

Plaintiffs' Case
Cross Examination of John Downs, M.D.

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*****PUT STIPULATION ON THE RECORD AS TO THE LIMITATION IN DOWNS' TESTIMONY**

(Also see pgs. 55-56, 100,227 limiting testimony to 9/8 until midnight)

I. INTRO-SET UP

You have read the sworn testimony of the Defendant, Dr. P, the surgeon?

You have read the sworn testimony of the Defendant, Dr. F, the Anesthes.?

(IF EQUIVOCATES ON THE FOLLOWING QUESTIONS USE -- AWARE OF THE TESTIMONY.... AS A PRETEXT).

Typically, a patient is in the hospital a day or two for a **laparoscopic hiatal hernia repair**. (Dr. Plascencia depo - pgs.63 - 64)

And usually 6 - 8 weeks they are back to their normal routine. (64).

Typically, a **laparoscopic gall bladder removal** is an overnight procedure. (64)

Overnight procedure is when you come on the day of surgery and you go home the following day.

And the recovery is 10-days to 2 weeks to be back to your normal routine.(64)

Even when the 2 surgeries are combined, it does not increase your time in the hospital. (64)

And the recovery time is still the same. (64 - 65)

On Sept. 8, 1999, Luis had a Laparo HH repair ?

And at the same time Luis had a Laparo GB removal?

Dr.Fernandez was the responsible Anesthesiologist for the surgeries?

Luis did not leave the hospital until January of 2000?

4 months after the surgeries?

II. POST OP COMPS

SEE POST OP COMPLICATIONS DEMONSTRATIVE AID CHART

After the surgeries in which Dr. Fernandez was the responsible Anesthesiologist, Luis suffered a: **(Use this pre-text before each question with respect to each injury)*****

*****After each injury or surgery, ask - Was his wife Magda present?**

Cardiovascular

- **Heart Attack**
- **Deep Vein Thrombosis**
 - large clot in the deep veins in the legs.
 - dangerous condition b/c the clot can come loose and travel to the lungs.
 - possible blockage.
 - required the insertion of an IVC

Gastrointestinal

- **Sepsis**
 - severe illness caused by an infection of the bloodstream caused by bacteria
- **See other injuries on Chart**
- **Abdominal Abscess**
 - collection of pus in caused by an infection

Renal

- **See other injuries on Chart**

Respiratory

- **ARDS**
 - life threatening condition
 - major inflammation of the lungs

– a cause is infection or Sepsis

- **See other injuries on Chart**

- **Tracheostomy**

– surgical opening in the neck/windpipe to assist w/breathing and secretions from the lungs

- **Empyema**

– specifically pus in the pleural space (cavity b/w the lung and membrane that surrounds it)

- **Thoracotomy**

– long incision b/w two ribs, from front to back and all or part of a lung is removed

- **Endotracheal tube**

– breathing tube; placed through the mouth and down the windpipe

- **Sinusitis**

– infection of the sinuses

Skin

- **See other injuries on Chart**

** It is your opinion that the **shock** suffered by Luis Rodriguez is related to complications of to this operation. (236)

** It is your opinion that the **sepsis** suffered by Luis Rodriguez is related to complications of this operation. (236)

** It is your opinion that the **kidney failure** suffered by Luis Rodriguez is related to complications of this operation. (236)

** It is your opinion that the **ARDS** suffered by Luis Rodriguez is related to complications of this operation. (236)

** It is your opinion that the **respiratory failure** suffered by Luis Rodriguez is related to complications of this operation. (236)

*****And we can agree that Luis would not have had any of these problems but for this operation. (236)**

II. RESPONSIBILITY

And it is your understanding that Dr. Fernandez was the primary care responsible anesthesiologist for Luis. (111)

And the anesthesiologist who is in charge of the anesthesia for the patient is has primary care responsibility. (39)

And this means that as the anesthesiologist, Dr. Fernandez would be primarily responsible for such things as breathing ? (66)

Dr. Fernandez -Recovery from anesthesia? (66)

Dr. Fernandez -The placement and removal of Luis' breathing tube. (198)

Dr. Fernandez Breathing tube issues such as re-intubation and the immediate post operative period. (199)

And Dr. Fernandez is primarily in charge of fluid resuscitation operatively (198)

And what we mean by fluid resuscitation is ensuring that Luis receives adequate fluids?

And you would also agree fluids become a shared responsibility between the anesthesiologist and the surgeon. (66 - 67)

And you believe that when a patient such as Luis has undergone the extensive surgeries, there are ongoing fluid requirements that continue after the operating room and into the recovery room //// And that the surgeons have some responsibility in that area. (67)

And that Dr. Fernandez was **also** responsible for Luis Rodriguez during the time he spent in the **Post Anesthesia Care Unit**. (65 - 66).

And post-operatively until he transferred care to the ICU. (198)

THESE SURGERIES AND THIS CASE, we agree that Dr. Fernandez was the **primary care responsible anesthesiologist for Luis in the operating room**. (111)

“YOUR LAST 10 YEARS”

And your last 10 years you have not performed anesthesia with primary care responsibility **in the operating room**. (39 - 40)

And you have not participated as the primary care responsible anesthesiologist for a laparoscopic gall bladder surgery in your last 10 years. (40)

And you have not participated as the primary care responsible anesthesiologist for a laparoscopic hiatal hernia repair surgery in the last 10 years. (40)

(38) And during the last 2 to 3 years, you have not in the OR as an Anesth. very often?

And you do not participate in these procedures on a routine basis? (45)

Last year (2004), did not participate in any of these procedures? (45)

Have not billed a patient for OR anesthesia services in 10 years? (39)

III. BILLING/BIAS

Let's talk about why you are here to testify.

In this case, you have been paid for your time by Ric Woulfe's office.

And you've done work for Ric Woulfe in the past (22)

Worked with Katherine Birnbaum at his office. (24)

Ms. Dougherty.

Mary Longerfeldt.

Darlene Stosik.

And you've been paid for medical legal work for the corporation, that owns Dr. Fernandez' anesthesiology group. (21)

And you are compensated today for being here.

And your familiar with another expert that is going to be called for Dr. Fernandez, Dr. Richard Matthay.

And he has also been paid to provide an opinion in this matter.

And you have known Dr. Matthay for probably 20-years. (35)

Your education and training is in Anesthesiology and Critical Care medicine.

You discussed your employment w/the University of Florida.

In Gainesville, Fl.

Your residence is here in Tampa, Fl. **(see Coker depo, pgs. 11-12).**

On Guisando de Avila?

Lived in Tampa since approx. 1988?

And you are not here giving testimony on behalf of the University of Florida?

Does UF know you are involved in this case?

You did not tell them?

So you are not suggesting that you are speaking for the UF or anyone other than

yourself?

Paid for your services **SOLELY** by Ric Woulfe in this case?

You do not share that money w/the UF?

You have made money over the last 10-15 years providing testimony in medical malpractice cases?

You do not share that w/the UF?

During the time you were hired, you were on sabbatical from the University?

Your opinions are completely your opinions?

And you earn income as an expert in medical legal cases like this?

By medical legal we mean in which there is a legal case in which you are hired by one side, in this case, the Defendant, Dr. Fernandez?

And you are paid to provide your opinions?

And your purpose is to give an opinion regarding Dr. Fernandez' standard of care in the operating room and Post Anesthesia Care Unit. (49)

Never going to treat Luis? No intention of treating him?

Never met him?

Probably never will?

You currently have approximately 200 litigation files open in your office. (13)

And you estimate reviewing 50 - 100 cases per year. (14)

And you have been compensated for medical legal work since 1971. (14 - 1981, **See Coker deposition which indicates 1971**)

Medical legal work is pretty steady for you? (14)

In addition to the 50-100 cases per year, you give 7 to 8 depos? (14)
2 to 5 Court app's ? (14-15)

At \$300 per hour ?

And the percentage of your work in medical legal is in excess of 90% (14)

*****PER YEAR, you earn greater then \$100,000 providing your services like you are in this case? (18)**

And that would be over the last 5 to 6 years ?

And the money that you receive for participating in these medical legal matters goes to a corporation named John B. Downs, M.D., LTD. (17)

And you are the sole owner of that corporation. (18)

And the money doesn't go to the University (18)

It doesn't go to a charity?

IV. LUIS RODRIGUEZ

We can agree that Luis Rodriguez had what is called "hypovolemia."

And hypovolemia means that there is a loss of the circulating blood in the body. (127-28,79).

And that Luis Rodriguez' **loss of the circulating blood in the body** was as a result of the surgeries. (79-80)

And in the surgeries, there was a loss of fluids greater than is indicated or documented. (80)

And when Luis lost blood and fluid , it needed to be replaced. (80)

And Luis' **loss of the circulating blood in the body** began at the beginning of the operation? (144)

In the Progress Notes some of the consulting physicians, the Cardiologist, and the Intensivist that were present on Sept. 8, 1999, refer to Luis Rodriguez' blood loss as a "large estimated blood loss." (235)

The number is One Thousand Five Hundred (1,500) ? (235)

And you would agree that 1,500 is quite a bit *////* A quarter of Luis Rodriguez' blood volume. (235)

And you would agree Luis was more hypovolemic than most people are? (145)

And you would agree that Luis had this **loss of the circulating blood in the body** throughout the operative procedure and into the recovery room. (143)

And for this operation, Luis had a blood loss that was higher than normal (145)

And the hypovolemia or loss of the circulating blood in the body suffered by Luis was related to the operation and the blood loss during the operation. (211)

And his hypovolemia or **loss of the circulating blood in the body** led to a period of low blood pressure or hypotension. (81)

And your opinion is that Dr. Fernandez, the anesthesiologist may not have fully appreciated it. (211)

One way to assess the lack of circulating blood in the body is by inserting what is called a **Swan Ganz catheter** ? A tube that is inserted in the chest?

If you are treating an individual such as Luis Rodriguez in the PACU, you would have inserted a Swan Ganz catheter to assess his volume status. (216 - 217)

** And you could have determined the extent and magnitude of Luis' loss of circulating blood at the insertion of a Swan Ganz catheter. (221)

And that is what the critical care physician did in the ICU after Luis was transferred from the PACU and out of the care of Dr. Fernandez? (216-17).

Let's talk about Luis Rodriguez' heart attack.

We agree that he did have a heart attack.

We can agree that his heart attack was not caused by any pre-existing coronary artery disease. (**196**, 84 - 85, 148)

SEE ALVARO GOMEZ, M.D.'S CONSULT NOTE AND PROGRESS NOTE

You are aware that Dr. Alvaro Gomez, a board certified Cardiologist treated Luis Rodriguez immediately after the surgeries.

And he spoke with the physicians that were involved in Luis' care and treatment.

And he had the ability to review the labs and testing at the time Luis was suffering.

(See Consult Note) And it is Dr. Gomez' opinion that Luis had no previous history of cardiac problems?

(See Progress Note) And it is also Dr. Gomez' opinion that Luis had a heart attack?

(See Progress Note) And that the heart attack was caused by the low blood pressure and a fast heart rate.

SEE PACU ANESTHESIA RECORD

Luis Rodriguez entered the PACU at 1355 hours or 1:55 pm?

And upon entry to the PACU, his blood pressure was 95/59.

His pulse or heart rate was 111.

Hypovolemia or lack of circulating blood in the body was partly responsible for these vital signs? (214-15)

You are aware that the Defendant, **Dr. Plasencia** has testified that Luis' blood pressure of 95/59 was low ?

You are aware he further testified that Luis' heart rate of 111 was high.

You would also agree that Luis suffered from a fast heart rate in the PACU. (136)
(called Tachycardia-173)

Agree there needs to be sufficient blood flow and oxygen in the blood for the Heart to work properly? (221)

Are you also aware that Dr. Plasencia, has testified that these vital signs including 5-minutes later when the oxygen dropped into the 80s that he considered Luis **unstable**?

In the PACU while under the care of Dr. Fernandez, Luis' BP dropped as low as 61/42?

This began at 2:24 p.m. and remained that low for approximately 15 minutes?

(See PACU Record)

And you would agree that during the time in the PACU he had significant problems breathing. (231)

And in the PACU he also suffered from severe chest pain.

(see Extended Nurses Notes at 1355)

And during this time in the PACU after the operation in which Luis Rodriguez suffered from a fast heart rate, he was conscious.

And during this time in the PACU after the operation in which Luis Rodriguez suffered from a low blood pressure, he was conscious.

And during this time in the PACU after the operation in which Luis Rodriguez suffered from chest pain, he was conscious.

See Extended Nurse's Notes

And in the PACU, several doctors attempted to put back the breathing tube that was

removed at the end of the operation.

And the process of putting back the breathing tube began at 2:24 p.m.?

And was completed approximately 41 minutes later at 3:05 p.m.?

And Luis was conscious during the 41 minutes it took to place back the breathing tube.

And he was conscious during the several attempts of placing different types of breathing tubes down his throat.

And he was conscious when they inserted the breathing tube called an LMA and then removed it.

None of the breathing tubes were successful to stabilize him?

And it was finally decided, he required the assistance of a machine to breath.

A ventilator?

Similar to this photograph ?

See Demo Aid photo of Vent

And he was conscious at this time.