FILED
20 JUL 2009 12:28 am
Civil Administration
A. LEBRON

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov	

CONTROL NUMBER:
01-09062102
(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

November (Month) Term, 2003 (Year)
No. 946

Nevyas, et al

vs.

Morgan, et al

Name of Filing Party:
Dominic J. Morgan, pro se

(Check one) ☐ Plaintiff ☑ Defendant
(Check one) ☐ Movant ☑ Respondent

INDICATE NATURE OF DOCUMENT FILED:

☐ Petition *(Attach Rule to Show Cause)* ☐ Motion
☐ Answer to Petition ☑ Response to Motion

Has another petition/motion been decided in this case? ☑ Yes ☐ No
Is another petition/motion pending? ☐ Yes ☑ No
If the answer to either question is yes, you must identify the judge(s):
Maier, Rogers

TYPE OF PETITION/MOTION *(see list on reverse side)*	PETITION/MOTION CODE *(see list on reverse side)*
Miscellaneous Motion	MTMIS

ANSWER/RESPONSE FILED TO *(Please insert the title of the corresponding petition/motion to which you are responding):*
Reply to Plaintiffs Response to Miscellaneous Motion

I. CASE PROGRAM

Is this case in the *(answer all questions)*:

A. COMMERCE PROGRAM
Name of Judicial Team Leader: _____
Applicable Petition/Motion Deadline: _____
Has deadline been previously extended by the Court?
☐ Yes ☐ No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____
Name of Judicial Team Leader: _____
Applicable Petition/Motion Deadline: _____
Has deadline been previously extended by the Court?
☐ Yes ☐ No

C. NON JURY PROGRAM
Date Listed: _____

D. ARBITRATION PROGRAM
Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM
Date Listed: _____

F. OTHER PROGRAM: _____
Date Listed: _____

II. PARTIES ***(required for proof of service)***
(Name, address and ***telephone number*** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

Leon Silverman, Esquire
Stein & Silverman, P.C.
230 South Broad Street, 18TH Floor
Philadelphia, PA. 19102
215-985-0255

Maureen Fitzgerald, Esquire
Eckert Seamans Cherin & Mellott, LLC
2 Liberty Place
50 South 16th Street - 22nd Floor
Philadelphia, PA 19102
mfitzgerald@eckertseamans.com
215-841-8400

Dominic J. Morgan, pro se
1038 E. 18th Street
Chester, PA 19013
610-364-3367

III. OTHER

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

_____ (Attorney Signature/Unrepresented Party) _____ (Date) Dominic J. Morgan, pro se (Print Name) 07/20/09 (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

30-1061B

Case ID: 031100946
Control No.: 09062101

Instructions for Completing Petition/Motion Cover Sheet

A Petition/Motion Cover Sheet must be attached to all Petitions, Motions, Answers or Responses filed, except for Discovery Motions and Motions for Extraordinary Relief. Sanctions will be imposed if the Cover Sheet is inaccurately completed.

Please Note the following:

1. ANSWER or RESPONSE DATE. The Motion Clerk shall enter the "Answer" or "Response" Date on the Cover Sheet. All Responses to Motions and Answers to Petitions must be filed with the Prothonotary and submitted to the Motion Clerk on or before the Response Date. **Note:** Summary Judgment Motions have a 30 day Response period. Except for those Motions identified in Phila.Civ.R. *208.3(a) and (b), all other Motions have a 20 day Response period.
2. ARGUMENT DATE. The Motion Clerk shall enter the Argument Date and location on the Cover Sheet, as appropriate.
3. CONTROL NUMBER. The Motion Clerk shall assign a Control Number to all Petitions and Motions. The Responding parties must enter this Control Number on the Cover Sheet accompanying their Answer or Response.
4. NATURE OF DOCUMENT FILED. The filing party must check whether the document being filed is a Petition (in which case a Rule to Show Cause Order must be attached), a Motion, an Answer to a Petition, or a Response to a Motion. The parties must indicate whether another Petition or Motion is outstanding or has been decided and, if so, must identify the Judge(s) to whom such prior Petitions or Motions had been assigned.
5. PETITION OR MOTION TYPES. The parties must utilize the following Petition or Motion Codes and Types (and the Motion Clerk is authorized to change a filing party's designation to reflect the correct Petition or Motion Code and Type):

CODE	MOTIONS
MTSAL	Motion for Additional Distribution of Sale Proceeds
MTPHV	Motion for Admission Pro Hac Vice
MTSVR	Motion for Alternative Service
MTAMJ	Motion to Amend Judgment
MTAMD	Motion to Amend Pleading
MTGAL	Motion to Appoint Guardian Ad Litem
MTAPC	Motion for Appointment of a Conservator
MTMCF	Motion for Approval and Distribution of Minor's Compromise
MTWRD	Motion for Approval & Distribution of Wrongful Death & Survival Action
MTAPS	Motion to Approve Transfer of Structured Settlement
MTADH	Motion for Assessment of Damages Hearings
MTAMV	Motion to Auction Motor Vehicles
MTBIF	Motion to Bifurcate
MTCIA	Motion to Certify Order for Interlocutory Appeal
MTCNM	Motion to Change Name
MTCLC	Motion for Class Action Certification
MTCMP	Motion to Compel Discovery
MTCPS	Motion to Compel Payment of Settlement
MTCOM	Motion to Complete Terms of Sheriff's Sale
MTCST	Motion to Confirm Settlement
MTCNS	Motion to Consolidate Actions
MTCON	Motion for Continuance
MTCOR	Motion for Coordination of Actions
MTCRT	Motion to Correct Record
MTCNF	Motion for Counsel Fees
PTDOM	Motion for Delay Damages
MTDJT	Motion to Demand Jury Trial
DPROB	Motion to Determine Preliminary Objections
MTDSC	Motion to Discontinue Case
MTDIS	Motion to Dismiss for Forum Non Conveniens
MTDCN	Motion to Disqualify Counsel
MTEMG	Emergency Motion
MTEST	Motion to Enforce Settlement
MTJDG	Motion for Entry of Default Judgment
MTJNP	Motion for Entry of Judgment of Non Pros
MTSUP	Motion for Entry of Supersedeas
MTEXP	Motion for Expungement of Record
MTEOT	Motion for Extension of Time to file Certificate of Merit
MTEXT	Motion for Extension of Time to answer/ respond)
PTEXR	Motion for Extraordinary Relief
MTNPT	Motion to File Nunc Pro Tunc
MTFUS	Motion to File Under Seal
PTFMV	Motion to Fix Fair Market Value
MTINT	Motion for Interpleader
MTINV	Motion to Intervene
MTIOP	Motion to Invalidate Opt-Outs (Class Action cases)
MTJAD	Motion to Join Additional Defendant
MTJPL	Motion for Judgment on the Pleadings
MTJUR	Motion for Jury Out of Time
MTLIM	Motion in Limine
MTMJS	Motion to Mark Judgment Satisfied
MTMVR	Motion to Obtain Motor Vehicle Records
MTOPN	Motion to Open/Strike Confessed Judgment
MTPAR	Motion for Partition
MTPIC	Motion for Payment into Court
MTPRE	Motion to Pay Rent into Escrow Account
MTSYS	Motion to Postpone Sheriff's Sale
PTTMF	Motion for Post Trial Relief
MTPCD	Motion for Pre-Complaint Discovery
PRINJ	Motion for Preliminary Injunction
MTPSA	Motion for Preliminary Settlement Approval (Class Action Cases)
MTPDE	Motion to Preserve Documents and Evidence
MTIFP	Motion to Proceed In Forma Pauperis
MTPRO	Motion for Protective Order
MTQSH	Motion to Quash
MTRCS	Motion for Reconsideration
MTRPR	Motion to Redeem Premises
MTREF	Motion to Release Escrow Funds
MTOPT	Motion to Remove Opt-Out of the Proposed Settlement Agreement (Class Action Cases)
MTRWT	Motion to Return Writ of Possession or Execution
MTSAN	Motion for Sanctions
MT229	Motion for Sanctions for Failure to Deliver Settlement Funds
MTSAS	Motion to Set Aside Sheriff's Sale
MTSAA	Motion to Set Aside Award
MTIPP	Motion to Settle Incompetent/ Incapacitated Person's Estate
MTSPR	Motion to Stay Proceedings
MTWOE	Motion to Stay Writ of Execution
MTSTK	Motion to Strike Pleading
MTSJD	Motion for Summary Judgment (30 day hold)
MTRAE	Motion for Supplementary Relief in Aid of Execution
MTRDM	Motion to Reassess Damages
MTREF	Motion for Reimbursement of Fees
MTREL	Motion to Release Bond
MTRDS	Motion to Remove Case from Deferred Status
MTSRC	Motion to Seal Record
MTSEV	Motion to Sever Cases
MTSPP	Motion for Specific Performance
MTTFR	Motion to Transfer
MTTRJ	Motion to Transfer Judgment
MTFTV	Motion for Title to Vehicle
MTWDA	Motion to Withdraw Appearance
MTWPS	Motion for Writ of Possession
MTWRS	Motion for Writ of Seizure
MTMIS	Miscellaneous Motion

CODE	PETITIONS
PTAAR	Petition to Appoint Common Law Arbitrator
PTARC	Petition to Appoint a Receiver
PTCAR	Petition to Compel Arbitration
PTCAW	Petition to Confirm Arbitration Award
PTCST	Petition to Confirm Settlement
PTFCT	Petition for Contempt
PTOJD	Petition to Open Default Judgment
PTSNP	Petition to Open Judgment of Non Pros
PTEMG	Emergency Petition

6. CASE PROGRAM. The party shall check the program to which the case is assigned and provide the requested program data.
7. PARTIES. The filing parties shall set forth the name, address and telephone number of all counsel of record and unrepresented parties, and must attach a stamped addressed envelope for each attorney of record and unrepresented party.
8. OTHER. The parties shall enter other relevant important information in this box – such as request for stay, emergency designation etc. – placing the Motion Clerk on notice of special handling or request.
9. SIGNATURE LINE. The Cover Sheet must be signed, dated and, if applicable, the attorney ID number must be provided.
10. SERVICE. A copy of the file-stamped Petition, Motion, Answer, Response and attachments must be served on all parties of record immediately after filing as required by Pa.R.C.P. 206.6, and Pa.R.C.P. 440.

The Current Version of the Petition/Motion Cover Sheet May Be Downloaded From The First Judicial District's Website: http://courts.phila.gov.

Dominic J. Morgan
1038 E. 18th St.
Chester, PA 19013

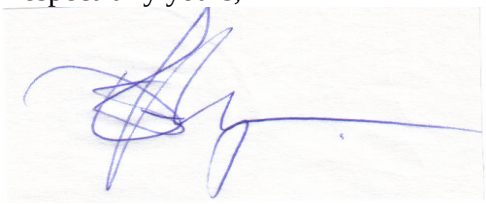
July 20, 2009

Honorable Peter F. Rogers
Court of Common Pleas of Philadelphia County
Criminal Justice Center - Room 1408
1301 Filbert Street
Philadelphia, PA 19107

Dear Judge Rogers:

I attach a courtesy "hard" copy of my Reply submitted electronically today, to "Plaintiffs' Response to Defendant's Motion to Determine Whether Plaintiffs are Private Figures or Limited Purpose Public Figures."

Respectfully yours,



Dominic Morgan, *pro se*

cc: Leon Silverman, Esq.
Maureen Fitzgerald, Esq.

Dominic J. Morgan, *pro se*
1038 East 18th Street
Chester, PA 19013
(610) 364-3367

HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D., and	:	TRIAL DIVISION
NEVYAS EYE ASSOCIATES, P.C.,	:	Philadelphia County
Plaintiffs		NOVEMBER TERM, 2003
	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	Control Number 01-09062101
STEVEN A FRIEDMAN	:	Jury Trial demanded on Counterclaim
Defendants	:	

PRO SE DEFENDANT MORGAN'S REPLY TO "PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DETERMINE WHETHER PLAINTIFFS ARE PRIVATE FIGURES OR LIMITED PURPOSE PUBLIC FIGURES"

The Nevyas plaintiffs' Response shows them again trying to have it both ways, saying one thing to this court and a different thing outside this court. Examples include:

1. At paragraph 4 plaintiffs tell this court: "Plaintiffs deny that the outcome of the surgery was poor and further deny that Morgan is now legally blind."

   Outside this court, plaintiff Herbert Nevyas states: "...he reported vision as low as 20/200 in each eye when I last saw him. I know he has been judged legally blind....and that he is presently receiving Social Security Disability payments because of his legal blindness." Exhibit D.

2. At paragraph 5 plaintiffs tell this court: "Plaintiffs, after reasonable investigation, have insufficient information to determine whether Defendant Friedman is a practicing physician...."

   Outside this court, plaintiffs file a federal lawsuit against Morgan and Friedman, stating that Friedman is a practicing physician in competition with Nevyas and in violation of the Lanham Act. *Nevyas v. Morgan*, 309 F. Supp.2d 673 (E.D. Pa. 2004).

3. At paragraph 12 plaintiffs tell this court: "Plaintiffs deny that any public dispute exists over LASIK surgery in general or over plaintiffs' performance of LASIK surgery in particular."

Outside this court, plaintiffs actively participate in the ongoing public controversy about LASIK by listing their websites (including http://www.nevyas.com/) among the over 316,000 website listings that discuss "LASIK controversy." [1] At

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[1] Under the topic "LASIK controversy" the internet lists over 316,000 websites. The first ten are:

1. LASIK: Advances, Controversies, and Custom fulfills all of your needs and ...
Section Two-LASIK Controversies. Chapter 26A The Pros of Pediatric LASIK ...
www.slackbooks.com/view.asp?SlackCode=66542 - Cached
2. Information about Lasik - LASIK Controversy
LASIK Controversy A debate rages among opthalmologists the world over. ...
LASIK Controversy. LASIK Evaluating Your Opthamologist. LASIK Eye Surgery Afterwards ...
www.info-about-lasik.com/LASIK_Controversy.html - Cached
3. Lasik controversy hits opthalmic practice - Cover Story - Healthcare ...
India's Only Business Fortnightly for the Healthcare Industry ... Lasik controversy hits ophthalmic practice ... recent controversy surrounding Laser In Situ ...
www.expresshealthcaremgmt.com/20020915/cover1.shtml - Cached
4. LASIK - The Indian eye controversy Shah S - Indian J Ophthalmol
Indian J Ophthalmol, Official scientific journal of the All India Ophthalmological Society (AIOS) ... Shah S. LASIK - The Indian eye controversy. ...
ijo.in/article.asp?issn=0301-4738;year=2002;volume=50;issue=4;spage... - Cached
5. Optimized vs. Wavefront-Guided LASIK: Today's Refractive Controversies ...
Optimized vs. Wavefront-Guided LASIK: Today's Refractive Controversies - Ophthalmology Technology Spotlight - Medcompare. Medcompare - The Buyer's Guide for Medical ...
www.medcompare.com/spotlight.asp?spotlightid=218 - Cached
6. LASIK Eye Surgery Controversies: It Can Help You More Than Hurt You ...
Media reports saying LASIK harms people's eyes should be put in context--especially with my own ... LASIK Eye Surgery Controversies: It Can Help You More ...
associatedcontent.com/.../lasik_eye_surgery_controversies_it.html - 56k - Cached
7. Is LASIK Elective Surgery Safe For The Long-Term?
News Release Because there is still much controversy over whether or not LASIK is safe or imposes any long-term damages since its introduction into the USA in 1997, ...

http://www.nevyas.com/ the Nevyases advertise their services, purport having the best type of LASIK device, purport having done LASIK longer than anyone else in Philadelphia, purport having the best results, and purport being "doctor's doctors."

Outside this court, among the over 316,000 website listings that discuss "LASIK controversy" are official minutes of the *110th meeting* of the FDA's Ophthalmic Devices Panel/ Medical Devices Advisory Committee, where defendant Morgan addresses the committee as an invited guest, at http://www.fda.gov/ohrms/dockets/ac/08/minutes/2008-4353m1.htm. Videotaped addresses by all speakers including defendant Morgan (#6 of 32) are at http://www.lasikdecision.com/index.php?option=com_content&task=view&id=629&Itemid=30, which also links to coverage by CBS, NBC, MSNBC, ABC, CNN, Associated Press, Morning Star, New York Times, and Wall Street Journal.

Outside this court, if plaintiffs do not wish to acknowledge the over 316,000 website listings that discuss "LASIK controversy," there are literally dozens of "hard

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emediawire.com/releases/.../7LASIK_Moratorium/emw2612464.htm - Cached

8. YouTube - LASIK Consumer Alert
With today's controversy over LASIK surgery, Dr. Mark Doubrava, Medical Director of Eye Care For Nevada discusses what consumers should look for in a doctor,
www.youtube.com/watch?v=gqLz3OzcMOw - 105k - Cached
Video.Play Video

9. Eyesight Associates - Medical Info
There has been a lot of controversy in the media concerning LASIK refractive eye surgery. ... The recent LASIK controversy has created a lot of confusion in ...
www.eyesightassociates.com/info-LasekVsLasik.html - Cached

10. Can You Justify the Cost of San Francisco IntraLASIK (InterLASIK or all ...
Is There a Controversy Growing over IntraLASIK in San Francisco? What does InterLASIK or all-laser LASIK cost vs wavefront LASIK? ... SAN FRANCISCO LASIK ...www.scotthyver.com/lasik/sanfrancisco/intralasik.shtml - Cached

copy" textbooks dealing with Lasik controversy. [2]

Outside this court, as plaintiffs surely know, there are also hundreds of magazine and journal articles that discuss "LASIK controversy."

4. At *The Relationship Between the Parties* section of their instant "Factual History," plaintiffs tell this court: "When a new laser became available on the market which Nevyas found to be an improvement over the previously available lasers, he purchased this laser for his own use and discontinued his IDE with the FDA."

Outside this court, the FDA shut down Nevyas' IDE "for reasons of public safety," forcing Nevyas to purchase an FDA-approved LASIK device. Among the 3500 pages of documents produced by Nevyas in the instant case, and the 900 pages produced in the earlier *Morgan v. Nevyas et al*, there is no document showing Nevyas voluntarily ended his IDE. Instead, after repeatedly citing problems with Nevyas and his IDE, and after repeatedly warning Nevyas about violations of law, regulation, and protocol, the FDA shut down Nevyas' IDE. *See* section 12 of Defendant Morgan's instant Memorandum of Law in Response.

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[2] Textbooks published prior to December 2003 include:

1. *Lasik: Fundamentals, Surgical Techniques, and Complications* by Akers, MJ.; Azar, DT.; Koch, DD.; published January 2003 by Informa Healthcare.
2. *Lasik: Advances, Controversies, and Customs* by Probst, L.; published November 2003 by Slack Inc.
3. *Lasik Complications: Trends and Techniques* by Gimbel, HV; Anderson-Penno, EE; published November 1998 and October 2000 by Slack Inc
4. *Lasik Techniques: Pearls and Pitfalls* by Belville, K; Smith, RJ; published November 2003 by Slack Inc.
5. *Lasik: Principles and Techniques* by Buratto, L; Brint, SF; published April 1998 by Slack Inc.
6. *Wavefront Customized Visual Corrections: The Quest for Super Vision II* by Macrae, SM; Krueger, RR; Applegate, RA published November 2003 by Slack Inc.

Verification:

I, Dominic J. Morgan, defendant pro se verify these statements to be true, and understand that these statements are made subject to penalties of 18 Pa.C.S. Sec. 4904 relating to unsworn falsification to authorities.

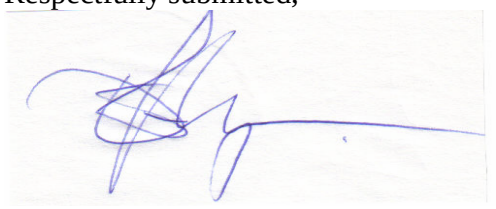
Certificate of Service:

I certify that a true and correct copy of the attached document has been e-mailed or mailed first class prepaid to the persons listed below on the date listed below:

Leon Silverman, Esquire
Stein & Silverman, P.C.
230 South Broad Street, 18th Floor
Philadelphia, PA. 19102

Maureen Fitzgerald, Esquire
Eckert Seamans Cherin & Mellott, LLC
2 Liberty Place
50 South 16th Street - 22nd Floor
Philadelphia, PA 19102
mfitzgerald@eckertseamans.com

Respectfully submitted,



Dated July 20, 2009

Dominic J. Morgan, pro se

Exhibit D

Nevyas Eye Associates / Delaware Valley Laser Surgery Institute
Ambulatory Surgery Center

Herbert J. Nevyas, M.D.
Refractive, Cataract, and Corneal Surgery

Joann Y. Nevyas, M.D.
Cataract and Glaucoma Surgery and Therapy

Anita Nevyas –Wallace, M.D.
Refractive, Cataract and Corneal Surgery

Mitchell E. Stein, M.D.
Retinal Disease, Glaucoma Medical and Surgical Ophthalmology

Vipin K. Goyal, M.D.
Corneal Surgery, Glaucoma and Refractive Surgery

Edward A. Deglin, M.D.
Vitreo-retinal Disease and Surgery

Joshua M. Greene, M.D.
Vitreo-retinal Disease and Surgery

Amiram Shapiro, M.D., M.S.
Ophthalmic Plastic Surgery Ocular Motility

Kenneth Morgenstern, M.D.
Cosmetic Oculoplastic Surgery Facial and Reconstructive Surgery

July 31, 2007

Medical Review Unit
NJMVC
P. O. Box 173
Trenton, NJ 08666-0173

RE: Mr. Dominic Morgan
Pennsylvania Driver's License [redacted]

To Whom It May Concern:

I have serious concerns about the driving skills of Mr. Dominic Morgan (DOB 8/8/1960) of [redacted]

It is my understanding that Mr. Morgan maintains a valid New Jersey driver's license, even though he is no longer licensed in Pennsylvania. I examined Mr. Morgan from an ophthalmologic standpoint several years ago, and he reported vision as low as 20/200 in each eye when I last saw him. I know that he has been judged legally blind after an examination by Dr. John D. Dugan, Jr. in Voorhees, NJ, and that he is presently receiving Social Security Disability payments because of his legal blindness.

I think that Mr. Morgan should be re-evaluated by your impartial examiner and his license revoked if he does not measure up to the appropriate visual standard. I would not want to be responsible for allowing a legally blind driver to be on the highway.

Sincerely,

Herbert J. Nevyas, M.D.

HJN/ljs

e-mail address:
nevyas@aol.com

Two Bala Plaza
333 City Avenue
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610-668-2777
Fax 610-668-1509

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Fax 215-790-0652

Central Square
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Philadelphia, PA 19114
215-673-2020
Fax 215-969-6375

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Greentree Executive Campus
Marlton, NJ 08053
856-985-9797
Fax 856-985-1191