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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STACY RATLIFF, et al,
Plaintiffs,

v.

Case No. CV04522634

BOOTH MEMORIAL HOSPITAL,
et al.,

Defendants.

COPY

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

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

10

11 APPEARANCES:

12

13 BECKER & MISHKIND CO., L.P.A.
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21 On behalf of the Plaintiffs

22

23 REMININGER & REMINGER CO., L.P.A.
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 Via telephone on behalf of
 Booth Memorial Hospital

24

25

1 APPEARANCES:

2

3 SUTTER, O'CONNELL, MANNION & FARCHIONE

By: Joseph A. Farchione, Esquire

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5 Cleveland Ohio 44114

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Via telephone on behalf of

7 Sharon Mikol, M.D.

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Stuart P. Adler, M.D.	Mr. Farchione	5

1 P R O C E E D I N G S

2 3:00 p.m.

3

4 STUART P. ADLER, M.D.,

5 was sworn or affirmed and testified as follows:

6

7 BY MR. FARCHIONE:

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

10 A Stuart P. Adler.

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

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

17 A Correct.

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

21 A Yes.

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

24 A I have not kept track.

25 Q How often do you receive cases to

1 review?

2 A I receive between one and three per
3 year.

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

7 A Absolutely not.

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

10 A I have no idea.

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

13 A Never.

14 Q What are your charges for reviewing?

15 A \$300.

16 Q What are they for deposition?

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

18 Q 600 for the deposition or 600 per
19 hour?

20 A Not per hour, no.

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

23 BY MR. FARCHIONE:

24 Q How much for trial testimony, sir?

25 A Same.

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

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

8 Q Do you know any of those individuals?

9 A Only one. David Kimberlin.

10 Q How do you know Dr. Kimberlin?

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

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

18 A No.

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

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

25 Q Other than that were you asked to do

1 anything else in this case?

2 A No.

3 Q Just so that we're clear, none of the
4 opinions you're going to be expressing today
5 should be taken directly or indirectly as a
6 comment on standard of care.

7 A No, I have no opinion about standard
8 of care, that's correct.

9 Q That would be both prenatally and
10 during the newborn time period?

11 A That's correct; I've not formed any
12 opinion on standard of care.

13 Q Have you formed an opinion to a
14 probability what the cause was of this
15 child's injuries?

16 A I have an opinion about what the
17 cause was, but I have even greater opinion
18 about what the cause was not due to.

19 Q Let me divide that into two.

20 A Okay.

21 Q You understand in medical/legal cases
22 we deal with probability, correct?

23 A Right.

24 Q You also understand sometimes
25 physicians may have a personal opinion of

1 something but it may not rise to a
2 professional opinion?

3 A Right.

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

8 A Yes, I do.

9 Q What is that opinion?

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

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

16 A Some sort of birth trauma.

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

19 A No, I don't.

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

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

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

1 of birth?

2 A At or near.

3 Q Do you have an opinion to a
4 probability as to how or what time prior to
5 birth this child could have been delivered
6 and been normal?

7 A No.

8 Q Is there a range of time that you can
9 give to me?

10 A No.

11 Q And what we're seeing at birth into
12 the newborn period would you agree with me is
13 consistent with an hypoxic ischemic injury 12
14 or 24 hours prior to birth?

15 A I think that's correct, yes.

16 Q Would you agree with me that it's
17 more likely than not that what we're seeing
18 at birth and in the newborn time period that
19 it is consistent with an injury that occurred
20 24 hours prior to delivery?

21 A It could have been.

22 Q Pardon?

23 A Yes, it could have been 24 hours.

24 Q I need to clarify that.

25 Would you agree with me to a

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

5 A I can't put a time on it.

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

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

14 MR. PESKIN: Objection. Or at birth.

15 BY MR. FARCHIONE:

16 Q Or at birth right.

17 A Yes.

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

23 MR. PESKIN: Objection.

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

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

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

5 BY MR. FARCHIONE:

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

13 A It's possible, yes.

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

16 MR. PESKIN: Objection.

17 THE WITNESS: Or zero to 12 hours
18 after birth.

19 BY MR. FARCHIONE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 A That's correct.

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

19 A Exactly correct.

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

23 A Sure.

24 MR. PESKIN: Objection.

25 THE WITNESS: Yes, I would.

1 BY MR. FARCHIONE:

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

5 A Not specifically, no.

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

9 A I have no opinion on that.

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

13 A That's correct.

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

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

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

25 A I think there's a number of things

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

5 Secondly, as I already indicated this
6 child had signs of an acute process that
7 worsened post-natally in terms of laboratory
8 parameters, clinical parameters and
9 everything else that occurred that he was
10 afflicted with was not present at birth but
11 developed very rapidly within the first 24,
12 48 hours of life.

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

20 Q Doctor, would you agree with me that
21 90 percent of cases involving cerebral palsy
22 there is no known cause?

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

25 Q You don't know the percentage of

1 that?

2 A That's correct.

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

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

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

9 A Yes.

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

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

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

21 A That would do it, too.

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

25 A Mild meconium aspiration leads to

1 hypoxia.

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

4 A It could.

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

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

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

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

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

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

25 Q Are any of those inconsistent with a

1 child who has an infection or sepsis?

2 A You have to define infection and
3 sepsis.

4 Q How would you define it?

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

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

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

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

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

3 A Pretty much everything.

4 Q With a viral infection you do not see
5 DIC?

6 A No.

7 Q Are you saying a hundred percent of
8 the time?

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

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

20 A Sure.

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

24 A To indicate CMV infection, that's
25 correct.

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

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

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

12 A That's correct.

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

16 A Correct.

17 Q What type of infections would that
18 be, Doctor?

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

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

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

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

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

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

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

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

23 A That's correct.

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

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

4 A That's correct.

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

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

13 Q That's the calcifications, right?

14 A That's only the calcifications,
15 right.

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

18 A No. It means small head.

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

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

1 to be disease free and normal at birth and
2 subsequently.

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

11 Q Who will have a small head?

12 A Yes.

13 Q Those are symptomatic CMV patients?

14 A Right.

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

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

22 50 percent is correct. I misspoke
23 the first time I gave it to you. 50 percent
24 of children who have symptomatic infection
25 will have microcephaly.

1 Q What percentage of symptomatic CMVs
2 will have intrauterine growth restriction?

3 A About 40 percent.

4 Q What percentage of symptomatic CMV
5 patients will have jaundice?

6 A About 67 percent.

7 Q What percentage of the symptomatic
8 CMV patients will go on to have hearing
9 deficits?

10 A Usually about 50 percent of these
11 kids will have a hearing deficit at one time
12 or another.

13 Q The notes you're referring to, how
14 many pages are they?

15 A My notes are one page.

16 Q Is it typed or is it handwritten?

17 A Handwritten.

18 Q Does it contain opinions?

19 A No.

20 Q What does it contain?

21 A It contains a list of the signs and
22 symptoms of CMV disease in the newborn and
23 the relative findings in this particular
24 case.

25 Q The signs and symptoms that you have

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

3 A Both.

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

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

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

17 A That's correct.

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

20 A No, no particular reason.

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

25 A I didn't even have eight in that

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

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

5 A That is correct.

6 Q Are you board certified in any other
7 specialty?

8 A No.

9 Q Is there an infectious disease board?

10 A There is.

11 Q Have you taken that?

12 A No.

13 Q Why have you chosen not to take that?

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

19 Q I don't blame you.

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

23 A No, I'm not.

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

1 A No, I don't have a copy of that.

2 Q Have you ever looked at it?

3 A Not to my knowledge.

4 Q It lists out the criteria to
5 determine an acute hypoxic ischemic event.
6 You're not familiar with that?

7 A No, I'm not.

8 Q So we're clear, Doctor, your opinion
9 is number one the cause of the injury to this
10 child was an hypoxic ischemic event, correct?

11 A No, I wouldn't say that.

12 Q How would you phrase it?

13 A I would say that in the absence of
14 another cause it seems like the most
15 reasonable conclusion is that this was due to
16 some hypoxic ischemic event.

17 Q And you were able to rule out CMV as
18 a cause, correct?

19 A That was my primary focus, yes.

20 Q In terms of other causes I take it
21 you weren't ask to take a look at it from
22 that standpoint, correct?

23 A I looked at it from the point of view
24 of other viruses or other intrauterine
25 infections including enteroviruses and I came

1 to the conclusion that none of those were
2 reasonable causes.

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

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

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

14 A In utero?

15 Q In utero.

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

18 Q You're not familiar with that
19 literature?

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

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

1 A No, I have not.

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

6 A That's correct.

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

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

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

17 THE WITNESS: I'll read and sign.

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

20

21 (Signature reserved.)

22

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

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17

Stuart P. Adler

18

19

20 Sworn and subscribed

to before me this

21 _____ day of _____, 2006

22

23 Notary Public: _____

24 My Commission Expires: _____

25

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2

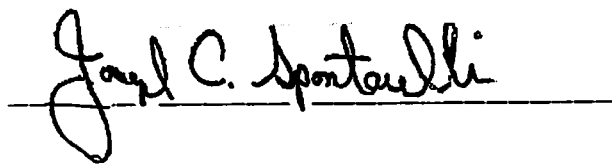
3 I, Joseph C. Spontarelli, CCR, Notary Public
4 in and for the Commonwealth of Virginia at Large,
5 and whose commission expires October 31, 2007, do
6 certify that the aforementioned appeared before
7 me, was sworn or affirmed by me, and was
8 thereupon examined by counsel; and that the
9 foregoing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

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

15 Given under my hand and notarial seal at
16 Richmond, Virginia, this 25th day of September
17 2006.

18

19



20

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