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FLATHEAD COUNTY
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

ROB QUIST, and BONNI QUIST,
wife,

Plaintiffs

vs.

ROCH R. BOYER, M.D.,

Defendant.

Cause No. DV-94-526A

**ANSWER OF
ROCH R. BOYER, M.D.**

COMES NOW the Defendant, Roch R. Boyer, M.D., and for his answer to
Plaintiffs' Complaint states:

FIRST DEFENSE

The Defendant admits the allegations of Paragraphs 1 through 5; as to
Paragraphs 6 through 13 the Defendant admits that during the laparoscopic
cholecystectomy the common bile duct was transected. However, that was appropriately
identified and the operation was converted to an open cholecystectomy where an
appropriate repair was done by the Defendant. On September 30, 1992 Plaintiff Rob
Quist was admitted to Swedish Hospital Medical Center and underwent a
Hepaticojejunostomy with Roux-en-Y. However, the Defendant denies all other
allegations of Paragraphs 6 through 13.

1 This Defendant does not have sufficient information to answer the
2 allegations of Paragraphs 14 through 18 other than to state that the care he rendered to
3 Rob Quist was not outside acceptable standards of care and as such the Defendant is not
4 liable for the damages claimed.

5 **SECOND DEFENSE**

6 The Complaint fails to state a cause of action against the Defendant upon
7 which relief can be granted.

8 **THIRD DEFENSE**

9 Defendant further pleads the affirmative defenses of assumption of the risk,
10 contributory negligence, statute of limitations and nonparty liability under Section
11 27-1-703, MCA.

12 At the time of filing this Answer, the Defendant is not certain what
13 affirmative defenses may be applicable at the time of trial. Discovery in this case, trial
14 preparation, and the facts brought out at the time of trial, may make some of the
15 affirmative defenses applicable and thus they are raised in this Answer so as not to be
16 waived by the Defendant. At the pretrial conference, Defendant will dismiss any
17 affirmative defenses which do not appear to be reasonably supported by the facts and the
18 law. The purpose of raising these affirmative defenses is not to create defenses where
19 none exist. Rather, it is a recognition that the pleadings, discovery and trial preparation
20 necessitate an examination and evaluation of evolving facts and law and the decision
21 maker, be that a judge or a jury, should have available for consideration all defenses
22 which may be applicable.

23 WHEREFORE, having fully answered Plaintiffs' Complaint, the Defendant
24 prays that the Plaintiffs' Complaint be dismissed and that judgment be granted in favor of
25 the Defendant together with his costs of suit herein expended.