

Salzano v Ritter

2008 NY Slip Op 30524(U)

February 15, 2008

Supreme Court, Suffolk County

Docket Number: 0022088/2005

Judge: Emily Pines

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 23 - SUFFOLK COUNTY**

P R E S E N T :

Hon EMILY PINES
Justice of the Supreme Court

MOTION DATE 10-18-07
ADJ. DATE 1-17-08
Mot. Seq. # 002 - MD
003 - MG

-----X
ANTHONY SALZANO, :
 :
 :
 Plaintiff, :
 :
 - against - :
 :
 RICHARD A. RITTER, M.D., BARRY C. :
 KLEEMAN, M.D., BROOKHAVEN :
 ORTHOPEDIC ASSOCIATES, M.D., P.C. and :
 BROOKHAVEN MEMORIAL HOSPITAL :
 MEDICAL CENTER, INC., :
 :
 Defendants. :
-----X

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Upon the following papers numbered 1 to 35 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 15; Notice of Cross Motion and supporting papers 16 - 26; Answering Affidavits and supporting papers 27 - 32; Replying Affidavits and supporting papers 33 - 35; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is

ORDERED that this motion (002) by defendant, Barry C. Kleeman, M.D., pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint and all cross claims against him, opposed by plaintiff, is denied; and it is further

ORDERED that this motion (003) by defendant Brookhaven Memorial Hospital pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint and all cross claims against it, is granted with prejudice.

The complaint of this action sets forth causes of action sounding in medical malpractice and lack of informed consent on behalf of plaintiff, Anthony Salzano. It is claimed, inter alia, that Barry Kleeman, M.D. treated plaintiff for injuries arising out of an incident while Mr. Salzano was playing football and

that he failed to provide an informed consent to Mr. Salzano, failed to recognize the signs and symptoms of shoulder instability, and negligently performed a labral repair surgery on Mr. Salzano's right shoulder by improperly placing a Mitek Bio-knotless anchor. This surgery was performed at Brookhaven Memorial Hospital. As a result of the claimed departures, Mr. Salzano claims he sustained multiple injuries including, but not limited to, shoulder impingement, anterior shoulder instability, right shoulder and arm weakness requiring a subsequent arthroscopic surgery on April 24, 2004.

The moving defendants allege there were no departures from the appropriate medical/surgical standards of care and that Mr. Salzano was seen by Dr. Kleeman for a second opinion, as requested by Dr. Ritter who performed the arthroscopic surgery at Brookhaven Memorial Hospital. Thus the moving defendants seek an order granting summary judgment dismissing the complaint and cross claims 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, Derdarian 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 motion (002), Dr. Kleeman has submitted, inter alia, an attorney's affirmation; the sworn affidavit of defendant's orthopedic expert, Jonathan B. Ticker, M.D.; copies of the pleadings, answer, and verified bill of particulars; copies of the transcripts of the examinations before trial of Anthony Salzano, and Richard Ritter, M.D.; and copies of various medical records and reports. In opposing this motion, plaintiff has submitted an attorney's affirmation; a redacted copy of the affirmation of plaintiff's expert orthopedist, with an unredacted copy under separate cover; and copies of various medical records.

In support of motion (003), Brookhaven Memorial Hospital has submitted, inter alia, an attorney's affirmation; copies of the pleadings, answers, and verified bill of particulars; patient records from Brookhaven Memorial Hospital and Brookhaven Orthopedic Associates; copy of the transcript of the examination before trial of Richard Ritter, M.D.; and the affirmation of Charles A. Pitman, M.D., defendant's orthopedist expert. In opposing this motion, plaintiff has submitted an attorney's affirmation wherein it is set forth that the motion for summary judgment of Brookhaven Memorial Hospital Medical Center is not opposed.

Turning to motion (002), Jonathan B. Ticker, M.D. sets forth that he is a physician licensed to practice medicine in the State of New York and is board certified in orthopedic surgery. It is Dr. Ticker's opinion, within a reasonable degree of medical certainty, that Dr. Kleeman's care and treatment of Anthony Salzano was at all times within good and accepted standards of medical practice and that Dr. Kleeman did not proximately cause or contribute to plaintiff's claimed injuries.

Dr. Ticker states that Mr. Salzano testified at his deposition that during a football game in September or October of 2002, he had an open field tackle which ripped his arm back. He thereafter saw Dr. Ritter, an orthopedic surgeon, on or about October 21, 2002, for complaints of sharp pain in his right shoulder. Dr. Ticker states Dr. Ritter ordered an MRI with contrast of the right shoulder to rule in or rule out right shoulder instability. The MRI, performed March 4, 2003, revealed a labral tear for which, states Dr. Ticker, Dr. Ritter recommended surgical treatment to repair the tear.

Dr. Ticker states that Dr. Ritter testified that Anthony Salzano was his patient, not Dr. Kleeman's patient, and that he asked Dr. Kleeman for an opinion concerning the surgery to repair the tear as a supporting measure. Dr. Ticker states Dr. Kleeman saw Anthony only one time on March 17, 2003, performed a physical examination and had x-rays taken of Anthony's right shoulder, and that Dr. Kleeman agreed with Dr. Ritter's recommendation that Anthony undergo surgery on the right shoulder. Dr. Ticker states the surgery was performed by Dr. Ritter at Brookhaven Memorial Hospital Medical Center on April 7, 2003. Dr. Ticker states that according to the operative report, Dr. Kleeman is listed as assistant surgeon to Dr. Ritter. He states Dr. Ritter testified that he would ultimately decide the specific location for each anchor placed and that he (Dr. Ritter) performed the right shoulder arthroscopy and arthroscopic stabilization, anterior labral repair and superior labral complex repair. Due to plaintiff's ongoing complaints of shoulder pain, Dr. Ritter had an MRI performed on February 11, 2004, and based on the results, recommended a second surgery to Mr. Salzano's shoulder, which surgery was subsequently performed by Dr. Schrank.

Dr. Ticker further opines with a reasonable degree of medical certainty that the care and treatment rendered by Dr. Kleeman was at all times within acceptable standards of medical care in that Dr. Kleeman performed an appropriate physical examination on March 13, 2003; appropriately agreed with Dr. Ritter's recommendation of right shoulder surgery for Anthony; and Dr. Kleeman did not cause or contribute to any injury to Anthony's right shoulder in that Dr. Ritter was the operating surgeon in charge of the April 7, 2003 right shoulder surgery and Dr. Kleeman's role was that of assistant. Dr. Ticker further states that Dr. Ritter testified that as the operating surgeon, he was ultimately responsible for all medical decisions and judgments rendered during the surgery.

Dr. Ritter testified at his examination before trial that he is a partner in the clinical practice of Brookhaven Orthopedic Associates of Patchogue and that Dr. Kleeman was also a partner at the time. He first saw Anthony Salzano, a sixteen year old high school football player, on October 14, 2002, for complaints of an injury to his right shoulder. He was seen again on February 19, 2003, at which time an MRI was ordered, then performed on March 4, 2003. The MRI revealed a labral tear at the base of the anterior labrum at the 4 o'clock position, but Dr. Ritter did not know how long the labral tear had existed. Dr. Ritter testified he also considered a Bankart lesion due to the anterior shoulder instability. He asked Dr. Kleeman to see Anthony on March 17, 2003 for his opinion. Surgery was recommended for the right labral tear, shoulder instability and pain. He testified he considered surgery to the shoulder to repair the tear by arthroscopy using suture anchors, which could be knotless or knotted.

Dr. Ritter also testified that prior to surgery, he told Anthony's mother that they anticipated an arthroscopic surgical procedure, but it could be possible that it would have to be converted to an open procedure due to visualization problems or other reasons which could prevent them from achieving their goal arthroscopically. He stated he also discussed the risks and benefits of surgery with Anthony and his mother, including infection, injury to nerve or a blood vessel, failure of the repair, possible need for further surgery, possible anchor dislodgment, persistent instability or pain. As to the benefits of surgery, they were told that since Anthony has symptoms without significant improvement despite nonsurgical measures and failing nonsurgical care, that if they could repair his torn labrum and achieve stability to the shoulder, then the best case scenario would be that he would be able to resume many of his activities without the pain that he was experiencing. He testified he did not grade the tear prior to surgery or after surgery, but stated he was bit familiar with a grade 2 SLAP tear. Surgery was performed on April 7, 2003.

When asked who physically reattached the labrum during the surgery, Dr. Ritter testified it was sort of impossible to answer (whether it was him or Dr. Kleeman) because it was more than a one man job. He described it as a team approach. Dr Ritter further testified that it was a joint decision as to the specific location where each of the anchors would be placed, but as the operating surgeon, it was ultimately his decision. Placement of the anchor sutures was based upon intraoperative judgment he stated. The labrum was attached on the anterior edge of the glenoid surface with an anchor to reattach soft tissue to bone by using suture material attached to the anchor. He stated that since he used the knotless system, the suture was passed through the labral tissue or capsulolabral complex, captured by the prongs on the anchor and recessed into the bone, thereby holding the labral complex in firm proximity to the glenoid. He further testified that there appeared to be an evulsion or separation of the anterior labrum; the majority of the cartilaginous surface of the ball of the shoulder was intact, and the majority of the cartilaginous surface of the glenoid socket appeared intact; there was some fraying of the cartilage in the

posterior aspect of the humeral head, frequently seen in unstable shoulders; and when he probed the superior labrum, there was instability of the superior labrum as well, so he felt it was indicative of a SLAP tear. He further stated there was a separation of the labrum from the glenoid insertion which extended down to approximately the 4 o'clock position (the Bankart lesion), and there appeared to be an extension superiorly into the superior labrum.

Dr. Ritter also testified he believed they placed three sutures, one at approximately 4:30 o'clock, one at 2:00 o'clock, and one was placed more superiorly, in proximity to the superior labrum. He stated the suture anchor repaired the Bankart lesion by inserting it onto the anterior glenoid edge. He testified that the SLAP tear was repaired surgically during the procedure with the three Bio-knotless suture anchors. He then testified that two anchors were used to repair the separation of the labrum from the glenoid edge, and one anchor was used to repair the SLAP tear. He described the anchor as attaching to the bone, and the sutures as being used to capture the labral and capsulolabral tissue to secure it to the anchor. He believed the anchors were inserted the appropriate way in the appropriate position and that he tested the stability after placement. He further stated the area would then have been probed and the shoulder would have been moved around. Postoperatively, the shoulder would then be immobilized for the first three to four weeks. He stated there is still a risk of anchor dislodgment after the four week postoperative period, but the shoulder is protected with a sling to prevent extremes of motion, followed by supervised physical therapy to avoid too much external rotation. Activity is limited and gym, sports, and aggressive play are restricted for at least three months. Intra operative photos were taken. He testified that at no time did he have any malfunction of any of the equipment used during surgery, and had no difficulty visualizing any of the operative fields. He stated the arthroscope was made of glass, and he was not aware that during a subsequent surgery to repair his surgery in April, 2004, that some pieces of broken clear glass were found in Anthony's right shoulder.

Based upon the foregoing, it is determined that defendant Dr. Kleeman has demonstrated prima facie entitlement to 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]). General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat the summary judgment motion made by defendant physician (*Fileccia v Massapequa Gen. Hosp.* 63 NY2d 639, 479 NYS2d 520 [1978]); *Alvarez v Prospect Hosp.* 68 NY2d 320, 508 NYS2d 923 [1986]); *Bustamonte v Koval*, 98 AD2d 739, 469 NYS2d 441 [2nd Dept 1983]).

In opposing this motion, plaintiff has submitted the affirmation of their expert who is licensed to

practice medicine in the State of New York and who is board certified in orthopedic surgery.¹ Plaintiff's expert states Mr. Salzano suffered a hyperflexion backward of his arm while playing football in August of 2002 and immediately felt pain in his shoulder, but was able to complete the game. He then reinjured his arm in another football game on October 12, 2002 after which he received physical therapy and was referred to Dr. Ritter. He states Dr. Ritter first treated Mr. Salzano on October 14, 2002 (although there is confusion in Dr. Ritter's note as to the actual date), and that Dr. Ritter noted Mr. Salzano suffered pain in the extremes of motion of his right shoulder. He states Dr. Ritter's impression was right shoulder instability/subluxation without a history of dislocation for which he permitted Mr. Salzano to continue playing football and ordered a shoulder harness and physical therapy. On February 19, 2003, he continued to have pain in the right shoulder, especially upon throwing a baseball. Positive Neer and Hawkins tests were noted which suggested shoulder impingement. An MRI performed on March 4, 2003 was positive for linear signal abnormality in the area of the articular cartilage/anterior labral junction suggesting a labral tear. Plaintiff's expert states Dr. Ritter saw Mr. Salzano on March 13, 2003 and suggested the likelihood of surgical repair of the labral tear, referred plaintiff to Dr. Kleeman for a second opinion, and that Dr. Kleeman agreed with the possible need for labral repair.

Plaintiff's expert described a SLAP tear as a specific type of labral injury at the point where the tendons of the biceps muscle inserts into the labrum at the superior (or uppermost) area of the labrum. He described a Bankart lesion as another specific type of labral injury due to repeated dislocation of the shoulder which causes a tearing of the labrum at the area of the glenohumeral ligament. Surgical treatment of these injuries usually involve an arthroscopic procedure to reattach the labrum to the glenoid surface, which is normally done through the use of sutures and suture anchors which are placed into a surgical hole that is drilled into the surface of the glenoid cavity. He states the suture is then placed around the labrum and is then captured by prongs at the end of the suture anchor which is then tapped into the glenoid through the surgical hole at or beneath the surface of the bone, and that the placement of the suture anchor has the effect of tightening the suture and securing the labrum to the glenoid surface. Plaintiff's expert states the sutures are dissolvable over time and complete attachment to the glenoid can take up to a year before the labrum can be considered stable.

Surgery was performed on April 7, 2003 at Brookhaven Memorial Hospital by Dr. Ritter and Dr. Kleeman. Plaintiff's expert states that during surgery, a large separation of the anterior labrum extending to the four o'clock position was noted with instability of the superior labral complex, indicative of a SLAP tear. A decision was made to stabilize the torn labrum utilizing a Mitek VARP system with Mitek Bio-knotless suture anchors. Plaintiff's expert states that while Dr. Ritter testified and wrote in his operative report that a total of three anchors were placed in the 12:00, 2:00 and 4:30 o'clock positions on the glenoid surface, the intraoperative nursing notes clearly state that four anchors were used during the procedure. Plaintiff's expert further states that Dr. Shrank, a subsequent treating physician, also indicates in his operative report that four anchors were used during the procedure performed by Dr. Ritter and Dr. Kleeman. Plaintiff's expert also states that Dr. Ritter testified that the decisions regarding placement of the anchors was "likely a joint decision between himself and Dr. Kleeman, and that according to the

¹The Court has conducted an in-camera inspection of the original unredacted affirmation and finds it to be identical in every way to the redacted affirmation in plaintiff's opposition papers with the exception of the redacted expert's name. In addition, the Court has returned the unredacted affirmation to the plaintiff's attorney.

operative report, each of the anchors were stable after probing the suture for the same. Mr. Salzano's right arm was thereafter placed in a sling and he was discharged home. Physical therapy was started four weeks later and plaintiff's expert states Dr. Ritter cleared Mr. Salzano to play football while wearing a brace only four and one half months after the surgery. On October 13, 2003, Mr. Salzano was then seen by Dr. Ritter complaining of pain in his right shoulder, along with a new onset of clicking and cracking which produced discomfort. Plaintiff's expert states that Dr. Ritter suspected the cause of the complaints was a loose anchor, so Mr. Salzano was placed on pain medication and anti-inflammatories, but he permitted Mr. Salzano to continue playing football, and advised him that if the symptoms worsened, a second-look arthroscopy may be necessary. Plaintiff's expert stated Dr. Ritter saw plaintiff for the last time on January 29, 2004 with complaints of continuing pain for which an MRI/arthrogram was ordered and performed on February 11, 2004.

Plaintiff's expert states that MRI/arthrogram demonstrated that one anchor was seen in the articular surface in the area of the anterior-inferior glenoid. Slough of the articular surface was seen in this area, along with loss of cartilage on the opposing articular surface of the humerus. Intra-articular loose bodies were also identified. Marked clumping and thickening of the anterior capsule and glenohumeral ligaments were seen. A severe superior labral tear with complete avulsion of the biceps tendon was noted and which continued to the 9 o'clock position.

Plaintiff's expert further stated that Mr. Salzano then followed up with Dr. Shrank, another orthopedic surgeon on March 15, 2004, who, noting the history and findings of the aforementioned MRI/arthrogram, recommended arthroscopic repair of the labral tear. This surgery was performed on April 20, 2004 at which time severe chondral changes (cartilage damage) to 30% of the glenoid surface was noted corresponding to anchor placement approximately 1 centimeter onto the glenoid face. Plaintiff's expert states that Dr. Shrank noted there was a loose tac head which became readily apparent in the glenohumeral joint, which was removed using mechanical graspers; there were several small cartilaginous loose bodies which were debrided from the glenohumeral joint using a mechanical shaver. He further states the anterior superior labrum was identified and found to be a normal sublabral hole configuration, and that it appears that the previous tacs were put in place to attempt to repair this sublabral hole ... (the remaining tacs 3 in number were visualized on the glenoid face and were recessed below the remaining cartilage. A grasper was used to attempt to remove the remaining tac pieces, but they were firmly attached to the bone, and no further attempt was made to remove the tacs, as this could have resulted in further cartilaginous damage.

Plaintiff's expert states that Dr. Shrank's operative report clearly indicates there were four suture anchors utilized in the surgery by Dr. Ritter and Dr. Kleeman, three of which were in place and one other which corresponded to the area of the subsequent chondral injury. Plaintiff's expert also states that Dr. Shrank also found a grade II SLAP tear intraoperatively and repaired it using an Athrex Bio Fast tac anchor; and further diagnosed glenohumeral osteoarthritis of the right shoulder which was not present on the MRI's taken prior to the surgery performed by defendants Ritter and Kleeman.

Based upon the foregoing, it is determined that there are factual issues raised by plaintiff's expert concerning Dr. Kleeman's care and treatment of plaintiff which preclude summary judgment dismissing the complaint and cross claims. Plaintiff's expert opines with a reasonable degree of medical certainty

that Dr. Kleeman departed from accepted standards of Orthopedic surgical care by failing to properly place one of the Mitek bio-knotless anchors during the surgery he preformed with Dr. Ritter on April 7, 2003. Plaintiff's expert states it is clear that four suture anchors were used during the surgery by Dr. Ritter and Dr. Kleeman, not three as testified to by Dr. Ritter. Plaintiff's expert further states that the anchor inserted one centimeter onto the face of the glenoid was allowed to be placed above the glenoid surface and into the joint capsule/articular surface and that this is a departure from the standard of care by Dr. Ritter and Dr. Kleeman. Plaintiff's expert opines that they also failed to properly assess the joint articulation after the placement of the anchors. Plaintiff's expert further opines that it was a departure from the appropriate standard of care to fail to identify the fact that damage was being caused by the improperly placed anchor which was directly causing the chondral injuries found on the glenoid surface and the corresponding humeral surface which resulted in severe permanent osteoarthritis in Mr. Salzano's right shoulder.

It is noted that although Dr. Ritter testified that he was ultimately responsible for the decisions made during the surgery concerning the location of anchor placement, plaintiff's expert has raised factual issues concerning departures from accepted standards of orthopedic care by Dr. Kleeman by his improperly placing the anchor. Plaintiff's expert states that the anchor which was placed one centimeter into the glenoid face, as referred to by Dr. Shrank in his operative report, corresponded to the area of chondral injury to the glenoid and the humerus; that it is clear that this anchor was placed above the surface of the bone and into the articular surface; and that this improper placement caused the tip of the anchor to extend above the joint surface into the joint capsule thereby permitting the humerus to articulate against it causing chondral injury to the humerus. Thus states, plaintiff's expert, Dr. Kleeman departed from acceptable standards of care with respect to the same. Plaintiff's expert further states that the tension placed on the sides of the anchor as a result of the improper placement lead to pressure being applied on either side of the anchor during articulation of the join which further caused chondral injury to the glenoid as demonstrated on both the MRI of February 11, 2004 and Dr. Schrank's report of the surgery of April 20, 2004. Plaintiff's expert opines that the portion of the anchor, which was improperly placed above the bone surface and into the joint capsule, broke off and was found in the glenohumeral joint by Dr. Shrank during his surgery as indicated by the operative noted wherein Dr. Shrank removed a piece of broken tack head.

Based upon the foregoing, plaintiff has demonstrated factual issues which preclude summary judgment to Dr. Kleeman.

Accordingly, motion (002) by Dr. Kleeman for summary judgment dismissing the complaint and cross claims is denied.

Turning to motion (003), defendant's expert orthopedist, Charles A. Pitman, M.D., sets forth he is duly licensed to practice medicine in the State of New York and is board certified in orthopedic surgery. He states, within a reasonable degree of medical certainty, that there were no departures from accepted standards of medical practice by Brookhaven Memorial Hospital in connection with the care and treatment provided to plaintiff, Anthony Salzano, and that Brookhaven Memorial Hospital did not cause or substantially contribute to any of the claimed injuries or damages alleged in this lawsuit. Dr. Pitman sets forth that Mr. Salzano was initially seen by Dr. Richard Ritter, an orthopedic surgeon, on October 21,

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2002, who noted a right shoulder instability/subluxation. An MRI revealed evidence of a mild bursitis, a subcortical cyst in the posterior lateral head, a cyst in the posterior glenoid and glenolabral articular abnormalities suggestive of a tear of the anterolabrum. He states Dr. Ritter recommended arthroscopic surgery. Mr. Salzano also saw Dr. Kleeman for consult who thought that arthroscopy and labral repair was appropriate. On April 7, 2003, Mr. Salzano underwent arthroscopic surgery with arthroscopic stabilization and an anterolabral repair at Brookhaven Memorial Hospital. Dr. Ritter was the surgeon, assisted by Dr. Kleeman. Dr. Pitman states there was no further treatment at Brookhaven Memorial Hospital and Mr. Salzano followed thereafter with Dr. Ritter at Brookhaven Orthopedic Associates and with subsequent physicians. Dr. Pitman states Brookhaven Memorial Hospital did not deviate from accepted standards of medical practice in the care and treatment provided to Anthony Salzano on April 7, 2003 as Mr. Salzano was a private patient of Dr. Ritter and Brookhaven Orthopedic Associates, the indications for arthroscopy of the shoulder were appropriately made by the treating physician/orthopedic surgeon, Dr. Ritter, and the procedure was performed by the treating physician. He further opines that there was no deviation from accepted medical standards by the defendant hospital and its staff or employees and there was no evidence of a causal relationship between the care provided by the hospital and its staff and the claimed injuries.

Based upon the foregoing, defendant Brookhaven Memorial Hospital has demonstrated prima facie entitlement to summary judgment.

Plaintiff has merely submitted the affirmation of plaintiff's attorney who sets forth that plaintiff does not oppose the motion for summary judgment by Brookhaven Memorial Hospital.

Accordingly, motion (003) is granted and the complaint and cross claims asserted against Brookhaven Memorial Hospital are dismissed with prejudice.

Dated: _____

2/15/08

Emily Pines
 HON. EMILY PINES, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION