

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARILYN A. COPPE, )  
)  
)  
Plaintiff, )  
)  
v. )  
)  
MICHAEL A. BLEICHER, M.D., )  
)  
)  
Defendant. )

Clapp Peterson Van Flein Tiemessen & Thorsness LLC  
CPVTT File # 5757-95 Date Rec'd 6/21/08  
Date Served 6/21/08 Response Due 7/16/08  
Scanned/Distribution LJ, MKP, CCL  
CORR PLDG DISC WIT REC BF OTHER \_\_\_\_\_

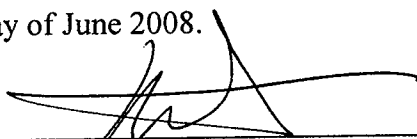
Case No.: 3AN-05-6006 CI

**NON-OPPOSED MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT**

COMES NOW, Marilyn Coppe, by and through her attorney of record, and pursuant to Alaska Rules of Civil procedure 15(a) and 15(b), hereby Motions this Court for Leave to file a Third Amended Complaint.

This Motion for Leave is non-opposed by Defendant's counsel.

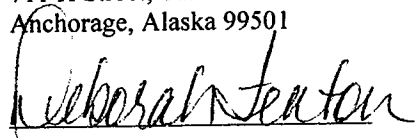
DATED at Anchorage, Alaska this 26<sup>th</sup> day of June 2008.

  
\_\_\_\_\_  
David Schlerf, Esq.  
ABA No.: 0611090

**CERTIFICATE OF SERVICE**

This is to certify that on the 26<sup>th</sup> day of June 2008 a true and correct copy of the foregoing document was caused to be mailed to the following party of record:

Linda Johnson  
711 H Street, Suite 620  
Anchorage, Alaska 99501



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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARILYN A. COPPE, )  
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 Plaintiff, )  
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 v. )  
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 MICHAEL A. BLEICHER, M.D., )  
 )  
 )  
 Defendant. )

Case No.: 3AN-05-6006 CI

**ORDER GRANTING MOTION FOR LEAVE TO FILE THIRD AMENDED  
COMPLAINT**

This court, having considered the Plaintiff's Motion for Leave to File her Third Amended Complaint and noting no opposition thereto, hereby GRANTS Plaintiff's Motion.

DATED at Anchorage, Alaska this \_\_\_\_ day of June 2008.

\_\_\_\_\_  
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

MARILYN COPPE )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MICHAEL BLEICHER, MD )  
 )  
 Defendant, )  
 )  
 \_\_\_\_\_ )

Case No. 3AN-05-6006 CI

**PLAINTIFF'S THIRD AMENDED COMPLAINT**

COMES NOW, Marilyn Coppe ("Plaintiff"), by and through counsel of record, David Schlerf, and hereby submits her third amended complaint in the above captioned action. Plaintiff brings this action against Defendant, Michael Bleicher, MD ("Defendant") as follows:

**JURISDICTION AND VENUE**

1. This court has jurisdiction over this action pursuant to AS § 22.10.020.

**DEMAND JURY TRIAL**

2. The Plaintiff re-alleges all of the allegations contained in Paragraph 1 as though set forth herein.
3. Pursuant to Civil Rule 38(a), the Plaintiff demands a trial by jury.

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## SUMMARY OF GENERAL ALLEGATIONS

4. The Plaintiff re-alleges all of the allegations contained in Paragraph 1 through 3 as though set forth herein.
5. Plaintiff is a resident of Anchorage, Alaska, in the Third Judicial District.
6. During the time at which the conduct of Defendant responsible for precipitating this action was perpetrated, Defendant was a physician and co-owner operating from a place of business located at 4001 Laurel Street in Anchorage, Alaska, in the Third Judicial District.
7. Plaintiff was continuously employed by Defendant on or about November 28<sup>th</sup>, 1994 through October 10<sup>th</sup>, 2003 as Medical Secretary.
8. During the course of her employment, Plaintiff and other staff members were required by the Defendant to handle contaminated surgical instruments and blood-contaminated materials/waste after medical procedures were conducted on patients by the Defendant. Defendant failed to provide adequate biohazard gear for Plaintiff. Plaintiff was often required to use her bare hands, therefore being exposed to second-hand biohazard material. This requirement was in violation of the medical standards used in the practice of medicine.
9. Plaintiff was never properly trained in appropriate cleaning procedures in the medical facility. Plaintiff and other staff members were instructed by Defendant to place contaminated medical instruments in an aged cardboard box, where they were then placed in file room/storage until a staff member, usually the Plaintiff, would be instructed—sometimes a week later, to then retrieve the instruments and clean them. After the sanitization procedure in a maintenance-neglected “autoclave” oven was conducted,

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Plaintiff wore yellow rubber gloves to remove said instruments from the autoclave. These same yellow gloves were used for ordinary office cleaning, including the floors and bathroom. Sanitary safeguards from top to bottom were woefully insufficient in the office. Defendant's habits and practices were also in violation of the standard safety precautions and procedures used in the medical profession.

10. On or about January of 1995, Plaintiff began experiencing physical joint and muscle pain required medical evaluation, and throughout her employment reported similar Occupational injuries and illness. On approximately April 2003 severe symptoms in the facility including, but not limited to, 15 minute blindness, fatigue, shortness of breath, brain fog, severe joint and muscle pain, dizziness, nausea and headaches. She complained to Defendant, who did not file a report of incidents but, prescribed her harmful pain medication without examination.

11. Plaintiff's symptoms began worsening in 2002, and she continued her complaints with the Defendant, who evaluated her and referred her to other doctors. Plaintiff began inquiring about Health Insurance. At that time and as a direct result of Plaintiff's complaints and questions regarding Health Insurance, and request to upgrade working conditions, Defendant commenced nearly a year long saga of harassment, creating an extremely belligerent, hostile, and demeaning work environment for the Plaintiff, which included making incessant denigrating comments about Plaintiff's concerns for the safety and health of the facility. Until her complaints regarding not being able to afford accumulating medical expenses and no health insurance, Plaintiff was formerly an exemplary and lauded employee of nearly nine years for the Defendant with absolutely no reprimands or indiscretions in her employee file. After her complaints, she was

maligned and treated with disgust. This betrayal by her employer with whom she worked for nearly a decade, and with whom she would have worked for many years to come, created substantial physical and emotional distress for the Plaintiff.

12. On par with the general unsanitary conditions in the facility, Plaintiff requested on multiple occasions during the course of her employment that the dust laden ventilation ducts be cleaned in order to alleviate allergic reactions and physical symptoms she and other staff members were suffering. On or about May 9<sup>th</sup>, 2003, Plaintiff was diagnosed with allergic symptoms potentially caused from environmental exposure at the workplace. Other staff members as well as Defendant continued complaining of similar physical symptoms.

13. On or about May 20<sup>th</sup>, 2003, and again on or about October 3<sup>rd</sup>, 2003, Defendant denied requests by the Plaintiff for a building inspection to evaluate a potential cause of physical symptoms or the presence of airborne contaminants that, among other symptoms, may bear allergy causing agents. Defendant claimed such inspection was inconvenient. On or about June 16<sup>th</sup>, 2003, Defendant finally conceded and Nortech was employed in order to conduct this evaluation because of complaints alleged by employees with regard to indoor air quality (IAQ). Nortech discussed issues with several staff members of the building, who reported various physical symptoms and concerns about the effect of the workplace upon their health. Nortech established that the outside vent of the heating, ventilating, and air conditioning unit was surrounded by decaying leaves and organic matter, which may bear "allergenic bioaerosols" such as pollen, mold spores, and odors that could impact any perceived or actual cause of the complained symptoms.

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Furthermore, Nortech concluded that the HVAC may not be drawing an adequate amount of outdoor air and should be adjusted.

14. Concerns by employees of the overall indoor air quality may further have been exacerbated by the fact that Defendant smoked cigarettes continually in the facility, potentially with a poorly operating ventilation system, exposing the Plaintiff, other staff members, and patients to second hand smoke.

15. On or about September 17<sup>th</sup>, 2003, Plaintiff reported her concerns and the nature of the problems in the facility with Alaska Division of Occupational Safety and Health (hereinafter "OSH"). After conversations with the Defendant about placing the report with this agency, Plaintiff was then placed on sick leave on October 3<sup>rd</sup>, 2003 after she succumbed to a severe allergy attack with assurances to return upon regaining her health. Subsequently, OSH responded to Plaintiff's complaint by denying an immediate inspection. Upon Plaintiff's return to the facility on October 10<sup>th</sup>, 2003 with the intention of continuing her employment, Defendant inquired as to the status of Plaintiff's OSH complaint. Plaintiff explained the situation, and Defendant then fired her.

16. Subsequent to her departure, Plaintiff sought employment in a plethora of work environments to which she was competently suited. Defendant failed to return calls and replied that Plaintiff not be rehired to said prospective employers seeking verification of Plaintiff's nine years of employment. Plaintiff was without doubt denied employment opportunities because of this retaliatory action by the Defendant.

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17. After suffering debilitating health and emotional distress because of her inability to procure employment as a result of Defendant's negligence and retaliatory conduct, Plaintiff only received an employer letter of reference from the Defendant as a result of mediation well after the initiation of this litigation.

**COUNT ONE**

**COMPLAINT FOR NEGLIGENT EXPOSURE TO TOXINS, BIO-HAZARDS,  
AND AIR-BORN CONTAMINANTS**

18. The Plaintiff re-alleges all of the allegations contained in Paragraph 1 through 17 above as though fully set forth herein.

19. Defendant owed a duty to the Plaintiff as an employee to provide a safe, legal work environment. Defendant breached this duty by failing to address safety concerns by the Plaintiff and other staff members and recklessly placed Plaintiff in danger by instructing her to clean the aftermath of surgery scenes without appropriate medical and bio-hazard gear, or training, which is in violation of the standard safety practices utilized in the medical profession.

20. Defendant was aware of the complaints of Plaintiff and staff regarding indoor air quality and other sanitary concerns, but did nothing in a timely manner. Defendant finally obtained an evaluation by a local company and discovered that the heating, ventilating, and air conditioning unit may be drawing air from a pile of decaying bushes and foliage near the outdoor vent. Defendant was further advised that said foliage and decaying matter could cause air-borne allergens which could prove symptomatic to

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employees. Defendant breached his duty to safeguard his work environment for the health of his employees.

21. Defendant's breach of this duty was the actual and proximate cause of the manifestation of Plaintiff's physical illness and symptoms while working at the medical facility.

22. Defendant's failure to properly manage his facility and his failure to properly instruct Plaintiff with regard to cleaning procedures created a clearly foreseeable and preventable health hazard, substandard work conditions, emotional distress, and physical injury from Defendant's outrageous and reckless conduct, callous disregard to the Plaintiff's rights, and, at a minimum, negligent conduct.

## COUNT TWO

### COMPLAINT FOR WRONGFUL DISCHARGE

23. The Plaintiff re-alleges all of the allegations contained in Paragraph 1 through 22 above as though fully set forth herein.

24. Defendant committed egregious acts of retaliation against Plaintiff in gross deviation from moral propriety and in violation of the public policies of the State of Alaska by harassing Plaintiff after she began complaining about work related illnesses and by inquiring about Health Insurance, and by terminating Plaintiff in a time virtually contemporaneous to the filing of Plaintiff's complaint with the Division of Occupational Safety and Health. Plaintiff's reception of harassment and termination by Defendant was a direct result of Plaintiff seeking some recourse to resolve her illness. Defendant further ostracized Plaintiff from future employment after her termination by ignoring

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calls from prospective employers seeking verification of Plaintiff's employment and job references. One prospective employer was told to ask the Plaintiff as to why she was no longer working for him.

25. Terminating an employee or discriminating against an employee for filing a complaint with OSH is a violation of AS §18.60.089(a) and remains contrary to the public policy of the State of Alaska.

26. A retaliatory discharge in violation of an explicit public policy gives rise to a tort as well as a contract claim.

27. Plaintiff engaged in the protected activity of filing a formal complaint with OSH. These activities by Plaintiff led to harassment and, in the end, culminated in her discharge.

28. These actions undertaken by the Plaintiff in attempting to insure workplace safety were the direct cause of her maltreatment and ultimate termination.

29. Causation sufficient to establish a prima facie case of unlawful retaliation may be inferred from the proximity in time between the protected action and the allegedly retaliatory discharge.

30. Retaliatory action would not have been undertaken by the Defendant, and Plaintiff would not have been fired, if she had not filed a complaint with OSH or sought health insurance for work related illnesses. This constitutes gross and outrageous conduct by the Defendant and stands in stark violation of the public policy of the State of Alaska and in callous disregard for the rights of his employee.

**COUNT THREE**

**COMPLAINT FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

31. The Plaintiff re-alleges all of the allegations contained in Paragraph 1 through 30 above as though fully set forth herein.

32. Terminating an employee or discriminating against an employee for filing a complaint with OSH is a violation of AS §18.60.089(a) and remains contrary to the public policy of the State of Alaska.

33. A retaliatory discharge in violation of an explicit public policy gives rise to a tort as well as a contract claim.

34. The covenant of good faith and fair dealing is implied in all at-will employment contracts. The covenant can be breached either subjectively or objectively. The employer commits a subjective breach when it discharges an employee for the purpose of depriving her of a benefit of the contract. The covenant can be further breached objectively by disparate employee treatment or firings in violation of the public policy of the State of Alaska. Firing an employee for filing job safety complaints or requesting proper safety equipment gives rise to a cause of action for breach of the implied covenant of good faith and fair dealing.

35. Causation sufficient to establish a prima facie case of unlawful retaliation may be inferred from the proximity in time between the protected action and the allegedly retaliatory discharge.

36. Retaliatory action would not have been undertaken by the Defendant, and Plaintiff would not have been fired, if she had not filed a complaint with OSH or seeking Health

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Insurance or some means of recourse to resolve her work related illnesses. This constitutes gross and outrageous conduct by the Defendant and stands in stark violation of the public policy of the State of Alaska and in callous disregard for the rights of his employee.

**COUNT FOUR**

**CLAIM FOR PUNITIVE DAMAGES**

37. The Plaintiff re-alleges all of the allegations contained in Paragraph 1 through 36 above as though fully set forth herein.

38. The Defendant's negligence and malicious and retaliatory actions against the Plaintiff were against the law, and at a minimum reckless, intentional, outrageous, knowingly, and without doubt made in bad faith.

39. Defendant's conduct was outrageous, perpetrated with malice and reckless indifference to the rights and interests of the Plaintiff.

40. Actual damages shall be shown at trial, but even if emotional distress and loss of potential employment which could not be obtained because of Defendant's retaliatory conduct may not be quantified in a dollar amount, punitive damages remain legally sound and in this particular case perhaps morally compulsory.

41. Accordingly, Plaintiff requests an award of punitive damages in an amount in excess of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000), the exact amount

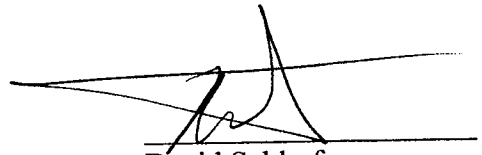
to be awarded at trial according to nine times the compensatory damages which is presumptively constitutional as mandated by the United States Supreme Court.

**PRAYER FOR RELIEF**

Plaintiffs, having set forth their complaint against Defendant, request the following relief:

1. For general damages, including, but not limited to, lost wages –both past and future, benefits –both past and future, and out-of-pocket medical expenses -both past and future, against Defendant in an amount in excess of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000), the exact amount to be determined with specificity at time of trial;
2. For punitive damages in an amount the court deems to be just and constitutional, the exact amount to be determined at trial;
3. An award of pre-judgment and post-judgment interest of the foregoing sums at the maximum rate allowed by law;
4. An award of emotional distress and pain and suffering in an amount the court deems to be just and constitutional, the exact amount to be proven at trial;
5. An award of Plaintiff's actual court costs, attorney fees, and costs incurred herein pursuant to Alaska Rules of Civil Procedure 79 and 82;
6. Such other and further legal and equitable relief as the court deems appropriate in the interest of justice.

DATED this 26<sup>th</sup> day of June, 2008.



David Schlerf  
Attorney for Plaintiff  
ABA #0611090

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**CERTIFICATE OF SERVICE**

This is to certify that on the 26<sup>th</sup> day  
of June 2008 a true and correct  
copy of the foregoing document  
was caused to be mailed to the  
following party of record:

Linda Johnson  
711 H Street, Suite 620  
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