

2004 WL 5669058 (S.D.Ga.) (Expert Deposition)

United States District Court, S.D. Georgia,
Brunswick Division.

Guy MAGLOIRE, Plaintiff,

v.

ROSSIGNOL TRANSPORT, LTD. and Eric Robert Lajoie, Defendants.

No. 04CV00010.

May 12, 2004.

(Deposition of Philip Rafiy, M.D.)

Name of Expert: Philip Rafiy, M.D.

Area of Expertise: Medical & Surgical >> Orthopedics

Representing: Plaintiff

Jurisdiction: S.D.Ga.

Appearances.

Stephen H. Frankel, Esq., Attorney for Plaintiff, 7600 Jericho Turnpike, Suite 406, Woodbury, New York 11797.

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, Attorneys for Defendants, 3 Gannett Drive, White Plains, New York 10604, By Stephen Brown, Esq.

Savage, Turner, Pinson & Karsman, Attorneys for Defendants, P. O. Box 10600, 304 East Bay Street, Savannah, Georgia 31401, By Stanley M. Karsman, Esq, (Via Telephone).

Videotaped Deposition of Non-Party Witness PHILIP RAFIY, M D. pursuant to Notice, before Kelly A Cruz, a Notary Public of the State of New York

ALSO PRESENT

JIM WOOD, VIDEOGRAPHER.

IT IS HEREBY STIPULATED AND AGREED, by and ?? the attorneys for the respective parties herein, that filing and sealing of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial

IT IS FURTHER STIPULATED AND AGREED that the within deposition pay may be sworn to and signer before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

THE VIDEOGRAPHER: Good afternoon. My name is Jim Wood from Documentaries, 1581 Route 202, Pomona, New York, in conjunction with Realtime Reporting.

The time is now 3:26 p.m. and will be displayed in hours and minutes. Today is Wednesday, May 12, 2004. Today's videotaped deposition is being taken of Dr. Philip Rafiy, at his business office in Hicksville, New York. And this deposition is being taken pursuant to notice for and in the Federal District Court of the Southern District of Georgia, Brunswick Division, In the matter of Magloire v. Rossignal, CV Number 204-10. Our court reporter is Kelly Cruz. Attorneys will identify themselves and the court reporter will swear the witness.

MR. FRANKEL: Mr. Frankel for the Plaintiff

MR. BROWN: Stephen Brown for the Defendants.

THE VIDEOGRAPHER: Mr. Karsman is on the phone from Georgia.

PHILIP RAFIY, M.D., called as a witness, having been first duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. FRANKEL:

Q. Good afternoon, Dr. Rafiy.

A Good afternoon.

MR. FRANKEL: This is the deposition of Philip Rafiy, pursuant to notice, regarding date, time and place. The deposition is being taken in a civil procedure, including use at trial. The parties agree that all objections will be made during the course of the deposition.

If a party wants to object to a question or the answer to a question, the objecting party will raise their hand. Once the objecting party's hand is raised, the videographer will go off the record. The stenographer will continue recording all die objections and/or responses to the objection

The objection will be noted on the transcript in the usual manner.

Once the objection has been duly noted, the videographer will continue the videotaping of the witness.

Dr Rafiy has been advised of his right to read and sign the deposition, and waived to read and sign the deposition.

Does counsel have any objections regarding these preliminary matters?

MR. BROWN: No.

BY MR. FRANKEL

Q Doctor, please state your name and address for the record.

A Philip Rafiy, 87 W. Old Country Road, Hicksville, New York 11801.

Q What is your occupation?

A I'm an orthopedic spine surgeon.

Q Please state for the jury your educational background, beginning with undergraduate school.

A I graduated from SUNY Binghamton with a bachelor of arts with honors. I completed a four-year medical school degree and received my medical doctor degree from SUNY Health Science Center at Brooklyn.

I completed a five-year orthopedic residency training program at the Albert Einstein-Bronx Lebanon, orthopedic surgery. I completed a one-year orthopedic spine internship at Tampa General Hospital. And completed an orthopedic trauma surgical internship in Switzerland.

Q. Have you had any further postgraduate training, Doctor?

A And continuing CME, continuing medical education with the open conference services.

Q Please tell the jury what is involved in the practice of orthopedic surgery?

A. The study of orthopedic surgery is the study of the musculoskeletal system, which involves the muscles, bones, joints. It involves the vertebrae between the joints extending from the spine, and the skeleton, involving the bones, muscles and nerves.

Q How long have you practiced orthopedic surgery?

A I have been practicing orthopedic surgery for the past 10 years.

Q Are you board certified?

A I am a board-certified orthopedic surgeon.

Q What does being board certified mean?

A. Board certification is a series of examinations which are administered by the American Board of Orthopedic Surgery on a national level. In order to obtain, one must complete a written examination upon successful completion of your orthopedic surgical residency training.

After completion of the written examination, an oral examination in orthopedic surgery must be successfully completed. And review and recommendations from your colleagues and training program in order to obtain complete board certification.

Q Thank you.

Are you licensed to practice orthopedic surgery in New York?

A Yes.

Q Are you licensed to practice orthopedic surgery in any other state?

A I am licensed in the State of New York to practice medicine and surgery.

Q Are you licensed to practice medicine in any other state?

A No.

Q Could you please tell the jury about the medical associations to which you belong?

A I am a member of the American Academy of Orthopedic Surgery. I also belong to the Nassau County Medical Society. And I belong to the North American Spine Conference, or Conference Spine Society.

Q Have you written articles within the specialty of orthopedic surgery?

A Yes.

Q Have these been published in medical journals?

A Yes, sir.

Q Dr. Rafiy, you have provided us with a copy of your curriculum vitae. Is it accurate and up to date?

A Yes, it is.

Q Do you need to add anything to it?

A No.

Q I would like to attach to the transcript a copy of Dr. Rafiy's curriculum vitae as Plaintiff's Exhibit 1.

THE VIDEOGRAPHER: We are going off the record. It's 3:33 p.m.

MR. FRANKEL: With defense counsel's permission, I am going to mark that.

MR. BROWN: No objection to that being marked as an exhibit.

MR. FRANKEL: Just as an exhibit. Yes.

(Plaintiff's Exhibit 1, Curriculum vitae, marked for identification.)

THE VIDEOGRAPHER- We are back on the record. It's 3:35 p.m.

Q Dr. Rafiy, I note that on your stationery that you state you are a clinical assistant professor of orthopedic surgery at Cornell University.

Would you kindly tell us about that?

A I was elected to a teaching position at the Weill Medical College at Cornell University. I have received a teaching position of clinical assistant professor in orthopedic surgery.

My duties are involved in the teaching and training of the medical students, and also of teaching and training of the orthopedic residents.

Q And, Doctor, currently you're Chief of the Division of Spine Surgery at Long Island Jewish Medical Center?

A I'm the Associate Chief at Long Island Jewish Medical Center.

Q And is that different from Cornell University?

A. Yes.

Q Could you kindly tell us about your duties at Long Island Jewish Medical Center?

A At Long Island Jewish Medical Center I am currently on active duty, active staff at the Long Island Jewish Medical Center. I am involved in the training of the orthopedic surgical residents in the field of orthopedic surgery, particularly in the field of spinal surgery.

I'm also involved in the training of medical students with lectures and afternoons at the facility.

MR. FRANKEL: I would like to offer Dr. Rafiy as an expert in the field of orthopedic surgery.

Do you have any voir dire on his qualifications at this time?

MR. BROWN: No.

Q All right. Dr. Rafiy, you are being paid for your deposition testimony today?

A Yes.

Q You are being paid for your appearance here today, correct?

A Correct.

Q What is your fee for the appearance?

A. The appearance and review of all records at \$400 per hour.

Q Were you paid approximately \$4,000 for your testimony to appear here today, sir, including the preparation, review of the records, et cetera?

A Yes.

Q And isn't it true that had you not been willing to appear and prepare for today's deposition, that you would have otherwise been tending to patients and/or performing surgery?

A Correct.

Q Thank you.

Dr. Rafiy, have you, in the course of your practice, examined and treated a patient by the name of Guy Magloire?

A Yes.

Q In connection with your care and treatment of Mr. Magloire, you kept a file of this patient?

A Yes.

Q Do you have that file with you today?

A Yes.

Q Have you kept Mr. Magloire's file in your ordinary course of your business?

A Yes, I have.

Q Does your file contain a history of Mr. Magloire?

A. Yes.

Q Does the file contain the type of information you have dictated?

A Yes.

Q Does the file involve the opinions of the various tests you have either performed on Mr. Magloire or ordered on his behalf?

A Yes.

Q Have you personally interpreted Mr. Magloire's diagnostic results?

A Yes.

MR. FRANKEL: I would like to attach Dr. Rafiy's file regarding his treatment of Mr. Magloire. This will be Plaintiff's Exhibit 2 of the deposition, if we have the file

THE VTDEOGRAPHER We are going off the record. It's 339 p m.

(Plaintiff's Exhibit 2, medical file for Mr. Magloire, marked for identification.)

MR. KARSMAN: We want a copy of the file attached, but we do not intend to introduce a copy of the file of this as evidence in the case.

MR. BROWN: And the reporter has just taken that down from Stan Karsman, local counsel for Plaintiff, over the phone.

THE VTDEOGRAPHER Back on the record. It's 3:41 p m.

Q Dr. Rafiy, you may refer to your chart to refresh your recollection regarding the specifics of your examination and treatment of Mr Magloire

A Yes.

Q Dr. Rafiy, please tell the jury when you first saw Mr. Magloire as a patient?

A. I examined Mr. Magloire on June 6, 2002.

Q. Did you take a history from Mr. Magloire as to why he came to see you?

A Yes.

Q Do you consider the history as given to you by the patient important as part of your medical evaluation and treatment?

A Yes.

Q Do you rely on the history given to you by the patient?

A. Yes.

Q Did you take a history from Mr. Magloire?

A Yes.

Q Would you kindly tell the jury about the history you took from Mr. Magloire, and what complaints he had at that time?

A. On June 6, 2002, the history I obtained was that Mr. Magloire was at that time a 61-year-old male who was involved in a motor vehicle accident on January 25, 2002.

He stated that he was the driver of a motor vehicle which was struck from behind by a