IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

CARL J. WILLIAMS, et al.,

Plaintiffs,

-vs-

JUDGE B. CORRIGAN
CASE NO. 253137

JONATHAN C. BOYD, M.D., et al.,

Defendants.

Doc. 285

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Telephone deposition of SHELDON L. MARGUILIES, M.D., taken as if upon cross-examination before Sandra L. Mazzola, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of Jacobson, Maynard, Tuschman & Kalur, 1001 Lakeside Avenue, Suite 1600, Cleveland, Ohio, at 10:30 a.m. on Friday, March 9, 1996, pursuant to notice and/or stipulations of counsel, on behalf of the Defendant, Jonathan C. Boyd, M.D., in this cause.

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On behalf of the Defendant
Meridia Hillcrest Hospital.

SHELDON L. MARGUILIES, M.D., of lawful age, called by the Defendant, Jonathan C. Boyd, M.D., for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF SHELDON L. MARGUILIES, M.D.

BY MS. CARULAS:

Q. Would you please state your full name for the record?

A. Sheldon Leslie Marguilies.

Q. Dr. Marguilies, you've been through the deposition process before, correct?

A. Yes.

Q. So you understand the basic ground rules. Because we are doing this by phone, if you could please try to speak up, I'd appreciate it. And likewise, if you would attempt to wait until I finish all of my questions before you answer and I will try to do the same so we do not overlap over the phone. Okay?

A. Fair enough.

Q. And if you don't understand any of my questions, please tell me that and ask me to rephrase. Okay?

A. Okay.
Q. And if you answer something, I'm going to assume you understood it. Fair enough?
A. Fine.
Q. Could you describe your practice for me, please?
A. I have a private practice of general neurology at Sinai Hospital in the professional building. Sinai Hospital is one of the teaching hospitals for Johns Hopkins University in Baltimore, Maryland.
Q. You say your practice is general. Do you do both adult and adolescents?
A. Yes. Actually I will see a child at any age, but I generally don't see patients below the age of say about eight.
Q. And what is the percentage split between adult and children neurology?
A. Children is below the age of what?
Q. How do you define it? Eighteen and under?
A. Well, if you want to define it that way, 1 would say it's about 95 -- yes, about 95 percent of my patients are over the age of 18.
Q. Besides Sinai do you have privileges at any other hospitals?
A. Yes. I don't exercise them very much but I do

have admitting privileges at Northwest Hospital Center and at Mercy and I think also at the University Hospitals, At John Hopkins if one of my patients get admitted to that hospital, I can go see the patient, but I can't admit a patient to that hospital and be their primary doctor,

Q. So your primary practice is at Sinai?

A. Yes.

Q. Do you have teaching responsibilities?

A. Yes.

Q. What are those?

A. I teach the medical students and residents, or I participate in the teaching of them -- of course, I not only teach, but I participate in the teaching program for medical residents and medical students who rotate from the University of Maryland and Johns Hopkins over to Sinai Hospital.

Q I see that you went to law school?

A Yes, right,

Q Do you practice law at all?

A No.

Q Have you ever practiced?

A No.

Q Your wife is also a lawyer?

A. Right.
Q. What is her specialty?
A. Bankruptcy.
Q. All right. Have you authored any literature on anything relevant to this case?
A. I don't think so, no.
Q Are you involved in any administrative responsibilities?
A No.
Q Now, you have not had any surgical training, is that true? You rotated through neurosurgery during your residency?
A Do you mean general surgery?
Q Right.
A No, not to speak of, no.
Q And likewise, you've not had any urology training?
A No, other than medical school, you know, when rotating on those specialties.
Q Do you know how it is that Mr. Lucas contacted you or found you?
A I think through Dale Zucker.
Q All right. And had you worked with Mr. Zucker before?
A Yes, I had done a case with him prior.

Q. What type of case was that?
A. I don't remember.
Q. Do you know how it was that Mr. Zucker initially found you?
A. No.
Q. Have you ever reviewed any cases for Mr. Lancione?
A. No.
Q. Do you belong to any expert witness services?
A. Yes, TASA.
Q. TASA?
A. Right.
Q. Any others?
A. Not that I know of.
Q. Do you know, did Mr. Zucker find you through TASA?
A. I don't know.
Q. How many cases would you say you review per year through TASA?
A. Probably about three.
Q. How many cases would you say you review, medical malpractice cases, I'm talking about, would you review per year?
A. Well, now TASA doesn't insure just medical malpractice. Sometimes it would be a personal

injury or sometimes maybe death penalty or competency hearing or -- anyway, I probably review a malpractice case a month.

Q. One per month?

A. On average,

Q. And for how many years have you been doing that3

A. Probably since '88.

Q. And other than malpractice cases, how many cases of any other type, general type of litigation do you review?

A. Probably about half that many. Or -- maybe half. Maybe it's equal. Personal injury or some type of injury to the nervous system.

Q. All right. So as a general rule you would review about two cases per month either being a malpractice or a general personal injury?

A. Right.

&- As far as the malpractice cases what is the split of cases you review between plaintiff and defense work?

A. Most of them, I'd probably say 75 to 80 percent, are plaintiffs. Then it flip-flops for personal injury. I do mostly defense work.

Q. Why is that, do you know?

A. No. Whoever calls me to ask me about my opinion

about a case.
Q. Do you conduct physical examinations of injured people, injured parties?
A. Yes.
Q. Is that something you do above and beyond these two cases per month that you review?
A. Well, I have just, for example, been involved in an automobile accident. They have an attorney but they come to see me as their treating doctor.
Q. Besides that, do you have an arrangement with any group that you will do physical examinations for litigation purposes?
A. No.
Q. Have you ever testified in court?
A. Yes.
Q. How many occasions?
A. Probably 12, 15 times.
Q. How many depositions would you say you've given over your career?
A. Probably about 50.
Q. What is your charge, sir?
A. $350 an hour.
Q. That is for review and testimony?
A. Yes.
Q. Have you ever testified in a case similar to

this?

A. No.

Q. Do you have your file in front of you?

A. Yes.

Q. Would you please tell me what is contained in your file?

A. Let's see. There is a letter from Dale Zucker dated June 3, 1994.

Q. All right. What else do you have?

A. Asking me to review the matter and a summary of the case, and then I have the medical records from Meridia Huron Hospital. Probably regarding the ileus.

Q. What dates, what hospitalization?

A. Specifically, I have Meridia Huron Hospital lab work of 10-3-91. Then I have the -- that hospital confinement of 12-19 to 12-21, an emergency room visit on 12-23, and a confinement of 12-23 to 1-24. And then I have a Meridia Huron Hospital lab work of 4-3-92, an x-ray of 4-14-92, and an EKG of 4-22-92.

Q. Anything else?

A. No.

MS. CARULAS: As far as the letter, John, do you have a copy of that letter that

you could then just provide to me?

Q. Great. Mr. Lancione just handed me a copy of the letter. If you would just give me a moment, I'll just look over it real quick.

Okay. It appears as if you also have a copy of the opinion letter of Dr. Sodemann?

A. That's right. I do I see that. You are right, sure. Sorry.

Q. You know what you need to do, doctor, if you can try to speak up a little bit. Our court reporter is having a difficult time.

A. I did see -- there was a letter from a GI expert. I don't know what I did with it. 1 don't know where it is. I don't know what 1 did with it, but anyway that was -- yes, that's also true, that's correct.

Q. And you had all of this material before you authored your report?

A. Right.

Q. Did you review any literature at all?

A. No.

Q. What literature do you regularly refer to in your practice?

A. Well, I have the entire Index Medicus. I generally don't use textbooks. I usually refer

to the literature.
Q. The journals?
A. The journals.
Q. What journals do you typically refer to?
A. Well, typically what happens is 1 have a problem, I search the Index Medicus and then whatever journal they tell me to go to, I go to. In the terms of regularly reviewing on my own, just journals that I look at, they would be Stroke, Neurology, Archives of Neurology, Annals of Neurology, Brain, Journal of Neurology, Neurosurgery and Psychiatry, Journal of Neurosurgery.
Q. But you did not do any type of literature review in this case?
A. Right.
Q. Now, doctor, your report is limited to the cause of Mr. Williams' stroke, correct?
A. Right.
Q. I take it that you will not be rendering any testimony whether or not Dr. Boyd or anyone in this case deviated from acceptable standards of care?
A. Well, I don't anticipate those questions, Obviously I don't control what's going to be

asked of me, but I don't anticipate those questions.

MS. CARULAS: We have an agreement at least, John, on the record that he will not be testifying as far as standard of care?

MR. LANCIONE: Right, correct.

Q. Mr. Lancione, did you hear, has represented that he will not question you about that so I will not get into that area with you.

What is your opinion as far as the cause of Mr. Williams' injuries?

A. You mean his stroke?

Q. Right.

A. My opinion is that the stroke was -- I have to look at my letter. My opinion is what I said in the letter, that Mr. Williams suffered a right hemispheric stroke as a result of medical complications resulting from a prolonged illness.

Q. And what is your basis for that?

A. Well, at the time he had his stroke he was a fairly sick individual. He had -- he was probably septic, febrile, had a very high white count, fluctuating blood pressure, probably dehydrated from the fever, had just had focal

seizures on the right hemisphere.

And he was a very sick individual, and that was certainly the cause of the stroke rather than to say that this was a coincidental stroke that he was going to have anyway. It's hard to argue that he was just going to have a right hemispheric stroke on this date absent the serious medical illness that he suffered.

Q. All right. Let me understand what you are saying specifically caused the stroke. Tell me what factors caused the stroke in your opinion.

A. He had an occluded artery in the right hemisphere or perhaps even the right neck. We don't have -- I didn't see a workup for the etiology of the stroke, you know, pathologic physiology of the stroke. But I think it's safe to say that he had an occluded artery being supplied to the right hemisphere.

Q. Would you expect to see that on a CAT scan?

A. Well, you won't see the occluded artery. You may see the footprints of it. Depends on what artery and the quality of the CAT scan and, you know, whether the patient was cooperative, moving.

Q. But would you expect to see some evidence of, as you call it, a footprint on the CT scan?

A. Yes. I know that he did not have -- he had two normal CAT scans. But that happens from time to time. It doesn't mean he didn't have a stroke.
Q. All right. So you are saying he had an occluded artery somewhere, correct?
A. Right.
Q. What caused the occluded artery?
A. Well, I think the occluded artery occurred because -- or the artery occluded because of the medical complications, dehydration, fever, sepsis, elevated white count, probably acute phase approaching to the bloodstream, hastened coagulation, fluctuating blood pressure, He had -- I don't know if he had ongoing seizures, but he may have had ongoing subclinical seizures.
Q. All right.
A. But basically he was -- people when they get medically sick can suffer a stroke.
Q. What in your opinion caused the seizures?
A. I think he probably had an ischemic event, ischemic insult, to the right hemisphere.
Q. And how did that occur?
A. Well, he did have an episode of hypotension, but it could have been an embolus, it could have been a local drop in blood pressure. There was

disturbance of cerebral blood through to the right hemisphere because of his medical instability.

Q. All right. Fair to say that you are unable to state to a reasonable degree of medical probability that was the exact etiology of the seizure?

A. Within -- all I can do is give you a range of possibilities, all of which would be within reasonable medical certainty, but I can't say which ones would lead to the event.

Q. So the possibilities you are saying are an embolus or a local drop in blood pressure?

A. Right, or some ischemic event in the right hemisphere I think is the generally category, It could have been sepsis, could have been some metabolic disturbance as a result of his medical complications.

Q. What evidence did you see that this patient was septic?

A. Well, the notes indicate that -- they talk about his being septic. I'll see if I can find them if you want me to find those, but they say that he was probably septic at the time. He had a very high fever and high white count and a drop in his

blood pressure and they thought that he was suffering septic shock at the time.

Q. Would you expect evidence of organisms in the blood or is that something that's outside of your specialty?

A. A little bit. It is, but I certainly would not doubt that somebody was septic just because you didn't have cultures out of the bloodstream. You couldn't say that. Certainly -- I'm sure there's many cases where people have bona fide sepsis where blood cultures are negative.

Q. But fair enough to say that's not your area of expertise?

A. It isn't. It's not my area of specialty, but certainly anybody with M.D. after their name knows that a negative blood culture does not rule out sepsis.

Q. Did you see any evidence of positive culture from anywhere?

A. I don't believe I did.

Q. So is it fair to say a source of the sepsis was never found?

A. I think that is true.

Q. But you base your opinion that this patient was septic on the fact that in your reading of the

records he had a high fever and high white blood cell count3

A. Well, he was diagnosed by the doctors taking care of him as being septic and he was treated as if he had sepsis with antibiotics.

Q. So those were your bases that they suspected sepsis, treated him and that in your opinion he had a high fever and high white blood count, correct?

A. Yes, and fluctuating blood pressures.

Q. All right. What was the cause of the sepsis?

A. I don't know.

Q. You say that the patient, the other reason you mentioned besides the seizures and the sepsis for causing the stroke were what?

A. Say that again.

Q. Earlier we were talking about what in your opinion combined could cause the stroke, correct?

A. Yes.

Q. And you had mentioned patient being septic and the seizures. Correct?

A. Right. And it's not clear whether or not the insult that caused the seizures also caused -- ended up causing the stroke or whether the seizures may have had some role later on down the

road of causing the stroke. That's not clear, but I have to leave that question open.

Q. Okay. So just so I'm clear, you can not state to a reasonable medical probability that the seizure caused the stroke, is that fair?

A. Yes.

Q. Can you state to a reasonable medical probability whether or not the sepsis caused the stroke?

A. Well, I mean sepsis -- if you have -- if you want to include the fever, elevated white count, all of the things that accompanied the sepsis, He was hypoxic for a while there, the changes in his blood pressure. If you include that all under sepsis.

Q. So you believe there was a relationship between the sepsis and the stroke?

A. Right. Again, let me be sure you understand what we are calling sepsis. We are calling sepsis all of those medical complications, such as the fever, high white count, fluctuating blood pressure, changes in respiratory status, is things that the doctors called sepsis.

Q. All right. Anything else that you believe caused the stroke?

A. Well, you know, I'm not sure -- it's kind of

funny, English words. It all depends on what you mean by the word, cause. There's no -- I would be willing to say that Mr. Williams being a smoker had -- may have had ==-- I don't know if he did, but it's conceivable that he had vascular disease.

Q. All right.

A. So but that isn't -- I'm not sure what you mean by caused the stroke. I mean just because he had vascular disease doesn't mean he was going to have a stroke. The reason he had the stroke was because of the things that we have been talking about. He may have been set up maybe -- I don't know. He may have had -- he certainly had a risk factor for having the stroke, I suppose, but that's, you know, a far cry from saying he was going to have a stroke.

And so I wouldn't call that a cause of the stroke in the sense that we are talking about now, something you want to call a cause of stroke. I think it's a risk factor for having a stroke, but it's not real cause of a stroke.

If he hadn't been hospitalized he wouldn't have had the stroke in my opinion.

Q. Certainly people who smoke have a significant

risk of stroke?

MR. LANCIONE: Objection. Go ahead and answer.

A. I would agree with that.

Q. And in Mr. Williams' case you realize that he was a patient with COPD?

A. That's correct. I know he was a smoker, so I would say that he had some COPD.

Q. And obviously patients who are to the point of having such chronic lung disease are at risk of having a stroke?

A. If COPD is due to stroke.

Q. Right.

A. Yes, I would think that's true.

Q. And just because of the smoking itself, that can cause vascular disease elsewhere in the body, correct?

A Yes.

Q Which in turn makes one at high risk for a stroke?

A I don't know what high is but --

MR. LANCIONE: Yes, let me object to the use the word, high, and in the previous question about smoking, the use of the term, significant. But go ahead and answer,

doctor.

A. I mean each person, you know, reacts differently. Some people -- you know, all these things, of course, are statistical. You know, you have a thousand of people. A thousand people smoking are clearly at risk for having a stroke. I don't know about Mr. Williams' case, whether or not if you did an arteriogram a year prior to his stroke, whether he would have whistle clean arteries or not, but as a statistical argument, smoking does raise of risk of having a stroke. I don't know -- I wouldn't use the word, high, because I don't know if it was high.

Q. Now, you mentioned that Mr. Williams had fluctuating blood pressure. What was the cause in your opinion of the fluctuating blood pressure?

A I would have to agree with the doctors who thought it was sepsis.

Q And what was the cause of his hypoxia?

A Probably sepsis.

Q Now, this patient had an ileus, correct?

A Yes.

Q Are you an expert at all in gastrointestinal issues?

A. Well, I'm the head of the public. I wouldn't put myself in gastroenterology --

Q. You say you're head of the public?

A. I'm head of public on this issue. I'm not sure what you mean by expert. I certainly know a fair amount about ileus. I do -- I am an internist.

Q. Okay. Have you ever seen a patient develop a stroke as a complication of a penile implant surgery?

MR. LANCIONE: Objection. Go ahead and answer.

A. No.

Q. And I take it since your practice is not in the area of GI, you have not seen a patient develop an ileus secondary to penile implant?

A. That's correct.

Q. Now, we know that Mr. Williams was discharged on December 21 and then readmitted on December 23?

A. Right.

Q. Am I safe to assume that you will not be testifying as to the issues of what difference treatment on the 21st versus the 23rd would have mattered for Mr. Williams?

A. Again, I don't know what questions are going to be asked of me. But I don't think I'm going to

answer that. I probably wouldn't be qualified to answer that.

Q. That's all I want to know, whether or not you feel you have the expertise to render an opinion as to how Mr. Williams' course would have been different --

A. Yes, I don't think I'm going to be able to answer that question.

Q. Fair enough. All right. So your testimony is strictly based upon the cause of the stroke?

A. Right.

Q. Do you believe the ileus had anything to do with the stroke?

A. Only indirectly if it somehow was the cause of the sepsis, somehow related to the sepsis, but by and of itself, the ileus didn't cause the stroke.

Q. And in your opinion -- or explain to me, do you have an opinion that the ileus caused the sepsis?

A. I don't know.

Q. So you are an unable to state to a reasonable degree of medical probability that the ileus caused the sepsis?

A. Yes, that's a little out of my field.

Q. Do you have any knowledge or opinion as to Mr. Williams' present status?

A. My understanding is that he's still quite disabled on his left side. I don't have -- I haven't examined him and I don't plan to examine him unless the case goes to trial in which case I will arrive a day early and examine Mr. Williams before trial.

Q. Well, this is our one and only opportunity here to take your deposition as to this issue, and my question to you at this point is beyond what you have in the records, you do not have an opinion as to his present condition beyond what you knew at the time that he was discharged from the hospital, is that fair enough?

A. Well, 1 have knowledge that he is probably not making a significant recovery. I would think that he is probably still quite paretic on his left side.

Q. You mentioned that you saw a few records, the lab in April of '92 an x-ray from April 6, '92, and an EKG of April 22, 1992?

A. Yes. Let's see. Yes.

Q. Which would have been subsequent to his discharge. Were those documents of any significance to your opinions?

A. Let me find them because I don't recall what they

showed.

Q. Okay. I believe that's all I have. My request to you is that if you develop any additional opinions in this case, review anything additional, that you advise Mr. Lancione of that and so I will be apprised of it. Fair enough?

A. Okay. I just need to get your address.

Q. Certainly. Mr. Malone is on the line and he may have some questions for you.

A. Go ahead.

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CROSS-EXAMINATION OF SHELDON L. MARGUILIES, M.D.

BY MR. MALONE:

Q. Dr. Marguilies, my name is Jim Malone. I'm the hospital attorney. And I really only have one question for you but it might take me a couple of questions to get to it. All right?

A. Your choice.

Q. I suppose you could hang up if you want to.

A. No problem. Go ahead.

Q. In your opinion more probably than not this gentleman's stroke was an embolic event or an occlusive event versus a devascularization event of some other etiology?

A. I don't know whether or not this was an embolic

or in situ thrombosis. There weren't any vascular studies on the patient.

Q. I understand that. And that's why I'm asking that question.

A. I can't distinguish those.

Q. The end result of stroke is the loss of brain tissue, is it not, that is, the death of brain tissue on a localized basis?

A. Yes.

Q. And that result follows either a hemorrhagic event in the brain or a devascularizing event in the brain, is that generally true?

A, Yes.

Q. The CT scans here because they're negative would suggest the absent of a cranial hemorrhage, do they not?

A. Yes.

Q. You would certainly see evidence of a cranial hemorrhage on one of the two scans this gentleman had?

A. I would agree with that.

Q. And they were both negative, were they not?

A. Right.

MR. MALONE: That's all I have. Thanks, doctor.

A. Okay.

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(Thereupon, a discussion was had off the record.)

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MS. CARULAS: Doctor, what would you like to do as far as waiver of signature?

A. I think I'll waive it. It was short. It was clear.

(Signature waived.)

CERTIFICATE

The State of Ohio,) SS:
County of Cuyahoga.)

I, Sandra L. Mazzola, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named SHELDON L. MARGUILIES, M.D. was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 23rd day of March A.D. 19 96.

Sandra L. Mazzola, Notary Public, State of Ohio
14237 Detroit Avenue, Cleveland, Ohio 44107
My commission expires January 12, 1997

WITNESS INDEX

OBJECTION INDEX