IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KANDI Y. WINDER and JEFFREY L. WINDER,	:	**No. 01-01795**
Plaintiffs	:	
	:	
vs.	:	**Civil Action - Law**
	:	
ROBERT A. DONATO, D.O.; WILLIAMSPORT OBSTETRICS & GYNECOLOGY, P.C.; JANE DOE 1 JANE DOE 2; JANE DOE 3; SUSQUEHANNA HEALTH SYSTEM; SUSQUEHANNA REGIONAL HEATHCARE ALLIANCE,	:	
Defendants	:	

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KANDI Y. WINDER and JEFFREY L. WINDER,	:	**No. 01-02133**
Plaintiffs	:	
	:	
vs.	:	
	:	
JOSEPH BORROSCO, R.N.; CAROL McELROY, R.N.; SCOTT HERALD, R.N.; DEBRA CAHN, R.N.; SUSQUEHANNA HEALTH SYSTEM; and SUSQUEHANNA REGIONAL HEALTHCARE ALLIANCE,	:	**Motion in Limine and Motions for Summary Judgment**
Defendants	:	

ORDER

AND NOW, this _____day of September 2003, upon consideration of Motion in Limine and the Motions for Summary Judgment filed by the defense, it is ORDERED and DIRECTED as follows:

1. With the agreement of Plaintiff’s counsel, the

Court GRANTS summary judgment with respect to the Jane Doe Defendants and the theory of corporate liability.

2. The Court DENIES the motion in limine and the portion of the summary judgment regarding res ipsa loquitor. The Court believes the Plaintiffs have sufficient evidence for this case to be submitted to the jury under the res ipsa loquitor concept. Dr. Donato claims that, since Plaintiffs' expert cannot exclude the nurses and other hospital staff, Plaintiff cannot satisfy the prong of res ipsa that "other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence." Similarly, the nurses and hospital claim Plaintiff cannot prevail because Dr. Donato has not been eliminated as a cause. The Court rejects the defendants' claims as they ignore the concept of shared responsibility. See Jones v. Polyclinic Hosp., 496 Pa. 465, 475, 437 A.2d 1134, 1139 (1981); Gilbert v. Korvette's, 457 Pa. 602, 614-615, 327 A.3d 94, 101 (1975).

Although Plaintiff's expert, Dr. Bornstein, admits the nurses would be liable if the burn occurred after Dr. Donato left the operating room, Dr. Bornstein finds this scenario to be highly unlikely given the location of the instruments and that they should be cooled down after they are no longer in use, as well as the nurses' deposition testimony denying doing anything after Dr. Donato left the operating room that would account for the burn. Dr. Bornstein

acknowledges that the physician's assistant, Mr. Hause, stated in his deposition that he looked at the abdomen prior to leaving the operating room and did not see a burn. Dr. Bornstein noted, however, that the burn was not discovered until one of the nurses was cleaning the Betadine off Ms. Winder's abdomen and indicated the burn could have been hidden under the Betadine. Whether the burn occurred during the procedure or after Dr. Donato left the operating room is a factual question to be resolved by the jury. If the jury finds that the burn occurred during the procedure, the Court believes Dr. Bornstein's expert report is sufficient for the jury to find that: (1) such a burn would not occur absent negligence; (2) neither the plaintiff or any third person (other than the doctor or the hospital staff) would have caused the burn; (3) the burn was caused by a hot instrument or object being placed on the patient's abdomen during surgery; and (4) the doctor and the staff had a shared duty toward the plaintiff to not place hot objects on her abdomen. If the jury finds the burn occurred after Dr. Donato left the operating room based on Mr. Hause's testimony, the Court believes Dr. Bornstein's opinions are sufficient for the jury to find that: (1) the burn would not have occurred absent negligence; (2) neither the plaintiff or any third person would have caused the burn; (3) the burn was caused by hospital staff placing an object on the patient's abdomen

after surgery; and (4) the staff had a duty toward the patient to not place hot objects on her abdomen.

Defendants also contend that since Plaintiffs cannot specify which surgical instrument caused the burn, this case cannot be submitted to a jury. Again, the Court cannot agree. See Williams v. Otis Elevator Co., 409 Pa.Super. 486, 491, 598 A.2d 302, 304 (1991)(where Plaintiff's expert opined the lurching of the elevator was symptomatic of a leveling problem which was caused most likely by a defect in component parts, such as the brushes, brakes or leveling switches, but could not determine the specific defect, Superior Court held it "was not essential to recovery that appellee's evidence point unerringly to the specific defect which caused the elevator to lurch.").

By The Court,

_____
Kenneth D. Brown, Judge

cc: Thomas Waffenschmidt, Esquire
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Work File
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