Rudden v Good Samaritan Hosp.
2008 NY Slip Op 30194(U)
January 17, 2008
Supreme Court, Suffolk County
Docket Number: 0025331/2005
Judge: Robert W. Doyle
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SHORT FORM ORDER

INDEX No. 05-25331
CAL. No. 07-00925-MM

SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 8-20-07
ADJ. DATE 11-30-07
Mot. Seq. # 002 - MD

---X
CHERYL RUDDEN and LOUIS W. RUDDEN, :
: Plaintiffs, :
:
- against - :
:
:
GOOD SAMARITAN HOSPITAL, SOUTH BAY :
OB/GYN, P.C., ROBERT S. SCHWARTZ, M.D. :
and BENJAMIN M. SCHWARTZ, M.D., :
:
:
Defendants. :
---X

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Upon the following papers numbered 1 to 30 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 20; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 21 - 23; Replying Affidavits and supporting papers 24 - 30; Other __; (~~and after hearing counsel in support and opposed to the motion~~) it is

ORDERED that this motion (002) by defendants, South Bay Ob/Gyn, P.C., Robert S. Schwartz, M.D., and Benjamin Schwartz, M.D., for an order pursuant to CPLR 3212 granting summary judgment dismissing plaintiff's complaint, opposed by plaintiffs, is denied.

The complaint of this action sets forth a first cause of action sounding in medical malpractice as against Good Samaritan Hospital, a second cause of action for medical malpractice as against South Bay Ob/Gyn, third and fourth causes of action for medical malpractice as against Robert S. Schwartz, M.D. and Benjamin M. Schwartz, M.D., a fifth cause of action for lack of informed consent asserted against all defendants, and a sixth cause of action on a derivative claim asserted on behalf of plaintiff's spouse, Louis W. Rudden.

The complaint sets forth that plaintiff, Cheryl Rudden, was a patient of defendant South Bay Ob/Gyn, P.C. from about April 12, 2004 through approximately the end of July, 2004, under the care of

defendants Robert S. Schwartz, M.D. and Benjamin Schwartz, M.D. On or about May 6, 2004 through May 8, 2004, plaintiff, Cheryl Rudden, was admitted by the aforementioned physicians to Good Samaritan Hospital as a patient for the purpose of having a video laparoscopic hysterectomy, right salpingo-oophorectomy performed due to a fibroid uterus and right ovarian cyst. On May 16, 2004 through May 23, 2004, plaintiff was readmitted by the aforementioned defendants to Good Samaritan Hospital as a patient to be treated for a pelvic abscess, ureterovaginal fistula, cystoscopy, ureteral stent placement and parenteral antibiotics. Plaintiffs allege that as a result of various departures from good and accepted medical practice by defendants that Cheryl Rudden was caused to sustain serious personal injuries consisting of left sided ureteral burning, left sided ureteral stricture/obstruction; left sided hydronephrosis; left sided hydro ureter; ureterovaginal fistula; vaginal drainage of urine; vaginal cuff cellulitis; multiple pelvic abscesses; multiple pelvic collections; ascites; excess fluid in the vagina; left distal ureteral separation; pelvic infection; vaginal cyst; urine leakage; urethral hypermobility; mild grade I cystocele; possible persistent ureteral vaginal fistula; left sided pelvic pains; abdominal scarring; abdominal distention; abdominal pain; fever; urinary urgency; stress incontinence; vaginal leakage; weight gain; feeling of bloating; intermittent vaginal burning; bladder spasms; frequent urinary tract infections; s/p video laparoscopic hysterectomy, right salpingo-oophorectomy, cystoscopy and incision pain management for fibroid uterus and right ovarian cyst; necessity for cystoscopy, vaginoscopy, retrograde pyelogram, left sided ureteroscopy and ureteral stent placement; necessity for second surgery of cystoscopy, removal of old stents, left sided ureteroscopy, ureteral balloon dilation, retrograde pyelogram and placement of double stent; necessity for left ureteroneocystostomy with psoas hitch surgery; removal of old stent; necessity for multiple CAT scans of the pelvis and abdomen, x-rays of abdomen, renal ultrasounds, blood tests, intravenous pyelogram, cystoscopy and vaginoscopy, sonogram, venous duplex scan lower extremities, stents, foley catheter, prolonged antibiotic medication, pain medication, hormone medication, anticholinergic medication; emotional anxiety and depression. Plaintiffs claim that during the procedure on May 6, 2004 that defendants caused injury to Cheryl Rudden's left ureter resulting in the aforementioned sequelae.

The moving defendants allege there were no departures from the appropriate standards of care, that the injury to plaintiff's ureter was a known and accepted complication of the procedure, that plaintiff was properly provided with informed consent, and that the postoperative care rendered by defendants was not the proximate cause of any of plaintiff's injuries. Thus the moving defendants seek an order granting summary judgment dismissing the complaint asserted against them.

The requisite elements of proof in a medical malpractice action are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (***Holton v Sprain Brook Manor Nursing Home***, 253 AD2d 852, 678 NYS2d 503[2nd Dept 1998], *app denied* 92 NY2d 818, 685 NYS2d 420). To prove a prima facie case of medical malpractice, a plaintiff must establish that defendant's negligence was a substantial factor in producing the alleged injury (*see,* ***Derdiarian v Felix Contracting Corp.***, 51 NY2d 308, 434 NYS2d 166 [1980]; ***Prete v Rafla-Demetrious,*** 221 AD2d 674, 638 NYS2d 700 [2nd Dept 1996]). Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiff's injury (*see,* ***Fiore v Galang***, 64 NY2d 999, 489 NYS2d 47 [1985]; ***Lyons v McCauley,*** 252 AD2d 516, 517, 675 NYS2d 375 [2nd Dept 1998], *app denied* 92 NY2d 814, 681 NYS2d 475; ***Bloom v City of New York,*** 202 AD2d 465, 465, 609 NYS2d 45 [2nd Dept 1994]).

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (***Sillman v Twentieth Century-Fox Film Corporation***, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v N.Y.U. Medical Center***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v N.Y.U. Medical Center***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must present facts sufficient to require a trial of any issue of fact by producing evidentiary proof in admissible form (***Joseph P. Day Realty Corp. v Aeroxon Prods.***, 148 AD2d 499, 538 NYS2d 843 [2nd Dept 1979]) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (***Castro v Liberty Bus Co.,*** 79 AD2d 1014, 435 NYS2d 340 [2nd Dept 1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (***Friends of Animals v Associated Fur Mfrs.,*** 46 NY2d 1065, 416 NYS2d 790 [1979]).

In support of their motion for summary judgment, defendant South Bay Ob/Gyn, P.C. (hereinafter South Bay), Robert S. Schwartz, M.D., and Benjamin M. Schwartz, M.D. have submitted, inter alia, an attorney's affirmation; copies of the summons and complaint, defendants' answers, and plaintiffs' bill of particulars; copies of the transcripts of the examinations before trial of Cheryl A. Rudden, Louis W. Rudden, Robert Schwartz, M.D., and Benjamin M. Schwartz, M.D.; uncertified copies of plaintiff's hospital and medical records; and the affirmation of Harold I. Grossman, M.D. defendants expert in obstetrics and gynecology.

In opposing this motion, plaintiff has submitted an attorney's affirmation and the affirmation of plaintiff's expert in urology.

Defendants' expert, Harold I. Grossman, M.D. sets forth that he is licensed to practice medicine in the State of New York and is board certified in the fields of Obstetrics and Gynecology. He states that he has reviewed the pertinent medical records of Cheryl Rudden as well as the deposition transcripts of all the parties deposed, plaintiffs' bill of particulars, the office records of South Bay, the Good Samaritan Hospital records for the admissions of May 6 through May 8, 2004 and May 16 through 23, 2004, cystoscopy report of July 29, 2004, the Southside Hospital records for the admission of April 9, through April 11, 2004, the office records of South Bay Urologic Associates, the office records of Dr. Bedlani, Dr. Nitti, and Dr. Polidoro, the records of Zwanger, Pesiri Radiology, and the NYU Medical Center Hospital records for Cheryl Rudden's admission on September 24, 2004.

Dr. Grossman set forth that Cheryl Rudden presented to Southside Hospital emergency room on April 9, 2004 with complaints of abdominal pain of sudden onset, and vaginal bleeding for the last two and a half months. A pelvic sonogram revealed small bilateral cysts and endometrial distention. Her final diagnosis was abdominal pain/ovarian cyst and she was advised to follow with her Ob/Gyn. He

states on April 12, 2004, Ms. Rudden was seen at South Bay by Dr. Robert Schwartz whose impression after examination was that she had a small fibroid uterus and a right ovarian cyst. Dr. Grossman states Dr. Robert Schwartz discussed various options with her, including an examination under anesthesia, video laparoscopy with right ovarian cystectomy, and a possible right oophorectomy with D&C. He states the second option discussed was a video laparoscopic hysterectomy with removal of her right fallopian tube and right ovary without removing the left fallopian tube and left ovary. Dr. Grossman states that she understood that following surgery she would not be able to have any children and would not have menstrual periods. He further states that she wanted to discuss the proposed surgery with her husband. Dr. Grossman also states that on April 28, 2004, Cheryl Rudden, accompanied by her husband, Louis Rudden, discussed the laparoscopic hysterectomy/RSO (right salpingo-oophrectomy) surgery with Dr. Robert Schwartz, who again explained the video laproscopic hysterectomy and removal of the right fallopian tube and ovary. Dr. Grossman states that Dr. Robert Schwartz discussed the risks and complications of the proposed surgery with Ms. Rudden.

Dr. Grossman states that on May 6, 2004, Ms. Rudden was admitted to Good Samaritan Hospital for her laparoscopic hysterectomy/RSO, and signed a consent form for the surgery. Thereafter, he states, a video laparoscopic hysterectomy/RSO was performed by Dr. Robert Schwartz from 2:05 p.m. to 3:20 p.m., with Dr. Benjamin Schwartz as first assistant. Dr. Grossman states that the Operative Report indicates that following removal of the fibroid uterus, the vaginal cuff was cauterized and the cervix, right fallopian tube and right ovary were removed, a cystoscopy was performed and indigo blue dye was noted to be easily visualized from both ureteral orifices, indicating the ureter had not been severed or ligated. On May 8, 2004, Ms. Rudden was discharged from the hospital.

Dr. Grossman states on May 10, 2004, Ms. Rudden telephoned South Bay complaining of swelling and a fever the previous night but not that day. On May 11, 2004, Ms. Rudden was seen by Dr. Robert Schwartz, wherein she expressed concern that she had been running a temperature and was uncomfortable following surgery. Thereafter, Dr. Robert Schwartz planned to see her in three weeks. However, on May 16, 2004, Ms. Rudden was readmitted to Good Samaritan Hospital through the emergency room with complaints of severe abdominal pain for the previous five days, accompanied by nausea. Dr. Grossman states that after examination and testing, she was admitted with a presumptive diagnosis of vaginal cuff cellulitis for which she was placed on IV antibiotics, and a Harris flush and CAT scan of the abdomen and pelvis were ordered, then performed May 17, 2004. The CAT scan revealed multiple locules of fluid in the pelvis with surrounding inflammation representing possible collections. Dr. Grossman stated these locules did not appear well organized and were not accessible to drainage. He also stated there was evidence of a delay in contrast in the left ureter, possibly due to spasm caused by surrounding inflammation, but the left ureter did not appear to be clearly obstructed. Infectious disease consultation was requested at which time the impression was postoperative intra-abdominal sepsis with plans to continue IV antibiotics and obtain a surgical consultation which was performed by Dr. Simon. According to Dr. Grossman, Dr. Simon's impression was possible post-operative fluid collection, inflammatory versus reactive status-post laparoscopic hysterectomy/RSO, with plans for CT imaging and possible surgical intervention (percutaneous or open drainage) would be considered.

Dr. Grossman states that on May 19, 2004, a CT scan of the pelvis and abdomen was performed which revealed small, bilateral pleural effusions, left greater than right; mild to moderate left-sided hydronephrosis increased compared to the prior CT scan; perinephric fluid and ascites; a few focal

collections within the pelvis which had increased in size compared to the May 17, 2004 CT scan; with a radiology impression of multiple pelvic collections which increased in size compared to the prior CT scan causing left sided hydroureter and hydronephrosis with new fluid in the left perirenal space and progression of ascites.

On May 20, 2004, Ms. Rudden complained of dribbling urine from her vagina and stress incontinence while ambulating. Dr. Grossman states this was to be investigated the following morning and thereafter, Dr. Robert Schwartz advised Ms. Rudden and her husband and sister that she might have developed an ureterovaginal fistula or vesicovaginal fistula, and that he planned to obtain a urological consultation from Dr. Omid Rofeim prior to an additional diagnostic IVP. Upon examination of Ms. Rudden, Dr. Rofeim noted Ms. Rudden had been draining urine from her vagina for two weeks after her laparoscopic hysterectomy/RSO. He, according to Dr. Grossman, ordered foley catheter drainage for at least two weeks, an IVP and CT cystogram. The IVP revealed mild left-sided hydronephrosis and hydroureter down to the level of the pelvis, with termination of the left distal ureter just superior to the bladder with an intra luminal collection and contrast within the vagina consistent with fistulization. On May 22, 2004 during a cystoscopy, access to the left ureter was attempted but unsuccessful until a rigid ureteroscope was inserted into the left ureter, but it could not be advanced beyond the level of the distal left ureter. A post operative finding was left distal ureteral separation for which a stent was placed in the left ureter. Ms. Rudden was discharged the following day with a foley catheter and leg bag in place, regular diet, unrestricted activity and pain medications.

Dr. Grossman further states that on May 26, 2004, Ms. Rudden presented to South Bay for an emergency visit for fever and a blood pressure of 90/60, but he does not indicate which doctor saw her, if any. On May 28, 2004, she returned again and was seen by Dr. Benjamin Schwartz for vaginal bleeding which he thought was old blood. On June 2, 2004, Dr. Grossman states Dr. Robert Schwartz examined Ms. Rudden, and it was Dr. Robert Schwartz's impression that the she had some possible, slight leakage of urine with bowel movements, but that the vaginal vault was healing.

Dr. Grossman states that on June 9, 2004, Ms. Rudden's foley catheter was removed. The stent was to be left in place for approximately two months. On June 18, 2004, Ms. Rudden called South Bay complaining of fever spikes for which Dr. Robert Schwartz ordered Vibramycin for seven days. She was seen by Dr. Robert Schwartz on June 21, 2002. On June 30, 2004, she returned, complaining of acute pain in her left lower quadrant for the past few days. A pelvic sonogram revealed a small complex left ovarian cyst with no masses in the pelvis. Her last visit with South Bay was on July 7, 2004.

Only July 29, 2004, Dr. Rofeim performed a cystoscopy to inspect Ms. Rudden's urethra and bladder at which time narrowing of the distal left ureter was noted in the area of the previous extravasation. A balloon dilator was used to dilate it; the old stent was removed and a new one inserted. Dr. Grossman states that Dr. Rofeim recommended either chronic stent changes or ureteral reimplantation and on September 24, 2004, Dr. Victor Nitti performed a left ureteroneocystostomy with psoas hitch wherein a surgical reimplantation of the ureter into the bladder and a stent were placed at NYU Medical Center. The stent was removed on October 25, 2004 by Dr. Nitti under cystoscopic examination. On February 7, 2004, Ms. Rudden reported to Dr. Nitti that she was experiencing occasional urinary urgency and pain in her left pelvic area. Detrol LA was prescribed for the urinary urgency after examination by renal ultrasound.

Dr. Grossman states that on March 12, 2005, Ms. Rudden presented to her gynecologist, Dr. Michelle Polidoro with a chief complaint of scant vaginal bleeding with sexual intercourse, vaginal dryness and hot flashes. Vaginal examination revealed a lesion in the back of plaintiff's vagina. On April 18, 2005, Ms. Rudden reported to Dr. Nitti that she was experiencing recurrent urinary tract infections with positive urine cultures, vaginal dryness and spasm-like pain at the end of voiding. Again, Detrol LA was prescribed.

Dr. Grossman opines that Ms. Rudden presented to South Bay and the Schwartz defendants in need of surgical treatment for the multinodular uterus and right ovarian cyst; various treatments were discussed with plaintiff individually and then with plaintiff and her husband; and that the surgical option performed was appropriate and within the standard of care given plaintiff's presenting signs, symptoms, clinical examination and radiological findings. Dr. Grossman opines there was no indication in the hospital records, deposition testimony or medical records of any complication occurring during surgery. Dr. Grossman opines that the distal left ureteral injury which plaintiff was diagnosed with was an accepted and well known complication which can develop in the absence of any negligent surgery. He further opined that recent medical research (although he does not reveal the source) reveals an incidence of ureteral injury during LAVH of up to 6%, and recent medical research also shows that up to 70% of ureteral injuries occurring during hysterectomy procedures are diagnosed post-operatively. Dr. Grossman opines that both Robert Schwartz and Benjamin Schwartz not only met, but exceeded, the standard of care in performing an intra operative cystoscopy to detect any injury to the ureter, and at the time the cystoscopy was performed, there was no evident injury to the ureter as Dr. Robert Schwartz's operative note indicates that the blue dye was noted to be easily visualized from both ureteral orifices. This, opines Dr. Grossman, indicates the ureter was patent at the time of the cystoscopy. With regard to Dr. Benjamin Schwartz, Dr. Grossman opines that the brief postoperative care rendered by him was at all times within good and accepted standards of medical care.

It is also Dr. Grossman's opinion that the post-operative care rendered by the aforementioned defendants subsequent to the May 6, 2004 surgery was not a substantial factor in causing or contributing to any injury alleged by Cheryl Rudden. Dr. Grossman opines that Dr. Robert Schwartz timely and appropriately diagnosed plaintiff's condition, and even if diagnosis had been made one to two days sooner, treatment would not have been any different, and that any delay was not significant. Dr. Grossman opines that Dr. Robert Schwartz timely and appropriately called an infectious disease consult and a surgery consult.

Based upon the foregoing, it is determined defendants Robert Schwartz, M.D., Benjamin Schwartz, M.D. and South Bay have demonstrated prima facie entitlement to an order granting summary judgment on the issue of medical malpractice by the moving defendants, but have not demonstrated prima facie entitlement to summary judgment on the issue of lack of informed consent as to risks and complications.

Dr. Grossman has failed to identify those risks and complications which he states Ms. Rudden was apprised of. Additionally, Cheryl Rudden testified during her examination before trial, when asked what risks Dr. Schwartz discussed with her, she responded that he didn't say there were any and he did not discuss any complications of the surgery. When asked, she responded that she was aware that with every surgical procedure there are risks that you might not wake up. Mr. Rudden testified he went to the office

with his wife to meet with Dr. Robert Schwartz, did not recall Dr. Robert Schwartz discussing any complications associated with the proposed surgery, and that Dr. Robert Schwartz did not mention bleeding or infection, and said nothing about the risk of possible injury to the ureter. Their testimonies raise factual issues with the testimony of Dr. Robert Schwartz submitted by defendants wherein he testified at his examination before trial that at her first office visit, he discussed the potential risks and complications of both proposed procedures with Ms. Rudden, and mentioned that the video laproscopic hysterectomy was more involved than the procedure for removal of an ovarian cyst and that there is more cutting and more cautery used. He further testified that he advised her that because of the nature of the procedure, the complications are higher than with an ovarian cystectomy. He stated the complication rate is very low but that injury to bowel or ureter or bladder is possible, although very rare. Accordingly, there are factual issues concerning the issue of informed consent raised in defendants' moving papers which preclude summary judgment.

Plaintiff has opposed this motion for summary judgment. To rebut a prima facie showing of entitlement to an order granting summary judgment by defendants, plaintiff must demonstrate the existence of a triable issue of fact by submitting an expert's affidavit of merit attesting to a deviation or departure from accepted practice, and containing an opinion that the defendants' acts or omissions were a competent-producing cause of the injuries of the plaintiff (*see, **Lifshitz v Beth Israel Med. Ctr-Kings Highway Div.***, 7 AD3d 759, 776 NYS2d 907 [2nd Dept 2004]; ***Domaradzki v Glen Cove OB/GYN Assocs.***, 242 AD2d 282, 660 NYS2d 739 [2nd Dept 1997]).

Plaintiff has submitted the affirmation of Dr. Sol M. Usher, M.D. who is licensed to practice medicine in the State of New York, is Board Certified in Urology and is a Fellow of the American College of Surgeons. Dr. Usher sets forth that he reviewed the pertinent medical records of plaintiff, Cheryl Rudden, including the records from North Shore LIJ Hospital Emergency Room visit of April 9, 2004, the Good Samaritan Hospital admissions of May 6, 2004, May 16, 2004, and July 29, 2004, the records of plaintiff from South Bay Ob/Gyn and Dr. Robert Schwartz, the records of Dr. Rofeim from South Bay Urological Associates, the NYU Urology Associates records of Dr. Nitti and the pyleogram films taken on May 22, 2004 and July 29, 2004. Dr. Usher states he also reviewed the affirmation of Harold I. Grossman, M.D.

Dr. Usher opines that South Bay Ob/Gyn, Dr. Robert S. Schwartz and Dr. Benjamin M. Schwartz failed to treat Cheryl Rudden in accordance with good and accepted standards of medical practice and that such failures caused injury to Cheryl Rudden both during the surgical procedure itself and as a result of the failure to timely diagnose the injury sustained by Cheryl Rudden during the surgery.

Dr. Usher sets forth that on May 6, 2004, Cheryl Rudden underwent a laparoscopic hysterectomy and right sided salpingo-oophorectomy at Good Samaritan Hospital by surgeons Robert S. Schwartz and Benjamin M. Schwartz, who both participated in the hysterectomy and right sided salpingo-oophorectomy. Dr. Usher states that during the surgery the defendants failed to identify the left ureter and negligently damaged Cheryl Rudden's left ureter, and that failure to identify the left ureter during surgery and causing the injury to the left ureter during a right sided salpingo-oophorectomy and hysterectomy was a departure from good and accepted standards of medical care. Dr. Usher further states that Dr. Robert Schwartz and Dr. Benjamin Schwartz failed to detect the injury caused to Cheryl Rudden's left ureter during the course of post-operative care, which failure was a departure from accepted

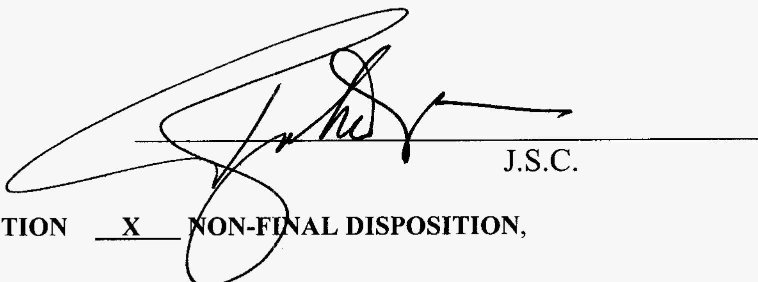
standards of care, and that it was a departure from accepted standards of care to fail to seek a urology consult once damage to the ureter was suspected during surgery.

In review of the foregoing, it is determined by this Court that plaintiffs' expert has raised material issues of fact in opposing defendants' motion. The primary factual issue raised concerns, inter alia, that although Dr. Grossman states injury to a ureter during a laparoscopic hysterectomy and salpingo-oophrectomy can occur in the absence of negligence, he does not comment on how this injury to a left ureter can occur during a right sided salpingo-oophorectomy and laparoscopic hysterectomy, which Dr. Usher states is a departure from accepted standards of care in that he opines the defendants failed to identify the left ureter to protect it from injury. In that there is a material factual issue raised by plaintiff's expert in opposing defendants' motion, summary judgment is precluded.

Defendants' additional arguments that plaintiffs' opposition to their motion is untimely is without merit as this matter had been adjourned by the court until November 30, 2007, and plaintiffs' opposition was received by this court on November 27, 2007.

Accordingly, motion (001) by defendants Robert Schwartz, M.D., Benjamin Schwartz, M.D. and South Bay Ob/Gyn is denied.

Dated: JAN 17 2008



J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION,**