. He's acknowledged that there's no expert testimony supporting causation on the theory of negligence after the care, there's no evidence of it.

In short, the objection was that, although there may have been evidence of negligence to support the line of argument, there was no evidence of causation. And implicit in this objection, of course, was an acknowledgment that the issue had been pled and tried, but simply not proven. For Dr. Boemi's counsel to isolate a single six-word phrase from this lengthy objection and inflate it into an objection "to the absence of a pleading, notice that the issue was being tried, proof, or expert testimony on the standard of care" is a disservice both to the truth and to the Court.[2/]

The record actually reflects that there was no objection prior to verdict that the issue of Dr. Boemi's post-operative care was "neither pled nor tried," and there was no objection to the argument that the district court found so "disturbing and inflammatory" on an issue not pled in the complaint that a new trial on all issues was required. And because Dr. Boemi's *sole* response to our argument on this issue is to invent the same objection that the district court invented, there is no need for us to repeat the well-settled law governing this issue. For the reasons and upon the authority set forth in our initial brief, the district court plainly erred in

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2/ To compound matters, counsel has this to say about our reading of record: "Ms. Aills' argument here is flawed by her unwillingness to accept what the record actually reflects, as opposed to her fanciful description of [what] she believes the district court did not understand" (Respondents' brief, p. 19). Most respectfully, it is clearly Dr. Boemi's counsel's version of the record that is fanciful; we are quite content to rest our case on what the record actually reflects.

ordering a new trial on a ground that was not presented to the trial court at any time prior to verdict.[3/]

B. The district court erred in failing to apply the "two-issue rule" to uphold the jury's fully supported verdict on the issue of liability. Dr. Boemi's 2½-page argument on this additional issue suffers from the same flaw as his argument on the preceding issue. His *sole* response is to invent the same objection that the district court invented to finesse the "two-issue rule." We have already demonstrated that no such objection was ever made before verdict -- that the only objection made by Dr. Boemi at trial was that the evidence was insufficient to support closing argument on the issue of Dr. Boemi's post-operative treatment -- so there is no need for us to reargue the merits of this issue. For the reasons and upon the authority set forth in our initial brief, the district court plainly erred in failing to apply the "two-issue rule" to uphold the jury's fully supported verdict on the issue of liability.

C. The district court did not err in concluding that the jury's finding of liability was fully supported by competent evidence. In his "cross-issue," which the Court is under no obligation to consider, Dr. Boemi insists that Christy failed

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[3/] To appellate counsel's suggestion (at pages 1 and 10) that we have impermissibly asked the Court to "undertak[e] a complete record review" and "provide [Christy] a second detailed review of the record" in deciding this issue, we say nonsense. The only portion of the record that needs to be consulted is the objection upon which the district court bottomed its reversal. Dr. Boemi has provided the Court with one sentence of the objection; we have provided the Court with the entire objection. No other portion of the record is relevant to this Court's decision of what the record on this issue *actually* reflects. The *only* party who has asked the Court for a "complete record review" is Dr. Boemi, in his lengthy "cross-issue" challenging the sufficiency of the evidence to support the jury's finding of liability.

altogether to present any evidence from which a jury could have found him negligent. He also asserts that the admittedly "horrific" injuries caused by his surgery were so "disturbing, inflammatory, and grotesque" that the jury should not have been permitted to see "gruesome" photographs of them (Respondents' brief, pp. 8, 16, n. 11). These two contentions are difficult to reconcile. In his selection of issues to argue here, it appears that Dr. Boemi lacks a sense of irony. In any event, his argument on this "cross-issue" is a highly technical, largely semantic one -- that he must be exonerated of liability for the "grotesque" and "gruesome" results of his surgery because Christy's experts did not use the magic words, "standard of care," in their rather pointed criticism of his care and treatment during presentation of Christy's case-in-chief. In our judgment, this argument is frivolous.

Christy proved a *prima facie* case of liability during her case-in-chief in at least three different ways. First, a jury is entitled to find a physician negligent for careless administration of an approved medical treatment, even in the absence of expert medical testimony on the point. Second, Christy presented expert medical testimony that the extensive surgery performed by Dr. Boemi was entirely unnecessary. And third, Christy presented expert medical testimony that Dr. Boemi's care and treatment was neither acceptable nor appropriate, which is all that §766.102(1), Fla. Stat., and the standard jury instruction defining negligence (which the jury was given below) requires. The magic words, "standard of care," were not required. We will elaborate upon each of these three aspects of the law and the facts in turn.

Although we believe the opinion testimony of Christy's experts was more than sufficient to present a jury question on the issue of Dr. Boemi's negligence, it

is worth noting at the outset that, even if the expert opinion testimony is ignored in its entirety, the jury could still have found Dr. Boemi negligent, based on the obviously catastrophic results that even Dr. Boemi confessed were neither intended nor expected (T5: 817):

> These two decisions [*Dohr v. Smith*, 104 So.2d 29 (Fla. 1958), and *Montgomery v. Stary*, 84 So.2d 34 (Fla. 1955)] are typical of the many malpractice cases involving a charge of negligence based on the careless or unskillful administering of an approved medical treatment -- as distinguished from a charge based on an incorrect diagnosis or the adoption of the wrong method of treatment -- in which the courts have upheld a judgment for plaintiff or required the submission of the cause to a jury, despite the absence of expert testimony that the acts complained of would amount to bad practice. . . .
>
> Even in those cases in which some expert testimony may be required to show causation, the jurors may be authorized to infer from the circumstances that the defendant was negligent in the administration of an approved medical treatment, despite the absence of direct expert testimony to this effect and in the face of expert testimony to the contrary.

Atkins v. Humes, 110 So.2d 663, 666, 81 A.L.R.2d 590 (Fla. 1959).[4/] Boemi's counsel's concession at the outset of the trial that the "approved medical treatment" that Dr. Boemi performed had "a horrific outcome" (T1: 62), and given Dr.

[4/] *Accord Pierce v. Smith*, 301 So.2d 805 (Fla. 2d DCA 1974); *Michaels v. Spiers*, 144 So.2d 835 (Fla. 2d DCA 1962); *Furnari v. Lurie*, 242 So.2d 742 (Fla. 4th DCA 1971); *Merola v. Stang*, 130 So.2d 119 (Fla. 3d DCA 1961); *Gouveia v. Phillips*, 823 So.2d 215 (Fla. 4th DCA 2002).

At page 22 of his brief, Dr. Boemi asserts that *Atkins v. Humes* and its progeny were "rejected" by this Court in *Sims v. Helms*, 345 So.2d 721 (Fla. 1977). They were not. Counsel has misread *Sims*. In *Sims*, the Court held, just as it had announced in *Atkins*, that expert testimony is required to support a claim of negligence in the adoption of the wrong method of treatment. It did *not* say that expert testimony is required to support a claim of negligence in the careless administration of an approved medical treatment.

Boemi's concession that the devastating results of the "approved medical treatment" he performed were neither intended nor expected (T5: 817), little more than common sense was required for the jury to find Dr. Boemi negligent.

Christy also proved a *prima facie* case of liability with expert opinion testimony that all Christy needed was a simply mastopexy without the need to remove any breast tissue -- that an additional augmentation in which nearly a pound of healthy breast tissue was removed from each breast and replaced with implants was entirely unnecessary to achieve the look that she had asked for (T1: 101-06, 201-03; T2: 203; T3: 433). Even Dr. Boemi's expert agreed that a mastopexy alone was a reasonable option for Christy (T4: 700).

Evidence that unnecessary surgery was performed is, in and of itself, sufficient to create a fact question on liability in a medical malpractice case -- because it is a matter of common sense that the "standard of care" does not include treatment that is not medically indicated. Neither is it necessary that the experts say the magic words, "standard of care," when voicing such an opinion. Both of these points have received a characteristically thorough and thoughtful exposition by Judge Farmer in a recent opinion for the Fourth District, to which the Court is referred for the specifics: *Edwards v. Simon*, 961 So.2d 973 (Fla. 4th DCA 2007).

Christy also proved a *prima facie* case of liability with abundant expert testimony that Dr. Boemi's care and treatment of her was neither acceptable nor appropriate -- because proof that a physician's care and treatment was neither acceptable nor appropriate is proof of a violation of the standard of care.[1/] That

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[5/] Dr. Boemi also complains that the opinions of Christy's experts were simply their personal opinions, rather than being based upon a community standard of care. We disagree with this position, but need not elaborate. This argument is

follows from the very definition of "standard of care" in §766.102(1), Fla. Stat. (emphasis supplied):

> In any action for recovery of damages based on . . . personal injury of any person in which it is alleged that such . . . injury resulted from the negligence of a healthcare provider . . . , the claimant shall have the burden of proving by the greater weight of evidence that the alleged actions of the healthcare provider represented a breach of the prevailing professional standard of care for that healthcare provider. *The prevailing professional standard of care for a given healthcare provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers*.

And that is exactly how the jury was instructed below, in the language of Fla. Std. Jury Instr. (Civ.) 4.2 (T6: 1032; emphasis supplied):

> Negligence is the failure to use reasonable care. Reasonable care on the part of a physician is that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as *acceptable and appropriate* by similar and reasonably careful physicians.

And because this is what the jury was asked to decide, that is what the evidence had to prove.

The opinion testimony provided by Christy's experts was more than sufficient to support a finding that Dr. Boemi's care and treatment of Christy was, in the words of both the statute and the jury instruction, neither acceptable nor appropriate. To begin with, although they did not use the magic words, the prevailing "standard of care" was squarely established by their testimony. Dr. Brueck explained that the operation that Dr. Boemi performed "has to be done

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unavailable to Dr. Boemi here because he did not object below, either to the qualifications of Christy's experts or to any of the opinion testimony they provided.

appropriately and carefully so that you maintain enough blood supply so you don't have the problems that Christy is having" (T1: 115). And Dr. Glat established the standard of care rather pointedly as follows (T3: 425):

> Q. And as a plastic surgeon, what level of importance is it when doing breast surgery to insure the continuation of the blood supply?
>
> A. That is, I mean that is the most critical thing is that you don't want to cut off the blood supply. In any type of surgery, blood flow is life.
>
> Q. Is that something that plastic surgeons know before they go into any sort of procedure?
>
> A. Yes, that is a basic part of our training.

And as the Court might have expected, Dr. Boemi himself agreed that the standard of care required protection of the blood supply to the breasts (T5: 808):

> Q. And you certainly recognize that -- or do you recognize that as a plastic surgeon one of the primary focuses of your procedure and performing them is to insure that you protect the blood supply to the tissues?
>
> A. Of course.

And, of course, with the exception of Dr. Boemi, *all* of the experts were in agreement that Christy's devastating injuries were caused by Dr. Boemi's failure to ensure a continuation of blood supply to Christy's breasts (T1: 114-20; T3: 435-37; T4: 691, 710-11; SR: depo at 1860, pp. 12-19; SR: depo at 1788, pp. 37, 57-58).

Christy's experts were of the opinion that Dr. Boemi's surgery was badly flawed in both design and execution (T1: 120, 151; T3: 473; T5: 863-67). And they opined that his conduct "defied common sense," "defie[d] all logic," "made no sense at all," was "reckless," and was "unconscionable" (T1: 100-06, 152, 201-04; T3: 428, 434, 477-78; T5: 867). Most respectfully, no legitimate argument can be

made that surgery which destroyed the blood supply to Christy's breasts, which defied both logic and common sense, and which was *recklessly* performed was "acceptable and appropriate." Christy plainly proved exactly what she was required to prove by both the statute and the standard jury instruction, and for all of the foregoing reasons, the trial court did not err in denying Dr. Boemi's motions for directed verdict and judgment in his favor as a matter of law.

Because the evidence presented in the plaintiff's case-in-chief was plainly sufficient to support submission of the issue of Dr. Boemi's negligence to the jury, we could reasonably ignore Dr. Boemi's extensive additional contentions (1) that the trial court abused its discretion in permitting Christy to reopen her case after the defense rested, and (2) that the evidence elicited at that stage was insufficient to cure the deficiency in the plaintiff's proof. These contentions deserve a response nevertheless, so we will address them after sketching their procedural background.[6/]

Dr. Boemi cannot fairly claim that he was "sandbagged." The request to reopen the plaintiff's case to prove up Christy's future medical expenses came early in the trial and was renewed several times thereafter (T3: 559-68; T4: 612-16). Although Dr. Boemi was therefore aware that the case might be reopened, neither he nor his experts were asked a single question about the need for future medical expenses or their cost. After the defense rested, plaintiff's counsel renewed his request to reopen the plaintiff's case to present expert evidence of Christy's future

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6 Space does not permit a detailed recitation of the procedural background to the contentions. If the Court needs the details, it can find them at pages 20-27 of the "Appellant's Reply Brief and Answer Brief on Cross-Appeal" filed in the district court, which we incorporate here by reference.

medical expenses. And because Dr. Boemi's counsel had insisted in his earlier motion for directed verdict that the plaintiff's proof of negligence was fatally deficient for lack of the magic words, "standard of care," he also stated, "and the second one, although I don't think I need to do this, would have been to have them say the magic word standard of care in the event we end up in some sort of appellate process" (T5: 856-57). He also stated that the proposed "standard of care" testimony would be appropriate "rebuttal since they brought in people to testify to the opposite" (*id*.).

Dr. Boemi's counsel objected, contending among other things that the proposed evidence would "serve no purpose" (T5: 858-59). Given the semantic argument that Dr. Boemi has raised in his "cross-issue," there was an obvious "purpose" in the proposed testimony -- and it was certainly prudent to attempt to protect against that argument -- so Christy's counsel responded that, since the defense had presented abundant testimony framed in the language of the magic words, the proposed "standard of care" testimony was "clearly rebuttal" testimony (T5: 859). The trial court granted the motion to reopen and allowed counsel to proceed with rebuttal, indicating that it would entertain an objection to any of the proposed testimony if defense counsel thought it was not proper rebuttal (T5: 860).

Dr. Brueck then testified in pertinent part as follows (T5: 867):

> Q. Are you familiar with the standard of care for plastic surgeons performing these types of procedures?
>
> A. Yes.
>
> Q. Do you have an opinion as to whether or not Dr. Boemi's care fell below the standard of care for a plastic surgeon performing these types of procedures?

A. In my opinion it did.

Q. And did his care cause her damage?

A. I think the design and execution of the procedures is what caused the damage. . . .

It is unclear from the record whether this testimony was deemed rebuttal evidence, as Christy's counsel had proposed, or whether it came into evidence as part of the "reopened" case. If it was not proper rebuttal, Dr. Boemi's counsel had an opportunity to object to it on that ground, but there was no objection to this testimony on *any* ground. And if it was proper rebuttal testimony -- and we believe that it was -- then Dr. Boemi's appellate contention that the trial court abused its discretion in permitting Christy to reopen her case is an argument on an issue that does not exist. Because the record is ambiguous on this point, Dr. Boemi cannot demonstrate that the evidence was submitted as part of a "reopened" case, rather than as proper rebuttal testimony, so his complaint lacks the necessary foundation to support it.

In any event, assuming *arguendo* that the evidence came in as part of the "reopened" case, Dr. Boemi still must demonstrate that the trial court abused its discretion in permitting Christy to clear the air of the semantic fog created by Dr. Boemi's insistence upon hearing the "magic words." The law on this point is thoroughly settled: a trial judge has broad discretion to permit a party to reopen its case, and that discretion will only constitute an abuse if the party opposing the request was irremediably prejudiced thereby.[1/] As the First District observed in

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[7/] *See, e. g., Exxon Co., U.S.A. v. Alexis*, 370 So.2d 1128 (Fla. 1978); *Eli Witt Cigar & Tobacco Co. v. Matatics*, 55 So.2d 549 (Fla. 1951); *Pavlis v. Atlas-*

Akins v. Taylor, 314 So.2d 13, 14 (Fla. 1st DCA 1975), "Lawsuits are no longer a cat and mouse game to such an extent that a party will be denied an opportunity to have a jury determine the justice of his cause on such a minor technicality."

Dr. Boemi claims that permitting Dr. Brueck's testimony was an "injustice" because he had no way to present expert testimony to challenge or refute the standard of care testimony offered by Dr. Brueck. Most respectfully, this argument is silly. The testimony of Dr. Boemi and his experts was replete with opinion testimony that Dr. Boemi's care and treatment of Christy did not fall below the standard of care (T4: 643, 667, 693-94; T5; 759-60, 817-18; SR; depo at 1788, pp. 15-16, 42). What more could they have said in response to Dr. Brueck's opinion that it did (which is why Dr. Brueck's testimony was proper rebuttal testimony -- not a feature of the "reopened" case).

And if Dr. Brueck's testimony came in as part of the "reopened" case, assuming that Dr. Boemi felt the need to do so, he had the absolute right to take the stand and testify once gain in rebuttal that his treatment met the standard of care. *See, e. g., Exxon Co., U.S.A. v. Alexis, supra*; *Pavlis v. Atlas-Imperial Diesel Engine Co., supra*; *Tri-County Community Council v. Gillis*, 384 So.2d 48 (Fla. 1st DCA 1980). He did not request to do so, because there was obviously no need to do so, and we respectfully submit that his claim of "injustice" is so much smoke. The trial court plainly did not abuse its broad discretion in permitting Christy to

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Imperial Diesel Engine Co., 121 Fla. 185, 163 So. 515 (1935); *Amador v. Amador*, 796 So.2d 1212 (Fla. 3d DCA 2001); *Buckingham v. Buckingham*, 492 So.2d 858 (Fla. 1st DCA 1986); *Gallagher v. L.K. Restaurant & Motels, Inc.*, 481 So.2d 562 (Fla. 5th DCA 1986); *Thrifty Super Market, Inc. v. Kitchener*, 227 So.2d 500 (Fla. 3d DCA 1969).

meet Dr. Boemi's objection with an expert opinion phrased in the manner he demanded as a condition of submitting the issue of his negligence to the jury.

Dr. Boemi concludes his argument on this issue with another semantic game. He contends that even if Dr. Brueck's "standard of care" testimony was properly permitted, his answer was insufficient to support a finding that his treatment of Christy fell below the standard of care. He bottoms this argument on the fact that the question which elicited the answer referred to "these types of procedures," without identifying which procedure he was being asked about. And he points out that there was confusion in the record about what type of "procedures" Dr. Boemi had performed. If the question were ambiguous, Dr. Boemi should have objected to its form when it was asked; his counsel apparently did not find the question ambiguous at the time, however, because he did not object to it. And, in our judgment, the question was not ambiguous at all.

The *facts* of what Dr. Boemi had done to Christy were not in dispute; the only disagreement among the experts was in the labels they used to describe his procedures. The *facts* were that Dr. Boemi removed nearly a pound of healthy tissue from each of Christy's breasts and replaced the missing tissue with 330cc implants, destroying the blood supply to Christy's breasts in the process. Dr. Boemi and his experts labeled these procedures a mastopexy and augmentation. Because nearly a pound of tissue had been removed from each breast, Christy's experts labeled his procedures a reduction and augmentation. By whatever name these procedures were called, the objective *facts* of the procedures remained the same -- and the fact that the several experts chose to call the negligently performed procedures by different names is certainly not a reason to conclude that Dr. Boemi

was entitled to judgment in his favor as a matter of law. For all of these reasons, the jury's finding of liability is fully supported by competent evidence, and the trial court did not err in denying Dr. Boemi's motions for directed verdict and judgment in his favor as a matter of law.

Respectfully submitted,

By:_____

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JOEL D. EATON

CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2)

I hereby certify that the type style utilized in this brief is 14 point Times New Roman proportionally spaced.

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JOEL D. EATON

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 14th day of September, 2009, to: Richard B. Mangan, Jr., Esq., Rissman, Barret, et al., 1 North Dale Mabry Highway, 11th Floor, Tampa, FL 33609, Attorney for Respondents; William R. Clayton, Esq., Greenberg, Traurig, P.A., 401 East Las Olas Blvd., Suite #2000, Fort Lauderdale, FL 33301, Co-Counsel for Respondents; and to Arthur J. England, Jr., Esq., and Brigid F. Cech Samole, Esq., Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Co-counsel for Respondents.

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