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IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS  
120th JUDICIAL DISTRICT

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LUCY LACA,

Plaintiff,

vs.

PEBBLE CREEK NURSING CENTER,

Defendant.

-----x

DEPOSITION OF PERRY STARER  
New York, New York  
Tuesday, October 22, 2002

Reported by:  
LESLIE FAGIN  
JOB NO. 141345

CERTIFIED  
COPY

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October 22, 2002

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2:05 p.m.

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Deposition of PERRY STARER, held at  
the offices of Esquire Deposition Services,  
216 East 45th Street, New York, New York,  
pursuant to Notice, before Leslie Fagin, a  
Notary Public of the State of New York.

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A P P E A R A N C E S:

JUAN GONZALEZ, ESQ.

Attorneys for Plaintiff

1312 Montana

El Paso, Texas 79902

(Via telephone)

GODWIN GRUBER, P.C.

Attorneys for Defendant

Renaissance Tower

1201 Elm Street

Dallas, Texas 75270

BY: G. MICHAEL STUART, ESQ.

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(Defendant's notice of intent to take oral deposition marked Exhibit 1 for identification as of this date.)

(Defendant's amended notice of intent to take oral deposition marked Exhibit 2 for identification as of this date.)

(Curriculum vitae marked Exhibit 3 for identification as of this date.)

(Report marked Exhibit 4 for identification as of this date.)

(Handwritten notes marked Exhibit 5 for identification as of this date.)

(Research articles marked Exhibit 6 for identification as of this date.)

P E R R Y     S T A R E R,     called as a witness,  
having been duly sworn by a Notary Public,  
was examined and testified as follows:

EXAMINATION BY

MR. STUART:

Q.     Would you please state your name for the record?

A.     Perry Starer.

Q.     You are a medical doctor, correct?

A.     Yes.

















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Starer

2 same standard of care for performing those would  
3 be the same whether it's acute or long term?

4 A. Based on the patient's needs, yes,  
5 sir.

6 Q. I think I also understand that it's  
7 your belief and practice that geriatric patients  
8 should not be restrained, is that true?

9 A. Yes.

10 Q. It's also, I understand, your belief  
11 that if a resident or a patient is determined to  
12 be at some risk for falls, then you believe that  
13 whatever is necessary to make them safe, whether  
14 it be one on one monitoring or something similar  
15 to that needs to be accomplished to make sure  
16 they are safe at all times, correct?

17 A. Yes, sir.

18 Q. Have you ever been to El Paso?

19 A. No.

20 Q. Do you have any information about that  
21 community or Pebble Creek Nursing Center other  
22 than documents you have before you here today,  
23 sir?

24 A. You mean information about  
25 population?





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Starer

2 her choice of place would not be dependent upon  
3 financial concerns and there were numerous  
4 long-term care facilities in El Paso that are not  
5 filled to capacity.

6 Based on that information, do you find  
7 it surprising that a plaintiff would remain in  
8 the facility they are suing during the pendency  
9 of their lawsuit?

10 A. That was hypothetical and I cannot  
11 explain, I am not here to make a decision on  
12 human nature, I can't really render an opinion.

13 Q. You just don't know?

14 A. I don't know why people do what they  
15 do.

16 Q. Doctor, tell the ladies and gentlemen  
17 of the jury, of the other 19 or so cases that you  
18 served as a plaintiff's expert on, how many of  
19 those cases did the plaintiff, upon suing the  
20 long-term care facility remain in the facility  
21 during the pendency of the lawsuit?

22 A. I actually don't have the data on all  
23 those cases, I don't know, sometimes they died so  
24 I can't tell you that.

25 Q. Can you name a single case in which









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Starer

2 during Miss Laca's stay. There also are a few  
3 extra pieces -- it's not numbered, so I tried to  
4 fold it in where it was, there is an emergency  
5 room record from the Del Sol Medical Center and  
6 an operative note from the Del Sol Medical Center  
7 and then the rest is all -- I think there might  
8 have been a summary in the front from the  
9 previous institution, just to be complete, yes,  
10 this is the Rio Vista Rehabilitation Hospital, so  
11 that's just a summary. But all the records are  
12 apparently are from Pebble Creek.

13 Q. In reviewing those records and coming  
14 to your opinions in this case, did you review any  
15 of the actual hospital records; were those ever  
16 provided to you?

17 A. No, I only had the summary.

18 Q. Doctor, were any of the depositions of  
19 the caregivers ever provided to you?

20 A. No, sir.

21 Q. How about the deposition of Mrs. Laca,  
22 was that ever provided to you?

23 A. No, sir.

24 Q. Doctor, do you think it may be  
25 important to understand some of the dynamics of

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Starer

2 actual testimony and information contained in the  
3 caregivers' depositions as well as Miss Laca's in  
4 understanding what may have occurred with her?

5 A. I feel and my opinions are based upon  
6 what I reviewed here. I don't know what's in the  
7 depositions, if you want I could review it and  
8 let you know, but at this time I feel there was  
9 enough evidence in here to arrive at the opinions  
10 in my report.

11 Q. Doctor, did you even know those  
12 depositions had been taken?

13 A. No.

14 Q. Was there any other additional  
15 information or records at any time that you  
16 requested from plaintiff's counsel?

17 A. This was only in our discussion  
18 yesterday, I said -- in the nurse's notes it  
19 seems to sort of come to an end, there is no real  
20 documentation of what happened immediately prior  
21 to the emergency room admission at Del Sol  
22 Medical Center, so I was looking for a page or  
23 something that might have been missing.

24 Q. So you identified actually either some  
25 information that would be helpful to determine

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Starer

2 what happened on the 26th, is that what you are  
3 telling me, as far as in the facility?

4 A. I wanted to know if anything was even  
5 documented. We sort of agreed on the phone it  
6 either didn't exist or wasn't provided to us or  
7 somehow it's not here. .

8 Q. Well, let's stop there. I got a  
9 little off track. What you told me as far as  
10 communications with the plaintiff's attorneys,  
11 you said initially it was here are the records,  
12 review them and then you did have a discussion  
13 with him over the phone prior to writing your May  
14 16th report?

15 MR. GONZALEZ: Objection, form.

16 MR. STUART: The basis?

17 MR. GONZALEZ: I don't have to give  
18 you a basis, I am just making my objection  
19 according to the rules.

20 MR. STUART: If I ask you for a basis  
21 for your form objection, you are required to  
22 state the basis for your objection to form.

23 MR. GONZALEZ: Who made you judge in  
24 this case.

25 MR. STUART: Do you have anything





































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Starer

2 played any role in this and getting tangled in a  
3 bed rail and getting over it versus any scenario  
4 where the bed rail isn't functioning and she  
5 could roll out of the bed, one way or the other;  
6 your review is basically limited to the issues  
7 about care planning and supervision for a  
8 resident?

9 A. That's a long question, but the idea  
10 that she is playing a role, I don't really want  
11 to blame her for what's occurred. It's the  
12 people who are watching her.

13 Q. What were her physicians orders for  
14 monitoring her and for supervising her while in  
15 the facility; it's a very specific question, I  
16 want to know what her attending physician ordered  
17 them to do?

18 A. I was looking through that and I don't  
19 recall seeing any orders. If you would like, I  
20 can go through it again, the physicians order  
21 section I was provided, I have a section on  
22 telephone orders and I don't recall any specific  
23 orders.

24 Q. Doctor, if we base that upon your  
25 review and agree that the attending physician













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Starer

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an emergency room admission and I forgot to do

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that, I certainly would go back and write that.

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MR. STUART: Objection.

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Nonresponsive.

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MR. GONZALEZ: That's responsive, you

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asked the question about four different

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times, I think the doctor answered it four

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different times.

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MR. STUART: Thanks for your input.

11

You can say objection to form. Read the

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rules, you will understand one day.

13

Doctor, I am going object as

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nonresponsive.

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Q. My question, along the lines of in

16

your practice, have you ever forgotten to write

17

down a patient assessment or order at the time

18

that it occurred?

19

MR. GONZALEZ: Objection. Form.

20

A. It's too general a question, I always

21

have to write my note.

22

Q. You have never forgotten to not write

23

one, correct -- strike that. I will take that

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one, I will object to my own question.

25

Doctor, have you ever forgotten to













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Starer

2 who have been deposed, that you haven't been  
3 provided by the plaintiff's attorney nor asked  
4 for could have provided you more information  
5 about what restraints, if any, were being used at  
6 the time of the occurrence, correct?

7 A. Yes, they could provide me information  
8 about whether restraints were being used.

9 Q. Doctor, is it your opinion that Miss  
10 Laca should not have been restrained by any  
11 device while in her bed in February of 2001?

12 A. Yes, sir.

13 Q. And what do you believe should have  
14 been going on as far as monitoring or somehow  
15 preventing her from at some point falling out of  
16 her bed and possibly being hurt; what are you  
17 saying the standard of care would have required  
18 for her to keep her safe in February of 2001?

19 A. Monitoring, she should have been  
20 monitored.

21 Q. How do you monitor a resident such as  
22 Miss Laca to prevent her from possibly rolling  
23 out of the bed and injuring herself, back then in  
24 February of 2001?

25 A. Either direct observation or a system









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Starer

another complete or add to to what I asked at  
that time?

A. I don't recall at this time.

Q. Sometimes something sticks in  
somebody's mind.

Have I been polite to you, Doctor?

A. Yes.

MR. STUART: I will pass the witness  
to you.

MR. GONZALEZ: I have no questions  
right now. We will reserve all our  
questions until the time of trial.

(Time noted: 3:20 p.m.)

CHANGES AND SIGNATURE

RE: LACA VS. PEBBLE CREEK NURSING CENTER

PAGE	LINE	CHANGE	REASON
8	19	"INCONTINENCE" INSTEAD OF "INCOMPETENCE"	TRANSCRIPTION ERROR
9	4	"INCONTINENCE" INSTEAD OF "INCOMPETENCE"	TRANSCRIPTION ERROR
10	2	"SIDE" INSTEAD OF "SITE"	TRANSCRIPTION ERROR
19	6	"FORMERLY" INSTEAD OF "FURNALTY"	TRANSCRIPTION ERROR
19	6	"IN PRESS" INSTEAD OF "INCROSS"	TRANSCRIPTION ERROR
27	16	"HAS" INSTEAD OF "HAVE"	TRANSCRIPTION ERROR
42	5	"ROLL" INSTEAD OF "ROWE"	SPELLING ERROR
47	22	"AN OPINION" INSTEAD OF "ON OPINION"	TRANSCRIPTION ERROR

I PERRY STARER, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

  
 \_\_\_\_\_  
 PERRY STARER

THE STATE OF TEXAS )  
 COUNTY OF EL PASO )

Before me, \_\_\_\_\_ on this day personally appeared PERRY STARER, known to me (or proved to me under oath or through \_\_\_\_\_) to be person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR  
 THE STATE OF \_\_\_\_\_

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NO. 2002-747

LUCY LACA,	)	IN THE DISTRICT COURT
	)	
Plaintiffs,	)	
	)	
vs.	)	EL PASO COUNTY, TEXAS
	)	
PEBBLE CREEK NURSING	)	
CENTER,	)	
Defendants.	)	120TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION  
DEPOSITION OF PERRY STARER  
October 22, 2202

I, LESLIE FAGIN, Certified Shorthand Reporter in and for the State of New York, hereby certify to the following:

That the witness, PERRY STARER, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on 10-30-02 to the witness or to the attorney for witness for examination, signature, and returned to me by 11-20-02;

That the amount of time used by each party at the deposition is as follows:

G. MICHAEL STUART - 1 hours, 15 minutes

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That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

JUAN GONZALEZ, ESQ., Attorney for Plaintiffs  
G. MICHAEL STUART, ESQ., Attorney for Defendant

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorney in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 30th day of  
October 2002.

Leslie Fagin BP

LESLIE FAGIN

Esquire Deposition Services  
216 East 45th Street  
New York, New York 10017  
(212) 687-8010

## 1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2  
3 The original deposition ( ) was ( ) was not  
4 returned to the deposition officer on

5 \_\_\_\_\_;

6 If returned, the attached Changes and Signature  
7 page contains any changes and the reasons therefore;

8 If returned, the original deposition was  
9 delivered to Juan Gonzalez, Custodial Attorney;

10 That \$ \_\_\_\_\_ is the deposition officer's  
11 charges to the Defendant for preparing the original  
12 deposition transcript and any copies of exhibits;

13 That the deposition was delivered in accordance  
14 with Rule 203.3, and that a copy of the certificate  
15 was served on all parties shown herein and filed with  
16 the Clerk.

17 Certified to by me this \_\_\_\_\_ day of  
18 \_\_\_\_\_ 2002.

19  
20 Leslie Fagin BP

LESLIE FAGIN

21 Esquire Deposition Services

216 East 45th Street

22 New York, New York 10017

(212) 687-8010

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----- EXHIBITS -----

EXHIBIT FOR ID.

1	Defendant's notice of intent to take oral deposition	4
2	Defendant's amended notice of intent to take oral deposition	4
3	Curriculum vitae	4
4	Report	4
5	Handwritten notes	4
6	Research articles	4