

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

SUZANNE YOUNG, CARI-ANN YOUNG  
and THERESA DI FALCO  
Plaintiffs

- and -

ST. JOSEPH'S HEALTHCARE HAMILTON,  
DAVID RICHARD, JOHNSON SMALL, FREDERICK J. BAXTER,  
NANCY DZAJA, ANNA DUL, NICHOLAS AFAGH, CATHERINE KELL,  
BREANNA CORNELIU, JOSIELYN STACEY, ANNA MARIE WALTERS,  
TINA-JACKSON BEEMER, MARY MENS, DIANE GARDINER,  
JOHN DOE AND JANE DOE  
Defendants

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This is the Examination for Discovery of  
THERESA MARGARET DI FALCO, a Plaintiff herein, taken at  
the offices of Nimigan Mihailovich Reporting, Suite  
701, One James Street South, Hamilton, Ontario, on the  
21st day of June, 2016.

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APPEARANCES:

SONJA NUIC	For the Plaintiffs
WILLIAM J. BULLIVANT	For the Defendants St. Joseph's Healthcare Hamilton, Catherine Kell, Breanna Corneliu, Josielyn Stacey, Anna Marie Walters, Tina-Jackson Beemer, Mary Mens and Diane Gardiner
TREVOR COURTIS	For the Defendants Johnson Small, Frederick J. Baxter and Nancy Dzaja
SEAN MURTHA	For the Defendants Anna Dul and Nicholas Afagh

I N D E X

WITNESS: THERESA MARGARET DI FALCO

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Undertaking to produce an Affidavit of Documents for Ms. Di Falco including a detailed Schedule B.	62

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-- EXAMINATION COMMENCED AT 1:00 P.M.

THERESA MARGARET DI FALCO, Sworn:

EXAMINATION BY MR. COURTIS:

1           Q.    So my name is Trevor Courtis. I'm one  
of the lawyers for Dr. Small, Baxter, and Dzaja, and  
today is my opportunity on behalf of the doctors just  
to ask you a few questions regarding your claims that  
you have made against them.

          If I ever have a question you don't  
understand, please feel free to mention so, and I'll  
attempt to clarify. If at any point you ever need a  
break, please let me know.

          And as mentioned, the court reporter is  
transcribing my questions and your answers, so it's  
important that you wait until I finish before you start  
answering. It's also important you answer verbally  
rather than any nods or gestures just so it can be  
recorded on the transcript. Does that all sound good?

          A.    That's fine, yes.

2           Q.    We probably should just on the record  
before we get started the discovery of Suzanne Young  
will continue on another date as she has come down with  
an illness following the initial part of her discovery  
this morning. Do you have anything else to add?

          MS. NUIC: Well, it wasn't really an

illness, but she's symptomatic and is not able to continue on today.

BY MR. COURTIS:

3 Q. Sure. Can you state your full name for the record?

A. Theresa Margaret Di Falco.

4 Q. And you have been sworn in today?

A. I have.

5 Q. And have you attended today with a sworn copy of your Affidavit of Documents?

A. No.

MS. NUIC: Sorry. The affidavit is in Suzanne's name.

MR. COURTIS: Okay. Will you be I guess producing an Affidavit of Documents for --

MS. NUIC: She's a Family Law Act claimant, so no.

BY MR. COURTIS:

6 Q. Have you conducted a search of your records and disclosed any documents that are relevant in this lawsuit to your lawyer?

A. Yes.

7 Q. And if you become aware of any additional documents that are relevant to this lawsuit, will you let your lawyer know?

A. Yes.

8 Q. What did you do to prepare for your discovery today other than meet with your lawyer?

A. Review some notes that I have taken over the course of the years.

9 Q. Did you speak to anyone else?

A. Aside from my lawyer, no.

10 Q. And other than -- I take it they're handwritten notes that you've made over the past number of years that you reviewed?

A. Handwritten and typed, yes.

11 Q. Other than those notes, did you review any other documents?

A. No.

12 Q. Counsel, can I get an undertaking to produce those notes?

R/F MS. NUIC: No.

MR. COURTIS: Can you state the basis for that refusal?

MS. NUIC: It's litigation privilege.

MR. COURTIS: So they entirely encompass --

MS. NUIC: Anything postaccident that's when the litigation commenced. The hospital was provided notice of the incident immediately after, so



it relates to litigation privilege, so I'm not producing them.

MR. COURTIS: So your position is after you notified the hospital of a complaint any notes after that point are covered by litigation privilege?

MS. NUIC: Yes. We provided you with all of the e-mails back and forth between the various -- to St. Joseph's notifying them and any discussions with St. Joseph's, so we're maintaining privilege over her own personal notes.

MR. COURTIS: When was the complaint made that started the litigation privilege?

MS. NUIC: When was the complaint made to St. Joseph's?

THE DEPONENT: The following morning.

BY MR. COURTIS:

13 Q. And had you retained counsel at that point?

A. No, I did not.

14 Q. But you had made a complaint to the hospital?

A. Yes.

15 Q. And did you make any handwritten notes before then, before the next morning when you made a complaint to the hospital?

A. I'm not clear on the question.

16 Q. So before you made the complaint to the hospital, which I guess you said was the next morning after the procedure, and I guess that would have been November 27th, 2012, before that point, did you make any points regarding Theresa's, sorry, Suzanne's condition or anything relevant to this action?

A. An e-mail, yes.

17 Q. Has that been produced?

A. It's just an e-mail.

MS. NUIC: To?

THE DEPONENT: It's just an update of Suzanne's surgery.

MR. COURTIS: Counsel, can I get an undertaking to produce that e-mail?

U/T MS. NUIC: Yes.

BY MR. COURTIS:

18 Q. Did you keep a diary or calendar during the time after Suzanne's procedure?

A. I keep records in a -- it's just the notes that I've been taking.

19 Q. And I assume that's covered under the aforementioned refusal?

MS. NUIC: Yes.

BY MR. COURTIS:

20 Q. And other than the e-mail that will be produced, you have corresponded with others about Suzanne's symptoms and her care I guess after the complaint to the hospital was made?

A. Yes.

21 Q. And that's covered by the aforementioned refusal?

MS. NUIC: We have produced those e-mails.

MR. COURTIS: Any other e-mails you would object to producing?

MS. NUIC: What do you mean? What other e-mails would I be sending you? We've sent you the e-mails.

BY MR. COURTIS:

22 Q. Is there any other correspondence other than the e-mails that you have already produced that you sent to anyone about Suzanne's treatment or subsequent symptoms that have not been produced to this point and that your lawyer has given to us?

A. I don't believe so.

U/A MS. NUIC: If there is, I'll review them and provide you with my position.

MR. COURTIS: That's an under advisement?

MS. NUIC: Yes.

BY MR. COURTIS:

23 Q. What's your date of birth?

A. 15th of June, 1963.

24 Q. And where do you live?

A. In Stoney Creek, Ontario.

25 Q. And what's your address?

A. 243 Fruitland Road.

26 Q. And how long have you lived at that  
address?

A. Since 1992.

27 Q. And who do you live there with?

A. With my husband Cal.

28 Q. And his last name is Di Falco also?

A. It is.

29 Q. Do you have children?

A. I have one daughter.

30 Q. And what's her date of birth?

A. The 26th of November, 1978.

31 Q. And what's her name?

A. Amanda.

32 Q. And still Di Falco?

A. She's married, but she goes by her  
maiden name.

33 Q. And where does she currently live?

MS. NUIC: What's the relevance?

Sorry.

MR. COURTIS: It's relevant if she's still living at home.

MS. NUIC: Why? She's an FLA claimant. How is it relevant if she still lives with Ms. Di Falco. She's not claiming that she was injured in this accident.

MR. COURTIS: So that's a refusal to answer that question?

R/F MS. NUIC: Yes.

BY MR. COURTIS:

34 Q. How long have you been married?

A. Since 1988.

35 Q. So we're just going to start off by talking directly about the procedure on November 26, 2014, and when I mention --

MS. NUIC: 2012.

BY MR. COURTIS:

36 Q. Sorry, 2012. And when I mention the procedure, I'm referring to that hysterectomy that's the source of this action. Did you attend the hospital that day?

A. I did.

37 Q. And did you go with Suzanne?

A. I drove her.

38 Q. And who all attended with you?

A. My husband, Cal, and my niece,  
Cari-Ann.

39 Q. And before arriving at the hospital on  
that day or in the days shortly beforehand, did Suzanne  
complain to you about having a bump on her head?

A. No.

40 Q. Did she complain to you about any  
headaches or dizziness?

A. Like the day of the surgery?

41 Q. Yes. We'll say the day of the surgery.

A. No.

42 Q. Did she complain to you of any other  
notable health concerns other than what she was going  
in to have the procedure for?

A. No.

43 Q. Starting from the moment you arrived at  
the hospital, where did you go?

A. We went to check in. We parked the  
car, and we checked into the operating area, waiting  
area, and Suzanne was taken to a preop.

44 Q. And did you do the check in at the  
operating area for Suzanne, or she did that herself?

A. We were all together.

45 Q. And so did you have to wait outside  
that check-in counter for a period of time?

A. No.

46 Q. And so after that point, did you all go  
to a separate waiting area, or I guess what happened  
next after you checked in?

A. We stayed with Suzanne until she was  
taken to surgery.

47 Q. So I guess where did you go after that  
point? Did they take her directly into a room, or were  
you just sort of in a waiting area for a while until  
they called her?

A. We were in a cubicle.

48 Q. So they took her sort of directly from  
the front counter into a cubicle?

A. A cubicle. She was on a bed in a  
cubicle that has curtains that separates the cubicles.

49 Q. And you went with her to the cubicle?

A. Yes.

50 Q. And at that point, she got changed into  
a gown?

A. Yes.

51 Q. Did you wait with her the entire time  
she was in that cubicle?

A. Yes, I did.

52 Q. Do you recall any doctors or nurses  
coming in to talk to Suzanne?

A. Yes.

53 Q. What or who do you recall coming in to  
talk to Suzanne?

A. I recall the anesthesiologist coming  
in. I recall a resident who works with Dr. Small  
coming in, several nurses.

54 Q. Do you recall the names of any of those  
people, or do you just know their position?

A. They did say their name.

55 Q. But you wouldn't have a recollection of  
that?

A. Most likely if I heard it, I would  
probably recall. I have a pretty good memory.

56 Q. Was the anesthesiologist Dr. Baxter?

A. That sounds familiar.

57 Q. Was the resident Dr. Nancy Dzaja?

MS. NUIC: Dzaja.

BY MR. COURTIS:

58 Q. Dzaja. I'm glad someone knows.

A. That's familiar.

59 Q. And when she was in the cubicle, how  
was her hair done? Was it up? Was it down?

A. When she arrived, her hair was down. I



braided it into two braids to make it comfortable for her and to keep her hair tidy as she has long hair, and we tucked it up into the hat before she went into surgery.

60 Q. Were they I guess braids on the side of the head, or were they behind the head at all.

A. So two split in the middle here, and they came forward.

61 Q. So there was a braid sort of across the back of her head and down?

A. No. You split the hair from the front of the forehead to the back of the nape, and you pull the hair like this, and then I just braided it on either side.

62 Q. I'll have to learn this terminology eventually. And those were tucked up into the surgical cap before she went into the --

A. Just before she went in, yes.

63 Q. And at that point, I guess how long was she in that cubicle if you remember?

A. It would be an hour.

64 Q. And at some point, somebody came and got her to bring her to the OR?

A. Yes.

65 Q. Did they wheel the bed out of the room

with her on it?

A. Yes.

66 Q. And do you recall was it a nurse or a  
porter?

A. I don't remember. I know there was two  
people.

67 Q. And did you I guess go with her at all  
for any distance, or did you say bye at that point?

A. We walked just around the corridor  
until she went to the doors that you can't go past.

68 Q. So you would not have gone sort of  
around the operating room itself? There was doors sort  
of in between that area and where you guys parted ways?

A. That's correct, we did not go beyond  
those doors.

69 Q. And at that point, did she or, to your  
knowledge, did she have a bump on her head?

A. No.

70 Q. Was she complaining of any headaches or  
dizziness at that point?

A. She was not, and I would know that  
because I did her hair that morning and, like I said,  
split it down the middle. She was in very good spirits  
that morning.

71 Q. And you don't recall any incident of

her hitting her head up to that point during that day?

A. No.

72 Q. And at that point, where did you wait while she was in the operating room?

A. There's an operating waiting area just outside those doors.

73 Q. Do you recall speaking with anyone immediately after the procedure?

A. During the day, I did, yes.

74 Q. And who came and spoke with you?

A. Dr. Small.

75 Q. What did he tell you?

A. He told us that Suzanne was in recovery. He handed us some pictures of Suzanne's ovaries, and he told her she was being monitored because her oxygen levels had dropped.

76 Q. Did he mention anything about her hitting her head at all at that point?

A. No. He did also mention her blood pressure was -- they were regulating her blood pressure as well.

77 Q. And when were you first able to go see her? I guess how long of a time after you talked to Dr. Small were you able to go see her?

A. I didn't see her until she was in a

ward. We weren't allowed.

78 Q. And from the time she went into the operating room until the time you were able to go see her on the ward, how long of a time would you estimate that was?

A. She was taken into surgery just shortly after 10 a.m., and we didn't see her until almost 5:30.

79 Q. At any point, did you ask anyone where is she?

A. Yes, I did.

80 Q. And who did you talk to?

A. I asked for constant updates from the volunteer that was working in the operating waiting area, and she did provide updates. We were then informed that Suzanne had been taken to her room. We proceeded to -- shall I continue?

81 Q. Yes.

A. We proceeded to go to the room that Suzanne was assigned to on the sixth floor, and Suzanne was not there. We asked at the nursing station, and they didn't receive Suzanne, so we went back down to the operating waiting area, and we were told again that she had left some time now. We explained that she wasn't on the sixth floor, and they were insistent that she was sent to her room. We went back out towards the

elevators and then asked at information, and they didn't have Suzanne in any room. So we went back to the sixth floor, and she still wasn't there. We went back to information and then back to the operating room.

We were going back and forth for a good time at least 20 minutes or more, and it was -- we were on our way back to the operating area, and the young lady at the reception, I still remember she was blond and she was pregnant, and she was chasing us I found her, I found her, and told us that she was on the seventh floor and gave us the room number.

82 Q. In your discussions with any of the volunteers or the various people you spoke to during that period, did they, other than Dr. Small, explain that her oxygen had dropped while she was in the recovery room?

A. No.

83 Q. But you did have some discussions with Dr. Small about issues being had with her about her oxygen level?

A. Yes. He didn't make it like it was something significant. He just said that they had to keep her longer because they were monitoring her oxygen and blood pressure.

84 Q. At any point prior to you locating her, did anyone tell you that she was being admitted to a special oximetry bed to monitor her oxygen?

A. No.

85 Q. Once you reached the ward room that she was, in fact, in, what do you first sort of remember when you entered the room?

A. I remember coming off the elevator and hearing my sister screaming, and we rushed down the hall into the room, and she was in a lot of pain screaming, and she just kept saying my head, my head over and over again.

86 Q. At that point, did you like examine the back of her head?

A. She asked me to, yes.

87 Q. And what did you see?

A. Well, it was dark. I remember it was dark in the room. Her hair was all over the place, and it was wet.

88 Q. Did you notice at that point a bump on the back of her head?

A. I barely touched her hair because she was screaming so much. I was afraid to. I just remember it being wet and looking at my hand and wondering if it was blood.

89 Q. Could you confirm that it was --

A. It was not blood.

90 Q. If you could describe at all what it  
either felt or looked like.

A. Cold.

91 Q. Did it have a coloration at all?

A. Well, it was dark. Blood is warm. It  
was cold, and I did ask the nurse how her hair got wet,  
and she didn't know.

92 Q. And it wasn't a substance with a  
particular colour that you noticed because it was dark?

A. I didn't notice any colour, and when I  
was in the hallway, I didn't see any colour on my  
hands.

93 Q. And it didn't have any smell that you  
recall today?

A. No.

94 Q. So after seeing your sister in this  
condition, do you recall either her or you reporting  
this to the nursing staff that was there in the room?

A. I did ask her. I asked the nurse  
why -- I was very concerned because she kept screaming  
my, head, my head. "What's wrong with her head?" And  
the nurse told me that she was hallucinating and that  
she was on a lot of medication.

95 Q. Did any doctors come to see her that evening to investigate the screaming or the head pain?

A. Not while I was there. They were insistent that it was not her head that she was screaming from pain just being in pain from having surgery and that she was hallucinating because she was heavily sedated, heavily medicated.

96 Q. But you or either her did relay to the nursing staff that it was pain in her head that was the cause of what she was reporting?

A. It was very clear that she was making that --

97 Q. By screaming my head, my head?

A. Yes.

98 Q. Do you recall the nursing staff giving her any sort of specific thing for the head pain?

A. They gave her pain medication.

99 Q. And just over the course of that evening, how did her symptoms specifically with her head change? When she had the medication, was she able to calm down at that point or was she still in significant pain?

A. She was in and out.

100 Q. In and out of like significant pain?

A. In and out of consciousness.



101 Q. And after finding your sister's hair a  
mess, did you braid it again?

A. No.

102 Q. Do you remember her expressing any  
other symptoms that she was having that evening other  
than the head pain?

A. No.

103 Q. Do you recall how long you stayed for  
that evening?

A. A few hours. A couple of hours after  
we reached her room.

104 Q. And so I have here that you didn't see  
her until 5:30, so that would have been around 7, 8:00  
something in that area?

A. Yes.

105 Q. And during that entire time, you and  
her daughter and your husband were all in that room?

A. Yes.

106 Q. And did everyone leave at that point  
when you left?

A. No.

107 Q. Who stayed?

A. My niece Cari-Ann and her fiancé was  
there.

108 Q. And did you go visit Suzanne the next

day?

A. I did.

109 Q. And what time would you have gotten there?

A. Very early. I regularly get up at 4, and I would have gotten dressed and driven to the hospital which is about a 20-minute drive. It was still dark out when I reached the hospital.

110 Q. And when you reached the hospital, how was she?

A. She was in a lot of pain. Her head was really bothering her.

111 Q. Was she still screaming at that point, or it was still hurting but not --

A. It was a lot of -- she was in a lot of pain. She has high tolerance for pain. She was in a lot of pain.

112 Q. As of that point, did she ask you to have a look at the back of her head?

A. She didn't want me to touch her head.

113 Q. But did you, in fact, have a look to see whether it was any different than you had saw the day before?

A. I did.

114 Q. And what did you see? Was there a lump

there?

A. I couldn't see, but I could feel.

115 Q. And other than the head pain, did she complain to you of any dizziness that she was experiencing?

A. Extreme nausea, dizziness, blurred vision.

116 Q. And at that point, had she begun to lose her hair from that area?

A. The day after the surgery?

117 Q. Yes.

A. No.

118 Q. On that morning, do you recall relaying those concerns to a nurse saying she's still having this significant head pain?

A. Yes.

119 Q. And what did the nurse say?

A. They gave her something for her -- actually, I asked to have someone come in and look at her more than once, and they gave her pain medication and ice packs.

120 Q. When you say they, who came and assessed her that morning?

A. The nurse who was on duty, the charge nurse. Dr. Small came in when I was there. A resident

doctor came in later on that morning.

121 Q. And so when the resident doctor came in that morning, was that the same resident that had spoken to her the day before?

A. I'm not going to be -- I can't confirm that. I can't remember that.

122 Q. Do you recall what either you or Suzanne said to the resident doctor that came in that morning to see her?

A. Yes.

123 Q. And what did you tell her?

A. I explained what I witnessed the night before when I came into Suzanne's room that she was in terrible pain from her head and I'm very concerned that there's a lump on her head.

124 Q. Did you tell her at that point that you thought the lump may have happened by her either being dropped or hitting her head during the procedure?

A. Well, I asked how this happened. That's what I asked.

125 Q. And at that point in the morning either from the resident or Dr. Small, were they able to give you any explanation?

A. Well, they both told me that they were going to speak to the different departments that

Suzanne was in to find out what happened because they both expressed great concern that Suzanne now has a lump on her head and is experiencing these symptoms.

126 Q. Do you recall them actually going in and assessing the bump on the back of the head?

A. Yes.

127 Q. So both the resident and Dr. Small would have had a look at the lump?

A. That's correct.

128 Q. And either you or Suzanne would have reported the other symptoms that she had been experiencing such as the extreme nausea and dizziness and blurred vision?

A. Yes.

129 Q. By that morning, did you notice her having any cognitive defects?

A. She wasn't -- she wasn't -- she wasn't Suzanne. She wasn't -- how to explain it. She was very not with it.

130 Q. Was she having issues with stuttering or finding words by that point?

A. She was having a lot of trouble finding words.

131 Q. Was she having issues with memory at that point unable to recall things to the best of your

recollection?

A. I can't really say because we really weren't talking about things that she would have to remember.

132 Q. And did the resident or Dr. Small did they prescribe any treatment for that head condition when they saw her that morning?

A. They did -- Dr. Small prescribed an antinausea medication.

133 Q. Did either you or your sister request an MRI or CT scan?

A. I asked for a specialist to come and see Suzanne's head. I mentioned before I asked that several times during Suzanne's stay at the hospital.

134 Q. That morning who would you have asked for a specialist to come see her?

A. The resident.

135 Q. What did she say as a result of that?

A. I was told by both the resident and the charge nurse that someone was called to come in and have a look at Suzanne.

136 Q. And over the course of that day November 27th the first day after the procedure, how did her symptoms progress over the course of the day? Did her head pain get better over the course of the

day?

A. No.

137 Q. Did it get worse?

A. It remained consistent. There was peaks where it got to the point where she couldn't stand the pain in her head.

138 Q. Do you recall her being examined by another resident Dr. Darma later in the day? This would have been around 5:00?

A. On the 27th?

139 Q. Yes.

A. I can't say I was.

140 Q. I guess do you recall when you were actually in the room and in the hospital that day? Like how long did you stay for?

A. For the entire day.

141 Q. When you saw the resident that you remember, was Suzanne sort of very angry at that point about the bump on her head?

A. She was never angry. She was concerned and confused and in pain.

142 Q. At any point during that day, did she ever mention or threaten to any medical provider that she was going to bring a lawsuit against the hospital?

A. No.

- 143 Q. Or any of the doctors that treated her?
- A. No.
- 144 Q. Did she ever mention that she was going to get a lawyer?
- A. No.
- 145 Q. Do you recall Dr. Small coming in to assess her again that day?
- A. No.
- 146 Q. Who else came and visited Suzanne on the first day after her surgery?
- A. My husband.
- 147 Q. Anyone else you recall? I understand it's a long time ago.
- A. Well, her daughter was there and fiancé.
- 148 Q. And what time did you leave about that evening?
- A. I can't remember.
- 149 Q. But at the time you left on the first day, she was still having significant head pain?
- A. Yes.
- 150 Q. Did you go see her the following day?
- A. I seen her every day she was in the hospital.
- 151 Q. And how did her I guess symptoms



progress over the course of when she was in the hospital? Did her headache or head pain get better?

A. No.

152 Q. Did she continue to have dizziness and nausea throughout?

A. Yes.

153 Q. Did she continue to have blurred vision?

A. Yes.

154 Q. Throughout the entire hospital stay?

A. Yes.

155 Q. At any point during the hospital stay, did you notice that she was losing hair from the area where she had a bump on her head?

A. No.

156 Q. Did you notice any changes in the bump on her head while she was in the hospital?

A. No.

157 Q. Would you have had a look at it on a daily occurrence?

A. Yes.

158 Q. And after the initial finding it wet, was there any I guess oozing from the site or any liquid that you found around the site of the bump on her head?

A. No.

159 Q. At the time of her discharge, did you have any concerns about her being discharged at that point given her ongoing symptoms?

A. No.

160 Q. Was she asking to go home at that point?

A. No. She was actually kept longer than what she was scheduled to stay.

161 Q. Do you recall her noting any abdominal pain while she was in the hospital?

A. No, surprisingly not.

162 Q. Do you recall any discussions with medical staff about her not passing gas or her bowel movements not returning to normal?

A. Yes.

163 Q. And what was the reason why she was kept longer than normal? Was it because of her head?

A. I don't know.

164 Q. Did the medical staff ever say we need to keep her longer because of the significant head pain she's experiencing?

A. No.

165 Q. And at the time of her discharge, were you there?

A. Yes.

166 Q. Did you drive her home?

A. Yes.

167 Q. Was she given any instructions by anyone on her discharge that you recall?

A. Yes.

168 Q. What were those instructions?

A. To follow up with Dr. Small.

169 Q. Did she have an appointment set at that point before she left the hospital that she was going to come back and see Dr. Small?

A. I believe so.

170 Q. Do you have a recollection of how much longer that would have been after the time she was discharged?

A. It wasn't very long.

171 Q. It could have been in the week after that it was scheduled for?

A. It wasn't very long.

172 Q. After her discharge, did you attend the followup appointment with Dr. Small?

A. I attended every appointment with Suzanne.

173 Q. Is that every appointment with Dr. Small or with her other practitioners as well?

A. With her other practitioners.

174 Q. And would you drive her to those  
appointments?

A. Mostly, yes.

175 Q. Do you recall a time where she ever had  
to attend an appointment without you just because of  
things that were going on?

A. Yes.

176 Q. And would she ever drive herself to  
appointments?

A. She has a taxi program.

177 Q. And immediately after she was  
discharged from the hospital and in the days before she  
saw Dr. Small the first time, how were her symptoms?  
Were they getting any better?

A. No.

178 Q. Was she still experiencing the headache  
and nausea and dizziness at that point?

A. Yes.

179 Q. Was she I guess mobile at that point?

A. Barely.

180 Q. Could she walk around with a cane at  
that point, or would she require a wheelchair?

A. She was reliant on someone to help her.

181 Q. And at the first followup appointment

with Dr. Small, did you relay these concerns that she was continuing to experience those issues to Dr. Small?

A. Yes, I did.

182 Q. What do you recall Dr. Small saying? Was there any response about how they were going to treat that on an ongoing basis?

A. He was quite concerned with the lump on Suzanne's head, with her symptoms, continued to prescribe antinausea medication and pain medication and also said he was still looking into how this happened and that he was going to call in a favour from a friend, a neurologist friend of his, to see Suzanne.

183 Q. Did she ever, in fact, see that neurologist?

A. No, because we got another referral.

184 Q. At what point, did you notice or did you notice ever that Suzanne began to lose her hair at that part where there previously had been a bump?

A. Yes, it was mid December.

185 Q. Has that hair grown back to this day?

A. Yes.

186 Q. At what point, did it grow back?

A. It took some time, but we have pictures.

187 Q. Would it have been months later or

weeks?

A. I believe it was months.

188 Q. And over the course of December and  
 January when she was just seeing Dr. Small, how did her  
 symptoms progress over that time? Did they get any  
 better?

A. No.

189 Q. At any point, did you become frustrated  
 that more wasn't being done?

A. Absolutely.

190 Q. Did you consider getting another  
 physician to adequately respond to these concerns  
 outside of Dr. Small?

A. Well, Suzanne's family physician also  
 seen her.

191 Q. And she saw her family physician  
 throughout the I guess December and January period?

A. Yes.

192 Q. And reported her symptoms and concerns  
 to -- it's Dr. Di Paolo, correct?

A. That's correct.

193 Q. So she did report her symptoms to him?

A. Yes.

194 Q. So what are some of the symptoms that  
 Suzanne still experiences today that she's told you

about?

A. Constant headache, nausea, but it's nothing like it used to be. Her vision has been affected.

195 Q. Does she continue to have dizziness?

A. Her balance is not good.

196 Q. Does she continue to have difficulties with her memory?

A. Her memory is terrible since this happened since her operation.

197 Q. Would you describe her as having a good memory prior to the procedure?

A. Absolutely.

198 Q. And she's continued to stutter?

A. Yes.

199 Q. Have you noticed it getting worse or getting better over the course of the last three and a half years since the procedure?

A. It's pretty consistent.

200 Q. Has she told you about any depression or anxiety that she's experiencing?

A. Yes.

201 Q. What has she told you about her depression and anxiety?

A. Like I said, I attend her appointments

with her, so she has a fear of doctors being treated. She's very depressed because her life is completely altered.

202 Q. Have you noticed her to be easily frustrated and irritable?

A. Yes.

203 Q. Has the change in her vision been able to be resolved by an optometrist, or does it persist?

A. She's under the care of -- the optometrist referred her to a specialist Dr. Rodrigues, and she's still under his care. She sees him regularly.

204 Q. They haven't been able to correct the difference in vision with the use of corrective lenses?

A. No, they have not.

205 Q. Did she obtain a different prescription after the procedure?

A. I think she had a prescription done just before the procedure, and after the procedure that prescription did not work.

206 Q. Has she, to your knowledge, obtained a subsequent one after the procedure that was changed?

A. Again, I take her to all her appointments. They're waiting for her eyes to hopefully stabilize.



207 Q. Can you tell me a bit more about the  
 complaint that was filed with the hospital? You said  
 it was filed in the morning after the procedure  
 November 27th?

A. Yes.

208 Q. And was that a formal, written  
 complaint, or who did you complain to?

A. I called patient relations.

209 Q. What did you tell them?

A. I believe I spoke to Karen Jeffrey, and  
 I had a very lengthy conversation with her regarding  
 what we experienced, and she instructed me to speak to  
 the charge nurse. His name was Phil, and I know his  
 last name starts with a V, I can't remember how to  
 pronounce it, which I did, and he came in and assessed  
 Suzanne's head and noticed the lump and gave her  
 medication and ice packs and said that he would be  
 investigating and speaking to the other departments in  
 trying to find out how this happened.

210 Q. And the charge nurse came and assessed  
 her that day, the same day as the complaint?

A. I don't remember.

211 Q. What did you tell Karen Jeffrey about  
 the incident?

A. What did I tell her?

212

Q. Yes.

A. I told her that Suzanne had surgery the day prior and what I experienced walking into Suzanne's room that evening that she was screaming of head pain, that I felt the back of her head, that I had done her hair up that morning into braids, her hair was all over the place and it was wet and the next day in the morning I felt the lump.

213

Q. Did you express any concerns with the care of Dr. Small to Ms. Jeffrey?

A. No.

214

Q. Did you express any concerns of the care of the resident that was seeing her every morning?

A. No.

215

Q. Did you express any concerns about the anesthetist that had seen her prior to the surgery?

A. No.

216

Q. Other than the generalized question of what happened, did you express any concerns about any of her medical staff?

A. My concern was I wanted to know what happened to Suzanne so we can find out what's wrong with her. That was the concern that I expressed. I wanted to know how this happened and to get Suzanne looked after. That was my main concern.

217 Q. Have you ever received any explanation  
for how this happened?

A. When I was asked to speak to Phil and I  
did, he assured me he was going to investigate. After  
Suzanne's discharge, I e-mailed Phil with a copy of  
Suzanne's head when it was starting to bald. He did  
not ever follow through with this investigation that he  
said he was going to undertake. I followed up with  
Karen Jeffrey because Phil did not respond to me.

218 Q. Did you follow up with Karen Jeffrey in  
writing?

A. Yes, I did.

219 Q. And that would have been by e-mail?

A. By e-mail, and I requested an in-person  
meeting.

220 Q. Counsel, can I have an undertaking to  
produce those e-mails to Phil V. and Karen Jeffrey?

MS. NUIC: They are part of our  
productions. I sent them to you.

BY MR. COURTIS:

221 Q. Thank you. Prior to the procedure on  
November 26th, was Suzanne in good health?

A. Yes, she was.

222 Q. Other than the complication with her  
ovaries?

A. Yes.

223 Q. Prior to that, did she have any issues with headaches?

A. She had tension headaches.

224 Q. But no debilitating headaches that are sort of longstanding duration?

A. No, not that I can remember.

225 Q. Did she ever have issues with her sleep prior to the procedure?

A. Not that I can recall.

226 Q. Do you ever recall her going in for a sleep study?

A. Prior to the procedure?

227 Q. Yes.

A. No.

228 Q. Do you recall her having issues with hypoglycemia?

A. Yes.

229 Q. Was that persisting in the sort of period directly before the procedure?

A. She's had that for a few years. I don't know exactly when that happened, but she's had that for some time that she would get headaches if she didn't eat.

230 Q. And at that time, there was no

stuttering when she spoke?

A. No.

231 Q. Did you notice a change in Suzanne  
after she was terminated from her employment in 2012 at  
Manpower?

A. Notice a change?

232 Q. In her mood or general demeanor.

A. She was upset.

233 Q. Other than the sort of normal upset,  
did she have issues with depression and anxiety at that  
time?

A. I think anything that any one of us  
would feel. It was unexpected her termination. She  
was wrongfully dismissed because they found out she was  
having surgery and they were reorganizing. It was a  
shock losing her job.

234 Q. What's the basis of your belief that  
she was terminated because they found out about the  
surgery?

A. Absolutely.

MS. NUIC: What's the basis?

THE DEPONENT: Oh, what's the basis?

BY MR. COURTIS:

235 Q. What's the source?

A. Suzanne has always been an excellent

employee. She received from this particular employer I think a recognition which was the only in all of Canada for her -- I don't know what it was what she got it for, but she was identified as being the recipient of this right across Canada.

236 Q. Recognizing her performance?

A. Recognizing her performance, but it was classified as something, and it was recognized by the VP as well so.

237 Q. Did you ever have any indication I guess directly from a source other than just being puzzled at how she could get terminated that it was as a result of her medical condition?

A. No, no. It's just I know that she did tell the employer that she was being investigated medically for the situation and that she was scheduled to have surgery.

238 Q. Did she tell you that she told her employer that she had cancer?

A. That it looked through this biopsy to Dr. Small, because he's never seen anything like this before, that it had signs of first stage cancer, and yes, she did tell her employer that.

239 Q. That it was signs of first stage cancer?

A. That it looked like it was and she needed the surgery.

240 Q. I guess how long after she disclosed that to her employer was she terminated?

A. Not very long. It was a shock.

241 Q. Specifically with Suzanne's ability to carry out the activities of daily living since the procedure, was she able to wash her hair by herself and otherwise bathe?

A. Washing her hair is something that she's unable to do because it requires you to tilt your head back, and she can't to this day tilt her head back without feeling she's going to pass out or lose balance or throw up, so she can't do that.

242 Q. Do you assist her with washing her hair?

A. Myself or her daughter.

243 Q. How often would you estimate that you wash her hair?

A. Now that she lives with her -- well, she's been with her daughter, and her daughter is very busy, so maybe once a week, once every two weeks. It depends on who is -- if her daughter is not available to do it, then, of course, I come up and help her.

244 Q. Does she require any assistance

otherwise grooming like brushing her hair or anything like that?

A. Her hair is probably the hardest thing to do. Her personal grooming she has her nails done, like her toenails done by a professional.

245 Q. Is she able to comb her own hair?

A. Yes.

246 Q. Has she told you that she experiences the same sort of dizziness when she combs her hair, or she can just get away without tilting her head back?

A. She hasn't really said anything.

247 Q. Is she still able to prepare meals?

A. No, because she's left the stove on a couple of times because she's forgotten she has it on, so we thought it would be best that she doesn't cook, use the stove, so preparing --

248 Q. So she doesn't use the stove at all now?

A. Unless there's supervision, and she has a hard time seeing like the numbers.

249 Q. Okay. So who usually prepares meals for her?

A. Her daughter.

250 Q. And before the procedure, would she cook regularly?



A. Oh, my goodness, yes.

251 Q. She would have been the primary cook in  
the household?

A. Yes.

MS. NUIC: Did she cook for anyone?

THE DEPONENT: Yes, her daughter.

BY MR. COURTIS:

252 Q. She was living with her daughter at the  
time of the procedure?

A. Her daughter was living with her. It's  
the opposite way.

253 Q. Does she have a decreased ability to do  
household chores?

A. Yes.

254 Q. What is she unable to do? Sweeping or  
dusting?

A. Pretty much everything. Anything that  
requires balance which most things in life does. A big  
concern is laundry because you have to carry, and she  
can't carry and balance. Seeing things like machines  
especially the new ones.

255 Q. Is there anything as far as household  
chores goes she is able to do?

A. Yes, she does tidying around.

256 Q. But anything that requires I guess sort

of vigorous movement or carrying anything she would not be able to do at this point?

A. Right.

257 Q. Before the procedure, would she do most of the chores around the house?

A. My sister was a workhorse. She did everything and always worked two jobs.

258 Q. So she would do the laundry and sweeping and sort of all the regular chores around the house?

A. Yes.

259 Q. I'm just going to ask briefly about the damages that you specified in the Statement of Claim. You make a claim for out-of-pocket expenses incurred for Suzanne. Could you give me a little more information about what kind of out-of-pocket expenses you incurred?

A. I take her to all her appointments, parking, gas.

260 Q. Have you paid for prescriptions for her?

A. Actually, yes, I have. I have paid for certain things.

261 Q. Other than travel and prescriptions, is there anything else you can think of that you paid for

for Suzanne as a direct result of the procedure and the symptoms that she's having?

A. Her cane.

262 Q. You paid for her cane?

A. Yes.

263 Q. Counsel, can I have an undertaking for any records supporting these expenses?

U/T MS. NUIC: Yes.

BY MR. COURTIS:

264 Q. You also claim a reasonable allowance for travel expenses which I guess is part of what we discussed in visiting Suzanne during her treatment and recovery. Can you specify that any more than you already have?

MS. NUIC: Well, she said that she's taken her -- she confirmed she was at the hospital post-surgery, and she's the one taking her to her appointments.

THE DEPONENT: And going to her home every day because my niece works full-time and I'm now retired.

BY MR. COURTIS:

265 Q. So you go to her home every day?

A. Not now, but initially yes, I was there every day.

266 Q. And how often would you go there now?

A. It varies because my niece is involved in other things outside of work. She's also a coach at a university, so it depends on when the season is, so it varies. It could be once a week. It could be twice a month.

267 Q. And you mentioned that the vast majority of doctors' appointments both with Dr. Small and with other specialists you've gone with her to those?

A. Yes.

268 Q. And in every or in most circumstances when you go with her, it's you driving?

A. Yes.

269 Q. To the extent it's not covered by the previous undertaking, can I have an undertaking for any records supporting travel specific expenses?

MS. NUIC: I think the out-of-pocket expenses would include travel, so it is subsumed in the previous undertaking.

MR. COURTIS: So there isn't any other expenses other than straight out-of-pockets?

MS. NUIC: No.

BY MR. COURTIS:

270 Q. You also claimed a reasonable allowance

for nursing and housekeeping and other services. What sort of housekeeping do you do around Suzanne's house now?

A. Again, it all depends on when Cari-Ann is home and the time of season when she's not home a lot. Daily dusting. Mostly it's the sweeping, it's the washing of the floors, it's the laundry, changing her bedding.

271 Q. I get that it's variable given her daughter's availability, but how often in any given month would you have to go to her house and do household chores and things of that nature?

A. It used to be on a regular basis. When I was there daily, I would end up doing stuff. Now that she lives with Cari-Ann again it could average once a week or twice a month.

272 Q. What care did you provide to her following the procedure?

A. Following the procedure, she was -- she was I would say bedridden for months and relied on a wheelchair. Her balance was horrible. She was unable to shower. She was unable to walk to the bathroom, to get a glass of water. She required a lot of care. Actually, she had home care like CCAC coming in. So it was everything and anything from her personal grooming

to feeding her to doing her chores. I also help her with, which her daughter has now taken over, all her finances. I was doing it for the longest time.

273 Q. And her daughter has taken that over?

A. Yes.

274 Q. Before the procedure, did you help out around the house with household chores and things of that nature, or was she able to do sort of everything at that point?

A. At Suzanne's home?

275 Q. Yes.

A. Suzanne did everything.

276 Q. Counsel, can I have an undertaking for any records supporting the claim for nursing, household and any other services?

MS. NUIC: The nursing and everything encompasses the loss of care, guidance and companionship claim, so it's not a quantification. It's encompassed in the FLA claim as well because she's providing services.

MR. COURTIS: So there would be no documents with respect to that? Is that what you're saying?

MS. NUIC: Yes. Her sister hasn't paid her. It's just a matter of providing care to her

sister, so it's encompassed in the family law claim.

MR. COURTIS: Are you planning on advancing a loss of income claim in this case on behalf of Theresa?

MS. NUIC: No. Theresa has confirmed she's retired.

MR. COURTIS: I'm sorry. Did you say yes, you're advancing that claim for Theresa?

MS. NUIC: No, I said not for Theresa.

BY MR. COURTIS:

277 Q. With respect to your relationship with Suzanne, how many years apart are you in age?

A. A year and a half. 16 months to be exact.

278 Q. And what was your relationship like with Suzanne prior to the procedure in 2012?

A. We were best friends.

279 Q. How often would you get together?

A. At least once a week. When she was working a lot, I would come out and see her at her work.

280 Q. Did you ever I guess after childhood did you ever live together the two of you?

A. No.

281 Q. And prior to the procedure, how often

would you get together?

MS. NUIC: That's what she said once a week.

BY MR. COURTIS:

282 Q. Sorry, I already asked you. What kinds of things would you enjoy doing together?

A. Singing, shopping, bowling, playing pool, swimming.

283 Q. Did she frequently go to family gatherings and church with you?

A. Yes.

284 Q. How often would you go to church with Suzanne?

A. Every week.

285 Q. How has your relationship changed since the procedure with Suzanne?

A. She's -- she's a different person.

286 Q. Do you still feel like she's your best friend?

A. She'll always be my best friend.

287 Q. And how often would you get together now?

A. I see her more now because she needs my help.

288 Q. Other than you helping around the house



and helping her, what sorts of things do you do together now?

A. I try to -- I try to encourage her to come to church with me.

289 Q. How often is she able to come to church?

A. She doesn't come that often.

290 Q. Less often than once every month?

A. Yes. I try to encourage her to come out to a movie.

291 Q. But the previous activities you mentioned shopping, bowling, playing pool do you do that with her anymore?

A. No.

292 Q. Do you feel that in any sense you've been brought closer as a result of having to constantly be with her and take her to medical appointments?

A. No, because I've always felt close to Suzanne. It's a different relationship. I feel I'm tiptoeing around her and --

293 Q. Is that as a result of her frustration and irritability?

A. Frustration on both parts, and her memory it's -- it went from a sister friendship to almost a caregiver.

294 Q. Does she regularly attend family gatherings now?

A. Not as often, and when she does, it's with a lot of coaching, and it's just different.

295 Q. Would that apply to social gatherings as well that it would take a lot of coaching to get her out to those?

A. Yes, or she won't come. She finds it very hard to be around people now.

296 Q. Is that just because of the symptoms that she's experiencing?

A. I think it's -- I think it's the symptoms. I think it's perhaps the depression. I know she doesn't like talking about how she is now. She feels -- she doesn't feel productive anymore. She feels like she's burdening people.

297 Q. If you have any further memory regarding any of the questions I've asked you, I'd ask you to please tell your lawyer right away, and she'll tell me. Is that all right?

A. Yes.

MR. COURTIS: And subject to questions which may arise out of answers to undertakings, under advisements, and refusals, those are my questions. You may get further from my friends.

EXAMINATION BY MR. BULLIVANT:

298 Q. Very little. I have one that I made a note of here. You indicated that your sister has a taxi program?

A. Yes.

299 Q. Is that what you called it a taxi program?

A. Yes.

300 Q. Is that something she's always had?

A. No.

301 Q. When did that first come into play?

A. Through ODSP.

302 Q. Right.

A. It's --

303 Q. That's who it came into play by. When did it first come into play?

A. I can't remember exactly.

304 Q. I guess it just begs the question does she drive?

A. She can drive, yes, but she doesn't because she -- she doesn't drive often I guess is what I'm saying.

305 Q. Is that before November 26 as well? We're talking about before November 26 of '12.

A. No, before November 26, 2012, she drove

all the time. She had to because she had to drive to Toronto to work.

306 Q. That's what I'm getting at. So she drove on a regular basis before, and so she has a license. The taxi program has come into effect as of sometime after the November 26, '12 incident?

A. That's correct.

MR. BULLIVANT: Thanks.

EXAMINATION BY MR. MURTHA:

307 Q. Just a couple of questions from me, ma'am. Your lawyer briefly introduced me. I'm on for two of the residents who were in the operating room at the time, and their names are Anna Dul and Nicholas Afagh. Now, do you have any particular information related to either one of these individuals? I know earlier you said that you would talk to some of the residents and you didn't necessarily know their names. Do either of those names ring a bell? Let me ask that question first of all.

A. No.

308 Q. Do you remember ever having any particular interaction with either of these individuals?

A. Their name doesn't ring a bell.

309 Q. Fair enough. And my only other

question, and, counsel, it's just about your claim of litigation privilege over the series of notes that she was making. I'm not going to ask for the contents of these notes because I understand your counsel is claiming privilege over them. Have you been taking these notes consistently since the time of the operation to now? You said you've been taking the notes in handwritten form and on the computer. Am I correct in understanding that?

A. Yes.

310

Q. Why were you taking these notes?

R/F

MS. NUIC: Don't answer the question.

MR. MURTHA: See, counsel, if you're claiming litigation privilege over it, that goes to the crux of the determination of litigation privilege. You're claiming privilege over it, and we're entitled to make a determination as to whether or not your claim of privilege is appropriate in this case.

MS. NUIC: I'm maintaining the refusal.

MR. MURTHA: You're making a refusal on -- I'm not asking for the content. I'm asking for the purpose why she was keeping these notes. That you're refusing?

MS. NUIC: Yes, I'm refusing that.

MR. MURTHA: I will ask for an

Affidavit of Documents from this client listing in a Schedule B I assume all of these documents that you're claiming litigation privilege over itemized listing the dates that they were taken and the form that each one of these documents was taken in. I understand she's an FLA claimant, but we know there are several documents that are properly within her possession and they might be listed in the Affidavit of Documents of the main plaintiff, Suzanne, but I think it's proper given that there are a series of documents that are exclusively within the control of your client for her own Affidavit of Documents.

U/T                   MS. NUIC: Well, they're just notes that will be from the date that she didn't -- I mean, I can particularize them as being her personal notes from the period that she started writing them to present.

MR. MURTHA: Please do. There might be a refusals motion, so we're going to need that Affidavit of Documents with a detailed Schedule B if you're maintaining privilege over it, and those are my questions. Thank you, ma'am.

-- EXAMINATION CONCLUDED AT 2:20.

I hereby certify the foregoing to be the evidence of THERESA MARGARET DI FALCO, a Plaintiff herein, given under oath before me on the 21st day of June, 2016, recorded verbatim and later transcribed by me.

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CATHERINE DOARY  
COURT REPORTER  
COMMISSIONER OF OATHS (Expires March 18, 2018)

Photostatic copies of this transcript are not certified and have not been paid for unless they bear the original signature of Catherine Doary; and accordingly are in direct violation of Ontario Regulation 587/91, Courts of Justice Act, January 1, 1990.