

**CROSS EXAMINATION**  
**DR. MICHAEL LESCH**

**NEED TWO EASELS FOR SET UP**

**I-BACKGROUND**

Your practice is out of St.Lukes-Roosevelt Hospital in New York City?

You're an employee of the hospital?

You are not here to testify or provide opinions on behalf of the hospital?

You have been paid money to provide opinions on behalf of the defendant, Dr. Bartzokis?

The money that you are going to be paid goes into your pocket?(25)

And you spend it at your discretion how ever you want to?(25)

No money to St.Lukes-Roosevelt Hospital ?(25)

**II-CAUSATION**

**SEE TIME SEQUENCE DEMO AID**

On September 11, 2000, we know Elie was bleeding?(96)

We know that he was receiving Heparin on 9/11?

Heparin caused the bleeding to increase or get worse?(92)

That bleeding led to bleeding into the area around Elie's heart causing a pericardial effusion?(96-97)

And that pericardial effusion grew?

And that pericardial effusion led to a cardiac tamponade?(97)

And this cardiac tamponade caused or contributed to Elie's death?(96)

---

Had the bleeding been diagnosed and stopped, it would have prevented more blood from filling the area around Elie's heart?(97-yes to PE)

And the diagnosis of the growing pericardial effusion due to bleeding would have prevented the cardiac tamponade?(98)

And you would agree that during the course of this bleeding, during the course of more blood filling the area around Elie's heart, Heparin should not be increased?(102-yes as to PE)

### **III- RESPONSIBILITY**

And in your practice, you have acted as a covering physician?(57)

As a covering physician, you are responsible for patient's care?

You have the ability to order tests?

Change medications or order fluids?

And do what is necessary to care for the patient?

The way you practice, there are notes placed in the record, such as, "out of town for the weekend, Dr. Lesch covering" and put your beeper number and home phone number?(59)

You have a habit of making it known in the chart?(59)

So that it is clearly defined who is covering and caring for that patient at any given time?(59)

And the reason for that is so there is no confusion at all of who will care for the patient?(60)

You want to make sure that the patient has a physician that is responsible for his care at all times?(60)

There are no such records in this case indicating which doctor is covering or responsible for Elie's care in this case? (59)

As a covering physician, Dr. Bartzokis was responsible for Elie's care on those days in which he saw him?(57-58)

He was responsible to see that Elie received the appropriate care and treatment on those days?

We know that the defendant, Dr. Bartzokis was caring for Elie Bental on September 7<sup>th</sup>?

September 8<sup>th</sup>?

**September 11<sup>th</sup>?**

September 11, 2000 was the day that Elie suffered a cardiac arrest as a result of the blood that accumulated around his heart?

Same day, Sept. 11, 2000, because of the cardiac arrest, his brain was deprived of oxygen?

Same day, that because his brain was deprived of oxygen, he suffered brain damage?

Brain damage that was irreversible?

Same day as a result of the irreversible brain damage, he went into a coma (unresponsive) ?

And on that tragic day, Sept. 11, 2000, after he suffered cardiac arrest as a result of the blood that accumulated around his heart and irreversible brain damage, he would no longer be able to see Monique, his wife of 47 years?

And on that day, after he suffered cardiac arrest as a result of the blood that accumulated around his heart and irreversible brain damage, he would no longer be able to communicate with his Monique?

He would no longer be able to rub her back or feel her touch?

He would no longer be able to enjoy, speak with, or see his three children and his grandchild, Ilan?

He would no longer be able to enjoy walks on the beach holding Monique's hand?

He would no longer be able to enjoy his turkish coffee in the morning?

He would no longer be able to enjoy his garden, growing flowers for his wife?

After Sept. 11, 2000, he would never wake up?

Never leave the hospital?

On Sept 11, 2000, the day , Dr. Bartzokis' was responsible for Elie's care, Elie was lost to the people he loved, his wife, Monique of 47 years, and his three children, Patricia, Kary, and Daniel, and his grandchild, Ilan?

---

After Sept 11, 2000, Elie never responded?

He never came out of the coma?

Never left his hospital bed or the hospital?

Ten days later, on September 21, 2000, Elie finally passed away?

#### **IV-BIAS-Your Role in this Case**

You never were provided records for purposes of making a diagnosis?

You were never contacted by any of the Defendants to assist in the diagnosis of Elie Bental?

You never treated Elie?

You were hired and paid by the law firm for the Defendant to provide opinions?

You have been retained by the same firm in approximately ten cases?(13)

You currently maintain approximately twenty medical/litigation files such as this case?(10)

On this file as of the date of your deposition, April 20, 2005, you had made approximately \$10,000.00 on this file from the law firm representing Defendant, Dr. Bartzokis? (12)

You currently maintain one to two files along with the Defendant's law firm?(13)

And on those ten files from the defendant's law firm, you have made how much \$50,000.00, \$100,000.00, \$150,000.00?(16)

In fact, this legal work is ten to twenty percent of your income?(22)

### **V-ELIE-SEPTEMBER 11, 2000**

#### **DIFFERENTIAL DIAGNOSIS**

By differential diagnosis, we mean the method doctors use to identify the condition causing the patient's problems?

Before a medical condition can be treated, it must be identified?

You observe the patient?

Get a history?

Examine the patient?

#### **Form a list of the most likely causes?**

The idea from this list is to eliminate the possible causes?

For example, a patient has symptoms A and B, the doctor creates a list of conditions that include symptoms A and B

?

Once a diagnosis is reached, you treat?

---

**SEE MEDICAL FLIP CHART BEGINNING AT 5:00AM**

**USE NOTEPAD TO LIST ELIE'S SYMPTOMS VERSUS SYMPTOMS OF BLEEDING**

At 5:00 AM, Elie Bental's blood pressure was 72/44?(109)

And that is considered hypotensive?

Its approaching very significantly hypotensive?(138)

Its approaching shock?(138)

There is no argument that bleeding will cause a decrease in blood pressure?(110 & 111-112)

His color was pale?(109)

Bleeding can absolutely cause someone to look pale? (110 & 113)

His hemoglobin had dropped over 2 grams from the day before?(109)

Bleeding can cause a decrease in the hemoglobin? (110 & 113)

If you are concerned that this may be a lab variation you can order another blood test?

Also, if you order another blood test and it has decreased further, more concern of active bleeding?

Dr. Bart never ordered another blood test?

Never commented it could be a lab variation?

He was also complaining of not feeling well?

And his heart rate was 147?

This is very high?

Certainly, at 5:00 AM, one of the possible causes of Elie's problems was bleeding?(110)

On September 11, 2000 bleeding such have been suspected?(104)

It should have been on the list of the possible conditions causing his health to deteriorate?(110-111)

This list is caused a differential ? (110-111)

And bleeding should have been on the differential?

## **Action taken at 5 AM**

### **SEE 9/11/00 – 5:00 AM ORDER**

At 5:00 AM Elie Bental was given fluids and had some changes in his medication by Dr. Zacharoudis?

Giving fluids and changing medication at this time, would not treat the bleeding, only what the bleeding is causing, such as decreased BP?(113-114)

Giving fluids and changing the medication may raise the blood pressure?(114)

May even make the patient feel temporarily better?(114-115)

And if the patient is bleeding into the heart such as Elie Bental, giving fluids and medication would not stop the bleeding?(115)

And if the bleeding is into the area around the heart causing a PE from filling up with blood and getting bigger, medications and fluids would not stop it? (115)

## **HEPARIN**

On the morning of 9/11, when Elie was not doing well, he was on a medication called Heparin ?

***(if necessary show 9/10 Order of Dr. Zacharoudis starting Heparin or 9/11 Orders increasing Heparin @ 0820)***

Heparin is a medication to treat or prevent blood clots?

Heparin also thins the blood?

And Heparin is a medication that can only be started by a physician's order?(64)

And it can be altered or discontinued by a physician's order?(64)

And it can only be discontinued by a stop order by a doctor?(68-69)

Heparin absolutely can cause a person to bleed or be more susceptible to bleed?(79)

Heparin can cause bleeding which can cause a pericardial effusion?

Heparin can cause bleeding which can cause tamponade?(80)

**8:00 AM**

**SEE MEDICAL FLIP CHART-8:00 AM (if necessary)**

At 8:00 AM Elie is complaining of feeling very weak?(117)

Heart rate is up to 140?(117)

And his blood pressure is again low at 83/49?(117)

**BACK TO NOTEPAD (if necessary)**

**These vital signs are consistent with someone who is receiving fluids and changes in medication but is continuing to bleed?(117)**

**These are signs of bleeding?(117)**

**SEE 9/11 @ 0820 ORDER-READ ORDER.**

It appears that an order was given by Dr. Zacharoudis at 8:20 in the morning -

This is Heparin in an IV bag?

He increased the Heparin to 1,400 units per hour?

Right after the BP of 83/49, HR 140, and feeling very weak which are all signs of bleeding?

If a person is bleeding --Heparin absolutely can cause a person to bleed or if bleeding, bleed more?( 134)

You would agree that you do not give Heparin or increase the dosage of Heparin if you believe someone is bleeding?(119)

Soon after, **Dr. Zacharoudis** gave this order to increase Heparin, he has testified he, "**signed out?**"

We're going to talk a little bit about signing out in a moment, however after Dr. Zacharoudis signed out, Dr. Bartzokis became responsible for the care of Elie Bental?

And this is sometime around 9 or 10:00 AM?(122)

### **DR. BARTZOKIS**

Dr. Bartzokis reviewed all the laboratory data? (123-124)

**(also see Dr.Bartzokis Progress Note, if necessary)**

Was aware of Elie's 2 gram drop in his blood?hemoglobin?

Was aware of the decrease in blood pressures since 5 AM?

And the fast heart rates since 5 AM?

He was also aware that Elie was complaining of feeling weak, not well?(124)

Dr. Bartzokis performed a physical examination?

We do not know how long he examined Elie, 5 minutes, 30 minutes?

We know that when he examined Elie, his blood pressure was 80/50?

Still significantly hypotensive? (138-72/44 significantly Hypo)

During the exam, Elie had decrease breath sounds?(125)

Decreased breath sounds are a sign of some type of blood or fluids leaking internally?(125)

---

When you are a covering physician and you suspect something is going on, whether its related to medication, or bleeding, you take time to speak with the family if they are present?(130)

In fact, your patients all have your beeper number and your home phone number, they know how to get in touch with you?(131)

Are you aware that there is a nurses note at 12:00 PM on September 11<sup>th</sup> that the family was present and awaiting to speak with Dr. Bartzokis?

***(See 9/11 Nursing Observation at 12P, if necessary)***

### **ECHOCARDIOGRAM**

Dr. Bartzokis ordered a test called an echocardiogram ?

He ordered that this test be read by the defendant. Dr. Zacharoudis?

The test was read by Dr. Zacharoudis?

The test revealed that Elie Bental had a “mild anterior pericardial effusion”?

### **SEE ECHO REPORT**

Anterior means in front of the heart? (107)

And pericardial effusion means he had fluid or blood accumulating in the sack around the heart?(83)

You have reviewed this echo film?

Defendant, Dr. Bartzokis never reviewed this test?

You could not tell by this test if there is more fluid or blood accumulating?(84)

Or at what rate?(84)

One way to find it if blood or fluid was accumulating in the area around the heart was to do another Echocardiogram at a different time?(121)

So the two can be compared?

A second test to determine if the effusion was enlarging was never done ?  
(122)

It was never ordered by Dr. Bartzokis?

You would agree that this echo was short?(86)

This test was a limited study? (**See Echo Report** and 86)

Limited b/c it wasn't of the greatest quality in terms of being able to see all the heart structures?(86)

In fact, you describe seeing the right ventricle of the heart flashing by for only a couple of seconds?(85)

There is another test called a TEE, in which you would be better able to determine the significance of the blood or fluid filling the sack behind the heart?(107-108)

There is no questions that a TEE gives you a better picture of the spaces and anatomy of the heart?(139)

He did not order the TEE? (108- "*could have been done, but not w/o risk*")

Dr. Bartzokis could have also ordered another test called a Swan Ganz catheter which would have measure the pressures in the heart?(108)

He did not order the test?

In fact, there were no other tests done to find out how much blood was in the area around Elie's heart? (128- "no other test to exclude effusion")

In fact, there were no other tests done to find out how fast the blood was filling the area around Elie's heart? (128- "no other test to exclude effusion")

No follow up physical exam by Dr. Bartzokis to find out if Elie was bleeding? (105)

No follow up physical exam by Dr. Bartzokis to find out if Elie was bleeding was bleeding into the area around his heart? (105)

Nothing was done by Dr. Bartzokis and Dr. Zacharoudis to exclude an enlarging pericardial effusion?(105)

### **Bleeding-**

**Nothing** was done on 9/11 by Dr. Zacharoudis to exclude bleeding into the area around Elie's heart? (105)

**Nothing** was done on 9/11 by Dr. Bartzokis to exclude bleeding into the area around Elie's heart? (105)

### **VI-SIGNING OUT**

Sometime after 10:30 AM, Dr. Bartzokis **ALSO** "signed out"?

And as we discussed earlier this usually means that you are passing the responsibility for that care of that patient to another physician?

Signing out is usually a notification to the nursing staff that you are not taking care of the patient and that you have signed out the care of the patient to another physician?(46)

To make certain, the nurses know who to contact?

When Dr. Bartzokis signed out on Elie Bental, there were multiple issues with Elie and he was not doing well?(47)

As you have explained signing out, Dr. Bartzokis did not sign out?(48)

Certainly he did not write a note in the chart?(48)

He did not write anywhere in the chart for the nursing staff or for anyone's benefit that he was signing out or passing Elie Bental's care to anyone else?(49)

He did not leave his contact information, such as his pager, cell number or otherwise in the Chart?

**?? – (If Dr. Bartzokis has testified he spoke with Drs. Seckler, Bott, and Zacharoudis)**

There is no reference in the chart of him contacting or speaking with Dr. Seckler, or Dr. Bott, or Dr. Zacharoudis, **in the chart**?(51, 52)

There is no note in the chart that Dr. Bartzokis contacted any physician and told them to follow up on Elie Bental?(52, 51)

**VII-CAUSATION PART II**

You would agree that an increase of blood or fluid fill in the area around the heart may cause cardiac tamponade?(80)

Cardiac Tamponade is when the blood or fluid around the heart constricts and compresses the heart making it more difficult to beat?

Factors of an increase of blood or fluid fill in the area around the heart are increase blood pressure?(82)

Increased heart rate?

Increased respiratory rate?

**SHOW NOTE PAD**

When blood is accumulating in the area around the heart, you would like to make a diagnosis?

Would like to make a diagnosis as soon as possible?(82-83)

Dr. Bott in his operative report and testimony stated that there is always some

bleeding from CABG, you'd agree with that?(134)

And that Elie's bleeding was from the chest wall and the structures around the heart?(134)

Dr. Bartzokis signed out on Elie, yet maintained the Heparin?(126)

We agree Elie was bleeding on 9/11?(91)

And the Heparin was causing the bleeding to increase or get worse?(92)

Bleeding can cause blood to fill the area around the heart (pericardial effusion)?(94)

And blood filling the area around the heart can lead to increased pressure on the heart which can eventually lead to cardiac tamponade?(94)

## **SEE CAUSATION CHART**

**You would agree that the idea is to diagnose bleeding?(94)**

**And stop it?(94)**

**And you would agree that bleeding should be suspected in a post CABG patient who is hypotensive?(98-99)**

**Dr. Zacharoudis did not diagnose bleeding?**

**Dr. Zacharoudis did not do anything to stop the bleeding?**

**Dr. Bartzokis did not diagnose the bleeding?**

**Dr. Bartzokis did not do anything to stop the bleeding?**

Elie's blood filled the area around the heart?(96-97)

Had Dr. Zacharoudis or Dr. Bartzokis diagnose the bleeding and stopped it, it would have prevented the blood from filling the area around Elie's heart?(97)

And the diagnosis of blood filling the area around Elie's heart (the enlarging pericardial effusion) would have prevented the cardiac tamponade?(98)

And you would agree that the **EVENT** [**Blood-heart-pericardial effusion-**] cardiac tamponade caused or contributed to Elie Bental's death?(96)

The cardiac tamponade caused a cardiac arrest?

A cardiac arrest is an event in which the heart suddenly stops beating?

This is different from a heart attack in which blood flow to the heart is disrupted to the point that a heart muscle dies?

Elie crashed and went into a cardiac arrest as a result of [**Blood-heart-pericardial effusion-**] cardiac tamponade?(135)

The cardiac arrest caused lack of blood flow to the brain?(134)

And this caused the lack of oxygen to the brain?

The brain is a very oxygen sensitive tissue?(134)

Without oxygen it dies very quickly?(134)

Elie's brain damage was irreversible?(135-136)

He never recovered?

And He ultimately passed away?

---

**You would agree that Dr. Bartzokis could have prevented Elie's ultimate brain death?**(144)

**VIII-FABRE**

You have no criticism of Dr. Bott doing surgery on Elie Bental?(55)

You have no criticism of Dr. Bott?(133)

You do not believe Dr. Bott deviated from the standard of care which caused or contributed to Elie Bental's death?(133)

You do not have an opinion or any criticism of the staff at Northridge Medical Center causing or contributing to Elie's death?(41-42)