

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF PIMA

3

4 ESMERALDA O. TRIPP, by and)
through her Conservator,)
5 ROBERT B. FLEMING,)

6 Plaintiffs,)

) CASE NO. C20144811

7 vs.)

8 THE ARIZONA BOARD OF REGENTS;)
UNIVERSITY OF ARIZONA, COLLEGE)
9 OF MEDICINE; et al.,)

10 Defendants)

11 _____)
BEFORE THE HONORABLE GUS
12 ARAGON

13
14 OFFICIAL COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL DAY TWELVE
15 CLOSING ARGUMENT OF MR. KEENAN
OCTOBER 27, 2017
16 TUCSON, ARIZONA

17

18

19

ORDERED BY: Christopher Smith, Esq.

20

21

22

23

24

25 REPORTED BY: Maria Lourdes Geare
Official Court Reporter, RPR,
Certified #50555

A P E A R A N C E S :

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHRISTOPHER SMITH, Esq., Counsel for the Defendants
BRYAN R. SNYDER, Esq., Counsel for Plaintiffs
KEVIN W. KEENAN, Esq., Counsel for Plaintiffs
DAVID A. WENNER, Esq., Counsel for Plaintiffs

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CLOSING ARGUMENT BY MR. KEENAN

EXHIBITS

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

None

1 P R O C E E D I N G S

2 CLOSING ARGUMENT

3 BY MR. KEENAN: Good morning. I've had a
4 chance to directly talk with you since the first day of
5 trial. I had the pleasure to be involved in the jury
6 selection process, but after that point in time, we're
7 not supposed to talk with you.

8 So, many of you I've seen on the way to the
9 restroom and back and I kind of diverted my eyes, I
10 wasn't try to be rude, but I'm just trying to obey the
11 Court's admonition.

12 But on behalf of myself, my co-counsel,
13 David Wenner, Brian Snyder and Betsy, hiding in the
14 back, our paralegal, and our clients, Julio Serrano,
15 Julio, Junior and Jamaica, and most importantly, the
16 plaintiff in this cases, Esmeralda Tripp, we want to
17 thank you for taking the time to do this as a juror.

18 It's a, you know, it's privilege to do it.
19 I had the good fortune to do it myself I couple of years
20 ago, I never thought I would be picked. So I know how
21 hard it is to do that so I appreciate your time.

22 This case involves a really, really bad
23 choice. And you've heard about that throughout the
24 trial, and I'm going to talk about that in my closing
25 argument. But it's a bad choice, which resulted in a

1 very, very bad outcome.

2 It's a situation where I have the privilege
3 of telling you about it right now because Esmeralda
4 Tripp can't tell you about it because she's been
5 silenced. She's been silenced because of what happened
6 to her. She won't no longer talk. So I feel very
7 pleased to have the opportunity to talk with you about
8 it.

9 You probably -- some of you probably heard
10 this before, there's a principle in medicine that all
11 young doctors in the training learn, and it's called
12 first do no harm. First do no harm.

13 And the take on that is that sometimes it's
14 better to not take any action if the risk is going to
15 harm the patient. So it really applies here.

16 This is a situation where Drs. Gokova and
17 Dr. Alter made a really, really, risky decision that was
18 extreme unnecessary under the circumstances. They made
19 a clearly dangerous decision when the clear facts showed
20 that should not have been done.

21 We heard a lot in this case about this word.
22 The word, not keep you in suspense guideline. We all
23 know about guidelines. And guidelines are important in
24 all aspects of our life.

25 We know that pilots have guidelines, it

1 basically is kind of a checklist that they have to go
2 through when they're going to fly the plane. Before
3 they start out the plane, there's a whole checklist of
4 procedures that they follow, this item, this item, this
5 item, and this item. And why do they have that? They
6 have that for safety reasons. They have that so that
7 people that are on the plane with them, don't get
8 killed. And they have that because sometimes in the
9 haste of things, when you're in a hurry or you're tired
10 or you want to go home, there's a checklist that you can
11 go through to make sure that you do things right.

12 It's critical for passenger safety. It
13 prevents situations where people are in a hurry and they
14 forget. They have a checklist that they go through, and
15 go right through it, to make sure that things are done
16 the right way and done the safe way.

17 In this particular case, you've heard all
18 about this guideline. This is a guideline that we
19 talked about throughout the trial. It's a guideline
20 that needed to be followed by both Dr. Gokova and Dr.
21 Alter, under the circumstances.

22 You'll look at the criteria for use of the
23 Profilnine. And the criteria talks about, number one,
24 was there serious or life-threatening bleeding?

25 Number 2, was the patient with an elevated

1 INR required for emergency surgery? This is the
2 checklist. This is the checklist that Dr Gokova and Dr.
3 Alter were supposed to file -- follow, under the
4 circumstances. And you know in this case and you know
5 from the evidence that there was no serious or
6 life-threatening bleeding.

7 My partner, Mr. Snyder, put up on the board
8 with the witnesses, you can see right there, did
9 Esmeralda have serious or life-threatening bleeding
10 before the Profilnine? Dr. Gokova? No. Dr. Rhee? No.
11 Nurse Going? No, Dr. Schmidt? No. Dr. Pike? No, but
12 then he had to qualify and says, well, while she was in
13 the ER, she started bleeding.

14 The point is she didn't have it. And it's
15 undisputed here that at the time the Profilnine was
16 given, there was no order to take her to surgery. There
17 was to reason to rush. There was no reason why this had
18 to be such a different situation. There was no reason
19 this couldn't be like the other times that Esmeralda had
20 the supratherapeutic INR, and she goes to University
21 Medical Center, she goes to a couple of other hospitals
22 in the Tucson area. And what happens under those
23 circumstances, she get's fresh frozen plasma or Vitamine
24 K, and it works.

25 Why do we have to fix it if it's not broken?

1 Why does that really matter in this case that Dr. Gokova
2 and Dr. Alter decided to think, gee, maybe let's try
3 something new that Esmeralda was not given before? Why
4 was that done?

5 If these doctors had followed the guideline
6 of UMC, under the circumstances, Esmeralda never would
7 have had a clot; she never would have had a clot go to
8 her heart; she never would have had the heart stop; she
9 never would have had the brain damage. It's that
10 simple. But because these doctors didn't follow their
11 guideline, all these bad things happened to Esmeralda
12 Tripp.

13 They rushed to make a decision here.
14 There's no reason to rush. None whatsoever. There was
15 no hurry. She had to get her INR down, but there was no
16 reason to hurry.

17 And if they were going to use the
18 Profilnine, doesn't it make more sense if they follow
19 this guideline. For example, make sure she's going to
20 surgery? Because when you give this Profilnine, it gets
21 the INR down so quickly at one level and within a very
22 short time it's going back up again. You wouldn't want
23 to give that, unless someone is going to surgery. She
24 was not going to surgery.

25 You heard a lot of talk about this case

1 about -- from Dr. Gokova, about what she did and what
2 her notes say. And you've got to decide how credible
3 she is under the circumstances.

4 You've got a situation here where these bad
5 things happened to Esmeralda on the 14th. And, you
6 know, right after Esmeralda is given the Profilnine, Dr.
7 Gokova leaves.

8 She takes her notes with her and three days
9 later, you can see she dictates off her note on
10 September 17th, the bottom X on the board here.

11 Doesn't make a lot of sense that some of the
12 things in the note may not be right, may not be
13 accurate, may be a little bit self-serving when this
14 note is not even dictated off until after you know
15 something bad has really happened. And so after you
16 know that Esmeralda Tripp ended up having her heart
17 stopped and suffered brain damage. Now you're going to
18 dictate the note. You have to decide the credibility
19 here in this particular case.

20 The Court already told you about certain
21 instructions in this case. And if you'll bear with me a
22 moment, I want to talk with you about a couple. These
23 are the things that guide you, if you will, in making
24 your decision. This is the law.

25 One of these instructions I want to focus in

1 on is the burden of proof instruction. Talks about
2 plaintiffs must prove her claims against defendants by
3 clear and convincing evidence.

4 In order to meet this burden, plaintiffs
5 must persuade to you by the evidence that the claim is
6 highly probable. A standard is more exacting than a
7 standard of more probably true than not true, but less
8 exacting than the standard of proof beyond a reasonable
9 doubt.

10 Let me focus on that a bit. It bears
11 talking about it. Some of you, like me, are probably
12 guilty of watching way too much T.V. And I can tell you
13 that any lawyer shows I ever see on T.V. are criminal
14 shows. Why is that? Because criminal cases are
15 generally a lot more interesting than civil cases. You
16 know, there's killing involved and, you know, all kinds
17 of awful crimes and so on.

18 The standard in those criminal cases is
19 beyond a reasonable doubt. Okay. That's not the
20 standard in this case. That's important.

21 I've had friends of mine, other lawyers try
22 cases similar to this, or medical malpractice cases and
23 they can't understand how they lost the case. They just
24 say, look, you know, we proved everything here. And one
25 of them came to me and said, you know, the problem is

1 that the jury didn't really understand. They thought
2 this case was beyond a reasonable doubt because they get
3 kind of confused with the criminal cases. Just bear
4 that in mind.

5 Every witness that we've had that's taken
6 the stand on liability in this case has told you to a
7 high degree of certainty, Dr. Gokova and Dr. Alter fell
8 below the standard of care or they caused damages, the
9 damages that we're talking about in this case.

10 They already testified about the standard of
11 care. Yu remember Dr. Talon testified about that. And
12 what did he say? To a high degree of certainty, Dr.
13 Gokova and Dr. Alter were below the standard of care.

14 In terms of how this happened, you heard
15 from Dr. Witt, the pharmacologist, the first weeks. You
16 heard front Dr. Do on the T.V. screen that was up here
17 from Stanford. You heard from Dr. Schwab San Diego.
18 There's a lot of S's in this case, in terms of expert
19 witnesses, so I had to pause for a second. Dr. Schwab,
20 a hematologist, from San Diego. And you heard in this
21 case to a high degree of certainty that what happens
22 here is a clot formed because of Profilnine went up to
23 Esmeralda's heart, stops the heart, and she suffers
24 brain damage. It's that clear. It's that convincing.

25 Let me talk to you about another and

1 instruction. This is the medical negligence
2 instruction. It says that -- I'm going to skip down
3 just a bit, second paragraph.

4 Medical negligence is a failure to comply
5 with the applicable standard of care. To comply with
6 the applicable standard of care, an emergency medicine
7 physician must exercise that degree of care, skill and
8 learning that would be expected under similar
9 circumstances, under a reasonably prudent emergency
10 medical physician within this state.

11 Let me go to the next paragraph. To comply
12 with the applicable standard of care, a medical resident
13 acting as an emergency medicine physician, must exercise
14 the degree of care, skill and learning that would be
15 expected under similar circumstances by a reasonably
16 prudent emergency medicine physician within the State.

17 Why is that important to talk to you about
18 that? Because in this particular case we have Dr.
19 Alter, who's a trained physician, Board-Certified, been
20 doing this for a while and he's the attending physician.

21 But you've got Dr. Gokova, that's a
22 resident, that's only been out of medical school for
23 two months when this happens. And she's the one who
24 sees Esmeralda Tripp. The law says she is held to the
25 same standard of care as an emergency room physician.

1 In other words, she doesn't get off the
2 hook, if you will, because she's only a resident.
3 That's what you're instructed by the Court and that's
4 the law you need to follow.

5 And so you understand the fairness of this,
6 this wasn't a situation, there's no evidence, that Dr.
7 Gokova went to Esmeralda Tripp and said, you know what,
8 I'm just a resident, you know, so what I say really
9 doesn't count. She's wearing her doctor's outfit, she's
10 talking with her, just like a regular ER doctor, under
11 those circumstances, she is held to the same standard of
12 care of Dr. Alter and any other reasonable prudent
13 emergency room physician under the circumstances.

14 You heard me mention here a moment ago Dr.
15 Talan. He testified, I believe, he was on Tuesday, the
16 second week. He was the emergency room physician that
17 was from the Los Angeles area, that teaches at UCLA, and
18 he works at hospitals in the L.A. area. He's
19 Board-Certified in emergency room medicine. He's
20 Board-Certified in infectious diseases, extremely
21 qualified, has been a doctor for many, many years. And
22 he testified that both Dr. Gokova and Dr. Alter fell
23 below the standard of care.

24 Why did they fall below the standard of
25 care? Again, because Esmeralda did not meet the

1 criteria for having Profilnine. She wasn't having
2 serious or life-threatening bleeding. And she wasn't in
3 a situation where she required emergency surgery. But
4 they gave it to her anyway. And that was below the
5 standard of care. We met our burden on that point.

6 Beyond that, Dr. Gokova in this case, you'll
7 recall, even admitted by her own testimony that she fell
8 below the standard of care. She testified that a
9 reasonable prudent emergency physician, treating a
10 patient with a high INR would not order Profilnine
11 unless the patient has serious or life-threatening
12 bleeding or needs emergency surgery. Bingo. Esmeralda
13 didn't meet either one of those criteria.

14 As you can see on the board next to you, all
15 these folks who came before you testified that she did
16 not have serious or life-threatening bleeding.

17 Speed kills. Speed kills in a case like
18 this. For some reason, we don't know why, there's a big
19 hurry by Dr. Gokova and Dr. Alter, in the early morning
20 hours, they wanted to get Esmeralda taken care of. They
21 expose her to extreme risk, they shouldn't have. Speed
22 kills.

23 There's no reason, no reason in the world
24 they couldn't have waited to see if she was actually
25 going to surgery.

1 Dr. Gokova, goes ahead and gives the order,
2 the Profilnine starts being infused and Dr. Gokova
3 leaves. There's no reason this couldn't have waited.

4 And I've got to point out something else.
5 I'm representing Esmeralda Tripp, I'm not trying to be
6 overly harsh with either of these two doctors over here,
7 but for God's sake, the reason why she is in the
8 condition she's in is because of their negligence.

9 And you heard Dr. Gokova on the stand, at
10 least I hope you heard her. I was having a tough time.
11 I'm sure she's nervous, this is nerve racking, this is
12 not her arena, but notwithstanding that, she talks so
13 soft and so fast, you know, it's just really hard to
14 make out sometimes, but what she did say was that this
15 was Esmeralda's choice. Seriously? This is her choice
16 to go ahead and have Profilnine. Think about that.
17 What kind of choice is that?

18 In order to give Esmeralda a choice, and
19 then again, this is setup, this whole background on
20 this, this is a woman that, by all accounts, has a very
21 low IQ. Her family says she's basically illiterate,
22 can't read very well, can't write very well. A
23 wonderful mother, wonderful companion to Julio, but
24 basically what happens here is Dr. Gokova says that she
25 gave her a choice. Well, the only way to give her a

1 choice would have been this: Look, Esmeralda, I'll
2 pretend I'm Dr. Gokova, look Esmeralda, here's the
3 story, I know, because I got access to your records, I
4 know that you've had this problem with your INR on
5 several occasions before, I know about that. And you
6 know, I looked at your chart, and I know looking at the
7 chart, I see that they treated this successfully with
8 Vitamine K or fresh frozen plasma, and it always worked.
9 But, uh-huh, I've got to -- I'm going to try something
10 else with you. I'm going to try this Profilnine drug,
11 you probably don't even know what I'm talking about,
12 some folks call it PCC, but I'll going to try this drug
13 on you and here's the deal, it's only supposed to be
14 used per our guidelines, if you got serious or
15 life-threatening bleeding and PS you don't have that.
16 The other criteria is to go to surgery and I don't know
17 if you're going to surgery or not, I don't know. But
18 I'm recommending it anyway. And, by the way, by the
19 way, just so you know, I've only been out of medical
20 school for a couple of months. I'm holding this
21 hospital garment that doctors wear. And I am a doctor
22 because once you get out of medical school, I have MD
23 after my name, but I'm in training, I'm in training, I'm
24 a resident. And P.S., I've never given this before.

25 What do you think Esmeralda would do under

1 those circumstances? Whoo. Get me somebody that's more
2 experience. Get me somebody that can really, really
3 tell me what my choices are. That didn't happen. That
4 didn't happen.

5 She relied, like all of us would rely, we
6 rely on the doctors. They're supposed to be looking out
7 for our best interest, they're supposed to be telling us
8 what we should be doing under the circumstances. They
9 should be telling us, look, this is what you should do
10 based on my educated experience. Okay, then, that's not
11 a choice there on her part. She didn't have enough
12 information to do that. If she had all this information
13 I just gave you, I guarantee you, she wouldn't have
14 taken it.

15 MR. KEENAN: Your Honor, this probably is a
16 good point to take a break.

17 THE COURT: All right. Ladies and
18 gentlemen, we'll go ahead and take our noon break.

19 Counsel, you want take an hour, and hour and
20 15, an hour-and-a-half?

21 MR. KEENAN: An hour is fine.

22 THE COURT: Mr. Smith?

23 MR. SMITH: An hour is fine.

24 THE COURT: Okay. We'll take one hour,
25 ladies and gentlemen. Please remember the admonition.

1 We'll see you back in one hour. Have a nice lunch.

2 (Jury not present.)

3 THE COURT: All right. Show the jury has
4 exited.

5 Counsel, be careful about expressing your
6 opinions about the evidence or what would happen. Using
7 the word like I guarantee she would have done this or
8 that or the other, that's really you indirectly
9 expressing your thought about what she would have done.

10 You can say, I submit to you, or I would
11 argue to you, that she would have done this or that or
12 the other. But when you use words like I think or I
13 guarantee, then you're expressing your opinion. So both
14 sides should avoid that kind of expressions.

15 We'll stand at recess. Have a nice lunch.
16 See you back in an hour.

17 (Lunch taken.)

18 THE COURT: We're back on the record.
19 Counsel and parties are present.

20 Counsel, are you ready for the jury to be
21 brought in?

22 We'll have the jury brought in.

23 MR. SMITH: Your Honor, can I ask --

24 THE COURT: Hang on.

25 MR. SMITH: I thought I heard Mr. Keenan at

1 the very beginning of his opening statement, refer to
2 Mr. Serrano, Sr., and Mr. Serrano, Jr., and Jamaica
3 Serrano as his clients.

4 THE COURT: Well, they may be his clients, I
5 don't know, but they're not parties to this case. Do
6 you need them to clarify that?

7 MR. SMITH: Yes.

8 THE COURT: Okay. Mr. Keenan --

9 MR. KEENAN: Your Honor, they are my
10 clients, they're just not part of the case.

11 THE COURT: All right. I think if you can,
12 I'm going to ask you to just clarify that we only have
13 one party and that's Esmeralda Tripp.

14 MR. KEENAN: Right. I think I started out
15 by saying she's the only plaintiff. I can say it again,
16 that's no problem.

17 THE COURT: Would you please. And then, Mr.
18 Smith, if you need to follow that up yourself, you're
19 welcome to do that.

20 So we'll have the jury be brought in.

21 BAILIFF/LAW CLERK: Jury entering.

22 (Jury present.)

23 THE COURT: Please be seated, members of the
24 jury.

25 All right. Mr. Keenan, go ahead, sir.

1 MR. KEENAN: Yes, Your Honor.

2

3 CONTINUED CLOSING ARGUMENT

4 BY MR. KEENAN: Well, I hope everybody had a
5 nice, but quick lunch.

6 I want to start off by apologizing about one
7 thing. I didn't realize I said this until my co-counsel
8 pointed out is that Esmeralda's heart didn't stop. I
9 think you heard that in the evidence she had a heard
10 attack, a myocardial infarction, and as a result of
11 that, she ended up having brain damage, but I think I
12 said somewhere that it stopped and it I did not, she had
13 an MI heart attack.

14 I also want to clarify something else,
15 though, I think I said this at the beginning, but
16 Esmeralda's son, Julio, Jr., Julio, Sr., and Jamaica
17 back here, they are all my clients, but they are not
18 parties to this lawsuit. The only party is Esmeralda
19 Tripp. And this case is being brought by Robert
20 Fleming, the attorney that's her conservator. And
21 you'll recall he testified, I think, the first day that
22 we called witnesses here.

23 The other thing is that we got some
24 uncontested facts in a Joint Pretrial Statement, just to
25 clarify something for you too is that Dr. Alter was duly

1 employed at the time of all these incidents by the State
2 of Arizona and University Physicians Healthcare. And
3 Dr. Gokova at all times was employed by the State of
4 Arizona. So those are the only two defendants being the
5 State of Arizona and University Physicians Healthcare.
6 Dr. Alter and Gokova are not named defendants, but they
7 were employees of the State of Arizona and University
8 Physicians, as I mentioned. All right.

9 So let me talk to you about, I'm not sure
10 exactly where I left off, but one of the items I meant
11 to talk to you about is doing your job. We all have to
12 do jobs in life.

13 Sometimes when you're rushed, like I did
14 before, trying to get things in before lunch, you say
15 something like, the heart stopped, but, you know, you
16 need to be careful and not rush in situations when
17 somebody's health or safety is at risk. And that's
18 what happened here.

19 These guidelines that we've talked about are
20 what the standard of care required Dr. Gokova and Dr.
21 Alter to adhere to at the time. You heard that not only
22 from Dr. Talan, our standard of care expert, but you
23 also heard that from Dr. Gokova. These are the things
24 that needed to be done for Dr. Gokova and Dr. Alter to
25 do their job.

1 And you heard testimony from them at the
2 time of trial that this Profilnine drug that this whole
3 case is about is a drug that Dr. Gokova had to look up
4 on the Internet at the time. And you heard Dr. Alter
5 say he was only vaguely familiar with the drug at the
6 time.

7 How in the world -- how in the world can
8 they make the decision to give Esmeralda Tripp this drug
9 when they're just in one instance doesn't really know
10 anything about it at all. And in Dr. Alter's instance
11 is vaguely familiar with it. How in the world can that
12 happen?

13 This guideline that was talked about the
14 other day, just this week, by one of the defense's
15 expert in this case. He's the pharmacist, Dr. Schmidt.
16 Remember, he's the young fellow from California that
17 came in. And he talked about that the doctors in this
18 case violated UMC's own guideline.

19 With all the information available on
20 Esmeralda Tripp, he would not have suggested urgent
21 reversal with a PCC, instead he would have recommend
22 fresh frozen plasma, you recall hearing that from him.

23 Dr. Schmidt also admitted that there was no
24 rush, there was no reason to rush because Esmeralda
25 Tripp was not in critical condition at that point. And

1 based on the medical literature, Esmeralda should have
2 been given fresh frozen plasma or Vitamine K, but
3 certainly not Profilnine.

4 We also know that every time that she was
5 given fresh frozen plasma or Vitamine K in the past, she
6 was able to go home. She got it, eventually her INR
7 comes down and she's able to go home. She doesn't have
8 a heart attack, she doesn't have brain damage.

9 One thing about these guidelines, they're
10 not written at a time when people are rushed. They're
11 written at a time where who's ever doing the guidelines
12 is using their learnt experience from research or
13 treating patients, they're talking to people, where they
14 have -- it's kind of a time out, where they can decide
15 when should this drug be given? When does it make
16 sense? Who should be giving this drug and under what
17 circumstances? It's not something where they have to
18 make a split second decision. They have all the time in
19 the world to come up with this guideline. And that's
20 what University of Arizona Medical Center came up with,
21 that guideline. It's supposed to be used for serious or
22 life-threatening bleeding or when the patient requires
23 emergency surgery.

24 Let me talk with you about another item
25 here. Esmeralda's heart attack. You've heard in this

1 case from multiple expert witnesses, you even heard from
2 Dr. Witt, our pharmacologist, you heard from Dr. Schwab,
3 Dr. Do, tough experts in their field. They said that to
4 a high degree of certainty Profilnine cause clots that
5 went to the heart caused Esmeralda to have a miocardial
6 infarction and ultimately have brain damage. That's the
7 sequence of events. This is what they testified to.

8 The defense, because they go second, had
9 experts also. But none of them can agree on the
10 critical facts regarding what caused Esmeralda's brain
11 injury. There was a lot of, I don't no's. And you'll
12 recall that when some of them testified, they didn't
13 know all the facts about Esmeralda. They were getting
14 facts about her the night before or the morning of. But
15 they managed to still adjust their opinions to support
16 the defense in this case. But you remember that Dr.
17 Martin, he's the neurologist that came in here from
18 Houston and Dr. Sacher agreed that Esmeralda Tripp had a
19 heart attack. But their experts can't even agree on
20 that.

21 Dr. Pike, the emergency room Doctor, MD, JD
22 Doctor/lawyer that came in here, doesn't even think that
23 she had a heart attack.

24 We've also heard from defendant's expert,
25 Dr. Sacher, that he simply doesn't think that what

1 happened to Esmeralda is what we think. Martin doesn't
2 know if the Profilnine caused the heart attack. So in
3 this particular case, if a blood clot didn't cause it,
4 then what did cause it?

5 Defendants in this case have come up with a
6 lot of theories and suppositions, but nobody can state
7 on the defense side to a reasonable degree of
8 probability, or in this case, a high degree of
9 certainty, what did happen. There's just a lot of I
10 don't no's.

11 We heard them throughout the term, vagal
12 basal response, you remember hearing some testimony
13 about that. Their experts admit that's pretty much
14 impossible. So what are we left with? What are we left
15 with in this case? We're left with what was talked
16 about in the opening statement.

17 We're left with a situation as to what
18 caused Esmeralda's heart attack. One, either Esmeralda
19 coincidentally had a heart attack for the first time in
20 her life, two hours after she had Profilnine, or is the
21 Profilnine, which is the known cause of heart attacks,
22 in this being the cause? So it's one or the other. And
23 you think about that.

24 You heard Dr. Marten testified on the stand,
25 he's the one that you heard him use the term

1 happenstance. What are the chances -- what are the
2 chances here that Esmeralda Tripp, that takes this drug,
3 this drug that is known to bring down the INR extremely
4 quickly; this drug that is known to cause clots; this
5 drug that she has never taken before; this drug that
6 you're not even supposed to give, unless somebody has
7 serious or life-threatening bleeding or they're going to
8 go to surgery, emergency surgery. Those are the
9 instances.

10 What are the chances of somebody taking that
11 drug and two hours later them having a heart attack and
12 suffering brain damage by coincidence?

13 It wasn't a coincidence, the facts fit. The
14 facts fit. It shows that Profilnine was the cause of
15 what happened here to Esmeralda.

16 Defendants in this case hire Dr. Pike.
17 You'll recall this testimony that he admitted that if a
18 clot formed in Esmeralda, it was associated with
19 Profilnine. And Dr. Schwab and Dr. Do both testified to
20 a high degree of probability that this is precisely what
21 happened under the circumstances.

22 Dr. Pike, as much as an advocate as he was,
23 wasn't going to say it was impossible. But you'll
24 recall he said that he didn't know one way or the other.
25 He agreed that if there's a clot, it probably was

1 associated with Profilnine.

2 But what did UMC's own records say?
3 Remember how Dr. Gokova indicated in her record that she
4 did three days after the fact, a bunch of information?
5 Let's look at one of the records that was done right on
6 the day that this event happened.

7 There's Dr. Sophie Galson, she was also an
8 employee, a defendant in this case. She's a resident,
9 just like Dr. Gokova. And she did a note, and you'll
10 remember this note being put up a couple of times. This
11 is her note. And she did this note right at the time --
12 she did this note right at the time that the events
13 happened with Esmeralda. It says, in bracket, at this
14 time, it was determined that likely cause of acute
15 change and hemodynamics and medication could possibly be
16 due to pulmonary embolism versus MI, versus ischemic
17 stroke in the setting of PCC administration. She felt
18 that way and she was also a resident.

19 Where was Sophie Galson to come in and talk
20 about that? She didn't come here to testify. Sophie
21 Galson didn't take her notes home. Sophie Galson didn't
22 chart three days after the fact.

23 You heard what happened to Esmeralda. You
24 heard that because of what we've been talking about she
25 had a brain injury, serious brain injury. You've heard

1 talk in this case about whether it is a persistent
2 vegetative state or a minimally conscious state. And
3 there's some subtleties there.

4 But you remember Dr. Doherty, she was the
5 other expert witness that testified by way of the
6 television. She felt, based upon her experience and
7 based upon her actually going and examining Esmeralda
8 Tripp, and spending about an hour and 25 minutes at
9 Esmeralda's household; and talking to Julio and talking
10 to her help, Debbie Freeman; and actually seeing if she
11 could get Esmeralda to move her left eye to the left and
12 track, and she was able to do it on multiple occasions.
13 She felt it was a minimally conscious state at the time.

14 But whatever it was, minimally conscious or
15 persistent vegetative state, Esmeralda's family had to
16 make some decisions when she left University Medical
17 Center in early November. And the decisions were, one
18 of them, which was a term that was used that is not a
19 pleasant term is pulling the plug and ending her life.
20 The other choice is having her go to go to some sort of
21 a rehab facility. And the third choice was to bring her
22 home.

23 Well, in her family's mind, this was no
24 decision at all. She's 43 years old, she's a young
25 woman. They decided that, given all the options, to

1 bring her home.

2 And a lot of it you heard from Julio why was
3 based on his strong religious convictions that he felt
4 this was the right thing to do. This is what he felt
5 Esmeralda would do for him. He wasn't going to abandon
6 her. He wasn't going to have her warehoused in some
7 facility. He was going to take on the burden of
8 whatever it took, to see if she can have some semblance
9 of a better life than she would have had she gone to a
10 rehab facility, and at least have a chance, a chance of
11 some recovery. He loves her too much and so do her
12 children, Jamaica and Julio Jr., so they brought her
13 home.

14 She needs, as you heard, she needs care
15 24 hours a day, seven days a week. She hasn't been left
16 alone in four years. She needs to be turned every
17 couple of hours. She needs to be fed through her G
18 tube. She needs her catheter checked. They need to
19 make sure that they are there in case she's choking.
20 She needs virtually every aspect of everything done to
21 her, from bowel needs, bladder needs, everything. But
22 Julio Jr., and Jamaica have taken this on. They've
23 taken this on because Esmeralda is their family.

24 You heard from a couple of witnesses, they
25 were not part of the family, one that I already

1 mentioned, that's Dr. Deborah Dougherty. She talked
2 about how she looked at Tracy Albee's life care plan.
3 Tracy Albee also testified here. She talked about the
4 different items of medical care, equipment, services,
5 home care that Esmeralda needs for the rest of her life.
6 She needs what hasn't been provided to her at all. She
7 needs to have nursing care provided to her on a daily
8 basis.

9 A helper that comes in that's paid for
10 through the State by ALTHCS. You heard there's only
11 30 hours a week, so that's what, about four to
12 five hours a day, in that time frame. She can't do a
13 lot of things that Esmeralda needs. She's not qualified
14 to do it. She's not licensed and the family has to do
15 that. Esmeralda's family has to take on this burden for
16 Esmeralda to remain at home.

17 And then you talk about with this life care
18 plan, you talk about how long does Esmeralda need these
19 items? She needs them for the rest of her life and that
20 brings up the question, well, how long is that? How
21 long is the rest of her life?

22 Well, you heard Dr. Martin get on the stand
23 and say that from the time she enters into, you could
24 use his word persistent vegetative, you had to call it
25 permanent vegetative state, but whatever you call it,

1 from that time forward, the average life expectancy of
2 somebody in that state is three to five years. So that
3 means, according to Dr. Martin, she's only got one year
4 left.

5 Does that make any sense? Absolutely not.
6 The reason it doesn't make any sense is for a lot of
7 reasons. Debra Dougherty has spent the last 29 years
8 dealing with virtually her entire career, taking care of
9 people with brain injuries. People in situations like
10 Esmeralda Tripp. She sees these people day in and day
11 out. She sees what a difference it makes. She sees in
12 an instance, like this, where Esmeralda is being taken
13 care of her home by her family and not in a nursing
14 home, where she's more prone to getting infections and
15 not in a rehab facility of some sort. She sees how good
16 a care Esmeralda has in the family. She hasn't had any
17 bed sores in four years, it's amazing.

18 And putting all that together and putting
19 her review of the literature together and her experience
20 and her evaluation of Esmeralda and talking with Julio
21 and Debbie Freeman, she rendered the opinion that from
22 the time Esmeralda went into this minimally conscious
23 state in 2013 forward, she has approximately 10,
24 11 years to live. She's already used up four of those
25 years. So in her opinion, she's got another six to

1 seven years to live. Doesn't that make a lot more
2 sense?

3 I asked Dr. Martin, does it give you pause
4 that Esmeralda has already lived four of those years?
5 No. Hypothetically if this case got continued and we're
6 trying it a year from now, I don't know what his answer
7 would at that point in time if all five years would be
8 used up.

9 So the reality of it is is that according to
10 her family, she has no signs of dying any time soon, but
11 she needs care. And she needs the care that Tracy Albee
12 has recommended for her.

13 You know, the defense in this case, they
14 have a life care planner, they had an economist, they
15 didn't bring them here to testify in Court. They could
16 have rebutted their opinions. So basically, these
17 opinions on the life care and the cost of these items
18 are undisputed by any expert testimony, whatsoever.

19 And you saw what the numbers are. You heard
20 how Dr. Buehler, the economists, came on the stand and
21 testified that when you take these numbers in the Albee
22 life care plan and you figure out what the total would
23 be for the next six-and-a-half-years. And then you
24 reduce it to present value, you're basically saying,
25 what amount of money, if her conservator had that sum of

1 money right now, would it take, if properly invested in
2 a fiduciary fashion, what amount of money would she
3 need? And the money is 4.4 million dollars. Some of
4 you I remember taking notes on that. But that's the
5 amount that she needs for the life care plan for the
6 rest of her life.

7 But there's some other items that we're
8 going to talk about. The Court is going to give you or
9 the Court already did give you the damages instruction
10 here. Bear with me just one second.

11 Says, if you find any defendant liable to
12 plaintiff, you must then decide the full amount of money
13 that will reasonably fairly compensate plaintiff for
14 each of the following elements of damages proved by the
15 evidence to result from the fault of the defense.

16 And if you look on here, there's five items.
17 I'm going to briefly touch on them. I've already talked
18 about number 3, and that's the reasonable expenses of
19 necessary medical care, treatment and services
20 reasonably probably be incurred in the future. But
21 that's not all. First item, nature and extent and
22 duration of the injury.

23 One of the instructions by the Court was
24 this one, that Esmeralda Tripp is 46 years old. A
25 person age 46 has the life expectancy of 36.5 years,

1 that's more years. What happened to her?

2 Well, by defense expert's testimony, she's
3 only got another year to go. But Dr. Doherty's
4 testimony, that's another six-and-a-half-years to go.
5 But for Esmeralda, she's deprived of the rest of the
6 years of her life by what happened here.

7 The second item there talks about the pain,
8 discomfort, suffering, disability, disfigurement and
9 anxiety already experienced and reasonably probable to
10 be experienced in the future as a result of the injury.

11 Esmeralda is not able to talk about that
12 right now. But you can imagine going through what she
13 did and how she screamed out in pain when this happened,
14 you could imagine all the pain --

15 MR. SMITH: Your Honor, I'm going to object
16 to the golden rule argument plaintiff's counsel is
17 making.

18 THE COURT: Come on up.

19 (Bench conference.)

20 THE COURT: I think I know what you mean.
21 And I don't think he's violated it. He's asking them to
22 imagine something. He's not asking them to put
23 themselves in the plaintiff's shoes. It's different
24 stuff. And we can imagine a lot of stuff without
25 putting ourselves in the shoes. But if you need to make

1 a record, this is the time.

2 MR. SMITH: No. He's asking the jurors to
3 put themselves in the position by you can imagine the
4 pain. That's a subtle way of saying how would you like
5 to feel that way, so it's the same point. It's good to
6 know the latitude because that's going to play on both
7 persons.

8 THE COURT: Well, just don't ask the jurors
9 to put themselves in those shoes.

10 MR. SMITH: Oh, I'm not going to say that to
11 them.

12 THE COURT: But you can say you can imagine
13 how these doctors, whatever, you know, you can say that.
14 Okay?

15 MR. SMITH: Okay.

16 (Bench conference over.)

17 THE COURT: Thank you, counsel.
18 Go ahead, Mr. Keenan.

19 MR. KEENAN: Thank you, Your Honor.

20 If you can imagine the pain, discomfort and
21 suffering that she went through under the circumstances,
22 especially given the condition that's she's in right
23 now.

24 We talked about three. Number four is the
25 loss of love, care, affection, companionship and other

1 pleasures of the parent/child relationship.

2 Esmeralda Tripp may not have been the
3 brightest person in the world. She may not have been
4 able to read, she may not have been able to write, but
5 she was a great mother and she was a great grandmother.
6 And she's missing out now on those opportunities to
7 spend her time with them. To pick them up, to help them
8 with problems, to be a mom. That's what she was --

9 THE COURT: Counsel, come on up, please.

10 (Bench conference.)

11 THE COURT: I don't think the consortium
12 claim includes grandkids, is that your position, that it
13 includes grandkids?

14 MR. KEENAN: No, but it says to her loss, I
15 guess it ties into 5.

16 THE COURT: So you need to be more specific.
17 You can say, she can't pick up her grandkids, but you're
18 saying in the same paragraph when you're saying loss of
19 her kids and loss of her grandkids and not picking them
20 up.

21 MR. KEENAN: I'll stay with --

22 MR. SMITH: Before we break, I think there's
23 no loss of consortium --

24 THE COURT: You made that argument in my
25 office.

1 MR. SMITH: No, no, no. I understand, I
2 apologize, but as far as the grandparents go, they don't
3 have a legal claim if they wanted to.

4 THE COURT: That was my point to him. So he
5 shouldn't be making that argument.

6 MR. SMITH: Is he going to be clarifying
7 that?

8 THE COURT: Well, you need to just stay away
9 from that.

10 MR. KEENAN: Sure. Fine.

11 (Bench conference over.)

12 THE COURT: Thank you, counsel.

13 Go ahead, sir.

14 MR. KEENAN: Ladies and gentlemen, number 5,
15 we were talking about the loss of enjoyment of life.
16 And that's in participation of life's activity to
17 quality and step normally enjoy before the injury.

18 What did she do? Her whole life that she
19 enjoyed was spending time with her family. She can't do
20 that any more. They're there and she's there, but it's
21 the enjoyment of life, the outings, the things that she
22 could do before with them is totally gone right now.

23 She can't try to help her daughter, Jamaica,
24 make decisions in life. She can't help Julio Jr., make
25 decisions in life. She can't enjoy friendships she had.

1 She can't enjoy loving Julio. These are the things that
2 she misses out on. These are the things she's missing
3 out on because of the brain damage she suffered.

4 You remember this picture that you saw in
5 Exhibit 100? You saw this picture of Esmeralda how she
6 is now with Julio. She's missing out on her family's
7 activities and the things that she did before. It's a
8 tremendous loss to her. As it would be for anybody in
9 this situation.

10 What's all that worth? And that's the big
11 question. And that's going to be your job to try to
12 decide in this case.

13 You know, some cases are really, really easy
14 on that. In some cases there's a dollar amount and that
15 seems to be easy to deal with.

16 If somebody stole \$25 million from a
17 business, that's a pretty easy one. The damages are the
18 \$25 million; rights? But if somebody basically takes
19 away the most meaningful aspects of your life, that
20 takes away your independence, that takes away your
21 ability to walk, your ability to enjoy your family, your
22 ability to do everything that you could do before at the
23 age of 43, what's that worth? What's that worth? Is it
24 worth \$15 million? Is it worth 20 million? Is it worth
25 \$25 million. You're going to have to decide what that's

1 worth.

2 Like I said, it's easy when someone has
3 taken a big chunk of money away, but it's difficult when
4 somebody really has an essence taken somebody's life
5 away, their freedom, their independence. You'll have to
6 decide what all that's worth and you add all that up,
7 including the \$4.4 million and you guys talk about that
8 and put that amount on the jury verdict form.

9 You're going get a form -- bear with me one
10 second. I got it right here. The Judge read this to
11 you before we started the closing arguments here, and
12 there's three forms.

13 And remember he kind of showed you where to
14 draw on the line on the forms. This is the form we
15 submit that you should put the dollar figure on if you
16 find in Esmeralda's favor. And I suggest to you that
17 when you add everything together.

18 That amount not only includes what needs,
19 but includes what she's lost. What she's lost. What
20 she's lost by having to spend the rest of her life in
21 bed. By having her life significantly shortened. What
22 she's lost by having everybody needing to take care of
23 her. What has she lost by that? That's for you to
24 decide. I can only make suggestions.

25 You're going to have to decide in this case

1 what good that money is going to do for her. You're
2 going to have to decide that question. But I submit to
3 you this money can give her security, this money can
4 make sure that she's taken care of in the home by people
5 that should be taking care of her, they're licensed
6 people. This money will assure that the members of her
7 family don't always have to be the people that are her
8 caregivers. This is what that money will do.

9 And bear in mind, as Mr. Fleming said, the
10 conservator, any money that goes to her, who's in the
11 conservatorship, it only can be spent for her. I'm
12 almost done here.

13 I want to talk to you about one other item.
14 Bear with me one second. It's the guideline. It's all
15 about the guideline. You've heard about it throughout
16 the trial. If these doctors had done their job and
17 followed this guideline, Esmeralda Tripp would not have
18 had the heart attack. She would not have suffered brain
19 damage. She would not need people taking care of her
20 everyday needs for the rest of her life. And we
21 wouldn't be here.

22 We're here because of the negligence of a
23 couple of doctors. Just bear in mind here, no matter
24 what I've said about that, I'm not saying that they're
25 bad doctors, but I am saying they were certainly

1 negligent in their care and treatment of Esmeralda
2 Tripp.

3 If somebody in the jury room says, gee, you
4 know what, I don't think the doctors meant to do it.
5 Well, I can just tell you, I hope somebody speaks up and
6 says, of course they didn't mean to do it, no one means
7 to do that. No one means to rear-end somebody in an
8 automobile accident. But when you do it, you're
9 negligent. And when you're negligent, you have to take
10 ownership of it. You have to accept responsibilities
11 for your own actions. That's what needs to be done
12 here. These doctors did not do their jobs on that date.

13 But Esmeralda asks you and I'm asking on her
14 behalf for you folks to do your jobs.

15 Thank you.

16 THE COURT: Thank you, counsel.

17

18

19

20

21

22

23

24

25

1 STATE OF ARIZONA)
2) SS.
3 COUNTY OF PIMA)

4

5

6

7

8

9 I, MARIA LOURDES GEARE, Certified Reporter #50555,
10 Official Court Reporter for the Superior Court, in and
11 for the County of Pima, do hereby certify that I took
12 the shorthand notes in the foregoing matter; that the
13 same was transcribed under my direction; that the
14 preceding pages of typewritten matter are a true,
15 accurate and complete transcript of all the matters
16 adduced, to the best of my skill and ability.

17

18

19

MARIA LOURDES GEARE, Certified Reporter
CR-505555,
Official Court Reporter,
Pima County Superior Court

20

21

22

23

24

25

DATED: December 26, 2017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N V O I C E

TO: Mr. Christopher Smith, Esq.
RE: Transcript for C20144811, Closing Argument by
Mr. Keenan, Day 12

DATE OF
INVOICE: December 27, 2017

CASE: ESMERALDA TRIPP V THE AZ BOARD OF REGENTS

| | |
|------------------|---------------------|
| DATE OF HEARING: | TRANSCRIPT COST: |
| 10-27-17 | \$344.00 |
| PAID | -0- |
| TOTAL OWED | \$344.00 |

PLEASE SUBMIT PAYMENT TO:

Maria Lourdes Geare
1883 West Grubstake Drive
Tucson, Arizona 85746

T H A N K Y O U !