SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: PART 11

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ELLEN DELANDRO and VINCENT DELANDRO,

Plaintiff,

-against-

JEFFREY S. ARONOFF, M.D., SOMERSET SURGICAL ASSOCIATES, P.C., A. PANGILINAN, M.D., and LENOX HILL HOSPITAL,

Defendants.

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Index No. 21191/00

15 Willoughby Street
Brooklyn, New York
April 28, 2004

B E F O R E:

HONORABLE RANDOLPH JACKSON,

Justice, and a jury.

A P P E A R A N C E S:

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Wendy Silas
Official Court Reporter

(Jury enters.)
THE COURT: Please be seated.
Good morning, members of the jury.
I believe we're ready for the next witness?
MR. SCHMEIZER: Yes, Judge, we are.
Plaintiff calls to the stand Dr. Guy, Ali Guy.
Would you take the stand?

A L I G U Y, M.D., called as a witness, after having been first duly sworn by the clerk of the court, was examined and testified as follows:

THE CLERK: Please be seated, sir, and in a loud clear voice please give your name and business address for the record and spell your name for the reporter.

THE WITNESS: My name is Dr. Ali Guy. First name is A-l-i, last name is G-u-y.

My office address is Seven Gramercy Park West, New York, New York, 10003.

THE COURT: You may inquire.

MR. SCHMEIZER: Thank you, Judge.

DIRECT EXAMINATION

BY MR. SCHMEIZER:

Q Good morning, Dr. Guy.

A Good morning, sir.

MR. SCHMEIZER: May I move some furniture,

Judge?

Q Dr. Guy, would you be kind enough, before we get into the material of this case specific, given us some understanding of your educational background and experience in the field of medicine?

A Yes, college, I attended Queens College Medical School. I graduated from University of Northeast in the Dominican Republic in June of 1981.

Thereafter I did three separate residencies.

I did my first residency in the field of internal medicine at Mt. Sinai Medical Center for a period of 18 months.

Then I did one year of general surgery at Cabrini Medical Center.

Then I completed a three-year training program in physical medicine and rehabilitation at Mt. Sinai Medical Center.

I'm board certified in the field of physical medicine and rehabilitation.

I was the director of the department of rehab medicine at Maimonides Medical Center in Brooklyn, New York from 1997 to July of 2002 when where my duties were involved to teach the residents in the hospital, the orthopedic residents, to prepare them for the boards under the rehab section questions, to provide teaching to the physical

therapists, the speech pathologists, occupational therapists, physician assistants, doctors in the field of internal medicine and also doctors in my department.

I was also in charge of quality assurance within my department.

I also did consultations to other specialists in my hospital.

Also, I'm the director of the neuromuscular equipment clinic at NYU's Hospital for Joint Diseases where my duties are to see the patients that are assigned to the clinic and to provide teaching to the residents from NYU and also to prepare them for the boards, parts one and part two.

Q Doctor, you mentioned several points I would like to go back on.

You've actually completed a residency in surg -- in general surgery, is that correct?

A No, I did one year of general surgery.

Q One year of general surgery?

A Yes, sir.

Q Where?

A At Cabrini Medical Center.

Q You also indicated that you were the director of rehabilitation at Maimonides Hospital?

A Yes, sir.

Q What is rehabilitative medicine and what were your

duties and responsibilities as the director of same -- the rehab at Maimonides?

A The field of physical medicine and rehabilitation is a medical specialty that was founded shortly after World War II. It deals with traumatic injuries to the body, people that have all types of injuries, from birth defects to cardiac, pulmonary problems, people that have all types of injuries, orthopedic injuries, musculoskeletal injuries, nerve injuries, car accidents, job accidents, problems with preponderance complications of surgical procedures, complications of sports injuries, so on and so forth.

The job of a doctor in this specialty is to restore function to an injured patient, to bring him to the optimal level of care as close to their pre-injured or their premorbid state and we have training in neurology, orthopedics, internal medicine, muscle and nerve physiology, cardiac physiology, pulmonary physiology and we also have extensive experience in disability and impairment evaluations which means to evaluate a patient and assess the extent of disability - is it mild, moderate or severe; is it total or partial - and try to restore function to those injured people.

Q You indicated to this court and jury that you were the director of the neuromuscular equipment clinic at NYU?

A Hospital for -- NYU's Hospital for Joint Diseases.

Q NYU's Hospital for Joint Diseases?

A Yes.

Q That's what I wanted to clarify.

A HJD is the abbreviation.

Q Do you have any privileges -- where do you hold hospital affiliations?

A Currently at NYU's HJD and Cabrini's Medical Center.

Q NYU's Hospital for Joint Diseases and Cabrini Medical Center?

A Yes.

Q And you mentioned board certification in rehabilitative medicine.

Did that require passing oral and written examination?

A Yes, sir, as well as passing the annual exams given by the department and passing the monthly evaluations by your preceptors.

Q And, doctor, in your role in rehabilitative medicine do you frequently lecture to medical students and to lawyers?

A I've lectured to every walk of life, medical students, rehab nurses, police officers, firefighters, attorneys, yes.

Q And what's the nature of those lectures?

A Well, I give a lecture once a year at Mt. Sinai School of Medicine and both sides of the law firms are

present, defense and plaintiff. They get continuing legal education seminar points through these lectures from Mt. Sinai.

Q And what are some of the subjects you lecture on?

A Spinal injuries, diagnostic studies, role of MRI, CAT scan, EMGs, injuries to the hand, reflex sympathetic dystrophy and functional capacity testing, functional capacity evaluations, indications, contraindications, so on and so forth.

Q Doctor, have you testified before?

A Yes, sir, many times.

Q Have you testified on behalf of patients and on behalf of the defendants?

A I've testified mostly on behalf of my patients.

I've only testified once on behalf of defendants.

Q Doctor, you've indicated you've testified before on behalf of your patients. Tell us a little bit about that.

How frequently do you come to court on behalf of your patients?

A I would say about less than one percent of all the patients I treat.

On the average, I testify - between my two offices and when I was at Maimonides, that would be the third location - I would testify on the average about 12 to 15 times per year. Some years more, some years less.

Q And you say this is on behalf of your patients?
A Yes, sir.
Q And when you come to court to testify as in this case are you receiving a fee?
A Yes, a fee for my time for canceling my office appointments and for travel time, yes.
Q And what is that fee?
A The fee is 3000 for half a day testimony, one thousand for pretrial preparation, all together 4000.
Q And have you testified on cases -- have you testified on cases in which Kelner & Kelner represented -- were the attorneys for the plaintiff?
A On some cases, yes.
Q Have you testified on cases where I've represented the plaintiff before?
A I believe two or three times in my 15-year career as a physician. Could be slightly less or slightly more.
Q And has my firm represented you in a case against Metro North?
A Yes, sir.
Q Doctor, at my request have you been asked to review various records with respect to the quality of health care rendered to Ellen Delandro?
A Yes, sir.
Q And what records did I ask you to review, if you can

recall them?
A Yes. I reviewed records from the Lenox Hill Hospital, I reviewed the EMG studies that were performed by neurosciences and Dr. Leonard Pace. I reviewed MRI of the left knee, MRI of the lumbar spine - just to refresh my memory - various records from Lenox Hill Hospital and some records from the Beth Israel Medical Center.
Q And, doctor, those records were reviewed at my request, is that correct?
A Yes, sir.
Q And the import of those -- that review was for you to render medical opinions with respect to the cause or mechanism of injury to Mrs. Delandro, is that correct?
A Yes.
Q I'm going to be asking you several questions now and from this point on I'm going to be asking you your opinions with a reasonable degree of medical certainty.
My questions should include that term, do you have an opinion with a reasonable degree of medical certainty?
A Yes, sir.
Q If I omit that term, please regard the question with the input of that request anyway.
Fair enough?
A Yes.
MR. SCHMEIZER: May I approach, Judge, I just

want to --
THE COURT: Yes.
MR. SCHMEIZER: Your Honor, may we approach the bench for one moment?
(Discussion held at the bench, off the record.)
Q Doctor Dr. Guy, before I ask you questions this morning with respect to your opinions, I ask you to take a look at this chart entitled lumbar disease.
Is this a fair and accurate depiction of the dermatomes of the lumbar spine and how they emanate from that -- from their origin?
A Yes, sir.
Q And will this chart aid you insofar as explaining to the jury the several questions I ask you with respect to the injuries sustained by Mrs. Delandro and the mechanism of injury?
A Yes, sir.
MR. SCHMEIZER: I would offer this chart, your Honor, into evidence and the big blowup that's already been used throughout the trial at this time.
THE COURT: Any objection?
MR. LYDDANE: No objection, your Honor.
THE COURT: All right, received in evidence Plaintiff's Exhibit 7, diagram entitled lumbar disease and Plaintiff's 8 -- does it have a title?

MR. SCHMEIZER: No, sir, but I think we can all agree that it represents the peritoneal cavity and the nerves surrounding it, nerves and branches surrounding it.
THE COURT: Off the record.
(Discussion held off the record.)
THE COURT: Diagram of nerves in pelvis, Exhibit 8 in evidence.
(Plaintiff's Exhibits 7 and 8 received in evidence.
MR. SCHMEIZER: May I proceed?
THE COURT: Certainly.
Q Doctor, I would like to ask you to assume the following facts in evidence.
I want you to assume -- just bear with me one moment.
(Pause.)
Q I want you to assume Mrs. Delandro was admitted to Lenox Hill Hospital on January 4th of 1999 and the procedure, colorectal procedure, performed on January 5th, 1999;
That on the evening of January 6th, 24 hours postoperatively, it was recognized by the surgical resident that Mrs. Delandro was exhibiting -- was complaining of or exhibiting left lower extremity numbness, decreased range of motion and pins-and-needles sensation as described by

Mrs. Delandro postoperatively;
That the surgical resident requested that the attending or a surgeon see Mrs. Delandro and, in fact, she was seen by a Dr. -- I believe Dr. Weinstein who diagnosed a neuroplexus;
That besides --
MR. LYDDANE: The word is neuropraxia.
Q Neuropraxia or pressure on the plexus.
Dr. Weinstein also requested a consult by a neurologist.
I want you to further assume that on January 7th that consult was performed by a Dr. Reich who indicated in his consult that, quote, "Portions of the weakness and numbness suggest L3-L4 nerve root involvement, not peripheral involvement. Will obtain MRI of the lumbar spine."
I want to you further assume that an MRI was performed on May 7th and that, in part, those findings include a Grade 1 spondylolisthesis at L4-L5 and a disk bulge at the same level producing a, quote, "mild spinal stenosis."
Further, the MRI indicates at L5-S1 level a moderately large central and left-sided disk herniation which produces compression of the thecal sac and left S1 nerve root.
MR. LYDDANE: That's January 7th, not May 7th?
MR. SCHMEIZER: I stand corrected.
Q On January 8th a consultation is held by a

rehabilitation specialist such as yourself, a Dr. Rho, who indicates that there's left lower extremity weakness, consider lumbar polyradiculopathy versus plexopathy and indicates he'll review the MRI and consider EMG study and/or nerve conduction studies to be performed on Mrs. Delandro.
I want you to further assume that an EMG is performed on January 27th some 12 days after Mrs. Delandro leaves Lenox Hill Hospital and the diagnosis of that EMG study is femoral neuropathy, left femoral nerve neuropathy, and the neurologist also indicates that there's significant swelling and edema such that he advises Mrs. Delandro to see her primary care physician for suspected deep venous thrombosis;
That Mrs. Delandro was admitted to Beth Israel Medical Center on that day, spends a considerable period of time at Beth Israel with a diagnosis of deep venous thrombosis, being treated by Coumadin and Heparin on intravenous therapy at that time.
Finally, I want you to assume on May 6th, some four months after the surgery, four months to the day after the surgery, Mrs. Delandro submits to another EMG and this EMG study finds several abnormal -- is a severely abnormal EMG of the left lower extremity in the distribution of the left femoral, obturator and sciatic nerves consistent with a left lumbar plexopathy.

Doctor, do you have an opinion with a reasonable degree of medical certainty as to the cause of Mrs. Delandro's injury?
A I do.
Q And what is the cause of her injury to a reasonable degree of medical certainty?
A Traction on a nerve during surgical procedure.
Q And, doctor, would you come off the witness stand at this time and explain to the court and jury the mechanism of injury in this case?
A Yes.
THE COURT: Yes.
MR. SCHMEIZER: May I?
THE COURT: Yes.
(Witness steps down.).
A The femoral nerve runs right in the inguinal area and during surgical procedure either during a traction, a pull or during instrument retraction, to pull away from the surgical site so you can have exposure to the area, that nerve can be damaged.
Neuropraxia is defined as a temporary damage to a nerve where it can regenerate and come back.
However, if the amount of time that the nerve is being pulled or the amount of traction placed directly on the nerve is too long that could become permanent and

irreversible. Only time will tell.
The way to diagnose this condition is, one, clinically and, second, you confirm it by way of EMG studies and then you repeat the test two, three, or four months later to see if there is any significant change, any improvement or worsening.
In the medical field when something lasts for more than two years it is generally considered as being permanent.
So if it does not improve or show improvement after three or four months and the clinical findings shows there's deficits present, then it's considered permanent.
So once this femoral nerve is stretched during direct stretch or traction or during the surgical instruments close to the area the nerve becomes injured, once a nerve becomes injured it becomes swollen.
Now, the injury could be directly right at the site of the injury or it could be pulled and it could be damaged further up or right at the site or further below.
And what happens when a nerve gets injured, the nerve gets swollen and it begins to dysfunction and the oxygen supplied to the nerve gets cut off and the nerve does not work properly and that's what happens.
The femoral nerve controls quadriceps extension, the obturator nerve - which also comes along the L2-L4 lumbar

plexus, anterior division - controls, a-d, adduction, controls adduction.
Abduction is away from the hip, adduction is towards the hip.
So the femoral nerve comes off the femoral plexus from the L2, L3 and L4 and here it is right here and the obturator nerve comes off the lumbar plexus at L2, L3 and L4, but in different branches.
So the femoral nerve, once again, can be injured by direct pressure on it or by traction pulling on it. As you pull the branches of the tree the branch closest to you -- as you pull on that branch the other branches also get pulled and you have a traction injury.
Q Your analogy of a tree and pulling on that branch, if we were to assume that tree branch were the femoral nerve, for instance, for arguments sake, and pulling on that branch would put -- place traction on other tree branches, would that explain why the EMG done in May of '99 indicated significant abnormalities --
MR. LYDDANE: Objection to the leading, your Honor.
THE COURT: Overruled.
Q Would it indicate why the EMG study in May of '99 indicated significant neurological abnormalities to both the femoral nerve, the obturator and the sciatic nerve?

A Yes, sir.
As you can see from this diagram, here's the femoral nerve and these are the different branches. L2 comes down here, L3, L4.
These are the posterior branches of the lumbar plexus and the light colors are the anterior branches which forms the obturator nerve.
So if you pull on this nerve you're also going to be pulling here, here, here, here and here because it's all interconnected.
Q Indicating by pointing to L4, L3, L2, am I correct?
A Yes, sir, the posterior branch. This is the posterior branch.
This is the anterior branch.
Anterior means front, posterior means the back branch.
Q What is this -- what are these -- what are these called?
A These are the lumbar plexus.
Plexus means a network of nerves, intercoursing each other like a big Grand Central Station, all the nerves crisscross one another.
Q Can you tell -- can you show us in the chart where the lumbar plexus is or a reference point where it would be in reference to the chart -- the lower level of the chart?

A It's covered by these muscles. It's deep, buried inside here behind these muscles.
On this side here you could see some of the nerves coming off the lumbar plexus, but it's buried, covered deep inside.
Q And it would be in the retroperitoneum?
A Yes, sir, behind the peritoneal cavity.
Q And, doctor, I would like you to take a moment now to go over the EMG study that was done.
Let's take the first one first, the one that was done on January 27th, 1999 and ask you to comment.
Doctor, there was questions raised at Lenox Hill Hospital whether the injury sustained by Mrs. Delandro was either a central nerve injury or a peripheral nerve injury or a plexo -- or a lumbar plexus injury.
Will -- could you explain to the court and jury the significance of these EMG studies that were done weeks after the admission to Lenox Hill and how they significant -- what significance they play in determining whether they are herniated disks or central nerve problems -- has any relation to the injury as opposed to the peripheral nerve or lumbar plexus nerve roots in this case?
A Very good.
I brought with me a model of the spine which I can explain my answers as I'm going along if, I may be allowed to

use my model?
Q Would you produce it and I'll ask the court?
A Yes.
(Pause.)
Q Is this a fair, anatomically accurate, depiction of a segment depicting the lumbosacral spine?
A Yes, it is.
Q Will it aid you in being able to demonstrate to the injury answering my question?
A Yes, sir.
MR. SCHMEIZER: May I offer it?
May I mark it for ID at this time?
THE COURT: Deemed.
Q Please, doctor, go forward and explain.
We've heard testimony that this could be a central nerve injury, such as a herniated disk, this could be a problem with the peripheral nerve system. We've heard about the lumbar plexus.
Explain to us the basis of your opinion that this is an injury -- the basis of your opinion that this was an injury that occurred during surgery?
A Yes. Before I get to your answer, just a little brief review of the normal anatomy.
What we're looking at is a model of the lumbar spine, the vertebra. Each vertebra is lum -- numbered