

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

COPY

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JOHN COLOMBINI, As Administrator of the
Estate of MICHAEL COLOMBINI, Deceased, and
JOHN COLOMBINI and BARBARA COLOMBINI,
Individually,

Plaintiffs,

-against-

WESTCHESTER COUNTY HEALTH CARE CORPORATION,
JIAN HOU, M.D., UNIVERSITY IMAGING AND
MEDICAL ASSOCIATES, P.C., VALHALLA ANESTHESIA
ASSOCIATES, P.C., NEW YORK MEDICAL COLLEGE,
MARY NADLER, R.N., PATRICIA LAURIA, PAUL
DANIELS, GENERAL ELECTRIC COMPANY and TERENCE
MATALON, M.D.,

Defendants.

-----X
709 Westchester Avenue
White Plains, New York
August 22, 2006
10:00 A.M.

EXAMINATION BEFORE TRIAL of TERENCE MATALON, M.D., a
Defendant herein, taken by Plaintiffs, pursuant to Order, and
stipulations of adjournment.

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

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S T I P U L A T I O N S

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3 IT IS HEREBY STIPULATED AND AGREED by
4 and between the attorneys for the respective parties
5 hereto, that all rights provided by the C.P.L.R.,
6 including the right to object to any question except
7 as to the form, or to move to strike any testimony,
8 at this examination are reserved; in addition, the
9 failure to object to any question or to move to
10 strike the testimony at this examination shall not
11 be a bar or waiver to make such motion at, and is
12 reserved for, the trial of this action.

13 IT IS FURTHER STIPULATED AND AGREED
14 that the within examination may be sworn to by the
15 witness being examined before a Notary Public other
16 than the Notary Public before whom this examination
17 was begun, but the failure to do so or to return the
18 original of this examination to counsel shall not be
19 deemed a waiver of the rights provided by Rules 3116
20 and 3117 of the C.P.L.R., and shall further be
21 controlled thereby.

22 IT IS FURTHER STIPULATED AND AGREED
23 that the filing and sealing of the original of this
24 examination are waived.

25 -oo0oo-

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2 T E R E N C E M A T A L O N, having been first
3 duly sworn by Rosemarie Tulumello(Ellis), a Notary
4 Public of the State of New York, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. GAIER:

8 Q Please state your name for the record.

9 A Terence Albert Sydney Matalon.

10 Q What is your address?

11 A 1606 Mount Pleasant Road, Villa Nova,
12 Pennsylvania 19085.

13 Q Dr. Matalon, how long have you lived in
14 Villa Nova, Pennsylvania?

15 A I think two to three years.

16 Q Where did you live before that?.

17 A Chappaqua, New York. Actually I lived --
18 for a year I commuted back and forth
19 between Chappaqua and Philadelphia, and
20 during that time, I lived in the city
21 during the week and came back to Chappaqua
22 on the weekends.

23 Q Have you, at any time, been affiliated
24 with Westchester County Medical Center?

25 A Yes.

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Q Do you still have that affiliation today?

A No.

Q When did that end?

A Roughly 2003.

MR. CORGAN: Hold on a second. That
may save some time.

Q Doctor, I have just been handed, by your
counsel, what would appear to be your curriculum
vitae. Do you have a copy of it, too?

Am I correct that this is what this is?

A Yes.

Q Is it all correct and accurate?

A As of July of '05. It hasn't been updated
since then, but it's accurate from that
standpoint, yes.

MR. GAIER: Can we mark this as an
exhibit?

MR. CORGAN: Yes.

(Whereupon, CV was marked as
Plaintiffs' Exhibit 1 for
identification, as of this date.)

Q You said it's accurate through July of 2005.
Could you tell me what you would add to it if
you were updating it right now since July of

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2005?

A There may be a couple of publications since that time period which actually aren't included on the publications available, so I guess that would be the substantial difference. The tenure of some committees would be extended. Since that time I've been named a board member at Albert Einstein in Philadelphia. I think that's pretty much it.

Q All right.

So you went to medical school -- first of all, you went to undergraduate school at Boston University?

A Yeah. It was a combined six year program there, so it was both medical school and undergraduate.

Q So when you applied to the undergraduate institution you knew you wanted to go to medical school afterwards?

A Correct.

Q And it was something that you applied for all together?

A That's correct.

Q So you were able to do in six years what would

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2 otherwise have taken you seven, I suppose?

3 A Eight.

4 Q Eight?

5 A Right.

6 Q And what year did you graduate?

7 A Medical school?

8 Q Medical school.

9 A '77.

10 Q You did a residency after that?

11 A I did an internship and a residency
12 immediately following that, yes.

13 Q The internship lasted a year and then the
14 residency?

15 A Correct.

16 Q How long did the residency last?

17 A Three years.

18 Q That was -- were they both in radiology?

19 A The internship was a rotating internship
20 that was about five months of rotation and then
21 I began radiology training, if I remember
22 correctly, so it was really three and a half
23 years or so residency.

24 Q And after completing your residency, I see you
25 did a fellowship?

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A Yes.

Q Where was that fellowship?

A It was at Northwestern..

Q It says here the fellowship was in ultrasound and CAT scan?

A And interventional radiology as well.

Q Oh, sorry.

"Interventional" meaning angiograms and things of that nature?

A Correct.

Q After you finished your fellowship, what did you do professionally after that?

A Then I went to Rush Presbyterian-St. Luke's.

Q Where is that?

A That was another teaching hospital in Chicago. And I was there from '82 to '99.

Q What did you do there?

A I did interventional, ultrasound and CT, primarily, but I also did some plain film work, some GI work. You know, I did some general radiology but 95 percent of my professional activities were in interventional, CT and ultrasound.

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Q Were you an employee of the hospital at that facility?

A No. I was a partner in a private practice group there.

Q You went right from your fellowship into a partnership or were you employed by the P.C.?

A I was employed by the P.C. for a couple of years and then I became a partner.

Q How long did you stay with that group?

A Until 1999.

Q During that tenure, it appears you became director of the section of interventional radiology?

A Yes.

MR. CORGAN: Just note my objection.

I want to make a correction on the record.

The private practice group was a P.C., Doctor?

THE WITNESS: I believe so.

MR. CORGAN: Okay.

MR. GAIER: He didn't say that, I said that.

MR. CORGAN: You were a shareholder,

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not a partner; at some point?

THE WITNESS: Yes, that's correct.

Q What did you do in 1999?

A 1999 I accepted a position at Westchester --
in Westchester to become the chairman and
director of radiology.

Q Had you lived in New York at all prior to 1999?

A I don't think so.

Q Had you had any involvement with any medical
institutions in Westchester prior to 1999?

A Not that I can recall, no.

Q When you came over in 1999, was it --
specifically what entity were you coming over
to? Was it the hospital? Was it the medical
college?

MR. CORGAN: Or both or something
else.

Q Just as best you can explain. How did it come
about, your transfer to New York in 1999?

A I was offered the position and I accepted
it as chairman of radiology by the New York
Medical College and director of radiology of
Westchester Medical Center as well as I was --
I purchased the ownership of UIMA, P.C. and

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2 became the president of the professional
3 corporation from the prior chair for a dollar.

4 Q And --

5 A I don't know if that explains what you
6 wanted to know.

7 Q I'm going to get to the UIMA thing in a minute.

8 You are saying you became -- you purchased
9 this share of UIMA in 1999 upon your arrival
10 here?

11 A Yes. It may have been before I got here.
12 It was during that transition that that -- that
13 the transition of the ownership of the P.C. was
14 accomplished.

15 Q But you are saying that UIMA existed as a legal
16 entity before you came to New York?

17 A Yes, I believe so.

18 Q Now you said an offer was extended to you. By
19 whom was this offer extended?

20 A I think it was a combined offer from Mr.
21 Stalzenberg and the dean of the medical
22 college.

23 Q Did you apply for the position before that?

24 A Yes.

25 Q Well, did it come to your attention that there

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2 was an opening back at your previous employment
3 in Illinois?

4 A Yes.

5 Q And you responded by sending in your CV, I
6 guess? Is that what happened?

7 A I don't remember the specifics, but that
8 would make good sense.

9 Q Is that normally the way it happens?

10 A Yes.

11 Q Was there any kind of an employment or
12 counselor involved in procuring your
13 application?

14 MR. CORGAN: Objection.

15 MR. GAIER: Withdrawn.

16 Q Did you find out about the opening through the
17 classified ads?

18 A I don't remember how I found it out.

19 MR. CORGAN: Off the record.

20 (Whereupon, a discussion was held
21 off the record.)

22 Q So in 1999 you found out about an opening and
23 you applied and you received an offer from the
24 head of the hospital and the medical college
25 jointly; is that correct?

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A Yes.

Q At the time that they -- well, we are going to come back to this in a few minutes, okay?

When you were in medical school, was there any such thing as magnetic resonance imaging? Did it exist back then?

A In medical school? I don't recall.

Q Do you recall when --we will call it MRI for short -- when MRI first became developed?

A I don't recall the exact dates, no.

Q Do you recall when you first learned about it, either through reading or hearing?

A I believe it was in residency that it was first being used clinically in my environment.

Q Did you have any exposure to it, at all?

A Limited.

Q Had you ever, during your residency, been in the vicinity of a MRI scanner?

A I don't specifically recall that, but I think it's probably true that I was.

Q Had you ever had the opportunity in your residency to read any MRI films?

A I don't remember.

Q At that time, did you obtain an understanding

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of how MRI works?

A A limited understanding, yes.

Q Could you explain that to us?

MR. CORGAN: You want him to explain
the physics of the MRI?

MR. GAIER: Well, to the best of his
ability. He doesn't have to get into great
detail.

Q Can you explain generally how the MRI works?

MR. CORGAN: Objection.

Why don't you tell him what, if
anything, you know about how a MRI
works.

How is that?

MR. GAIER: I was only asking
him about what he knows, yes.

A Basically the MR scanner, when patients are
placed in a MR scanner, a powerful magnet
aligns the molecules based on their reaction to
the MR scanner. Radiofrequencies can then be --
can interrupt those interactions and the MR
can, in effect, listen to how that interruption
occurs and how the restoration to the steady
state of those molecules returns.

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- 2 Q Was it your understanding that when you first
- 3 learned about MRI that the magnet is integral
- 4 to the process?
- 5 A Yes.
- 6 Q And it was your understanding that it is a very
- 7 powerful magnet?
- 8 A There are various strengths of magnets,
- 9 yes, but some of them are very powerful, some
- 10 of them are not so powerful.
- 11 Q Did you have an understanding as to whether or
- 12 not the magnet posed any danger to people in
- 13 the vicinity?
- 14 A The magnet doesn't pose necessarily any
- 15 danger. It's -- there can be dangerous
- 16 situations that occur in the presence of a
- 17 magnet, but the magnet itself is not a
- 18 dangerous object.
- 19 Q Right, okay.
- 20 Going back to -- we are talking about
- 21 during your residency -- when you first heard
- 22 of this, was that what you just described, that
- 23 things in the presence of a magnet can be a
- 24 dangerous -- pose a dangerous --
- 25 A I don't recall that specific fact as being

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2 something I learned at that time. I don't
3 recall, you know, things that happened to that
4 specificity more than 25 years ago. Is it
5 likely that I probably learned that? Yes, but
6 are you asking me do I specifically recall
7 learning that fact, I do not.

8 Q Do you recall back at that time ever being
9 instructed not to bring ferrous objects in the
10 vicinity of the magnet?

11 A Yes.

12 Q Do you recall being told why not to bring
13 ferrous objects in the vicinity of the magnet?

14 A Yes.

15 Q What were you told in that regard, to the best
16 of your recollection?

17 A Because a ferrous object would be attracted
18 by the magnetic field and would be drawn into
19 the magnetic field with significant force.

20 Q Was it your understanding that at that time
21 that that could pose -- cause injury to
22 somebody in the vicinity?

23 A Yes.

24 Q Including a patient?

25 A Yes.

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Q While you were in Illinois at Rush Presbyterian-St. Luke's Medical Center, when you first started there, do you know if they had a MRI unit?

A I believe they did.

Q And throughout --

A I know they did, actually.

Q Throughout your tenure -- withdrawn.

Throughout your tenure there, did they always have a MRI unit?

A Yes.

Q Did you ever have any involvement with that unit?

A Limited.

Q What was the nature of that involvement?

A From what aspect?

Q Well, you said "limited." Did you interpret MRI films?

A No.

MR. CORGAN: I'm sorry, where are we talking about now?

MR. GAIER: At Rush Presbyterian.

Q Did you order MRIs for patients?

A I might have recommended that a MRI be done

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on a patient but I didn't order.

Q Were you involved in overseeing or administering the MRI unit?

A No.

Q At any time during your tenure at Rush, did you have any involvement with the MRI units in terms of administrative responsibilities?

A At a point in time the P.C. that I was a shareholder of set up a private venture that purchased a MR. One of our roles as physicians there was to provide IV services at night on a rotating basis, so that I took my turn in that rotation and started IVs on patients within the MR.

Q Why would you start IVs on patients?

A To administer contrast material.

Q When you were back at that facility, do you remember what type of MR unit -- what the brand was?

A I believe it was a GE.

Q Separate from whatever you had during your residency, but during your time at Rush, did you receive any training with respect to MRI?

A I don't recall if there was formal

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training.

Q Have you ever received training on how to review MRI films?

A I suspect that I received some limited training in my residency, but it was very limited at that time.

Q Have you had any continuing medical education with respect to reviewing and interpreting MRI films?

A I'm sure that I have sat in on various lectures that included the interpretation of MR, yes.

Q Have you had any, after your residency, any training with respect to safety in a MR environment?

A Certainly after the incident, after the Colombini incident there was extensive training and education that was performed at Westchester.

Q Let's limit it right now to the period from the time you finished your fellowship until you finished your stay in Illinois in 1999 before you came over, during that period.

A I don't recall. That was 24 years ago or

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more.

Q Up until 1999?

A Right, right.

Q Do you recall -- when you say you used to give IVs for people receiving MRs when there is a contrast media involved, during that period were you ever given any training in MR safety, you know, vis-a-vis the MR environment?

A I would suspect that I was, but I don't specifically recall a MR education safety training that I received.

Q Do you recall ever being educated with respect to different types of oxygen canisters in a MR environment?

A No.

Q Are you familiar with a concept as to MR safe materials versus non-MR safe materials?

A Yes.

Q Does your --

MR. CORGAN: You are asking him now is he aware of it or are you asking him when he was back at Rush?

MR. GAIER: I'm trying to limit this to previous to 1999 or 1999 or

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earlier.

Q Were you familiar with that concept back --

A Yes, I think so.

Q Do you recall how you became familiar with that concept?

A No.

Q Was it your understanding during that period that there were some materials that are made that are safe to bring in a MR environment, that are specifically MR safe, and others that were not?

A Yes.

Q Did you have any understanding in that regard with respect to oxygen canisters?

A I did not know that there were so-called safe oxygen canisters at that time.

Q Was it your understanding that all oxygen canisters were unsafe?

A Yes.

Q Did you have that understanding right up until July of 2001?

A I believe so.

MR. CORGAN: Could you define what you mean by "safe"?

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2 MR. GAIER: Well, we already kind of
3 did that in talking about what is MR
4 safe.

5 MR. CORGAN: Because that is a
6 little bit vague. An oxygen canister
7 can be safe and ferrous metallic and
8 just not within the range of the
9 magnet. An oxygen canister can be
10 behind a wall and be safe and be made
11 of ferrous metallic.

12 What you are asking him are you
13 aware of oxygen canisters comprised of
14 materials that are not magnetic, as in
15 aluminum?

16 MR. GAIER: Jack, I prefaced my
17 question by laying a foundation about
18 MR safe objects and non-MR safe
19 objects.

20 MR. CORGAN: It's your
21 deposition. Go ahead.

22 Q When we talk about something being MRI safe, is
23 it your understanding that is something that
24 can safely be brought into the scanner room and
25 not be drawn into the magnet?

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A Correct.

Q When you talk about something being not MRI safe, that is saying that could not be brought into the scanner room because if it was, it would be drawn into the magnet; is that correct?

A That's correct.

Q When we talk about oxygen canisters and your understanding that there were none which were MRI safe, does that mean to you that it was your understanding right up until July of 2001 that no oxygen canister could be brought into the scanner room without risk of it being drawn into the magnet?

A I think that was my recollection, yes.

Q Okay.

MR. GAIER: Off the record.

(Whereupon, a discussion was held off the record.)

Q When you came of the understanding that there were some materials for MRI which were MRI safe and some which were not safe, do you recall making any inquiry as to whether or not there were safe MRI canisters?

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A No.

MR. GAIER: Withdrawn.

Q Whether or not there were MRI safe oxygen canisters?

A No.

Q Prior to 1999, prior to your move to Westchester, had you ever heard anecdotally or read of any incidents of oxygen canisters being pulled into MRI equipment?

A No.

Q Had you ever heard of other metal objects being pulled into MRI equipment?

A Yes.

Q Do you recall the nature of what you heard?

A I know that I personally was involved in an -- I had a paper clip on my person once and walked into a magnet and the paper clip was drawn into the magnet.

Q Were you holding it in your hands?

A No. It was actually, you know, on my person.

Q It just flew off you --

A Yes.

Q -- into the magnet?

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A Yes.

Q Were you surprised?

A I was very shocked, yes.

Q Do you remember when that was?

A That was in Chicago.

Q Do you remember what year roughly?

A It was in the '90s.

Q Was that the only time that you had been involved with a metal object being pulled -- inadvertently being pulled into a MRI unit?

A Yes.

Q Nobody got hurt?

A No -- yes, no one got hurt.

Q Understood.

MR. CORGAN: Off the record.

(Whereupon, a discussion was held off the record.)

Q Prior to coming to Westchester, were you aware of any other incidents at the Rush Hospital where metal objects had been pulled into a scanner there?

A No.

Q Have you ever heard of any incidents of anybody

Matalon

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2 being injured as a result of a ferrous object
3 being pulled into a MRI scanner?

4 A No.

5 Q Anywhere?

6 A No.

7 Q Was it your understanding prior to coming to
8 Westchester that ferrous objects in the
9 vicinity of MRI scanners could pose a risk of
10 serious injury?

11 A What do you mean by "in the vicinity"?

12 Q Metal object --

13 A Within the magnetic field?

14 Q -- object being brought into the magnetic field
15 could pose a risk of serious injury?

16 A I was absolutely aware that that could
17 occur, yes.

18 Q At any time prior to coming to Westchester, had
19 you ever been responsible for the
20 administration of a MRI facility?

21 A No, not directly.

22 Q I mean you mentioned earlier that your
23 involvement at Rush was that you would
24 sometimes administer IVs prior to a MRI which
25 involved contrast media.

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A Yes.

Q Had you ever had any other administrative involvement in that regard?

A I was a shareholder in the entity that owned the magnet, but I did not have any direct supervisory involvement in the operations of the magnet.

Q All right. That kind of subsumes my next question, but I will repeat it for the sake of clarity.

Did you ever provide any supervision of any of the personnel in that facility during your tenure there at Rush?

A "In that facility" meaning of the magnet?

Q The MRI facility.

A I guess when we were administering the IVs, if there was a medical emergency, we would assume supervision and control over the technologist. That was our role as the physician starting the IVs at night, but from the standpoint of day-to-day activities of how the scanner was run, the policies and procedures, for example, those were done by other individuals.

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- 2 Q What types of other individuals?
- 3 A MR physicians, physicians with a special
- 4 interest and special competency in MR.
- 5 Q Is there a particular medical board or subboard
- 6 you can take in MR competency?
- 7 A No. But there are many fellowships in
- 8 radiology that are either partly or exclusively
- 9 MR.
- 10 Q And those are generally the individuals that
- 11 gravitate to those positions that control MR
- 12 and interpret the majority of most MR images?
- 13 A Yes.
- 14 Q At your facility in Illinois, at the Rush MR
- 15 facility, did you have any of these individuals
- 16 that you are describing in MR? .
- 17 A Yes.
- 18 MR. GAIER: Off the record.
- 19 (Whereupon, a discussion was held
- 20 off the record.)
- 21 Q What you are saying, when you were at Rush,
- 22 there were physicians on staff who had special
- 23 training or competence in MR?
- 24 A Yes.
- 25 Q And the whole time that you were there, there

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was always at least one such person on staff?

A Yes.

Q Was there ever more than one such person on the staff?

A Yes.

Q How many would you have?

A We had, I think, a group of 20 odd people and I would say that there were probably five or six people that might read MR examinations.

Q These doctors with special training or competence in MR at Rush, were they responsible for supervising the MR environment?

MR. CORGAN: If you know.

A There was usually one individual who was the director, if you will, and that individual had overall responsibility for managing the operations, yes.

Q And that included safety considerations as well?

A Yes.

Q Including safety in relation to ferrous objects?

A Yes. At Rush, yes.

Q And that one individual was a doctor?

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A That was a doctor, yes.

Q A radiologist?

A Yes.

Q And somebody with special competence or training in MR?

A The safety policies were generally hospital policies that received input from the physicians, but they were hospital policies.

Q How about the implementing of the safety policies, was this --

A Let me just clarify it.

For the private venture, right, there were parallel policies that were done by the private venture.

Q When you say the "private venture," you are talking about what was then the P.C.?

A It wasn't really the P.C. that owned the magnet. It was a subsidiary of the P.C. It was an -- I don't know if it was LLC or some other legal vehicle that was used to separate the P.C. from the ownership of the magnet, but it was, in reality, controlled by the same individuals that were part of the P.C.

Q Okay.

Matalon

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2 So what we are talking about, and I don't
3 want to get into too much detail because it is
4 a whole other hospital and in another state and
5 another time, but just so we are clear, as
6 entities, you had the hospital, you had an
7 entity that owned the MRI equipment and then
8 you had --

9 A One of the MRIs. There was were more than
10 one.

11 Q Okay.

12 -- and you had a P.C. that consisted of
13 radiologists who would interpret the MRIs?

14 A Correct.

15 Q How many MRIs did you have over there at Rush?

16 A I can't remember if it was two or three,
17 including this private one.

18 Q And which one were you involved with?

19 A From what stand -- from the starting of the
20 IVs; is that what you are talking about?

21 Q Did you have any involvement with any of these
22 MRIs?

23 A Very, very limited involvement as I
24 indicated earlier.

25 Q So -- but whatever that involvement was, it

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didn't necessarily -- was it limited to any one of these two or three units?

A The most physical involvement I had was with our private venture MR where I started IVs.

Q That was the one at which you were a shareholder?

A Correct.

Q And within the private venture, was there a doctor who had overall administrative and supervisory responsibilities?

A In terms of what aspect?

Q In terms of operating the MR facility.

A From a medical standpoint or from a business standpoint?

Q Well --

A There were different leadership roles.

Q Was there any one individual who had overall responsibility for everything?

A No.

MR. CORGAN: Objection.

Q Was there an individual who was responsible for the day-to-day operations of the MRI facility itself?

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A What do you mean by "day-to-day"?

Q Setting up the way -- the manner in which the MR unit was run, scheduling, overseeing all that -- all the aspects of it?

A There was a president of the corporation --

Q Right.

A -- that managed the business aspects of the private venture magnet. There was a MR physician that controlled the patient care issues.

Q Okay.

A So there were two sort of parallel leadership roles, if you will.

Q The first person that you described as the business person, was that person an M.D.?

A Yes, but had no competence in MR.

Q Do you recall that person's name?

A Yeah.

Q Could you tell us that person's name?

A Jerry "Bataznik."

Q And the other doctor, the one who had MR competence and was involved in the patient care aspect, do you recall that person's name?

A Yes.

Matalon

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- 2 Q Could you tell us that person's name?
- 3 A Dave Turner.
- 4 Q When we are talking about safety in a MR
- 5 environment in terms of ferrous objects and the
- 6 danger they pose, does that fall into the
- 7 business side --
- 8 A No.
- 9 Q -- or the patient care side?
- 10 A Patient care side.
- 11 Q So this would be Dr. Turner?
- 12 A Yes.
- 13 Q He had responsibilities for overseeing that?
- 14 A In the private venture, yes.
- 15 Q And I think you mentioned that the hospital
- 16 issued rules and regulations, but you said that
- 17 the private entity also issued its own, for
- 18 lack of -- I don't remember exactly what you
- 19 said, rules or procedures.
- 20 A Honestly, I don't know if there were
- 21 different policies between the hospital and the
- 22 private venture, but hospital patients, in
- 23 general, were not seen in the private venture
- 24 facility. It was purely an outpatient
- 25 facility.

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Q Was it on the grounds of the hospital?

A It was across the street from the hospital in a doctors' office building. They rented space in that building.

Q Did Dr. Turner or -- well, withdrawn.

Did somebody at this privately owned entity issue safety rules and regulations?

A I don't remember.

Q Do you recall, whether written or not, were there protocols for safety; do you recall?

A I don't recall.

Q Did you have occasion, when were you there, to be in the vicinity of the magnet?

A I have already indicated that I had, yes.

MR. CORGAN: Objection.

Q Were there safety protocols that you adhered to when you were in the vicinity of the magnet?

A From the standpoint that I removed all metal from my person, I assume that that was a safety protocol that I was adhering to, but if you are asking me was I consciously aware of safety protocols that I was following, I don't recall specific safety protocols that were in existence there. I'm sure that they were

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2 there, but I don't specifically recall them.
- 3 Q When you --
- 4 A But assume that they were there. Let's put
5 it that way.
- 6 Q You don't recall ever seeing anything printed
7 in terms of protocols or rules?
- 8 A I don't recall that, that's correct.
- 9 Q When you would administer IVs for these MRIs,
10 would they sometimes be hooked on an IV pole?
- 11 A No.
- 12 Q Are you aware of whether there were IV poles
13 that are MR safe?
- 14 A Am I aware now or was I aware then?
- 15 Q Were you aware then?
- 16 A I don't know.
- 17 Q Are you aware now --
- 18 A Yes.
- 19 Q -- there was such poles?
- 20 A I assume that there are. I mean there is
21 no reason you couldn't make a pole out of
22 aluminum.
- 23 Q Do you know for a fact whether there are or
24 not?
- 25 A Do I know for a fact, no.

Matalon

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- 2 Q In 1999, you came over to Westchester from
- 3 Illinois. You took on three positions at that
- 4 time; is that correct?
- 5 A At least.
- 6 Q Well, you came over and you were, I think you
- 7 said, the director of radiology at Westchester
- 8 County Medical Center?
- 9 A Yes.
- 10 Q And you were the chair of radiology at New York
- 11 Medical College?
- 12 A Yes.
- 13 Q And you also became a shareholder and president
- 14 of University Imaging Medical Associates --
- 15 A Yes.
- 16 Q -- P.C.?
- 17 And was it made clear to you when you were
- 18 given this offer that you couldn't take one of
- 19 these positions without the other?
- 20 A That was the implied situation, yes.
- 21 Q In other words, they said "Dr. Matalon --"
- 22 A This -- the position was all three, yes.
- 23 Q It's all three?
- 24 A Yes, yes.
- 25 Q Did you have any understanding of what

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University Imaging Medical Associates, P.C.
did?

A A rough understanding, yes.

Q Can you describe that understanding, please?

A It --

MR. CORGAN: I;m sorry, are we
talking about before he took the job?

MR. GAIER: At the time he took the
job when the offer was made to him and
he decided to do it.

A I understood that it was the professional
corporation that employed the physicians, was
responsible for the revenue derived from
clinical services.

Q What do you mean when you say "clinical
services"?

A The interpretation and performance
professionally of radiologic examinations.

Q When you took the job, did you have any
understanding as to whether or not University
Imaging Medical Associates, P.C. had
responsibilities with respect to administering
and supervising the MRI facility at Westchester
County Medical Center?

Matalon

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2 A Did I know that they were responsible for
3 that? I don't think I could say that I knew
4 that they were responsible for that when I took
5 the job.

6 Q What month in 1999 did you come over?

7 A I think that I started working part time in
8 March and my family moved in August. I was
9 working two and a half days a week here and two
10 and a half days a week in Chicago for about six
11 months, to the best of my recollection.

12 Q At the time that you -- withdrawn.

13 In addition to the position you were taking
14 with New York Medical College, with Westchester
15 Medical Center and with UIMA -- can we call it
16 UIMA?

17 A Sure.

18 Q -- were there any other positions you took as
19 well?

20 A At that time?

21 Q In coming over to New York, yes.

22 A Not that I can recall.

23 Q For instance, was there a CAT scan P.C.?

24 A No.

25 Q Was there an X-ray P.C.?

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A I think that the -- that UIMA, P.C. had a general partnership role in the magnet and that my assumption of the ownership of UIMA, P.C. was associated with the acquisition of that general partnership as well.

Q Was it your understanding that as a general partner in the magnet, that UIMA had responsibility for the day-to-day operations of the magnet?

A I don't know.

MR. CORGAN: I'm sorry, note my objection. What point in time are you talking about now?

MR. GAIER: This is all right now in 1999.

MR. CORGAN: Roughly in March of 1999?

MR. GAIER: That's correct.

MR. CORGAN: So that would be before this agreement was signed --

THE WITNESS: Right.

MR. CORGAN: -- and that would be your understanding.

THE WITNESS: Right.

Matalon

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2 A I don't really recall to what extent UIMA,
3 P.C. was involved in the management of the
4 magnet when I assumed those roles in March of
5 1999. I knew that it was a private venture
6 that UIMA was general partner to. I knew that
7 we provided professional interpretation for the
8 images that were acquired there and that's what
9 I think I knew at the time.

10 Q Okay.

11 Now you may have already testified to this,
12 but I want to clarify it. When you came over
13 in 1999, and as part of the package you had to
14 become a shareholder of UIMA, you also had to
15 become president of UIMA at that time?

16 A Yes. That was the -- I was the sole
17 shareholder and president.

18 Q Sole shareholder.

19 Did you have an understanding as to how
20 long UIMA had been in existence prior to that?

21 A I know that it was for a few years, but I
22 don't think it was for a long time. I had
23 heard that there was a prior professional
24 corporation that preceded UIMA.

25 Q Would that be Faculty Medical Diagnostics; does

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that sound familiar?

A I don't know what it was.

Q When you took on the role of president of UIMA in 1999 in March, did you make clear to the people that were extending you the offer that you had no special competence or experience in MR?

A Did I make it clear to them? I don't know if I specifically indicated that fact.

Q Is it fair to say, Doctor, that in March of 1999 when you took on these three jobs and moved to New York, you didn't have the special competence or training in MR that say Dr. Turner had of that nature that you described earlier?

A I think that's fair to say.

Q Is it fair to say you had no experience in supervising a MR facility at that time?

A That's correct.

Q When you were taking on the role of president of UIMA, did you have any thoughts internally at that time as to whether or not it should be done by somebody who had a special competence in MR?

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- 2 A That what should be done by somebody?
- 3 Q The presidency of UIMA.
- 4 A No, I did not think that was a relevant
- 5 issue.
- 6 Q And at that time it was your understanding that
- 7 you were not taking on any supervisory
- 8 responsibility with respect to the MR facility?
- 9 A That me, personally, that's correct, yes.
- 10 Q Was it your understanding that somebody else at
- 11 UIMA was imbued with those responsibilities?
- 12 A Yes.
- 13 Q Who was that person?
- 14 A Ellen Panageas.
- 15 Q She's a doctor?
- 16 A It's both Ellen Panageas and Mike Tenner.
- 17 Q Tenner?
- 18 A Tenner.
- 19 But I think that Panageas had the title.
- 20 Q What was the title?
- 21 A I believe it was medical director of the
- 22 MR.
- 23 Q And was she there when you arrived there?
- 24 A Yes.
- 25 Q Was Dr. Tenner there when you arrived there as

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well?

A Yes.

Q Were either of them shareholders of UIMA?

A No.

Q After March of 1999 up until July of 2001, did either of them ever become shareholders of UIMA?

A I don't know exactly when Dr. Tenner became a shareholder of UIMA, I believe it was after 2001, but at some point in time he became a shareholder of UIMA.

Q Were you ever an employee of UIMA -- withdrawn.

Were you ever paid a salary by UIMA?

A Yes.

Q Were you an employee of Westchester Medical Center?

A I think I was an -- officially my paychecks came through New York Medical College and -- although the substantial portion of my income was from Westchester Medical Center, it was delivered to me through an affiliation agreement with New York Medical College.

Q So to the best of your recollection, up until July of 2001, you never received any checks

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from the Westchester County Health Care Corporation as part of your regular compensation?

A Correct.

Q Did you receive checks from UIMA?

A No. All of my checks came through New York Medical College. UIMA, P.C. paid New York Medical College to provide the HR services for checks and so on.

Q What are "HR services"?

A Human resources. So we were officially -- well, I think contractual members of the P.C. were employees of UIMA, but they were-actually paid from New York Medical College.

Q Was Ellen Panageas paid by New York Medical College?

A All of the physicians, including myself, were paid from New York Medical College.

Q Including Dr. Panageas?

A Yes. She was one of the physicians.

Q I'm just trying to be specific for the record. And including Dr. Tenner as well?

A Yes.

Q Prior to July of 2001 and after you started in

Matalon

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2 March of 1999, did Dr. Tenner ever have a role
3 as director of the MR?

4 A I don't know. He may have had a role
5 earlier, but I don't know.

6 Q Do you know whether he had any special
7 competence in MR?

8 A Yes, he did.

9 Q While you were at the Westchester facility
10 during that -- from March of '99 until July of
11 2001, did you see private patients at all that
12 weren't hospital patients?

13 A Are you speaking within the MR? Are you
14 talking about me personally?

15 Q I'm talking about generally. Yeah, I'm talking
16 about you personally, yes, first of all.

17 A I don't know what you mean by a private
18 patient.

19 Q Did you see any patients that weren't patients
20 of the hospital?

21 A That were not inpatients or that were not
22 outpatients?

23 Q That were --

24 MR. CORGAN: Note my objection. Why
25 don't you rephrase it.

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MR. GAIER: Okay, good.

Q During that time between --

A Are you --

MR. CORGAN: Don't ask questions.

THE WITNESS: I'm sorry. You are right.

Q Let me try it. I think I can do it.

At the time that you were at the facility between March of 1999 and July of 2001, did you ever see patients or interpret MRIs on behalf of patients who were not either inpatients or outpatients of the hospital itself?

MR. CORGAN: Objection.

MR. GAIER: Okay.

MR. CORGAN: What is an outpatient of the hospital?

MR. GAIER: He said outpatient. I was trying to --

MR. CORGAN: I mean you may want to work on that a little bit. I mean -- off the record.

(Whereupon, a discussion was held off the record.)

Q During your tenure, that period from March of

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2 '99 until July of '01, did you on occasion see
3 patients or interpret films of patients who
4 were sent by doctors who were not admitted to
5 the hospital?

6 A Did I personally interpret non-MR films,
7 yes.

8 Q MR films as well?

9 A No, I did not interpret MR exams.

10 Q You didn't interpret any MR films?

11 A Correct.

12 Q Do you have an understanding as to why they
13 required you to be president of UIMA if you
14 never interpreted MR films?

15 MR. CORGAN: Objection.

16 MR. GAIER: Are you telling him not
17 to answer?

18 MR. CORGAN: You are asking him what
19 they were thinking.

20 MR. GAIER: I'm asking if he had an
21 understanding.

22 MR. CORGAN: You mean if he knows?

23 Q If you know, of course.

24 A I think that the ability to interpret MR
25 has nothing to do with being the president of

Matalon

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2 UIMA or the chairman of a department or the
3 director of radiology.

4 Q Did UIMA have any function in terms of
5 interpreting radiology films other than MR?

6 A Yes. UIMA was responsible for the
7 professional services and interpretation of
8 every radiologic examination, including CT,
9 ultrasound, interventional, mammography,
10 pediatrics and MR.

11 Q So it was essentially the entire radiology
12 group for the hospital?

13 A Exactly.

14 Q Prior to October of 2000, do you know whether
15 UIMA had any responsibility with respect to the
16 operation of the MR facility at Westchester
17 County Medical Center?

18 MR. CORGAN: Just note my objection
19 to the form. My objection is only to
20 the use of the word "responsibility,"
21 which is, I think, a legal conclusion,
22 so then I think you may want to say
23 did they have any contractual
24 arrangement or did they have a custom
25 and practice.

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MR. GAIER: That's a good
starting point.

Q Were there any contractual arrangements between
UIMA and any other entity relative to the MRI
facility itself at Westchester prior to October
of 2000?

A There probably was, but I don't
specifically know of a specific document that I
can point to.

Q In October of 2000, did you sign a MRI Services
Agreement that involved UIMA and Westchester
County Health Care Corporation?

A Yes.

Q I'm going to show you a copy of a document that
I have. Take a look at it because I'm going to
ask that that be marked as an exhibit. I want
to make sure that what we have here is all
consistent.

MR. SHALHOUB: Off the record.

(Whereupon, a discussion was held
off the record.)

MR. GAIER: Let's mark this.

(Whereupon, MRI Services
Agreement was marked as Plaintiffs'

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Exhibit 2 for identification, as of
this date.)

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4 Q I'm going to show you what's been marked as
5 Plaintiffs' Exhibit 2 for identification just
6 to identify it.

7 Are you familiar with this document?

8 A Yes.

9 Q Before I go into the details of the document, I
10 just want to ask you did UIMA ever sign any
11 similar agreements like this relative to other
12 radiologic services at the hospital? In other
13 words, was there a CAT scan services agreement?

14 A No.

15 Q Was there an X-ray services agreement?

16 A No.

17 Q Was there any other type of radiologic services
18 agreement other than a MRI Services Agreement
19 during your tenure at Westchester Medical
20 Center?

21 A No.

22 Q Do you have any understanding as to why MRI
23 services were treated different than the other
24 radiologic services in this regard?

25 A Yes.

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Q Could you tell us that, please?

A The MRI Services Agreement was the vehicle by which employees that were previously retained by the private venture magnet could remain employees outside of the County system during the time when we were building a private outpatient imaging facility that they would then become employees subsequently of when this magnet was closed. So it was purely a vehicle to allow these individuals to remain employed while the magnet was opened by Westchester Medical Center without them becoming County employees.

Q Was it your understanding that the magnet was owned by Westchester Medical Center?

A Yes, owned or leased or maintained or controlled by, yes.

Q So you don't have any knowledge as to whether it was actually ownership versus --

A No, I think it was a lease.

MR. CORGAN: On the record, we have previously turned over to you a document entitled Lease Termination Agreement. Do you have that?

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MR. GAIER: I do have that.

MR. CORGAN: Remember what it says? It was a document by which in 1999 --

MR. GAIER: Right.

MR. CORGAN: -- the previous owners and operators of the MRI relinquished their interest in the MRI in exchange for consideration provided by the Westchester County Health Care Corporation and by which the Westchester County Health Care Corporation took over the rights to the lease of the property and the MRI unit and the business which they purchased from the previous operators of that. That's what the Lease Termination Agreement -- that's the proposition it holds forth.

I don't know if this witness has any knowledge of that, but you are free to ask him about it.

MR. GAIER: Thanks. Do you have a copy of the Lease Termination

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Agreement here, because I have a copy too, but mine is attached to the documents that you mailed me.

MR. CORGAN: (Handing)

MR. GAIER: We will put this aside for now.

Q Going back to your previous answer, the MRI Services Agreement was set up in anticipation of a new MR facility that was being constructed?

A Yes.

Q This is the one that was going to take affect, if I recall, in September of 2001; is that accurate?

A Roughly, yes.

Q The MR magnet and facility that were at Westchester Medical Center that's, I guess, at the center of the controversy in this case that happened in July of 2001, that was scheduled to be shut down, I believe it was, in September of 2001; is that correct?

A I don't remember whether there was a specific date that it was scheduled to be shut down, but it was around that time period, yes.

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MR. CORGAN: Off the record.

(Whereupon, a discussion was held
off the record.)

Q Now, this MR Services Agreement, turning, I
guess, to the last page before the schedules,
the signature page, the one that begins "I
witness whereof" --

A Yes.

Q -- on the right side under "University Imaging
and Medical Associates, P.C.," is that your
signature?

A Yes.

Q And you signed in your capacity as president of
UIMA?

A Yes.

Q And you read the document before you signed it?

A Yes.

Q Did you understand it?

MR. CORGAN: Objection.

MR. GAIER: Fair enough. Withdrawn.

Q Going to the front of the document, just
looking at the top paragraph, the fourth line,
it says "University Imaging and Medical
Associates, P.C., with offices at C/O --"

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meaning care of; is that correct?

A I assume so, yes.

Q "-- the Department of Radiology, New York Medical College, Valhalla, New York --" can you tell me why it's described as "with offices at care of the Department of Radiology" at "New York Medical College"?

A No.

Q Did UIMA have administrative offices?

A I don't think so.

Q During this period of this MRI Services Agreement, were the employees of UIMA paid by New York Medical College?

A I don't think so.

Q The doctors with UIMA, were they paid by New York Medical College?

A Yes.

Q The non-medical doctor personnel at UIMA, do you know if they were paid by New York Medical College?

A I don't think they were. I don't remember for sure, but I believe that we utilized a third-party human resource company to perform that action.

Matalon

MR. CORGAN: Just off the record for
a second.

(Whereupon, a discussion was held
off the record.)

Q Dr. Ellen Panageas, did she receive any checks
from UIMA, as far as you know?

A Not as far as I know, not directly from
UIMA.

Q Well, when you say "not directly," you said
there was a payroll company that issued checks;
isn't that --

A I said there was a payroll company that
issued checks to the non-physician employees.

Q Did the payroll company issue any checks to
physician employees?

A No.

Q Who issued, as far as you understand it, the
paycheck for UIMA services to Dr. Panageas?

A New York Medical College.

Q And was that including compensation for the
work she did in her capacity as medical
director of the MR?

A I don't think that there was specific
identified compensation she received for that

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specific role. She --

Q It was charitable on her part?

A I think it was part of her job description.

Q And she got paid for that job description?

A Yes.

Q And the pay that she got included compensation for that part of her job?

A I guess you could look at it that way, yes, but I don't think that her compensation discussions with me included specific dollar amount, for example, for being the medical director of the MR.

Q Did you have compensation discussions with her?

A Yes.

Q Were you the one in charge of giving her raises?

A Yes.

Q And would you occasionally have to sit down and talk about what her next year's compensation rate was going to be?

A Yes.

Q You may have testified to this already, so I apologize if it's redundant, but I don't recall.

Matalon

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2 Was she already medical director of the MR
3 before you came in March of '99?
4 A I believe so, but I don't know that for
5 sure. I believe so, but I don't know that for
6 sure.
7 Q Did you have the discretion as president of
8 UIMA as to whether to retain her as medical
9 director of the MR during your tenure there?
10 A Yes.
11 Q And when you had these compensation
12 conversations with her, did you -- did it
13 involve discussions of her role at UIMA?
14 A Yes.
15 Q Her professional role?
16 A Yes.
17 Q Including her job description and
18 responsibilities?
19 A Yes.
20 Q And did it encompass the fact that she would
21 continue as medical director at UIMA?
22 A She was not --
23 Q I'm sorry, withdrawn.
24 Medical director of the MR at UIMA.
25 A I'm not sure I understood the question.

Matalon

MR. GAIER: Withdrawn.

MR. CORGAN: Hold on a second.

A If you can repeat that question.

Q I was going to go on to another one.

A That's fine, too.

MR. GAIER: Can I hear the question
back?

(Whereupon, the question was read back
by the Reporter.)

Q Just to clarify, she was not medical director
of UIMA, she was medical director of the MR at
UIMA, correct?

A She was medical director of the MRI. It
was not UIMA's MRI. It was never UIMA's MRI.
It was either this private venture that the
hospital then purchased, but it was never
UIMA's MR.

MR. CORGAN: So you are talking, just
point of clarification, pre 1999 it
was not UIMA's, post 1999 it was not
UIMA's, as of 2001 it was not UIMA's;
is that what you are saying?

THE WITNESS: That's what I'm
saying, yes.

1 Matalon

2 Q What was not UIMA's?

3 A The MR.

4 Q You mean the actual piece of equipment --

5 A Right.

6 Q -- was not owned by --

7 A Correct. Because you used the possessive.

8 You said "UIMA's MR" in your question.

9 Q Right. I didn't mean to do that.

10 A I'm just -- I didn't want to give you wrong

11 information.

12 MR. CORGAN: I should have objected

13 'to the form of the question.'

14 Q I think you said Dr. Panageas was the director

15 of MR.

16 A Medical director of MR, correct.

17 Q Was that a similar position in substance to

18 that which Dr. Turner had back at Rush?

19 MR. CORGAN: Note my objection.

20 A Yes.

21 Q Is that a yes?

22 A Yes. I will say that that's a hospital

23 designation.

24 Q The --

25 A The directorship position, yes.

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Q -- director of MR.

Taking a look at the first page of this document here, under "purpose" in the second paragraph, the second "whereas" paragraph, okay, just could you read it into the record?

A (Reading) Whereas the corporation desires to obtain certain administrative and supervisory services in connection with the operation of a magnetic resonance imager parenthesis, in quotations, "the MRI," end quotations, end parenthesis.

Q And the next paragraph, the next "whereas" paragraph, just for completion, could you read that?

A (Reading) Whereas UIMA wishes to furnish such administrative and supervisory services for compensation and under the terms and conditions set forth herein.

Q At the time that this agreement was entered into, was it your understanding that UIMA was going to furnish administrative and supervisory services relative to the MR imager at Westchester Medical Center?

A Yes.

Matalon

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- 2 Q And it was your understanding that the
- 3 corporation, meaning Westchester County Health
- 4 Care Corporation, required somebody to provide
- 5 administrative and supervisory services in
- 6 connection with the operation of the MR imager
- 7 at Westchester Medical Center?
- 8 A They wanted someone to do that, yes.
- 9 Q They wanted an entity to do that?
- 10 A They desired to obtain those services.
- 11 Q And was it your understanding that by engaging
- 12 in this MRI Services Agreement, that UIMA would
- 13 be providing those administrative and
- 14 supervisory services relative to the MRI imager
- 15 at Westchester Medical Center?
- 16 A Under the direction of the medical center,
- 17 but yes.
- 18 Q What do you mean by "under the direction of the
- 19 medical center"?
- 20 MR. CORGAN: You have to read the
- 21 agreement.
- 22 MR. GAIER: I did.
- 23 A Everything --
- 24 MR. CORGAN: Okay.
- 25 A Everything that UIMA did was under the

Matalon

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2 specific authority and subservient to the
3 medical center. All the activities that UIMA
4 did was subject to approval by the medical
5 center.

6 Q In other words, if UIMA was going to leave
7 pieces of equipment in an area outside of the
8 MR scanner within the unit, would somebody from
9 UIMA call up the hospital and ask them if that
10 was okay?

11 MR. CORGAN: Objection to the form.

12 A I don't know if UIMA --

13 MR. CORGAN: Objection to the form.

14 Rephrase the form of the question.

15 Q As part of the operation of the MR facility,
16 various pieces of equipment would be required
17 in the facility to be there at times, correct?

18 A Yes.

19 Q Some of that equipment might be MR safe; is
20 that correct?

21 A You mean ferromagnetic and
22 nonferromagnetic?

23 Q Nonferromagnetic.

24 A Yes.

25 Q And some of that equipment might be

1 Matalon
2 ferromagnetic; is that correct?
3 A That's correct.
4 Q Let's take, for instance, a code cart. You can
5 have a code cart -- you know what a code cart
6 is?
7 A Yes, I do.
8 Q And a code cart has various materials on it as
9 well, usually?
10 A Yes.
11 Q And some of those materials are sometimes
12 metallic; is that correct?
13 A If it's a ferromagnetic code cart I guess,
14 yes. If it was a nonferromagnetic code cart,
15 possibly no.
16 Q But some of the material on it can be metallic?
17 A Can be, yes.
18 Q And the code cart itself is often made of
19 metal, whether it's ferromagnetic or otherwise?
20 A Yes.
21 Q Do you know whether a code cart was ever used
22 in this particular facility?
23 A No.
24 Q Would you anticipate that a code cart might be
25 used or kept in the facility?

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A Yes.

Q When a code code was wheeled into the facility, would UIMA have to call up the medical center, the hospital, and ask permission to do that?

A No.

Q That's within their discretion to do on their own?

A I think it may have been covered by policies and procedures that were controlled by the medical center.

Q Right.

But the actual act of moving it into the facility was something that would be performed without getting approval immediately in advance?

MR. CORGAN: I'm sorry, are we talking about the purchase of it or --

MR. GAIER: No, we are not talking about the purchase. We are talking simply about bringing --

MR. CORGAN: Are you asking him does the hospital get involved in who can wheel things into the room?

MR. GAIER: That's what I am

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asking him. '

A Are you talking about into the MRI room; is that what you are asking?

Q I'm talking about the facility.

A You said into the facility?

Q The facility, meaning the entire suite.

A I would say that UIMA would not necessarily -- that the employees of UIMA, which is, I assume, what your question means, would not require specific authorization by the institution to move a code cart within the facility. That's my interpretation of the arrangement there, that that action was condoned, granted by the existing understood policies that control the activity of the employees of UIMA within that facility.

Q Did UIMA have control over its own employees?

A Control in what way?

Q Over their conduct within the MR facility.

A Over certain aspects of their conduct, yes. Other aspects were controlled by policies and procedures that were not UIMA's policy and procedures but were policy and procedures of Westchester Medical Center.

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For example, I don't actually -- I'm not --
there is no need for that.

MR. CORGAN: Let him ask the next
question.

Q Was it your understanding that by entering into
the MRI Services Agreement, that UIMA was
contracting to provide administrative,
supervisory, teaching and professional
services?

I'm referring to Article 1, second -- 1.1,
the very last sentence before the colon.

A Yes.

MR. CORGAN: Where is that?

MR. GAIER: First page.

A Yes, yes.

MR. CORGAN: B.

MR. GAIER: Did you say "B"?

MR. CORGAN: Yes, capital letter B.

MR. GAIER: I was actually before A,
but that's okay. We can go to B.

Q Going to B --

MR. CORGAN: What you read is --
oh, I see, you were reading 1.1.

MR. GAIER: If nothing else, I'm

Matalon

methodic.

Let's take a short break.

(Whereupon, a brief recess was taken.)

Q Dr. Matalon, we were just turning your attention to paragraph B on the second page of the agreement.

Can you just read that into the record?

A (Reading) UIMA will provide administrative, supervisory and teaching services necessary for the conduct of all phases of the MRI operation as an integral service of the Department of Radiology, including but not limited to scheduling of personnel and administration of the maintenance contract with General Electric for the MRI.

Q Is it your understanding, pursuant to that paragraph of this agreement, that UIMA would be administering the day-to-day operations of the MRI facility?

A Yes.

MR. CORGAN: Whatever that means.

MR. GAIER: He understood it.

Q Was it your understanding from this that UIMA had a supervisory role with respect to the

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day-to-day operations of the MRI facility?

A I don't know what you mean by "day-to-day."

Q It says in here "necessary for the conduct of all phases of the MRI operation." Do you see that?

A Yes, I do.

Q At the time that you signed this document, did those words in that context, did that have any particular meaning to you?

A This paragraph?

Q Those particular words "necessary for the conduct of all phases of the MRI operation."

MR. CORGAN: Note my objection. You know, when he signed it, he read the entire document.

MR. GAIER: Understood.

MR. CORGAN: So he then would have read all the other paragraphs in this thing.

MR. GAIER: Of course.

MR. CORGAN: So he would have an understanding based on his reading of the entire document.

MR. GAIER: Understood.

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2 MR. CORGAN: So that your
3 question is focused upon only the
4 phrase that you are referring to
5 herein.

6 MR. GAIER: That is correct.

7 MR. CORGAN: What is your
8 question?

9 Q "Necessary for the conduct of all the phases of
10 the MRI operation," did that phrase have any
11 meaning to you when you signed it?

12 A Yes, it does.

13 Q Tell us what that meant to you.

14 A It was this paragraph to me meant that we
15 were responsible for the operational aspect of
16 the MR, the MR operation, and that involved
17 creating the vehicle by which personnel would
18 be present to do the studies that needed to be
19 done, that it was an operational,
20 administrative and supervisory service that we
21 were required to provide.

22 Q So in that context, UIMA was providing the
23 administration of that MRI operation?

24 A Particularly the scheduling of personnel
25 and administration of the maintenance contract,

Matalon

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2 yes.

3 I mean, those were the primary examples
4 that are used in that same paragraph to
5 characterize the scope and type of services
6 that were expected.

7 Q Okay.

8 Does the operation of a MR facility involve
9 safety, generally?

10 MR. CORGAN: Objection. Everything
11 involves safety, doesn't it?

12 MR. GAIER: That's a different
13 question.

14 MR. CORGAN: The operation of a
15 garage involves safety.

16 MR. GAIER: Okay, great.

17 Q Did the operation of a MR facility involve
18 safety; is that part of the operation?

19 A The operational safety aspects were not
20 controlled by UIMA.

21 Q That's not my question.

22 A Okay.

23 Q Does the operation of a MR involve safety?

24 A Yes.

25 Q Does the operation of a MR involve safety?

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A Yes.

Q In your understanding of MR and MR facilities, is safety an integral part of the operation of a MR?

A I think safety is integral to everything that we do, but if you are asking me -- if you are trying to characterize this agreement --

Q That's not --

A -- as being related to the safety aspects of the operations of the MR, that's not my understanding of the agreement and that's not how the agreement reads.

Q Doctor, I understand that you are trying very hard to get that point across. I think you have done it at least twice already. Okay.

MR. CORGAN: Objection. Move to strike.

MR. GAIER: Good, fine.

Q My question to you is whether or not in terms of your understanding of MR operation, whether safety is an integral part of the operation of a MR?

MR. CORGAN: And his answer was yes.

Q Was your answer yes, because it came out as a

Matalon

narrative?

MR. CORGAN: He said yes, "safety is integral to everything."

Q Doctor, can you answer?

A Yes.

MR. CORGAN: He's a physician.

Q And it's your understanding that a MR environment is a potentially hazardous environment; is that correct?

A Yes.

Q Is it your understanding that a MR environment poses potential dangers in terms of ferrous objects?

A Yes.

Q And it's your understanding that there are often objects that are in a MR facility, such as this one at Westchester Medical Center in 2001, that could pose a danger if brought into the magnetic field?

A Yes.

Q And the people who are operating a MR facility like this one in 2001, are they required to be aware of these dangers?

A They should be, yes.

Matalon

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2 Q And the people administering MRs in 2001 should
3 be aware of these dangers?

4 A I don't know what you mean by
5 "administering."

6 Q Okay, withdrawn.

7 What types of professions are involved in
8 the operation of a MR facility, to your
9 understanding?

10 A Would you repeat the question?

11 Q For instance, are doctors involved in the
12 operation of a MR facility?

13 A Yes.

14 Q Are MR technologists involved in the operation
15 of a MR facility?

16 A Yes.

17 Q Are there any other personnel that would be
18 involved in the operation a MR facility, as you
19 understand it?

20 A Sometimes nurses.

21 Q Okay.

22 A Sometimes anesthesiologists.

23 Q Okay.

24 How about clerical personnel?

25 A Yes.

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Q Receptionists?

A Yes.

Q Assistants to MR technologists?

A Sometimes.

Q Is your understanding that it is important that the people providing services in a MR facility be made aware of dangers in the facility?

A Is it my understanding now, yes.

Q Was it your understanding in July of 2001?

A I think if someone would have asked me that question, I probably would have answered yes.

Q In paragraph B, it refers to "teaching services necessary for the conduct of all phases of the MR operation."

What type of teaching services was it your understanding this was referring to?

A I believe that that referred to teaching the personnel what their roles were with respect to time clocks and things like that. It was not -- I mean, it was not, for example, teaching residents and medical students and so on.

Q So it wasn't engaged in medical training for people who were going into the medical

Matalon

profession, going to be doctors?

A That was not my understanding.

Q It was more practical teaching in terms of the MRI operation?

A I'm not sure what you mean by "practical teaching in terms of the MRI operation."

Q Fair enough, okay. I know.

When you say "time clocks," for instance --

A Right. That was as specific I can agree to.

Q Is that something you can recall actually?

A No.

Q Okay.

So part of what UIMA signed on for would be teaching people how to use the time clock?

A It would be responsible for insuring that there were scheduled people to be there at certain times, that people were available to answer phones, to schedule patients, that there would be technologists staffed during the hours of operation to provide those services.

Q Would it be teaching people who were regularly in the MRI facility not to bring ferrous objects in the scanner room?

Matalon

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2 A I didn't see that as UIMA's role at all.
3 Maybe under the direction of following the
4 policy and procedures of Westchester, but not
5 independently as its role.

6 Q Okay.

7 UIMA was required to follow the policies
8 and procedures of Westchester?

9 A Yes.

10 Q All of the policies and procedures of the
11 hospital?

12 A Presumably, yes, that applied to the MR,
13 yes.

14 Q Was UIMA charged with enforcing those
15 procedures within the MR?

16 MR. CORGAN: What do you mean by
17 "enforcing"?

18 MR. GAIER: You don't know what
19 "enforcing" means?

20 MR. CORGAN: Yeah, I don't know what
21 "enforcing" means.

22 Q Doctor, do you know what "enforcing" means?

23 A I don't know if UIMA had the ability to
24 compel someone to do something when you say
25 enforcement. I think that UIMA should do its

Matalon

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2 best to comply with and make sure that the
3 activities that occurred there complied with
4 the policy and procedures that were in place.

5 Q Good.

6 So UIMA would undertake efforts to see to
7 it, not necessarily insure, but to try to
8 insure that the policies and procedures of the
9 hospital were complied with within the MR
10 facility?

11 A Yes.

12 Q Did that involve educating people as to what
13 those policies and procedure were?

14 A It might, yes.

15 Q Do policies and procedures from the hospital --
16 withdrawn.

17 As you were the chair of the -- withdrawn.

18 You were the director of the radiology
19 department at Westchester Medical Center?

20 A Yes.

21 Q You have issued policies and procedures
22 yourself, haven't you --

23 A Yes.

24 Q -- in that capacity?

25 A Yes.

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Q As the chair of New York Medical College, did you ever have the occasion to issue any policies and procedures?

A Yes.

Q What did they relate to?

A I believe I signed all of the policy and procedures of the entire Department of Radiology.

Q That was in your capacity as --

A As the director of --

Q -- chairman of radiology of New York Medical College?

A Well, no, not of New York Medical College. Of Westchester Medical Center.

Q Okay.

In your capacity as president of UIMA, did you have the opportunity to issue --

A No.

Q Let me finish the question.

-- issue any policies, procedures, rules or regulations?

A No, not from the standpoint of MR safety and policies.

Q As president of UIMA, did you ever issue any

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policies and procedures?

A Not relating to medical safety issues, no.

Q Relating to anything?

A Maybe relating to how vacation days were counted or how professional expenses could be dispersed. Not relating to -- not necessarily relating to medical activity.

Q Do policies and procedures issued within the context of the hospital, is it your understanding that they necessarily contemplate every foreseeable situation?

MR. CORGAN: Is that a rhetorical question?

MR. GAIER: It's his understanding.

A I think --

MR. CORGAN: Objection to the form --

A -- they do the best they can.

MR. CORGAN: -- to the form of the question.

Q Is it possible for policies and procedures to contemplate every situation?

MR. CORGAN: Objection.

Q Are there certain protocols or standards of

Matalon

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2 care within the hospital setting that are not
3 specified by the written rules and regulations
4 of the hospital?

5 A Protocols or standards of care?

6 Q Let's go with standards of care.

7 A Yes.

8 Q What is the difference between a protocol and
9 standard of care?

10 MR. CORGAN: Objection.

11 Don't answer the question.

12 Q Do you have an understanding as to a difference
13 between a protocol and a standard of care?

14 A I assume that a protocol is a codified
15 document and a standard of care is a legal
16 statement based on what a reasonably
17 well-trained healthcare professional would do.

18 Q Are there standards of care with respect to
19 safety?

20 A I would suspect that there are standards of
21 care for everything.

22 Q Are there standards of care with respect to
23 safety in a MR environment?

24 A Are there standards of care now?

25 MR. CORGAN: Objection.

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A Are there standards of care --

MR. CORGAN: Objection.

Don't answer the question as to are there in general.

MR. GAIER: Fair enough.

Q Starting with back in July of 2001, are you familiar with whether or not there were standards of care relative to safety in an MR environment?

A In 2001?

Q Yes.

A Was I aware of standards of care?

Q Are you aware of whether there were any at that time?

A I'm sure that there was a standard of care that related to safety in an MR environment. Did I know what that standard of care was, no.

Q Do you know whether Dr. Panageas knew what that standard of care was?

A I believe she did.

Q In her capacity as medical director of the MR, do you know whether she gave any instructions or directives relative to those standards of care to the personnel at UIMA?

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A I suspect that she was involved in recommending --

MR. CORGAN: Wait a second. Don't guess, by the way, so this is not a guessing game.

THE WITNESS: Okay.

A What was the question?

MR. GAIER: Could you read it back?

(Whereupon, the question was read back by the Reporter.)

A I don't know.

MR. CORGAN: Note my objection, you know, because there are standards of care that apply to physicians and there is the vague standard of care that you are talking about here. I think you should refine that so when you ask whether Dr. Panageas knew what the standard of care was as to physicians, she may well know the answer to that. I don't know what the other question is that you are asking because it's not clear.

1 Matalon

2 Q Back in Illinois, Dr. Rush was the medical
3 director of --

4 A Turner.

5 Q Dr. Turner. Did I say --

6 A Rush.

7 Q Dr. Turner was the medical director of the MR,
8 the private facility at Rush, across the street
9 from Rush.

10 Do you know whether he issued any either
11 directives or rules or procedures relative to
12 safety in the MR facility there?

13 A There were hospital policies and
14 procedures.

15 Q We are talking about the place that was across
16 the street. Do you remember?

17 A I am unaware of any policies or procedures
18 that he authored with respect to that isolated
19 facility.

20 Q Were there technologists who worked in that
21 facility?

22 A Yes.

23 Q Did anybody supervise them?

24 A The -- they were supervised by Dr. Turner
25 and the MR physician of the day.

1 Matalon

2 Q And did that supetvition include safety considerations?

3 A I would assume so, yes, but I don't really

4 have a lot of personal knowledge about their

5 activities since I really didn't do it.

6 MR. CORGAN: So then don't guess and

7 don't assume.

8 THE WITNESS: Okay.

9 Q Turning to the next page, Article 2 of the

10 services agreement, "UIMA was paid a

11 compensation of \$60,000."

12 Is that on an annualized basis for the one

13 year of the contract; is that accurate?

14 A I believe so, that's what it says.

15 Q Do you know what that compensation was for?

16 A For providing these services.

17 Q When you say "these services," can you specify

18 what those services were?

19 A Well, Article 1 indicates the scope of

20 administrative services to be provided by UIMA.

21 Do you want me to read that back to you? But

22 that's --

23 Q The stuff we have already talked about, meaning

24 the administrative, supervisory --

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1 Matalon
2 A We didn't talk about all of them, but there
3 are a number of items that are included in
4 Article 1 that were contracted for by the
5 medical center to be provided by UIMA and,
6 presumably, the \$60,000 dollars was in
7 compensation for those services.
8 Q Did those services include supervision?
9 MR. CORGAN: Objection.
10 A Yes.
11 Q Did the supervision include supervision of the
12 technologists?
13 A Yes.
14 Q Did it include supervision --
15 MR. CORGAN: As previously testified.
16 MR. GAIER: Jack, let me try to do
17 this, okay?
18 Q Did it include supervision of the
19 receptionists?
20 A Yes.
21 Q In a MRI facility on a given day of its
22 operation, is a M.D. always present, generally
23 speaking?
24 A I think you would have to be more specific
25 about where the MR was, what the kind of

1 Matalon
2 patients were.
3 Q Under the standards of care that you were
4 familiar with in July of 2001, was it required
5 that a medical doctor is always present in a MR
6 facility when MRS are being conducted?
7 MR. CORGAN: Just note my objection.
8 Did you say you were familiar
9 with the standards of care pertaining
10 to the operation ---
11 THE WITNESS: No.
12 MR. CORGAN: -- of MRIS?
13 THE WITNESS: No, I'm not.
14 Q Putting aside the standards of care then, do
15 you know whether it was a matter of practice at
16 this facility whether a medical doctor was
17 always present when MRS were being conducted?
18 A "At this facility" meaning what facility?
19 Q The one at Westchester that UIMA was operating
20 at Westchester Medical Center?
21 A I don't know.
22 Q Do you understand --
23 A Actually I do know.
24 Q Okay.
25 A There was not. I don't believe that there

1 Matalon

2 was a requirement for a physician to be present

3 for all exams.

4 Q This requirement --

5 A I said there was no requirement.

6 Q This nonrequirement -- when you say there

7 wasn't a requirement, are you referring to

8 hospital rules and regulations?

9 A I don't recall what the basis of the

10 requirement was. I don't recall whether --

11 why there was no requirement for some Mrs not

12 to have the physician present and some did.

13 Q Is this something that --

14 MR. CORGAN: Can we go off the record

15 a second?

16 MR. GAIR: Sure.

17 (Whereupon, a discussion was held

18 off the record.)

19 Q Did UIMA require a doctor to be present during

20 MR scans?

21 A No, not during noncontrast studies. I

22 think a physician administered contrast

23 material.

24 Q If there was going to be a MR scan with

25 contrast media, did UIMA require a doctor to be

1 Matalon
2 present for giving it?
3 A I don't know if it was a UIMA requirement.
4 I don't recall whether it was a UIMA --
5 MR. CORGAN: Just a second.
6 Q Let me go to the next question.
7 MR. CORGAN: Would it be of any
8 benefit for you to clarify your last
9 answer?
10 I would like him to.
11 A It was not a UIMA requirement. It was a
12 requirement either of the medical center,
13 Medicare, the patients. It was not a UIMA
14 stipulation whether or not physicians were
15 present or not present.
16 Q So that clarification you just gave was after
17 consulting with your counsel; is that correct?
18 A That's correct.
19 Q Because the record didn't pick up the
20 whispering.
21 MR. CORGAN: That's all right. I
22 didn't tell him anything he doesn't
23 already know. He is testifying under
24 oath.
25 Tell the true.

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2 Q The technologists in the MR facility at
3 Westchester in July of 2001, they were
4 employees of UIMA. I think we established
5 that, right?
6 A At that time they were, yes.
7 Q Were they supervised?
8 A Yes.
9 Q By whom?
10 A By UIMA.
11 Q Who within UIMA supervised them?
12 A The medical director under the auspices of
13 the hospital.
14 Q Well, the medical director in this case being
15 Dr. Panageas?
16 A Well, they had multiple -- they had
17 multiple supervisors. There was an
18 administrative supervisor, there was a
19 professional supervisor in that Dr. Panageas
20 provided professional supervision for them,
21 there was a woman who was their sort of
22 administrative boss that --
23 Q Who was that, by the way? Was that Karen
24 DeTorrez?
25 A Yes.

1 Matalon
2 Q Did Karen Detorrez have any supervisory
3 capacity with respect to safety?
4 A I don't think so.
5 MR. CORGAN: Do you want to know who
6 did?
7 MR. GAIR: No.
8 MR. CORGAN: You don't want to know
9 who did? Ask the question. I'm going
10 to ask at the end.
11 MR. GAIR: That's great.
12 Q Did Dr. Panageas have supervisory capacity with
13 respect to safety over the technologists?
14 A Yes, through the policy and procedures that
15 she followed from Westchester.
16 Q Policy and procedures are rules that are issued
17 by the hospital, right?
18 A Yes.
19 Q In this case, the chair of the radiology
20 department would issue those policies and
21 procedures?
22 A Usually there are multiple signatures on a
23 particular policy and procedure. Usually it
24 would be signed by the section director
25 responsible on the professional side for that

1 Matalon
2 area and the technical director of the
3 institution and the director of services and
4 that would be me, the latter person.
5 Q Separate from policies and -- withdrawn.
6 policies and procedures are essentially
7 rules that are required to be followed; is that
8 accurate?
9 A In most settings, yes.
10 Q Separate from policies and procedures, though,
11 within any facility, within a hospital, there
12 are also practices that are undertaken every
13 day. Do you have an understanding of what I
14 mean when I say "practices"?
15 MR. CORGAN: I don't.
16 A Maybe you can define it for me.
17 MR. CORGAN: Objection. Practices
18 that are just conducted, adhered to on
19 a regular basis.
20 A That are in violation or separate than
21 policy?
22 Q That may be separate from policies and
23 procedures; is that correct?
24 A But they would be compliant with the
25 policies and procedures.

1 Matalon
2 Q If there is a policy and procedure regulating
3 it.
4 A Yes.
5 Q What if there is no policy and procedure
6 regulating it?
7 A Then I don't understand the question.
8 Q Okay.
9 Are there -- if there is no policy and
10 procedure regulating a specific area of
11 conduct, right, there may still be practices
12 that are undertaken in that particular area of
13 conduct; is that correct?
14 A That are not governed by a policy, yes, I
15 would agree.
16 Q And this is normal to any hospital, correct?
17 MR. GORGAN: Well, objection.
18 MR. GAIR: Jack, let us do this.
19 MR. GORGAN: Go ahead. I will let
20 you answer it.
21 MR. GAIR: Thank you.
22 A There may be activities that occur that
23 aren't covered by a particular policy and
24 procedure, yes.
25 Q This can go on in any department of a hospital;

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2 Is that right?
3 A Theoretically.
4 Q And there were certainly within this MR
5 facility practices that went on that weren't
6 regulated by a policy and procedure of the
7 hospital's; is that correct?
8 A I'm not sure -- if you can give me a
9 specific as to what you mean.
10 Q Well, let me try in general.
11 Were there any practices that you are aware
12 of in that facility?
13 A That were not covered?
14 MR. CORGAN: Objection. Be more
15 specific, please.
16 MR. GAIR: All right.
17 MR. CORGAN: Be specific. Too broad.
18 Q It was your understanding when you signed this
19 MRI Services Agreement that UIMA employees are
20 not employees of Westchester County Medical
21 Center -- I'm sorry, Westchester County Health
22 Care Corporation?
23 A Yes.
24 Q This MRI Services Agreement was in effect from
25 October 15th of 2000 until October 14th of

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2 2001; was that your understanding?
3 A Yes.
4 Q And that included -- obviously, it was in
5 effect, therefore, on July 27th of 2001?
6 A Yes.
7 Q Do you know if there was any MRI Services
8 Agreement prior to this one?
9 A I don't know.
10 Q Did the responsibilities of UIMA, with respect
11 to this MR facility, did it include the hiring
12 of employees?
13 A Yes.
14 Q And were you personally charged with the hiring
15 of employees?
16 A No.
17 Q Did you have somebody below you who was in
18 charge of that?
19 A Yes.
20 Q Who was that?
21 A From the hiring of nonphysician employees?
22 Q The hiring of nonphysician UIMA employees.
23 A Karen DeTorrez.
24 Q And did you issue any standards to her as to
25 how she should go about evaluating who to hire

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and who not to hire?

A No. She had served in essentially that same capacity for many years.

MR. CORGAN: For the predecessors to UIMA?

THE WITNESS: Correct.

Q There were predecessors to UIMA?

A Correct.

Q Are you familiar with the names of any of those entities?

A I would recognize them, but I'm not very familiar with them.

Q Are you familiar with Medical Faculty Diagnostic Associates, P.C.?

A I recognize it.

Q Are you familiar with something called Medical Faculty Associates, P.C.?

A I'm not sure I understand the difference.

Q Okay.

How about WMC Imaging Associates, P.C., have you ever heard of that?

A Yes.

Q Do you know if there's any relation between Medical Faculty Diagnostic Associates, P.C. and

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WMC Imaging Associates, P.C.?

A I would be speculating.

Q Okay.

Have you ever heard of University Radiology Associates, P.C.?

A I have heard of that.

Q Do you know if there is any relation between them and either WMC Imaging Associates or Medical Faculty Diagnostic Associates?

A I don't know for sure.

Q Is there any relation between any of those three entities and UIMA?

A There are relations between UIMA and some of those entities, but I'm not sure I can articulate them accurately for you.

Q Did these entities coexist at the same time that UIMA existed up until 2001?

A Some of them.

Q Which ones?

A I believe that UIMA -- I don't want to speculate.

Q Okay.

Ever hear of Medical Research Associates, P.C.?

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A Yes.

Q Do you know what they did?

A I'm not sure.

Q Did they have any relation with UIMA?

A They may have.

Q When UIMA hired personnel to work in the MR facility, did they train those personnel?

A I presume so, but I don't know. I don't have firsthand knowledge.

Q Do you have an understanding as to whether or not training is important in the context of the operation of an MR facility?

MR. CORGAN: Objection. It's kind of a little too broad, don't you think?

In what regard?

MR. GAIER: Okay.

Q Do you have any knowledge as to -- we are talking about prior to July of 2001 -- as to whether or not training in relation to safety in the MR environment is important to the operation of a MR facility.

A Prior to 2001 did I know that it was --

Q Important.

A -- an important issue?

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MR. CORGAN:

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Yes.

I probably knew it was an important issue.

Did UIMA provide that training?

Again, I don't know the answer to that question specifically. I did not directly -- I was not at all involved in the administration of services that UIMA provided at the MR. I may have been there one time prior to the incident of this case, so I had essentially no knowledge of the day-to-day activities that occurred there.

Do you know whether -- withdrawn.

You had been there once prior to the incident involving Michael Colombini; is that accurate?

I didn't say that.

MR. CORGAN: Objection. He didn't say once.

I said perhaps once or twice, but I certainly was not at all intimately familiar with the operations there and how they were conducted.

Okay.

Do you know whether UIMA undertook any

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2 efforts to prevent ferrous objects from being
3 brought within the scanner room?

4 MR. CORGAN: What do you mean by
5 "UIMA"? What do you mean by that?

6 MR. GAIER: We identified what
7 UIMA --

8 MR. CORGAN: We already have the
9 testimony that the techs, they would
10 tell the people not to bring that --

11 MR. GAIER: We haven't had that
12 testimony today.

13 MR. CORGAN: Is that what you
14 are -- want to ask him?

15 MR. GAIER: I'm trying to find
16 out if UIMA, any personnel employed by
17 UIMA, undertook efforts to prevent
18 ferrous objects from being brought
19 into the scanner room prior to July of
20 2001.

21 A Yes.

22 Q How do you know that?

23 A I know that there were forms that patients
24 filled out specifically looking for ferrous
25 items either on them or in them that would

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2 preclude their being placed within a magnetic --
3 within the magnet.

4 Q Is there any other means by which you have an
5 awareness of efforts to keep ferrous objects
6 out of the scanner room by UIMA?

7 A By UIMA? I don't know if I would
8 specifically say by UIMA, but patients were
9 changed out of their clothes in an effort to
10 insure that no ferrous items were brought into
11 the room.

12 Q Do you have an understanding as to whether or
13 not ferrous items could be introduced by
14 persons other than patients into the MR scanner
15 room?

16 A Did I know that could occur?

17 Q Yes.

18 A Yes.

19 Q Did UIMA undertake any efforts to prevent those
20 other persons from bringing ferrous objects
21 into the scanner room?

22 A Well, under the direction of Westchester,
23 UIMA followed the policy and procedures that
24 were in effect, some of which specifically
25 relate to preventing introduction of a ferrous

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object into the magnetic field.

Q And if something was not covered by the policies and procedures, would UIMA undertake any efforts to prevent that from being introduced into the scanner room?

MR. CORGAN: Just note --

A I don't know what you mean by "UIMA."

Q Well, you were the president of UIMA?

A Yes.

MR. CORGAN: He was more than that.

MR. GAIER: Right. But he was also the president of UIMA.

MR. CORGAN: Among other things.

Q You signed this MRI Services Agreement on behalf of UIMA in your capacity as president of UIMA; am I correct?

A That's correct.

MR. CORGAN: Note my objection. What you haven't asked him --

MR. GAIER: Jack, you are going to get to do all that, okay? You are going to get to all that. Let me see what I can do here. All right?

Q My question is you signed this contract in your

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2 capacity as president of UIMA?
3 A Yes.
4 Q It wasn't in your capacity as director of the
5 radiology department of the hospital, right?
6 A That's correct.
7 Q It wasn't in your capacity as chair of the
8 radiology department of New York Medical
9 College, was it?
10 A That's correct.
11 Q It was not?
12 A Correct.
13 Q Okay.
14 And when you signed this contract, UIMA
15 agreed to take on, as we read -- as you read
16 before, administrative, supervisory and
17 teaching responsibilities relative to the MRI?
18 A Under the direction and subject to the
19 approval of the corporation, that's correct.
20 MR. CORGAN: "The corporation" being
21 the Westchester County Health Care
22 Corporation, as per the agreement.
23 Q Going back to paragraph B, okay?
24 A Paragraph B of what?
25 Q Paragraph B in the agreement.

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That answer you gave, you were looking at
the --

A I was looking at 3.6.

Q Of the services agreement, the MRI Services
agreement, correct?

A I was looking --

MR. CORGAN: He was looking at 3.6.

Q Of the MRI Services Agreement?

A That's correct.

Q Okay, good, because we want to place your
answer in context.

MR. CORGAN: Would you like him to
read that?

MR. GAIER: I don't.

Q I want to go to paragraph B.

MR. CORGAN: We have already had him
read that.

MR. SHALHOUB: What section?

MR. GAIER: Second page, top of the
page.

A So 1.1 B.

Q Does that, right in there, does that provide
any limiting language in terms of under the
direction of the hospital?

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2 MR. CORGAN: Note my objection. This
3 is a contract. You are deposing a
4 witness about a contract and you are
5 focusing on one section, ignoring the
6 rest of it.

7 MR. GAIER: I'm not ignoring the
8 rest of it.

9 MR. CORGAN: I'm not going to
10 allow him to answer questions like
11 that. That's ridiculous. I object to
12 the form of that question.

13 If you want to know about this
14 contract and how it applies to this
15 case, you ought to ask him about all
16 the provisions of it and not just
17 focus on one and insist that that's
18 the whole meaning of the contract.
19 Obviously if this contract only
20 involved B, it would only talk about
21 B. It would not have 12 other pages.

22 In giving your previous answer,
23 the one making reference to the
24 direction of the hospital, you were
25 referring to a portion of the

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contract, correct?

THE WITNESS: Yes.

Q What portion of the contract were you referring to?

A 3.6.

Q 3.6.

A As well as -- I mean, when I answered that question it was 3.6, but there are multiple areas that cover that specific issue. There is also 1.4.

Q Okay.

A And there is also 3.10 D.

Q 3.10 D. What is your understanding of that provision?

MR. CORGAN: Why don't you read it or use whatever language --

Q You can read it.

A (Reading) Notwithstanding any other provision in this agreement, the corporation shall not delegate to UIMA nor shall UIMA exercise any decision-making authority with regard to the following: And D is the corporation's independent adoption of policies affecting the delivery of healthcare services.

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Q And what does that mean to you?

A That means that the corporation has the independent ability to adopt policies affecting the delivery of patient care services, healthcare services, and that it does not delegate that nor does it grant UIMA any decision-making ability with respect to those policies.

Q So you are saying that it is your understanding, just so I can be clear on this, that this provision prohibited UIMA from telling somebody "no, you can't bring that oxygen tank into the scanner room"?

A. I didn't say that.

Q Well, did it or didn't it prohibit UIMA from doing that?

A My understanding --

Q That's a very specific question, Doctor. I'm going to ask you at this time be specific.

MR. CORGAN: Read the question back.

Let me hear the question.

MR. GAIER: Read it back.

(Whereupon, the question was read back by the Reporter.)

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A No, I don't think that's what that says.

Q Okay.

Did it prohibit UIMA from telling its employees to keep ferrous objects out of the vicinity of the scanner room?

MR. CORGAN: Objection to the form of that.

A No, it doesn't because that statement was following the policies of the Westchester --

Q Well, we are going to get to the policies of Westchester, I assume.

A What this is saying is that UIMA could not make policies, that the policies were Westchester's policies and that they were not UIMA's policies. That's my -- I mean, I'm not an attorney. I don't understand it, but that was my -- you asked me what my understanding of the agreement was. That's my understanding of the agreement.

MR. CORGAN: Good.

Q Hypothetically, if the corporation didn't issue any policy relative to bringing ferrous objects into the scanner room, did UIMA have the authority, under this agreement, to issue --

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whether you want to call it a policy or rule or directive, an instruction, a protocol -- did it have the authority to stop people from bringing those objects into the scanner room, yes or no?

MR. CORGAN: Objection. Your question is compound and you have to break it up.

Q Or only one of those items.

MR. CORGAN: Based upon what he is saying, he is saying that UIMA did not have the ability to issue policies. That's what he says because policy is directly the responsibility of the corporation. Could an employee of UIMA interdict someone walking into the room, of course, but you are mixing the two together. That's why I objected to the form of that question.

Q We started the question with an assumption. Assuming that there is no written policy by the hospital relative to prohibiting ferrous objects from the scanner room, okay?

MR. CORGAN: But there is.

Q That's the starting point, Doctor. I'm going

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2 to start and I'm going to try not to make it
3 compound. Let's start with an assumption here,
4 that hypothetical. You know what hypothetical
5 is, right?

6 A Yes.

7 Q Okay.

8 In this hypothetical, the hospital doesn't
9 have a written policy or procedure regarding
10 bringing or regarding prohibiting the bringing
11 of ferrous objects into the scanner room. Is
12 it your understanding -- did UIMA have the
13 authority to create its own rule within the
14 operation of the MR facility?

15 A No.

16 Q So if the hospital didn't prevent people by
17 rule, by written rule, of bringing ferrous
18 objects into the scanner room, UIMA could not
19 create such a rule?

20 A Correct.

21 MR. CORGAN: They could prevent them
22 from doing it, but they can't create
23 the rule. That's what this says.

24 Q So let's -- is that your testimony, just to
25 clarify?

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MR. CORGAN: Objection.

MR. GAIER: Because you testified. I want to know if he agrees with what you said is his testimony.

Q Do you agree with what your counsel said; they can prevent them from doing it, but they couldn't issue a rule?

A Yes.

Q Okay.

Are all rules written?

MR. CORGAN: Objection. Objection.

It is a rhetorical question.

MR. GAIER: It is a rhetorical question. Fair enough.

Q Did UIMA have the authority, in your understanding, to issue an oral directive, nothing written, nothing on paper, nothing typed, nothing printed, but an oral directive that nobody in this facility is to bring ferrous objects into that room?

A Independent of the medical center, is that what you are asking?

MR. CORGAN: "That room" being the scanner room?

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MR. GAIER: The scanner room.

A There is already a policy that covered that specific action.

Q Okay.

A So that you know, it's not really a meaningful question. There was a policy; that was not an oral directive. There was a written policy that governed that.

Q Okay.

Do you have an understanding as to whether or not conditions outside the scanner room could have an impact on safety vis-a-vis a ferrous object getting drawn to the magnet?

MR. CORGAN: Objection. You've got to be more specific. Outside the --

Q Do you have --

MR. CORGAN: -- outside the scanner room comprises the entire universe. I think it's a little too broad.

MR. GAIER: All right. Fair enough. That's good. That's good.

Q Was there somebody within UIMA who was charged with the responsibility of ordering materials for the facility?

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2 A For the MR facility?

3 Q Yes.

4 MR. CORGAN: Within UIMA or without

5 UIMA?

6 MR. GAIER: I just said somebody in

7 UIMA.

8 MR. CORGAN: Within UIMA.

9 A What kind of materials?

10 Q All right.

11 Are there materials that are necessary to

12 the operation of the facility?

13 A I think things like paper and scheduling

14 forms and things like that were the

15 responsibility of UIMA, but things like

16 contrast material, oxygen tanks were the

17 responsibility of the medical center.

18 Q How about surgical gloves?

19 A I would -- I don't want to guess.

20 Q Surgical gloves used within the facility.

21 A I would think not surgical gloves, probably

22 not -- gloves, but not necessarily surgical

23 gloves.

24 Q Rubber gloves?

25 A Right.

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Q The kind that you can blow up into a balloon.

A My guess is those would be ordered by the medical center, but I'm guessing there. I don't want to guess for you.

Q How would the medical center know if they ran out of the medical gloves within the MR facility?

A They may have been told by one of UIMA employees that those needed to be ordered.

Q That's what I meant.

So there is somebody within UIMA, a UIMA employee, who is charged with, if not ordering it from an outside entity, ordering it from the hospital; is that correct?

A My suspicion -- I don't want to guess, okay?

Q Okay.

A But it's likely that there were multiple different people that were responsible for various areas within the MR facility that would be responsible for ordering the disposal or reusable items that needed to be replenished.

Q And if they ran out of portable oxygen tanks, was somebody in UIMA responsible for telling

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somebody in the hospital that?

A I don't know for sure.

Q Okay.

Did UIMA have the -- was there a rule in this hospital prohibiting MRI safe oxygen tanks from being kept anywhere in the hospital?

A I don't know.

Q Was there a rule in the hospital that prohibited MRI safe, meaning nonferrous, oxygen tanks from being kept in the MR facility?

A Not that I'm aware of. I was not even aware that there was such a thing.

MR. CORGAN: That was your testimony.

Q That was your testimony.

Do you know whether anybody at UIMA had the authority to request MR safe oxygen tanks in the facility?

A I think they could make recommendations.

Q And to make requests?

A From the standpoint that those are the requests that could be either granted or not granted, yes.

Q Right.

A That could be done, yes.

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Q On behalf of UIMA, you never made such a request relative to this facility because you didn't know about the existence of MR safe tanks?

A I don't think it would be UIMA's position to make that request. It would be the physician from the -- in the capacity of their professional activities that would make that kind of request, not UIMA, from the standpoint of this MRI Services Agreement.

Q Was it UIMA's position to identify safety problems within the facility?

A No.

Q If a UIMA employee identified a safety problem, were they required to remain silent?

A If a UIMA employee identified a safety problem, they should absolutely disclose it, but it was not UIMA's -- it was not UIMA's duty to deal with safety issues.

MR. CORGAN: You are saying under the agreement?

MR. GAIER: No. I'm --

THE WITNESS: Right.

Q Under the agreement with UIMA, it's under the

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agreement, is it not?

MR. CORGAN: Objection.

A Everything with UIMA is under the --

MR. CORGAN: Objection.

Q You have just said under the agreement all services that UIMA provided in that facility were pursuant to this agreement, correct?

A No.

Q UIMA provided services that were outside the agreement?

A Well, I think you have to understand that, for example, my position there was not simply as the president of the UIMA. My position at the MR was related to my position at the medical school and my position as director of service.

Q You had multiple hats?

A Right.

So that, you know, from the standpoint of safety issues, those were dealt with in my capacity as the director of service, not as the president of UIMA.

Q Okay, but that's not what we are talking about at the moment.

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A Okay.

Q What we are talking about at the moment was very simple. If an employee of UIMA --

A You are talking about a physician and nonphysician employee?

Q UIMA had physician employees?

A UIMA had physician and nonphysician employees.

Q Who were the UIMA physician employees?

A All of the radiologists.

Q Can you name them, please?

A Every radiologist? I don't think I can name all of them.

Q During the period prior to July of 2001 and for the -- in the year prior to that.

A I don't think I can recall all of them.

Q How many radiologists?

A There were probably in the high teens of radiologists that were employed by UIMA. Remember -- it's not my job to educate you.

Q That's fair enough.

Did UIMA -- did all of these radiologists who were employed by UIMA, did they all provide MRI service?

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A No. I think I testified roughly the five or six of the 20 or so provided MRI services.

Q At this facility?

A Actually I testified about Rush.

Q That's what I thought.

A Yeah.

I think at Westchester, I would say there were four or five roughly that provided MRI services.

Q You have identified Dr. Ellen Panageas as one of them?

A Yes.

Q She was the medical director of MRI?

A Yes.

Q You identified Dr. Michael Tenner?

A Yes.

Q He was one of them who provided --

A Yes.

Q Okay.

Were there any others?

A There were a couple of others, but I'm not sure I can remember their names.

Q Okay.

And there were also nonphysician employees

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of UIMA?

A At the time of this incident, yes.

Q If a physician employee of UIMA observed a safety lapse or something that they considered dangerous, were they permitted to bring it to someone's attention?

A Yes.

Q Let's talk about technologists in particular. The UIMA technologists, the technologists who were employed by UIMA during this period prior to July of 2001, was it part of their job to bring safety lapses to the attention of a superior?

A Sure.

Q And that would be their job to bring those safety lapses to the attention of the hospital?

A Yes.

Q And to the attention of whoever their superior was at UIMA?

A Yes.

Q Within UIMA and then -- within UIMA at the MR facility, who did the -- withdrawn.

Among the technologists, and we are looking right now at July of 2001, prior to July 27th,

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was there any one technologist who was a supervisor, who had supervisory capacity over the others?

A I don't remember for sure.

Q How many technologists did UIMA employ at the time; do you know?

A I don't remember for sure.

Q Do you remember John Priest?

A I do.

Q He was a technologist at UIMA?

A Yes.

Q Paul Daniels?

A I remember him also.

Q And Patricia Lauria was a technologist at UIMA?

A I remember her.

Q There was a Michelle Mycelyck, M-Y-C-E-L-Y-C-K, was a technologist at UIMA?

A I don't remember her.

Q And there were others?

A If you say so.

Q Am I right that there were others?

A I think I said I didn't remember.

Q And you don't recall whether any one of these --

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A I believe that John Priest was the chief tech.

Q The chief tech?

A Yes.

Q And that would be --

A Or the head MR technologist.

Q So that did he have some supervisory responsibilities vis-a-vis in relation to the other technologists in that regard?

A To some degree, yes.

Q Who did -- did John Priest report to somebody? Was there somebody more senior than him?

A Well, all of the activities were supervised by Rick Hvisch, H-V-I-S-C-H.

Q Rick Hvisch was, I take it, not a UIMA employee?

A Correct.

Q What was his title? Did he have a title?

A He was the chief tech of all of radiology. He was responsible for all the areas in the Department of Radiology.

Q Was he -- did he have an office?

A Yes.

Q Where was his office?

A In the Department of Radiology.

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- Q Now the Department of Radiology was in a different location than the MR facility in July of 2001; am I correct?
- A That's correct.
- Q It wasn't even like right -- it wasn't immediately adjacent either, was it?
- A No, it was not.
- Q It was in the main hospital building?
- A It was attached to the main hospital building.
- Q Right. And the MR facility was a separate building?
- A I'm sorry, the MR facility was attached to the main hospital.
- Q Right, okay, and Rick --
- A Hvisch's office was in the Department of Radiology.
- Q Which was in the main hospital building?
- A Correct.
- MR. CORGAN: Could we take a brief break?
- (Whereupon, a short luncheon recess was taken.)
- Q I think we were last talking about Rick Hvisch

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and where his office was. His office was in the radiology department, which is in the main building of the hospital?

A Yes.

Q Did he have his own particular office in the MR facility?

A No.

Q Was he a MR technologist; was he certified?

A He was a radiologic technologist, but I don't know if he was MR certified or not.

Q Are you aware that there is such a thing as MR certification specifically for MR technologists?

A I accept that. I'm not sure I'm specifically aware of it.

Q So you don't know whether Rick Hvisch was a certified MR technologist?

A I think I said that.

Q Do you know whether or not he had any MR training?

A I don't know.

Q Did he, on occasion, to your knowledge, attend the MR facility at Westchester Medical Center in the period prior to July 27th of '01?

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A Yes.

Q Do you have an understanding of the frequency in which he attended the facility?

A I believe he had week -- he had monthly meetings with some of the staff from the MR facility.

Q Which of the staff?

A I don't know which ones specifically.

Q Do you know if he conferred with doctors from the MR facility?

A There was an additional monthly departmental meeting that all the section directors were required to attend that he ran as well.

Q Okay.

But in addition to that, you --

A I believe that that's the case.

Q You believe that he had additional monthly meetings specifically with MR personnel?

A Correct, with people from the MR facility, yes.

Q You don't know which personnel?

A I thought it was with Karen DeTorrez primarily, but I don't know.

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Q Karen DeTorrez being the administrator of the MR facility?

A Correct.

Q Do you know if he had regular meetings with the technologists?

A I don't know.

Q Do you know how often he was there on a regular basis in -- withdrawn.

Do you know if he was in the MR facility there on a regular basis?

A I think I had indicated that I thought that he met on a monthly meeting. I don't know if it was at the MR facility or not.

Q What I'm trying to get is do you know if he was actually physically in the MR facility on a regular basis?

A I don't know that for sure.

Q Now, correct me if I'm wrong, but was it your testimony that he had supervisory responsibilities with respect to the MR technologists in the facility?

A Yes.

Q In every aspect of their work?

A In all aspects relating to patient care

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services. I think the administrative supervision was provided by Karen DeTorrez, but he was responsible for all patient care supervision.

Q When you say "patient care," is that including safety within the MR suite?

A Yes.

Q Well, we talked earlier about the dangers that can potentially be posed by ferrous objects being brought into the scanner room.

Is that a danger posed only to patients or could that danger be posed to other people as well who are in the scanner room?

A It could pose a danger to other people in the room if they are between the path of the ferrous object and the magnet.

Q And that would apply if the person was a doctor between the path of the object and the magnet, that they could be exposed to danger?

A Yes.

Q And if it was a nurse, the same?

A Yes.

Q And if it was a technologist, the same?

A Yes.

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Q And in that regard, is safety something in terms of ferrous objects in the MR environment, is that something that is limited to patient care?

MR. CORGAN: I'm not sure I understand what your question means. Could you just rephrase that?

MR. GAIER: I don't think I could. I thought it was pretty clear. Read it back.

(Whereupon, the question was read back by the Reporter.)

MR. CORGAN: So you are asking broadly speaking, safety, is it limited only to patient care or does it apply to everyone?

MR. GAIER: Safety in terms of the ferrous objects in the MR environment, okay, whether that is strictly an issue of patient care or if that is a broader concept.

A I would say that that would be housed under the umbrella of the services associated with the provision of patient care, that patient

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care should be done within a safe environment,
but it is under the auspices of giving patient
care that that safety issue is housed under.

Q Well, if there is no patient in the MR scanner
room and there are no patients in the MR
facility, is the prevention of ferrous objects
from being brought into the magnetic field
still a consideration?

A Yes.

Q And does it still fall under the rubric of
patient care?

A I think since the magnet is primarily used
for patient care services, that those
activities would be covered under patient care
activities and they would extend to times when
there are no patients in the room.

Q So then hypothetically, if at the end of the
day there are two janitors cleaning the room
and one of them brings an oxygen tank that's
made of ferrous material in the room and the
other guy gets hit, that is --

MR. CORGAN: Is that hypothetical?

MR. GAIER: It is, of course. I
think I started with saying that.

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Q -- that is an issue of patient care?

A If I understand that hypothetical -- I guess that could not be, but -- 'that's why we don't allow janitors to clean the rooms.

Q Okay.

A That's why the technologists clean the rooms. The hypothetical is not a real situation. It wasn't a real situation at Westchester.

Q Okay.

So if at the end of the day when all the patients are gone, two technologists are cleaning the room and one of them brings a ferrous oxygen tank in and the other one gets hit, is that an issue for patient care?

A Well, from the standpoint that having a clean room is part of having a good patient care environment, yes.

Q Well, but if the janitors were cleaning the room --

A Janitors didn't clean the room.

MR. CORGAN: This is argumentative.
Why don't you move on?

MR. GAIER: Okay.

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Q Did Dr. Panageas have any responsibility for overseeing the technologists at all?

A Yes.

MR. CORGAN: Objection. Asked and answered.

Q In what respect did she have that responsibility?

A She had that as being the designated medical director of services there.

Q What types of things would she supervise them, in what areas?

A She would be responsible for almost all patient care related activities.

Q Including safety?

A Including safety under the direction of the medical center, which was her title as the medical director.

Q And she was a UIMA employee?

A She was a UIMA employee, but she wasn't a medical director of the MR as a UIMA title. She was a medical director of the MR as a Westchester title.

Q Was that a formal designation?

A It was not a section directorship. There

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2 were section directors which were a staff
3 bylaws designated specific role. She was not
4 the section director, but she was the medical
5 director, which was not a staff bylaws
6 specified role, did not have specific
7 protections or laws that governed how those
8 people could be appointed or not appointed.

9 Q When you negotiated with her for her
10 compensation, was that in your capacity as
11 president of UIMA?

12 A Her compensation arrangements were related
13 to -- my discussions were related to my
14 capacity as the president of UIMA. Her role
15 as the medical director was related to my
16 designation as the director of service, and
17 certainly in my discussions of compensation
18 with her, I acknowledged that she was
19 performing those duties.

20 Q So the compensation that UIMA would pay her
21 through whoever wrote the checks, but it came
22 from UIMA you said; is that correct?

23 A Yeah. Well, it came indirectly from UIMA
24 through the medical college.

25 Q Right.

1 Matalon

2 The compensation that UIMA would pay her
3 indirectly contemplated those services she
4 provided as the director of MR, correct?

5 A To some degree, yes, but every physician
6 that has a subspecialty had supervisory
7 responsibilities for that particular
8 subspecialty. Those physicians that were the
9 primary -- those competent individuals for CT
10 had authority over CT, those for interventional
11 had for inventional, those for neuro had for
12 neuro, so there were lots of so-called chiefs
13 around.

14 Q Are you aware of any documents from any entity
15 that would identify Dr. Panageas during this
16 time period of July of 2001 as the medical
17 director of MR?

18 A I don't know. I don't know that I can
19 specify a particular document.

20 Q In other words, would there be some kind of a
21 documentation of her appointment by -- you
22 know, on behalf of the hospital or on behalf of
23 UIMA?

24 A Honestly I don't know. I don't know if
25 there was a sign when you entered there that

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2 may or may not have indicated that she was. I
3 don't remember.

4 Q Do you know whether Rick Hvisch supervised the
5 technologists in the MR facility in regard to
6 MRI safety?

7 MR. CORGAN: Asked and answered.

8 You can answer it again.

9 A Yes.

10 Q Was he the sole person supervising them with
11 respect to MRI safety at this facility?

12 A Well, he was the most senior radiologic
13 person employed by the medical center, other
14 than myself, that had authority over those
15 individuals. He had technical supervision over
16 all aspects of radiology and MR was one of
17 them.

18 Q Do you know whether he undertook any course at
19 any time in MR safety?

20 A I don't know.

21 MR. CORGAN: Did you ask him who
22 employed Rick Hvisch?

23 MR. GAIER: I don't need to ask
24 him. I can see where we are going with
25 that.

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MR. CORGAN: I will ask him. Don't
you want to establish basic facts?

Q Who was Rick Hvish employed by in July of 2001?

MR. CORGAN: As far as you know.
A As far as I know, the medical center.

Q Did you appoint him in his capacity as the
supervising tech?

A No.

Q Was he in that position before you came?

A Yes.

Q Did you have authority over him?

A In my role as the director of the service,
yes.

Q Of the hospital?

A Yes.

Q You had no authority over him in your capacity
as president of UIMA, correct?

A No.

Q Did he have authority over you --

A Yes.

Q -- in that capacity?

A Yes.

Q Did he ever give you any instructions with
respect to safety in the MR facility?

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A No, not that I can recall.

Q Do you know whether he gave any of the UIMA techs any instructions relative to safety in the MR facility?

A I don't know.

Q Did he have any authority over Dr. Panageas?

A Only as -- only to the extent that I had already indicated his authority over me.

Q What was the extent that he had that authority?

MR. CORGAN: You might want to read the MRI Services Agreement in that regard.

A I mean basically I can read to you what the MRI Services Agreement says.

Q Let me ask you this: Is Rick Hvisch mentioned in the MRI Services Agreement by name?

A No.

Q Is the position of chief tech of radiology mentioned in the MRI Services Agreement by name?

A No.

Q But there is something that you feel is pertinent to Rick Hvisch in the MRI Services Agreement?

A With respect to what?

1 Matalon

2 Q With respect to his authority over you.

3 A Yes.

4 Q What is that?

5 A I believe that he represents an easily

6 identifiable agent of the corporation.

7 Q Give me a page and section.

8 A I think that I would just refer you to the

9 sections 3.6, 1.4.

10 MR. CORGAN: That's capital letter G,

11 1.4 -- oh, no -- right, 1.4.

12 A 1.4.

13 Rick Hvisch was the primary technical

14 supervisor over all aspects of radiologic

15 patient care at the medical center.

16 Q Looking at 3.6 --

17 A Yes.

18 Q -- does that say anything about easily

19 identifiable agent of the corporation?

20 A No, it does not.

21 Q Okay.

22 And does --

23 A You asked my -- what my opinion was.

24 Q No. I was asking --

25 A I was answering from the standpoint --

Matalon

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2 MR. CORGAN: He asked you what the
3 basis of your opinion was and you have
4 asserted or you have referenced the
5 MRI Services Agreement.

6 Q Just for completeness, does 1.4 say anything
7 about easily identifiable agent of the
8 corporation?

9 A No.

10 Q When you are talking about his authority over
11 you, you are gleaning that from these two
12 sections?

13 MR. CORGAN: Objection. In part.

14 A I mean those are the facts, that's not a
15 presumption. It's not a conclusion. That was
16 the reality of how the patient care activities
17 were managed in the MR during that period of
18 time.

19 Q Well, do you know whether Rick Hvisch ever went
20 down to the MRI facility and inspected it to
21 determine whether or not it was safe?

22 A I believe he did, but actually to determine
23 whether or not it was safe, I don't know the
24 answer to that question.

25 Q You said you believe he did?

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MR. CORGAN: He said --

A I interrupted you while you were asking the question and I said -- you asked -- you were asking whether or not he went down to the MRI facility and inspected it and I said yes and then you completed your question by saying to see whether it was safe and I withdrew my answer to indicate I was not sure whether or not he had made a safety inspection.

Q So just to clarify, not to be redundant, sitting here today, you don't know whether Rick Hvisch, prior to July 27th of 2001, ever went to the MRI facility and inspected it to see if it was safe in terms --

A I don't know if he did that, that's correct.

Q Doctor, let me finish my questions, otherwise we are going to keep doing this.

A I'm sorry.

Q Let me do the question again.

Sitting here today, you don't know whether in July and prior to July 27th of 2001, Rick Hvisch would go to the MR facility and inspect it to see if it was safe in terms of ferrous

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objects in the MR environment?

A I don't know if he did that or not, that's correct.

Q Are you aware of any other personnel, nonphysician, nontechnologist person of UIMA in the MR facility? Are you familiar with any other people there? You mentioned Karen DeTorrez is there. Anybody else that you recall?

A I don't recall specific names of other people. I might recall their faces or I might recognize their names, but I don't recall their names.

Q Did you ever, in your capacity as president of UIMA, did you ever appoint anybody within UIMA as being, say, a safety officer or responsible for safety concerns?

A No.

Q Did you ever, in your capacity as president of UIMA, have any discussions with any of the UIMA employees regarding safety in the MRI facility?

MR. CORGAN: Are we talking before or after July 27th?

MR. GAIER: We are talking before.

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Unless I say otherwise, we are talking about before July 27, 2001.

MR. CORGAN: Okay:

A No.

Q At the time that you were president of UIMA prior to July 27, 2001, do you know if UIMA had any other MR facilities that it operated other than the one that was on the premises of the hospital in that building?

A I don't know that they had any others.

Q Do you know a Dr. William "Frishman"?

A Yes.

Q Who is he?

A He's the chairman of medicine.

Q Is he a radiologist?

A No.

Q Do you know what specialty, if he has one?

A I think he's a cardiologist.

Q Have you ever had any involvement with him relative to your responsibilities as president of UIMA?

A Not that I can recall.

Q Do you know a Susan "Wisenberg"?

A I don't recognize that name.

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Q You said before you are familiar with Medical Faculty Diagnostic Associates, P.C.?

A I think I said I recognize the name.

Q Have you ever also heard the term FMD?

A I think I indicated I recognize the name earlier.

Q And to the extent that you recognize their name, do you recognize them as being of the same entity, basically?

A I don't know if there is a difference between those entities or not.

Q Do you know whether any of the doctors who were employed by UIMA had also worked for FMD at some time?

A I don't know for sure.

Q Do you know whether Dr. Tenner was ever involved with that FMD?

A I honestly don't know much about FMD, so I can't answer questions about it since I don't really even know what entity for sure it is.

Q Prior to July 27th of 2001, are you able to give an estimation of how many times you were actually in that facility?

A An estimate?

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Q Yes.

A Would be, perhaps, two or three. I remember an initial tour when I got there where I was toured the entire department and I remember, perhaps, looking at -- I was in the scanner room once on that initial tour and then prior to July of 2001 and then I believe that I may have looked at one or two patients' images that I had an interest in based on other examinations that they had that I was involved with.

Q When they took you for the tour, that was shortly after you began working there?

A I believe -- I don't know if it was when I started working there or during my interview process.

Q Do you recall who took you for the tour?

A I don't remember for sure.

Q Do you recall what time of day it was? Was it during working hours?

A Yes.

Q Was the facility, the MR facility, functioning at the time? Was it in use?

A There were patients -- there were patients

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in the MR facility. I don't -- if I was in the scanner room, obviously there was no patient in the room.

Q Okay.

Do you recall when you entered the facility if there were any warning signs on the facility relative to ferrous objects?

A I don't recall. It's been awhile.

Q Do you recall when you were given a tour of the facility if anybody said anything to you or asking you whether you had any ferrous objects on you?

A Certainly before I went into the magnet, yes.

Q Do you recall who asked you?

A I don't recall.

Q Do you recall what they said to you?

A I don't recall.

Q So was there -- when you said "certainly" before, was that based upon what you believe was custom and practice?

A Yes.

Q So you don't have a specific recollection whether anybody asked you that or not?

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A I don't have a specific recollection,
that's correct.

Q Do you recall when you took this tour whether
you made any inquiries about whether or not
materials outside the scanner room were MRI
safe or not?

A I don't recall making that inquiry.

Q Is that something that you would have done?

A I doubt it.

Q Do you recall whether you observed any crash
cart outside the scanner room?

A I don't recall.

Q Do you recall whether you observed any oxygen
tanks outside the scanner room?

A I don't recall.

Q Did you make any inquiries at the time as to
whether or not there had been any accidents?

A I did not make any inquiries.

Q During the entire time that you were at the
facility up until July 27th of 2001, had you
ever made any such inquiries as to what the
history of the safety record was at that
facility?

A I had not made any inquiries.

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Q Did anybody volunteer the information to you?

A No one had indicated that there had been any prior incidents or accidents related to the MR prior to July of 2001.

Q Do you recall when you were in the facility if you saw any warning signs, not when you were entering but once you were within the facility, relative to --

A I don't specifically recall.

Q If there were any warning signs at all?

A I don't recall.

MR. GAIER: Off the record.

(Whereupon, a discussion was held off the record.)

Q Had you ever had any conversations with any hospital employees relative to warning signs at the facility?

A Prior to July of 2001?

Q Unless I say otherwise, yes, prior to July 27, '01.

A No.

Q Had you ever had any conversations with any UIMA personnel relative to warning signs at the facility prior to July 27th of 2001?

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A No.

Q Prior to July 27th of 2001, did you have any contact with General Electric employees relative to the MRI equipment in that facility?

A I don't think so.

Q Prior to July 27, 2001, do you recall ever having conversations with anyone relative to warning signs with regard to MRI environment? This is a very general question I'm asking you.

A At Westchester you are talking about?

Q No, just in general.

A Yes.

Q Okay.

Can you tell me when you had such a conversation, or if you had more than one, when you had them?

A I just recall having conversations about MR warning signs at prior institutions, yes, at Rush.

Q Can you describe for me the nature of the conversation, the substance of the conversation?

A No.

Q Was it relative to whether they were sufficient or insufficient?

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A I think it was relative to the fact that they were present.

Q Prior to July 27th of 2001, while you were at Westchester Medical Center, did you ever have any conversations relative to means of keeping ferrous objects out of the scanner room?

A No.

Q Had you ever had any such conversations in that sense of means of keeping them out of the scanner room prior to coming to Westchester?

A Other than my personal involvement in starting IVs and recognizing the importance of not bringing a medical object into the room and having actually brought a metal object into the room, no.

Q So after the paper clip incident?

A It certainly heightened my awareness.

Q Did you make any inquiries after the paper clip incident as to means of keeping ferrous objects out of the room?

A No.

Q Did you inquire as to whether or not larger objects than paper clips, for instance, might pose a more serious risk of harm?

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A Did I ask that question?

Q Yes.

A No.

Q Did it occur to you that it could?

A Yes.

Q Did you consider any means of trying to avoid, such or prevent such objects from being introduced into the magnetic field?

A Where, when?

Q At any time prior to July 27th of '01.

A At Westchester you are talking about?

Q I'm asking you -- this was a very general question.

MR. CORGAN: Objection to the form.

Q Well, the paper clip incident happened back at Rush?

A Right.

MR. CORGAN: Why don't you rephrase the question. Object to the form.

Q After the paper clip incident, you testified that it had occurred to you that larger objects could pose a greater danger. Had you ever considered means of keeping such objects out?

A If I testified that it was after the paper

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2 clip that I recognized that larger objects
3 posed a greater danger, that's incorrect. I
4 want to set the record straight. I knew that
5 large objects posed a greater threat than a
6 paper clip before the paper clip incident.
- 7 Q Okay.
- 8 A It wasn't a function of the paper clip that
9 made me recognize a larger object could pose a
10 greater threat.
- 11 Q You said that the paper clip did heighten your
12 awareness that these things can go flying out;
13 is that what you are saying?
- 14 A It heightened my awareness to be more
15 rigorous in my personal conduct to insure that
16 I was more rigorous in personally screening
17 myself not to bring an object into the room.
- 18 Q Was that additional rigor a consequence of the
19 fact that a larger object could do more serious
20 damage than a paper clip?
- 21 A No. I was more concerned that since I
22 always play with a paper clip, that I would
23 bring another paper clip into the room.
- 24 Q Had you ever considered whether or not a magnet
25 could be used, a small handheld magnet could be

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used as a means of keeping ferrous objects away from the vicinity of the scanner?

A Had I ever considered that prior to July of 2001; is that what you are asking me?

Q Yes.

A No.

Q Did you ever consider prior to July of 2001 the concept of metal detectors being used to keep such things away?

A No.

Q Did you consider them after July of 2001?

A Yes. And we rejected that.

Q Did you consider handheld magnets after July of 2001?

A I don't think we actually considered handheld magnets.

Q Prior to July of 2001, while you were director -- withdrawn.

Prior to July of 2001, July 27th of 2001, and while you were at Westchester Medical Center, did you ever consider whether items should be tagged within the MR facility to indicate whether they were ferrous or nonferrous or MRI safe or non-MRI safe?

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A I had no involvement in the operation of the MRI. I think I testified to that already, so the answer is no.

Q Because you didn't have any involvement, therefore, you didn't consider it?

A Correct.

Q Do you know whether in this particular facility prior to July of 2001, and now I'm going to try to be clear on this, not as you sit here today but prior to July of 2001, July 27th of 2001, did you know whether oxygen tanks were stored within the facility?

A No.

Q Did you know whether oxygen tanks would have occasion to be used in the facility?

A No, I did not know how oxygen was administered in the facility.

Q You did know that oxygen would on occasion be administered in the facility?

A I thought that it was being administered for some inpatients, but I did not know how it was being done.

Q So you didn't know whether oxygen came through the wall to get to be administered to the

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patient during an MRI procedure?

A I had never observed a patient getting oxygen there, so the answer to that was I did not know.

Q Were you aware at a time at which they installed in this facility a wall oxygen system, so to speak?

A Prior to 2001 or after?

Q Prior to 2001.

A No. I think I already testified I did not know how oxygen was administered, so if I didn't know that, then I wouldn't know there was oxygen installed; right?

Q If a wall oxygen system had been installed while you were the president of UIMA and the director of radiology at the hospital, is that something you would have known about?

A Not necessarily.

Q Prior to July 27th of 2001, did you ever make any suggestions with respect to ferrous objects in the MRI facility?

A No.

Q Did you ever, prior to July 27th of 2001, while you were at Westchester Medical Center, did you

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ever make any suggestions with respect to oxygen tanks in the MRI facility?

A I think I have answered it already. The answer is no.

MR. GAIER: Off the record.

(Whereupon, a discussion was held off the record.)

Q Prior to July 27th of 2001, did you ever make any inquiries of anybody who was in this facility on a regular basis as to how they would keep ferrous objects out of the scanner room?

A I don't recall making any inquiries.

Q You have been referring to this a couple of times today. It's the Department of Radiology Policy and Procedure Manual. It's actually excerpts of it; pages MR 9, 11, 12, 17 and 22 and they were previously marked as Plaintiffs' Exhibits D1 through D5 for identification dated 12/9/04. You want to make sure the copy you are looking at is identical to the one that's previously marked, so we don't have any problems.

Referring to Plaintiffs' Exhibit D1 of

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12/9/04 --

MR. CORGAN: What is the number on the bottom?

THE WITNESS: MR 9.

MR. CORGAN: There is MR 9, 11, 12, 17 and 22.

MR. GAIER: Right. These are the ones that were provided by the hospital to Mr. Columbini.

MR. CORGAN: So when you refer to a page, do it by the MR number at the bottom.

MR. GAIER: Wonderful.

Q Just generally, have you ever seen these before today?

A Yes.

Q When have you seen them?

A I reviewed them in preparation for today.

Q Okay.

Prior to preparing for today, had you ever seen them during your employment in Westchester?

A I presume I saw them after July of 2001.

I don't recall seeing them prior to July of

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2001.

Q Well, were they part of a larger document, part of a larger booklet?

A Yes.

Q Was that booklet -- did it contain the rules of the Department of Radiology at Westchester County Medical Center?

A It was the Policy and Procedure Manual, yes.

Q That's what it was called, Policy and Procedure Manual?

A That's the title, yes.

Q And you were, from March of '99 until some time after July of 2001, you were the director of that department?

A Yes.

Q In your capacity as director of that department, did you have the authority to promulgate policies and procedures that were contained in that manual?

A Yes.

Q Were there any policies, procedures, rules, regulations or anything that were contained outside this manual relative to the Department

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2 of Radiology? In other words, were there any
3 other documents that contained published rules
4 and regulations for the department?
5 A Not that I can recall.
6 Q When you started your work in Westchester, did
7 you review the rules and regulations for your
8 department that you were chairing?
9 A Every one, no.
10 Q When you first came on and started working
11 there, did you sit down and look through those
12 policies and procedures?
13 A If I remember correctly, there was a
14 continuous process of reviewing the policy and
15 procedures that I did with Rick Hvisch. It
16 wasn't something we did all at once at one
17 time.
18 Q Do you know how long Rick Hvisch had been over
19 there at the hospital prior to your coming?
20 A I think for many years, and I believe he
21 authored these documents.
22 Q Wait. It's your understanding that Rick
23 Hvisch authored the Department of Radiology
24 Policy and Procedure Manual?
25 A Yes. It was done with professional input.

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Q "Professional" meaning what?

A Physicians, but the physicians didn't write the policy and procedures. They were written by Rick.

Q We are talking about the entire Policy and Procedure Manual for the Department of Radiology?

A Yes.

Q The chief technologist or technician is the one who wrote the manual?

A Substantially, yes.

Q Is that the way it was at Rush?

A I don't know how it was done at Rush.

Q Were you a department chair at Rush?

A No, I was not.

Q Were you a subdepartment chair?

A I was a section director.

Q You are at a hospital now?

A Yes.

Q You are a chair there?

A Yes.

Q Is that how it's done there?

A Yes.

MR. CORGAN: Objection.

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- 2 Q The chief technician writes the department
- 3 policy and procedure manual?
- 4 A At my hospital that individual is not
- 5 called the chief technician, but it's the -- a
- 6 similar-type person. It is a technologist who
- 7 has administrative authority over the entire
- 8 department and they do it, you know, with my
- 9 involvement, my authority to sign it and my
- 10 ability to edit it, but it is largely done by
- 11 those individuals.
- 12 Q Well, when you came to Westchester in or after
- 13 March of 1999, did you sit down and go through
- 14 the Policy and Procedure Manual with Rick
- 15 Hvisch?
- 16 A Not in a single sitting. We did over a
- 17 number of years. It's a very large document.
- 18 Q How many pages?
- 19 A I would not fathom a guess, but it's many
- 20 inches in thickness. (Indicating)
- 21 Q You are holding your fingers approximately two
- 22 inches apart; is that about how thick it is?
- 23 A I would say it's probably more than two
- 24 inches apart, but I'm guessing. I don't want
- 25 to guess.

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Q Are you aware of any rules or rather any policy or procedures, anything within that manual, that relates directly to safety in the MRI other than these five pages?

A No.

Q So these five pages that we have in front of us here, do these comprise all of the policies and procedures that were in effect at the hospital on July 27th of 2001?

A I don't know.

Q Well, is there any other place they could be other than in that manual?

MR. CORGAN: Objection.

A You are asking --

MR. CORGAN: Objection. Don't answer the question.

THE WITNESS: Okay.

Q Are you aware of any other book or pamphlet or codification that would contain rules relative to MRI other than these particular ones in the Policy and Procedure Manual of the Department of Radiology?

A No.

Q Are you aware of any other policy and procedure

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2 within that manual that would relate to MR
3 safety?
4 A No.
5 Q Looking at this document, these five pages, you
6 see there is a revision date on the upper
7 right-hand corner of each page.
8 A I see that.
9 Q And am I correct that the date is 2/27/97,
10 which means February 27th of 1997?
11 A Yes.
12 Q That's your understanding?
13 A That's what I see, yes.
14 Q And is it your understanding that that means
15 that's when each of these rules was last
16 revised?
17 A Yes.
18 Q And when you came to the facility in March of
19 1999, did you review these to see whether or
20 not they needed to be revised?
21 A I don't remember.
22 Q Am I correct that it had been a little over two
23 years since they had last been revised when you
24 arrived at the facility?
25 A Roughly.

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- 2 Q And you don't recall having any discussions
- 3 with Rick Hvisch regarding these policies and
- 4 procedures?
- 5 A I don't think I said that. I said that
- 6 we, over a period of time, reviewed many policy
- 7 and procedures.
- 8 Q But I'm talking about these.
- 9 A I don't know if we reviewed this one or
- 10 not. We did not revise it but we did review
- 11 many policy and procedures on a routine -- in a
- 12 routine fashion.
- 13 Q But you are certain that -- okay, withdrawn.
- 14 By July 27th of 2001, you had been the
- 15 director of the radiology department for over
- 16 two years, right?
- 17 A Yes.
- 18 Q And you had been the president of UIMA for over
- 19 two years?
- 20 A Correct.
- 21 Q And sitting here today, you don't know whether
- 22 during that two plus year period, whether you
- 23 had ever reviewed these particular policies and
- 24 procedures?
- 25 A I don't recall specifically whether I had

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done that or not, that's correct.

Q If you had done that, would you have asked whether during the time they were last revised, meaning during the time since February 27th of '97, would you have asked whether or not any incidents had happened in terms of safety lapses in the MR facility?

A No.

Q Would you have expected to be told by Rick Hvisch whether there had been any such incidents since they were last revised?

A Yes.

Q Would you have expected him to tell you that even if you hadn't reviewed these rules with him?

A If he felt that there was an existing safety concern, I would have expected him to tell me that, yes. If he didn't feel that there was an existing safety concern, I wouldn't think that that would be relevant.

Q If there had been a prior incident of an object being pulled into the machine and causing the machine to have to go down, would you have expected him to tell you that?

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2 A It depends on what the outcome of that
3 action was. If there was remedial action
4 taken that was felt to be sufficient to have
5 addressed the issue, I'm not certain that it
6 would be an obligation for him to tell me if it
7 was not an ongoing concern.

8 Q What if the same condition that led to the
9 incident was unchanged and continued to exist?

10 A You are saying they did absolutely nothing
11 to change their policy and procedures based on
12 prior action?

13 Q Yes.

14 A Then I would probably expect him to tell me
15 that that occurred. I would probably expect
16 him not to continue operations without changing
17 something about what led to the prior action.

18 Q So when you came on and you became the director
19 of the department then, also the president of
20 UIMA, did you make any inquiry if there had
21 been any incidents in recent years involving --

22 A Did not make any inquiries.

23 Q Are you aware of an incident -- withdrawn.

24 Prior to July 27th of 2001, were you aware
25 of an incident that had happened relative to

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this machine?

A No.

Q Sitting here today, are you aware of a prior incident that happened relative to this machine?

A Yes.

Q One involving oxygen tanks?

A Yes.

Q One that happened in 1997?

A Yes.

Q One that happened in October of 1997?

A I don't know the specific date, but yes.

Q Would it be pertinent to you to know the specific date?

A No.

Q Would it be pertinent if it happened after this was last revised?

A It would be pertinent only if nothing was changed in terms of the operations of the magnet that led to that oxygen tank being drawn into the magnet.

Q Well, when you say "operations of the magnet," what do you mean?

A That nothing -- my understanding was that

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2 the prior action related to an oxygen tank in a
3 wheelchair that was pulled into the magnet, not
4 from oxygen tanks that were kept outside the
5 room; that this was an oxygen tank supplying
6 oxygen on a wheelchair that they wheelchaired
7 the patient or wheelchaired -- the wheelchair
8 was brought into room, whether there was a
9 patient in the wheelchair or not, I don't know,
10 but it was an oxygen tank that was on a
11 wheelchair that was associated with the prior
12 event.

13 Q When did you come of this understanding?

14 A That I only learned within the last two
15 days, that it was a wheelchair situation. I
16 was told that there was a prior incident with
17 an oxygen tank the day of the Colombini event.

18 Q So now we are establishing that there were two
19 prior incidents; one involving a wheelchair and
20 one involving an oxygen tank?

21 A No, I didn't say that.

22 Q Okay.

23 A I said that what I was told was that the
24 prior event involved a wheelchair with an
25 oxygen tank on the wheelchair.

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Q When were you told this?

A Yesterday.

Q Okay.

Prior to yesterday --

A Okay.

Q -- and prior to two days ago --

A Okay.

Q -- did you have any understanding that there had been any incident at this facility involving a ferrous object being pulled into the machine?

A Yes.

Q What was that understanding?

A My understanding was that the day, whatever that day was that the Colombini event occurred, I was told by Mike Tenner that there was a prior incident with an oxygen tank.

Q Okay.

Did you make any inquiries after you were told about this? Did you ask more specifics about that prior incident?

A I don't think I did. I was really focusing on the issue at hand.

Q So you didn't ask when that prior incident

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happened?

A I don't remember.

Q You said a few minutes ago that 'if there had been a prior incident, if the operation of the MRI hadn't changed -- withdrawn.

MR. GAIER: Could you go back and find that answer for me?

(Whereupon, the answer was read back by the Reporter.)

Q Would you have anticipated that they would have changed actions in terms of operations of the facility separate from anything written in this policy manual?

MR. CORGAN: Who are "they"?

MR. GAIER: Whoever he is referring to.

MR. CORGAN: You might want to ask him who are we talking about here? Who would have changed what?

Q Who are you talking about?

A If you -- I don't know what specifically the question is. If you want to repeat a question to me, I will be happy to try to answer it.

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MR. GAIER: I want you to read his last answer that you just read back.

A The medical center -- let me answer the question.

Q I want you to be clear. I don't want you to say anything you don't mean.

A I recall the question and I recall the answer.

The medical center should change the operations within the magnet.

Q Would that have to be done in the confines of this Policy and Procedure Manual?

A The Policy and Procedure Manual did cover that specific action. The Policy and Procedure Manual states that ferrous objects should not be brought into the room.

Q Let's be specific. Give me a page number on that.

A (Reading) MR 12. Iron or magnetic objects must not be brought into the neighborhood of the magnet.

So it was basically the policy was not followed.

Q Okay.

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So whoever, in October of 1997, brought the oxygen tank into the scanner room violated that policy, correct?

A Yes.

Q Okay.

Now, it's your understanding that in order to remedy that situation something should have been done; is that correct?

A Assuming that there was not a policy that didn't --

Q Let's assume this policy was there.

MR. CORGAN: Don't cut him off. Come on, don't cut him off.

A Assuming that there is not a policy that covers that action, then a policy should be introduced that covers that action. There already was a policy. That should have precluded that activity. It didn't.

Q Therefore, you felt that under those circumstances, this policy was violated by whoever brought it in the room back in October of '97, correct?

A Yes.

Q But relative to the answer you gave a few

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minutes ago that I have had read back once and will have her read back again if you want, should other action have been taken to follow -- to make sure the policy was adhered to after that October '97 incident?

A I'm not sure what action --

MR. CORGAN: Note my objection. How can he speculate as to that? He wasn't there.

MR. GAIER: We are not speculating. This is all related to the answer he gave.

MR. CORGAN: He didn't -- he didn't have any details of what happened. You are asking him how they should have changed the policy.

MR. GAIER: That's not what I asked him.

MR. CORGAN: What did you ask him?

MR. GAIER: We can read -- it all relates to that answer he gave and I want to be very specific, okay?

MR. CORGAN: None of this is

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very specific.

Q Is changes to the Policy and Procedure Manual
the only means of avoiding such a situation?

MR. CORGAN: Of avoiding a situation,
the introduction of a ferrous metallic
object, obviously.

Q Doctor, I want you to assume that the incident
that happened in 1997, happened on October 17,
1997, and that an anesthesiologist brought a
canister cart with at least one oxygen canister
in it into the room and that they got pulled
from his hands and pulled into the bore of the
magnet.

MR. CORGAN: Were they pulled from
his hands or were they pulled from the
cart?

MR. GAIER: You know what --

MR. CORGAN: Do we even know
that?

MR. GAIER: I will tell you
what, okay, do you have a copy of the
incident report from '97?

MR. CORGAN: I gave it to you.

MR. GAIER: I know. I've got it

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right here. 1

Off the record.

(Whereupon, a discussion was held
off the record.)

MR. GAIER: Would you please
mark this?

(Whereupon, documents relating to
'97 incident were marked as
Plaintiffs' Exhibit 3 for
identification, as of this date.)

Q Doctor, I'm going to show you a series of
documents that have collectively been marked as
Plaintiffs' Exhibit 3. It's ten pages that
consist of an Incident Report from the medical
center, a letter from a Patricia "Bigart" from
Faculty Magnetic Diagnostic, and then a two
page handwritten note on Faculty Magnetic
Diagnostic's letterhead handwritten and signed
by a Susan "Wisenberg" and then a few other
documents relating to the bills for damage done
as a result of that incident.

MR. CORGAN: Can we agree that all of
those documents as dated precede this
doctor's testimony as to when he came

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to the medical center for the first
time?

MR. GAIER: Yes.

MR. CORGAN: Okay.

MR. GAIER: Can we agree that
they are documents that you produced
in the course of discovery --

MR. CORGAN: Yes.

MR. GAIER: -- all in one
disclosure?

MR. CORGAN: Yes.

A Is there a question?

MR. CORGAN: What's the
question?

Q For our purposes, I would read the first page
and then the two handwritten pages.

MR. CORGAN: The first question is
have you ever seen those documents
before?

THE WITNESS: I have not read
these, no.

Q You never saw them?

A I saw them on the computer screen today,
but I have not read them.

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2 Q If you want to read them now it might help a
3 little bit in terms of questions that I am
4 trying to ask.

5 A I'm happy to do it.

6 Q The first page and third and fourth pages are
7 all you really need to be concerned with.

8 A (Perusing)

9 Okay. Is there a question?

10 Q Well, I will get back to asking the question
11 this way. We can focus on the hypothetical.

12 I want you to assume that an incident like
13 what's being described there in fact happened
14 in October of '97 in which an anesthesiologist
15 brought a canister cart --

16 MR. GAIER: Off the record.

17 (Whereupon, a discussion was held
18 off the record.)

19 Q Assuming this incident happened in which an
20 anesthesiologist brought a canister cart in and
21 at least one or more canisters in that cart got
22 pulled into the machine resulting in damage and
23 causing the machine to go down, I think it
24 says, for two days, assuming that that happened
25 and assuming that at the time it happened this

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rule on MR 12 that you pointed out before prohibiting magnetic objects from being brought into the neighborhood of magnet, assuming that was in effect, would you expect some action to be taken to prevent a similar occurrence from happening in the future?

A I would hope that something would change, yes.

Q Well, would you expect that something to change?

A Yes.

Q Okay.

Would that something be a revision of the Policy and Procedure Manual relative to this issue?

A Not necessarily. It could have been the introduction of the oxygen tanks that directly provided oxygen inside the room.

Q Okay.

That's one thing and that would not require a revision of the policy and procedure manual; that would be a change in practice and procedure within the facility, right?

A Correct.

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Q And would another thing that could have been done would be to exclude ferrous oxygen tanks from the facility?

A Could it have been done? Yes, it could have been done.

Q Okay.

And the process by which this change would be made would be done without altering the Policy and Procedure Manual, correct?

A Possibly.

Q It could be done by altering the Policy and Procedure Manual as well?

A That's correct.

Q But when you talked in terms of operation of the MR before, there are methods for addressing such issues without going to the Policy and Procedure Manual; is that correct?

A Could you repeat that question, please?

Q Sure.

When you talked earlier in one of your earlier answers about -- I don't want to have to paraphrase one of your answers because I'm going to be accused of doing it wrong. I'm sure I will not get it accurate, but it was to

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2 the effect that you would have expected
3 something to change in the operation of the MR.

4 A Yes.

5 Q These things can be done without regard --
6 without altering the Policy and Procedure
7 Manual, correct?

8 A Yes.

9 Q And the people who were responsible for --
10 withdrawn.

11 In that case in the October of '97 incident
12 that you didn't know about until after the July
13 incident, an anesthesiologist brought ferrous
14 oxygen tanks into the scanner room, correct?

15 A That's the assumption, yes.

16 Q And is it your opinion that after that incident
17 steps should have been taken to avoid
18 anesthesiologists or anyone else from bringing
19 ferrous oxygen tanks into the scanner room?

20 A As I said earlier, I think there was a
21 policy in place that did cover that action.
22 There was a policy in place that said don't
23 bring ferrous objects into the room.

24 Q You mean the one on MR 12, the policy on MR 12?

25 A Yes, yes.

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Q Okay.

But separate from altering that policy, is it your opinion if they didn't alter that policy, yet it still wasn't followed on the day in question --

A If the policy had been adhered to or if it was adhered to in the future, that action would not have happened and there would not have been a recurrence of that action.

Q Right.

But we were talking about things that can be done outside of changing the policy, but rather things done to affect the efficacy of the policy.

A Okay. You are asking me what should have been done?

Q Well, what I'm asking you first is whether or not after the October '97 incident you think steps should have been taken to, if not completely preclude, to lessen that risk?

A Do I think that should have been done?

Q Yes.

A I -- yes, I think that should have been done.

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Q Sitting here today, do you know whether any steps were taken at all?

A I have no idea. I did not even know of that, you know, prior to July of 2001.

MR. CORGAN: You did not know of this incident --

THE WITNESS: Correct.

MR. CORGAN: -- referred to in these documents which are Plaintiffs' Exhibit 3 for identification prior to July 27, 2001?

THE WITNESS: That's correct.

Q These things that could have been done or rather -- withdrawn.

These steps that should have been done to prevent this kind of thing from happening, they should have been implemented by UIMA personnel?

A At what time? I mean at the time --

Q After October of '97.

A Well, the UIMA personnel were not the personnel that were --

Q Okay.

A -- that were employees within that magnet.

Q So they should have been -- the changes that

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should have been affected, should have been affected by whatever personnel were staffing that facility; is that correct?'

A If it was felt that there was something that could be done.

Q Okay.

But we already discussed that you felt something should have been done to lessen the risk of that happening, agreed?

A I said -- that's not what I said.

MR. CORGAN: Objection. Objection. This is inappropriate, this inquiry. Really. I'm going to object. I mean --

MR. GAIER: You already said you object.

MR. CORGAN: -- your hypothetical is so far beyond relevance to this case.

MR. GAIER: You think?

MR. CORGAN: I think so.

MR. GAIER: I don't think so.

MR. CORGAN: What he thinks could have been done or should have

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been done in 1997 when he was never there, doesn't know anything about the circumstances other than what he read here, I mean, come on.

MR. GAIER: Except he was the guy --

MR. CORGAN: It's all speculation.

MR. GAIER: All right, great.

Q Going back to -- just to clarify your testimony, is it your testimony that after the '97 incident something should have been done to --

A Well, if I were there in 19 --

Q Doctor, you are doing that again.

A Sorry.

Q In your opinion, after the '97 incident, should something have been done to reduce, if not eliminate, the risk of that kind of thing happening again?

A Something should have been done.

Q Good.

And the people who were staffing that facility should have been involved in doing

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that something?

MR. CORGAN: Objection to the -- what do you mean "the people who were staffing that facility"?

MR. GAIER: The people, the personnel, within that facility.

A The institution should have reviewed the incident and should have made recommendations to either change policy or procedure or change operations if they felt there was something that could be done to reduce the risk in the future.

Q We said earlier, according to the MRI Services Agreement, the corporation retained all authority with respect to issuing policies and procedures, right?

A The corporation meaning Westchester, yes, that's correct.

Q Did it also retain all authority with respect to operations?

A All operations.

MR. CORGAN: What are we talking about now?

MR. GAIER: I'm talking about the --

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his last answer.

MR. CORGAN: For the record, the Westchester County Health Care Corporation did not exist in 1997.

MR. GAIER: Can you go back and read the previous answer?

(Whereupon, the answer was read back by the Reporter.)

Q You see a distinction between changing policies and procedures and changing operations?

MR. CORGAN: Note my objection. You are reading from a document.

MR. GAIER: I'm not reading from anything. I'm talking about his testimony. I'm trying to understand his testimony.

MR. CORGAN: I'm sorry, are you referring to a document?

MR. GAIER: No. I'm referring to his testimony right now.

MR. CORGAN: Okay, go ahead.

Q Is there a distinction between changing policies and procedures and changing operations?

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A Yes.

Q Referring now to the MRI Services Agreement, okay, you identified a provision which you said -- 3.10 D -- talked about decision-making authority with regard to its, being the corporation's, independent adoption of policies affecting the delivery of healthcare.

Does that subsume operations as well in the context in which you just used --

A "Subsume?"

Q Does that include?

A It includes operations.

Q So it's not just policies and procedures but it's operations as well?

A Yes.

Q So what you are saying then is that UIMA had, as your understanding of the relationship, had no discretion with respect to operations within that facility?

A No independent discretion, that's correct.

(Reading) Every -- all services rendered and work performed by UIMA will be under the direction and subject to the approval of the corporation.

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Q What are we looking at now?

A 3.6.

UIMA was subservient to the corporation.

Q Okay.

The people who were in that facility on a daily, regular basis, employees of UIMA --

MR. CORGAN: When?

Q -- from October of 2000 through July 27th of 2001 --

A Yes. Were they all employees of UIMA?

Q That was -- well, okay.

MR. CORGAN: You did ask that.

MR. GAIER: All right.

A I'm not sure they were all employees.

MR. CORGAN: They weren't all employees.

Q Anybody who was in that facility on a daily basis were not all employees, okay.

Who wasn't?

A The transporter that brought patients from the floors were employees of the medical center, people that worked on facilities, fixed the lights, you know, cleaned the floors were employees of the medical center.

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Okay.

MR. CORGAN: Some of the nurses.

The nurses were employees of the medical center.

MR. CORGAN: Residents.

All right. You better testify. He said residents. He can't testify.

Residents were employees of New York Medical College, actually.

There were personnel whose -- withdrawn.

MR. CORGAN: Off the record.

(Whereupon, a discussion was held off the record.)

There were people in the MR facility at Westchester Medical Center from October 2000 till July 27th of '01 whose location within the place, within the center that they worked was in the MR facility, agreed?

There are people that work there, yes.

Not just people who work there; people whose offices were there and people who physically went to that place and that was where they went to work every day; am I correct?

Yes.

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- 2 Q And I mean separate -- I mean, can we draw a
- 3 distinction between them and people who work
- 4 all around the hospital? Can we draw that
- 5 distinction --
- 6 A Yes.
- 7 Q -- or are they all the same?
- 8 A Yes, you can draw that distinction.
- 9 Q There were certain people whose only location,
- 10 unless they happen to go for something to eat
- 11 or something like that, was in the MR facility,
- 12 correct?
- 13 A Yes.
- 14 Q And those people, were any of them not UIMA
- 15 employees?
- 16 A Again, it's how you consider the physicians
- 17 since they were actually paid through the
- 18 medical college, whether you considered them
- 19 employees of UIMA or --
- 20 Q Okay.
- 21 But you said --
- 22 A -- the medical college.
- 23 Q But you did say they were employees of UIMA
- 24 getting paid indirectly from UIMA through the
- 25 medical college?

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A No. They were directly paid through the medical college.

Q But you said indirect from UIMA?

A UIMA subsidized most of their income through the clinical revenue that was paid to cover portions of their salaries through the medical college.

Q Not to rehash everything, but you said before Dr. Panageas was an employee of UIMA.

A Correct. Their contracts were with UIMA, but I don't know whether where they are paid affects as to how they are viewed as an employee.

Q For the purposes of our discussion that we are trying to have right now, we can consider those doctors UIMA employees?

A Fine.

Q But my question to you was are there personnel who are -- we drew a distinction between those who are only in the facility and then those who kind of work all over the place in the hospital.

A Yes, I remember.

Q Can you identify any non-UIMA personnel who

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2 fall on the side of only in the facility?
3 A Not that I can think of.
4 Q Rick Hvisch did not work only in the facility?
5 A Correct.
6 Q In fact, you don't even know how often he was
7 there?
8 A Correct.
9 Q So going back to where we were of operations,
10 these operations were, in fact, conducted or
11 implemented by UIMA personnel; is that correct?
12 A They were implemented by UIMA personnel --
13 Q Okay.
14 A -- under the direction of the corporation.
15 Q I'm glad you got that in.
16 A I'm going to ask for a quick break.
17 Q Sure.
18 (Whereupon, a brief recess was taken.)
19 Q We were talking about when I asked you if
20 something should have been done in terms of
21 operation in response to the '97 incident.
22 Now the next question I'm going to ask you,
23 if something was not done after the October '97
24 incident and the conditions that existed that
25 led to that incident had remained the same,

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2 should something have been done subsequent
3 thereto?

4 A I don't know.

5 Q Fair enough.

6 If something wasn't done and the conditions
7 that existed which allowed it to happen the
8 first time were still there, then the same risk
9 still exists, doesn't it?

10 MR. CORGAN: Objection.
11 Speculation.

12 MR. GAIER: No. If nothing is done
13 and the condition exists, then the
14 same risk still exists. It's logic.
15 It's not speculation. I just want to
16 know if the doctor agrees with that.

17 MR. CORGAN: How do you -- what
18 do you consider to be nothing?

19 MR. GAIER: Well, if nothing was
20 done.

21 MR. CORGAN: I'm not going to
22 allow him to answer that question.

23 MR. GAIER: Okay.

24 Q If, Doctor, ferrous metallic oxygen canisters
25 were stored outside the door of the scanner

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room and in the proximity of the door to the scanner room prior to October of 1997 and if that continued -- withdrawn:

After the incident to Michael Colombini, did you come to learn that ferrous oxygen tanks were stored outside the door to the scanner room in proximity to the scanner room?

A Yes.

Q Do you have an opinion as to whether or not that condition -- can you accept that as being a condition?

A Yes.

Q Do you have an opinion as to whether or not that condition was a causal factor in what happened to Michael Colombini?

MR. GAIER: I can't imagine how you can possibly object to that.

MR. CORGAN: Well, I'm thinking.

MR. GAIER: It's not relating to --

MR. CORGAN: What makes him qualified to answer that question as opposed to anyone else?

MR. GAIER: As opposed to anyone else who?

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MR. CORGAN: You are asking for his medical opinion; is that -- I mean what kind of conclusion is -- that's his personal opinion.

A It --

MR. CORGAN: That's the problem I have. It doesn't take any particular expertise in radiology to have an opinion in that regard, and I don't think that opinion is a medical one and this is a medical malpractice case, so if you want to rephrase the question as to whether the storage of the tank outside, in his opinion, constituted a departure from the accepted standard of --

MR. GAIER: I didn't ask him that.

MR. CORGAN: Because maybe it didn't.

MR. GAIER: If it was a departure, then you have to worry about expertise.

MR. CORGAN: Maybe it wasn't a

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departure. Maybe it was a standard --

MR. GAIER: I didn't ask whether it was a departure. Then you have to get into whether or not he has that expertise.

Q Doctor, after Michael Colombini got severely injured and eventually died from his injuries, at some point in that period after you heard of it happening, did you undertake an effort to find out what happened?

A Yes -- well, there was an an investigation that was performed by the medical center, yes, and I was --

Q Did you personally undertake any effort to find out what happened?

A Did I personally? I was part of the Westchester investigation, yes.

Q Was there an -- I guess a group or commission?

A I'm not sure I would call it a commission, but there was a group that was -- that had many meetings related to this incident.

Q Were you part of that group?

A I was a member of the group, but not the -- not the member from the standpoint of providing

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2 expertise in MR safety.

3 Q Okay.

4 But you were a member and as part of that
5 membership in that group of persons that were
6 determined to find out what happened -- that is
7 what you were determining, part of what you
8 were determining to do, correct?

9 A Well, to determine what happened and to
10 determine what things we could do as a result
11 of that.

12 Q Yes, but also what happened, correct?

13 A I was not -- actually I should -- there are
14 two things that went on; one was an
15 investigation as to what happened. I was not
16 really part of that effort. There was an
17 investigation -- or not an investigation, but
18 an effort -- I forgot what it was actually
19 called.

20 Q Incident review?

21 A Incident review. I was part of the
22 incident review, but I was not -- I was not
23 part of the investigation.

24 Q The review is separate from the investigation?

25 A In my opinion there were two specific kinds

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2 of actions that were undertaken; one was an
3 investigation as to what happened and I was not
4 really involved in that investigation. That
5 was predominantly risk management that dealt
6 with those issues.

7 Then there was a multidisciplinary team
8 that looked at the event and made conclusions
9 about what -- what were the mitigating factors
10 associated with the event and made
11 recommendations on what should be done.

12 Q Were you a member of the multidisciplinary
13 team?

14 A I think so. I'm not positive, but I think
15 so. It's hard for me to remember back that
16 far.

17 Q Well, is there anything else that you could
18 have been a member of that we haven't covered?

19 A I was a member of lots of committees.

20 Q Relative to this incident, I mean.

21 A No, not that I can remember.

22 Q You had indicated at the get go here that you
23 were involved in either an investigation or a
24 group of people --

25 A In a review. I said I was involved in the

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review, not in the investigation.

Q Okay.

In being involved in the review, was that as a member of the interdisciplinary team that you just described?

A I believe so. Honestly, I don't remember that much about it.

Q Was there another group other than the interdisciplinary team that you could have been a member of?

A I don't remember.

Q Okay.

Have you got a copy of the Incident Review?

A Yes, I do.

MR. GAIER: I don't think we have marked this as an exhibit, did we?

MR. CORGAN: I don't know.

That's not it.

MR. GAIER: Off the record.

(Whereupon, a discussion was held off the record.)

MR. CORGAN: You have the document.

It's been produced.

MR. GAIER: Right.

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2 MR. CORGAN: However, it was a
3 part of a QA function, you know, so
4 he'll answer the questions about the
5 document, but, you know, when you get
6 beyond that into his role on the
7 interdisciplinary committee, which was
8 a QA function of the hospital, my
9 position is it is not waived, and if
10 you want him to answer certain
11 questions, which haven't been asked
12 yet, so I don't know what they are, I
13 may object, and you may be required to
14 get a court order to get him to answer
15 that.

16 MR. GAIER: I will tell you
17 what. It's my position that it is
18 clearly waived based upon production
19 of the document --

20 MR. CORGAN: The document is
21 waived.

22 MR. GAIER: -- and on some
23 actions taken by the hospital, but I
24 will try to avoid a conflict in the
25 context of if we don't have an issue,

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we don't have to get a court order.
I'm going to try to keep this pretty
confined.

MR. CORGAN: You can mark this.

(Whereupon, WCHCC Incident Review
document was marked as Plaintiffs'
Exhibit 4 for identification, as of
this date.)

Q Doctor, you see what's been marked as
Plaintiffs' Exhibit 4 for ID with today's date
on it?

A Yes.

Q You reviewed this document?

A I have. I have seen it, yes.

Q "WCHCC Incident Review."

A Yes.

Q Is this the Incident Review about which you
were speaking?

A Yes.

Q And the Incident Review on which you were a
member of the group which you believe was the
interdisciplinary team --

A Yes.

Q -- that involved making determinations as to

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improvements to prevent this from happening again?

A Yes.

Q Did it also involve, as corollary to that, before that could happen, determinating what -- at least making findings as to what actually happened?

A Yes.

Q And my question to you, Doctor, was this: Do you have an opinion, having been part of this team, as to whether the storage of the ferrous oxygen tanks outside the scanner room in proximity to the scanner room was a causal factor?

A Now based on this Incident Review --

Q Yes.

A -- I think that it was.

Q Okay.

Now, if that condition had existed since October of 1997 and prior to October 17, 1997, based upon the incident that happened in October of 1997, do you have an opinion as to whether or not that condition should have been changed?

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2 A Prior to 2001 it was not recognized as a
3 risk.

4 Q Should it have been recognized as a risk in
5 your opinion?

6 A In retrospect it was a risk.

7 Q How about based upon the October 17, '97
8 incident?

9 MR. CORGAN: Objection. There is no
10 evidence or basis for him to assume that
11 there were oxygen tanks stored in that area
12 that were the cause of that incident.

13 You haven't established that!

14 Q Can we assume for the sake of a hypothetical
15 that the oxygen tanks that were involved in the
16 '97 incident were stored in the same relative
17 area as the ones that were involved in this
18 incident?

19 MR. CORGAN: No, there is no
20 foundation for it.

21 MR. GAIER: We are not at trial yet.

22 MR. CORGAN: That's my position.

23 Q Well, let me ask you it like this: If that
24 condition existed back in October of '97, prior
25 to that incident, should it have been changed?

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MR. CORGAN: Objection.

MR. GAIER: Will you let him answer
it over objection?

MR. CORGAN: Based on what;
retrospect?

MR. GAIER: No. Based upon the
October '97 incident alone, if that
condition existed prior to that,
should it have been changed?

A No. It was not recognized as being a
deviation from -- first of all, I'm not an
expert in MR safety and in 1997, if I were
aware of that incident, I would have read the
decision about how to deal with that subsequent
operational issue, policy issue, to the MR
physicians and --

Q Let me stop you right there. I'm sorry.

A Let me finish my statement.

Q Sure, all right.

A -- and the hospital to determine what
should be done.

Q The MR physicians being, in this case in 2000,
Dr. Panageas or whoever was in that position
prior at the time of the incident?

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A Correct.

Q Do you know whether Dr. Panageas, in the course of her work in this facility, would assess, make assessments with respect to safety of the conditions in the facility?

A Do I know that she specifically made those assessments?

Q That's my question?

A I don't know that specifically. Do I assume that she would do that as part of her job, yes.

Q Do you know whether Dr. Panageas provided any training to the persons who staffed the MR facility on a regular basis? Now I'm distinguishing that group of persons who were there.

A I don't know that for fact.

Q Prior to the incident in July of 2001, had you ever seen any of the General Electric materials regarding MRI?

A Yes.

Q What had you seen? Had you seen their instruction manuals?

A I don't think so.

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Q Their operation manuals?
A I don't think so.
Q What kind of materials had you seen?
A Usually marketing materials.
Q Okay.
Had you seen any safety materials from
General Electric prior to July 27th of '01?
A I don't recall.
Q Do you recall seeing any pamphlets that would
involve safety issues from General Electric
prior to July 27th --
A I don't recall.
Q -- 2001?
A I don't recall.
Q Had you ever referred to the any of the General
Electric operational manuals for MRI?
A Prior to 2001?
Q That's correct.
A Not that I can recall.
Q Did you do it after 2001?
A Not that I can recall.
Q Have you ever heard of a General Electric
safety or instructional video relative to
safety?

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A Yes.

Q When did you hear of this?

A I think we used it at Westchester as an educational tool after the July 2001 event.

Q Do you know if you used it prior to the July 2001 event?

A I don't know.

Q Was that part of the -- with respect to the Incident Review changes that were recommended?

A I don't know if it was part of the incident review that precipitated that specific action or not.

Q So there were changes that were affected to improve MRI safety after the incident in addition to those which are reflected in the Incident Review?

A I didn't say that.

Q I'm asking you that.

A I would have to know exactly what the Incident Review says and I would -- I don't know that there were other actions taken or not taken that were in excess, if you will, of the Incident Review.

Q Well, the Incident Review lists many pages of

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actions taken starting on --

A Right.

Q -- page three and really goes right through to the end.

If you want, you can take an opportunity to review it and tell me if you see anything in there about requiring people to view the General Electric safety video.

A I don't see it as part of a specific action recommended by the Incident Review, which is what I think I said earlier.

Q But it was a change that you recall was affected after the incident with Michael Colombini?

A Again, I don't know if it was a change or not. I know that we did it after the incident. I don't know whether it was used before the incident or not.

Q A conscious effort was made after the incident to make sure it was viewed?

A I believe so.

Q Who made that determination to do that?

A I don't recall.

Q Do you have, sitting here today, do you have,

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2 and based upon practice, who you think would
3 have made that decision?

4 MR. CORGAN: Objection.

5 Don't speculate.

6 MR. GAIER: Okay.

7 Q Were you involved in that decision?

8 A I don't recall the decision or who made it,
9 so I don't recall whether I was involved in it
10 or not.

11 Q Do you recall, once the decision was made, who
12 was required to view it?

13 A I don't recall.

14 Q Do you know if this was done in the form of a
15 policy and procedure by the radiology
16 department?

17 A I don't recall.

18 Q After the incident with Michael Colombini, were
19 additional signs posted in the MR facility
20 relative to ferrous objects?

21 A I believe there was an additional sign and
22 that was placed in the facility.

23 Q Were you involved in the decision of what type
24 of sign and where to place it?

25 A No.

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2 Q Do you know who was involved in that decision?

3 A No.

4 MR. CORGAN: Just note for the record
5 my objection to all the questions
6 concerning what was done after the
7 event.

8 MR. GAIER: Why?

9 MR. CORGAN: I don't think those
10 things are --

11 MR. GAIER: It goes to a couple
12 of things. We don't have to argue
13 about it.

14 MR. CORGAN: We don't have to
15 argue, but I'm not waiving my
16 objection at the time of trial.

17 MR. GAIER: That's why you have
18 objection to the form, so it's
19 preserved anyway.

20 MR. CORGAN: It's true.

21 Q I'm going to show you a document, two
22 photographs on a single sheet, previously
23 marked as Plaintiffs' Exhibit C4 for ID dated
24 12/9/04, and I'm going to refer you to the
25 yellow sign. Do you see the yellow sign?

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A I do see it. '

Q Do you know if that was added after the incident?

A I don't remember.

Q I'm going to ask you to look at the Incident Review for a moment and I'm going to refer you to the second to last paragraph on the second page starting at the top of the paragraph. It says "in the initial interview." Do you see that?

A Yes.

Q About four lines down it refers to a "follow-up interview by HHC -- HCC where a healthcare worker revealed that she had seen and responded to the initial urgent sounds coming from the anesthesiologist."

Do you know, sitting here today, the identity of that healthcare worker, who that person was?

A No.

MR. GAIER: Off the record.

(Whereupon, a discussion was held off the record.)

Q Did you ever know, while you were at

1 Matalon
2 Westchester, a Dr. Jian Hou, H-O-U?
3 A No.
4 Q Did you ever come to learn of him after that
5 incident?
6 A Yes.
7 Q You never heard of him before the incident?
8 A No.
9 Q Did you know Dr. "Senchalla"?
10 A I don't think so.
11 Q Did you have any interactions with any of
12 anesthesiologists who staffed the MR facility?
13 A Almost never -- well, that staffed the MR
14 facility, not at all. I had no patient care
15 activities there.
16 Q In the MR facility?
17 A Right.
18 Q You did do some procedures where an
19 anesthesiologist might be involved?
20 A Yes, but pretty rare.
21 Q CAT scan sometimes, I suppose, there may be
22 sedation or something?
23 A Yes. Pretty rarely.
24 Q Did you ever have any interaction with Valhalla
25 Anesthesia Associates?

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2 A With the company?

3 Q Yeah, the group.

4 A Not as it relates to this issue.

5 Q Did you ever know a Nurse Mary Nadler?

6 A I recognize the name.

7 Q Did you recognize it from prior to this

8 incident at all?

9 A Possibly.

10 Q Do you --

11 A I recognize the name.

12 Q Do you recognize her as being a radiology

13 nurse?

14 A Yes.

15 Q But you never worked with her in the MRI

16 facility?

17 A No.

18 Q Prior to this incident, did you know Paul

19 Daniels?

20 A I knew him, yes.

21 Q And did you know Patricia Lauria?

22 A Yes.

23 Q Did you know John Priest?

24 A Yes.

25 Q After the incident, did you ever talk to any of

1 Matalon
2 them about what happened?
3 A Not that I can recall specifically.
4 Q You had no conversation with Mr. Priest after
5 this incident?
6 A Mr. Priest may have have been part of the
7 incident review process, and as part of that
8 process, we may have discussed the incident,
9 but I don't recall any specific conversations
10 between he and I about the incident.
11 Q When you say "part of the incident review
12 process," was he a member of the
13 interdisciplinary team?
14 A He might have been.
15 Q Mr. Priest wasn't employed by the hospital, was
16 he?
17 A I don't believe so at that time.
18 Q He was an employee of UIMA at the time, right?
19 A Correct.
20 MR. CORGAN: Only if you know.
21 A I believe. I don't know for sure.
22 Q Do you recall if during the incident review
23 process Mr. Priest made any statements relative
24 to the October '97 incident?
25 A I don't recall.

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- 2 Q Do you recall whether Mr. Priest was ever
- 3 questioned as part of this review process?
- 4 A Questioned by whom?
- 5 Q By persons conducting either the investigation
- 6 and interview or part of this team.
- 7 A I don't know for a fact.
- 8 Q Do you know whether between Patricia Lauria and
- 9 Paul Daniels, at the time of this incident in
- 10 July of 2001, whether one had supervisory
- 11 capacity over the other?
- 12 A I don't know.
- 13 Q Do you know who would know that?
- 14 A Perhaps John Priest or Karen DeTorrez.
- 15 Q You indicated that you had no involvement with
- 16 General Electric personnel at all during the
- 17 the time you were there prior to July 27th of
- 18 2001.
- 19 Am I correct that you had no involvement
- 20 with respect to this magnet?
- 21 A I had a lot of involvement with them with
- 22 respect to purchase of a new magnet, but not
- 23 really relating to this magnet.
- 24 Q Was this involvement, was that -- did this
- 25 commence prior to July 27th of 2001?

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A Yes.

Q Was the involvement with sales personnel from General Electric?

A Yes.

Q During any of these meetings -- first of all, did you have meetings?

A Yes.

Q In person meetings --

A Yes.

Q -- as well as telephone conversations?

A Yes.

Q Was anybody else from either UIMA or the hospital involved in any of these meetings?

A Yes.

Q Who?

A Various people would be involved based on the specific issues that were being addressed at my meetings with GE.

Q Could you identify, to the best of your ability, all persons who would have been involved at any time prior to July 27th of 2001?

A In terms of their -- we were in the process of purchasing equipment for our new imaging center.

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- Q Right.
- A So if it was MR, it would be the MR physicians, if it was ultrasound, we might involve the ultrasound physicians, if it was CT, we might involve the CT physicians.
- Q So GE was supplying this equipment, not just the MR equipment?
- A They wanted to supply all the equipment.
- Q Okay, all right.
- A They ended up supplying most of the equipment, but not all.
- Q With respect only to the MR, who'also would have been there aside from yourself?
- A From the standpoint of assessing the capabilities of the equipment, Tenner and Panageas, predominantly from the physician's side.
- Q How about nonphysicians?
- A I don't know if John Priest would have been included in those conversations or not. He might have been.
- Q How about either Mr. Daniels or Ms. Lauria?
- A No.
- Q How about Ms. DeTorrez?

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A No.

Q Do you recall who from General Electric you met with?

A There were many people that I met with.

Q Do you recall whether during any of the conversations or discussions there was any reference to safety?

A No.

Q You don't recall or there was no reference?

A I don't recall any reference to safety.

MR. CORGAN: Are we talking about the new MRI.

MR. GAIER: Yeah, but the new MRI -- the sale had begun prior to the old accident or the old MRI accident, right, so, you know, that's why I'm asking the questions.

MR. CORGAN: I see. I didn't object.

Q Was it your understanding that this -- at the time of the incident on July 27, 2001, that this equipment was being leased from General Electric?

A I believe so.

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Q Was it your understanding that General Electric owned the equipment at that time?

A Again, you don't want me to speculate so I'm not sure.

Q Good.

MR. GAIER: I'm not far from being done. Let's take a break.

(Whereupon, a brief recess was taken.)

Q Before when we talked about previous incidents, you mentioned a wheelchair and your understanding that there was an oxygen tank on a wheelchair. Were you referring to the 1997 incident?

A I thought I was, but that's not what the incident report said.

Q Okay.

Are you aware of any incidents during your tenure prior to July 27, 2001, were you aware of any incidents at Westchester, the MRI facility, in which a metal object was pulled into the machine and caused it to not be able to be used?

A Other than these two oxygen tanks?

Q I said during your tenure at Westchester

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Medical Center, meaning after March 1999 --

A Yes.

Q -- up until July 27, '01. Are you aware of any incident?

A There was -- I believe there was another incident in one -- in a new magnet, but I don't recall the specifics of the incident.

Q Was that new magnet operational prior to July 27, 2001?

A No, no.

Q So I'm trying to narrow you to this period 3/99 to 7/27/01.

A I was an unaware. I don't recall any incidents involving magnetic objects being pulled into the magnet --

Q Nothing that was reported to you?

A -- that either stopped -- I don't recall any events.

Q If something had happened like that and as a result it caused an interruption of usage of the machine, is that something that you would have expected to be reported to you?

A Yes.

Q If something like that had been reported to

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you, would you have undertaken some sort of investigation, formal or informal, to determine how it happened?

A I might have done that or I might have directed that it be done.

Q Would that have been done with an eye towards preventing repeat incidents?

A Yes.

Q In terms of your -- I want you to assume that in April of 2001 a MR assistant, a MR tech assistant by the name of Tracy Chappetta brought a patient in a wheelchair into the MR room, the wheelchair was ferrous and that it become lodged against the table due to the force of the magnet and that as a result, the woman couldn't have her MRI.

Is that something that you would have expected to be brought to your attention?

A That was the only outcome, that the woman didn't get her MR; she was not injured in any way?

Q Well, assuming further that no MRIs could be done until that wheelchair was removed?

A And that took how long?

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2 Q Well, as part of the assumption, a General
3 Electric field engineer had to be called to
4 remove it?

5 A If there were no damage and there was no
6 significant interruption of service, I might or
7 might not have been informed about that.

8 Q What qualifies a "significant interruption of
9 service"?

10 A More than a few days.

11 Q So do you mean a couple of days of interruption
12 of service --

13 A Well, I think --

14 Q Let me finish the question.

15 Up to a couple of days of interruption of
16 service as a result of a ferrous object being
17 introduced to the magnet is acceptable to the
18 point that you didn't need to be informed?

19 A No, I would say that anything exceeding a
20 day.

21 Q Okay.

22 Then if service is interrupted for a day of
23 the MR unit because a ferrous object was
24 introduced to the magnetic field, that would be
25 something you wouldn't need to know about?

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2 A Is it something that I would not need to
3 know about? That's probably an accurate
4 statement, but I didn't say that no one needed
5 to know about it.

6 Q Is it something that should be reported to the
7 hospital?

8 A I would say so. That -- I believe that
9 constitutes an incident that is worthy of being
10 reported.

11 Q And is one of the purposes that it should have
12 been reported, so that corrective measures
13 could be taken to prevent it from repeating?

14 A If corrective measures could be taken, yes.

15 Q As far as you understand it sitting here today,
16 after your whole involvement with the process
17 after Michael Colombini was injured, is
18 education and training a fundamental aspect of
19 preventing injuries in the MRI facility as a
20 result of ferrous objects?

21 A It is and it is viewed as an important
22 aspect, yes.

23 Q After the incident with Michael Colombini, were
24 ferrous oxygen canisters used in that MR
25 facility anymore?

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A They were. They are restricted to immediately outside the facility.

Q Outside the facility?

A The MR facility, that is, they were, instead of being stored in the holding area, they were now stored outside the door entering the facility.

Q Meaning the just --

A Meaning that door with the yellow sign. (Indicating)

Q Wait a second. There are a couple I've got.

MR. CORGAN: All right. Ask the question.

Q Here's exhibit C2 of 12/9/04. It's got a picture of a few exterior doors. Is this the exterior door to the MR facility?

A No.

Q That's not --

A That's not what I'm referring to. The exterior door.

Q Forgetting what you are referring to for a moment, is that the exterior door to the facility?

A The exterior from the standpoint of

1 Matalon

2 outside, not what I was referring to. That's
3 the exterior door to the entire building, not
4 the exterior door to the MR facility. That's
5 an exterior door, I believe, that leads you to
6 a corridor and if you follow that corridor, you
7 reach the MR exterior door. (Indicating)

8 Q Is there any other place that you can enter
9 through this door to go to anything other than
10 the MR facility?

11 A I believe you can go to other places other
12 than MR facility there.

13 Q In other words, if you went through the door
14 and you turned right, you would be heading
15 towards the hospital proper?

16 A Correct.

17 Q If you turned left you're in the MR facility?

18 A That's correct.

19 Q So then looking at Plaintiffs' Exhibit C3 on
20 the right side, the photo on the right side
21 has, again, that door with the yellow sign on
22 it. You are saying that after the Michael
23 Colombini incident, ferrous oxygen tanks were
24 no longer permitted past that point, meaning
25 the point of that door?

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A Correct.

Q Were portable oxygen tanks still used within the facility after the incident?

A Yes.

Q Were they all MRI compatible oxygen tanks?

A Theoretically, yes.

Q Meaning nonferrous?

A Correct.

Q Do you have any familiarity at all with the wall oxygen delivery system that was used in this facility?

A Do I have any familiarity now --

Q Well, yes.

A -- or prior to --

Q Do you have any familiarity now with the wall oxygen system that was used prior to July 27, '01?

A Very limited.

Q Is it that you learned that during the incident review?

A Yes, and after the incident.

Q Okay.

And prior -- after the incident, did you take on -- withdrawn.

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Prior to the incident of 7/27/01, did you have any involvement with safety in the MRI facility at all?

A No.

Q After the incident of 7/27/01, did you take on any involvement with the safety in the MRI facility at all?

A No.

Q Were new rules and regulations issued by the radiology department?

A I believe so.

Q Were they issued under -- did you issue them?

A I was the final signature, yes, I believe. I don't specifically recall other or new policy and procedures nor do I remember whether I signed them.

Q Sitting here today, do you know whose responsibility it was to check the levels of oxygen in the wall oxygen system?

A No.

Q When I say "was," I mean prior to and on 7/27/01.

A I do not know.

Q Are you aware that there was a Department of

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2 Health investigation into this incident as
3 well?
4 A I believe that I am aware of that.
5 Q Were you interviewed pursuant to that
6 investigation at all?
7 A I don't remember.
8 Q Were you ever interviewed at all relative to
9 any investigation regarding the incident with
10 Michael Colombini other than for the purpose of
11 this particular lawsuit?
12 A I don't remember.
13 Q Are you familiar with a fellow by the name of
14 Thomas Martin, a lawyer?
15 A I believe so.
16 Q Do you know how you knew him?
17 A I don't remember.
18 Q Are you familiar with Barbara DeCesar?
19 A Am I familiar with Barbara, yes.
20 Q Who was she?
21 A She was, I believe, the head of risk
22 management or head of something to do with
23 insurance.
24 Q At the hospital, and she was in that capacity
25 in July of 2001?

Matalon

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2 A I believe so.
- 3 Q Are you familiar with the somebody by the name
4 of Elliot Allen?
- 5 A I don't recall.
- 6 Q How about a Richard "Delavary," M.D.?
- 7 A I'm not sure. I think he might have been
8 the former chairman of medicine.
- 9 Q How about Evelyn Fineman?
- 10 A No.
- 11 Q A Connie -- I will spell it, C-O-C-I-O-P-P-O?
- 12 A I don't know.
- 13 Q How about a Dr. Baber, B-A-B-E-R?
- 14 A Baber.
- 15 Q Who is Dr. Baber?
- 16 A He preceded me as the interim chair.
- 17 Q How about a Dr. Lerner?
- 18 A He was the chief medical officer for
19 Westchester.
- 20 Q Was Dr. Lerner the chief medical officer at the
21 hospital while you were the head of the
22 radiology department?
- 23 A Yes. I don't know if that was his title,
24 but it was close to his title.
- 25 Q Did he continue in that position? Was he in

1 Matalon

2 that position on July 27th of '01?

3 A I believe so.

4 Q Do you know if he's still in that position

5 today?

6 A I have no idea.

7 Q New York Medical College has an affiliation

8 agreement with the hospital; is that correct?

9 A Yes.

10 Q Was that the same back in March of '99?

11 A Yes.

12 Q And in July of 2001?

13 A Yes.

14 Q Pursuant to this affiliation agreement --

15 withdrawn.

16 Was it pursuant to this affiliation

17 agreement that they would issue the paychecks

18 to the medical staff of UIMA?

19 A No.

20 Q Was there a legal relationship -- withdrawn.

21 Was there a relationship between New York

22 Medical College and UIMA that gave rise to them

23 issuing the checks to UIMA's medical personnel?

24 A Yes.

25 Q What was the nature of that relationship?

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2 A It preceded my getting there and I just
3 was -- I inherited a system in which all of the
4 physicians' income was funneled through the
5 college.

6 Q Did these doctors, like Dr. Panageas and Dr.
7 Tenner, all of the income from the practice of
8 medicine come through the medical college?

9 A All of their income, which was composed of
10 a portion from the affiliation agreement from
11 Westchester as well as receipts and collections
12 from patient care service that came through New
13 York Medical College.

14 Q Did UIMA reimburse New York Medical College for
15 the salary that was paid to doctors like Dr.
16 Panageas and Dr. Tenner for work they did for
17 UIMA?

18 A Yes.

19 Q That portion of the work that medical doctors
20 who worked for UIMA got reimbursed, that
21 portion of the work that the medical doctors of
22 UIMA had to -- withdrawn.

23 When UIMA would reimburse the medical
24 college for who it paid, Dr. Panageas and Dr.
25 Tenner, was that for the entire salary they

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paid these doctors?

A No.

Q So Dr. Panageas and Dr. Tenner would get payments from New York Medical College that were not reimbursed by UIMA, correct?

A Some of them would not -- their, as I stated earlier, their incomes were derived from primarily two sources; affiliation dollars that came from the medical center that were given to the college that the college then distributed to the physicians as well as clinical practice dollars that UIMA gave to medical -- to the medical college that were returned to the physicians summed with the affiliation's dollars to create one paycheck, to the best of my understanding.

Q Was every clinical practice dollar that UIMA paid to New York Medical College, was every penny of that given back to the doctors or did part of it get kept by the medical college?

A I think there were services that the medical college provided in addition to the checks they wrote that UIMA paid the college to do. I don't know if it was insurance or

Matalon

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2 benefits or something that were -- that were
3 done that were subtracted from the sum of
4 dollars that were given to the college.

5 Q Okay.

6 So let me see if I have this correctly.
7 New York Medical College would pay the doctors
8 who staffed UIMA and it would also conduct or
9 also provide certain services in the way of
10 benefits and employee administration for these
11 doctors and UIMA would pay New York Medical
12 College for that?

13 A Yes, I believe that's correct. That's why
14 there was ambiguity about who they were
15 employees of because they had benefits of
16 medical college employees through this
17 arrangement with the medical college to both
18 pay them and treat them as employees despite
19 the fact that their true employment agreement
20 was with the P.C.

21 Q So are they, arguably, employees of both?

22 A That's what I tried to indicate earlier,
23 that there was some ambiguity about that and I
24 didn't know how you wanted me to look at them.

25 Q Just as best you can.

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A Right.

Q Do you know whether New York Medical College also had some involvement with the lease of the MRI equipment prior to July 27th of '01?

A There was some involvement, but I don't know the specifics of it.

Q Do you know whether New York Medical College ---

MR. CORGAN: Priot to what date?

MR. GAIER: July 27th of '01.

MR. CORGAN: Okay.

Q Do you know whether or not New York Medical College had some involvement with the lease of the real estate, the building in which the MRI facility was housed, prior to July 27, 2001?

A I don't know for sure.

MR. GAIER: I think I'm just about done, Jack. Will you stipulate that your office will be the agent for service for any subpoena to be served on Dr. Matalon for purposes of trial?

MR. CORGAN: I will take that under advisement.

MR. GAIER: I have no further

1 Matalon
2 questions.
3 EXAMINATION BY
4 MR. SHALHOUB:
5 Q Dr. Matalon, I just have a couple of questions.
6 I won't be long, I promise.
7 I know that we had a number of
8 questions and answers that sort of related
9 to this subject today, but my first
10 question is who at the medical center or
11 at UIMA was responsible for the safety
12 training of the MR technicians?
13 A I don't know for sure.
14 Q Do you know who the possible persons are
15 who had that responsibility?
16 A It could have been John Priest, it
17 could have been the MR physicians.
18 Q And the same question for training with
19 respect to the use and operation of the MR
20 device, who at UIMA or at the medical
21 center was responsible for that training?
22 A What was the prior question restricted
23 to?
24 Q The first was a question just about
25 safety.

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A Safety. And this is operations.

I would say that it was the same -- well, operations, I would say was more likely -- it would be both, both of those. There would be some professional input in terms of what sequences were done for what kind of exam and it would be the technologists, such as John, training the new techs on specific ways of operation of the facility.

Q Is it fair to say that you personally did not have safety or operations training responsibilities for the MR technicians?

A That's fair to say.

MR. SHALHOUB: That's all I have. Thank you very much.

EXAMINATION BY

MR. CORGAN:

Q Do you know what roll Rick Hvisch played in the training of MRI techs?

A Other than providing the policy and procedures that governed how they should train the employees, none.

Q Doctor, pursuant to the MRI Services Agreement --

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do you have that in front of you?

A Yes.

Q At the time that you signed this, was it your understanding that the Westchester County Health Care Corporation referred to here as "the corporation," as the corporation was in some capacity the operator of the MRI?

A Yes, they were.

Q And are you aware of any documents -- have you seen any documents pertaining to how it came to pass that the Westchester County Health Care Corporation was placed in that position?

A Yes.

Q And have you seen the Lease Termination Agreement dated as of May 13, 1999 between the Westchester County Health Care Corporation and New York Medical College, the Westchester -- the WMC Imaging Associates and Medical Faculty Diagnostic Associates, P.C.?

A Yes.

Q Have you had the opportunity to read this?

A I've reviewed it.

Q You are not a lawyer, are you?

A No.

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2 Q Based upon your review of this document, does
3 it appear that on or about May of 1999, the
4 Westchester County Health Care Corporation, for
5 consideration, purchased the leases from the
6 former leaseholders at the site of the MRI then
7 in Macy Pavilion in 1999?

8 A Yes.

9 MR. GAIER: I object to form.

10 Q And at the time, does the document indicate
11 that the Westchester County Health Care
12 Corporation purchased and released the New York
13 Medical College, the Westchester'-- the WMC
14 Imaging Associates and Medical Faculty
15 Diagnostic Associates from involvement for MRI
16 for whatever their purposes were?

17 A Yes.

18 MR. GAIER: Object to form.

19 Q What is your understanding of the general gist
20 of this document?

21 A The Lease Termination Agreement was the
22 vehicle by which the prior private venture MR
23 could be shut down, and it had to be shut down
24 by buying out the prior owners of the MR, and
25 the consideration that was provided was that

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2 incentive for them to give up their interest in
3 that MR to allow the medical center to then own
4 and operate it with the expressed plan of
5 closing that MR with the creation of an
6 outpatient imaging center, which would contain
7 an MR, as well as a dedicated inpatient MR.

8 Q Now, Doctor, were you party to that Lease
9 Termination Agreement?

10 A I think I was indirectly a party to it.

11 Q How was that?

12 A Through UIMA's involvement with, I believe
13 it was, WMC Imaging Associates.

14 Q From the time after, that is to say from the
15 time of May 13, 1999 through July of 2001, as
16 far as you know, was the New York Medical
17 College directly involved in the operation or
18 supervision of the MRI unit which is the
19 subject of this lawsuit?

20 A 100 percent.

21 Q How so?

22 A They were responsible for all of the
23 activities associated with that MR.

24 Q The Westchester Medical Center?

25 A Correct.

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2 Q What about the New York Medical College, was
3 the New York Medical College involved
4 thereafter after this?

5 A Not in any way.

6 Q Okay.

7 And was the MRI Services Agreement that you
8 signed on behalf of University Imaging and
9 Medical Associates, P.C., was that signed
10 sometime after that date, as far as you know?

11 A It was signed --

12 Q That is after May 13, 1999.

13 MR. GAIER: October 15, 2000.

14 MR. CORGAN: October 15, 2000, okay.

15 A Correct.

16 MR. GAIER: Which we can take
17 judicial notice is after May 13, 1999.

18 Q Now, pursuant to this agreement, section
19 F --

20 MR. GAIER: Of?

21 Q -- was it provided that all the medical
22 records -- withdrawn.

23 Were there medical records maintained by --

24 A There were --

25 Q -- the people --

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A -- scans that were maintained in the MR facility.

Q Who were they the property of pursuant to this agreement?

A They were all the property of the corporation.

MR. GAIER: Which agreement are we talking about?

THE WITNESS: The MRI Services Agreement.

MR. CORGAN: The MRI Services Agreement.

Q What was meant in section 1.2, as far as you know, what was your understanding of the terms "in addition to the existing coverage and services obligations identified above, UIMA will provide all technical and administrative personnel necessary for efficient operation of the MRI"?

MR. GAIER: Jack, what paragraph are you referring to?

THE WITNESS: 1.2 on the second page.

A I'm not sure what it's referring to.

Q Did efficiency have anything to do with the

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2 monetary aspects of running the organization?

3 A Absolutely.

4 Q In section 1.4, "the services to be performed
5 by UIMA pursuant to this agreement do not
6 include any management services required to be
7 performed directly by hospital facility
8 licensed and certified by the State of New York
9 nor will it include any services for the direct
10 provision of patient care which will remain the
11 exclusive responsibility of WMC."

12 What was your understanding of that?

13 A That all aspects of patient care as well as
14 whatever were required by a licensed and
15 certified facility by the State of New York
16 should remain the sole and exclusive
17 responsibility of the corporation.

18 Q Now in section 3.6 where it says "the parties
19 understand and agree that all services rendered
20 and work performed by UIMA will be under the
21 direction and subject to the approval of the
22 corporation, that final control or direction
23 over all functions of the MRI shall repose in
24 the corporation, that the corporation is the
25 sole operator, licensee and certificate of need

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holder for the Westchester Medical Center and that the corporation is responsible for the operation of the MRI."

What was your understanding of that provision?

A That anything that UIMA did was under the expressed direction and subject to the approval of the corporation, that everything that UIMA did was subservient to the corporation's directives.

Q Now, in addition to the president of UIMA, you also held the position of director of the Department of Radiology; is that true, sir?

A Yes.

Q And could you tell us what that involved?

A That involved insuring that quality imaging services were provided to the patients of Westchester County, in this area, that came to this facility, both in MR as well as other imaging modalities.

MR. CORGAN: I have no further questions.

MR. GAIER: I got a quick follow-up relative to 3.6.

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CONTINUED EXAMINATION BY

MR. GAIER:

Q And the final control and direction of all functions of the MRI reposing in the corporation, if somebody from UIMA decided that it was inappropriate to have ferrous oxygen tanks in close proximity to the door to the scanner room, would they have had to get permission from the corporation to remove those oxygen tanks?

A I'm not sure how patients would be treated if there were no oxygen tanks in that area, so I don't see how they could have done that.

Q If somebody from UIMA wanted to take those oxygen tanks and put them behind a cabinet door, would they need to get permission from the corporation to do that?

MR. CORGAN: Objection.

A What do you mean by behind the cabinet? They would have had --

Q If --

MR. CORGAN: Let him answer.

A Well, was there a cabinet door to put them

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behind?

Q If there was, would they have had to get their permission?

A I don't know.

Q If somebody from UIMA wanted to replace the ferrous oxygen tanks with nonferrous tanks, would they have had to have permission from the corporation?

A They -- I don't know how they could have done it. It wasn't their tanks. It wasn't --

MR. CORGAN: So the answer is yes.

A It wasn't their property. Yes.

Q If somebody from UIMA wanted to keep all ferrous oxygen tanks outside the MRI facility, would they have had to get permission from the corporation?

A Yes.

Q And who from the corporation would give that permission? Who would they go to for that permission?

A They would go to Rick Hvisch and myself most likely as the director of service.

Q Did anybody from UIMA ever ask you for permission to remove the ferrous oxygen tanks

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2 from the vicinity of the scanner room?
3 A Not that I can recall.
4 Q Did anybody from UIMA ever, as far as you know,
5 ask Mr. Hvisch to do the same?
6 A Not that I know of.
7 Q Did anybody from UIMA ask you to supply
8 nonferrous oxygen tanks?
9 A Not that I can recall.
10 Q Did anybody from UIMA, as far as you know, ask
11 Mr. Hvisch to replace the ferrous tanks with
12 nonferrous oxygen tanks?
13 A Not that I know of.
14 These are all prior --
15 Q Everything I'm saying is prior to July 27,
16 2001.
17 A Just to make sure we are on the same page.
18 Q Prior to July 27, 2001.
19 Subsequent to July 27, 2001, did anyone
20 from UIMA ask you to replace the oxygen tanks?
21 A I don't recall.
22 Q Subsequent to July 27, 2001, did anybody from
23 UIMA ask to remove the ferrous oxygen tanks
24 from the MRI facility?
25 A I don't recall.

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- 2 Q Prior to July 27, 2001, did anybody from UIMA
- 3 ever indicate to you that they felt the
- 4 situation with oxygen tanks, ferrous oxygen
- 5 tanks in proximity to the scanner room was a
- 6 dangerous condition?
- 7 A Prior to 2001 -- prior to -- no.
- 8 Q Do you know whether anybody from UIMA, prior to
- 9 2001, indicated to Mr. Hvisch that they felt
- 10 that that situation was a dangerous condition?
- 11 A I'm not aware of that.
- 12 Q You said that Mr. Priest could have been the
- 13 person responsible for safety training of MRI
- 14 technicians.
- 15 MR. CORGAN: That's not --
- 16 MR. GAIER: That's what he said.
- 17 MR. CORGAN: That's not what I asked.
- 18 MR. GAIER: That's what he asked.
- 19 MR. CORGAN: You are opening up your
- 20 original questioning.
- 21 MR. GAIER: No. This is what he
- 22 asked. I have to ask a follow-up to
- 23 it.
- 24 MR. CORGAN: Go ahead.
- 25 Q Do you know whether Mr. Priest supervised

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MRI technicians relative to safety?

A Prior to 2001?

Q Prior to July 27, 2001.

A I don't know.

Q And the Lease Termination Agreement, is this part of the whole plan that was going towards the new MRI facility they were planning on building?

A Yes.

Q And UIMA's act of taking over responsibilities or administrative supervision and operation of the facility happened because of the termination agreement that took FMD out of the picture; is that correct?

A I believe so, yes.

Q WMC Imaging you said had involvement with UIMA. Do you know what the nature of that involvement was?

A I'm not sure.

MR. GAIER: I'm done.

MR. CORGAN: Just one more.

CONTINUED EXAMINATION BY

MR CORGAN:

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- 2 Q Now, Doctor, as the chief of -- I should say as
- 3 the director of radiology, were you aware
- 4 of a plan by which the facility which is
- 5 the subject of this lawsuit was to be
- 6 phased out?
- 7 A Yes.
- 8 Q And, in fact, as part of that plan, did
- 9 there come a time when the facility was
- 10 closed?
- 11 A Yes.
- 12 Q When was that?
- 13 A I believe it was in September or
- 14 October of 2001.
- 15 Q And at the time, Doctor, was the facility
- 16 dismantled?
- 17 A I believe so.
- 18 Q Was that part of the plan?
- 19 A I believe so.
- 20 Q And was the facility moved to a different
- 21 location on the campus of the Westchester
- 22 Medical Center in Valhalla?
- 23 A It wasn't really moved. There was a
- 24 new facility that was constructed in a
- 25 different location.

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Q In a different place?

A Right.

MR. CORGAN: Thank you.

CONTINUED EXAMINATION BY

MR. GAIER:

A Do you know whether or not the new facility that was being planned at that time, whether it was done for safety considerations.

A No. It was done because the prior magnet was 15 years old and it -- a new facility that was attached to the medical center was envisioned and an inpatient facility. The current -- the prior location of the WMC magnet was not a location that was conducive to inpatient care imaging.

Q When did the new facility start operation?

A The new inpatient facility?

Q The one that replaced the other facility.

A Sometime just prior to the closure of the original facility.

Q Would that have been about September or thereabouts of '01?

A Yes.

Q And did UIMA continue to operate that facility?

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A I don't remember that.

Q Was there a facility for doing outpatient MRIs once the new facility opened?

A There was an outpatient facility that opened. It might have opened actually prior to July of 2001.

Q Where was that facility?

A That was at 19 Bradhurst Avenue.

Q And that's pretty much around the corner from the hospital, isn't it?

A It's across the Sprain.

MR. CORGAN: Objection. It's a half a mile away.

Q Did UIMA or while you were president of UIMA, did you run that facility?

A While I was president of UIMA did I run that facility?

MR. CORGAN: The outpatient at Bradhurst?

MR. GAIER: The outpatient at Bradhurst.

A Yes, but I didn't run it in my capacity as the president of UIMA.

Q Well, first I asked if UIMA ran the facility. Did UIMA operate that facility?

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A I don't believe it -- it might have operated it for a short period of time, but it had its own dedicated personnel.

Q There was no overlapping personnel between that and the Westchester facility?

A There was a transition of those employees that were previously employed by UIMA until the magnet that was closed that transitioned to Westchester Imaging Services as employees of Westchester Imaging Services to provide services in the imaging center.

Q During the period that UIMA was operating the 19 Bradhurst facility, were you the president of UIMA at that time?

A Yes.

Q Was Dr. Panageas a doctor who was involved in the 19 Bradhurst facility?

A I don't remember well.

Q Did you ever have occasion to issue any policies and procedures for the 19 Bradhurst facility?

A Me, personally, I don't recall.

Q Did the hospital or the Westchester County Health Care Corporation have any control whatsoever over the 19 Bradhurst facility?

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A It had some --

MR. CORGAN: Just note my objection.
First of all, it has no relevance
whatsoever to this case, number one.
Number two, your point in time is not
fixed, and number three, if you ask me
those questions off the record I will
give you the answers to them.

MR. GAIER: I'd rather get them
on the record.

MR. CORGAN: But he doesn't
know. It's not relevant. He's gone.

MR. GAIER: No, it is. While he
was there, while he was there. I'm
not talking currently. I'm talk --

MR. CORGAN: What does it have
to do with the case, afterwards?

MR. GAIER: We are getting on to
this whole thing of who had control.

What I would like to know:

Q Did the hospital have control over the 19
Bradhurst facility?

MR. CORGAN: But it's off the campus.
It's a different place. It has nothing

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to do -- we have two different facilities in September of 2001 --

Q Do you know whether it had control?

MR. CORGAN: -- located in two different places.

Q Do you know whether it had control?

A It had some kind of control based on the partnership agreement between UIMA or a subsidiary of UIMA and a subsidiary of the corporation. The corporation exerted specific limitations on how patients would be scanned, what kind of insurance would be accepted.

Q What was the name of the UIMA subsidiary?

A I think it was UIMA, LLC.

Q Did it exist prior to July 27th of 2001?

A I believe so.

Q Did it have any separate employees from UIMA, P.C.?

A It had no employees, I believe. I'm not sure if it had employees, but it did not have employees prior to July of 2001. It was the vehicle by which UIMA participated with the medical center to create the imaging center.

Q Which imaging center; the new one that was

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being built?

A Correct.

MR. CORGAN: On or off campus?

THE WITNESS: Off campus.

MR. CORGAN: The Bradhurst one.

Q When I said the "new one," I meant the one on campus?

A The -- no. The imaging center in the outpatient facility --

Q Got it.

A -- the Bradhurst location.

The inpatient magnet was not an imaging center. It was purely an inpatient facility.

MR. GAIER: That's it.

(Time noted 4:05 P.M.)

TERENCE MATALON

Subscribed and sworn to before me
this day of , 2006.

Notary Public

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I N D E X

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C E R T I F I C A T E

I HEREBY CERTIFY that the Witness was duly sworn by me, the officer before whom this Examination Before Trial was taken, and that the minutes herein are a true and accurate transcription of the proceedings hereunder.

Rosemarie Tulumello (Ellis)
ROSEMARIE TULUMELLO (ELLIS)

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STATE OF) PG. OF PGS.

S S:

COUNTY OF)

I, Terence Matalon, wish to make the following changes, for the following reasons:

PAGE LINE

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TERENCE MATALON

Subscribed and sworn to before me
this day of 2006.

Notary Public

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