IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STACY RATLIFF, et al,
Plaintiffs,
v. Case No. CV04522634
BOOTH MEMORIAL HOSPITAL,
et al.,
Defendants.

TELEPHONIC DEPOSITION OF
STUART P. ADLER, M.D.
3:00 p.m. - 3:30 p.m.
September 21, 2006
Richmond, Virginia

Job #176584

REPORTED BY: Joseph C. Spontarelli, CCR

Telephonic deposition of STUART P. ADLER, M.D. taken by and before Joseph C. Spontarelli, Notary Public in and for the Commonwealth of Virginia at large, pursuant to Ohio Rules of Civil Procedure and by notice or agreement to take depositions; commencing at 3:00 p.m. on Thursday, September 21, 2006 at Virginia Commonwealth University Medical Center, Richmond, Virginia.

APPEARANCES:

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P R O C E E D I N G S

3:00 p.m.

STUART P. ADLER, M.D.,

was sworn or affirmed and testified as follows:

BY MR. FARCHIONE:

Q Doctor, please state your full name for the record.

A Stuart P. Adler.

Q Dr. Adler, my name is Joe Farchione and I represent Dr. Mikol in the Ratliff lawsuit.

You have been identified as an expert on behalf of the plaintiff; you understand that, correct?

A Correct.

Q This is my only opportunity to ask you your opinions and the basis of those opinions. Do you also understand that?

A Yes.

Q Doctor, how many times have you been involved in medical/legal work?

A I have not kept track.

Q How often do you receive cases to

review?

A I receive between one and three per year.

Q Have you reviewed any cases before on behalf of Mr. Peskin's firm, Becker & Mishkind?

A Absolutely not.

Q Do you know how it is that they found you?

A I have no idea.

Q Have you been involved in any cases in Ohio before?

A Never.

Q What are your charges for reviewing?

A $300.

Q What are they for deposition?

A I don't know. This one is 600.

Q 600 for the deposition or 600 per hour?

A Not per hour, no.

MR. PESKIN: Don't give him any ideas, Joe.

BY MR. FARCHIONE:

Q How much for trial testimony, sir?

A Same.

Q Doctor, what materials, if any, in addition to what are listed in your letter of September 22, 2005 were provided to you?

A I received copies of the expert reports from Becker & Mishkind; those reports of Mantovani, Kimberlin, Donn, Radetsky, Eichenwald and Sze.

Q Do you know any of those individuals?

A Only one. David Kimberlin.

Q How do you know Dr. Kimberlin?

A We never worked together, but through meetings and I think we participated in some studies that he's also been involved in. I know many of the people that he works with.

Q Have you had enough contact with him to develop an opinion as to his expertise in the area?

A No.

Q Doctor, what was it that you were asked to do in this particular case?

A My recollection is I was asked to state whether in my opinion Mr. Ratliff's diseases could be attributed to cytomegalovirus.

Q Other than that were you asked to do

anything else in this case?
A No.
Q Just so that we're clear, none of the opinions you're going to be expressing today should be taken directly or indirectly as a comment on standard of care.
A No, I have no opinion about standard of care, that's correct.
Q That would be both prenatally and during the newborn time period?
A That's correct; I've not formed any opinion on standard of care.
Q Have you formed an opinion to a probability what the cause was of this child's injuries?
A I have an opinion about what the cause was, but I have even greater opinion about what the cause was not due to.
Q Let me divide that into two.
A Okay.
Q You understand in medical/legal cases we deal with probability, correct?
A Right.
Q You also understand sometimes physicians may have a personal opinion of

something but it may not rise to a professional opinion?

A Right.

Q In this case do you have a professional opinion to a probability as to the cause of the child's cerebral palsy and mental retardation?

A Yes, I do.

Q What is that opinion?

A I think there was some kind of hypoxic injury associated with this child's birth either prior to birth or just after birth.

Q What is the underlying cause in your opinion of the hypoxic injury?

A Some sort of birth trauma.

Q Do you have an opinion as to what type of birth trauma that would be?

A No, I don't.

Q Do you have an opinion as to the timing of the onset of this hypoxic injury?

A At or near the time of birth. At the time of delivery.

Q So this child suffered an injury that was acute in nature that happened at the time

of birth?
A At or near.
Q Do you have an opinion to a probability as to how or what time prior to birth this child could have been delivered and been normal?
A No.
Q Is there a range of time that you can give to me?
A No.
Q And what we're seeing at birth into the newborn period would you agree with me is consistent with an hypoxic ischemic injury 12 or 24 hours prior to birth?
A I think that's correct, yes.
Q Would you agree with me that it's more likely than not that what we're seeing at birth and in the newborn time period that it is consistent with an injury that occurred 24 hours prior to delivery?
A It could have been.
Q Pardon?
A Yes, it could have been 24 hours.
Q I need to clarify that.
Would you agree with me to a

probability that what we're seeing at birth and in the newborn time period that it is consistent with an injury that occurred 24 hours before birth?

A I can't put a time on it.

As I said before, in my opinion this child's illness was not due to infection it was due to some kind of hypoxic or brain injury that occurred at or near the time of birth. I can't put it in terms of numbers of hours.

Q But at or time could be 12 to 24 hours as well as a few hours before birth.

MR. PESKIN: Objection. Or at birth.

BY MR. FARCHIONE:

Q Or at birth right.

A Yes.

Q What about beyond 24 hours, would you feel comfortable saying that what we're seeing at birth in the newborn period is also consistent with an injury that took place 24 to 48 hours before birth?

MR. PESKIN: Objection.

MR. FARCHIONE: He's just objecting for the record, Doctor.

MR. PESKIN: If you can answer that question the way it's phrased you can.

THE WITNESS: I don't know when this injury occurred.

BY MR. FARCHIONE:

Q I understand that. What I'm trying to elicit from you is -- we'll get into the basis of why you feel that it is an hypoxic injury -- what you see at birth and in the newborn time period my question is is that also consistent with an injury that took place 24 to 48 hours before the birth?

A It's possible, yes.

Q Just as possible as it is zero to 12 hours before birth.

MR. PESKIN: Objection.

THE WITNESS: Or zero to 12 hours after birth.

BY MR. FARCHIONE:

Q What happened after birth that you think may have caused this injury?

A I have no idea what the cause of the injury was, but there's clearly evidence in this case that this child was in a great deal of distress within 24 hours of being born.

Q What evidence do you cite to in support of that statement, Doctor?

A The child had low blood glucose, was severely acidotic, had difficulty breathing at the time of birth and subsequently was thought to have a DIC, vascular coagulopathy.

All the evidence would suggest that this was a baby that was normal, had a normal birth weight, normal head circumference, did not suffer any chronic problems in utero prior to delivery and at delivery something happened to this child and he was quite profoundly ill within 24 hours after birth. That's obvious from the record.

Q Doctor, is it your opinion that the injuries this child has could all have taken place after birth?

A Yes. After birth being within the first 24 hours after birth.

Q You said there were severe acidosis after birth. What do you believe supports that?

A It's in the record. He had a pH of about 7.0 as I recall reading in the chart there.

Q Plaintiffs' neonatology expert, Dr. Hermanson, puts that in the mild to moderate category of acidosis. Do you disagree with that?

A I'm not a neonatologist, but in my limited experience 7.0 is acidotic and I think that's corroborated by the lab data.

Q When you say limited experience, explain for me why your experience is limited.

A Because I'm not a neonatologist, I'm an infectious disease expert.

Q So you do not normally get called in to take care of children who have suffered an hypoxic ischemic event, correct?

A That's correct.

Q Only if there's a concern for an infection, I take it, you would be called in.

A Exactly correct.

Q Would you defer to a neonatologist or a pediatric neurologist in terms of the timing of this hypoxic ischemic event?

A Sure.

MR. PESKIN: Objection.

THE WITNESS: Yes, I would.

BY MR. FARCHIONE:

Q Doctor, have you looked at this case to determine whether or not there were clinical signs of chorioamnionitis?

A Not specifically, no.

Q Do you have an opinion as to whether or not chorioamnionitis can cause an injury similar to an hypoxic ischemic injury?

A I have no opinion on that.

Q Again, that would be something that you would defer to other specialties I take it.

A That's correct.

Q Why is it that you believe this injury was hypoxic in nature -- before you answer that question, Doctor, you said hypoxic. Was it hypoxic and ischemic or was it just an hypoxic injury?

A Hypoxia causes ischemia. If you have hypoxia by definition you have ischemia. They're basically the same thing.

Q Please tell me the basis for your opinion that this injury was an hypoxic ischemic event.

A I think there's a number of things

that would suggest this. The first was that there's no other plausible explanation. Certainly a viral infection is not a plausible explanation.

Secondly, as I already indicated this child had signs of an acute process that worsened post-natally in terms of laboratory parameters, clinical parameters and everything else that occurred that he was afflicted with was not present at birth but developed very rapidly within the first 24, 48 hours of life.

There's also evidence that the child had an Apgar of three at birth, needed to be suctioned, was in some respiratory difficulty immediately after birth so I think all the evidence points to a diagnosis almost of exclusion that this had to be some kind of an hypoxic brain injury.

Q Doctor, would you agree with me that 90 percent of cases involving cerebral palsy there is no known cause?

A I wouldn't agree or disagree. I don't know.

Q You don't know the percentage of

that?

A That's correct.

Q You certainly wouldn't agree that we can find the cause of all cases of cerebral palsy.

A I would assume not, but I don't know.

Q You've been able to rule out infection as a potential cause, correct?

A Yes.

Q In terms of this Apgar of three and this respiratory difficulty what is your opinion as to the cause of the respiratory difficulty?

A I believe the baby had an hypoxic insult and was breathing rapidly. Anytime you're hypoxic you breathe rapidly to compensate for low oxygen.

Q Plaintiffs' neonatology expert stated that the respiratory difficulty was due to mild meconium aspiration.

A That would do it, too.

Q Do you have an opinion as to what it was in this particular case? Was it hypoxia or was it mind meconium aspiration?

A Mild meconium aspiration leads to

hypoxia.

Q Mild meconium aspiration does not lead to hypoxic brain injury, does it?

A It could.

Q It could but it does not probably, does it?

A I don't know. I don't see any reason why not. We certainly know that meconium aspiration will lead to hypoxia which can lead to brain injury.

Q Do you believe in this case that the mild meconium aspiration led to hypoxia and led to brain injury in this case?

A There's no way anyone could answer that question.

Q When you talked about other processes worsening after the child was born what are you talking about, the DIC; those items you listed for me earlier?

A The DIC, the child developed low platelets, he had seizures, coagulopathy, increased heart rate, respiratory rate, acidosis -- all signs of a child who has had a severe injury or insult.

Q Are any of those inconsistent with a

child who has an infection or sepsis?

A You have to define infection and sepsis.

Q How would you define it?

A We usually begin by defining it as to whether or not you have a bacterial infection or a viral infection. This child could have had a bacterial infection which could have led to many or even all of the findings that he had. In fact, he did not have a bacterial infection as far as the record would indicate.

Q And that's based on the fact that blood cultures were negative.

A Yes. I think the blood cultures were negative, spinal fluid was normal, the child was seizing, there was no evidence of meningitis, urine cultures were negative.

The onset was very rapid. It would be very unusual to see this picture with early onset Group E strep. They most always have pneumonia which he didn't. The early onset, the fact it happened quickly, suggests to me that this was not a bacterial infection.

Q Of the items you listed what are inconsistent with a viral infection?

A Pretty much everything.

Q With a viral infection you do not see DIC?

A No.

Q Are you saying a hundred percent of the time?

A You have to talk about what you mean by viral infection. There's multiple different viruses. There are very few that would infect the neonate at this age, and certainly very few that would cross the placenta. I can't think of a single viral infection that would give a picture like this at all. It is possible but unlikely, very unlikely.

Q Let's go through the list that you have in your report.

A Sure.

Q The second item you have is there are no intracranial calcifications to indicate infection.

A To indicate CMV infection, that's correct.

Q That's what I wanted to clarify first of all because it says indicate infection. You were referring to a CMV infection?

A Yes. It says in my report: I hold the opinion to a degree of medical probability that Mr. Ratliff's injuries are not the result of a CMV infection.

Q In number two you state Robert had no intracranial calcifications to indicate infection. Again that word infection relates to CMV, correct?

A That's correct.

Q There are infections that you can have that will not manifest in calcifications, correct?

A Correct.

Q What type of infections would that be, Doctor?

A What kind of infections you would have that would not cause calcifications?

Q Right. That would cause brain injury to a child but would not have calcifications.

A It could be CMV, you could have congenital toxoplasmosis. Those would be the only two.

Syphilis, congenital syphilis. You could have rubella, for example. Those would be the major ones.

Enterovirus is not an intrauterine infection, it's a post-natal infection. It's conceivable that could cause a brain injury without calcification. It certainly wouldn't cause calcifications.

Q Would it depend on the timing of the onset of the infection in utero as to whether or not you're going to see the calcifications in the newborn time period?

A Nobody knows. Nobody knows what causes the calcifications or what they're due to. There's no insight in the literature and no one has ever told me nor is there any evidence to tell us what those calcifications are due to.

Q If we have calcifications on a scan you can't say that that takes at least this many weeks to develop following a CMV infection?

A That's correct.

Q Would that be the same as it relates to microcephaly at birth? In other words, if

a child has an onset of CMV infection closer to the time of birth you would not necessarily see microcephaly, correct?

A That's correct.

Q The fact that a child is not microcephalic does not necessarily rule out a CMV infection, correct?

A Well, of children who have a congenital CMV infection who have disease 54 percent will have intracranial calcifications, so there's 46 percent who may of CMV disease without it.

Q That's the calcifications, right?

A That's only the calcifications, right.

Q I used the term microcephaly. Do you use that differently from small head?

A No. It means small head.

Q What percentage of children that are CMV infected as infants have a small head or microcephaly?

A It depends on what you mean by CMV. If you use the word CMV infected then it's a very small percentage because 90 percent of children who have a CMV infection are going

to be disease free and normal at birth and subsequently.

It's only patients who have what we call symptomatic CMV infections; that is, they have symptoms compatible with intrauterine CMV infection and CMV disease. If they are diseased versus infected then microcephaly is going to be present in approximately at least 40 percent of these infants.

Q Who will have a small head?

A Yes.

Q Those are symptomatic CMV patients?

A Right.

Q The way you answered that question indicated to me that you were looking up something.

A I have some notes here. Actually it's 75 percent. 75 percent of children with symptomatic disease will have -- I take that back.

50 percent is correct. I misspoke the first time I gave it to you. 50 percent of children who have symptomatic infection will have microcephaly.

Q What percentage of symptomatic CMVs will have intrauterine growth restriction?
A About 40 percent.
Q What percentage of symptomatic CMV patients will have jaundice?
A About 67 percent.
Q What percentage of the symptomatic CMV patients will go on to have hearing deficits?
A Usually about 50 percent of these kids will have a hearing deficit at one time or another.
Q The notes you're referring to, how many pages are they?
A My notes are one page.
Q Is it typed or is it handwritten?
A Handwritten.
Q Does it contain opinions?
A No.
Q What does it contain?
A It contains a list of the signs and symptoms of CMV disease in the newborn and the relative findings in this particular case.
Q The signs and symptoms that you have

listed were they from textbook articles or are they from your memory and experience?

A Both.

Q Why don't you read through that list for me, please.

A Intrauterine growth retardation-pre-term, inguinal hernia, petechiae, puerpera, jaundice, elevated bilirubin, ALT, hepatomegaly, thrombocytopenia, anemias, microcephaly or small head, calcifications, poor feeding, suck, lethargy, seizures, increased spinal fluid, protein, splenomegaly, hearing loss and chorioretinitis.

Q In your report you did not list that many items.

A That's correct.

Q Any reason why you didn't go through the entire list in your report?

A No, no particular reason.

Q In other words, what I'm getting at is were you picking out the most common findings and you listed them in your report or was it just simply you stopped at eight?

A I didn't even have eight in that

report. Probably most of those are listed in my report.

Q Doctor, you're board certified in pediatrics, correct?

A That is correct.

Q Are you board certified in any other specialty?

A No.

Q Is there an infectious disease board?

A There is.

Q Have you taken that?

A No.

Q Why have you chosen not to take that?

A The pediatric infectious disease board is relatively new. It came out about ten years ago and I'd been practicing for about 25 years by the time it came out and it was of no practical value to me.

Q I don't blame you.

Are you familiar with the ACOG and the American Academy of Pediatrics monograph on hypoxic ischemic injury?

A No, I'm not.

Q The title of it is Neonatal Encephalopathy and Cerebral Palsy.

A No, I don't have a copy of that.
Q Have you ever looked at it?
A Not to my knowledge.
Q It lists out the criteria to determine an acute hypoxic ischemic event. You're not familiar with that?
A No, I'm not.
Q So we're clear, Doctor, your opinion is number one the cause of the injury to this child was an hypoxic ischemic event, correct?
A No, I wouldn't say that.
Q How would you phrase it?
A I would say that in the absence of another cause it seems like the most reasonable conclusion is that this was due to some hypoxic ischemic event.
Q And you were able to rule out CMV as a cause, correct?
A That was my primary focus, yes.
Q In terms of other causes I take it you weren't ask to take a look at it from that standpoint, correct?
A I looked at it from the point of view of other viruses or other intrauterine infections including enteroviruses and I came

to the conclusion that none of those were reasonable causes.

Q In terms of whether there was chorioamnionitis and funisitis which may have contributed or caused the injury to this child you do not have an opinion as to that.

A No, I do not. Could he have aspirated amniotic fluid contaminated with bacteria and had an pneumonia? I don't believe that would happen.

Q No, I'm talking about chorioamnionitis and funisitis with cytokine release causing brain injury to this child.

A In utero?

Q In utero.

A No, I don't think there's such an entity that I'm aware of that would do that.

Q You're not familiar with that literature?

A I'm familiar with the fact that there are theories that this could happen, but I think they're highly theoretical.

Q Have you written on that topic or researched that topic specifically at any point in time?

A No, I have not.

Q I take it that's not a topic that you have a special interest in, chorioamnionitis and/or funisitis as it relates to prenatal brain injury.

A That's correct.

MR. FARCHIONE: Doctor, that's all I have.

MS. DISILVIO: I don't have any questions at this time.

MR. FARCHIONE: Doctor, you have the right to review the deposition and make whatever changes you deem appropriate or you can waive that right. The choice is yours, but you need to state so for the court reporter.

THE WITNESS: I'll read and sign.

MR. FARCHIONE: I'll order the original by e-transcript in dot PTX form.

(Signature reserved.)

(Deposition adjourned at 3:30 p.m.)

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_____

Stuart P. Adler

Sworn and subscribed
to before me this
_____ day of _____, 2006

Notary Public:_____

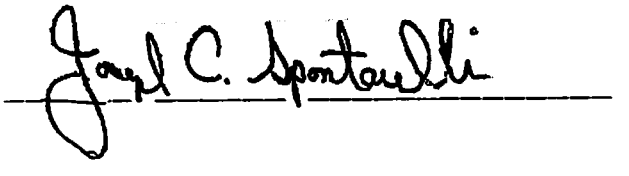
My Commission Expires:_____

COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

I, Joseph C. Spontarelli, CCR, Notary Public in and for the Commonwealth of Virginia at Large, and whose commission expires October 31, 2007, do certify that the aforementioned appeared before me, was sworn or affirmed by me, and was thereupon examined by counsel; and that the foregoing is a true and correct transcript taken to the best of my ability.

I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interested in the event thereof.

Given under my hand and notarial seal at Richmond, Virginia, this 25th day of September 2006.



Joseph C. Spontarelli,
Court Reporter/Notary Public
Va. CCR #0315028