

1 THE COURT: Doctor, please. If you can state your
2 name and spell your last name?

3 THE COURT OFFICER: Raise your right hand.

4 D O C T O R B U R T G R E E N B E R G, a witness called by
5 and on behalf of the DEFENDANT, upon being duly sworn, testified
6 as follows:

7 THE WITNESS: Burt Greenberg, BURT GREENBERG.

8 THE COURT OFFICER: Occupation for the record?

9 THE WITNESS: Physician.

10 MR. PATERNITI: May I inquire, Your Honor?

11 THE COURT: Yes, sir.

12 MR. PATERNITI: Thank you.

13 DIRECT EXAMINATION

14 BY MR. PATERNITI:

15 Q Good morning, doctor.

16 A Good morning.

17 Q Doctor, I'm going to ask you a few questions this
18 morning. I just ask you that you keep your voice up as much as
19 possible so all the of the jurors can hear. The acoustics in
20 this room can be difficult at times.

21 Doctor, are you licensed to practice medicine in the
22 State of New York?

23 A Yes.

24 Q And for how long have you been so licensed?

25 A 28 years.

1 Q And do you practice medicine in a particular specialty?

2 A Yes, in plastic surgery.

3 Q And are you board certified in that field?

4 A Yes.

5 Q And for how long have you been board certified?

6 A Since 1988.

7 Q Doctor, could you, please, tell the jury something --
8 tell them about your education, and training starting with med
9 school?

10 A I went to Cornell University with a seven year
11 undergraduate and graduate program, in Ithaca, New York, and
12 then Syracuse, New York, obtaining my MD degree, in 1979.

13 In 1979, I went to Philadelphia to begin The University
14 of Pennsylvania for a year of internship and general surgery,
15 for five years; followed by two years of plastic surgery also at
16 Pennsylvania, and then two years at Harvard Medical School, as a
17 fellow, a teaching fellow and research person in the field of
18 plastic surgery.

19 Q And upon completing that fellowship at Harvard, what's
20 the next thing that you did?

21 A I came back to New York, and I started my practice at
22 North Shore University Hospital, Long Island Jewish Medical
23 Center.

24 Q And have you been practicing plastic surgery since that
25 time?

1 A Yes.

2 Q And do you presently have a private practice?

3 A Yes.

4 Q And how long have you been in private practice?

5 A Since 19 -- the end of 1986. So, it's about 28, 29
6 years.

7 Q And could you give the jury an idea of what the nature
8 of your practice is? Types of patients that you treat?

9 A My practice is half reconstructive cases which are
10 cases involving children with trauma or birth defects; breast
11 reconstruction for cancer, different types of skin cancers and
12 the reconstruction of all that. And the other half of the
13 practice is cosmetic surgery. For instance, breast
14 augmentation, facelifts, liposuction, tummy tucks. That sort of
15 thing.

16 Q Okay, now, doctor, besides your private practice and
17 you see patients in your office, do you have privileges at any
18 hospitals?

19 A Yes, I do.

20 Q And where do you have privileges?

21 A North Shore Hospital, Long Island Jewish Hospital,
22 Syossete Hospital, Plain View Hospital, Wynnthrop Hospital,
23 Nassau County Medical Center, South Hampton Hospital, and Saint
24 Francis Hospital.

25 Q Now, besides treating patients in your private

1 practice, have you had occasion to see patients and treat
2 patients outside of the country?

3 A Yes, I recently last March was in Cambodia as a
4 visiting lecturer, and operated on patients in the city of
5 Emory, Cambodia. These children were victims of folfox régime
6 of roadside bombs years ago with active bombs still around, as
7 well as the high incidents of clef lip and pallet deformity seen
8 in Vietnam and Cambodia.

9 Q And were you involved in treating these children?

10 A Yes.

11 Q Now, doctor, at the request of my office, did you
12 perform an examination of Stanley Pina in this matter?

13 A Yes, I did.

14 Q And can you tell us when -- well, withdrawn. Doctor,
15 do you have with you -- withdrawn. As a result of that
16 examination, did you generate a report?

17 A Yes.

18 Q Generate a report?

19 A Yes.

20 Q And do you have a copy of that report with you?

21 A Yes.

22 Q Do you also have with you -- withdrawn. When we asked
23 you to perform the examination of Stanley Pina, did we provide
24 you with certain medical records for your review?

25 A Yes.

1 Q Okay, and is that what you have in front of you?

2 A Yes, I do.

3 Q Okay. All right, so at this point, doctor, I'm going
4 to ask you some questions about your examination, and you can
5 refer to your report --

6 A Okay.

7 Q To the extent necessary?

8 A Okay, let me just pull that out then. I have it here.

9 THE COURT: Do you have the report? Let's mark
10 it. Mark it Defendant's Exhibit C, for identification.

11 (Whereupon, the item referred to, previously
12 Defendant's Exhibit C was marked for identification.)

13 DIRECT EXAMINATION

14 BY MR. PATERNITI:

15 Q Okay, doctor, first of all can you tell the jury when
16 you performed this examination?

17 A This report is dated April 25, 2014.

18 Q Okay.

19 A I performed the examination on April 21, 2014, and I
20 have the sign-in sheet of the patient here.

21 Q Okay, the report itself is dated April 25, 2014,
22 correct?

23 A Yes.

24 Q Now, doctor, now as we know you have Defendant's C, for
25 identification, in front of you, and that report. Does that

1 report contain all of your findings and opinions with regards to
2 your exam of the infant?

3 A Yes.

4 Q And, doctor, can you tell us on that -- on the day of
5 the exam, other than Stanley Pina, who was present in your
6 office for that examination?

7 A His mother. Stanley Pina's mother.

8 Q And as part of your examination, did you speak with
9 her, and ask her some questions?

10 A Yes.

11 Q And can you tell us what, if anything, did the mother
12 say to you or state regarding any complaints the young boy had
13 with regards to his left cheek?

14 A Yes, I asked the mother whether Stanley was able to
15 formulate words. At that time he was only two and a half years
16 old. Whether he can eat properly? Whether she had noticed any
17 tethering or grabbing of that area of the injury of the cheek,
18 and she had said that time that he did not have any of these
19 functional disabilities with animating his face, moving his face
20 or eating or talking.

21 Q And when you did this exam, you had an opportunity to
22 observe Stanley Pina in your office, correct?

23 A Yes.

24 Q And based on your exam, did you notice any, evidenced
25 by the infant plaintiff, any signs of discomfort or pain?

1 A No, none at all.

2 Q And, doctor, you had a chance to specifically examine
3 the scar here, correct?

4 A Yes.

5 Q And first of all, based on your examination of the left
6 cheek, can you tell us what layers of the skin were involved?

7 A The epidermis is the outside layer of skin, and the
8 dermis is directly underneath it. Underneath the dermis are
9 the muscular structures of the cheek and jaws. And this injury
10 was the epidermis, which is extremely thin. Less than the slice
11 of this paper, and the dermis. So, the injury went into the
12 dermis of the left cheek.

13 Q Okay, and would you consider that superficial
14 laceration?

15 A Yes.

16 Q And, doctor, we know at the time of your examination,
17 there was no evidence of discomfort or pain.

18 In your opinion, is this scar something that will be
19 painful or become painful for the patient going forward?

20 A No, not at all.

21 Q Now, when you examined the scar itself, did you use any
22 type of any particular type of equipment or instruments?

23 A I used two instruments. I used loop magnifying
24 glasses which magnify, in my case, wounds three and a half times
25 the normal power of the naked eye at 20/20 vision, and I used a

1 ruler with caliber measurements.

2 Q Okay, and in this case, the nature of the scar that you
3 saw, was it difficult to see the scar without magnifying loops?

4 A It was barely visible without magnifying loops.

5 Q It was?

6 A Barely visible.

7 Q Okay. Now, doctor, you can refer to your report, if
8 necessary. Could you describe for us what your observations
9 were about the scar?

10 A I measured the scar to be 1.5 centimeters in length,
11 which is about half an inch, and it was located at a width of
12 two millimeters, which is about an eighth of an inch, on the left
13 cheek oriented obliquely. And what I mean by obliquely, it's
14 at an angle. It's not horizontal. It's not vertical, but it's
15 at an angle to the cheek. I found that there was no tethering
16 of the scar. In other words, there was no anchoring of the
17 base of the scar to the deeper muscular structures, and I could
18 not feel any subsurface deformity or knotting or heaviness of
19 the scar that you might otherwise see, say, in a keloid type
20 scar. This was not the case here whatsoever. It was soft. I
21 felt on exam, and discovered that the child was able to
22 communicate, to smile, and cry without any pulling of the scar
23 in any given direction, including the deep pulling did not, it
24 was not found.

25 Q Okay, so now, doctor, does that conclude your

1 observations and examination?

2 A Yes.

3 Q Okay, the location of the scar?

4 A Yes.

5 Q On the left cheek, where was that in relation to what,
6 I guess, we would use in lay terms the cheek bone?

7 A It was just below the cheek bone.

8 Q Would you consider it to be in a more fleshy part of
9 the cheek?

10 A Yes.

11 Q Okay, now doctor --

12 MR. PATERNITI: Your Honor, can I have these
13 marked for identification?

14 THE COURT: Yes.

15 THE COURT OFFICER: So marked Defendant's D, E, F,
16 for identification.

17 (Whereupon, the item referred to, previously
18 Defendant's Exhibit's D, E, F was marked for
19 identification.)

20 MR. PATERNITI: May I hand them to the witness,
21 Judge?

22 DIRECT EXAMINATION

23 BY MR. PATERNITI:

24 Q Doctor, in connection with your examination, at the
25 time of the examination, did you take photos of Stanley Pina's

1 left cheek?

2 A Yes.

3 Q And did you take three photos?

4 A Yes.

5 Q And the documents that have been handed to you, can you
6 tell me who those are?

7 A Three photos of his face, and left cheek.

8 Q Are those the photos that you took?

9 A Yes.

10 Q And are they a fair and accurate depiction of the way
11 Stanley Pina looked 14 month ago? 14 months ago in April of
12 2014?

13 A Yes.

14 MR. PATERNITI: Your Honor, at this point I'd
15 offer the photos into evidence.

16 MR. HIRSHBERGER: Objection. The photos are in
17 black-and-white, so they don't depict the scar. If he has
18 color photos, I'd like to take a look at those, but a
19 black-and-white photo doesn't depict the scar.

20 THE COURT: It's overruled. D, E, F, in evidence.

21 MR. HIRSHBERGER: Your Honor, I have an additional
22 objection.

23 THE COURT: What's the addition?

24 MR. HIRSHBERGER: We had requested these photos.
25 They weren't provided to us.

1 THE COURT: Well, that's something different.

2 MR. HIRSHBERGER: Yeah.

3 THE COURT: Step up, please.

4 (Whereupon, the following discussion
5 takes place at sidebar among the Court and
6 Counsel, outside the hearing of the defendant and sworn
7 jurors. Off the record.)

8 THE COURT: Okay, upon speaking with counsel
9 Defendant's D, E and F, photographs, I will reserve
10 decision on whether or not they come into evidence.

11 DIRECT EXAMINATION

12 BY MR. PATERNITI:

13 Q Okay, Doctor, when you took those photos, can you just
14 explain to the jury the equipment you used to do that?

15 A I used a Cannon camera with a macro lens. And --

16 Q Go ahead.

17 A And Stanley Pina was sitting at that time on his
18 mother's lap, and she was holding him.

19 Q And when you say macro lens, what does that mean?

20 A It's a lens that allows photographer to get closer to
21 the subject within 18 inches where a regular lens may create a
22 blurred mentioned.

23 Q Now, doctor, based on your examination, your
24 examination of Stanley Pina, can you tell us, in terms of a
25 prognosis, what will happen with this scar going forward?

1 A It will fade in time. It may be completely
2 unnoticeable, as he grows over the next few years.

3 MR. PATERNITI: Okay, thank you very much.

4 CROSS EXAMINATION

5 BY MR. HIRSCHBERGER:

6 Q Good morning Doctor Greenberg.

7 A Good morning, sir.

8 Q Doctor Greenberg, you used a Cannon camera with a macro
9 lens to take those photographs?

10 A Yes.

11 Q I presume that camera is cable of producing photographs
12 in color?

13 A Yes.

14 Q But you choose to bring black-and-white photographs?

15 A Well, what I normally do is everything is done in
16 color, and stored that way and electronically transmitted to
17 parties who request it.

18 Q Okay, so at some point the decision was made to use
19 black-and-white photographs because that's what you have in
20 front of you, correct?

21 A That's what I have in front of me.

22 Q Now, sir, part of the -- well, withdrawn. Part of the
23 -- I'm trying to look for the right word. What would you refer
24 to when a scar cause someone cosmetic discomfort? What word
25 would you use?

1 A Not sure I completely understand what you're asking me.

2 Q You treat patients with scars?

3 A Yes.

4 Q People come to you they say I have a scar on my face,
5 it's bothering me. Can you help me?

6 A Yes.

7 Q What do you call that? When someone comes to you and
8 is there a medical term?

9 A Not really. Just a painful scar.

10 Q Okay, and pain can be both physical and emotional,
11 correct?

12 A It could be, yes, generally.

13 Q If someone comes to you and say this scar is bothering
14 me, that will mean emotional pain, correct?

15 A No. When patients do that, they refer to physical
16 pain. They point to it, they say it hurts, it itches, it's
17 driving me crazy kind of thing.

18 Q You never had a patient come to you and say it doesn't
19 hurt, but it bothers me because it affects the way I look? You
20 never had that?

21 A Yes, that has happened. I understand. Yes, that does
22 occur.

23 Q What would you call that, emotional pain? Something
24 along those lines?

25 A Okay.

1 Q When you said to him before the scar doesn't cause
2 pain, you were referring to physical pain, correct?

3 A Yes.

4 Q You don't know if later on in life it will cause him
5 emotional pain, correct?

6 A Correct.

7 Q All right. Now, part of the issue with a scar is that
8 a typically on someone with Stanley Pina's complexion, is that
9 it causes a differential in color between the adjacent skin? Do
10 you agree with that?

11 A Yes.

12 Q So, when you show a black-and-white photograph, you're
13 not really able to see the differences in color, are you,
14 doctor? Not as much as in color?

15 A True.

16 Q Okay, so those black-and-white photographs are not
17 going to show the scar, as well as color photographs, correct?

18 A Correct.

19 Q So, if you were a defense lawyer, and you wanted to
20 show jurors photographs of the scar, you'd prefer to use
21 black-and-white, won't you?

22 MR. PATERNITI: Objection.

23 Q Okay, thank you. Don't worry about it.

24 THE COURT: Sustained.

25 Q Now, did you read my plastic surgeon's testimony from

1 yesterday?

2 A No.

3 Q I'm going to represent to you that he testified that
4 the scar affected both the epidermis and the dermis. You agree
5 with that, don't you?

6 A Yes.

7 Q So, you'd agree with my expert regarding what levels of
8 skin the scar affects, correct?

9 A Yes.

10 Q Okay. Now, you agree that the scar may fade, correct?

11 A Yes.

12 Q However, it will never completely go away will it?

13 A It may.

14 Q It may completely go away?

15 A It may.

16 Q But you don't know it could be permanent couldn't it?

17 A Yes.

18 Q Now, and there's no question that the scar on his face
19 came from the laceration due to the cesarian section, correct?

20 MR. PATERNITI: Objection. Beyond the scope,

21 Your Honor.

22 THE COURT: Overruled.

23 Q You can answer.

24 A True.

25 Q Now, you mentioned that the child is able to

1 communicate, smile and cry; correct?

2 A Yes.

3 Q Okay, and you mentioned that there is no subsurface
4 deformity or tethering of the scar, correct?

5 A Yes.

6 Q None of that? None of those words mean that there was
7 no visible scar present, correct?

8 A Correct.

9 Q And you used magnifying glass because that's what
10 plastic surgeons do, when they examine a patient's scar,
11 correct?

12 A Yes, the glasses.

13 Q But you could, in fact, see it with the naked eye,
14 couldn't you?

15 A Barely.

16 Q You could see it though?

17 A Well, I was asked that earlier, and my answer was
18 barely. Barely noticeable with the naked eye.

19 Q Barely noticeable from what distance?

20 A 12 inches.

21 Q Now, there was some discussion yesterday about the
22 length of Robert Guida's report. Have you ever review Robert
23 Guida's report?

24 A No.

25 Q He was the plastic surgeon hired by my office to look

1 at Stanley Pina. Sir, how many lines is your report?

2 A It's one page and four lines on the second page.

3 Q If you count the lines, would you agree with me there
4 are ten lines?

5 Q Ten sentences, I mean, rather?

6 A Oh, I started counting.

7 Q I'm sorry. Ten sentences?

8 A I will assume that's true.

9 Q I counted them. If I told you there were ten
10 sentences, you'd agree with that?

11 A Okay.

12 Q And out of those ten sentences, the first three
13 basically say that you examined him, and that you were given
14 medical records, correct?

15 A Yes.

16 Q And the last two is just your opinion, correct?

17 A Yes.

18 Q Okay, so out of the ten lines, only five of them deal
19 with the actual examination that you performed, correct?

20 A Yes.

21 Q So, if you have a report with five lines on it, you
22 consider your examination thorough, don't you?

23 A Yes.

24 Q A report with eight lines on it that doesn't
25 necessarily mean it was not a thorough exam, correct?

1 A Correct.

2 MR. HIRSHBERGER: Nothing further.

3 THE COURT: Thank you.

4 MR. PATERNITI: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. PATERNITI:

7 Q Doctor, you're aware, doctor, I want you to assume that
8 the jury here in this case had a chance to see Stanley Pina, and
9 an opportunity to view his left cheek in person.

10 You'd agree with me seeing something in person, as
11 close-up as you want to be, is better than any photograph?

12 A Yes.

13 Q Okay. And, doctor, photos that we have there that
14 were marked those photos that are in black-and-white, those are
15 taken from a year and two months ago, correct?

16 A Yes.

17 Q Or year and a month ago?

18 And, doctor, would you be surprised if or would you
19 expect that the appearance of the scar has improved over that 13
20 months?

21 A Yes.

22 Q And would you expect it to continue to improve, as time
23 goes?

24 A Yes.

25 Q And, doctor, if it's barely noticeable from 12 inches

1 away, in 2014, do you think that this scar could fade in
2 entirety at some point in the future?

3 A It's possible.

4 MR. HIRSHBERGER: Objection.

5 THE COURT: What's the objection?

6 MR. HIRSHBERGER: Foundation. It's the form of
7 the question.

8 THE COURT: Overruled.

9 A Yes, it's possible it will fade completely.

10 Q Okay, and -- okay.

11 MR. PATERNITI: I have nothing further. Thank
12 you.

13 MR. HIRSHBERGER: Nothing further. Thank you.

14 THE COURT: Thank you so much, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Counsel, you want to approach,
17 please.

18 (Whereupon, the following discussion
19 takes place at sidebar among the Court and
20 Counsel, outside the hearing of the defendant and sworn
21 jurors.)

22 THE COURT: Okay, members of the jury, that's
23 going to end our testimonial phase for this afternoon. I
24 am going to bring you back tomorrow at two o'clock, so we
25 can have summations. So, please, remember my admonitions

1 about speaking among yourselves or with others with respect
2 to the case, and since you are going home for this evening,
3 please, do not go to or past the accident site.

4 So, tomorrow we are going to have summations and
5 then Thursday we will have charge in the morning, and then
6 you will have it for your deliberations. So, if you need
7 to know the scheduling, that's what the scheduling will be.
8 So, we should be finished with it by Thursday morning.
9 Okay, have a great day.

10 THE COURT OFFICER: All rise jury exiting.

11 (Whereupon, the sworn jurors exit the courtroom.)

12 THE COURT: We will take a ten minute recess
13 before we begin.

14 (Whereupon, there is a pause in the proceedings.)

15 A F T E R N O O N S E S S I O N

16 (Whereupon, there was a charge conference held off
17 the record. The trials is adjourned to 5/20/15, for
18 summations.)

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