

FILED BY *JL* C.C.
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

CARRIE STELLA

PLAINTIFF

VERSUS

CAUSE NO.: 03cv2757-D/V
JURY TRIAL DEMANDED

MEMPHIS OBSTETRICS & GYNECOLOGICAL
ASSOCIATION, P.C. AND FAZAL MANEJWALA, M.D.

DEFENDANTS

PRETRIAL ORDER

1. A pretrial conference was held in this matter on the 7th day of March, 2005, at 1:15 p.m. at the United States Courthouse in Memphis, Tennessee, before U. S. District Judge Bernice Donald.

2. The following counsel appeared:

a. For the Plaintiff:

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
William B. Raiford, III	Merkel & Cocke, P.A. P.O. Box 1388 30 Delta Ave. Clarksdale, MS 38614	662-627-9641

b. For the Defendant:

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
Harold W. McLeary, Jr. Victoria S. Rowe	McLeary, Domico & Kyle, PLLC The Tower At Peabody Place 100 Peabody Place, Suite 1250 Memphis, TN 38103	901-312-5555

3. The pleadings are amended to conform with this pretrial order.

1 This document entered on the docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 3-14-05

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4. The following claims (including claims stated in the complaint), counter-claims, third-party claims, cross-claims, etc., have been filed:

Plaintiff's claims of medical negligence arising out of a total abdominal hysterectomy/bilateral salpingo oophorectomy (TSO/BSO) performed by Defendant Manejwala on November 19, 2002.

5. The basis for jurisdiction is:

Diversity of citizenship

There is the following jurisdictional question: (If there is none, write in "None")

None

6. There are pending motions as follows: (If there are none, write in "None")

Motion to Take Deposition of Susan Crews Out of Time
Motions In Limine

7. The following is a concise summary of the ultimate facts as claimed by:

a. Plaintiff:

On November 19, 2002, Defendant Fazal Manejwala, M.D. performed a total abdominal hysterectomy/bilateral salpingo oophorectomy at Methodist Hospital-Germantown, TN. Plaintiff alleges that during the surgery Defendant perforated or damaged Plaintiff's colon, and negligently failed to recognize or repair it. Following surgery, Defendants failed to appropriately monitor and follow up on Plaintiff's complaints. As a result of the delay in diagnosis, Plaintiff suffered severe complications, including colostomy and numerous surgeries.

b. Defendant:

On November 19, 2002, Dr. Fazal Manejwala performed a total abdominal hysterectomy/bilateral salpingo oophorectomy on Plaintiff, Carrie Stella. Dr. Manejwala had inspected the bowel prior to closing and it appeared completely intact. Following surgery, Ms. Stella remained hospitalized until she was discharged on November 23, 2002 in stable condition. Thereafter, Ms. Stella suffered a spontaneous perforation whereupon she was readmitted for surgical repair of her colon. The complications suffered by Ms. Stella were the result of a spontaneous perforation that occurred after her initial discharge and within 24 hours of her November 26th admission. Dr. Manejwala and the agents and employees of MOGA complied the applicable standards of professional medical practice in providing care and treatment to Carrie Stella and appropriately responded to all of Ms. Stella's complaints.

8. The following facts are established by the pleadings or by stipulation or admission.

- a. On November 19, 2002, Defendant Manejwala performed a TAH/BSO.
- b. On November 26, 2002, Plaintiff was admitted to Methodist Germantown with findings of a 2.5 cm perforation of the colon and massive fecal contamination.
- c. As a result of the injury to her colon, Plaintiff underwent the following procedures and/or hospitalizations:

Methodist Hospital-Germantown - 11/26/02 - 12/07/02
 Methodist Hospital-Germantown - 02/10/03 - 02/16/03
 Methodist Hospital-Germantown - 02/25/03 - 03/04/03
 Methodist Hospital-Germantown - 03/29/03 - 04/08/03
 Methodist Hospital-Germantown - 04/13/03 - 04/26/03
 Methodist Hospital-Germantown - 05/01/03
 Methodist Hospital-Germantown - 05/07/03
 Methodist Hospital-Germantown - 05/17/03 - 05/25/03
 Methodist Hospital-Germantown - 06/03/03
 Methodist Hospital-Germantown - 06/17/03
 Methodist Hospital-Germantown - 06/26/03 - 07/03/03
 Methodist Hospital-Germantown - 05/10/04 - 05/18/04

- d. As a result of the injury to her colon, Plaintiff incurred the following medical expenses:

11/26/02 - 12/07/02	\$ 41,784.99
02/10/02 - 02/16/03	\$ 17,905.70
02/25/03 - 03/04/03	\$ 17,330.40
03/29/03 - 04/08/03	\$ 37,338.05
04/13/03 - 04/26/03	\$ 33,597.70
05/07/03	\$ 2,496.30
05/08/03	\$ 2,496.90
05/15/03	\$ 2,496.20
05/17/03 - 05/25/03	\$ 24,170.10
06/03/03	\$ 2,496.90
06/17/03	\$ 1,742.60
06/26/03 - 07/03/03	\$ 28,676.15
05/10/04 - 05/18/04	\$ 23,568.00

- e. While denying Plaintiff's colon problems or damages were due to any negligent action or omission of Defendants, it is admitted the surgeries and procedures were necessary to repair Plaintiff's colon injury, according to the deposition testimony of Dr. Mark Miller and were reasonable in amount.
- f. At the time of Plaintiff's TAH/BSO, Plaintiff was employed at Hollywood Casino earning a base pay of \$5.40 per hour plus tips. Plaintiff was released to return to work by Dr. Mark Miller on May 18, 2004. Plaintiff did not return to work until February 2005.

9. The contested issues of fact are as follows:
 - a. Whether Defendants violated the acceptable standard of professional practice in their treatment and care of Plaintiff.
 - b. Whether any act or omission of Defendants, if any, caused injury or damages to Plaintiff.
 - c. The nature and extent of Plaintiff's damages.
10. The contested issues of law are as follows:

Issues raised by pending motions.

11. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment only) to be offered in evidence by the respective parties. Each exhibit has been marked for identification and examined by all counsel.

A. TO BE OFFERED BY THE PLAINTIFF:

- P-1 Medical Records of Methodist Hospital Germantown identified as J-1
- P-2 Summary of medical expenses
- P-3 Pathology slides and photographic prints thereof
- P-4 Chart used by Dr. Ackerman
- P-5 Anatomic drawing attached to the deposition of Dr. Mark Miller
- P-6 Photographs of Carrie Stella
- P-7 Carrie Stella's 1999-2002 tax returns

Plaintiff reserves the right to introduce any exhibits listed by the Defendant.

The authenticity and admissibility in evidence of these exhibits has been stipulated. If the authenticity and/or admissibility of any exhibit is objected to, the exhibit must be identified in the following space, together with a statement of the specific ground or grounds for the objection.

Defendant objects to the admissibility of P-3 Chart Used by Dr. Ackermann on the basis that Plaintiff has failed to lay the proper foundation for the admissibility of the proffered evidence pursuant to F.R.E. 401, 402 and 403. For further objection, Defendants would state that said documents contain hearsay statements not subject to any exception pursuant to F.R.E. 803.

B. TO BE OFFERED BY THE DEFENDANT:

- D-1 Anatomical Charts attached to the deposition of Dr. Mark Miller
- D-2 Additional Anatomical Charts

Defendant reserves the right to introduce any exhibits listed by the Plaintiff.

Plaintiff reserves the right to object to D-2 Additional Anatomical Charts pending review of the same.

The authenticity and admissibility in evidence of these exhibits has been stipulated. If the authenticity and/or admissibility of any exhibit is objected to, the exhibit must be identified in the following space, together with a statement of the specific ground or grounds for the objection.

C. TO BE OFFERED JOINTLY

- J-1 Medical Records of Methodist Hospital Germantown
- J-2 Medical Records from MOGA

12. The following is a list and brief description of any chart, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing statements, but which will not be offered in evidence:

Plaintiff may use blowups of any medical record, exhibit, or deposition testimony.

Defendant may use blowups of any medical records, exhibits, or deposition testimony.
With respect to the items listed above, objections are made to their use as follows:

If any other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to trial. If there is then any objection to their use, the dispute will be submitted to the court at least one day prior to trial.

13. The following is a list of witnesses whom Plaintiff anticipates calling at the trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements are made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness herein constitutes a representation, upon which opposing counsel may rely, that the witnesses will be present at trial in the absence of a reasonable written notice to opposing counsel to the contrary. The listing of a MAY WILL witness constitutes a representation that counsel reasonably expects to call the witness at trial, but is not bound to do so.

INDICATE:

<u>NAME:</u>	<u>WILL/MAY CALL</u>	<u>BUS.ADDRESS AND TELEPHONE</u>	<u>FACT/ EXPERT</u>	<u>LIAB/ DAMAGES</u>
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Will testify live:

Carrie Stella	W	5760 Ridgetop Drive Horn Lake, MS 38637	F	
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Leslie Glancy	M	5760 Ridgetop Dr. Horn Lake, MS 38637	F
Glenda Kohl	M	8875 Bent Grass Loop Southaven, MS 38671	F
Mariellen Callaghan	M	160-12 Booth Memorial Ave. Flushing, NY 11365	F
Sandra Wills	M	5760 Ridge Top Drive Horn Lake, MS 38637	F
Debbie Droze	M	1635 Smokehouse Dr. Cordova, TN 38016	F
Fazal Manejwala, M.D.	M	7603 Southerest Parkway Southaven, MS 38671	F
Gerard M. Callaghan, M.D.	M	Bellevue Women's Center 1035 Bellevue Ave. Suite 510 St. Louis, MO 63117	E
Douglas M. Ackerman, M.D.	M	2817 Avenue of Woods Louisville, KY 40241	E

Plaintiff reserves the right to call any witnesses listed by the Defendant.

Plaintiff reserves the right to call at trial Defendant or any corporate representative of the Defendant.

Will testify by deposition:

Mark Miller, M.D.
7655 Poplar
Germantown, TN 38138
(all of Plaintiff's direct and re-direct)

Douglas M. Ackermann, M.D.
2817 Avenue of Woods
Louisville, KY 40241
(Evidentiary Deposition to be taken by agreement T.B.A.)

Indicate whether the entire deposition, or only portions thereof, will be used. Not later than the Pre-Trial Conference counsel shall confer for the purpose of resolving all controversies concerning depositions. All such controversies not so resolved shall be submitted to the trial judge at the Pre-Trial Conference. All objections not submitted within that time are waived.

The following is a list of witnesses whom Defendant anticipates calling at the trial (excluding witnesses used solely for impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements are made with the district judge to whom the case is assigned prior to commencement of trial. The listing of a WILL CALL witness herein constitutes a upon representation which opposing counsel may rely, that the witness will be present at trial in the absence of reasonable written notice to opposing counsel to the contrary. The listing of a MAY CALL witness constitutes a representation that counsel reasonably expects to call the witness at trial but is not bound to do so.

INDICATE:

<u>NAME:</u>	<u>WILL/MAY CALL</u>	<u>BUS.ADDRESS AND TELEPHONE</u>	<u>FACT/ LIAB/ EXPERT DAMAGES</u>
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Will testify live:

Dr. Fazal Manejwala	W	Memphis Obstetrics & Gynecological Association, P.C. 3775 Covington Pike Memphis, Tennessee 38135 (901) 387-1568	F/E
Dr. Herb Taylor	W	80 Humphreys Center, Suite 330 Memphis, Tennessee 38120 (901) 747-1200	E
Dr. Patrick Dean	M	I Pathology Partners 150 Collins Street Memphis, Tennessee 38112 (901) 526-7477	E
Dr. Margaret Reisling	M	Memphis Obstetrics & Gynecological Association, P.C. 3775 Covington Pike Memphis, Tennessee 38135 (901) 387-1568	F
Dr. Cory Tinker	M	Memphis Obstetrics & Gynecological Association, P.C. 3775 Covington Pike Memphis, Tennessee 38135 (901) 387-1568	F
Susan Crews	M	6485 Jamestown Avenue Horn Lake, MS 38637-2004	F
Judy Looney, RN	M	Methodist Germantown Memphis, Tennessee	F

Mary Lynn Stallings

M

Memphis Obstetrics &
Gynecological Association, P.C.
3775 Covington Pike
Memphis, Tennessee 38135
(901) 387- 1568

F

Defendant reserves the right to call any witnesses listed by the Plaintiff.

Will testify by deposition:

Mark Miller, M.D.
7655 Poplar
Germantown, TN 38138
(all of Defendants' Cross Examination)

Douglas M. Ackermann, M.D.
2817 Avenue of Woods
Louisville, KY 40241
(Evidentiary Deposition to be taken by agreement T.B.A.)

Indicate whether the entire deposition, or only portions thereof, will be used. Not later than the Pre-Trial Conference counsel shall confer for the purpose of resolving all controversies concerning depositions. All such controversies not so resolved shall be submitted to the trial judge at the Pre-Trial Conference. All objections not submitted within that time are waived.

14. This is a jury case.

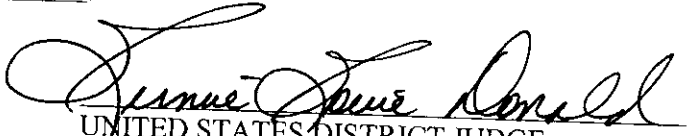
15. Counsel suggest the following additional matters to aid in disposition of the action:

Use of overhead projector.

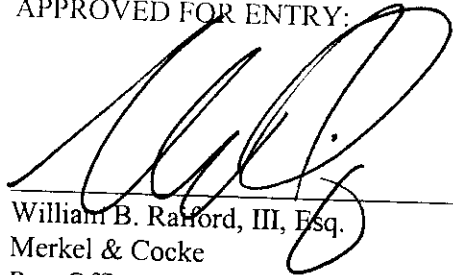
16. Counsel estimate the length of the trial will be 4 - 5 days.

17. As indicated by paragraph 1, this pretrial order has been formulated (1) at a pretrial conference before the United States District Judge, notice of which was duly served upon all parties, and at which the parties attended as hereinabove shown or (2) the final pretrial conference having been dispensed with by the magistrate judge, as a result of conference between the parties. Reasonable opportunity has been afforded for corrections or additions prior to signing. This Order will control the course of the trial, as provided by Rule 16, Federal Rules of Civil Procedure, and it may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

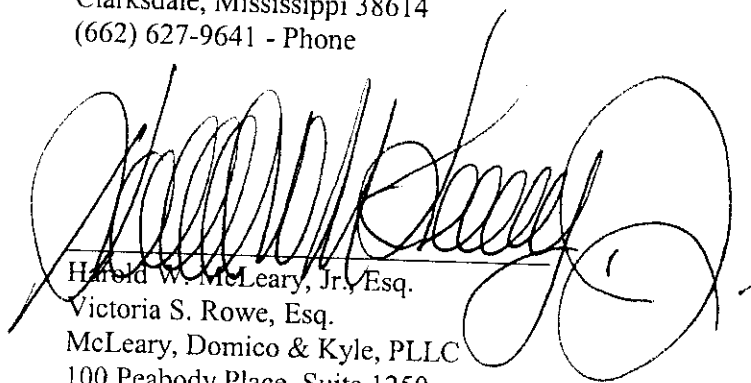
This, the 10th day of March, 2005.


UNITED STATES DISTRICT JUDGE

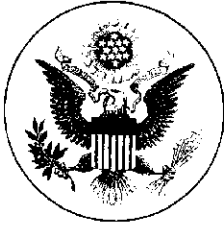
APPROVED FOR ENTRY:



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Notice of Distribution

This notice confirms a copy of the document docketed as number 62 in case 2:03-CV-02757 was distributed by fax, mail, or direct printing on March 14, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT