

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 quarrel with the indication for the surgery?

2 **A** That's correct.

3 **Q** And you have no quarrel with the way the
4 surgery was done?

5 **A** Correct.

6 **Q** Okay. So then you agreed to review this
7 malpractice case through the service called AMFS and
8 the money you receive is 350 per hour?

9 **A** Yes.

10 **Q** Does AMFS charge more?

11 **A** Obviously, they do. They are not going to
12 do that for free. The connection of doctor with an
13 attorney firm, they are not going to do that for free.
14 So, yeah, there's a profit margin in there for them.

15 **Q** All right. But you are free to accept cases
16 from sources outside AMFS; is that true?

17 **A** Yes, if I so desire, yes.

18 **Q** You allowed your name to be used by AMFS as
19 a form of marketing your service to lawyers; correct?

20 **A** No, I'm not out there marketing myself to
21 attorneys. As far as I know, they are not marketing
22 an individual doctor. They have a panel of
23 specialists that they use to review cases. So there's
24 no marketing intention there.

25 **Q** Okay. Let me rephrase my question.

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 You allow AMFS to use your name and you know
2 that the business of AMFS is to find experts for
3 lawyers involved in lawsuits; correct?

4 **A** Right.

5 **Q** So at least in that sense, you have taken
6 the step of joining this service to make your name
7 available to doctors -- err, to lawyers, rather, for
8 hire; true?

9 **A** True.

10 **Q** So at least in that sense, you have marketed
11 your services as an expert witness; correct?

12 **A** I guess you could look at it that way.

13 **Q** Have you done any other marketing of your
14 services outside of AMFS; that is, have you ever
15 advertised your availability as a malpractice
16 expert?

17 **A** No. I don't desire to do that. I have got
18 plenty to do with 15 cases in what now, five years. I
19 don't want to do any more. It's time-consuming and I
20 don't like sitting across the table from you guys and
21 hassling back and forth about issues.

22 So I have got some credentials, some years
23 of practice and I think my opinion is worthy on
24 certain issues and bringing out facts of the case.

25 **Q** But you have never advertised, outside of

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 any advertising AMFS may do, your availability as an
2 expert witness; correct?

3 A That's correct.

4 Q Have you ever lectured to groups of lawyers?

5 A No.

6 Q Have you ever taught any seminars that deal
7 with medical-legal witness issues?

8 A No.

9 Q Have you ever attended any seminars about
10 how to be a better expert witness?

11 A No.

12 Q Now, before I walked in here today, how much
13 money have you charged for your work in this case?

14 A Okay. When I initially got this case -- and
15 I don't even know the initial date, because I have had
16 a move since I got the initial review on this case.

17 That was, as I recall, two hours of review
18 then, 750.

19 Q \$700?

20 A \$700, okay. I have charged two hours to
21 review the case again in preparation for this
22 deposition and that's it, other than the time for the
23 actual depo that we're doing today.

24 Q Well, you spoke to Mr. Moletteire before the
25 deposition started?

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 **A** Yes, that's 30 minutes of time charged
2 there.

3 **Q** And what are you charging him for that
4 conference?

5 **A** AMFS, I presume, is going to charge him
6 about \$175, half of an hour of review time to
7 conference with him.

8 **Q** So AMFS -- who -- well, when I finish here
9 today, I have got to pay for this deposition.

10 Who do I send my check to?

11 **A** AMFS.

12 **Q** And then they take whatever they are going
13 to take and you get the rest?

14 **A** True.

15 **Q** So AMFS is going to send me a bill for 350
16 an hour for your deposition and you get less than
17 that?

18 **A** No, I get 450. They will send you a billing
19 for more than that. I don't know what it is. I don't
20 get into their business.

21 **Q** What if they send me a bill for a thousand
22 dollars an hour and you are charging me 450 an hour?

23 **A** That's between you and them, not me.

24 **Q** Who is the principal that you deal with
25 AMFS?

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 **A** Dr. Barry Gustin, G-u-s-t-i-n.

2 **Q** Do you have a retainer letter from
3 Dr. Gustin or AMFS in this case?

4 **A** No.

5 **Q** Did you ever --

6 **A** Not with me. They have sent a letter about
7 the expected appearance by me for this deposition and
8 that's it.

9 **Q** It looks like I have got a letter here dated
10 July 1, 2004, from Mr. Moletteire that says we were
11 recently contacted by AMFS and instructed to forward
12 another set of medical records regarding Smith?

13 **A** Right, right.

14 **Q** And then they enclose for you a copy of the
15 medical records as well as Mr. Smith's deposition in
16 July of 2004; correct?

17 **A** That's correct, and that's here on the
18 table.

19 **Q** Have you seen any sworn testimony other than
20 that of Mr. Smith?

21 **A** No. I believe that's the only deposition
22 that's in the group of documents.

23 **Q** Okay. Could you confirm that for me,
24 please, because there have been other depositions
25 taken in the case?

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 **A** Yes, that is correct. The only depo was
2 that of George Smith that has been available to me up
3 to this point.

4 (Document marked as Carpenter Deposition
5 Exhibit No. 3 for identification, 27th day
6 of December, 2004.)

7 BY MR. DUKES:

8 **Q** Are you aware that there have been other
9 depositions taken, at least before I told you that?

10 **A** Yes. In talking with Mr. Moletteire, he did
11 mention that there had been other depositions and that
12 Dr. Ziegler has not yet been deposed.

13 **Q** Did Mr. Moletteire tell you what other sworn
14 testimony was available to review?

15 **A** I believe Dr. Ware was one that he mentioned
16 and I'm not sure about -- maybe Dr. Remark was
17 deposed; but I'm sure he mentioned Dr. Ware.

18 **Q** Did Mr. Moletteire -- was this in the
19 conference you had before the start of the deposition
20 today?

21 **A** Yes, it was.

22 **Q** Was today the first day that you had ever
23 spoken to Mr. Moletteire about this case?

24 **A** I believe I spoke with him directly after
25 the initial review and gave him an opinion over the

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 phone.

2 Q Okay. Since that initial opinion -- and
3 that would have been way back when this case started;
4 right?

5 A Right.

6 Q Probably even before suit was filed; true?

7 A True.

8 Q Since that initial review and initial
9 conference with Mr. Moletteire way on back, have you
10 had any conversation with him before today?

11 A No, I have not.

12 Q Did Mr. Moletteire tell you in your
13 predeposition conference why he had not sent you
14 Dr. Ware's deposition?

15 A No. He was under the impression that I had
16 been sent that deposition by his office staff; and,
17 apparently, it got misplaced somehow.

18 Q So he thought it was important enough to
19 send; but, apparently, it never got here?

20 A Right.

21 Q Did he tell you, having realized at the
22 predeposition conference some hour ago that you didn't
23 have Dr. Ware's deposition, what Dr. Ware said?

24 A No, he didn't go into any detail on
25 Dr. Ware's depo.

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 Q So you have no idea what Dr. Ware may or may
2 not have said in his sworn testimony?

3 A Well, not in detail, no.

4 Q Well, even in the vaguest generalities?

5 A No.

6 Q I will tell you Dr. Remark has not been
7 deposed but I will tell you Dr. Buza has.

8 A Okay.

9 Q That's B-u-z-a.

10 A Right.

11 Q Did Mr. Moletteire tell you anything about
12 Dr. Buza's testimony?

13 A He just mentioned that he had done his depo
14 and he was a little surprised that I don't have it
15 yet.

16 Q So, again, Mr. Moletteire, apparently,
17 thought Dr. Buza's testimony was important enough to
18 send to you but was chagrinned to learn that you
19 didn't have it?

20 A Right.

21 Q Did he then in the predeposition conference
22 tell you what Dr. Buza said?

23 A No, not in detail, no.

24 Q Well, even in the vaguest generalities?

25 A He mentioned that Dr. Buza had come to the

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 conclusion that there was osteomyelitis there in
2 Mr. Smith's foot. Even though there was not concrete
3 proof and no specimen to look at under the microscope,
4 he did feel that there was osteomyelitis in the foot.

5 Q That's what Mr. Moletteire told you?

6 A Yes.

7 Q My memory of that testimony was that
8 Dr. Buza ultimately said he didn't know one way or the
9 other, but Mr. Moletteire told you that Dr. Buza had
10 stated that there was osteomyelitis?

11 A That's your interpretation of the depo and I
12 just told you what Mr. Moletteire's interpretation of
13 the depo was.

14 Q But, nonetheless, you don't think that
15 Mr. Smith ever really had osteomyelitis?

16 MR. MOLETTEIRE: Object to the form of the
17 question.

18 A I don't see concrete evidence that he did.

19 BY MR. DUKES:

20 Q Okay. Have you asked for anything that you
21 haven't received in this case?

22 A Yeah. I was looking for maybe the MRI of
23 Mr. Smith's back.

24 Q Why would you be interested in an MRI of the
25 back?

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 **A** Well, he's talking about the foot pain that
2 he is still having and you want to make sure that that
3 foot pain is due to the infection, let's say, the
4 damage to the foot from the original injury or if it
5 could possibly be caused by a disk problem irritating
6 the nerve to that foot.

7 **Q** Have you ever seen the MRI of the back?

8 **A** No.

9 **Q** Have you seen a report of it?

10 **A** No. I just saw Dr. -- I'm sorry,
11 Mr. Smith's report that he was told that he had an
12 L5-S1 disk.

13 **Q** Could an L5-S1 disk account for foot
14 discomfort?

15 **A** It can, and you have to understand what kind
16 of conditions cause what kind of pain, the
17 characteristics of those pains.

18 An L5-S1 disk would typically cause shooting
19 pain, it would cause numbness and tingling in the
20 distribution of that S1 nerve down into the foot.

21 **Q** Like a sciatic-type pain?

22 **A** Yeah, yeah, more of a deep, aching pain.

23 **Q** Have you actually looked at any imaging
24 studies in this case?

25 **A** No, I've not seen any imaging studies in

