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1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART 19

2 -----X

PLAINTIFF,

3 Ind. No.

4 Plaintiff,

-against-

5 Trial

BIO-REFERENCE LABORATORIES, INC.

6 And CLAUDIA RAVINS, M.D.,

7 Defendants.

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9 Queens Supreme Court
88-11 Sutphin Boulevard
10 Jamaica, New York 11435

11 B E F O R E :

12 THE HONORABLE PATRICIA P. SATTERFIELD,
Justice, Supreme Court

13 (And a jury of six plus two alternates)

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

15 Attorney for the Plaintiff:

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24 JEAN H. BESKIN
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Senior Court Reporters

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0013

1 (Requested portion of the transcript.)

2 MR. AWAD: I am, your Honor.

3 THE COURT: Well, good morning, counselor.

4 MR. AWAD: Thank you, your Honor.

5 OPENING STATEMENT TO THE JURY

6 BY MR. AWAD:

7 MR. AWAD: Good morning, jurors.

8 THE JURY: Good morning.

9 MR. AWAD: A medical expert, a Board certified
10 pathologist, will be here tomorrow and you will hear
11 from this Board certified pathologist, who is associated
12 with a university
13 setting. His name is Dr. PATHOLOGIST. Dr. PATHOLOGIST will
14 tell you and explain to you that there is a very simple
15 rule in medicine when it comes to screening tests for
16 cancer.

17 The simple rule no matter who the doctor, no
18 matter who the patient, no matter who the laboratory,
19 public, private, hospital, private corporation, no
20 matter where in this country, coast to coast, north to
21 south, east to west, it's a very simple rule that
22 applies in medicine when a laboratory is reviewing a
23 screening test, such as a PAP smear, the laboratory is
24 not permitted to report the PAP smear as being within
25 normal limits. If there is any evidence on the slide of

0014

1 cellular abnormalities, that could signal a precancer
2 state.

3 This expert will tell you that there are
4 guidelines established years ago by national authorities
5 that apply to every laboratory in the country in the
6 classification system and these guidelines specifically
7 provide, okay, when a laboratory reviews the slide, if
8 there are abnormalities as classified by any national
9 authority, they must be reported.

10 If the laboratory reports the slide within
11 normal limits when, in fact, there is evidence of
12 cellular abnormalities, this expert will tell you that
13 laboratory is responsible to the patient for any harms
14 or losses --

15 MR. SUNDHEIM: Your Honor, it seems to be --
16 objection.

17 THE COURT: Be seated, counsel.

18 MR. AWAD: -- caused by any delay in the
19 diagnosis and treatment of the cancer because of the
20 wrong report.

21 Other experts will also be here to tell you a
22 second simple rule in medicine as it applies to all
23 gynecologists and, again, the same notion 'cause it's so
24 simple, whether it's north or south, east or west,
25 whether it's in a hospital or in a doctor's office, in a

0015

1 clinic or otherwise, a Dr. Halbridge, a Board certified
2 gynecologist, a Dr. Richard Hirschman, a Board certified
3 oncologist, and others will tell you this is the
4 fundamental responsibility of any doctor anywhere when
5 ordering a PAP smear and sending it to a laboratory, to
6 read the report when the laboratory delivers it back to
7 the doctor.

8 If a doctor chooses for whatever reasons not
9 to read that report and by doing so, okay, the patient
10 loses the opportunity for retesting, for further
11 evaluation, this doctor, this Board certified
12 gynecologist, will tell you that the deviation from that
13 rule makes the physicians responsible for any harms or
14 losses that the patient experiences particularly because
15 of the progress or the growth of a cancer over a period
16 of time when it should have been picked up earlier.

17 PAP smear each and every physician will tell
18 you are designed and used and have made an enormous
19 difference in the health care of woman in countries
20 where they have been made available, and it is one of
21 the few cancers that medicine says can actually be cured
22 because it could be caught in such an early stage and
23 sometimes even before it's even what they call clinical
24 stage.

25 Now, briefly, I will review some of the

0016

1 choices and actions of the defendant laboratory by
2 history and the defendant gynecologist by history.
3 PLAINTIFF, our client whom you see seated in the
4 chair here in the courtroom, PLAINTIFF came under the care
5 and treatment of the gynecologist, Dr. Ravins, in 1999.
6 The defendant Ravins undertook her as a patient, agreed
7 to become responsible for all of her gynecology care, and
8 in 1999 in an office setting Dr. Ravins, the
9 gynecologist, did an internal examination, performed a
10 PAP smear and PLAINTIFF was noted at that time to be in
11 the word of some perimenopausal or about to go into
12 menopause, she had not had her period for a few months.
13 In 1999 that PAP smear and internal examination were

14 done by Dr. Ravins and that PAP smear was sent to
15 Bio-Reference Laboratory and the report came in. You
16 will hear from Dr. Ravins she did not read that report.

17 In the year 2000 in June of 2000 PLAINTIFF
18 reports to Dr. Ravins' office, and Dr. Ravins' office
19 again undertakes the gynecological care of PLAINTIFF.
20 Dr. Ravins again performs an internal examination of the
21 pelvic area and the area of female genitalia and does a
22 PAP smear. That PAP smear again is sent to
23 Bio-Reference Laboratory and on that PAP smear that is
24 sent to Bio-Reference there is the presence of cellular
25 abnormalities, cellular abnormalities that include

0017

1 changes that pathologists and technologists can see
2 between the nucleus and the cytoplasm, changes by
3 intraepithelial lesion, changes referred to abnormality
4 or atypical.

5 The laboratory reported the smear as being
6 within normal limits and sent the report to Dr. Ravins,
7 but Dr. Ravins didn't read it, didn't see it. Within
8 that report there was other information and we will show
9 them all to you, the other information in that June of
10 2000 report about the PAP smear that Dr. Ravins had
11 taken, the laboratory had read, and the report said --
12 she didn't read said, something that you will come to
13 find out about tomorrow, there is no endocervical
14 portion of the specimen.

15 In performing a PAP smear Dr. PATHOLOGIST will
16 tell you it is the endocervical area of any PAP smear
17 where the greatest amount of opportunity there is to
18 find precancerous cells. On the smear itself there is
19 evidence of abnormality that needs to be worked up. The
20 laboratory did not report that but reported that it was
21 missing tissue. Dr. Ravins never considered performing
22 any repeat PAP smear, any further evaluation, and never
23 told Ms. PLAINTIFF anything about that at all. By
24 definition she couldn't since she never saw it.

25 Nine months later in March of 2001 PLAINTIFF for
0018

1 the third time reports for her gynecological care.
2 Dr. Ravins for a third time does an internal examination
3 and performs a PAP smear. And, for a third time it is
4 sent to Bio-Reference. In March of 2001 Bio-Reference
5 again reports that the PAP smear is within normal
6 limits. In March of 2001 in performing the

7 gynecological examination Dr. Ravins reports that
8 everything is normal on the internal examination of the
9 vagina and cervical areas.

10 Several weeks after all of that was determined
11 to be normal on a Saturday evening in early April,
12 PLAINTIFF is at her home and she experiences a
13 very severe episode of vaginal hemorrhaging, a lot of
14 bleeding from her vagina in a woman who hadn't had her
15 period since 1999.

16 Just weeks after Ravins and the laboratory say
17 everything is normal you will come to find out that the
18 bleeding that she's experiencing and she calls for
19 emergency help and sees Dr. Ravins at the office hours
20 during business hours the following week, that a biopsy
21 is then performed and she now is diagnosed with Stage
22 III-B cancer, a very, very advanced stage cervical
23 cancer, and within the canal of the cervical area itself
24 the mass is so large and big that the bleeding is caused
25 because it has lacerated, it has opened up.

0019

1 PLAINTIFF -- (Sigh) -- in the year 2002 --
2 Ms. PLAINTIFF in the year 2002 undergoes medical treatment
3 we will present. A Board certified oncologist will
4 speak to you about them. Some of it involves remarkably
5 invasive treatment. Later on it goes on to involve a
6 surgery that can be so dehumanizing as to change a
7 person forever and ever.

8 We are suing Bio-Reference Laboratories
9 because on the 2000 and 2001 slide, okay, there were
10 cellular abnormalities that should have been recorded.
11 We are suing them because had they been reported as
12 being abnormal, Ms. PLAINTIFF would have had the same
13 opportunity as any woman in the United States to have
14 earlier treatment of her cervical cancer. In fact, as
15 very early stage in not a precancerous stage, something
16 called a Stage I cancer.

17 We are suing Bio-Reference Laboratories
18 because those slides not only were not within normal
19 limits, but those slides actually showed atypical
20 abnormal cells that I referred to earlier.

21 MR. SUNDHEIM: Excuse me. Is something being
22 provided on the slide around the corner? I don't know
23 what is up there.

24 THE COURT: Nothing is being projected.

25 MR. SUNDHEIM: That's my only interest.

0020

1 THE COURT: If there had been, I can assure
2 you I would have interceded.

3 MR. SUNDHEIM: Thank you.

4 MR. AWAD: We are suing Bio-Reference
5 Laboratories because in not reporting the abnormality on
6 the slide in 2000 Ms. PLAINTIFF lost almost a full year of
7 time and during that year of time the cervical cancer
8 was allowed to progress and grow to such an advanced
9 stage that her life has changed from.

10 That year period of time is a very valuable
11 period of time because during that year of time all
12 sorts of medical evaluations and work-ups could have
13 been done for her and should have been done for her, as
14 a gynecologist would tell you and as every doctor to
15 whom I put the questions to because every day each
16 doctor will have something different to offer in terms
17 of the case. They will, although, tell you that in the
18 treatment of cervical cancer the earlier the diagnosis
19 the better the prognosis, the earlier the diagnosis, the
20 least amount of treatment is needed.

21 We are suing the defendant gynecologist,
22 Dr. Ravins, because she didn't read the PAP reports when
23 they came back. Dr. Gynecologist will tell you that a
24 gynecologist who doesn't read reports of tests that they
25 ordered is responsible if, in fact, there are things in

0021

1 that report that would have allowed a gynecologist to do
2 further work-ups. There can be any sort of excuses or
3 explanations offered for not reading a laboratory
4 report. You are responsible for that.

5 We are suing Dr. Ravins because her internal
6 examination, her gynecological examination, even as late
7 as March of 2001 obviously missed this mass that had now
8 grown in Ms. PLAINTIFF's uterus over the last period of
9 time. Just weeks earlier she was there. She missed it.

10 We are suing her because her gynecological examinations
11 in 2000 and 2001 were not adequate.

12 During a short period of time but nonetheless
13 a very important period of time, the evidence will show
14 you that PLAINTIFF went from a precancerous stage
15 under the captainship of Dr. Ravins and under the
16 evaluations of life. Went from a precancerous stage to
17 a stage of cancer that is so advanced that in many cases
18 it is not compatible with life.

19 Gynecologist, PATHOLOGIST, today, this
20 afternoon, Dr. John Lovecchio, chair of gynecology,
21 oncology surgery for the North Shore University Hospital
22 system, will be here to testify about the repercussions
23 because he took care of Ms. PLAINTIFF in the year 2002.
24 He will tell you that the surgeries that he performed in
25 2002 would never have been indicated, would never have

0022

1 to have been performed, and the treatments she is
2 undergoing would never have been offered to her if her
3 cancer had been diagnosed in Stage I.

4 Now, the concept of reasonable care will be
5 spoken about here by a number of physicians in terms of
6 departure or deviation from standards of care.
7 Reasonable care both Dr. PATHOLOGIST, Dr. Gynecologist, will
8 talk to you and offer you explanations as to the idea no
9 one in medicine or in the health care field can
10 guarantee perfect medicine or the greatest of care. But
11 there are standards of care they will tell you, rules of
12 the road that involve reasonable care of a reasonably
13 careful physician or a laboratory in the community, and
14 when the standards of care are not complied with and the
15 patient suffers harm not because of the cancer but
16 because the cancer grew and progressed over a long
17 period of time, that that's when doctors and
18 laboratories have played a substantial factor in
19 bringing about the injury of a patient.

20 Folks, before we started and the reason why we
21 are here now is because neither the laboratory nor the
22 physician has accepted any responsibility for their
23 choices and actions in the year 2000 and the year 2001.
24 And, so we are here to try this case to you.

25 Before we came here when I say "we", I mean my
0023

1 law firm on behalf of PLAINTIFF, we had to make certain
2 determinations as lawyers on the evidence in terms of
3 the investigation and determination, and you will find
4 out as we go here the evidence will show that, in fact,
5 we have, in fact, looked at the reasons for
6 Dr. Lovecchio's radical surgery.

7 Dr. Lovecchio performed a surgery that I will
8 speak to you about in a moment that is very unusual and
9 did that in the year 2002. And, in spite of clean
10 margins which he will explained to you here today, we
11 sued Dr. Lovecchio, we took his deposition. We listened

12 to what he had to say. And, you will find he like
13 others who participated in the surgery we looked at it
14 that they had reasonable judgment calls.

15 We looked at and found and asked ourselves how
16 is it that we can show you or tell you that there was a
17 miss on the slides. Or that the reports weren't
18 adequate? Other than Dr. Ravins wasn't reading then?
19 The answer is we will present to you the reports from
20 the laboratory tomorrow, they have been looked at. We
21 will present to you tomorrow the slides from the
22 laboratory, the very slides that I'm talking about. We
23 looked at those.

24 We took Dr. Ravins' testimony at a pretrial
25 deposition like Dr. Lovecchio and others and it's at

0024

1 that time and for the first time that we found out on
2 Ms. PLAINTIFF's behalf that these PAP records that were
3 coming back to Dr. Ravins were never being read by her
4 but being read by assistants or nurses or otherwise.

5 We looked into and we will present you the
6 evidence, we looked into the idea since this is a
7 screening test, which is different than a diagnostic
8 test, screening test the evidence will show is designed
9 to find abnormality. It may or may not be correct in
10 finding it but to look for it. A diagnostic test is
11 meant to determine exactly what is there.

12 The screening test allows a woman and
13 particularly the PAP test with PAP smear the evidence
14 will show you allows any woman in the United States and
15 other countries that have them standardized. Allows the
16 woman an opportunity to see whether or not she needs in
17 conjunction with her gynecologist further work-up. It
18 may or may not be cancer depending on the full biopsy.
19 He took a look and an expert testimony will be here in
20 three different days about the sensitivity of PAP
21 smears. Did they work? Did they sometimes miss things
22 no matter what and we found out and we will show you
23 despite any other excuses or explanation that PAP smears
24 have made an enormous difference in the United States
25 because they do allow technicians perform what is called

0025

1 koposcopy, not colonoscopy, but koposcopy, which is a
2 look in the vagina/cervical area in which biopsy can be
3 done. It may trigger an ultrasound sonogram or identify
4 a CT, all of which happened too little and too late for

5 PLAINTIFF.

6 So we will offer you the testimony for you to
7 evaluate once you have seen the slide, seen the reports,
8 heard from the physicians, the opinion testimonies that
9 there were deviations from standards of care for the
10 laboratory, the negligence, and that their deviation is
11 from standards of care for the physician that were a
12 substantial factor in bringing about the worsening of
13 this cancer.

14 We will show you by the greater weight of the
15 evidence, the preponderance of the evidence. As I said
16 in jury selection, this is a contested case. Leave it
17 to her honor at a later time to talk to you about the
18 measure of damage and the measure of the proof that is
19 required under the law in a civil case. We do expect
20 your Honor to instruct you on the law of damages at the
21 end of the case and on how you may calculate a verdict
22 involving money damages for the harm that has been
23 caused by the delay in diagnosis and treatment, and for
24 that reason during this trial both myself and Ms. Spina
25 will be offering testimony to you about those harms and

0026

1 losses that are related to that loss of opportunity and
2 time, to that opportunity to have gotten treatment at
3 Stage I, an early cancer, and not Stage III-B, a very
4 late-stage cancer and we will offer that testimony not
5 for your -- not for reasons of sympathy, as we
6 discussed, or otherwise because sympathy is not to play
7 a role here. A long time has passed for sympathy so you
8 may at least in your deliberations have information
9 concerning her harms and losses that you can take into
10 account in determining a money damage verdict.

11 And so the last five or eight minutes of my
12 opening here I'm going to tell you a little bit about
13 what the damages we expect to show here.

14 A Stage I cervical cancer, the evidence will
15 show you, often times depending on the woman's place in
16 life where she is, and the choices she wants to make
17 with her physicians, childbearing, not childbearing age,
18 often times results in a hysterectomy. A hysterectomy
19 is a specific surgical procedure that removes the
20 uterus, the fallopian tubes, and the ovaries. Sometimes
21 it is called partial where the ovaries are kept or total
22 that the ovaries are removed. It is a procedure that
23 someone in the family or friend has had. That's not the

24 surgery Ms. PLAINTIFF had. By the time that she had got
25 to doctors that can help in cervical cancer this cancer

0027

1 was so big, so much invading the pelvic wall as well as
2 into the vagina that that option was gone and instead
3 the only option which she had -- well, I should say that
4 the only option, the recommended options, the
5 recommended treatment by doctors at Lenox Hill Hospital
6 and otherwise was to undergo a course of treatment for
7 this. It's a 5 x 6 centimeter mass in the cervix that
8 extends from the upper vagina for high dose she had
9 through May and June of 2001 had radiation pointed
10 directly at her genital areas and was radiated heavily.
11 Had to be because of the bulk -- Dr. Lovecchio will talk
12 about -- because of the bulk of the tumor.

13 She had to undergo a course of very severe
14 chemotherapy which is debilitating that she would not
15 have otherwise to that level of intensity, that degree
16 of intensity. Chemotherapy has profound effects and how
17 much, and she will talk to you about that.

18 But the evidence will also show and we're
19 bringing in Dr. Lovecchio first only because of
20 scheduling. You will hear from the surgeon who saw
21 Ms. PLAINTIFF after the first set of treatment in 2001
22 when she's referred to him in 2002 because he's one of
23 the few surgeons in the country that can and does the
24 surgery I'm about to talk to you about. 2002 that
25 cervical cancer recurred and it was still there and, as

0028

1 he will explain to you, it's in the middle. The bulk of
2 the tumor is in the middle of the cervix. Now that the
3 chemotherapy, as radical as it was, and the radiation,
4 as radical as it was couldn't stop it, he was asked to
5 see the patient. Ms. PLAINTIFF saw him for something
6 called a pelvic exenteration. He evaluated and I will
7 leave it for him to talk about it this afternoon and
8 determined Ms. PLAINTIFF was a candidate for that type of
9 surgery.

10 I have not done a count, but there's probably
11 about 30, 35 surgeons in the country who can do this.

12 Now, it's counterintuitive I offer to you what
13 was done, but it is done only in a patient in which the
14 cervical cancer is not metastasized to a distant organ

15 So there is an entire work-up on Ms. PLAINTIFF
16 in the summer of 2002 and August 2, 2002 in order to

17 save her life because of the advancement of this cancer.
18 He will tell you as well you don't go from precancerous
19 to Stage III-B cancer in a year. It was there. It
20 doesn't happen overnight. Because that had occurred,
21 okay, he now is not only going to remove her uterus, her
22 fallopian tubes, and her ovaries, but he will surgically
23 cut out and remove her vagina, her clitoris, her anus,
24 her rectum, most of her bowel that's called the sigmoid
25 colon, the ascending colon, and transverse colon. He

0029

1 removed -- exenteration means the surgical removal of
2 every organ that is inside the pelvic cavity of a woman.
3 And, he will explain to you literally how a woman looks
4 that moment of time in which everything including
5 urinary continence and organs addressed to that have
6 been removed while she is on the operating table. It's
7 an empty vault.

8 Dr. Lovecchio will tell you in a radical
9 surgery, a plastic surgeon as well as a urology surgeon,
10 as well as a variety of surgeons, all have a part, and
11 the plastic surgeon then goes into the legs and cuts
12 flaps of skin and folds them up into the woman's --
13 where Ms. PLAINTIFF's genitalia was once to formulate a
14 new vagina and provide some support inside this pelvic
15 cavity. It's only justified if you've got a sliver of
16 chance of living because if you have no sliver of chance
17 of living, medicine could never justify doing such
18 radical surgery for a short period of time.

19 There are complications of this surgery,
20 horrible for Ms. PLAINTIFF, in September of 2002. We
21 investigated them. Brought doctors to the deposition
22 table, okay. There is the complication of adhesions.
23 There were adhesions caused even on the portion of the
24 bowel that are left over, the urinary that's left over.
25 There are things in a way too detailed to talk about

0030

1 now, but there were reoperations and you will see in the
2 hospital records the impact psychiatrically on this
3 woman. Five years, and it's five years later, but she
4 wears two bags, as you see her you don't see it. She
5 wears two bags, one for the urine and one for her feces,
6 and regularly during the day she has to empty out the
7 bag for the feces which is watery because so much colon
8 has been lost that it can't form a stool. And, she has
9 to catheterize herself and catheterize means something in

10 and make sure the bag gets full, and she has to empty
11 her urine and I will ask Ms. PLAINTIFF to talk about it.
12 I will ask her to talk about it and I apologize about it
13 ahead of time but I am telling you I'm going to do this
14 because it's got to be in your consideration if, in
15 fact, you are going to decides harms and losses, and you
16 will find out something about PLAINTIFF.

17 The evidence is going to show that woman has
18 refused at all to accept defeat anywhere. As you might
19 have guessed, I have asked her some questions in
20 preparation here. I can't get her to talk. I mean she
21 is a school teacher. She has been teaching reading in
22 Ridgewood for years. She goes to work every day. She
23 took a leave of absence in September of 2002 to have
24 this surgery and she's back on the job in January and
25 guess what? She doesn't want anybody to know and you

0031

1 will judge why that's so.

2 I'm going to be difficult with her. I'm going
3 to ask her questions about what I believe is her
4 suffering, but you are going to find this is not a
5 person who wallows in sickness or helplessness or
6 weakness. But buried deeply in there I will prove you
7 buried deeply in there, okay, is a pain and a suffering
8 that is unbearable. We will show you the reasons why
9 she's entitled to money damages. Scripture says --
10 Scripture says that for those who are wronged by others
11 their just time will come, and you will find that the
12 person who is here is a very lovely person, but the
13 PLAINTIFF you meet today is not the PLAINTIFF
14 PLAINTIFF that existed before 2000. It will show you she
15 was a deeply involved person in life. This is a person
16 who took every opportunity to do overtime, extra work at
17 the Board of Ed. Loves teaching -- well, I will leave
18 it to you to make that determination. I shouldn't say
19 that.

20 In addition to which we will show you that she
21 devoted her life to animal shelters. She ran animal
22 shelters, overseen animal shelters, very involved in the
23 community.

24 She was a an avid hiker. She will be able to
25 tell you what path and what trail you should take up at

0032

1 Bear Mountain when you want to get out of Queens a few
2 times and get a little fresh air upstate.

3 She will tell about the museums, the lectures,
4 and the concerts not every day, but in a year's time
5 that she participated in and used to enjoy, all of which
6 is gone forever.

7 Despite her courage and so on and so forth, in
8 closing I expect because of that to come back at the end
9 of this trial after we've shown you the merits of the
10 liability and after we have shown you the merits of the
11 damages, I expect and I will be required as her lawyer
12 to come back and ask you for very, very substantial
13 money compensation for what's been taken away from her.

14 Thank you.

15