



MondayMonday

Standard Of Not-Caring

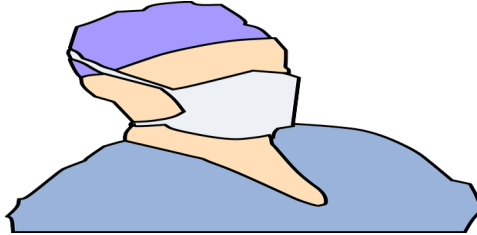
February 29, 2016

It's Brigadoon Day, that one day that only exists in a Leap Year. A special day, for sure. So what can we think of that was as special as this day? What was so singularly wonderful that it defied logic? No, not that. The other thing? Not what we're talking about. We need something ethereal; something other-worldly; something that cannot be replicated ever again. A once in a lifetime thing.

Flying. Not like today. Not like getting in a plane in New York, getting off in St. Louis, doing an expert deposition and then flying back to New York. That is to flying what love is to working in a bordello. Mechanical. Perfunctory. Cold. Lonely.

In 1957, God told Boeing to build an airplane. "If you build it," said God, "they will come." So Boeing built the 707 and Juan Trippe saw that it was good and bought it for Pan Am. Sinatra saw that it was good too and sang the well-known hymn "Come Fly With Me" in its praise. In its first commercial flight, it flew from Idlewild to Le Bourget, refueling in Gander. Gander!

We met her in our youth (as all such stories go) on a charter flight from Idlewild to the Bahamas. We sat with our family and there was plenty of room. They gave us orange juice and as much Coca-Cola as we wanted. We had a very nice lunch on trays that folded down from the back of the seat in front of us. We even got a mint. Best of all, we were in the clouds, FLYING! Nothing has ever been so blue; so bright; so alive. When we left, they



gave us wings (as if we didn't know we had them already) and a flight bag.

"Oh! I have slipped the surly bonds of Earth/And danced the skies on laughter-silvered wings," wrote John Magee. Years later, flying is like Brigadoon. It is gone, but reappears every now and then. Like after a hard day, sitting in the front of the plane, with a stiff drink and an empty head, enjoying the ability to gaze out at the stars and be ten again. High flight, to be sure.

Sometimes, as plaintiff's lawyers, we pound our fists against the night, unable to rouse justice from her unfair sleep. Poetic? Here's how it translates into reality.

Abe Novick was 75 when he was involved in an auto accident. Within days, he was complaining of pain in his neck and unable to hold even a spoon. His wife, Esther, called an ambulance and off the two went to South Nassau Communities Hospital. Abe was diagnosed with fractures to his cervical spine and underwent surgery to repair crushed vertebrae in his neck. Abe even had his own doctor treating him (the doctor would testify to his "conditions" including "inadequately controlled" diabetes.) While at the hospital, Abe developed numerous infections, including MRSA, and a Stage III decubital ulcer. Within two months of his surgery, Abe was on a feeding tube. Having done its duty, the hospital moved Abe along to a nursing home.

There, the Stage III ulcer grew into a "deep crater involving the fat layer" within two weeks, only to be reclassified as a Stage IV ulcer "a crater involving muscle and/or bone, with necrotic tissue." The nursing home, having done all it could, dutifully transferred Abe to the Long Beach Medical Center, where his entry diagnosis of collapse of bodily tissues is too lengthy to share here. The hospital then transferred Abe to another nursing home, where he died. The cause of death? "Cardiorespiratory failure, diabetes mellitus and hypertension": The "how", not the "why".

The medical defendants had learned physicians swear that there was no deviation from accepted standards. That ulcer? "Inevitable" After all, Abe was a 75-year old diabetic who was sick and injured already. Plaintiff's counter by a Registered Nurse was insufficient, as she was not a physician. The malpractice and wrongful death claims were dismissed. The Public Health Law claims against the nursing home? They only apply where there is a deprivation of rights and another expert physician swore he knew of none. Plaintiff's Registered Nurse could not specify any regulation that had been violated by "action or inaction." The Public Health Law claims were dismissed as well. *Novick v. South Nassau Communities Hospital*, 2016 NY Slip Op 01304 (2d Dep't 2/24/16).

If there are eight million stories in the naked city, why does this one disturb us so? Are we just getting old, or is it our known predilection for the maudlin? No. It's because Abe was entitled to a standard of care that would not find a death like this "inevitable". Those 'experts'? Shame.

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