ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
----------X
TERRY SARRO,

Plaintiff,

- against -

Index No.:
CV022575

PATRICK J. MCGANN, ELIZABETH A. BLAKE and ROBERT BLAKE,

Defendants.
----------X

July 18, 2003
8:40 a.m.

DEPOSITION of DR. SEBASTIAN LATTUGA taken by the Respective Parties, pursuant to Order, held at 2001 Marcus Avenue, Lake Success, New York, before Nicoletta DiReda, a Notary Public for and within the State of New York.

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

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FILE NO: 1618

* * *

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that all rights provided by the C.P.L.R., including the right to object to any questions, except as to the form, or to move to strike any testimony at this examination, are reserved; and, in addition, the failure to object to any question or to move to strike testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved for, the trial of this action.

IT IS FURTHER STIPULATED AND AGREED that this examination may be sworn to, by Public other than the Notary Public before whom this examination was begun, but the failure to do so, or to return the original of this examination to counsel, shall not be deemed a waiver of the rights provided by Rule 3116, C.P.L.R, and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this Examination Before Trial shall be furnished without charge to the attorneys representing the witness testifying herein.

S E B A S T I A N L A T T U G A,
called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

(Doctor's file was marked as Defendant's Exhibit A for Identification.)

(Notice of Taking Deposition and Subpoena was marked as Defendant's Exhibit B for Identification.)

(Curriculum Vitae was marked as Defendant's Exhibit C for Identification.)

EXAMINATION BY
MR. SULES:

Q. Good morning, Doctor. Could you please state your full name?

A. Sebastian Lattuga, M.D.

Q. What is your address?

A. 2001 Marcus Avenue, Lake Success, New York, 11042.

DR. LATTUGA

Q. I'm going to show you what has been marked as Defendant's Exhibit B, which is a Notice of Taking Deposition and Subpoena.

Are you appearing here pursuant to that subpoena?

A. I believe, yes.

Q. And the Subpoena requested that you bring with you any and all records, documents, notes, reports, correspondence, tests, films and such things that relate in any way to the care, treatment or diagnosis or examination of Terry Sarro in the lawsuit.

Did you bring those documents with you?

A. Yes.

Q. Have those documents been marked here as Defendant's Exhibit A?

A. Yes.

Q. Is that the complete file that you have with respect to the Plaintiff Terry Sarro?

A. Yes.

Q. Are there any omissions or records or anything else which is not included within what has been marked here today?

DR. LATTUGA

A. This is all the information that I have on Terry Sarro.

MR. LIESER: By counsel, there are some films that we have in our office for trial which we disclosed, but they are not here today.

BY MR. SULES:

Q. Other than these films, are there any other documents missing from your records with respect to Terry Sarro?

A. These are all the records that I have in my possession with respect to Terry Sarro.

Q. Did you review any records in preparation for your testimony here today?

A. Yes.

Q. What did you review?

A. This file.

Q. Referring to Defendant's Exhibit A?

A. Yes, as well as the MRI films.

Q. When did you review those films?

A. Wednesday evening.

Q. Where was that?

A. At the attorney's office.

Q. David Sutton's office?

DR. LATTUGA

A. Yes.

Q. Did you review any other documents in preparation for your testimony here today?

A. Only this file and the radiographs and MRI.

Q. Outside of the documents that are here today and the films, do you have any independent recollection regarding your care and treatment and diagnosis of Terry Sarro?

A. I might -- I mean, it's a difficult question to ask. I do know the patient, I treated her. I've operated on her. Most of the information related to the case is in her file, but I might have an independent recollection. It depends on the question.

Q. Is there any significant independent recollection that you have with respect to the patient Terry Sarro that is not included in this record?

A. I don't know.

Q. Doctor, Defendant's Exhibit C has been marked here which is a copy of your Curriculum Vitae, is that complete and accurate?

DR. LATTUGA

A. Yes.

Q. Your CV indicates that you are board certified on the National Board of Medical Examinations, is that correct?

A. Yes.

Q. Is there any particular specialty affiliated with that board certification?

A. Orthopedic surgery.

Q. Do you have any other board certifications?

A. No.

Q. Your CV indicates that you are licensed to practice medicine in the State of New York?

A. Yes.

Q. When was that?

MR. LIESER: Can he refer to the CV?

MR. SULES: Sure.

A. Approximately 1991.

Q. And it also indicates you're licenced to practice medicine in the State of Florida, when was that?

A. Yes, that was 1995.

Q. Are you licensed to practice medicine

DR. LATTUGA

in any other state?

A. No.

Q. Has your license to practice medicine in New York or Florida ever been suspended?

A. No.

Q. Have you ever received a censure or reprimand?

A. No.

Q. Your CV lists hospital affiliations for Mercy Medical, Winthrop and South Nassau Community Hospitals. Are all those affiliations current?

A. I resigned from South Nassau Hospital.

Q. What was the reason for your resignation?

A. I felt no longer an obligation to go there.

Q. When did you resign from South Nassau?

A. The earlier part of this year, 2003.

Q. Have you ever been affiliated with any other hospital other than those listed here?

DR. LATTUGA

A. Franklin General Hospital.

Q. When was that?

A. 1997 probably through 2000, roughly.

Q. What is the reason you're no longer affiliated with Franklin General?

A. Same reason, I no longer felt an obligation to go there or a need.

Q. Have any of your affiliations or privileges at any hospital ever been suspended?

A. No.

Q. Your education lists Saint John University, is that an undergraduate degree?

A. Yes.

Q. What is that degree in?

A. Biology.

Q. Your CV lists publications, do you have any publications?

A. I do, yes.

Q. Do you have a list of them?

A. I cannot find them.

Q. Could you indicate how many publications you have?

A. Approximately four.

Q. What field are the publications in?

DR. LATTUGA

A. Spinal surgery and orthopedics.

Q. That's it?

A. Yes.

Q. Do you have any medical books that you maintain here in your office?

A. No.

Q. Do you have any medical books that you recognize as an authority in the subject of spinal surgery?

A. No.

Q. Do you have any medical books that you recognize as an authority in the field of orthopedics?

A. No.

Q. We're here today in your office of 2001 Marcus Avenue. Do you maintain any other offices?

A. Yes.

Q. Where is that?

A. Bohemia.

Q. What is the address?

A. One Corporate Drive, Bohemia, 11716.

Q. Approximately how much time do you spend in this office versus that office?

DR. LATTUGA

A. I spend two days a week here and a half day a week in Bohemia.

Q. Do you have any other offices?

A. No.

Q. The other days of the week when you're not either at this office or Bohemia what do you do?

A. Surgery.

Q. Where do you do surgery?

A. Mercy Medical Center.

Q. Approximately how many hours a week do you spend in surgery?

MR. LIESER: I'll object. He can answer.

BY MR. SULES:

Q. Just an approximation.

A. 20 hours.

Q. Are these your patients or other patients?

A. They're my patients.

Q. Patients from one of your two offices?

A. Yes.

Q. Do you perform surgery for other

patients that you're not treating in either of your offices?

A. No.

Q. How long have you had this office here?

A. February 2003.

Q. How long have you had the office in Bohemia?

A. Same time, February 2003.

Q. How many patients do you presently treat?

A. I see approximately 150 patients a week and I perform approximately six to twelve surgeries per week.

Q. What percent of your patients are patients who have been involved in a traumatic event such as an automobile accident or a fall?

MR. LIESER: Objection to form. You can answer.

A. I don't have firm statistics on that number.

MR. LIESER: Don't guess.

A. I can guess for you.

MR. LIESER: Don't guess.

DR. LATTUGA

MR. SULES: Counsel, are you representing Dr. Lattuga here today?

MR. LIESER: No, I'm representing the Plaintiff. I'm just here to make sure there is an accurate record.

MR. SULES: I don't believe it's appropriate to give him advise as to whether or not to guess. If he can answer the question, he can answer the question.

BY MR. SULES:

Q. Doctor, can you answer the question as to approximately what percentage of your patients are --

A. Approximately 25 or 30 percent.

Q. How do you receive most of your patients?

A. Physician referrals or patient referrals.

Q. Do you receive referrals from any other source?

A. Occasionally.

Q. What other sources?

A. Emergency room.

Q. Anything else?

DR. LATTUGA

A. No.

Q. Do you ever receive any referrals of your patients from attorneys?

A. Not that I'm aware of, no.

Q. How did you first come to treat this patient, Terry Sarro?

A. She made an appointment to visit me in the office.

Q. How was she referred to your office, if you know?

A. I'm not sure.

Q. You know that the patient is represented by the office of David Sutton, correct?

A. Yes.

Q. Has that office or Mr. Lieser ever referred any patients to you?

A. I'm not aware, no.

Q. Are you aware of any referrals from any attorneys since you opened your practice?

A. No.

Q. Did you review any documents or prepare any reports specifically at the request of the office of David Sutton with respect to

DR. LATTUGA

Terry Sarro?

A. Yes.

Q. What reports or documents are those?

A. It's a narrative.

Q. Would you refer to specifically which one it is?

A. Narrative 6/2/03.

Q. May I see it.

A. (Complying)

Q. 6/2/03, is the date June 2nd, 2003?

A. Yes.

Q. Other than this June 2nd report, have you prepared any other reports at the request of David Sutton?

A. I'm not aware of that, no.

MR. SULES: Could we mark the report as Exhibit D.

MR. LIESER: You already marked the file.

MR. SULES: I want to specifically mark that report.

(Narrative was marked as Defendant's Exhibit D for Identification.)

DR. LATTUGA

BY MR. SULES:

Q. Doctor, referring specifically to this report, were you paid for preparing that report?

A. I believe I was, yes.

Q. How much were you paid?

A. My standard fee is approximately $900.

Q. Were you paid an additional fee for an examination of Ms. Sarro?

A. All of my -- any office visit has a fee associated with it.

Q. But specifically in preparation of this report were you paid an additional fee to examine her and then prepare the report or was that inclusive in the $900?

MR. LIESER: Objection to the form.

BY MR. SULES:

Q. Or how ever you can tell me.

A. I believe the answer to your question, I'm slightly confused by your question, is no.

Q. Prior to preparing this report, did you conduct an examination of Ms. Sarro

DR. LATTUGA

specifically for purposes of preparing this report?

A. No.

Q. Have you been retained by the Office of David Sutton as an expert in this case?

A. Yes.

Q. Do you have a written retainer?

A. I don't understand the question.

Q. Is the retainer in written form?

A. I'm not aware of such -- I know I have -- I'm just aware of a certain fee of my availability. I'm not aware if there has been any paperwork transaction between my office staff and David Sutton's office.

MR. LIESER: Just note my objection to those two questions.

BY MR. SULES:

Q. What is the amount of your retainer or the terms of your retainer?

A. I get paid for my time and it's approximately 10,000 for half a day.

Q. Is that a day of testimony at trial?

A. Yes.

Q. Have you been paid that $10,000?

DR. LATTUGA

A. No.

Q. Have you been paid the $900 for the report?

A. I believe, yes.

Q. Have you been paid any other sums from David Sutton's office with respect to Terry Sarro for any expert services?

MR. LIESER: Objection. You can answer.

A. Yes.

Q. What other sums?

A. I get paid for my time, so my meeting with the office was paid for.

Q. And how many meetings since you've been working with David Sutton's office have you had?

MR. LIESER: Objection. He can answer.

A. One.

Q. That was the one last Wednesday you said?

A. Yes.

Q. And how much were you paid for that meeting?

DR. LATTUGA

A. I believe $400.

Q. Is there an hourly rate that you charge?

A. I believe it's $400.

Q. How long did that meeting last?

A. Approximately an hour.

Q. The MRI film that you reviewed, when were they taken?

A. 11/27/01.

Q. Who ordered those films?

A. Both myself and Dr. Wong (phonetic).

Q. What part of the body were the films taken?

A. Lumbar spine.

Q. Did you order any other MRIs for Ms. Sarro?

A. Cervical spine.

Q. When was that done?

A. 12/0/01.

Q. Who ordered that one?

A. Myself and Dr. Wong.

Q. Did you receive a written report from a radiologist interpreting those films?

A. Yes.

DR. LATTUGA

Q. Of both films, the lumbar and cervical?

A. Yes.

Q. Did you ever review the films yourself?

A. Yes.

Q. When?

A. On the date of the initial visit to me. I'm sorry, on the date, the first date after the films became available.

Q. Which was when, approximately?

A. I'm just confirming the date. One moment.

Q. Let me ask you this, Doctor, is it fair to say it was contemporaneously with the time that the film was taken?

A. Yes.

Q. And you said you reviewed the films again Wednesday night, correct?

A. Yes.

Q. You reviewed the actual films Wednesday night?

A. Yes.

Q. Had you reviewed the films any other

time other than initially and this past Wednesday?

A. And the date of the surgery I would have them available.

Q. Did you review them on that date?

A. On the date of the surgery?

Q. Yes.

A. Yes.

Q. The actual films themselves?

A. Yes.

Q. Do you have any training in the review and interpretation of MRI films?

A. Of the spine, yes.

Q. What training have you had?

A. My fellowship in adult and pediatric spinal surgery.

Q. When you order an MRI film for a patient, do you routinely refer it to a radiologist for review and interpretation?

MR. LIESER: Objection.

A. The answer to your question is no, but to clarify, any time you order an MRI it's an independent study. I don't own an MRI, therefore they always do a reading. I always

request a pateint bring the films for my review.

Q. Do you defer to the expertise of the radiologist in interpreting the film?

A. Not routinely, no.

Q. Do you have any board certification in the field of radiology?

A. No.

Q. What specific training in your fellowship did you have with respect to the interpretation of MRI films?

A. Every patient that is seen in a surgical consultation requires the review of their film, all their radiographs, CAT scans, MRIs, so it's part of your training to be educated in the proper reading, evaluation, interpretation of radiographs with respect to your specific or my specific specialty which is spinal surgery.

Q. Do you review all of the films of your surgical patients prior to surgery?

A. Yes.

Q. How many films have you reviewed in your practice?

DR. LATTUGA

MR. LIESER: Objection.

A. Thousands.

Q. In your review of the films prior to surgery, do you ever encounter any conflicting interpretation yourself which conflicts with the radiologist's review?

A. Yes.

Q. How often does that occur?

A. Once a week.

Q. Doctor, are you being paid for your time here today at this deposition?

A. Yes.

Q. How much have you been paid?

A. I believe it's the $400.

Q. Can you tell me some of your work history since becoming a licensed physician starting from your first job?

A. After graduating my fellowship, I came to private practice on Long Island and I was -- I came to practice in the Rockville Center area. I joined several orthopedists as a spinal expert in the group and my practice has been limited exclusively on an elective basis to the practice of spinal surgery. And I

practiced for the past seven years or so now in Long Island, again practice limited to spinal surgery and treatment in the operative and non operative management of spinal disorders.

Q. Could you specifically give me the groups or associations you had since you've been in private practice?

A. Yes, with Orland and Cohen Orthopedic Associates up until 2003 and then I went out on my own.

Q. When did you first begin with Orland and Cohen?

A. '97 -- where is my CV? Since '96, probably September '96 is when I started.

Q. Prior to this had you been in private practice at all?

A. No.

Q. On what percent of your patients do you perform surgery on?

A. I see approximately 150 patients a week and I do six to twelve surgeries per week, so whatever that percentage number works out to.

Q. But in terms of the number of

patients that you actually see, how many do you actually perform surgery on in percentage on, not in terms of how many you see in the offices versus surgery?

A. But you see, that's my practice. People are sent to me for --

MR. LIESER: Objection.

A. -- surgery generally speaking, so if I see 150 patients a week, those are all patients that are to me new and follow up that are being treated for spinal conditions, most of which I can make better without surgery. That number reflects that approximately 150 new or follow up patients are seen per week and I'm able to do about six to twelve surgeries per week based on that volume of patient evaluations, so is it four percent, do the math. Whatever the math turns out to be.

MR. CLARK: Move to strike as non responsive.

BY MR. SULES:

Q. What I'm trying to say is, if a patient comes to you, do you perform surgery on 100 percent of the patients that come to you

one way or the other?

A. No.

Q. So what I'm asking is, what percentage of the patients that come to you do you ultimately perform surgery on?

MR. LIESER: I'm going to object, asked and answered.

A. I would say about four percent.

Q. Doctor, have you ever given testimony prior to today?

MR. LIESER: At trial?

BY MR. SULES:

Q. No, any testimony, deposition, trial or otherwise as a medical expert?

A. Yes.

Q. On how many occasions?

A. It's an unclear question. Do I include workers' compensation testimony?

Q. Sure. If you can break it down worker's comp versus trial versus deposition, that would be fine.

A. Give me specifics. Are you speaking a number of times, is that what you're saying, a number of times?

DR. LATTUGA

Q. Let me ask you this --

A. Because I don't keep records, I don't have a record of how many times I've testified.

Q. Tell me what services you performed with respect to workers' compensation as an expert.

A. I'm asked to testify on behalf of the patients that I've treated either at a workers' compensation board or as a phone deposition. It's approximately once or twice a month and that's the approximate volume I've done over the past five years.

Q. How many depositions have you done outside of workers' compensation?

A. Again not being all that familiar with the terms of the word deposition, I believe --

MR. LIESER: If you don't understand the term, then ask him.

A. The deposition, what do you mean?

Q. What we're having here today is a deposition. You're being deposed as an expert in a case.

Outside of workers' comp, how many

times have you appeared for a deposition either on the phone or in person in such a situation?

A. Again I don't keep records, I would say approximately three, four, five times, something like that.

Q. Total?

A. Yes.

Q. On whose behalf have you served as an expert on those occasions?

MR. LIESER: Objection.

A. My patients.

Q. Have you ever testified in court outside of workers' comp?

A. Yes.

Q. On how many occasions?

A. Two or three times.

Q. On whose behalf did you testify?

A. The patient.

Q. And you were paid by the patient's attorney?

A. Yes.

Q. Has your testimony at workers' comp and in depositions and in court been exclusively on behalf of claimants?

DR. LATTUGA

A. Patients.

MR. LIESER: Objection.

Q. Patients making a claim?

A. Yes.

Q. When did you first come to treat this particular patient Terry Sarro?

A. 7/20/01.

Q. Do you have a record of that visit?

A. Yes.

Q. Where did she see you at that time?

A. Rockville Center.

Q. That was with Orland and Cohen?

A. Yes.

Q. Did you take a history from the patient at that time?

A. Yes.

Q. What did the history reveal?

A. On July 18 of 01 she was a belted driver in a four car motor vehicle accident. She was injured in that accident. She sought care from primary care physician who referred her to an orthopedist.

MR. LIESER: Are you referring to the 7/20?

DR. LATTUGA

A. I'm referring to my narrative which is a review of my notes. If you want I can read --

Q. I don't want you to read anything. I just want to know what your treatment was.

Did you take any past history from the patient?

A. Yes.

Q. Did you learn any significant past history?

A. No previous surgeries or hospitalizations.

Q. Is that the extent --

A. High blood pressure. She has a history of high blood pressure in the family. She has a history or arrhythmia, an abnormal heartbeat, she had an allergy to penicillin, she was not a smoker, drinks socially.

Q. Is that the extent of the past history you took?

A. Yes.

Q. When did you next come to treat Ms. Sarro?

A. 12/10.

DR. LATTUGA

Q. '01?

A. Yes.

Q. Do you have a record of that visit?

A. Yes.

Q. Did you learn any other significant past medical history at that time other than what you had on the previous occasion?

MR. LIESER: Could you read that back?

(Thereupon, the referred to question was read back as above record by the court reporter.)

MR. LIESER: So you're including the events that took place between the last visit and this visit as part of the medical history?

MR. SULES: Well, let's see if he can answer the question.

MR. LIESER: I just think it's ambiguous. I'll object.

A. No.

Q. Did Ms. Sarro on that December 10, 2001 visit make any complaints which she had not made previously on her July visit to you?

DR. LATTUGA

A. 12/10/01, patient complaining of back and leg pain predominantly and she continues to be symptomatic of the lumbar spine. After motor vehicle accident patient is complaining of leg pain predominantly L5S1 distribution.

Q. Did she have that complaint on the July visit?

MR. LIESER: Objection.

BY MR. SULES:

Q. Or can you tell me what complaints she had on the July visit?

A. She had neck and back symptoms on the July visit.

Q. No leg pain, is that correct?

MR. LIESER: Objection. You can answer.

A. Yeah, she complained of low back pain with extension to the hip and into the left leg.

Q. Is that in July or in December?

A. She -- I have that on my note on July 20, 01. It's at the bottom of the note.

Q. Can I see the note you're referring to?

DR. LATTUGA

A. Yeah (complying). These were written in after.

Q. Are you referring to handwritten notes when you're referring to pain that you testified about?

A. Yes.

MR. SULES: Let's mark this Exhibit E.

(July 2001 record was marked as Defendant's Exhibit E for Identification.)

BY MR. SULES:

Q. Doctor, the record of July 2001 for the most part is a typewritten record, correct?

A. Yes.

Q. And was it typed up contemporaneously with her visit of July 2001?

A. Yes.

Q. And at the bottom of the first page you indicated that you just read from some handwritten notes, is that correct?

A. Yes.

Q. Who wrote that handwriting?

A. I believe I wrote that.

DR. LATTUGA

Q. When did you write that handwriting?

A. Contemporaneous with my reviewing that initial note when it comes back from the transcriptionist.

Q. Do you have a date of when you added those handwritten notes to the typewritten report?

A. No date is written.

Q. Do you have an independent recollection as to the date that you added those handwritten notes?

A. No.

Q. Could you read what those handwritten notes say fully?

A. Patient can't sit for more than four hours a day, LBP, low pack pain, left hip, arrow, which means going to left leg, no meds. I can't really make out what else I wrote.

Q. Can you tell me whether or not you added those notes to your records before or after her December visit to you?

MR. LIESER: Objection asked and answered.

A. Yes.

DR. LATTUGA

Q. What was it, before or after her December visit?

A. It's my custom and practice to review the notes once they're transcribed and if I notice that there is a typo or if I notice that there is something that I felt was important that was omitted, I would jot it in a handwritten note on the page. So --

Q. Can you tell me whether or not that was done -- I'm sorry, please finish.

A. So it's my custom and practice to review the note when it comes back from the transcriptionist. It generally comes back from the transcriptionist within several days and generally that's when I would write that note.

Q. The note that you have in that Exhibit E is a photocopy note, correct?

A. Yes.

Q. Where is the original handwritten note?

A. The original chart I believe is at Orland and Cohen.

Q. Did you make those addition --

MR. CLARK: Can I just see this. I'm

sorry.

BY MR. SULES:

Q. Did you make those additional notes to your record after any discussion with anyone from David Sutton's office?

A. No.

Q. When did you first learn that Ms. Sarro had a lawsuit?

A. At the time when I was requested for the narrative, that would alert me -- that would tell me that there must be some type of litigation involved.

Q. And the narrative you're talking about is the narrative of June 2nd, 2003?

A. Yes.

Q. So is it your testimony that prior to June 2nd, 2003 you were not aware that Ms. Sarro had a lawsuit?

A. Yes, that's my testimony.

Q. Were you aware that she was represented by an attorney prior to June 2nd, 2003?

A. No.

Q. After December 10th, 2001 did you

DR. LATTUGA

have an occasion to treat Ms. Sarro again?

A. On 12/19 she had a surgery and --

MR. LIESER: Wait for a question.

A. -- 12/28 I saw her in follow up. On 3/4/02 I saw her in follow up. 5/19/03 I saw her in follow up. Okay, yes, that answered the question.

Q. When you prepared this June 2nd, 2003 report, did you see her at any time after 5/19 up until your preparation of that report?

A. I don't believe I saw her. No.

Q. Have you seen Ms. Sarro since your 5/19 visit?

A. No, I have no record of such.

Q. Do you have any future scheduled appointments with Ms. Sarro?

A. I'm not aware of any.

Q. Doctor, those two to three times that you testified in court, who were the attorneys for the patients that you testified for?

A. I don't recall their names.

Q. Have you ever testified for Mr. Sutton's office before?

A. No.

DR. LATTUGA

Q. Have you ever testified for Mr. Lieser before?

A. No.

Q. This report that you wrote dated June 2nd, 2003 for which you charged a fee of $900, approximately how many of those reports do you write a week, a month, a year?

MR. LIESER: Objection.

BY MR. SULES:

Q. Reports specifically at the request of a patient's attorney?

A. I guess approximately one to two a month.

Q. Is your fee of $900 the same or does it vary?

A. It's approximately $900, yes.

Q. Do you maintain any medical books at your Bohemia office?

A. No.

Q. Did you express any opinions in your June 2nd, 2003 report as to Ms. Sarro's condition or prognosis?

A. I felt that, and I'm reading from my note, she sustained an injury disk herniation

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which caused a permanent marked neurological change with respect to the lower extremity and the opinion I gave was that her injuries were directly and consequentially related to the motor vehicle accident.

Q. Specifically and totally which injuries are you saying are directly and consequentially related to the motor vehicle accident of July 18, 2001?

MR. LIESER: Objection.

A. I'll read from my record. Consequential to that accident she sustained acute chronic cervical sprain syndrome and multiple lumbar disk herniations which caused neurological changes with respect to her left lower extremity; that she has chronic pain as a result of that. She remained intimately symptomatic from her problems and has neurological consequences.

Q. And specifically which herniated disks, if you can identify by L or S or C, did you opine that she sustained in the accident of July 18, 2001?

A. L5S1, L3,4 and L4,5.

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Q. And on what do you base that opinion?

A. On the history that she gave me, my review of her MRIs, my follow up visits, my intraoperative surgical observation of her lesion and her exams.

Q. And when you mentioned lesion, what lesion are you referring to?

A. The herniated disk compressing the nerve.

Q. And specifically which disk?

A. L5S1.

Q. What surgery did you perform?

A. Hemilaminectomy, facetectomy, foraminotomy L5S1 left.

Q. Did you perform surgery on any other sights other than L5S1?

A. (Indicating)

Q. In layman's terms, can you tell us what you did in performing the hemilaminectomy?

A. She underwent general anesthesia. She was placed on her stomach. An incision was made on her back. Muscles were dissected off the bone, the boney area directly over the sight of the herniation; was removed using high

speed surgical burrs and instruments that exposes the dura which is the decal sack containing the nerves as well as the nerve roots exiting from that sack.

Those nerves are generally displaced as part of the surgery in a safe and careful manner, exposing the underlying region of the disk as well as exposing the area where the herniating disk fragment will be found.

Generally the fragment is removed, as well as any loose disk material within the disk space. The direct observation of the nerve roots are examined to make sure there is no residual compression by boney elements, ligamentous tissues or disk tissue. The bleeding is controlled, the area is irrigated with sterile solution to make sure it is clean, there is no loose debris and then the wound is closed, sutured together closed.

Q. Were the sutures removed at a later date or did they dissolve?

A. Let's see what I used (indicating). A dissolvable suture appears to have been used.

Q. Prior to surgery did you formulate an

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opinion as to what was the cause of Ms. Sarro's complaints with respect to her lower back?

A. Yes.

Q. What was it?

A. Herniating disk in her low back.

Q. And specifically which disk did you opine was the cause of her pain?

A. The L5S1 disk was the cause of her leg pain.

Q. What about the other disks?

A. The other disks were symptomatic with respect to back pain, but not the leg pain.

Q. And specifically which nerve roots did you free during the operation?

A. The L5 and the S1.

Q. Was the surgery a success?

A. Yes.

MR. LIESER: I'm going to object.

Q. Would you agree, Doctor, that there could have been other causes of Ms. Sarro's herniation other than the automobile accident on July 18, 2001?

MR. LIESER: Objection.

A. The question is unclear.

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Q. You expressed an opinion in your June 2nd, 2003 report that the herniated disks at the various levels of the lumbar spine were all possibly related to the motor vehicle accident of June 18, 2001, correct?

A. Yes.

Q. Would you agree that the herniations at the various levels of the lumbar spine could have been caused by something other than the July 18, 2001 accident?

MR. LIESER: Objection.

A. I find it difficult to answer that question in really a yes or no fashion because it's very open ended. I mean, anything is possible. By her history, her physical and my review of the MRI, I would say the answer to the question is no, that I don't think it's possible that it can be caused by anything else, but anything is possible.

Q. Is it possible that the herniated disks which you observed in the lumbar spine preexisted the automobile accident of July 18, 2001?

MR. LIESER: Objection.

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A. Based on her history that she gave me, physical exam, chronology as I saw it, I have no evidence to believe that that is true, no.

Q. If you were to learn of a prior history, could that change your opinion?

MR. LIESER: Objection.

A. Certainly.

Q. Did you ever learn that Ms. Sarro had been involved in any prior traumatic events involving her lower back?

A. There is a vague history of her having injured her back when she was a young girl.

Q. Do you know the circumstances of that injury?

A. No.

Q. Did you ever review any MRI films taken of Ms. Sarro's spine prior to the one that you ordered at Orland and Cohen?

A. No.

Q. Do you know if any were done?

A. No.

Q. Are you aware of any other prior

traumatic injuries to Ms. Sarro's lumbar spine?

A. No.

Q. Could the herniated disks that you observed in the MRI have been caused by that prior traumatic event that you learned about by Ms. Sarro?

A. No.

Q. And why not?

A. Because her injury was when she was a young girl and the disk herniations on the MRI that I reviewed were contemporary with her injury were relatively acute disk herniations, disk injuries.

Q. When you performed the surgery, did you observe any pathology with respect to the lumbar spine that differed from the MRI film that you reviewed?

Put in another way, was there something that you saw there in surgery that you didn't see in the film?

A. During surgery the appearance of the disease is more magnified, it's more obvious, so there was a direct -- you get a direct view of the compression of the disk against the

nerve. You'll see the pathology, you'll see the sequela of having that compression on the nerve. That isn't something that you would see on an MRI. So you would expect to see something more or something less. In this case I saw something more with respect to the injury. The MRI is illustrative, but not completely descriptive of what you'll find during surgery.

Q. Specifically what, if anything, did you observe from the surgery that was not evident in the MRI?

A. Direct dural compression of S1 nerve.

Q. Did you ever write any document or record in any fashion your findings in your review of the MRI film?

A. It could be in the record. I'm going to review the record right now. I generally would make some description of what I saw.

Q. Before you do that, let me ask you this question.

Did you review the radiological interpretation of the MRI film?

A. Yes.

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Q. In your review of the MRI film, did you find anything that differed from the opinion of the radiologist that reviewed the MRI film?

A. I felt that she had a significant extruded disk fragment.

Q. At what level?

A. L5S1 and that she had substantial disk injury to L3,4 and 4,5.

Q. Doctor, do you do any advertising?

A. Yes.

Q. Where do you do your advertising?

A. With the Yellow Pages, that would be considered an ad, radio spots on occasion, informational print material which is distributed to both referring physicians and patients directly or indirectly.

Q. What radio spots do you do, on what stations?

A. I have a media company that handles that. I don't know which station it goes to.

Q. Is it a local radio station?

A. Yes.

Q. Prior to performing surgery on

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Ms. Sarro did you ever consider any conservative treatment of her?

A. She was receiving conservative treatment. She had physical therapy and medicines were being prescribed to her.

MR. SULES: I don't have anymore questions.

MR. CLARK: Doctor, I represent one of the defendants in this case. I have a couple follow ups.

MR. LIESER: I'm going to object. It's my understanding --

MR. CLARK: Until we resolve this issue, I don't know that I'm out of this case.

MR. LIESER: Let's go off the record for one second.

(Thereupon, an off-the-record discussion was held.)

MR. SULES: I just have one more question for the doctor.

BY MR. SULES:

Q. Doctor, did you have any discussions with Mr. Lieser prior to your testimony here

today?

A. Yes.

Q. What was the sum and substance of those discussions?

A. We reviewed the record.

Q. Anything else?

A. No, not that I'm aware of.

MR. SULES: I would just ask for a copy of the doctor's records, that's all.

MR. LIESER: By counsel, they were previously turned over.

BY MR. SULES:

Q. Doctor, we marked several records here as Exhibits and they're going to be used at trial and I would ask that you maintain these records.

By the way, are these records that you ordinarily keep in the course of your business?

A. Yes.

Q. Is it the ordinary course of your business to maintain such records?

A. Yes.

Q. I ask that you keep these records and

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make no alternations, deletions, additions, et cetera to them until the time of the trial of this action, agreed?

A. Yes.

MR. CLARK: On this issue about whether I can ask questions or not, I was noticed on this deposition and as far as I'm concerned, until this issue of the cross claims are resolved, I'm a party of this case.

MR. LIESER: Counsel --

MR. SULES: We're going to go off the record now.

MR. LIESER: No, I'm going to respond on the record.

MR. SULES: No, I'm paying her --

MR. LIESER: You're right, but let me say one more statement.

My last comment on the record is we signed a stipulation to release your client from the case with prejudice. Furthermore, you elaborated to the court in numerous letters over the past few days that you are no longer a party to this

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action and should have no further involvement and therefore I maintain that you cannot ask questions at this time.

MR. CLARK: The codefendant and I have a disagreement as to what effect those cross claims are and I would like to ask this witness a couple of questions. It's appropriate, I'm here, I've been here for the deposition. I have three, four questions to ask this guy.

MR. LIESER: Counsel, I don't think it's appropriate.

MR. SULES: Off the record.

(Thereupon, an off-the-record discussion was held.)

MR. CLARK: Codefendant, Mr. Sules, has left the room. The doctor has left the room. Counsel is apparently not going to permit me to ask this doctor any questions or apparently going to give me an opportunity to call the judge in this federal court case to clarify this issue.

I recognize that there is a legal question as to whether or not I actually

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still am a Defendant in this case and recognize Mr. Lieser's thoughts on this subject and I would love to think comfortably, calmly that I'm not a party to this case, but those cross claims have not been discontinued with prejudice, so I have concerns that in a technical sense I may still be a litigant in this action, although I don't want to be and clearly counsel for Plaintiff doesn't want me to be either.

I'm making the record because if there is such a time that I deem that I still am a party to this case, I have been prejudiced now without having an opportunity to question this witness.

(Time Noted: 9:40 a.m.)

DR. LATTUGA

A C K N O W L E D G M E N T

STATE OF NEW YORK)

:ss

COUNTY OF)

I, DR. SEBASTIAN LATTUGA, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of July 18, 2003; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

DR. SEBASTIAN LATTUGA

Signed and subscribed to before me, this day of , 2002.

Notary Public

DR. LATTUGA

I N D E X

EXAMINATION OF DR. SEBASTIAN LATTUGA

EXAMINATION BY	PAGE
Mr. Sules:	4

EXHIBITS

DESCRIPTION	PAGE
A - Doctor's file	4
B - Notice of taking deposition/Subpoena	4
C - Curriculum Vitae	4
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E - 7/2001 Record	34

DR. LATTUGA

C E R T I F I C A T E

STATE OF NEW YORK)

:ss

COUNTY OF KINGS)

I, NICOLETTA DIREDA, a Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such an examination is a true record of the testimony given by such a witness.

I further certify that I am not related to any of these parties to this action by blood or marriage, and that I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July, 2003.

Nicoletta Direda

NICOLETTA DIREDA