

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

SHARON K. BURKE)	
)	
Plaintiff,)	
)	
vs.)	Civil No. 01-0009379
)	Calendar 5
THE NEUROLOGY CENTER, P.A., et al.)	Honorable Mary A. Terrell
)	and
Defendants.)	Civil. No. 02-0008381

SHARON K. BURKE)
)
Plaintiff,)
)
vs.)
)
WILLIAM HIGGINS, M.D., et al.)
)
Defendants.)

JOINT PRETRIAL STATEMENT

Pursuant to Superior Court Rule 16(c), the parties, through counsel, file this joint pretrial statement.

A. Certification of Rule 16(c) Meeting.

The undersigned counsel hereby certifies that the conference of counsel pursuant to Rule 16(c) occurred on January 6, 2004 at the offices of plaintiff's counsel. The counsel who conferred were Patrick Malone and Raymond Herschthal for the plaintiff and James M. Heffler for defendant The Neurology Center, Stephen L. Altman for defendants Groover, Christie & Merritt, P.C., and William Higgins, and Alan Siciliano for defendant Stuart J. Goodman, M.D.

B. Parties and Counsel.

Plaintiff:

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C. Nature of the Case

Plaintiff's Proposal (incorporating a change proposed by the Neurology Center):

The plaintiff Sharon Burke has sued two neurologists and a group of radiologists for medical negligence. She contends that these doctors failed to diagnose and treat her with reasonable promptness for a brain condition, and that because of their failures, she suffered a stroke with permanent and serious brain damage. The defendants are Dr. Stuart Goodman, a neurologist, and the Neurology Center (a group of neurologists that employs Dr. David Moore), and a group of radiologists known as Drs. Groover, Christie & Merritt, plus Dr. William Higgins, an employee of the radiology group. The defendants deny all negligence or wrongdoing and state that their conduct was both timely and appropriate. They also state that they did nothing to cause any injury to the plaintiff.

Defendant Goodman's Proposal:

The Plaintiff, Sharon Burke, has brought a claim of medical negligence against two neurologists and a group of radiologists. The neurologists are Dr. Stuart Goodman and Dr. David Moore (The Neurology Center). The radiology group is known as Groover, Christie & Merritt. Ms. Burke contends that the Defendants failed to timely diagnose and treat a condition, and as a result, she has suffered injury. The Defendants deny that they failed to properly diagnose and treat the Plaintiff and that their conduct was not the cause of any injury claimed by Ms. Burke.

D. Claims and Defenses.

1. Plaintiff's Claims:

The plaintiff Sharon Burke began suffering neurological signs and symptoms of small strokes in December 1999. She went repeatedly to a neurologist and to neuroradiology imaging testing and never had the basic appropriate tests done that would have proven that she had a series of blood clots blocking the arteries going to her brain. Those tests were: (1) an ultrasound of the carotid arteries, also called a carotid duplex or carotid doppler; (2) an angiogram of the blood vessels in the brain, and/or (3) a magnetic resonance angiogram (MRA) of the brain. All of these tests make pictures of the arteries feeding the brain. If she had received timely diagnosis, she would have received blood-thinning medications that would have prevented a major stroke that she suffered in October 2000 and also would have prevented smaller strokes that she suffered earlier that year.

The standard of care will be proven through the defendants themselves and through several distinguished expert witnesses for the plaintiff. Dr. Edgar Kenton is the current president of the American Board of Neurology and Psychiatry, the certifying board for all neurologists. Dr. Mark Tramo is a neurologist at the Harvard Medical School and Massachusetts General Hospital. Dr. David Yousem is chief of neuroradiology at Johns Hopkins Hospital in Baltimore. The plaintiff will also call additional experts for damages as set out below.

Her specific claims against individual defendants:

The Neurology Center

Ms. Burke first saw Dr. David Moore, a neurologist with The Neurology Center, on a self-referral on September 18, 2000. The visit had been moved up from a later scheduled visit because of her mother's growing concern about Ms. Burke's deteriorating condition. Dr. Moore saw Ms. Burke at his office next door to Providence Hospital in the District of Columbia, where he rendered all of his treatment to her.

Dr. Moore was the last good opportunity that Sharon Burke had to have her ongoing strokes arrested and prevented. The workup before that time by Dr. Stuart Goodman, a co-defendant, had been spotty and not well thought out, and Dr. Goodman had not reached any conclusion about what was wrong with Ms. Burke despite her being his patient for ten months. For his part, Dr. Moore, instead of doing testing on an urgent basis, put her on a leisurely schedule of tests that started with the non-urgent possibility that she might have an incurable case of multiple sclerosis. Only after he finished testing for MS and proved that she didn't have it did he go on to address the more urgent concern that she might be having strokes.

Dr. Moore also failed for several weeks to review brain imaging tests that Ms. Burke's mother Wilhelmenia Torian brought to his office shortly after the September 18th visit. When Dr. Moore finally looked at them, before Ms. Burke's follow up visit of October 18, 2000, he recognized that she was suffering from a series of strokes. Again, rather than doing urgent testing, he sent her out for routinely scheduled testing on her carotid arteries in her neck and an echocardiogram of her heart. Had he done these tests on an appropriately urgent basis, he would have discovered immediately

that her carotid arteries were badly clogged by blood clots and that she was at risk for an immediate stroke.

On Saturday, October 21, 2000, Ms. Burke suffered another episode of something that had been plaguing her for a number of months: sudden leg weakness that caused her to fall. She called her mother, and her mother telephoned Dr. Moore, who did not instruct the patient to go to the hospital, thus missing another opportunity to save her.

On the morning of Monday, October 23, 2000, Ms. Burke's mother came to Sharon's townhouse in Prince George's County to pick her up to take her for the further medical testing that Dr. Moore had ordered. She discovered Sharon in her room paralyzed and unable to talk. Ms. Burke was taken to Prince George's Hospital Center, where the carotid artery ultrasound and angiogram of the brain, that Dr. Moore should have ordered on an urgent basis, were finally done, and both showed major blockages due to blood embolisms. Ms. Burke was put on a blood-thinning drug called Coumadin. She had one episode of bleeding that had to be treated in the hospital, but otherwise she has been on Coumadin without incident since October 2000 and has had no further strokes. If she had had the diagnosis sooner than October 23, 2000, the major stroke that she suffered that day as well as smaller strokes earlier, likely would have been prevented and she would be a productive working person today.

Dr. Moore thus missed three major opportunities to save Ms. Burke from serious disability: on September 18, 2000, when he should have ordered urgent testing, on October 18, 2000, when he finally looked at her brain imaging studies personally and

realized that she was having strokes, and on October 21, 2000, when he heard about another episode of an apparent fresh stroke. Since Ms. Burke's films were delivered to Dr. Moore shortly after the September 18th visit, he had multiple additional opportunities in the weeks between September 18th and October 18th to review the tests and to review the imaging scans for himself and see that she was having strokes and take appropriate follow up.

Dr. Stuart Goodman:

Dr. Goodman is a sole practitioner neurologist in Clinton, Maryland in Prince George's County.

Dr. Goodman also had multiple opportunities to intervene in Sharon Burke's deteriorating neurological condition and failed to do so. His own records show that he was confused about what was going on with her. When Dr. Goodman first saw Sharon Burke in December 1999, he had not yet obtained his board certification in neurology even though he had been practicing in the field since 1983. He had failed the written examination of the American Board of Neurology six times. He passed the written test on his seventh try and then passed the oral boards on his second try and became board certified in April 2000. Dr. Goodman should have realized that this patient needed more expert neurological evaluation than he could provide and should have referred her to another neurologist. Instead he fumbled with her care from December 1999 until September 2000, at which point the family discharged him in disgust because he had failed to diagnose Ms. Burke's deteriorating condition and had failed to offer any treatment, and had even failed to hold out any realistic prospect that

he would ever get to the bottom of what was wrong with her. During the entire time that he saw her, her condition was slowly deteriorating.

In December 1999, Ms. Burke first saw Dr. Goodman on a referral from her internist because of several days of left sided weakness and numbness in her leg and arm, combined with difficulty writing with her right hand. Dr. Goodman sent her for an MRI scan of the brain but did not do any imaging tests of the blood vessels. The primary available tests to him were (1) a non-invasive ultrasound of the neck focusing on the carotid arteries, which is also called a carotid duplex or doppler test, (2) an angiogram, in which dye is injected into the blood vessels going to the brain and x-rays are taken, and (3) a magnetic resonance angiogram (MRA), which is a cousin of the MRI test but focused exclusively on the blood vessels feeding the brain. Dr. Goodman did none of these blood vessel imaging tests.

Dr. Goodman claims that after the MRI tests came back with a report from the radiologist from Magnetic Resonance Imaging of Maryland that she had potential multiple sclerosis (a “demyelinating disorder”), his office called Ms. Burke and told her to return for a follow up. There is no contemporaneous documentation of this. Ms. Burke did not return to his office because she assumed that since he did not contact her, no news was good news, and in the meantime her weakness had gone away and she had completely recovered to her normal strength (another reason this was unlikely to be multiple sclerosis, in which patients do not recover to their baseline). In late June 2000, six months later, Ms. Burke began having episodes of leg weakness again. She was referred back to Dr. Goodman by her internist. Dr. Goodman ordered another MRI

scan. This MRI scan was reported back to him with three possibilities: multiple sclerosis, vasculitis (an inflammation of the lining of the blood vessels in the brain), or multifocal ischemic disease, which is the same as strokes. He chose only to evaluate her for the second problem, the vasculitis, but again did an incomplete and inconclusive work-up, failing to do imaging scans that would have been appropriate both for vasculitis and for the possibility of strokes. After a visit on September 1, 2000 when Dr. Goodman admitted that he did not know what was going wrong with Sharon and was not sure how to get to the bottom of it, the family did research on their own and found The Neurology Center and Dr. Moore, whose care was discussed above.

Drs. Groover, Christie & Merritt and Dr. William Higgins:

Drs. Groover, Christie & Merritt is the professional corporation that employed the two neuroradiologists who interpreted Ms. Burke's MRI scans: Dr. Gary Staples, the official reader of the December 1999 scan, and Dr. William Higgins, the interpreter of the July 2000 scan. Dr. Higgins is also sued individually. The scans were done at a facility called Magnetic Resonance Imaging of Maryland in Clinton. It is not a defendant because the professional radiology services were provided exclusively by the Groover Christie radiology group.

Dr. Staples violated the standard of care by reading the December 1999 MRI as showing a strong possibility of demyelinating disorder (i.e., MS) and specifically stating that no vascular lesion was seen, even though there were abnormalities in the scan that were not consistent with MS and that were much more probable for stroke. There are two basic types of tissue in the cortex, or thinking portion, of the brain: grey

matter near and on the surface of the cortex, and white matter deeper interior. Multiple sclerosis is a white matter disease. Grey matter disease is more typical for strokes. Although there are grey-matter lesions on the December 1999 scan, Dr. Staples failed to report those to Dr. Goodman and misled Dr. Goodman into thinking it was exclusively an MS problem.

On the July 2000 scan, Dr. Higgins violated the standard of care by failing to compare the study to the December 1999 scan, which would have told him that the patient was having a series of strokes and that MS was no longer even a reasonable possibility for part of her problem. He also failed to report that her right internal carotid artery was blocked by an apparent clot. He did write in his report that there was a possibility that she had “multifocal ischemic disease,” and that “an embolic process should be considered,” but these were listed in the report as afterthoughts and they did not give the impression to either Dr. Goodman or later to Dr. Moore that strokes were the most likely problem for this patient.

The standard of care for radiologists requires that a radiologist: (1) report all major abnormalities seen on the study; (2) compare the current study to any previous studies for significant changes; (3) do a differential diagnosis where appropriate to list the possible diseases from most likely to least likely; (4) recommend follow-up studies to further clarify the diagnosis, and (5) alert the clinician if the diagnosis changes significantly from the old study to the current one. Dr. Staples violated standards 1, 3 and 4 (2 and 5 did not apply since there was no prior study). Dr. Higgins violated all five of these standards.

For their part, both Dr. Goodman and Dr. Moore should have looked at the MRI scans themselves without relying totally on what the radiologists told them.

Causation and Damages:

Sharon Burke showed clear evidence of stroke and TIA (transient ischemic attack) activity in her brain starting in December 1999. She had an obvious clot in her right internal carotid artery in July 2000. Any layperson can see it on the MRI film. Yet Ms. Burke never had any imaging of the blood vessels feeding her brain until after her severe stroke on October 23, 2000. She qualified for, and urgently needed, a cerebral angiogram or magnetic resonance angiography (MRA) or even carotid artery ultrasound in December 1999 and thereafter. Any of these tests would have found the clots and resulted in curative treatment if given before October 23, 2000.

The stroke that caused permanent damage to her cognitive and speech processes along with right-sided motor weakness occurred on October 23, 2000. Two days later, at Prince George's Hospital, she finally had the carotid duplex ultrasound test that she had needed for ten months. It showed clots in her right carotid artery, the same artery that the MRI in July 2000 showed to be blocked with clot. Ms. Burke then was put on Coumadin and has had no recurrent strokes since.

Although Sharon Burke was starting to have stroke injury in her brain by the time she came under the care of the defendants, all of her functional deficits would have been prevented if she had had a prompt diagnosis and treatment. Plaintiff's behavioral neurologist expert, Dr. Daniel Weinberger, from the National Institutes of Health, will testify that the accumulation of strokes in a person of Sharon's age is a "straw that broke the camel's back." Her brain accommodated the early strokes in late 1999 and early 2000 because it had residual capacity left over. It could not accommodate her major stroke of October 2000 for two reasons: it was on the left, dominant side of her brain, and the earlier strokes had used up her brain's residual capacity to adapt. Therefore all of her deficits are the fault of the combined negligence of the defendants.

There is little dispute about the extent of the injury. Dr. Schretlen, the defense neuropsychologist, summarized it as "a dementia syndrome that is characterized primarily by expressive aphasia, psychomotor slowing and right hemiparesis." He further states:

"Given Ms. Burke's residual cognitive deficits, right hemiparesis, and susceptibility to fatigue, it is unlikely that she will be capable of returning to work. Her slowed processing speed probably would prevent her from keeping up-to-date with assignments and/or tasks. Also, her expressive aphasia makes communication difficult, her ability to make complex decisions is quite limited, and she is slow to learn new information." Schretlen report at p. 7.

The plaintiff's experts only part ways with Dr. Schretlen on the issue of Ms. Burke's future care needs. Because she lost all the brain reserves that normal people bring into middle age, the aging process will not be kind to her. While she can now live alone with substantial help from her mother, her independence will end both when her mother becomes less capable of

devoting hours every week to assistance and as Ms. Burke's needs escalate. It is reasonable to expect, and plaintiff's experts have opined, that by age 50, Ms. Burke will need some type of full-time assistance, either in an assisted living facility or with a live-in personal care attendant.

Plaintiff is seeking an award of damages as follows:

- | | | |
|----|-----------------------------------------------------------|---------------------------|
| 1. | Medical expenses to date: | \$106,691 |
| 2. | Future care needs: | \$2,834,203 |
| 3. | Lost earnings, past & future | \$946,804 |
| 4. | Pain, Suffering, Disfigurement
and Permanent Injuries: | To be determined by jury. |

The Maryland non-economic damages cap applicable to Dr. Goodman places a maximum on non-economic loss at \$590,000 (the amount in the Maryland statute for injuries after October 1, 2000). The damages cap does not apply to the other defendants.

2. Defendants' Defenses:

Defendant Goodman's Defenses:

Dr. Goodman contends that he was not negligent and did not violate the standard of care in his treatment of the Plaintiff. Dr. Goodman first saw the Plaintiff in December, 1999. Dr. Goodman took a history and examined the Plaintiff. Dr. Goodman ordered an MRI. Dr. Goodman contends that after the MRI was concluded and report provided to him, the Plaintiff was called and told to return to his office for a follow-up visit. Dr. Goodman did not see the Plaintiff again until June, 2000. On that occasion, Dr. Goodman ordered another MRI. Dr. Goodman saw the Plaintiff on several occasions between June and September 1, 2000. During that time, Dr. Goodman was attempting to diagnose the Plaintiff. After September 1, 2000, the Plaintiff sought medical attention from Dr. Moore at The Neurology Center.

Defendant The Neurology Center, P.A.:

Beginning in December 1999, Ms. Burke began seeing Dr. Goodman, another neurologist, with neurological complaints including leg numbness and episodes of dizziness. The complaints continued intermittently and, on September 18, 2000, Ms. Burke came to see Dr. Moore for a second opinion. Ms. Burke brought reports of her two MRI scans, told Dr. Moore, an employee of The Neurology Center, that Dr. Goodman felt she had multiple sclerosis, and said they wanted the opinion of another neurologist. The history given to him involved a gradual worsening of her symptoms, as opposed to any sudden onset of acute symptoms, and Dr. Moore was never told that plaintiff fell down, or that her “legs gave out.” Based upon the history, the MRI reports, and the statement that Dr. Goodman felt she had MS, Dr. Moore’s differential diagnosis leaned toward MS. However, he did an examination, ordered several further tests, and scheduled the patient to return on October 18, after the test results were received.

Prior to the October 18, visit, Dr. Moore received the actual MRI films. As he relies primarily on the interpretations of radiologists, he reviewed these films informally with a neuroradiologist at the Washington Hospital Center, and then felt that an ischemic process was more likely than MS. Accordingly, he ordered new tests, including echocardiogram and carotid duplex, to investigate an embolic process as the cause of her symptoms, and scheduled a follow-up visit in 2 weeks. Once again, there was nothing to indicate that there was any acute, urgent symptomology. Unfortunately, plaintiff suffered a severe stroke five days later, on October 23, 2000.

It is the position of Dr. Moore, and his expert witnesses, that he proceeded in a completely reasonable manner, and that there was no reason to order tests on an urgent or emergent basis. Plaintiff's experts allege that Dr. Moore ordered all the right tests and performed thorough examinations, but that he should have proceeded on an urgent basis. Defendant emphatically believes that this is pure hindsight, and that he acted appropriately, based on the information he was given.

Also, as set forth in this defendant's prior memorandum, it is the position of The Neurology Center, P.A. that, under the "interest analysis" approach dictated by the District of Columbia Courts, the Maryland damage cap would apply to The Neurology Center, P.A.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

During the period of time of December, 1999 through approximately September of 2000, Ms. Sharon Burke, a resident of the State of Maryland, was under the care of Dr. Stuart Goodman, a neurologist practicing in Prince George's County, Maryland. Ms. Burke subsequently came under the care of Dr. David Moore, a neurologist associated with The Neurology Center. Dr. Moore began treating Ms. Burke in mid-September of 2000. Ms. Burke subsequently experienced a stroke in late October of 2000 while she was under the care of Dr. Moore.

Dr. Gary Staples and Dr. William Higgins are radiologists employed by Drs. Groover, Christie & Merritt, P.C. Dr. Staples is licensed to practice in the State of Maryland. He reviewed and interpreted an MRI study of the Plaintiff on or about December 14, 1999 and formed the impression of white matter abnormalities bilaterally,

right greater than left, suspicious for white matter degenerative disease. Dr. Staples suggested that multiple sclerosis should be a consideration in the appropriate clinical setting. He also reported abnormal contrast enhancement in the right parietal area. The MRI study which was interpreted by Dr. Staples was an abnormal study and this was made available to Dr. Stuart Goodman, the attending neurologist of Ms. Burke at that time.

An additional MRI scan was ordered by Dr. Goodman in July of 2000 and was reviewed and interpreted by Dr. William Higgins in Maryland. In his report, Dr. Higgins referred to both white matter and gray matter involvement and indicated that an embolic or ischemic disorder should be considered. He reported an area of increased signal within the right basal ganglia including the head of the caudate. He also reported a patchy increased signal within the deep white matter of the right cerebral hemisphere, corona radiata. He reported increased signal within the right mid frontal gyri and also a small patchy increased signal within the gray matter of the left parietal lobe. There was enhancement of the right basal ganglion lesion as well as the right cortical frontal lobe lesion. Dr. Higgins' differential diagnosis included a demyelinating process such as Multiple Sclerosis and arteritis. He further explained that multifocal ischemic areas could also give this appearance and that an embolic process should be considered. "Ischemia" is defined as a deficiency of blood in a body part due to functional constriction or actual obstruction of a blood vessel. The term "embolic" pertains to an embolism which is defined as the sudden blocking of an artery by a clot of foreign material that has been brought to its site of lodgment by the blood current. The

obstructing material is most often a blood clot, but may be a fat globule, air bubble, piece of tissue, or clump of bacteria. Dr. Higgins' study clearly showed abnormalities and was made available to Dr. Stuart Goodman, the Plaintiff's attending neurologist.

GCM, Drs. Staples and Higgins maintain that they complied with the standard of care and that their studies were adequate in signaling abnormalities regarding Ms. Burke's condition.

1. Drs. Groover, Christie & Merritt, P.C., Gary Staples, M.D. and William Higgins, M.D. complied with the applicable standard of care with respect to the care provided to Sharon Burke in the radiological studies performed on her in December of 1999 and July of 2000.

2. No act or omission on the part of Drs. Groover, Christie & Merritt, P.C., Gary Staples, M.D. and William Higgins, M.D. proximately caused any injury to Sharon Burke.

3. These Defendants contest the nature and extent of the damages claimed on behalf of the Plaintiff including but not limited to her claim that she is in need of 24 hour assisted living.

4. These Defendants further claim that Plaintiff is capable of vocational rehabilitation and is capable of certain forms of gainful employment.

5. These Defendants contest all issues of liability, proximate cause, alleged breaches of the standard of care and damages asserted against them in this action.

6. These Defendants reserve the right to raise and develop the defense of intervening, superseding cause(s) at the trial of this action.

As to the relief sought, these Defendants object to the claims set forth therein to the extent that they may not have been fully disclosed during the course of discovery. Furthermore, Defendants GCM and Higgins contend that damages related to non-economic loss would be governed by the Maryland Statute capping said damages for reasons set forth in the motion filed by these Defendants to apply Maryland law in this case.

E. Undisputed Issues/Stipulations.

The plaintiff proposes the following stipulations:

1. All copies of medical records are authentic.
2. The parties may use Power Point slides, other computerized visual aids, models, charts and diagrams during opening statements and closing arguments without prior disclosure to opposing counsel, provided that in opening statement, no material may be shown that contains an exhibit whose admissibility is in dispute.
3. Demonstrative aids to be used in the course of trial, such as medical illustrations, will be produced for inspection no later than two weeks before trial.
4. The parties reserve the right to use enlargements of portions of the medical records as exhibits.
5. The parties stipulate to the reasonableness of the medical bills but not to whether or not any negligence by the defendant caused the need for such treatment.
6. All medical records of Sharon Burke are admissible in evidence.

Defendant The Neurology Center, P.A. does not stipulate to numbers 2, 3 and 4.

The Defendant Goodman proposes the following stipulations:

1. The Defendant Goodman will agree to authenticity of all medical records exchanged during the course of discovery.
2. The Defendant Goodman objects to Paragraph 2 of the Plaintiff's proposed stipulations.

Defendants GCM and Higgins object to the use of power point slides, other computerized visual aids, models, charts, diagrams and other demonstrative aids if not shown to Counsel within a reasonable time prior to trial and Defendants reserve the right to object to the use of such items on other grounds including, but not limited to, lack of proper foundation, overly prejudicial and/or not probative, irrelevant and immaterial and inflammatory.

F. Disputed Issues

1. All issues of liability, causation and damages are in dispute.

G. Request for Stipulations

None at this time other than as stated above.

H. Relief Sought

Plaintiff is seeking an award of damages as follows:

- | | | |
|----|-----------------------------------------------------------|---------------------------|
| 1. | Medical expenses to date: | \$106,691 |
| 2. | Future care needs: | \$2,834,203 |
| 3. | Lost earnings, past & future | \$946,804 |
| 4. | Pain, Suffering, Disfigurement
and Permanent Injuries: | To be determined by jury. |

I. Citations

None.

J. Pending Motions

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

These Defendants had filed a motion raising the issues of *forum non conveniens* and the application of Maryland law to this case. These issues were fully briefed and argued. This Honorable Court denied the motion relating to the issue of *forum non conveniens* but withheld ruling on the choice of law issue until a later time. These Defendants will continue to contend at trial that Maryland law should be applicable to them and will rely on cases and authorities set forth in their motion as follows: Moore v. Ronald Hsu Construction Shama Restaurant Corp., 566 A.2d 31 (D.C. 1989), Estrada v. Potomac Electric Power Co., 488 A.2d 1359 (D.C. 1985), Restatement (2d) of Conflict of Laws, Section 145, Franklin v. Mazda Motor Corp., 704 F.Supp. 1325 (D.Md. 1989), Bledsoe v. Crowley, 849 F.2d 639 (D.C. Cir. 1988), Packer v. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., 728 F. Supp. 8 (D.D.C. 1989), Kaiser

Foundation Health Plan of the Mid-Atlantic States, Inc. v. Rose, 583 A.2d 156 (D.C. 1990), Dunkwu v. Neville, 575 A.2d at 295-296, Colclough v. Kaiser, 121 Daily Wash. L. Rptr. 189 (D.C. Super. Ct. 1993). These Defendants incorporate by reference herein their motion and memorandum in support relating to the choice of law issue.

These Defendants respectfully reserve the right to supplement their recitation of supporting authority for their contention that Maryland law is applicable to these Defendants in this case depending on circumstances that may occur prior to or during the trial of this matter.

Defendant The Neurology Center has also joined in the motion regarding application of Maryland law, with particular regard to the Maryland Cap Statute.

K. Witnesses.

Plaintiff's Witnesses:

- 7) Sharon K. Burke
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- 12) Lorna Powell
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- 13) Vance E. Torian Jr.
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- 16) Dr. Cedric Poku-Dankwah
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- 17) Dr. Stuart J. Goodman
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- 18) Dr. David G. Moore
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- 19) Dr. Stephen J. Kittner
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- 21) Joseph P. Catlett, M.D.
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- 22) Beverly Whitlock, Ph.D.
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- 23) Kimberly M. Brathwaite
Brain Injury Rehabilitation Services
1 Church Street
Rockville, MD 20850
- 24) Brenda Tjaden, CCC-SLP
Brain Injury Rehabilitation Services
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Plaintiff's Expert Witnesses:

- 8) Edgar Kenton, M.D.
Lankenau Medical Building
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Wynnewood, PA 19096

Dr. Kenton is a board-certified neurologist. In Dr. Kenton's opinion, to a reasonable degree of medical certainty, Sharon Burke had clinical findings and a history much more suspicious for transient ischemic attack and/or stroke than for multiple sclerosis. The brain imaging studies of December 1999 confirmed that this process was affecting the gray matter, which would be highly unusual for MS but typical for an ischemic process. The July 2000 studies were even more suspicious for stroke with the apparent blockage of the right internal carotid artery and the apparent infarcts in the distribution of the right middle cerebral artery. In Dr. Kenton's opinion, Dr. Goodman, the neurologist in charge of her case from December 1999 to September 2000, should have done an urgent workup for stroke that would have included a trans-esophageal echocardiogram. Dr. Moore, who took over her care in September 2000, also should have done an urgent stroke workup in September 2000. The neuroradiologists, Drs. Staples (December 1999 MRI) and Higgins (July 2000 MRI), could have and should have provided more accurate assessments of the MRI's that they reviewed focusing on suspicion for stroke. Ms. Burke's embolic disease very likely would have been discovered by an appropriate workup and she would have been placed on

anticoagulant medication in time to prevent the severe and permanently disabling injury that she has suffered.

- 9) David M. Yousem, M.D.
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600 N. Wolfe Street
Baltimore, MD 21287

Dr. Yousem is a board-certified neuroradiologist and chief of neuroradiology at Johns Hopkins Hospital. Dr. Yousem has reviewed the following brain imaging studies on Ms. Burke: December 1999 MRI, July 2000 MRI; October 2000 MRI; October 2000 CT; October 2000 arteriogram. He has written a report of his findings which is incorporated in this statement. In addition, he holds the following opinions about how the standard of care for neuroradiologist was violated concerning the original reports of the December 1999 and July 2000 MRI's:

1. The interpreter of the December 14, 1999 study, Dr. Gary Staples, wrote that it was "highly suspicious for demyelinating disease" or multiple sclerosis. He gave no differential diagnosis or other possibilities for the changes seen. The radiologist should have reported that the findings on the right side were suggestive of a vascular lesion because of the gray matter involvement within a vascular (middle cerebral artery) distribution and enhancement characteristics. The radiologist should not have limited the possibilities to demyelinating disorders because that was not consistent with the right-sided lesions.
2. The interpreter of the July 14, 2000 study failed to identify the high signal intensity in the right internal carotid artery seen on multiple images, best appreciated on the cavernous and petrous segments. This implies either blockage or very slow flow in the right internal carotid. This is a highly significant finding that should have been reported to the neurologist who ordered the test.
3. Dr. Higgins' report of the July 14, 2000 MRI gave a differential diagnosis which he wrote "includes demyelinating process such as multiple sclerosis, arteritis and multifocal ischemic areas." Only the last two of these could explain the nature of the gray matter infarcts, and suggesting this could represent a demyelinating processes would confuse any neurologist relying on this report. Dr. Higgins also correctly noted that "an embolic process should be considered." However, this was at the end of his "findings" section and was not emphasized. The omission of the right internal carotid

changes is again significant here, because if those changes had been correctly reported, a thromboembolic process would have been the first possibility presented to the neurologist and not the last. The neuroradiologist also should have said that a thromboembolic process was more likely than a vasculitic process.

4. The report of the July 14, 2000 MRI also violated the standard of care in that the interpreter failed to compare the study with the December 1999 study. This would have shown a reasonable interpreter that the findings looked much less like multiple sclerosis in July 2000. An interpreter also could have seen that the right internal carotid changes seen in July 2000 were not present on the December 1999 study, making the possibility that the July 2000 findings represented "artifact" even more remote.
5. The reports of both December 1999 and July 2000 also were deficient in failing to recommend followup studies to clarify the diagnosis. The July 2000 report was deficient in failing to bring to Dr. Goodman's attention the fact that the old diagnosis of suspicious for multiple sclerosis no longer applied.

- 10) Daniel R. Weinberger, M.D.
3116 Davenport Street, N.W.
Washington, D.C. 20008

Dr. Weinberger is a behavioral neurologist. He believes that Ms. Burke is severely disabled and that her strokes occurred over a prolonged period of time, with her most devastating stroke occurring in late October 2000. Intervention at earlier points in time likely would have prevented most if not all of the severe and permanently disabling injury that she has suffered.

- 11) Paul Fedio, Ph.D.
9408 Raintree Road
Burke, VA 22015

Dr. Fedio is a clinical neuropsychologist. He has reviewed Ms. Burke's records and has conducted testing on her, which he is writing into a report which will be submitted shortly. In his opinion, Ms. Burke presents with multiple and severe cognitive deficits which preclude employment in any competitive work setting; remediation and rehabilitation are not likely to qualify her for competitive employment. Ms. Burke has a severe memory problem and a severe expressive dysphasia (aphasia). She also has weakness of her dominant right hand. He believes her deficits would have been minimal if any, had the stroke process been arrested before late October 2000.

- 12) Lee R. Mintz, M.Ed.
Seven Church Lane
Suite 6
Baltimore, MD 21208

Ms. Mintz is a vocational rehabilitation counselor. She will describe Ms. Burek's inability to return to competitive work and her prospects for earnings if she had not suffered the disabling stroke.

- 13) Priscilla Phillips, R.N.
Nancy Bonds,
The Coordinating Center
8258 Veterans Highway
Suite 13
Millersville, MD 21108

Ms. Phillips and Ms. Bonds are registered nurses and certified life care planners. They have prepared reports detailing Ms. Burke's life care needs.

- 14) Richard J. Lurito, Ph.D.
R.L. Inc.
1491 Chain Bridge Road
Suite 300
McLean, VA 22101

Dr. Lurito is an economist. He has submitted reports about the present cost of funding Ms. Burke's life care plan and the present value of her loss of earning capacity.

- 15) Mark Tramo, M.D., Ph.D.
87 Lafayette Street
Marblehead, MA 01945

Dr. Tramo is a board-certified neurologist who teaches at the Harvard Medical School and the Massachusetts General Hospital. In Dr. Tramo's opinion, to a reasonable degree of medical certainty, both Dr. Stuart Goodman and Dr. David Moore failed to meet the appropriate standard of care in their evaluation of Sharon Burke. Dr. Goodman failed to order the appropriate tests for his differential diagnosis of multiple sclerosis and/or vascular disease. He should have ordered vascular imaging studies, even based on the reports he received from the neuroradiologists, without any independent study of the films themselves. Appropriate workup would have found the problem and resulted in appropriate treatment that would have avoided the disabling stroke of October 2000 that caused both cognitive and motor deficiencies. For his part, Dr. Moore acted more appropriately in ordering reasonable tests, but failed to do so on an urgent basis. When Ms. Burke came to him in September 2000, she was at least

nine months into a progressive, active brain disorder. He should have hospitalized her immediately and performed a stroke workup. This should have included vascular imaging studies and independent review of her prior MRI studies. Timely and appropriate care by Dr. Moore would have resulted in a correct diagnosis in time to avert the disabling stroke of October 2000.

Defendants' Witnesses

Defendant Goodman's Witnesses:

The Defendant Goodman does not anticipate calling any additional witnesses other than those listed by the Plaintiff and Co-Defendants.

The Neurology Center, P.A. reserves the right to call:

Any party to the action.

Any witness listed by any other party to the action, including those listed by the plaintiff.

Dr. David G. Moore (treating physician, The Neurology Center).

Drs. Groover, Christie & Merritt and William Higgins, M.D. Witnesses:

1. All Parties joined to this action.
2. Any and all witnesses named by Plaintiff and not otherwise objectionable.

3. Gary Staples, M.D.

4. William Higgins, M.D.

5. Representative of Drs. Groover, Christie & Merritt, P.C.

6. Charles Citrin, M.D. (radiologist)

Dr. Citrin is Board certified in Radiology and specializes in Neuroradiology.

Dr. Citrin's opinions are based upon his education, experience and review of the MRIs

of 12/14/99 and 7/14/00. All of Dr. Citrin's opinions will be expressed to a reasonable degree of medical certainty.

Dr. Citrin is expected to testify that the Drs. Groover, Christie and Merritt, Gary Staples, M.D. and William Higgins, M.D. complied with the standard of care in the interpretation of the MRIs of Ms. Burke. Specifically, Dr. Citrin is expected to testify that the MRI of 12/14/99 shows evidence of a demyelinating disease, such as multiple sclerosis. Furthermore, Dr. Citrin is expected to testify that the differential diagnoses of multiple sclerosis, arteritis and multifocal ischemic areas, identified in the radiology report complied with the standard of care. Dr. Citrin is expected to testify that the standard of care was complied with in the reading of the July, 2000 MRI and he is further expected to testify in accordance with his deposition testimony of December 26, 2002. Dr. Citrin is also expected to testify that no act or omission on the part of these Defendants proximately caused the alleged injuries to Ms. Burke.

7. Joel Bowers, M.D. (radiologist)

Dr. Bowers is Board certified in Radiology and subspecializes in neuroradiology. Dr. Bowers' opinions are based upon his education, experience and review of the MRIs of 12/14/99 and 7/14/00. All of Dr. Bowers' opinions will be expressed to a reasonable degree of medical certainty.

Dr. Bowers is expected to testify that Drs. Groover, Christie and Merritt, Gary Staples, M.D. and William Higgins, M.D. complied with the standard of care in the interpretation of MRIs of Ms. Burke. Specifically, Dr. Bowers is expected to testify that the MRI of 12/14/99 shows evidence of a demyelinating disease, such as multiple sclerosis. Furthermore, Dr. Bowers is expected to testify that the differential diagnoses

of multiple sclerosis, arteritis and multifocal ischemic areas, identified in the radiology report complied with the standard of care. He is further expected to testify that the reading of the July, 2000 MRI complied with the standard of care. He is expected to testify in accordance with his deposition testimony given on January 3, 2003. Dr. Bowers is also expected to testify that no act or omission on the part of the these Defendants proximately caused the alleged injuries to Ms. Burke.

8. Marc Schlosberg, M.D. (neurologist)

Dr. Schlosberg is Board certified in Neurology and is in private practice in DC. These Defendants reserve the right to call Dr. Schlosberg depending on testimony given by Plaintiff's neurologists at trial and/or developments which may occur prior to trial.

9. Richard Lawrence, PhD. (vocational rehabilitation expert)

Dr. Lawrence is a vocational rehabilitation counselor. Dr. Lawrence will rebut the opinions of plaintiff's vocational rehabilitation expert, including, but not limited to, the projected work life of Ms. Burke, the projected wage range and the time frame in which she is expected to return to the workforce. Dr. Lawrence will testify in accordance with the reports which he has generated and which have been provided to opposing Counsel.

10. Rick Gaskins, MBA, CPA (forensic accountant/economist)

Mr. Gaskins is a forensic economist. Defendant anticipates that based upon his knowledge, training and experience in his area of expertise, his review of plaintiff's medical, education and employment records, the reports of plaintiff's experts and other discovery materials, Mr. Gaskins will opine regarding any claimed economic

losses by Ms. Burke, past, present and future, including the present value of any future losses claimed by Ms. Burke. Mr. Gaskins will also offer opinions as to the life and work life expectancy of plaintiff, any current wage loss sustained by the plaintiff and the present value of any future loss of income, and future care costs, if any. His final opinions will be formulated pending his review of updated reports of Plaintiff's experts, including economic reports and life care plans.

11. Trudy R. Koslow, M.Ed. CRC, CCN, CLCP (certified life care planner)

Ms. Koslow is a Certified Life Care Planner. She will address Ms. Burke's life care needs pending the IME, final discovery responses to be supplied by plaintiff, depositions, observations and evaluation of Ms. Burke and on any supplementation of the Plaintiff's expert witness designation. It is anticipated that Ms. Koslow will testify in accordance with her report related to a proposed Life Care Plan which has been produced to all Counsel herein.

12. David Schretlen, PhD. (neuropsychologist)

It is anticipated that Dr. Schretlen will testify in accordance with the report which he generated reflecting his findings and conclusions relating to Sharon Burke and which has been produced to all Counsel herein.

13. Stuart Goodman, M.D.

14. David Moore, M.D.

15. Any and all health care providers, including physicians, nurses and others, identified in this case and/or appearing in the medical records relating to Sharon Burke including, but not limited to, those of the Washington Hospital Center.

16. Any and all health care providers, including physicians, nurses and others who have rendered medical care to Plaintiff at any time.

17. Any and all custodians of records or other witnesses necessary to authenticate, or otherwise lay the foundation for admission of any evidence identified for trial purposes should there be any question regarding the authenticity of any records or other evidentiary items.

18. These Defendants reserve the right to call rebuttal and/or impeachment witnesses not identified herein and to use deposition testimony in accordance with Superior Court Civil Rule 32 if witnesses are unavailable.

19. Witnesses listed by Co-Defendants and not otherwise objectionable.

As to the Plaintiff's Witnesses listed under Paragraph K of the Pretrial Statement, these Defendants object to any witnesses who were not previously identified in discovery. Furthermore, there are a number of experts listed in the initial listing of Plaintiff's List of Expert Witnesses who are expert witnesses but may be called to give factual testimony. To the extent that they were not fully disclosed in discovery, they are objected to.

Defendants' Expert Witnesses

Defendant Goodman's Expert Witnesses:

1. The Defendant Goodman reserves the right to call any expert witnesses listed by any of the other parties in this case.

2. The Defendant Goodman reserves the right to call any of the Plaintiff's treating physicians.

3. Solomon Robbins, M.D.
5400 Old Court Road
Randallstown, MD 21133

Dr. Robbins is board-certified in the field of neurology. Dr. Robbins will testify consistent with his deposition that Dr. Goodman did not violate the standard of care.

4. David Schretlen, Ph.D.
Johns Hopkins Hospital

Dr. Schretlen specializes in the field of neuropsychology. Dr. Schretlen has examined the Plaintiff on behalf of the Defendants and will testify consistent with his report.

5. Richard E. Lawrence, Ph.D.
Bowie, Maryland

Dr. Lawrence is a vocational specialist. Dr. Lawrence has reviewed medical records, tax information, and interviewed the Plaintiff. Dr. Lawrence will testify consistent with his report concerning the Plaintiff's employability and earning capacity.

6. Trudy R. Koslow, M.Ed.
Richmond, Virginia

Ms. Koslow specializes in life care planning. She has examined the Plaintiff's records and met with the Plaintiff. Ms. Koslow will testify consistent with her report concerning the future care needs of the Plaintiff.

Defendant The Neurology Center, P.A. Expert Witnesses:

Allan Genut, M.D. (Dr. Genut is a neurologist, who will testify in accordance with defendant's 26(b)(4) Statement, Answers to Interrogatories, and Dr. Genut's "Deposition Upon Written Questions".)

Richard I. Katz, M.D. (Dr. Katz is a neurologist, who will testify in accordance with defendant's 26(b)(4) Statement, Answers to Interrogatories, and Dr. Katz' "Deposition Upon Written Questions".)

Richard Lawrence, Ph.D. (Dr. Lawrence is a vocational rehabilitation counselor who is expected to testify in accordance with his prior reports.)

Trudy Koslow (Ms. Koslow is a vocational rehabilitation counselor and life care planner, who is expected to testify in accordance with her prior reports.)

Joel Morse, Ph.D. (Dr. Morse is an economist who is expected to testify in accordance with his prior reports.)

As to Plaintiff's Expert Witnesses, Defendants GCM and Higgins object to Dr. Edgar Kenton providing any testimony relative to GCM, Dr. Staples and/or Dr. Higgins on the grounds that Dr. Kenton is a neurologist and not a radiologist and indicated that he was not retained in this case to provide expert testimony relative to the radiologists.

These Defendants object to any testimony on the part of Dr. Mark Tramo relative to them on the grounds that Dr. Tramo is a neurologist and not a radiologist and that it

was the understanding of Counsel that Dr. Tramo was not retained to provide expert testimony relative to any radiologists in this case.

These Defendants reserve the right to object to the testimony of other expert witnesses listed by Plaintiff herein to the extent that their opinions may not have been fully disclosed in discovery and/or to the extent that they may render new opinions during the course of trial or for any other reason that would serve as the basis for an evidentiary objection during the course of the trial of this matter.

Plaintiff's Objections to Defense Witnesses.

The plaintiff objects to testimony by experts Genut, Katz and Schosberg as not having been disclosed in discovery.

L. Exhibits

1. Plaintiff's List of Exhibits

- 7) Medical records from Stuart J. Goodman, M.D., 12/20/99
- 8) Medical records from David G. Moore, M.D. , 9/18/00 - 5/14/01
- 9) Medical records from Southern Maryland Hospital, June 2000
- 10) Medical records from Prince George's Hospital, October 2000
- 11) Medical records from Cedric Dankwah-Poku, M.D., 7/7/98 - 1/28/03
- 12) Medical records from Washington Hospital Center, 11/3/00 - 11/9/00 followed by WCH(12/6/00)-1 & -2
- 13) Medical records from Washington Hospital Center, 11/13/00 11/16/00 transferred to NRH
- 14) Medical records from Washington Hospital Center, 2/21/01 - 2/24/01
- 15) Medical records from Washington Hospital Center, 3/6/01 - 3/8/01

- 16) Medical records from Stephen J. Kittner, M.D., 2/12/01
- 17) Medical records from NRH Regional Rehab, 5/15/01 - 9/17/01
- 18) Medical records from Rick Parente, Ph.D., 10/11/01
- 19) Medical records from Rehana Hussain, M.D.
- 20) Medical records from Samuel J. Potolicchio, M.D., 9/01 - 10/21/03
- 21) Medical records from Head Injury Rehabilitation and Referral Services, Inc., 2/11/02 - 7/14/03
- 22) Medical records from National Rehabilitation Hospital, 11/1 - 3/00
- 23) Medical records from National Rehabilitation Hospital, 11/16 - 12/06/00
- 24) BLANK (no exhibit)
- 25) Medical records from MRI of Maryland
- 26) Medical bills from Prince George's Hospital Center
- 27) Medical bills from Head Injury Rehabilitation and Referral Services, Inc.
- 28) Medical bills from Washington Hospital Center
- 29) Medical bills from The Neurology Center
- 30) MRI of December 1999
- 31) MRI of July 2000
- 32) MRI of October 2000
- 33) CT scan of October 2000
- 34) Arteriogram of October 2000
- 35) Echocardiography report of November 14, 2001
- 36) Transesophageal echocardiography report of July 16, 2002

- 37) Deposition of Dr. Edgar J. Kenton dated November 25, 2002 with exhibits:
Exhibit 1 - Diagram
Exhibits 2A and 2B - June 12, 2002, examination notes
Exhibit 3 - Mini mental status exam
Exhibit 4 - Page containing handwritten notes
- 38) Deposition of Dr. Stuart J. Goodman of June 3, 2003, with exhibits:
Exhibit 1 - Dr. Goodman's handwritten notes of Sharon Burke's office visit 12/9/99
Exhibit 2 - Dr. Goodman's typewritten note dated 12/20/99
Exhibit 3 - MRI report of date of examination of 12/14/99
Exhibit 4 - Dr. Goodman's handwritten notes of Sharon Burke's office visits 7/11/00 and 7/28/00
Exhibit 5 - Dr. Goodman's typewritten note dated 7/21/00
Exhibit 6 - Disability certificate dated 7/11/00
Exhibit 7 - Prescription slip for MRI
Exhibit 8 - MRI report of date of examination of 7/14/00
Exhibit 9 - Dr. Goodman's typewritten note dated 8/7/00
Exhibit 10 - Lab reports for 7/28/00
Exhibit 11 - Dr. Goodman's typewritten note dated 9/7/00
Exhibit 12 - Dr. Goodman's handwritten notes of Sharon Burke's office visits 8/21/00, 9/1/00 and 11/13/00
Exhibit 13 - Lab reports for 9/1/00
- 39) Video of Dr. Goodman's deposition of June 3, 2002 [original retained by plaintiff's counsel, available for inspection, and copies available from LAD Reporting Service]
- 40) Deposition of Dr. William L. Higgins of July 2, 2002, with exhibits:
34-Exhibit 1 - 7/14/00 MRI film jacket with handwritten notes
Exhibit 2 - MRI Report dated [blank]
- 41) Deposition of Dr. David G. Moore of May 28, 2002, with exhibits:
Exhibit 1 - Consultation note
Exhibit 2 - September 18, 2000 report
Exhibit 3 - Photocopy of Prescription
Exhibit 4 - MRI report
Exhibit 5 - June 21, 2001 letter
Exhibit 6 - Somatosensory Evoked Potential Test
Exhibit 7 - Electromyographic Report
Exhibit 8 - Office note
Exhibit 9 - Follow up note
Exhibit 10 - October 18, 2000 letter
Exhibit 11 - Photocopy of Referral Slips

Exhibit 12 - Attending Physician Statement
Exhibit 13 - Consultation Record
Exhibit 14 - Consultation Record 11/13/00
Exhibit 15 - February 12, 2002 Letter
Exhibit 16 - Follow up note
Exhibit 17 - Application for Long-Term Disability

- 42) MPEG Video File/LiveNote CD of David G. Moore, M.D.'s deposition of May 28, 2002 (3 CD disks) [original retained by plaintiff's counsel, available for inspection, and copies available from LAD Reporting Service]
- 43) Deposition of Dr. Gary Staples of June 21, 2002, with exhibits:
Exhibit 1- MRI report (retained by counsel)
Exhibit 2 - Series 2 (retained by counsel)
Exhibit 3 - Series 3 (retained by counsel)
Exhibit 4 - Series 6 (retained by counsel)
Exhibit 5 - Series 5 (retained by counsel)
Exhibit 6 - Series 4 (retained by counsel)
Exhibit 7 - Report on December '99 films
Exhibit 8 - Series 6 (retained by counsel)
Exhibit 9 - Series 7 (retained by counsel)
Exhibit 10 - Series 5 (retained by counsel)
37-Exhibit 11 - MRI film jacket cover 12-14-99 with handwritten notes
- 44) MPEG Video File (1 CD disk) / Live Note (1 CD disk) of Gary Staples, M.D.'s deposition of June 21, 2002 [original retained by plaintiff's counsel, available for inspection, and copies available from LAD Reporting Service]
- 45) Ms. Burke's employment records from J. Baker Casual Male, 2/19/91 through 9/8/00
- 46) Ms. Burke's payroll history from Casual Male Corporation, 2/19/91 through 9/8/00
- 47) *Curriculum Vitae* of Nancy Bonds, R.N.
- 48) Paul Fedio, Ph.D.
A. *Curriculum Vitae*
B. Neuropsychological Evaluation of Ms. Burke dated August 8, 2002
- 49) *Curriculum Vitae* of Edgar Kenton, M.D.

- 50) Richard J. Lurito, Ph.D.
 - A. *Curriculum Vitae*
 - B. "Present Value of Lost Income and Care Costs of Sharon K. Burke," by Richard J. Lurito, Ph.D., dated January 2004
- 51) BLANK (no exhibit)
- 52) American College of Radiology 1995 and 1999 communication standards.
- 53) Lee R. Mintz, M.Ed,
 - A. *Curriculum Vitae*
 - B. Employability Assessment dated July 1, 2002
 - C. Addendum to Employability Assessment dated January 8, 2004
- 54) Priscilla Phillips, R.N.
 - A. *Curriculum Vitae*
 - B. Life Care Plan, August 2002, by Priscilla Phillips, R.N.
 - C. Addendum to Life Care Plan of August 2002 dated January 6, 2004, by Priscilla Phillips, R.N.
- 55) *Curriculum Vitae* of Mark Tramo, M.D., Ph.D.
- 56) *Curriculum Vitae* of Daniel R. Weinberger, M.D.
- 57) *Curriculum Vitae* of David Yousem, M.D.
- 58) Medical literature: Grossman and Yousem, Neuroradiology: The Requisites, 1994, chapter 4, "Vascular Diseases of the Brain."
- 59) Medical literature: Grossman and Yousem, Neuroradiology: The Requisites, 1994, chapter 7, "White Matter Diseases."
- 60) Medical literature: Grossman and Yousem, Neuroradiology: The Requisites, 1994, chapter 18, "Approach and Pitfalls in Neuroimaging."
- 61) Medical literature: Culebras, Antonio, et al. "Practice Guideline for the Use of Imaging in Transient Ischemic Attacks and Acute Stroke: A Report of the Stroke Council, American Heart Association." Stroke. 28 (7): 1480-1497 (1997).

- 62) Medical literature: Feinberg, William M., et al. “Guidelines for the Management of Transient Ischemic Attacks: From the Ad Hoc Committee on Guidelines for the Management of Transient Ischemic Attacks of the Stroke Council of the American Heart Association.” Stroke. 25 (4): 1320-1335 (1994).
- 63) Medical literature: Gilroy, John, editor. Basic Neurology, 3rd Edition. McGraw-Hill, New York. 231-277, 307-319 (2000).
- 64) Medical literature: Adams and Victor, Principles of Neurology, 5th edition, 1993, chapter 34, “Cerebrovascular Diseases.” and chapter 36, “Multiple Sclerosis”
- 65) Samples of Ms. Burke’s handwriting
- 66) Videoclip (tape) of Ms. Burke before stroke
- 67) Key medical records excerpts:
- A. MRI Report of December 14, 1999 by Gary Staples, M.D.
 - B. Dr. Goodman’s report of December 20, 1999.
 - C. Dr. Goodman’s report of July 21, 2000.
 - D. MRI Report of July 14, 2000 by Dr. Higgins.
 - E. Dr. Goodman’s report of August 7, 2000.
 - F. Dr. Goodman’s report of September 7, 2000
 - G. Dr. Moore’s report of September 18, 2000.
 - H. Dr. Moore’s handwritten notes of September 18, 2000.
 - I. Dr. Moore’s report of October 18, 2000.
 - J. Angiogram report of October 26, 2000.
 - K. Carotid Duplex Report of October 25, 2000.
- 68) Medical bill summary for Sharon Burke
- 69) Table of life care plan needs for Sharon Burke (from January 2004 report of Coordinating Center)
- 70) Medical illustration: December 1999 MRI scan
- 71) Medical illustration: July 2000 MRI scan
- 72) Medical illustration: October 2000 MRI scan
- 73) Medical illustrations:
- A. Medical Illustration: internal carotid artery comparison: Dec. ‘99 to July 2000

- B. Medical Illustration: July 2000 internal carotid artery
 - C. Medical Illustration: Textbook MRI images compared to July 2000 MRI images
- 74) A. Medical illustration: blood supply to the brain
B. Gray matter and white matter of the brain.
- 75) Medical illustration: stroke damage in Ms. Burke October 2000 compared to earlier scans
- 76) Photographs of Sharon Burke and her mother
- 77) Video clip of Ms. Burke speaking after the stroke
- 78) Timeline: Symptoms, Examinations, Tests

Defendants' Objections to Plaintiff's Exhibits:

Defendant Goodman's Objections to Plaintiff's Exhibits:

This Defendant objects to Plaintiff's Exhibits 31, 32, 33, 34, 35, 36, 37, 38, 72A and 72B. Specifically, this Defendant objects to the introduction of his deposition and videotape of his discovery deposition. Additionally, this Defendant objects to the introduction of any *curriculum vitae* of any experts listed by the Plaintiff. This Defendant also objects to the introduction of any medical literature listed as exhibits. This Defendant objects to excerpts of medical records and medical illustrations. This Defendant also objects to the videotape of the Plaintiff prior to her stroke.

Defendant The Neurology Center, P.A. objects to plaintiff's listed exhibits numbers 31, 36, 38, and 42 through 72, inclusive.

Defendants' List of Exhibits

Defendant Goodman's List of Exhibits:

- 1) Medical records of Dr. Goodman.
- 2) Any exhibits listed by the Plaintiff except those to which objections have been lodged.
- 3) Any exhibits listed by the Co-Defendants.

Defendant The Neurology Center, P.A. reserves the right to utilize any medical or treatment record of Ms. Burke, as well as any other exhibit listed by any party to the action.

List of Exhibits of Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

1. Radiology report of December 14, 1999 prepared by Dr. Gary Staples.
2. MRI Films of December 14, 1999.
3. Radiology report of July 14, 2000 prepared by Dr. William Higgins.
4. MRI Films of July 14, 2000.
5. Medical records of Stuart Goodman, M.D.
6. Medical records of David Moore, M.D.
7. Curriculum Vitae of Gary Staples, M.D.
8. Curriculum Vitae of William Higgins, M.D.
9. Curriculum Vitae of Charles Citrin, M.D.
10. Curriculum Vitae of Joel Bowers, M.D.
11. Curriculum Vitae of Richard Lawrence, Ph.D.
12. Curriculum Vitae of Trudy Koslow
13. Curriculum Vitae of David Schretlen, M.D.
14. Curriculum Vitae of Rick Gaskins
15. Curriculum Vitae if Marc Schlosberg, M.D.

16. Medical records of Washington Hospital Center relating to treatment of Sharon Burke.

17. Medical records of Prince George's County Community Hospital relative to treatment of Sharon Burke.

18. These Defendants reserve the right to use anatomic models, illustrations, diagrams or enlargements of the records and other demonstrative or physical items that would assist in explaining and/or understanding the evidence.

19. These Defendants reserve the right to use any exhibits listed on behalf of the Plaintiff and/or Co-Defendants that are not otherwise objectionable.

Objections of Defendants GCM and Higgins to Plaintiff's List of Exhibits:

1. Although these Defendants are willing to stipulate that the medical records are authentic, the volume of records being presented by the Plaintiff (Exhibits 6 through 17) may be cumulative and not wholly relevant to the issues in this case.

2. Defendants object to Exhibit No. 31, the deposition of Dr. Edgar Kenton, to the extent that it may be cumulative of testimony provided in open court.

3. Defendants object to Exhibit No. 32, the deposition of Dr. Stuart Goodman, to the extent that it may be cumulative of testimony provided in open court.

4. Defendants object to Exhibit No. 33, the video deposition of Dr. Stuart Goodman, to the extent that it may be cumulative of testimony provided in open court.

5. Defendants object to Exhibit No. 34, the deposition of Dr. Higgins, to the extent that it may be cumulative of testimony provided in court.

6. These Defendants object to Exhibit No. 37, the deposition of Dr. Staples, on the grounds that it is cumulative of testimony provided in open court.

7. These Defendants object to Exhibit No. 38, the deposition of Dr. Staples, on the grounds that it is cumulative of testimony provided in open court.

8. Defendants object to Exhibit No. 41 to the extent that it may be cumulative of testimony provided in open court.

9. Defendants object to Exhibit No. 42-A as to the Curriculum Vitae to the extent that it may be cumulative.

10. Furthermore, Exhibit 42-B, the Neuropsychological Evaluation of Ms. Burke, is objected to on the grounds that it may also be cumulative of testimony in open court and as a hearsay document and may lack proper foundation.

11. Defendants object to Exhibit No. 43 to the extent that it may be cumulative of testimony provided in open court.

12. Defendants object to Exhibit No. 44-A to the extent that the Curriculum Vitae may be cumulative of testimony provided in open court and is a hearsay document.

13. Defendants object to Exhibit No. 44-B on the grounds that it is a hearsay document and may be cumulative of testimony provided in open court and may lack proper foundation.

14. Defendants object to Exhibit No. 47-A on the grounds that it may be cumulative of testimony provided in open court.

16. Defendants object to Exhibits No. 47-B and C on the grounds that they are hearsay documents, may lack proper foundation and may be cumulative of testimony provided in open court.

17. Defendants object to Exhibit No. 48-A on the grounds that it may be cumulative of testimony provided in open court.

18. Defendants object to Exhibits No. 48-B and C on the grounds that they are hearsay documents, cumulative and may not be supported by facts and evidence and may lack proper foundation.

19. Defendants object to Exhibit No. 49 on the grounds that it may be cumulative of testimony provided in open court.

20. Defendants object to Exhibit No. 50 on the grounds that it may be cumulative of testimony provided in open court.

21. Defendants object to Exhibit No. 51 on the grounds that it may be cumulative of testimony provided in open court.

22. Defendants object to all of the medical literature set forth in Exhibit Nos. 52, 53, 54, 55, 56, 57, and 58 on the grounds that such literature is hearsay, cumulative, may be irrelevant and immaterial in whole or in part, may lack appropriate foundation and may not have been produced in the course of discovery in this case.

23. Defendants object to Exhibit No. 59 on the grounds that it may be cumulative, inflammatory and therefore prejudicial.

24. Defendants object to Exhibit No. 60 on the grounds that it is inflammatory and therefore prejudicial and also may be cumulative of testimony provided by other witnesses.

25. Defendants object to Exhibit No. 61 to the extent that it is redundant of records already listed on Plaintiff's List of Exhibits and also cumulative.

26. Defendants object to Exhibit No. 62 to the extent that it would be a cumulative exhibit and redundant of bills already set forth in Plaintiff's List of Exhibits.

27. Defendants object to Exhibit No. 63 on the grounds of lack of foundation and possibly not supported by the evidence at trial.

28. Defendants object to Exhibit No. 64 in the absence of the illustration being produced for inspection. Defendants reserve the right to object on other grounds once they have seen the illustration.

29. Defendants object to Exhibit No. 65 in the absence of the illustration being produced for inspection. Defendants reserve the right to object on other grounds once they have seen the illustration.

30. Defendants object to Exhibit No. 66 in the absence of the illustration being produced for inspection. Defendants reserve the right to object on other grounds once they have seen the illustration.

31. Defendants object to Exhibit No. 67 in the absence of the illustration being produced for inspection. Defendants reserve the right to object on other grounds once they have seen the illustration.

32. Defendants object to Exhibit No. 68 in the absence of the illustration being produced for inspection. Defendants reserve the right to object on other grounds once they have seen the illustration.

33. Defendants object to Exhibit No. 69 in the absence of the illustration being produced for inspection. Defendants reserve the right to object on other grounds once they have seen the illustration.

34. These Defendants respectfully reserve the right to interpose additional objections to any of Plaintiff's Exhibits depending upon the manner and purpose for which they are introduced at trial.

M. Depositions

Plaintiff's Deposition Excerpts:

The plaintiff may offer as substantive evidence – by playing the videotape and/or reading the transcript – the following excerpts from:

Dr. Goodman's deposition:

p.21:16 to p.22:9
p.9:17 to p.11:1
p.12:3 to p.12:16
p.35:4 to p.35:15
p.39:22 to p.40:11
p.40:12 to p.41:11
p.48:4 to p.48:13
p.62:19 to p.64:11
p.64:12 to p.65:6
p.72:16 to p.73:11
p.102:17-21

Dr. Higgins' deposition:

p.5:6-15
p.29:12 to p.31:16
p.43:10 to p.43:20
p.53:14 to p.54:9
p.57:14-19

Dr. Staples' deposition:

p.6:16 to p.7:1

p.11:7-19
p.11:20 to p.12:5
p.21:13-22
p.22:19 to p.23:5
p.32:8-21
p.41:6-12
p.47:13-17
p.50:13-21
p.53:21 to p.54:10
p.55:5-8
p.55:13-18

Dr. Moore's deposition:

p.8:11-20
p.8:21 to p.9:1
p.9:10-17
p.10:7-15
p.16:9 to p.17:8
p.17:13 to p.18:9
p.17:18-21
p.40:12-17
p.54:7 to p.55:4
p.65:12 to 66:5
p.67:9-16
p.84:10 to p.85:3
p.85:19 to p.86:20
p.104:12-21

Defendants' Deposition Excerpts

Defendant Goodman's Deposition Excerpts:

1. None.
2. The Defendant Goodman objects to the Plaintiff's use of selected portions of his deposition or videotape, and reserves the right to read any other portion of the deposition or show any other portion of the videotape for substantive or contextual purposes.

Defendant The Neurology Center, P.A.:

This defendant reserves the right to utilize any depositions in accordance with the court rules.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

These Defendants object to the reading of deposition transcripts as being cumulative. These Defendants reserve the right to counter-designate portions of deposition transcripts if Plaintiff is permitted to read selected portions of the transcripts.

N. Pleadings and Discovery Responses

The parties reserve the right to use any pleadings taken during the discovery for impeachment purposes or substantive evidence.

Defendant The Neurology Center, P.A.: This defendant objects to the use of "any pleadings" for impeachment or substantive evidence.

This defendant reserves the right to utilize any pleadings and discovery responses in accordance with the court rules.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

None at the present time but these Defendants reserve the right to rely upon any pleadings, discovery or otherwise, for impeachment and/or as substantive evidence.

O. Demonstrative or Physical Evidence

Plaintiff:

See plaintiff's exhibit list. The plaintiff intends to use the following demonstrative evidence:

A. A short video clip of the plaintiff before her injury and another video clip taken recently, to demonstrate her language difficulty caused by the stroke at issue in this case.

B. A model of the brain and various medical illustrations as listed in her exhibit list.

C. Charts showing a timeline or chronology of key events.

D. Charts showing the radiologist standard of care.

E. Charts showing selected key images from the MRI scans taken on three dates.

F. A chart of the plaintiff's life care needs and costs.

G. Charts showing the plaintiff's handwriting.

The plaintiff also may use enlargements of selected pages of the medical records.

Defendants:

Defendant Goodman:

See Defendant's Exhibit List.

See exhibit list. This defendant reserves the right to utilize demonstrative evidence and blow-ups of medical records.

Defendant The Neurology Center, P.A.: See exhibit list. This defendant reserves the right to utilize demonstrative evidence and blow-ups of medical records.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

These Defendants reserve the right to use anatomic models, illustrations, diagrams, enlargements of the records, and any demonstrative or physical items that would assist in explaining or understanding matters at issue.

P. Videotapes

The plaintiff may play portions of the videotaped depositions of Dr. Goodman, Dr. Staples and Dr. Moore in lieu of reading the transcripts. The plaintiff also may show videotapes of her speaking before and after the injury, as described in the section on demonstrative evidence.

Defendant The Neurology Center, P.A.: Defendant may videotape witnesses if necessary in accordance with court rules.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

No videotapes at the present time.

Q. Requested Voir Dire Questions

Plaintiff:

See attached proposed Voir Dire Questions.

Defendants:

See attached proposed Voir Dire Questions.

The Defendant Goodman has no additional proposed Voir Dire questions. The Defendant Goodman objects to the Plaintiff's proposed Voir Dire Question Nos. 22, 25, 27, 28, 29, 30, 31, 34 and 35.

Defendant The Neurology Center, P.A.: See attached. This defendant objects to plaintiff's voir dire questions number 6, 8, 22, 23, 25, 26, 27, 28 and 31 through 36.

Requested Voir Dire of Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

1. Is any member of the jury panel personally acquainted with or related to the Plaintiff, Sharon Burke, or members of her family?
2. Has any member of the jury panel maintained a business, social, or personal relationship, in the past or in the present, with the Plaintiff, Sharon Burke?
3. Has any member of the jury panel or member of their immediate family or close friends been represented by, opposed by, or had business dealings with any of the following attorneys or law firms: (a) Patrick A. Malone, Esquire of Stein, Mitchell & Mezines; (b) Stephen L. Altman, Esquire or Thomas M. Wochok, Esquire of Hamilton Altman Canale & Dillon, LLC; (c) Raymond B. Herschthal, Esquire of Law Offices of Raymond B. Herschthal; (d) Alan R. Siciliano, Esquire of DeCaro, Doran, Siciliano, Gallagher & DeBlasis, LLP; and James M. Heffler, Esquire of Heffler Uhl & Taylor?
4. Has any member of the jury panel or member of their immediate family or close friend ever been a plaintiff or defendant in a lawsuit for dental or medical malpractice.

5. Has any member of the jury panel or member of their immediate family or close friend ever been a party or witness in ANY lawsuit? Please provide details.

6. Is any member of the jury panel or member of their immediate family or close friend a lawyer, medical doctor, podiatrist, dentist, nurse, physician's assistant, emergency medical technician, psychologist, therapist, counselor, health care professional or mental health care professional?

7. Does any member of the jury panel, member of their immediate family, or close friend or relative of any member of the jury have any formal training of any nature in medicine, nursing, podiatry, physical therapy, dentistry, psychology, or pharmacology? If so, please state the relationship and nature of the training.

8. Does any member of the panel or close friend or relative of any member of the panel have any formal legal training of any nature? If so, please state the relationship and nature of the training?

9. Is any member of the panel or close friend or relative of any member of the panel employed by an attorney or law firm?

10. Is any member of the panel, member of their family, or close friend or relative of any member of the panel employed by a physician, hospital, health maintenance organization, podiatrist, psychiatrist, psychologist, or pharmacist?

11. Is any member of the jury panel acquainted with, related to, or has any member of the jury panel ever maintained a business or social relationship with any of the possible witnesses:

a. the parties;

b. it is proposed that the list of witnesses of the respective parties be read at this point.

12. Do any of the prospective jurors believe that simply because a lawsuit has been filed seeking a large amount of money that that in itself should result in a large award for the Plaintiff? Or, if called upon to serve as a juror in this case, will you listen to all of the evidence and render a fair and impartial verdict based on the evidence and the instructions of law that the Judge will give you?

13. Based on what you have heard so far, can any of you think of any reason why you cannot serve as a juror in this case? Details please?

**Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.
Objections to Plaintiff's Voir Dire:**

1. Defendants object to Question No. 8. It is assumed that Plaintiff will contend at trial that she should have been placed on Coumadin and asking this question may spawn a discussion that is premature in the case and prejudicial to the Defendants.

2. Defendants object to Question No. 27 and Question No. 28 on the grounds that the wording appears to be reflective of a Jury Instruction. Since the jurors will not have heard any evidence at the time that they are voir dired, they should not be hearing about elements of damage which may or may not be proven.

R. List of Standard Jury Instructions Requested

See attached Standard Jury Instructions. The parties agree on many of the standard jury instructions. Where one party has proposed an instruction and the other party has not, such instructions are objected to.

Defendant The Neurology Center, P.A.: 1-1 through 1-12; 2-1, 2-3, 2-4, 2-5, 2-6, 2-8, and 2-9; 3-1, 3-2, 3-3, and 3-8; 4-3; 5-12, 5-19; 9-1, 9-2, 9-3, 9-6, 9-8; 12-3, 12-4, 12-5.

Defendant objects to requested instructions 5-1, 5-2, 5-3, 9-2, 13-1, 13-7.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

Because Defendants Drs. Groover, Christie & Merritt and Dr. William Higgins claim that Maryland law should be applicable to them in this case, they propose that the following Maryland Jury Instructions be given:

1. MPJI - CV1:1 Introduction
2. MPJI - CV 1:2 Questions of Law During Trial
3. MPJI- CV 1:12 Case Submission on Issue
4. MPJI - CV 1:4 Expert Opinion Testimony
5. MPJI - CV 1:5 Impartiality and Consideration
6. MPJI - CV 1:6 Inferences from Statements of Court
7. MPJI - CV 1:7 Burden of Proof Preponderance of Evidence Standard
8. MPJI - CV 1:11 Multiple Parties
9. MPJI - CV 1:12 Case Submission on Issues
10. MPJI - CV 1:13 Conclusion-Unanimous Verdict
11. MPJI - CV 27:1 Health Care Provider-Standard of Care
12. MPJI - CV 27:2 Burden of Proof

If the Plaintiff's Counsel is willing to stipulate that the use of jury instructions under District of Columbia law can be used as to Defendants Groover, Christie & Merritt and Dr. Higgins without the latter Defendants' waiving their right to claim that Maryland

law is applicable in this case for purposes of the application of the Maryland cap on non-economic damages, then these Defendants would propose the following District of Columbia Jury Instructions as follows: 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 2-1, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, 2-10, 3-1, 3-2, 3-3, 3-5, 3-8, 3-9, 4-3, 5-14, 9-1, 9-2, 9-3, 9-4, 9-5, 9-6, 9-8, 12-3, 12-4, 12-5 and 12-17. Otherwise, these Defendants maintain their position that Maryland law and instructions are applicable to this case.

[NOTE: The plaintiff agrees with GCM's proposal that jury instructions under District of Columbia law can be used without waiving the position of GCM and Higgins that the Maryland damages cap should apply to them.]

Furthermore, these Defendants join in the requested instructions numbered 1 through 10 of Co-Defendant The Neurology Center.

These Defendants reserve the right to amend, supplement, revise, add or withdraw jury instructions prior to the submission of this case to the Jury depending on circumstances which may occur prior to or during the trial of this matter.

Objections of Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D. to Plaintiff's Standard Jury Instructions:

2-2 Object to the extent that there may not be any facts judicially noticed and therefore this instruction may be unnecessary and/or inappropriate

5-1 This instruction deals with the elements of negligence and would be cumulative to the instruction relating to medical malpractice claims (9-1).

- 5-2 This instruction deals with the elements of negligence and would be cumulative to the instruction relating to medical malpractice claims (9-1).
- 5-3 This instruction deals with the elements of negligence and would be cumulative to the instruction relating to medical malpractice claims (9-1).
- 6-3 Defendants object to this instruction on agency and/or scope of employment to the extent that it suggests that the employee's "failures to act" were committed in furtherance of the business of the employer. Defendants GCM and Higgins deny that they were negligent or that they failed to act and therefore the wording of the instruction proposed is prejudicial to their cause.
- 13-1 Defendants object to the extent that the evidence may not be supportive of all elements of damage set forth in that instruction.
- 13-3 Defendants object to this instruction to the extent that the evidence may not be supportive of this instruction in whole or in part.
- 13-4 Defendants object to this instruction to the extent that the evidence may not be supportive of this instruction in whole or in part.
- 13-5 Defendants object to this instruction to the extent that the evidence may not be supportive of this instruction in whole or in part.
- 13-10 Defendants object to this instruction to the extent that the evidence may not be supportive of this instruction in whole or in part.

These Defendants respectfully reserve the right to amend, supplement or withdraw the foregoing objections depending on circumstances which may exist prior to or during the trial of this matter.

S. Non Standard Jury Instructions

Plaintiff: None.

Defendant Goodman: The Defendant Goodman reserves the right to offer Non-Standard Jury Instructions should such instructions be warranted by the evidence.

Defendant The Neurology Center, P.A.: See attached.

Plaintiff's Objections to Non-Standard Jury Instructions:

Plaintiff's General objections to Neurology Center's requested special instructions:

The standard jury instructions, *Standardized Civil Jury Instructions for the District of Columbia* (2002 ed.) are a product of many years of work by committees balanced between distinguished lawyers for both plaintiffs and defendants. The standard instructions cover virtually all issues presented in this case. Special instruction should only be used if there is a unique or unusual legal issue not fairly covered by the standardized instructions. None of the special instructions proposed by the defendant Neurology Center meet this test. If the court was to give some instructions crafted by the defense to be slanted in their favor, then there would be an

unending battle where opposing counsel would seek counter-balancing instructions in its favor. The court can easily avoid this by adhering to the standardized instructions.

Plaintiff's Objection to Instruction No. 1: See general objections. This is a defense-slanted version of the standard instructions numbers 9.01 and 9.02 on nature of the medical malpractice claim and the medical standard of care.

Plaintiff's Objection to Instruction No. 2: See general objections. The subject of this instruction is fully covered by Standardized Jury Instruction No. 9.02 on Standard of Care and 9.06 on Bad Result. The standard instructions are balanced. This instruction is unbalanced in that it suggests that the jury must find for the defendant.

Plaintiff's Objection to Instruction No. 3: This is another slanted instruction that covers issues that are fully covered by Standardized Jury Instruction No. 9.06. In addition, the "mere happening" language appears to derive from Standardized Jury Instruction No. 5.19. Courts in malpractice cases have increasingly recognized that "mere happening" instructions are inappropriate. See *Kennelly v. Burgess*, 654 A.2d 1335, 1341-42 (Md. 1995). See also commentary at instruction 5.19 in the 2002 edition of *Standardized Civil Jury Instructions for the District of Columbia*.

Plaintiff's Objection to Instruction No. 4: This is a defense-slanted version of Standardized Jury Instruction No. 12.01. The instruction is unnecessary.

Plaintiff's Objection to Instruction No. 5: This instruction restates the proximate cause issue in a defense-slanted way. The court should follow Standardized Jury Instruction No. 9.03, Professional Liability - Elements of Claim, and instruction no. 9.04, Professional Liability - Proximate Cause - Substantial Factor. The last sentence

of instruction 9.04 encompasses the entire point of the requested special instruction number 5, except that the standard instruction is evenhanded.

Plaintiff's Objection to Instruction No. 6: This instruction is also repetitive of the standardized instructions on proximate cause, but misstates and exaggerates the plaintiff's burden of proof. The court should use instruction 9.04, Professional Liability - Proximate Cause - Substantial Factor.

Plaintiff's Objection to Instruction No. 7: This instruction misstates the law on the burden of proof of "preponderance of the evidence." The preponderance burden is much more accurately and better described in Standardized Jury Instruction No. 2.08.

Plaintiff's Objection to Instruction No. 8: This restates the burden of proof on damages in a defense-slanted way. The instruction is also confusing. It appears to refer obliquely to the issue of aggravation of preexisting condition, which is fairly described in Standardized Instruction No. 13.07, which the court should use instead of defendant's proposed special instruction.

Plaintiff's Objection to Instruction No. 9: This instruction confuses the issue of income tax. The evidence will have already subtracted from the plaintiff's damages the amount of taxes she may pay in the future on her lost income. This instruction suggests that such computation should not have been done by the economist. The issue is more straightforwardly addressed and more clearly described in Standardized Instruction No. 13.01 final paragraph. The court should use Standardized Instruction No. 13.01 but should eliminate the last sentence about damages for emotional distress.

Plaintiff's Objection to Instruction No. 10: This instruction is highly misleading. It implies that the court may award attorneys fees after the trial, which is contrary to law. There is no reason for the jury to be instructed anything about legal costs and attorneys fees.

Objections of Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D. to Non-Standard Jury Instructions:

These Defendants respectfully reserve the right to submit non-standard jury instructions in this case (either Maryland or District of Columbia) should any issues develop prior to or during the trial of this matter justifying the submission of non-standard jury instructions to assist the jury in its decision-making process in this case. As stated above, these Defendants concur in the non-standard instructions proposed by Defendant Neurology Center.

T. Verdict Form

Plaintiff's: See Attached.

Defendant The Neurology Center, P.A.: Will be provided.

U. Settlement

The Plaintiff has demanded \$5,900,000.00.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.:

These Defendants are willing to explore settlement options in this matter.

V. Estimated Length of Trial

The parties estimate the trial will last 10 to 12 trial days.

Defendants Drs. Groover, Christie & Merritt, P.C. and William Higgins, M.D.

to Non-Standard Jury Instructions: The Defendants estimate the trial will require three to four weeks.

“THE FOREGOING JOINT PRE-TRIAL STATEMENT AS REVISED AT THE PRE-TRIAL CONFERENCE IN THE PRESENCE OF THE PARTIES AND COUNSEL, SHALL STAND AS THE PRE-TRIAL ORDER IN THIS CASE.”

JUDGE

Respectfully submitted,

STEIN, MITCHELL & MEZINES, L.L.P.

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