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FEB 15 2007
 U.S. DISTRICT COURT
 DISTRICT OF NEW JERSEY
 CAMDEN, NEW JERSEY

MAR 14 2007

Caro/Boer

DAVE POMIANCK,

Plaintiff, :

v. :

TOWNSHIP OF GLOUCESTER, SCIBAL
 ASSOCIATES, JOSE EDUARDO DIAZ-
 JIMENEZ, MD, AND EXPRESS URGENT
 CARE & OCCUPATIONAL HEALTH
 SERVICES

Defendant. :

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 CAMDEN COUNTY

Lcket No **982 - 07**

Civil Action

COMPLAINT

Plaintiff, David Pomianck, residing at 6 Lincoln Avenue,
 Erial, County of Camden, State of New Jersey, by way of complaint
 against the defendants says:

PARTIES

1. Plaintiff David Pomianck is an individual of full
 age, who at all times relevant to this complaint was an employee in
 good standing with the Township of Gloucester.

2. Defendant, the Township of Gloucester, is a public
 entity created under the laws of the State of New Jersey and at all
 times relevant to this matter was the employer of the plaintiff.

3. Defendant Scibal Associates, is a corporation or

other business entity created under the laws of the State of New Jersey, which provides insurance and claims adjustment services to various public entities within the State of New Jersey including the plaintiff's employer.

4. Defendant Jose Eduardo Diaz-Jimenez, MD is a licensed physician, employed by Defendant Express Urgent Care & Occupational Health Services, who provided care and treatment to the plaintiff.

FACTUAL ALLEGATIONS

5. On September 7, 1993 the plaintiff, then 15 years of age, was involved in a motor vehicle accident in which he sustained a traumatic brain injury.

6. Beginning at Christmas of 1998 the plaintiff began to experience seizures and at that time he was diagnosed with partial epilepsy.

7. Since the year 2000 the plaintiff has not experienced any seizures, however, he remains on medication to prevent them.

8. As a result of the aforesaid traumatic brain injury the plaintiff has been left with memory difficulties and cognitive problems which impairments are of a permanent nature.

9. The foregoing physical impairments prevent the plaintiff from the normal exercise of complex mental functions and constitute a physical disability and infirmity.

10. As a result of the foregoing the plaintiff is a qualified individual with a disability who is protected by the provisions of the New Jersey Law Against Discrimination N.J.S.A. 10:5-4.1.

11. On or about June 21, 1996 David Pomianck applied for employment with the defendant Township of Gloucester and was thereafter hired as a laborer in the Public Works Department.

12. Subsequently the plaintiff was promoted to the position of Truck Driver.

13. At all time relevant to this matter the plaintiff was qualified to perform the essential functions of the position of Truck Driver.

14. On or about August 23, 2005 the plaintiff, in the course of his employment, sustained a lumbar strain, right leg strain, contusion and groin strain which compelled him to miss work and obtain treatment for said injuries.

15. The aforesaid injuries of the plaintiff were covered by Worker's Compensation and the defendant, Scibal Associates, was the administrator of such benefits on behalf of the Township of Gloucester.

16. Pursuant to instructions from the defendants, Township of Gloucester and Scibal the plaintiff was required to obtain treatment at defendant Express Urgent Care & Occupational Health Services from defendant Dr. Diaz-Jimenez.

17. The plaintiff subsequently sought and received treatment from Dr. Diaz-Jimenez therefore establishing a patient-physician relationship with said health care provider.

18. On account of the plaintiff's disability and on account of the plaintiff having a history of a disability and on account of the plaintiff having sought Worker's Compensation benefits the defendants Township of Gloucester and Scibal Associates caused surveillance to be conducted of defendant.

19. At the time the surveillance was being conducted the plaintiff was performing activities within the limits prescribed by Dr. Diaz-Jimenez.

20. Notwithstanding the foregoing defendant Diaz-Jimenez falsely resubmitted to the Township of Gloucester and Scibal Associates, at their instigation, documents changing the limitations that he had prescribed for the plaintiff, thus conspiring with the other defendants to create a pretext that plaintiff was engaged in fraudulent conduct.

21. Notwithstanding the existence of a physician-patient relationship, defendant Dr. Diaz-Jimenez viewed video of the surveillance and then without disclosing to the plaintiff that fact he proceeded to interrogate the plaintiff at a subsequent examination seeking to illicit information that could be used against the plaintiff and to establish that the plaintiff had engaged in fraud.

22. On September 20, 2005 the defendant Township of Gloucester, having been aided by the other defendants filed disciplinary charges against the plaintiff seeking his removal as a public employee for conduct unbecoming such an employee and for misrepresentation of Worker's Compensation restrictions.

23. The aforesaid actions were taken on account of the plaintiff's disability and on account of his having filed for Worker's Compensation benefits.

24. The plaintiff denied the aforesaid charges and demanded a hearing.

25. The Township of Gloucester did not however, schedule a hearing, but instead on November 3, 2005 at the instigation of defendant Scibal Associates, it filed additional charges against the plaintiff immediately suspending him and seeking his removal as a public employee based upon his inability to perform the essential functions of his job on account of his disability and for him having allegedly falsified a pre-employment application.

26. Plaintiff contested the aforesaid charges and again demanded a hearing.

27. On March 30, 2006 a hearing commenced on all of the aforesaid charges at which time witnesses for the Township, including Dr. Diaz-Jimenez, testified and then were cross-examined by counsel for the plaintiff.

28. The aforesaid hearing was not concluded on the

aforesaid date and a new date was scheduled for the conclusion of same.

29. On _____, 2006, prior to the conclusion of the hearing the defendant Township of Gloucester abandoned the charges and returned the plaintiff to work.

30. As a result of the foregoing the plaintiff was out of work and unable to support his family from November 3, 2005 until _____, 2006.

31. During the aforesaid time the plaintiff was unable to meet his financial obligations despite the borrowing of money from family and sustained a significant loss to his credit standing.

32. During the aforesaid period of time the plaintiff was compelled to expend \$2,700 in attorney's fees to defend against the aforesaid charges.

33. During the aforesaid time plaintiff sustained non-pecuniary damages in the form of emotional distress, anxiety and discomfort as a result of the long term suspension imposed upon him by his employer.

34. The aforesaid injuries are continuing notwithstanding the fact that the defendant employer has paid him back pay for the period of the suspension.

35. Under the foregoing circumstances the acts of the defendant were committed with malice and/or with intentional indifference and/or with reckless indifference to the employment rights of the plaintiff to be free of discrimination based upon disability or handicap.

36. As a result of the aforesaid acts of the defendant, the plaintiff has sustained a loss of wages, income, and economic benefits along with future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

FIRST COUNT

37. The aforesaid acts of the defendant employer constituted discrimination against an individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's disability in violation of N.J.S.A. 10:5-4.1.

38. As a direct result of said unlawful acts the plaintiff sustained the previously described damages.

39. Pursuant to N.J.S.A. 10:5-27.1, Plaintiff is entitled to attorney's fees and expert fees in connection with the bringing of the claims alleged in this count.

WHEREFORE, plaintiff demands judgement against the defendants **TOWNSHIP OF GLOUCESTER**, for compensatory damages, punitive damages, injunctive relief as will redress the actions of

the defendant employer, nominal damages, attorney's fees, expert fees, interest, costs and such other relief as the court deems just.

SECOND COUNT

40. The aforesaid acts of the defendant employer constituted retaliation against the plaintiff for having sought Workers Compensation in violation of the anti-retaliation provisions of the New Jersey Workers Compensation Act.

41. As a direct result of said unlawful acts the plaintiff sustained the previously described damages.

WHEREFORE, plaintiff demands judgement against the defendant **TOWNSHIP OF GLOUCESTER**, for compensatory damages, punitive damages, injunctive relief as will redress the actions of the defendant employer, nominal damages, attorney's fees, expert fees, interest, costs and such other relief as the court deems just.

THIRD COUNT

42. The aforesaid acts of the defendants Scibal Associates, Jose Eduardo Diaz-Jimenez, MD and Express Urgent Care & Occupational Health Services constituted tortuous interference with the plaintiff's contractual and property interests in his employment with the Township of Gloucester.

43. As a direct result of said unlawful acts the plaintiff sustained the previously described damages.

WHEREFORE, plaintiff demands judgement against the defendants SCIBAL ASSOCIATES, JOSE EDUARDO DIAZ-JIMENEZ, MD, AND EXPRESS URGENT CARE & OCCUPATIONAL HEALTH SERVICES for compensatory damages, punitive damages, injunctive relief as will redress the actions of the defendants, nominal damages, attorney's fees, expert fees, interest, costs and such other relief as the court deems just.

F. MICHAEL DAILY, JR. LLC

BY: _____
F. MICHAEL DAILY, JR.
ATTORNEYS FOR THE PLAINTIFF

Jury Demand

Plaintiff herewith demands a jury trial as to all issues triable by jury.

F. MICHAEL DAILY, JR. LLC

BY: _____
F. MICHAEL DAILY, JR.
ATTORNEYS FOR THE PLAINTIFF

CERTIFICATION PURSUANT TO R.4:5-1

It is hereby stated that the matter in controversy is not the subject of any other acting pending in any other Court, or of a pending arbitration proceeding to the best of my knowledge and belief. I know of no other parties who should be joined in

RELEASE

KNOW ALL MEN BY THESE PRESENTS THAT DAVE POMIANCK, for and in consideration of the sum of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00) (\$7,500 on behalf of Township of Gloucester, \$3,500.00 on behalf of Scibal Associates and \$2,500.00 on behalf of Jose Eduardo Diaz-Jiminez, M.D.), receipt of which is hereby acknowledged, does hereby remise, release and forever discharge Township of Gloucester, Scibal Associates, Jose Eduardo Diaz-Jiminez, M.D. and Express Urgent Care & Occupational Health Services and any and all other persons, firms, corporations, associations or other entities, their heirs, executors and administrators (hereinafter "RELEASED PARTIES"), of and from all, and all manner of, actions and causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity and Plaintiff's claims for adverse employment action relative to Plaintiff's mental and physical capabilities including those which are the subject of a lawsuit otherwise described as Dave Pomianck v. Township of Gloucester, Scibal Associates, Jose Eduardo Diaz-Jiminez, M.D. and Express Urgent Care & Occupational Health Services, Superior Court of New Jersey, Camden County, Docket No: CAM-L-982-07, which against the said RELEASED PARTIES, Plaintiff ever had, now has or which his heirs, executors, administrators, successors or assigns, or any of them, hereafter can, shall or may have for, or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of these presents.

This Release shall not apply to a claim Plaintiff may have against the Township of Gloucester only, relative to Plaintiff's current suspension relative to his employment with the Township of Gloucester with the exception of any claims encompassed or otherwise precluded

pursuant to Rule of Court 4:30A (entire controversy doctrine).

Defendants are releasing all claims for indemnification, contribution and any other claims, including but not those limited to any contracts held by and between the Defendants in exchange for the amicable resolution of the foregoing action.

The undersigned hereby acknowledges and assumes all risk and chance of hazard that the said injuries or damage may be or become permanent, progressive, greater, or more extensive than is now known, anticipated or expected. No promise or inducement which is not herein expressed has been made to the undersigned and, in executing this Release, he does not rely upon any statement or representation made by any person, firm or corporation hereby released or any agent, physician, doctor or any other person representing them or any of them concerning the nature, extent or duration of said damages or losses or the legal liability therefor.

Dave Pomianck expressly acknowledges and agrees that he has released, or will release, discharge and indemnify, defend and save harmless the RELEASED PARTIES from any and every claim, right, action, demand, lien, known or unknown to any party hereto of every kind or character which may ever be asserted by reason of or in relation to the damages, injuries, illnesses or diseases or the effects, consequences or treatment thereof, and any and all claims made by any person, entity, insurer, federal or state government agency, under any legislation providing for the imposition of a lien in favor of a hospital, medical practitioner, worker's compensation insurer, Blue Cross/Blue Shield, Medicare, Veterans Administration, federal or state government agency, or any other classes of benefits paid to or payable to Dave Pomianck or his representatives or attorneys or payment of any liens including those which may have resulted from the Plaintiff's acceptance and application for unemployment compensation.

The undersigned understands that this settlement is the compromise of a doubtful and

disputed claim and that the payment is not to be construed as an admission of liability on the part of the persons, firms and corporations hereby released, by whom liability is expressly denied.

This Release contains the ENTIRE AGREEMENT between the parties hereto and the terms of this Release are contractual and not a mere recital.

The undersigned further states that he has carefully read the foregoing Release and knows the contents thereof and signs the same as his own free act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of February in the year of Our Lord two thousand and nine.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

[Signature]
WITNESS

[Signature] SEAL
DAVE POMIANCK

[Signature]
WITNESS

[Signature] SEAL
TOWNSHIP OF GLOUCESTER
Thomas C. Cardis, Business Administrator

[Signature]
WITNESS

[Signature] SEAL
SCIBAL ASSOCIATES
JOSE EDUARDO DIAZ-JIMINEZ, M.D.