

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

MARGARET PENZOLD, :
 Plaintiff, :
 : :
v. : AT LAW NO. :
 : CL07-4822 :
 : :
CARL LINDEMANN, MD, :
- and - :
TIDEWATER PHYSICIANS :
MULTI-SPECIALTY GROUP, PC, :
 Defendants. :

 :

DEPOSITION UPON ORAL EXAMINATION
MARY M. FOOKS

August 28, 2009 -- 10:30 a.m.

Virginia Beach, Virginia

APPEARANCES: SHAPIRO, COOPER, LEWIS & APPLETON, P.C.
By: James C. Lewis, Esquire,
counsel for the Plaintiff.

HANCOCK, DANIEL, JOHNSON & NAGLE, P.C.,
By: John R. Redmond, Esquire, counsel for
the Defendants.

Old Dominion Reporting
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EXAMINATION

MARY M. FOOKS

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1 Deposition upon oral examination of Mary M. Fooks,
2 taken before Shannon A. Crittenden-Mann, a Notary Public for
3 the Commonwealth of Virginia at Large, pursuant to Notice
4 and Agreement, commencing at 10:30 a.m. on August 28, 2009,
5 at Law Offices of Shapiro, Cooper, Lewis & Appleton, P.C.,
6 1294 Diamond Springs Road, Virginia Beach, Virginia, and
7 these in accordance with the Rules of the Supreme Court of
8 Virginia, 1950, as Amended.

9
10 MARY M. FOOKS, called as a witness on behalf of
11 the Plaintiff, after having been first duly sworn, was
12 examined and testified as follows:

13
14 BY MR. REDMOND:

15 Q Good afternoon, ma'am. As I indicated, my name is
16 John Redmond. I represent Dr. Lindemann and his group in
17 this case, and this is my opportunity today to ask you some
18 questions about what you know, what you remember, what other
19 people told you and so forth about your mom. Okay?

20 A (Witness nods head affirmatively.)

21 Q Shannon here is taking down everything we say, and
22 so it's important for us to get an accurate transcript for
23 you to use verbal answers. You've been nodding at me and I
24 can see that and know what you're saying here, but when we
25 pick it up and read it later you won't be able to figure out

1 what it was.

2 A You don't get the nods?

3 Q Right.

4 A Okay.

5 Q So if you could use verbal answers that would be
6 great, and I guarantee you you're going to mess that up and
7 I will too at one point or another, and I will ask you to
8 repeat your answer if that's true so we're sure we have
9 something that's verbal. Okay?

10 A Yes. Yes.

11 MR. LEWIS: You're trainable.

12 A Forget it. Yes.

13

14 BY MR. REDMOND:

15 Q A lot of times I'll mumble my question or it will
16 just come out not making any sense to you. If that's the
17 case please just ask me to rephrase it, reask it. I'll be
18 happy to do that because our goal here today is to get a
19 transcript every body can understand. All right?

20 A I understand.

21 Q There you go. And the oath that Shannon just
22 administered is the same oath that you would get in a court
23 of law, so it's just as important. It's under penalty of
24 perjury, and you understand that?

25 A Yes.

1 Q All right. Have you ever had your deposition
2 taken before like this?

3 A No.

4 Q Have you ever testified in court before for like a
5 traffic ticket?

6 A Well, no. I had to think about that. I don't --
7 no.

8 Q Can I have your full name and address, please?

9 A All right. My name is Mary Margaret Fooks, F,
10 like in Frank, O-O-K-S.

11 Q And where do you live?

12 A 1047 Manchester Avenue.

13 Q That's in Norfolk?

14 A Norfolk, 23508.

15 Q And you married?

16 A Yes.

17 Q What's your husband's name?

18 A Robert. Nelson is his middle name.

19 Q All right.

20 A Fooks.

21 Q Anybody else live with you at your home?

22 A No.

23 Q Do you work --

24 A No.

25 Q -- outside the home?

1 A (Witness shakes head negatively.)

2 Q Did you in the past?

3 A Yes.

4 Q What did you do?

5 A Well, lots of things. The most recent was about
6 twelve years for a decorator/work room shop in
7 Charlottesville. I sewed.

8 Q Did you live in Charlottesville at the time?

9 A Yes.

10 Q And you moved from Charlottesville at some point
11 to Norfolk?

12 A Last fall. Fall of '08.

13 Q And how long did you live in Charlottesville
14 before that?

15 A Fourteen years.

16 Q Does your husband still work?

17 A No.

18 Q What did he do when he last worked?

19 A Well, he's a civil engineer, so contract,
20 developer, builder.

21 Q Do you or your husband have any medical training
22 of any kind, nurse, doctor, EMS training?

23 A No.

24 Q Anybody in your family?

25 A I have a sister who's a nurse.

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1 Q Which one is that?

2 A Well, she -- she lives in Springfield, Illinois.
3 Her name is Polly, but --

4 Q Tell me a little bit about your educational
5 background.

6 A Well, I have a BA from Mary Baldwin College.

7 Q In what?

8 A Art.

9 Q Any graduate school?

10 A No.

11 Q Did you review anything to prepare for today's
12 deposition, medical records, legal looking junk, anything at
13 all?

14 A Well, last night with my sister and my mother we
15 just went over the chronological like surgeries and things
16 like that that she had had.

17 Q Was that a --

18 A But I didn't study anything legal last night.

19 Q Well, when you say chronological, did you have a
20 chronology, written chronology?

21 A Right, sort of, starting with the 8th of
22 August 2005.

23 Q All right. And was this something that you
24 prepared or who prepared it?

25 A Another sister and I prepared it together.
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1 Q Who is the other sister?

2 A Laura Derrickson.

3 Q Do you still have a copy of it?

4 A Yes, I do, but it's out in the car.

5 Q I'd like to take a short break and ask you to get
6 it. Can you do that for me?

7 A Sure.

8 MR. REDMOND: All right with you, Jimmy?

9 MR. LEWIS: Sure. Absolutely.

10

11 (There was a short break, after which, testimony
12 continues as follows:)

13

14 BY MR. REDMOND:

15 Q Ms. Fooks, you've been kind enough to grab the
16 chronology. I guess can we call this a chronology?

17 A I guess. It's -- I don't know who has the
18 original copy, but as you can see, the last line on each
19 page didn't -- I mean, it's not on mine either.

20 Q Right, but we'll get a little better copy later,
21 I'm sure, but just for purposes of asking you questions and
22 I call this a chronology. Is that okay with you?

23 A Sure.

24 Q And just so we have it on the record, it's one,
25 two, three, four, five -- five handwritten pages and then

1 one, two -- two typewritten pages. The typewritten pages
2 have a title "Addendum to the Notes of October 26th, 2006
3 Written by Laura Derrickson," and then the date next to that
4 is November 11th, 2006. The handwritten portion the title
5 is "Summary of Margaret Penzold's Medical Problem of Summer
6 2005, Written by Daughter, Laura Derrickson, 10/26/06."
7 Right?

8 A Uh-huh.

9 Q Is that true?

10 A Yes.

11 Q Is this Laura's handwriting?

12 A Yes.

13 Q And the typed up version is -- if you know did
14 Laura type that up?

15 A I guess so.

16 Q Not sure?

17 A I'm not sure.

18 Q And what prompted the creation of these two
19 things? Why was it thought necessary to write down a
20 chronology of events?

21 A Well, let's see. Well, just to get everything in
22 order of when it happened. I mean --

23 Q Right. Well, the date on this document, the
24 handwritten document says it was written on October 26th,
25 2006, which would be roughly a year and maybe a couple

1 months after the -- the events of this case; right?

2 A Right.

3 Q Was there something at that period of time in
4 October of 2006 that sort of prompted the idea that you-guys
5 needed to get your thoughts in order with the chronology?

6 A Not anything in particular, you know. We just
7 decided to go forward I guess with this whole thing.

8 Q And that's sort of what I was getting to. When
9 you say "decided to go forward," at this point were you
10 talking -- you, and you the daughters, and your mom talking
11 about maybe filing a lawsuit?

12 A Right.

13 Q Or talking to a lawyer?

14 A Right.

15 Q Was any of this created at the request of a
16 lawyer?

17 A No.

18 Q And it was created, both these documents, to help
19 you order your thoughts and remember things?

20 A Yes.

21 Q True?

22 A Yes.

23 Q And realizing that these are summaries, as far as
24 you know these are accurate summaries of what occurred?

25 A Yes.

1 Q All right. Did the creation of either of these
2 documents take place when your daughters were -- or some
3 number of you were gathered together to do it or was it
4 created separately?

5 A No. At least Laura and I probably did it
6 together. I really don't remember, but she and I probably
7 did it.

8 Q Talking about the handwritten version?

9 A Yes.

10 Q All right. I guess what I want to ask you is I
11 have three brothers. Sometimes we would convene when my mom
12 was sick and talk about things. Did you-guys sort of -- all
13 the daughters convene and discuss what maybe you ought to
14 do?

15 A Well, by e-mail, but we're so scattered that the
16 two of us where are here together so we did that.

17 Q Was the decision to call a lawyer and take a look
18 at whether to file a lawsuit one made sort of as a group?

19 A Yes.

20 Q All right. We'll get to these in a minute. I
21 want to sort of continue the stream that I was working with.
22 Okay?

23 A Okay.

24 Q And I think I asked you if you reviewed anything
25 to prepare for today, and you told me you reviewed these two
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1 things; right?

2 A Just that, yeah.

3 MR. REDMOND: And by the way, we're going to
4 mark these together as Exhibit One?

5 MR. LEWIS: Fine.

6 MR. REDMOND: All right.

7 MR. LEWIS: Fine. It's okay.

8 MR. REDMOND: We're going to combine them
9 rather than separate them because they're the
10 same thing basically.

11

12 (Handwritten and Typewritten Documents were marked
13 as Fooks Deposition Exhibit Number One.)

14

15 BY MR. REDMOND:

16 Q Other than reviewing this document, Exhibit One,
17 did you review anything else, go on the Internet look up
18 anything, look at any medical books, read a handout about
19 what a deposition was, anything like that?

20 A No.

21 Q You ever read any deposition transcripts of
22 anybody in any kind of case?

23 A No.

24 Q Did you have an opportunity to talk to Mr. Lewis
25 or somebody from his office about what a deposition was and
Old Dominion Reporting

1 that you would be asked questions and so forth?

2 A No, not me.

3 Q All right. Have you ever had a conversation with
4 Mr. Lewis?

5 A No, not -- except just greeting him when I've been
6 here twice with my mother now.

7 Q Got you. For what reason did you bring your mom
8 here? Just to talk with the lawyer, regular information?

9 A Well, she -- she came about a month ago with my
10 sister just to meet Jim. Laura Derrickson was here for a
11 visit.

12 Q So Laura went with your mom on the occasion to
13 meet Jim Lewis?

14 A Right.

15 Q And you went on one occasion yourself to meet
16 Mr. Lewis?

17 A No. I met them here from Norfolk just to help
18 with my mother.

19 Q So the three of you were here?

20 A Yeah.

21 Q Did the three of you take part in conversations
22 with Mr. Lewis or did he kind of pull your mom out
23 separately?

24 A I did not and I -- I don't even know if he talked
25 to my mother.

1 Q All right. Mainly just a chance for you to meet
2 him?

3 A Yes.

4 Q All right. Have you talked with your sisters or
5 your mom about your deposition today?

6 A No.

7 Q I want to go back now to the period of time that
8 we're basically, you know, going to be talking about in this
9 lawsuit in 2005, all right, August of 2005. Did you have
10 any knowledge of your mom having any pains or problems in
11 the couple of weeks before she went to see Dr. Lindemann in
12 August?

13 A Only by phone. I was --

14 Q What did you learn?

15 A She was having pain in her hip.

16 Q Did she describe what kind of pain, whether it was
17 dull, sharp, achy?

18 A No, except bad, bad pain.

19 Q Did she mention whether it was continuous, there
20 all the time or came and went with different activities?

21 A Not really. See, I didn't live down here and I
22 never came down during that time. So --

23 Q So you didn't have an understanding whether it was
24 something that she suffered from throughout the day or just
25 at certain points she did things?

1 A No.

2 Q And, again, these things occurred a number of
3 years ago and you lived in Charlottesville at the time, so I
4 understand you're not going to remember stuff any better
5 than I can remember stuff or certainly no better than
6 Mr. Lewis can remember stuff. So if you don't know the
7 answer to a question and you can't remember you just tell me
8 that and we'll move on.

9 A Okay.

10 Q You don't have to try and reconstruct and put it
11 together. Okay?

12 A Okay.

13 Q All right. So you heard in a phone call from your
14 mom that her hip hurt and it was bad. Did she characterize
15 it in any other way?

16 A No, she did not.

17 Q All right. Any of your sisters called you to say
18 they heard from your mom and heard anything about it?

19 A Well, a sister who lives in Richmond had stopped
20 by her house like a week before this happened on her way
21 home from the beach and just -- she called me that night
22 when she got back to Richmond and said, "I think something's
23 wrong," because the house was a mess apparently with dirty
24 dishes and she just thought things looked strange, a little
25 unkempt.

1 Q And this was before your mom had seen
2 Dr. Lindemann?

3 A Uh-huh.

4 Q Is that yes?

5 A Yes. It was like on Saturday before she went on
6 Monday.

7 Q All right. And refresh my recollection. Which
8 sister is this?

9 A Well, this sister's name is Phoebe Zarnegar.

10 Q Got you.

11 A She lives in Richmond.

12 Q Right, and did Phoebe mention to you, you know,
13 when she went by and saw your mom on that Saturday anything
14 about the hip pain, anything about your mom being in pain or
15 uncomfortable?

16 A Not -- I don't think so.

17 Q All right. So when was the next time you learned
18 anything about your mom, her hip pain and so forth?

19 A I can't really remember except the week between
20 the 8th and the 12th I did have several telephone
21 conversations with her from Charlottesville and she just
22 kept telling me she had this terrible pain in her hip.

23 Q Same as before, she didn't tell you a continuous?

24 A Yeah, she did not elaborate.

25 Q Just was bad?

1 A Yeah.

2 Q Now, that would have been after she saw
3 Dr. Lindemann on the 8th. Did she say anything about the
4 visit with Dr. Lindemann?

5 A No.

6 Q Did you even know she went to see Dr. Lindemann?

7 A Yes, she told me she did.

8 Q All right. Did she say anything about what tests
9 he did, what he asked her, anything?

10 A (Witness shakes head negatively.)

11 Q No?

12 A No, and it wasn't -- I think he gave her something
13 for pain.

14 Q Other than that vague notion, did your mom tell
15 you or did you learn from any other source that she'd been
16 given a prescription for medication during that visit?

17 A I don't think so.

18 Q And let me -- let me make myself clear about one
19 thing. When I ask you if you've learned something or not,
20 I'm just not talking about whether your mom actually told
21 you. I'm talking about whether your sisters told you or you
22 found out some other way, okay, just so we understand each
23 other. Nothing?

24 A Right. Nothing.

25 Q All right. In the period of time between the 8th
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1 and the 12th, and you told us that your mom said she was
2 continuing to have bad pain, did she say that the medicine
3 had helped her any?

4 A No, it didn't. She told me in another
5 conversation, no, it didn't.

6 Q Do you know whether she either called
7 Dr. Lindemann's office to say that or went back in or made
8 any other contact with them in that interim between the 8th
9 and 12th?

10 A Wednesday the 10th she called him again to tell
11 him she was still in a lot of pain.

12 Q And how did you find that out?

13 A I kept calling her all week off and on. I
14 happened to have -- I had the week off as vacation. I
15 should have come down, but I didn't. I was painting at
16 home.

17 Q That's some vacation.

18 A Yeah. Well, it was a stay-at-home vacation, so I
19 just kept calling her.

20 Q And she told you during one of those calls that
21 she called in on Wednesday?

22 A Yes.

23 Q All right. So that's how you found that out?

24 A Yes.

25 Q And did she tell you what -- what happened during
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1 that call, how that went and --

2 A He prescribed another medication, which I don't
3 know what it was over the phone. I guess he called it in to
4 the drug store or wherever she -- I'm not even sure where
5 she gets her medication, and a neighbor picked it up and
6 brought it home to her.

7 Q Do you know whether she actually spoke with
8 Dr. Lindemann or his nurse or --

9 A No, I don't know.

10 Q Now, in this period of time between the 8th and
11 the 12th, did she ever describe her pain changing at all,
12 either it being worse than before or moving?

13 A No.

14 Q Was she able to drive during that time?

15 A Not after Monday, the 8th. She drove herself
16 there that day.

17 Q And drove herself home presumably?

18 A Uh-huh. Yes.

19 Q But not after that?

20 A No.

21 Q Okay. What else did you learn from your mom
22 during that week when you kept calling her, anything new,
23 different?

24 A No.

25 Q Anything you learned from your sister -- sisters
Old Dominion Reporting

1 or any other source during that week?

2 A No. I didn't -- did not talk to them, anybody
3 again until Friday night when she was headed into surgery.

4 Q All right. So the next series of events that led
5 to information was when you were actually called and told
6 that she was -- had been seen at an urgent care center and
7 was going to the hospital?

8 A Not until she was at the hospital. I got a call
9 from my sister who took her there.

10 Q Okay. And which sister was that?

11 A That was Phoebe.

12 Q And what did Phoebe tell you during that call?

13 A Well, she just told me that she was at the
14 hospital very seriously ill and they were getting ready to
15 do surgery.

16 Q Any other details?

17 A No.

18 Q Any discussion of Dr. Lindemann at all?

19 A Oh, no, not at all, not by that point.

20 Q Any discussion of what the -- did you understand
21 that the surgeon had already talked to Phoebe about what was
22 going to happen?

23 A Well, yes, my sister Phoebe had been conferring
24 with the surgeon, and they were getting ready to do surgery.

25 Q Were you told or did you know at that point what
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1 they thought might be wrong?

2 A No. They -- they weren't sure except that it was
3 pretty bad. They did not think she would survive the
4 surgery.

5 Q All right. And that's the information I'm trying
6 to figure out, whether there was anything else you were told
7 like that or anything specific?

8 A (Witness shakes head negatively.)

9 Q Nothing else?

10 A No.

11 Q All right. Did you go down to --

12 A Yeah, but of course it was -- we didn't get -- my
13 husband and I went down but not until -- we didn't get there
14 until 10:00 because we had to drive from Charlottesville.

15 Q Your mom out of surgery by then?

16 A Part of it. I think they had done everything they
17 had to do to the leg, but he came out and talked to us to
18 say then he was going in through the stomach to see if he
19 could locate where all this poison was coming from.

20 Q And what did -- were you there to get an
21 explanation directly from the doctor about what he found
22 when he looked at the leg?

23 A Yes, when the whole thing was over maybe about
24 midnight, you know, it was sort of overwhelming at that
25 point. I don't remember everything he said but --

1 Q Give me the gist of what he said.

2 A They did not have to take the leg off, which
3 they -- he went into surgery with an orthopedic surgeon
4 thinking that he might have to, and it was her appendix. I
5 never have understood the whole thing, but I mean, she had a
6 monster hole in her stomach because they had to do a lot of
7 digging to get all the poison out.

8 Q Anything else?

9 A No. I -- I think with anybody that age -- she was
10 89, but it seems to me that he told us that, you know, it
11 will be nip and tuck, you know, as to like 24 hours or
12 whatever they say to --

13 Q Right. Well, I want to focus on what he told you
14 he found, and you said -- and if you don't remember that's
15 fine, and I'm not looking for exact words. I'm just looking
16 for the gist. You've told me that he didn't have to
17 amputate the leg and that there was a monster hole in her
18 stomach I think you said. Can you explain it?

19 A Well, he cut the flesh away down to the bone.

20 Q In the leg?

21 A On her left leg, and what's it called?

22 Q Necrotic tissue?

23 A Yeah. It's the poison. It's like flesh-eating
24 disease on the inside. That's the way he described it.

25 Q Did he say where that came from?

1 A Well, it came from the burst appendix apparently.

2 Q That's what he told you?

3 A Yes, but I've never quite understood the whole
4 thing myself as far as a hernia had developed and --

5 Q What did that have to do with anything in the case
6 medically?

7 A Well, I don't know how to describe it. I really
8 don't because I'm not a medical doctor of what had gone on.
9 I really don't.

10 Q And that's fine. I'm just trying to figure out
11 from a lay person's perspective what you understood the
12 hernia had to do with anything?

13 A Well, the way I sort of understood is it that the
14 appendix had burst maybe a week or so and then it formed
15 like a sac around it, and then that herniated and broke and
16 drained down her leg, but that's just the way I've
17 understood it but I may not be right.

18 Q Do you remember him discussing anything about her
19 intestines or bowels?

20 A No.

21 Q There's a word that's been kicked around in a
22 medical sense here. This has nothing to do with Jim's past.
23 The word's been incarceration. Have you heard that before
24 from either Dr. Newman or anybody that talked about
25 Dr. Newman's opinion?

1 A No. What does that mean except being in jail? I
2 don't even know what that means.

3 Q It's an interesting word in the medical context.

4 A No.

5 Q All right. So did you -- were you told or did you
6 understand that any of her, for lack of a better word,
7 insides, other than the hernia and the appendix, were
8 unusual or abnormal?

9 A No.

10 Q Did you later at any time up until today learn any
11 additional information to explain the process of how her leg
12 became painful, hip, leg became painful?

13 A No.

14 Q Have you done any research since then anywhere,
15 Internet, medical books, asking around about the situation?

16 A No.

17 Q Have you talked to Dr. Newman at all, the surgeon,
18 at any time after those explanations he gave?

19 A No. No, not really. I can't -- you know, he
20 would come in the room for brief visits. You know how it is
21 when you're in a hospital and he would just look at
22 everything and, no, I never talked to him again about it.

23 Q Did your sisters or anybody else ever give you a
24 more thorough explanation of how it all came to happen?

25 A No.

1 Q All right. So to this day, what you've told me
2 remains what you understand, nothing more; is that correct?

3 A Yes. That's correct.

4 Q All right. So your mom's in the hospital for two
5 weeks or so and then went to the convalescent center?

6 A Three weeks, but one week after that surgery she
7 had to go back in. The plastic surgeon got there, you know,
8 and he took everything off, skin off the good leg to graft
9 it onto the bad leg.

10 Q Right. That was Dr. Kanter?

11 A That was Dr. Kanter.

12 Q And then there was drainage and the legs healed
13 and so forth eventually over time?

14 A Yes, but it was gruesome.

15 Q And over that period -- moving this along because
16 I've already talked -- I've already deposed your sister and
17 your mom, so I'm not trying to put words in your mouth. So
18 you tell me if I'm not getting the story here, but what I
19 understand and it makes sense is that in the period of time
20 when she was recovering she was in a lot of pain any time
21 they had to do anything with her, and that went on for a
22 good period of time both in the hospital and later in the
23 convalescent center; true?

24 A Yes. The first three weeks in the hospital and
25 then almost three months in one nursing home. It -- it was

1 just awful. I don't think she remembers much of it. Thank
2 goodness.

3 Q And when you say "just awful" you mean the pain?

4 A Oh, yeah, and have to change the dressings all the
5 time and --

6 Q Was she getting any help for the pain or was she
7 getting medicine?

8 A Yes, and that's in here somewhere. She had a
9 Fentanyl patch or something for pain.

10 Q Right, a Fentanyl patch. Any of that seem to
11 help?

12 A Well, it doesn't seem like it at the time, but it
13 must have because she does not remember. She knows she was
14 in that nursing home but she thinks maybe a week, and she
15 was there three months.

16 Q Got you.

17 A So thank goodness she must have been out of it on
18 pain medicine I guess.

19 Q Was your mom able to live independently before she
20 ended up in the hospital?

21 A Oh, yes, very much so.

22 Q Did you play or your sisters to your knowledge
23 play any role in either her financial affairs or day-to-day
24 affairs of any kind?

25 A No, not at all. The sister that lives in Richmond
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1 is a CPA and she would help my mother just advising her
2 sometimes, but, no, she handled all her own finances,
3 everything, and she lived alone there for like 25 years.

4 Q How about afterwards?

5 A Afterwards for what?

6 Q Was your mom able to live independently after she
7 got out of the nursing home?

8 A Oh, no. No.

9 Q All right. And she ultimately had to move into
10 Patriots Colony?

11 A Right.

12 Q Now, your mom had reserved a spot at Patriots
13 Colony by placing a deposit many years before?

14 A Many years before.

15 Q All right. Did she have, to your knowledge, any
16 plan to move in on a date certain?

17 A No, she would not move. No.

18 Q She would move only when she was forced to I
19 guess?

20 A Right.

21 Q Now, what I need to understand from you is what
22 you saw or what you think your mom suffered as damages as a
23 result of having to have the surgery back in 2005, how she's
24 different physically, mentally, so forth?

25 A Well, you know, she was back in the hospital with
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1 pneumonia that fall before she ever left the first nursing
2 home, and then after she got into Patriots Colony she had to
3 go back in for intestinal surgery. It seems the intestines
4 had wrapped around the scar tissue probably from the
5 stomach, and so she was rushed to the hospital. I happened
6 to be down there that day. Was coming to visit her, and
7 then I had just gone home, and not even a week later, like
8 four days later she -- the doctor walked in -- he called me
9 in Charlottesville. He walked in the room and her guts were
10 on the outside of her stomach. It wasn't healing.

11 Q This was about when?

12 A This was in the spring of 2006, like March of
13 April, and, of course, every one of these surgeries she has
14 they think she's not going to live because she's so old and
15 she's been through all this. Well, until that leg healed it
16 was just, you know, they had -- were changing the dressing
17 every day and that's very painful, and she couldn't even get
18 up to use the bathroom or anything for a long time. I mean,
19 just to touch her was very painful, but like I said, thank
20 goodness I think she does not remember that now.

21 Q How about her emotional state?

22 A I think it's been pretty good considering. She,
23 of course -- she wanted to go back home, but that was just
24 impossible.

25 Q Do you know if she described herself as depressed?
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1 A No, she never described herself as depressed but
2 she -- they gave her -- and I'm not even sure if she's still
3 on it now. They did give her an antidepressant for a while,
4 but, you know, I would have to ask them at Patriots Colony.
5 Like I say, I'm not sure she's still on it.

6 Q Did she appear to you in the years after all of
7 this in 2005 and then the pneumonia in 2006 I guess it was?

8 A Well, no. The pneumonia actually was that fall.

9 Q That was 2005?

10 A That was 2005.

11 Q Right. Did she appear to you to be depressed?

12 A Yes, you know. Yeah.

13 Q How? What was it about her that made you think
14 she was depressed?

15 A Well, you know, she wanted to have her great big
16 fat episcopal funeral as she called it instead of the great
17 big fat Greek wedding and, you know something she used to
18 do, and there was a nurse doing temporary duty at Patriots
19 Colony just about two weeks ago who apparently worked at
20 this first nursing home when my mother was in there, and
21 when they'd come in to change the dressings it took an Army
22 of them to do it.

23 Q Right.

24 A They would -- my mom would start singing hymns,
25 church hymns, and they would all sing with her, and this

1 aide was helping my mother at Patriots Colony, like I said
2 just a couple of weeks ago, and apparently she was humming
3 and my mother said to her, "I know that voice." So it turns
4 out she was one of the ones that used to work at this first
5 nursing home and would come in to help change the dressings,
6 and they would sing.

7 Q Well, that sounds like your mom was in pretty good
8 spirits considering the circumstances?

9 A Well, I never heard her sing like that at home. I
10 think she was like almost in a -- well, she kept saying she
11 wanted to die and stuff.

12 Q That was my next -- stuff like that?

13 A Yeah.

14 Q And she'd never said that before?

15 A No.

16 Q Have there been any pictures, photographs or
17 videos of her leg, her abdomen, scars, anything at all that
18 you know of?

19 A Not that I've seen, no.

20 Q And the chronology that we've attached as
21 Exhibit One, do you know if there were other notes that were
22 taken down that were the source of this, you know, kind of
23 looked at and put together?

24 A No. No. We just tried to do that from memory.

25 Q All right. I know you're not a doctor or a nurse
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1 or anybody with medical knowledge, but I'd like to know as a
2 lay person, as a regular person if you think Dr. Lindemann
3 or somebody in his group did something wrong that caused
4 your mom to have these problems?

5 A Well, I would say it was a misdiagnosis.

6 Q Why is it -- I'm sorry. I didn't mean to cut you
7 off.

8 A I mean, he did not diagnose it as far as I can
9 see.

10 Q Did anybody tell you -- any medical person tell
11 you that?

12 A No.

13 Q Do you have any knowledge of your own -- do you
14 have any factual reason to think that Dr. Lindemann should
15 have diagnosed it when he saw her? We all know in
16 retrospect that at some point she had a ruptured appendix,
17 and so my question is, you know that in retrospect, but is
18 there anything factually that you yourself know as a regular
19 person that leads you to believe that there was evidence
20 that Dr. Lindemann should have diagnosed it on the earlier
21 appointment in August?

22 A Well, I don't -- like you say, I'm not a medical
23 person, but I would have thought there would have been some
24 more tests or something that -- that could have alerted him
25 to that could have been what was wrong with her.

1 Q And you just --

2 A But I don't know because I don't know what the
3 tests are or, you know.

4 Q All right. Do you even know if there are tests
5 that would have shown that?

6 A No, I don't know.

7 Q Has any doctor or medical person -- and by that I
8 mean nurse, therapist, anything like that -- told you that
9 Dr. Lindemann made a mistake or was negligent or was wrong?

10 A No.

11 MR. REDMOND: Thank you very much. Sorry to
12 take up your time.

13 MR. LEWIS: I have no questions.

14 MR. REDMOND: You have the right, ma'am, to
15 read this after she types it up, see if there's
16 anything in there you feel like you need to
17 change and if you do that then you write it on a
18 separate sheet and it gets attached to the
19 transcript or you may waive that right and not be
20 bothered with having to do that at all. It's
21 entirely up to you. I'll tell you Shannon is a
22 very good court reporter, but it's not my place
23 to tell you to do one way or another. So we do
24 need to know what you would like to do.

25 MR. LEWIS: For what it's worth, most people
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1 rely on Shannon's professional ability.

2 THE WITNESS: I was going to say, did my
3 sister do it?

4 MR. LEWIS: Yes, she waived.

5 THE WITNESS: She waived, okay. Well, I
6 will too.

7

8 (The witness was excused.)

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1 COMMONWEALTH OF VIRGINIA AT LARGE, To-Wit:

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5 I, Shannon A. Crittenden-Mann, a Notary
6 Public in and for the Commonwealth of Virginia at
7 Large, whose commission expires May 31, 2012, certify
8 that the foregoing deposition of MARY FOOKS
9 was duly taken and sworn to before me at
10 the time and place for the purpose in the caption
11 mentioned, and that the foregoing is a true and
12 correct transcript to the best of my ability of the
13 testimony given by the witness.

14 I further certify that I am not a relative or
15 employee of attorney or counsel of any of the parties
16 or financially interested in the action.

17 Given under my hand this _____ day of
18 _____, _____.

19

20

21

22

23 Notary Public

24

Registration No. 217036

25