

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

THE ESTATE OF JOSEPH ROBERT
LAFARGE, BY AND THROUGH
ANGELA BLIZZARD, ADMINISTRATRIX

Plaintiff

v.

CIVIL ACTION
No. 1:08CV185-A-D

KEITH KYKER, M.D.; CARDIOLOGY
ASSOCIATES OF NORTH MISSISSIPPI, P.A.;

Defendants

PRETRIAL ORDER

1. Choose [by a ✓ mark] one of the following paragraphs, as is appropriate to the action:

If a pretrial conference was held ✓

A pretrial conference was held as follows:

Date: May 6, 2011 Time: 11:00 a.m.

United States Courthouse
at:

Aberdeen, Monroe County, Mississippi,

before the following judicial officer:

Magistrate Jerry Davis.

If the pretrial conference was dispensed with by the court pursuant to L.U.Civ.R. 16(f)(2)

The final pretrial conference having been dispensed with by the judicial officer, the parties have conferred and agree upon the following terms of this pretrial order:

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2. The following counsel appeared:

a. For the Plaintiff:

<u>Name</u>	<u>Postal and Email Addresses</u>	<u>Telephone No.</u>
Marc D. Amos, Esq.	Nichols, Crowell, Gillis, Cooper & Amos, PLLC P.O. Box 1827 Columbus, MS 39703	(662) 243-7332
Philip W. Thomas, Esq.	Philip W. Thomas, P.A. 747 North Congress Street Jackson, MS 39202	(601) 714-5660

b. For the Defendant:

<u>Name</u>	<u>Postal and Email Addresses</u>	<u>Telephone No.</u>
Robert K. Upchurch	rku@hruhpa.com	662.842.1721
David W. Upchurch	dwu@hruhpa.com P.O. Drawer 409 Tupelo, MS 38802	662.842.1721

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

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

Plaintiff's Complaint states a claim for medical negligence and a claim for lack of informed consent against Dr. Kyker and Cardiology Associates of North Mississippi, P.A. There are no counterclaims, cross-claims or third party claims.

5. The basis for this court's jurisdiction is: Diversity.

6. The following jurisdictional question(s) remain(s) [If none, enter "None"]: None.

7. The following motions remain pending [If none, enter "None"] [Note: Pending motions not noted here may be deemed moot]:

1. The portion of Defendants' Motion *in Limine* to Exclude Certain Testimony that the Court deferred (Doc 140)

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2. Defendants' Motion to Exclude Amount of Bobby Joseph LaFarge's Medical Bills (Doc. 141)
8. The parties accept the following **concise** summaries of the ultimate facts as claimed by:

- a. Plaintiff:

In May 2006 Bobby LaFarge, age 72, sought treatment from Cardiology Associates with complaints of shortness of breath and tightness in his chest. A Cardiology Associates physician—Dr. Francisco Sierra—diagnosed Bobby as having atrial fibrillation and scheduled a consultation with Dr. Keith Kyker and a diagnostic heart catheterization with Dr. Barry Bertolet. All of these doctors were employed by Cardiology Associates.

On May 24, 2006, Dr. Sierra implemented a conservative treatment plan that included 3-4 weeks of taking the anticoagulant blood thinning drug Coumadin before attempting to restore Bobby's heart to normal rhythm. Dr. Sierra also planned for Bobby to take Coumadin for several weeks after the restoration of the arrhythmia to normal rhythm. Dr. Sierra's plan was consistent with the applicable standard of care.

The purpose of a patient with atrial fibrillation taking blood thinner medication is to prevent a stroke. The medication reduces the chance of stroke by over 60%. Absent proper anticoagulation, the chances of a patient having a stroke are greatest in the days immediately following the restoration of the heart to normal rhythm.

On Tuesday, May 30, 2006, Dr. Kyker evaluated Bobby. Dr. Kyker diagnosed atrial fibrillation and atrial flutter and agreed with Dr. Sierra's conservative treatment plan of Coumadin before attempting to restore Bobby's heart to a normal rhythm. Neither atrial flutter nor atrial fibrillation are life threatening arrhythmias.

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On Wednesday, May 31, 2006, Dr. Bertolet conducted the heart catheterization and diagnosed heart failure. Dr. Bertolet recommended to Dr. Kyker that Dr. Kyker perform a radio-frequency catheter ablation that day. Dr. Kyker and Dr. Bertolet discussed the fact that Bobby was not therapeutically anticoagulated, but decided to proceed with the procedure anyway.

Bobby was sedated when Dr. Kyker decided to conduct the ablation procedure. In order to obtain the consent for the procedure, someone called Bobby's daughter Angela Blizzard, who lives in Portland, Oregon. The person who called Angela told her that Bobby's heart bypass grafts looked good and that they wanted conduct the ablation that day to restore Bobby's normal heart rhythm because Bobby was already sedated and it would be convenient. They did not tell Angela that Bobby was not properly anticoagulated, nor did they tell Angela about Bobby's increased risk of stroke due to their failure to anticoagulate Bobby. Angela would not have consented to the ablation procedure if she had been properly informed that they had not anticoagulated Bobby and that he was therefore at a greatly-increased risk of stroke. Dr. Kyker's actions in failing to obtain a proper informed consent before the ablation procedure breached the standard of care and proximately caused Bobby to suffer a stroke.

Dr. Kyker attempted to perform the ablation, but the procedure failed. Dr. Kyker breached the standard of care by (1) failing to adequately diagnose Bobby's condition before the ablation; (2) failing to have adequate knowledge of cardiac electrophysiology medicine; (3) proceeding with an unnecessary procedure; (4) proceeding with an unnecessary procedure when Bobby had not been therapeutically anticoagulated with Coumadin before the procedure, (5) not giving Bobby Heparin during and after the ablation procedure, and (6)

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not therapeutically anticoagulating Bobby with Coumadin or Heparin after the procedure. Dr. Kyker should have given Bobby Heparin during the ablation procedure because Bobby had not been therapeutically anticoagulated. Dr. Kyker's failure to therapeutically anticoagulate Bobby before and after the ablation was a breach of the standard of care and proximately caused Bobby's stroke.

Dr. Kyker's original plan after he completed the ablation procedure was for Bobby to go home for several weeks, for Bobby to continue taking Coumadin until he was properly anticoagulated, and then for Bobby to come in for another ablation. When Bobby's symptoms worsened following the ablation, Dr. Kyker decided to attempt a repeat ablation in four or five days (after the weekend). Dr. Kyker originally prescribed Coumadin following the ablation, but stopped the medicine on Friday night in anticipation of the planned repeat ablation on Monday.

On Sunday evening June 4, Bobby had a massive cardio-embolic stroke caused by a blood clot from Bobby's heart.

The stroke took Bobby's mobility and health and caused him to suffer severe harms and injuries. Bobby could no longer speak (on a regular basis), could not walk, and could not perform basic personal hygienes, like using the bathroom, taking a shower, or brushing his teeth. Angela flew Bobby out to Oregon so that she could be near him and help care for him. Bobby lived in a skilled nursing home from 2006 until he died from infections related to diabetes in January 2010.

b. Defendant:

Dr. Kyker is an electrophysiologist practicing with Cardiology Associates of North Mississippi. An electrophysiologist is a heart doctor who specializes in the diagnosis, care

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and treatment of abnormal heart rhythms. Dr. Kyker first met Mr. LaFarge during an office visit on May 30, 2006. Prior to seeing Dr. Kyker, Mr. LaFarge had been seen on May 24, 2006, by one of Dr. Kyker's partners, Dr. Francisco Sierra, a general cardiologist. Dr. Sierra documented that Mr. LaFarge, age 72, had a medical history that included coronary artery bypass surgery in 1997, high blood pressure, diabetes and obesity and further documented that Mr. LaFarge had not seen a heart doctor in approximately eight years. Mr. LaFarge, a former four to five pack per day smoker, told Dr. Sierra that for several weeks prior to his visit he had been short of breath with minimal exertion and was having chest tightness. Dr. Sierra obtained an EKG which he interpreted as demonstrating coarse atrial fibrillation, an irregular heart rhythm involving elements of atrial fibrillation and atrial flutter and prescribed a blood thinner, Coumadin, for Mr. LaFarge. Dr. Sierra's original plan was for Mr. LaFarge to take Coumadin for three to four weeks before making Mr. LaFarge an appointment with one his partners for an attempt to shock Mr. LaFarge's heart back into normal rhythm. Dr. Sierra also wanted Mr. LaFarge to see one of his partners who was an electrophysiologist in two to three weeks. After receiving the results of tests he had ordered on May 24, which tests revealed that Mr. LaFarge had serious abnormalities with the pumping mechanism and the electrical conduction system of his heart, Dr. Sierra's plans for Mr. LaFarge changed and he scheduled Mr. LaFarge to see Dr. Kyker on May 30 and for Mr. LaFarge for a heart catheterization on May 31.

When Mr. LaFarge saw Dr. Kyker on May 30, he told Dr. Kyker he was having episodes of heart palpitations which resulted in chest tightness and a smothering sensation and at times shortness of breath when just walking across a room. Mr. LaFarge also told Dr. Kyker he was having blood in his urine, which Mr. LaFarge was very concerned about. Dr.

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Kyker obtained another EKG which showed that Mr. LaFarge had an irregular heart rhythm known as atrial flutter. The type of atrial flutter Mr. LaFarge demonstrated is well known to respond to flutter ablation, a procedure in which the abnormal electrical current causing the flutter in the top part of the heart is interrupted allowing the heart to return to normal rhythm. Before finalizing a plan of treatment for Mr. LaFarge, Dr. Kyker wanted to have the results of the heart catheterization which Mr. LaFarge was scheduled to undergo the next day (May 31) and he also wanted Mr. LaFarge to be evaluated for the bleeding he was experiencing.

On May 31, Mr. LaFarge went to the North Mississippi Medical Center in Tupelo for his heart catheterization which was performed by an interventional cardiologist, Dr. Barry Bertolet, another of Dr. Kyker's partners. Before the catheterization Mr. LaFarge was experiencing atrial flutter which caused his heart to beat up to 170 times per minute. He reported to Dr. Bertolet shortness of breath while resting, a symptom of severe congestive heart failure, and also reported chest pain at rest.

At the beginning of the heart catheterization, Mr. LaFarge's heart was in a normal rhythm but during the catheterization his heart went into atrial flutter with a heart rate in the 170 to 180 beats per minute range. The catheterization showed that Mr. LaFarge had severe coronary artery disease but no recurring blockages to the arteries of his heart. Dr. Bertolet was of the opinion that Mr. LaFarge's rapid decline in heart function was resulting from the atrial flutter which was causing his heart to beat 170 – 180 times per minute, and that Mr. LaFarge's congestive heart failure was life threatening. Consequently, immediately following the catheterization, Dr. Bertolet personally went and talked to Dr. Kyker and recommended a flutter ablation that day to try and stop the damage being caused by Mr.

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LaFarge's heart beating 170 to 180 times a minute and to also implant a defibrillator since Mr. LaFarge was at risk for sudden cardiac death.

Dr. Kyker evaluated Mr. LaFarge and agreed that Mr. LaFarge's worsening heart condition was potentially life threatening and that a flutter ablation was indicated. Because Mr. LaFarge had received sedative and pain medications in connection with his heart catheterization Dr. Kyker appropriately obtained the informed consent of Mr. LaFarge's daughter, Angela Blizzard, to perform the recommended procedures. Dr. Kyker called Angela Blizzard and discussed with her Mr. LaFarge's condition, the recommended procedures and the risks associated with those procedures, including the risk of possible stroke. Ms. Blizzard expressly authorized for the procedures to be performed for her father.

Plaintiff is critical of Dr. Kyker for not anticoagulating Mr. LaFarge for three to four weeks prior to performing the flutter ablation. Mr. LaFarge's change in his condition and decline in heart function required urgent action by Dr. Bertolet and Dr. Kyker. Mr. LaFarge experienced a significant worsening of his condition between May 24, 2006 and May 31, 2006. On May 24, 2006, Dr. Sierra estimated Mr. LaFarge's ejection fraction -- the amount of blood being pumped by the heart into the circulatory system with each heart beat -- at 45 to 50%, which was consistent with Mr. LaFarge's reported shortness of breath with exertion. On May 25, Mr. LaFarge underwent a stress test during which his ejection fraction was noted to have declined to 37%. On May 30, Mr. LaFarge reported to Dr. Kyker that he was experiencing shortness of breath when just walking across the room and said he was experiencing a smothering sensation when his heart was out of rhythm. On the day of his heart catheterization Mr. LaFarge complained of shortness of breath at rest, chest pain at rest and was documented to have an ejection fraction of 20%. Mr. LaFarge was in severe, Class

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IV, heart failure on May 31, 2006. Dr. Bertolet had performed the catheterization and determined that his rapid decline in heart function was not caused by any blockages in the coronary arteries, but was the result of the high heart rate caused by the atrial flutter. Mr. LaFarge was in severe congestive heart failure, was having a life threatening heart rate and required immediate attention. In light of Mr. LaFarge's condition on May 31, 2006, Dr. Kyker's recommendation for and performance of the atrial flutter ablation met the standard of care in all respects.

The procedure performed by Dr. Kyker is the definitive method for determining the cause of Mr. LaFarge's irregular heart rhythm. Dr. Kyker, using catheters placed around the heart, confirmed that Mr. LaFarge's irregular heart beat was atrial flutter and he proceeded to perform the flutter ablation which terminated the atrial flutter and returned Mr. LaFarge's heart to a normal heart rhythm. Unfortunately, the buildup of fluid in Mr. LaFarge's lungs caused by his congestive heart failure prevented him from being able to lay still and flat on the procedure table. Additional sedating drugs could not be safely given because of the likelihood of worsening Mr. LaFarge's breathing problem and Dr. Kyker could not safely complete the procedure or place the defibrillator and the procedure was stopped.

Following the ablation procedure, Mr. LaFarge was admitted to the hospital for further observation, care and treatment. Upon admission to the hospital an Order was entered for Mr. LaFarge to be restarted on Coumadin. Dr. Kyker visited Mr. LaFarge on the evening of May 31 and noted that he had experienced an episode of his heart beating rapidly and suspected a recurrence of the flutter. Dr. Kyker subsequently recommended to Mr. LaFarge repeating the flutter ablation the following week and Mr. LaFarge desired to have the repeat procedure. Dr. Kyker also saw that Mr. LaFarge was experiencing significant bleeding as

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shown by blood in his urine and issued an Order requesting a urologist to see Mr. LaFarge. Because of the significant bleeding which Dr. Kyker observed which was confirmed by a urinalysis, Dr. Kyker ordered that Mr. LaFarge's Coumadin be stopped. Dr. Kyker's order to hold the Coumadin was an appropriate exercise of his medical judgment and was within the standard of care. Coumadin was contraindicated in view of Mr. LaFarge's active bleeding and given the fact that continued and increased bleeding caused by the blood thinning effects of Coumadin could be life threatening to Mr. LaFarge.

On June 4, 2006, Mr. LaFarge suffered a stroke which paralyzed his left side and affected his speech. The stroke was not caused by procedure performed by Dr. Kyker and was not the result of Coumadin being discontinued. Mr. LaFarge's history of smoking, coronary artery disease, diabetes, being overweight, and having high blood pressure placed him at high risk for a stroke. Dr. Kyker's care and treatment of Mr. LaFarge met the standard of care in all respects and Dr. Kyker did not do or fail to do anything which caused Mr. LaFarge's stroke.

9. The following facts are established by the pleadings, by stipulation, or by admission:

None.

a. The contested issues of fact are as follows:

- (1) Whether Dr. Kyker and Cardiology Associates breached the applicable standard(s) of care.
- (2) Whether or not Dr. Kyker met the applicable standard of care in his care and treatment of Joseph Robert LaFarge from May 31 through June 4, 2006.
- (3) Whether Dr. Kyker's and Cardiology Associates alleged breaches of the standard(s) of care approximately caused Bobby's stroke.

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- (4) Whether Dr. Kyker and/or Cardiology Associates obtained appropriate informed consent(s) for his treatment of Joseph Robert LaFarge, including the ablation procedure.
- (5) Whether Mr. LaFarge's stroke was caused or contributed to by any alleged negligent act or omission on the part of Dr. Kyker.
- (6) Whether or not the damages claimed by the plaintiff were caused or contributed to by any alleged negligent act or omission on the part of Dr. Kyker.
- (7) The nature, extent, amount and degree of the damages, if any, sustained by the plaintiff.

b. The contested issues of law are as follows:

- (1) Whether or not as a matter of law Dr. Kyker deviated from the applicable standard of care in a manner that proximately caused or contributed to the stroke experienced by Joseph Robert LaFarge on June 4, 2006.
- (2) The elements of damage and the amount of damages which may be claimed by the Plaintiff.
- (3) Whether the Plaintiff has standing to claim as damages those portions of Joseph Robert LaFarge's medical bills that were written off or adjusted or are otherwise not collectible.¹
- (4) Whether Mississippi's statutory limitation on non-economic damages in medical malpractice cases is constitutional under state and federal law.²
- (5) Whether Mississippi's statutory limitation on non-economic damages in medical malpractice cases violates the equal protection clause.³
- (6) Whether Mississippi's statutory limitation on non-economic damages in medical malpractice cases violates the separation of powers clause in the state and federal constitutions.⁴

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

¹ This contested issue of law is stated by the Defendants solely for preservation of the record.

² This contested issue of law is stated by the Plaintiff solely for preservation of the record.

³ This contested issue of law is stated by the Plaintiff solely for preservation of the record.

⁴ This contested issue of law is stated by the Plaintiff solely for preservation of the record.

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a. To be offered by the Plaintiff:

- P-1 Cardiology Associates medical records for Bobby LaFarge.
- P-2 North Mississippi Medical Center medical records for Bobby LaFarge
- P-3 Portions of Bobby LaFarge's medical records from Oregon
- P-4 Photographs of Bobby LaFarge
- P-5 Excerpts from Day in the Life Video of Bobby LaFarge
- P-6 Summary of Related Medical Bills and Expenses
- P-7 Curriculum vitae of Ira R. Friedlander, M.D., FACC
- P-8 Curriculum vitae of Gregory A. Compton, M.D., CWS, CMD

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified evidentiary ground(s) for the objection(s):

- P-4 Defendants reserve the right to object to P-4 until such time as the particular photographs sought to be offered into evidence are identified.
- P-5 Defendants object to P-5 on the grounds stated in their Motion *in Limine* to Exclude the Plaintiff's "day in the life" Video.
- P-6 Defendants object to P-6 on the grounds stated in their Motion *in Limine* to Exclude Evidence of the Amount of Bobby Joseph LaFarge's Medical Bills which were Written Off and or Adjusted by Medical Providers, and further object to P-6 on the grounds of relevancy until such time as the proper predicate may be laid for the admission of any such summary and/or medical bills and expenses.

b. To be offered by the Defendant:

- D-1 Records of Cardiology Associates of North Mississippi, P.A. for Joseph Robert LaFarge;
- D-2 Records of North Mississippi Medical Center for Joseph Robert LaFarge's May 31, 2006 admission;
- D-3 Records of Columbus Urology Group for Joseph Robert LaFarge;

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- D-4 Records of Tuscaloosa Veterans Administration Medical Center for Joseph Robert LaFarge;
- D-5 Records of Emory University Hospitals for Joseph Robert LaFarge;
- D-6 Records of Hillsboro Rehabilitation and Specialty Care for Joseph Robert LaFarge;
- D-7 Records of Shelton's Pharmacy for Joseph Robert LaFarge;
- D-8 January 20, 2011 Statement of Charges of Plaintiff's Expert, Ira R. Friedlander, M.D.;
- D-9 Curriculum vitae of Keith Kyker, M.D.;
- D-10 Curriculum vitae of Barry Bertolet, M.D.;
- D-11 Curriculum vitae of Jeffrey Kerlan, M.D.;
- D-12 The court file from the Estate of Joseph Robert LaFarge styled *In the Matter of the Estate of Joseph Robert LaFarge, deceased*, Case No. C100100PE in the Circuit Court of the State of Oregon for the County of Washington.

Defendants reserve the right to introduce any exhibit listed by the plaintiff.

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified evidentiary ground(s) for the objection(s):

D-12 The Plaintiff objects to D-12 pursuant to FRE 401 and 403.

- 11.** The following is a list and brief description of charts, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing arguments, but which **will not** be offered in evidence:

Plaintiff:

- a. Plaintiff may use a power point presentation in opening statement that will summarize Plaintiff's case and incorporate excerpts from exhibits.
- b. Plaintiff may use a power point presentation in closing argument that will summarize Plaintiff's case and incorporate excerpts from exhibits.

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- c. Plaintiff may use an easel pad in opening statement and closing arguments.
- d. Plaintiff may use a chronology in opening and/ or closing.
- e. Plaintiff may use two medical illustrations and a heart rate rhythm chart previously produced.
- f. Plaintiff may use demonstrative aids showing Bobby’s reported arrhythmias during May-June 2006.

Defendants:

- a. Medical illustrations of the anatomy at issue;
- b. Medical illustration of the flutter ablation procedure;
- c. Medical illustrations/animations demonstrating
 - (a) normal heart rate and rhythm;
 - (b) atrial flutter with normal heart rate; and
 - (c) atrial flutter with elevated heart rate
- d. Medical models.

Objections, if any, to use of the preceding objects are as follows:

Plaintiff reserves the right to object to the use of any or all of the above demonstrative aids identified by Defendants, as they were produced for the first time on May 5, 2011.

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

- 12.** The following is a list of witnesses Plaintiff anticipates calling at 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 have been made with the trial judge before commencement of trial. The listing of a **WILL CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

<u>Name</u>	<u>Will/</u> <u>May</u> <u>Call</u>	<u>[F]act/</u> <u>[E]xpert</u> <u>[L]iability/</u> <u>[D]amages</u>	<u>Business Address &</u> <u>Telephone Number</u>
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Angela Blizzard	May	Fact	Liability/ Damages	
Betty Vazquez LaFarge	May	Fact	Damages	
Josie Fannon	May	Fact	Damages	38 St. Paul Church Rd. Brooksville, MS
Dr. Francisco Sierra	May	Fact/ Expert	Liability/ Damages	
Dr. Barry Bertolet	May	Fact	Liability	
Dr. Keith Kyker	May	Fact	Liability	
Dr. Steven Losli (depo.)	May	Fact/ Expert	Damages	
Dr. Ira Friedlander	May	Expert	Liability/ Damages	609 Parkhill Drive #18 Akron, OH 44333 (330) 573-2002
Dr. Gregory Compton	May	Expert	Damages	2948 Seabrook Island Rd., John Island, SC 29455 (843) 735-8242

Will testify live.

Will testify by deposition:

Deposition Excerpts that may be introduced:

Witness	Page	Line (s)
Dr. Keith Kyker:	5	2-25
	6	1-25
	7	1-18
	8	13-25
	9	1-25
	10	1-25
	11	1-25
	12	1-25

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13	1-25
14	1-25
15	1-25
16	1-25
17	1-23
18	9-12, 23-25
19	1-25
20	1-19
23	7-25
24	1-16
46	12-25
47	1-25
50	17-25
51	1-20
53	9-25
54	20-25
55	1-25
56	1-3
106	1-19
114	15-25
115	1-25
117	1-22
119	11-15
Page	Line (s)
120	2-8
121	17-25
122	1-7
124	16-25
125	1-25
126	1-25
127	1-3
132	3-21
150	15-25
151	1-25
152	1-8
155	24-25
156	1-5
157	3-14

Dr. Steven L. Losli:

Page	Line (s)
5	1-22
6	10-21
7	10-25

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8	1-25
9	1-25
10	1-25
11	1-16
14	1-11
15	25
16	1-25
17	1-12
18	2-25
19	1-25
20	1-25
21	1-14
26	8-25
27	1-25
28	1-25
29	1-25
30	1-10
34	6-25
35	1-22
52	22-25
53	1-9

State whether the entire deposition, or only portions, will be used. Counsel **must** confer, no later than twenty-one days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (electronically recorded or otherwise). All controversies not resolved by the parties **must** be submitted to the trial judge not later than fourteen days before trial. All objections not submitted within that time are waived.

Keith Kyker, M.D.

Defendants object to the Plaintiff reading identified excerpts of Dr. Kyker's deposition. These excerpts can only be placed in proper context through a reading or playing of the entire video deposition. If the Plaintiff is permitted to read or play any portion of Dr. Kyker's deposition, the Defendants request that the Plaintiff be required to read or show the entire deposition in order that the testimony may be placed in its proper context and to avoid any unfair prejudice to Dr. Kyker.

Page 5, line 2 through page 24, line 16: Without waiving the above stated objection and request, the Defendants object to above cited pages. The questions posed during the line of questioning in the cited pages were impermissibly vague, predicated on an improper hypothetical and contained no factual basis to the care and treatment of Mr. LaFarge and should be excluded pursuant to FRE 401, 402 and 403. In the event the Court were to allow the Plaintiff to read any portion of the above-referenced cited pages, then Defendants request that the entirety of Dr. Kyker's deposition be played. It is only by a full hearing of

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his deposition testimony that his responses to the questions from page 5 line 2 through page 24 line 16 can be placed into their proper context.

Page 125, line 12 – 126, line 10: The Defendants object to the above cited pages on the grounds that they are predicated on an improper, unidentified statement read to Dr. Kyker by Plaintiff's counsel. (See Question at p. 125, line 12)

Steven L. Losli, M.D.

Defendants designate the following additional pages to be read or shown: Page 37, line 17 through page 52, line 19.

- 13.** The following is a list of witnesses Defendant anticipates calling at 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 have been made with the trial judge before commencement of trial. The listing of a **WILL CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

<u>Name</u>	<u>Will/ May Call</u>	<u>[F]act/ [E]xpert [L]iability/ [D]amages</u>	<u>Business Address & Telephone Number</u>
1. Keith Kyker, M.D.	May Call	F/E/L/D	499 Gloster Creek Village Suite A1 Tupelo, MS 38801 (662) 620-6800
2. Barry Bertolet, M.D.	May Call	F/E/L	499 Gloster Creek Village Suite A1 Tupelo, MS 38801 (662) 620-6800
3. Jeffrey Kerlan, M.D.	May Call	E/L/D	6025 Walnut Grove Road, Suite 111 Memphis, TN 38120 (901) 226-5510
4. Francisco Sierra, M.D.	May Call	F/E	499 Gloster Creek Village Suite A1 Tupelo, MS 38801 (662) 620-6800
5. Karl J. Crossen, M.D.	May Call	F	499 Gloster Creek Village

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- | | | | | |
|-----|--|----------|---|---|
| | | | | Suite A1
Tupelo, MS 38801
(662) 620-6800 |
| 6. | James E. Stone, Jr., M.D. | May Call | F | 499 Gloster Creek Village
Suite A1
Tupelo, MS 38801
(662) 620-6800 |
| 7. | Stephen Farmer, M.D. | | F | P. O. Drawer 829
Tupelo, MS 38802 |
| 8. | Justin Graff, M.D. | May Call | F | 609 Brunson Drive
Tupelo, Ms 38801
(662) 844-7021 |
| 9. | Steven Losli, M.D. | May Call | F | 500 N. Columbia River Hwy,
Suite 6
Saint Helens, OR 97051
(503) 397-0471 |
| 10. | Angela Blizzard | May Call | F | 36240 Southwest Viewridge Ln.
Hillsboro, OR 97123 |
| 11. | Nita Mills,
Representative of
Billing Dept. at
NMMC | May Call | D | 830 S. Gloster Street
Tupelo, MS 38801
(662) 377-3000 |
| 12. | Sallie Simmons | May Call | F | 802 Hemlock Street
Columbus, MS 39702 |
| 13. | Roger Williams, M.D. | May Call | F | 499 Gloster Creek Village
Suite A1
Tupelo, MS 38801
(662) 620-6800 |

Will testify live. Yes.

Plaintiff objects to Nita Mills being called as a witness. Ms. Mills was not identified as a potential witness prior to the discovery deadline, and Defendants have not offered to make Ms. Mills available for discovery purposes.

Will testify by deposition:

FORM 3 (ND/SD MISS. DEC. 2009)

Steven Losli

Video deposition: E (Depo transcript pp. 37, 17-52, 19)

State whether the entire deposition, or only portions, will be used. Counsel **must** confer, no later than twenty-one days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (electronically recorded or otherwise). All controversies not resolved by the parties **must** be submitted to the trial judge not later than fourteen days before trial. All objections not submitted within that time are waived.

14. This _____ is _____ is not a jury case.
15. Counsel suggests the following additional matters to aid in the disposition of this civil action:
16. Counsel estimates the length of the trial will be 5-6 days.
17. As stated in paragraph 1, this pretrial order has been formulated (a) at a pretrial conference before a judicial officer, notice of which was duly served on all parties, and at which the parties attended as stated above, or (b) the final pretrial conference having been dispensed with by the judicial officer, as a result of conferences 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.

ORDERED, this the 13th day of May, 2011.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE

Attorney for Plaintiff

Attorney for Defendants
Keith Kyker, M.D. and
Cardiology Associates of North
Mississippi, P.A.

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Entry of the preceding Pretrial Order is recommended by me on this, the 6th day of
May, 2011.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE