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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
HONORABLE J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE
C/A NO. 2004-CP-16-322

Ruth J. Person,

Appellant,

vs.

Carolina Pines Regional Medical Center,

Respondent.

RECORD ON APPEAL
(VOLUME III OF V)

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1 picked from the jury Vinire. What happens is, both of
2 their names are placed in a box and randomly chosen, one of
3 the two, by our clerk. Mr. Clerk are you ready to do that.

4 **Clerk of Court:** Yes sir.

5 **The Court:** Then when you are ready, please make
6 your call.

7 **Clerk of Court:** Tina Tedder, Juror 107.

8 **The Court:** Ms. Tedder, when you come back in,
9 Ma'am, I will let you be seated among the twelve, and thank
10 you for your service as a juror on the panel of twelve.

11 I will ask you at this point, if you would step
12 to your jury room, we will be with you momentarily. Thank
13 you for your understanding of this.

14 (Whereupon the jury exits the courtroom at
15 9:59 a.m.)

16 **The Court:** Okay. The jury is out. I'd be glad
17 to hear from you, Mr. Driggers.

18 **Mr. Driggers:** Yes, sir. Your Honor, all those
19 questions that counsel is asking Mr. Enoch are not
20 questions within her purview of her job. She testifies
21 that she gathers information, presents it to committee.
22 All these questions have been about whether the doctor is
23 qualified, essentially asking her to speak about the
24 hospital, about the credentialing process, how it works, if
25 it worked well, and have her evaluate that.

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1 **The Court:** Who is the witness then to whom that
2 question should be directed?

3 **Mr. Driggers:** Your Honor, that is the physician
4 on the committee. Again, credentialing is what we have
5 been trying to establish, and I point Your Honor is the
6 gathering of information, and presenting it to the
7 committee. And that is what Ms. Enoch does as her role as
8 Medical Staff Coordinator. These questions are about
9 whether doctors are qualified to perform surgeries. That
10 is not her job.

11 **The Court:** Response.

12 **Mr. Corbin:** The question was, would he qualify
13 under the literature that you were suppose to be familiar
14 with.

15 **The Court:** Do you have a response to that?

16 **Mr. Driggers:** Your Honor, these are two
17 distinct issues, credentialing and privileging. What we
18 are dealing with here is the gathering of information,
19 verify that information and that is what Ms. Enoch does,
20 and she can testify to that, it goes through a process of
21 privileges being granted. If Mr. Corbin has a medical
22 expert to come down here and talk about those issues
23 whether doctors are qualified or not, use all those same
24 guidelines, but these are not questions for the
25 credentialing person.

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1 **The Court:** Your response.

2 **Mr. Corbin:** My expert will say she has an
3 absolute duty as a Credentialing Specialist to know this,
4 to read this, and be familiar with it.

5 **Mr. Driggers:** That is one thing. What I am
6 objecting to is, the questions about whether doctors are
7 qualified to do this, that, or the other.

8 **The Court:** And what bases do you have to ask
9 that question of someone, who is a Credentialing
10 Specialist.

11 **Mr. Corbin:** Because a Credentialing Specialist
12 is supposed to be familiar with the information, is
13 supposed to read it and see if under the literature, the
14 doctor has the threshold requirements to be qualified.

15 **The Court:** Did -- Go ahead, please forgive me.

16 **Mr. Corbin:** Whether or not she wants to give it
17 to the committee or the committee wants it or whatever she
18 does with it, she has a duty to know that.

19 **The Court:** All right. Do you wish to respond
20 to that.

21 **Mr. Driggers:** Yes sir, Your Honor. There has
22 been no testimony anywhere in the record, that the position
23 of Medical Staff Coordinator they are any kind of a
24 gatekeeper role. They don't make any discretion, and that
25 was the testimony Ms. Voigt gave and will give whenever she

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1 testifies, they don't never grant anybody privileges or
2 withdrawn privileges. They don't make those decisions. So
3 for that reason we don't believe that these questions about
4 whether the doctor is qualified are properly put to the
5 Medical Staff Secretary. They are just not relevant. And
6 this gets to the whole heart of the matter of this
7 credentialing issue that we have never had a ruling on
8 again, because Mr. Corbin has asked questions, we've
9 objected, and he has withdrawn things, and it's never come
10 before the Court, but now, we are living in the result of
11 it. We are having to fight for these issues during
12 testimony, but for this witness, she has no role whatsoever
13 in granting doctors privileges, which is really the issue
14 in this case. Whether Carolina Pines was negligent in
15 giving Dr. Mincheff permission to perform Laparoscopic or
16 Open Nissen Fundoplication. Not whether they gathered his
17 material together or verified it, that's not either; that's
18 all been stipulated, what his experience is. We're not
19 arguing all those matters.

20 **The Court:** Counsel, I'm going to sustain the
21 objection. You have this through other witnesses. The
22 testimony here is that it is not Ms. Enoch's decision to
23 make. There is an objection that it would be inappropriate
24 to require her to make a decision here on the stand that
25 really is not hers in the workplace. And for that reason,

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1 I will sustain the objection.

2 **Mr. Corbin:** I understand that. If I can ask a
3 general questions about what literature she reads and those
4 kinds of things, I just can't take the second step under
5 that literature is Dr. Mincheff qualified. Is that fair?

6 **The Court:** That is fair enough. You can ask
7 her what she has done in order to perform her job, if their
8 position is that she is merely a record keeper and passing
9 on to others. Well, that's their position and we will see
10 where the jury falls on that issue.

11 **Mr. Corbin:** Yes sir.

12 **The Court:** All right. We've been at it for
13 about an hour and a half. Let's stand down and take a
14 staff break at this point. We'll go into recess for about
15 ten minutes. Ms. Enoch, I'm going to ask you not to speak
16 to lawyers on either side while you are on break, because
17 you are a witness that is under testimony, but you feel
18 free to take a break.

19 **MS. ENOCH:** Yes sir.

20 **The Court:** Counsel, let me get you to come up
21 and talk about one little thing here.

22 We will take a court break now about ten or
23 fifteen minutes.

24 (Whereupon, a bench conference was held.)

25 (Whereupon, a recess was taken from 9:59

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1 a.m. until 10:21 a.m.)

2 **The Court:** All right. Are we ready for the
3 jury?

4 **Mr. Corbin:** Yes, sir.

5 **The Court:** Please bring in the jury.

6 (Whereupon, the jury enters the courtroom at
7 10:21am.)

8 **The Court:** All right. Ms. Tedder, welcome to
9 the twelve jurors, and Mr. Smith we will let you remain as
10 our alternate juror for the present time.

11 You will recall, we were questioning the witness.
12 You may proceed, counsel.

13 **Mr. Corbin:** Thank you, judge.

14 Q. (By Mr. Corbin) Ms. Enoch, you indicated to the jury
15 that you had read some of the articles. Turn to
16 article number one, please.

17 A. Yes sir.

18 Q. Would you agree, in your profession as a Credentialing
19 Specialist to the following, quote that is in the
20 first paragraph, "The basic premise is that the
21 surgeon must have the judgement and training to safely
22 complete the procedure as intended?" Do you agree
23 with that portion of it?

24 A. Yes.

25 Q. The next portion says, "as well as have the capability

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1 of immediately proceeding to a traditional open
2 procedure when circumstances so indicate," do you
3 agree with that part?

4 A. Yes.

5 Q. What does it mean?

6 A. Having the capability to perform a procedure.

7 Q. What does that sentence mean?

8 A. That the surgeon must have judgement and training to
9 safely complete these procedures. That is what it
10 means to me.

11 Q. Does it mean that if a doctor is doing something
12 laparoscopically that he better have the ability to do
13 the open procedure, too? Is that what it means?

14 A. That is what it states, yes sir.

15 Q. Do you know why that is important?

16 A. Do I know why that is important, sir?

17 Q. SAGES just put it in the very first paragraph, do you
18 have any idea why that is important?

19 A. I am not sure.

20 Q. Fair enough. On the third page of SAGES guidelines in
21 the middle of the page it again talks about, quote,
22 "the ability to proceed immediately with a traditional
23 open procedure", is that what it says?

24 A. I am sorry. Did you say the third paragraph, sir?

25 Q. It is under Complete Procedural Conduct paragraph, the

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last portion of the sentence, the ability to proceed immediately with a traditional open procedure, correct?

A. I don't see what you are referring to. You said, page three, sir?

Q. Yes, Ma'am. You are looking in the index section.

A. Okay.

Q. This is where the article actually starts. That is page three, of the article.

A. Okay. Thank you, sir.

Q. Page three, of the article, which is the guideline section does it not say the physician, must have quote, "the ability to proceed immediately with a traditional open procedure", end quote?

A. Yes, sir.

Q. That is very important. Would you agree?

A. Yes.

Q. As a Medical Staff Specialist, you are required to understand what the hospital own by laws mean, right?

A. Yes.

Q. That is part of your duty, right?

A. Yes.

Q. If you don't know what the by laws mean, if is difficult to enforce the by laws, correct?

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1 A. If I don't know what it means, sir.

2 Q. Why do you have to know what the by laws mean?

3 A. To be able to show guidance to the physicians on the
4 committees, sir or to be able to give them a copy of
5 the by laws.

6 Q. Oh, you give them a copy and provide guidance, too,
7 what kind?

8 A. I'm sorry, repeat that sir.

9 Q. You initially said, well I need to know what the by
10 laws mean so I can provide guidance to the members of
11 the committee. Then you said well. I just want to
12 give it to them.

13 A. Either/or, sir.

14 Q. Okay. So you can provide guidance involving the
15 credentialing process, correct?

16 A. Yes, sir.

17 Q. That is a very important part of your job.

18 A. It is important, sir.

19 Q. The committee depends on you to provide guidance,
20 right?

21 A. They depend on me solely or just depend on me
22 sometimes? I'm not understanding, sir.

23 Q. Does the Credentialing Committee depend on you to do
24 your job properly in giving guidance?

25 A. To do my job properly, yes sir.

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Q. In giving guidance, correct?

A. Yes, sir.

Q. Okay. Page five of the SAGES Guidelines where it talks about practical experience, when you read it, what did you think about those provisions about the applicant's experience? And Dr. Mincheff or anybody else would be the applicant, correct?

A. Yes.

Q. And it says quote, "documented experience that includes an appropriate volume of cases equivalent to the procedure in question in terms of complexity." Does that mean anything to you as a Credentialing Specialist?

A. Documented experience?

Q. Does it mean anything to you?

A. Yes sir.

Q. What does it mean?

A. Documentation that they have done the procedure or gotten some type of training.

Q. What does volume of cases mean?

A. Number of cases.

Q. Is it important under this guideline that you are supposed to determine how many surgical procedures a physician has actually performed during the re-application process, correct?

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1 A. Repeat that question, sir. Did I?

2 Q. Under this particular guideline that you read, would
3 you agree that it is important during the
4 credentialing process to know a surgeon's volume of
5 cases, how many surgeries has he done of this sort,
6 during the re-application process?

7 A. It is important for me to get the data and forward the
8 information, sir.

9 Q. Does the hospital consider that information important?

10 A. Yes.

11 Q. Do you consider it important when you gather it?

12 A. Yes.

13 Q. Why?

14 A. To show that they have done the procedure that they
15 have gotten training on that procedure.

16 Q. In the volume of cases according to the complexity of
17 the surgery, do you know what that means?

18 A. In terms of complexity?

19 Q. Yes, Ma'am.

20 A. Yes.

21 Q. What does it mean?

22 A. In terms of the complications or the degree for that
23 particular procedure.

24 Q. Is it fair to say that you are required to, or the
25 hospital is required under this guideline to know the

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volume of cases a surgeon has performed involving, for example Laparoscopic Nissen Fundoplication, if he is reapplying for privileges; you better know how many he has done in the last two years, right?

A. Yes.

Q. And he better have done enough volume of cases for that particular surgery, according to its complexity, to prove he can safely do it, right?

A. Repeat the question, sir.

Q. And he had better have produce the proof that during those two years --- we're talking about the re-application process every two years, right?

A. Yes.

Q. The surgeon is absolutely required to give the hospital enough evidence to convince it that the surgeon has done enough of these complex surgical procedures in the last two years; he has proven he can do it safely and is sufficient to evaluate,

Mr. Driggers: Objection. Relevance, Your Honor.

The Court: Just a moment before you answer. Counsel, I am going to sustain the objection. Move onto your next question.

Q. (By Mr. Corbin) Ms. Enoch, would you agree under anybody's definition as a Credentialing Specialist

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1 that adequate volume of cases of zero for nine years
2 would not qualify?

3 **Mr. Driggers:** Same objection.

4 **The Court:** I'll sustain it for the same reason,
5 counsel.

6 Q. (By Mr. Corbin) In this guideline when it states,
7 and you said it's important in your job as a
8 professional, when it states a doctor must have an
9 appropriate number of cases would you agree you better
10 have done it once in that year?

11 **Mr. Driggers:** Same, objection. Your Honor.

12 **The Court:** Again, sustained.

13 Q. (By Mr. Corbin) You are familiar with Dr. Mincheff's
14 qualifications being the Credentialing Specialist at
15 the hospital, right?

16 A. I am familiar with some of it, yes.

17 **Mr. Driggers:** Same objection, Your Honor.

18 **The Court:** That question was not,
19 inappropriate. Overruled.

20 Q. (By Mr. Corbin) Would anyone at the hospital now Dr.
21 Mincheff's qualifications through the credentialing
22 process in his file; would anybody know better than
23 you?

24 **Mr. Driggers:** Objection, Your Honor.

25 **The Court:** On what basis?

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1 **Mr. Driggers:** I would like to approach the
2 bench.

3 **The Court:** Counsel, please come up if you will.
4

5 (Whereupon, a bench conference was held in
6 the presence of the jury but out of the hearing of the
7 jury.)

8 **The Court:** The objection is overruled. Go
9 ahead.

10 **Q.** (By Mr. Corbin) Ms. Enoch, do you know of anybody at
11 the hospital who would be more familiar with or know
12 the actual content of Dr. Mincheff's credentialing
13 file in your office than you?

14 **A.** In my office, no?

15 **Q.** Is it fair to say that you are the most knowledgeable
16 person at Carolina Pines as to the contents of Dr.
17 Mincheff's credentialing file, which you keep in your
18 office, is that fair?

19 **A.** The most knowledgeable of the organization of the
20 file, sir?

21 **Q.** Do you know what it is in the file?

22 **A.** I have it organized, yes sir.

23 **Q.** Okay. You organized, you read it, you have a duty to
24 know what is in it, correct?

25 **A.** Every single page, sir?

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1 Q. Do you have a duty to make certain the file is
2 complete?

3 A. Yes sir.

4 Q. Okay.

5 A. Yes, sir.

6 Q. And, to function in your position to make certain the
7 file is complete you had to know what is in it, right?

8 A. Yes, sir.

9 Q. Does anybody to your knowledge know any more about the
10 contents of what is actually in Dr. Mincheff's file at
11 the hospital involving that file that you keep in your
12 office?

13 A. I have it organized, sir. Yes.

14 Q. Who knows more about it than you?

15 A. I don't understand what you mean by more than me?

16 Q. You don't?

17 A. What is actually the organization of the file, sir, or
18 each single page? I do not understand, sir?

19 Q. The contents of the file, whatever is physically in
20 that file that you read, compiled, organized and keep
21 in your office, do you follow me?

22 A. Okay.

23 Q. If you know someone at the hospital that has more
24 knowledge about its contents than you, please tell me.

25 A. No, sir.

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1 Q. Okay. In fact, you are aware that Dr. Barker believes
2 you are the most knowledgeable person at the hospital.

3 **Mr. Driggers:** Objection, irrelevant. May I,
4 just approach the bench? I apologize.

5 **The Court:** No, that's not necessary. I'm going
6 to sustain that, counsel. Objection, sustained.

7 Q. (By Mr. Corbin) If you know someone at the hospital
8 more than you, please tell me.

9 A. I don't understand what you are saying, sir.

10 Q. The job that you perform, you are charged with a duty
11 and it directly involves patient safety, right?

12 A. Yes.

13 Q. There is no more important job in the world in a
14 hospital than to ensure patients' safety than the job
15 that you do with respect to credentialing correct?

16 **Mr. Driggers:** Object to the form, Your Honor,
17 relevance.

18 **The Court:** I'll over rule. He has asked her
19 opinion with regard to that issue and that's appropriate.

20 **Mr. Driggers:** Thank you, Judge.

21 Q. (By Mr. Corbin) But, do you understand the question,
22 patient safety, correct?

23 A. It is important, yes sir.

24 Q. Do you know of anything more important than the job
25 you do involving credentialing in terms of patient

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1 safety?

2 A. Repeat the question, sir. I'm trying to understand
3 what you are saying.

4 Q. Is there a more important process at the hospital than
5 credentialing to protect patient safety?

6 A. I'm not sure, sir.

7 Q. What is a learning curve?

8 **Mr. Driggers:** Objection, Your Honor, relevance.

9 **The Court:** Sustained, counsel.

10 Q. (By Mr. Corbin) In the literature that you reviewed,
11 you are familiar with the general concept of learning
12 curve as it is applied to physician experience,
13 correct?

14 A. Yes.

15 **Mr. Driggers:** Objection, again. Your Honor

16 **Mr. Corbin:** She said she read it.

17 **The Court:** Overruled, she did testify earlier
18 that she had read that.

19 Q. (By Mr. Corbin) In fact as a Credentialing
20 Specialist it is important for you to understand that
21 in fact there is a learning curve of experience for
22 physicians, correct?

23 A. As a Credentialing Specialist, sir as far as a
24 learning curve, I don't make those decisions. That
25 information is forwarded onto a Medical Advisor and

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1 then that Medical Advisor is forwarded to a committee
2 and forwarded to a Medical Executive Committee then to
3 the Board of Trustees. I don't say he or she did not
4 meet his learning curve. That is not my decision,
5 sir.

6 Q. It starts with you, right?

7 A. Gathering the data.

8 Q. Is it important to you as a Credentialing Specialist
9 to gather learning curve data published in national
10 medical journals, about how many times a surgeon ought
11 to do procedures to safely do it, is that important?

12 A. Repeat the question, sir.

13 Q. Credentialing Specialists, you start the process, you
14 gather and you have got it, correct?

15 A. I gather, yes sir.

16 Q. And part of the gathering process is that you are
17 charged to be familiar with the literature, and the
18 learning curve concept all through the literature
19 about patient safety, correct?

20 A. I forward that information, sir.

21 Q. And do you gather it?

22 A. If I'm requested, sir.

23 Q. Do you know where to find it?

24 A. Yes, if I'm guided. Sometime Medical Advisors tell me
25 where I need to look for certain information or

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1 sometimes a Purity Committee will let me know.

2 Q. Do you believe the learning curve data is important?

3 A. It is important.

4 Q. It is important because in general the more surgeries
5 that a surgeon does especially in the beginning
6 learning how to do it, the more he does the less
7 complications in general, correct?

8 Mr. Driggers: Objection, relevancy.

9 The Court: Counsel, let me just talk to the
10 jury for a moment.

11 We all bring certain expectations to the courtroom.
12 I'm sure that you do as jurors. You are not in the
13 courtroom every day, just like we are not in your workplace
14 every day, so it's a new experience. And I know you see on
15 television that trials are held in a thirty minute period,
16 and every question has a typical focus, and is immediately
17 answered, and there are not objections that are raised and
18 so forth. So probably the reality of the Court is very
19 different than what expectations you may have from watching
20 television.

21 There have been multiple objections here over this
22 line of questioning and I will just tell you that one of
23 the issues in this case is whether the witness who is on
24 the stand here has a clerical function or has a decision
25 maker function. This is sort of what is happening here as

Q&A 001019

1 you hear objections. One side has a certain position and
2 questions, the other side has another position, and the
3 Court makes no comment on that. This is ultimately for the
4 jury to decide, but these are the objections and reasons
5 for the objections. I'm going to sustain the objection
6 counsel and direct you to move on, to your next issue.

7 Q. (By Mr. Corbin) Your responsibility is to understand
8 the by laws and know what they mean, correct?

9 A. Yes.

10 Q. And in the by laws, all through the by laws, there are
11 references involving current competency of physicians,
12 correct?

13 A. Yes.

14 Q. Does current competency have anything to do with a
15 learning curve?

16 Mr. Driggers: Objection, Your Honor, relevance
17 again.

18 The Court: Again, sustained.

19 Q. What does current competency mean?

20 A. Currently being able to perform a procedure, being
21 trained in that procedure.

22 Q. If you don't perform the procedure in nine years, how
23 does that definition of current competency relate to
24 that?

25 Mr. Driggers: Your Honor, relevancy.

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1 **The Court:** Counsel, let me get you to approach
2 a moment, please.

3 **The Court:** Thank you for your patience, just a
4 moment, please.

5 (Whereupon, a bench conference was held in
6 the presence of the jury but out of the hearing of the
7 jury.)

8 **The Court:** All right. The objection is
9 sustained. Please move to your next question, Mr. Corbin.

10 Q. (By Mr. Corbin) The medical staff by laws at
11 Carolina Pines in general, what impact do they have on
12 patient safety?

13 A. In general, the by laws, there is knowledge or there
14 is information about the processes of various
15 processes of the hospital doctors.

16 Q. Do you feel qualified to discuss what is in the by
17 laws?

18 A. Yes.

19 Q. In fact, the hospital requires you to know what is in
20 the by laws, correct?

21 A. I do not understand what you mean as far as reading
22 the by laws, or knowing every single word, I'm not
23 understanding.

24 Q. Does Carolina Pines expect you to know what is in the
25 by laws?

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1 A. They expect me to use the by laws, yes sir.

2 Q. To use the by laws do you know the standard?

3 A. Yes.

4 Mr. Corbin: These are the by laws and I move
5 Your Honor, to introduce these --

6 Q. If you could identify these as being the by-laws of
7 the hospital.

8 A. Yes.

9 Mr. Corbin: Your Honor, we would introduce this
10 as plaintiff's exhibit.

11 Mr. Driggers: I just want to verify what is up
12 there. I have not seen.

13 The Court: Counsel, do you want to take a look
14 at it?

15 Mr. Driggers: No objections, Your Honor.

16 The Court: Without objection, is that already
17 marked, counsel? Is it premarked? What number do you
18 have?

19 Mr. Corbin: We don't have a number for this,
20 Your Honor.

21 The Court: All right. We'll mark it.

22 Madame Court Reporter: It is Plaintiff's
23 Exhibit Number 38, Your Honor.

24 The Court: All right. Plaintiff's 38 in
25 evidence without objection.

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Whereupon, Plaintiff's

Exhibit Number 38 was marked

and admitted into the Record.

Q. (By Mr. Corbin) Ms. Enoch, if you could look at the by-laws and help us to define some of the terms in it, could you do that please?

A. Yes, sir.

Q. Page 2, paragraph 12. Can you read that to us, please?

A. Page 2 of the Articles and definitions under Interpretations, sir?

Q. Yes, Ma'am.

A. Okay. Number 12. Hospital means Hartsville HMA Incorporated, d/b/a Carolina Pines Regional Medical Center located in Hartsville, SC.

Q. Okay. Turn to page 6, please. That particular provision in paragraph 3. The title is, Eligibility Criteria and Qualifications for the Medical Staff, correct?

A. Yes, sir.

Q. In other words, what qualifications, must Dr. Mincheff have in order to do Ms. Person's surgery, correct?

A. Yes.

Q. Under the first part of that provision, what is the very first word that the physician must prove,

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paragraph 1, first word?

A. Number 1, I'm sorry, experience.

Q. Okay.

A. Okay. Yes, sir.

Q. Does that mean experience in the last two years or does that mean going back more than nine years ago?

Mr. Driggers: Objection, Your Honor, relevance.

The Court: Sustained.

Q. (By Mr. Corbin) The other term that the physician must prove is quote "demonstrative ability" end quote. That is involving the particular surgical procedure, correct?

Mr. Driggers: Object to the form, Your Honor, relevance.

The Court: I will overrule your objection, again if the witness knows, in her role in her position then she may answer.

Q. (By Mr. Corbin) You've indicated that you are required to know the definitions, correct?

A. Yes sir.

Q. Define the term demonstrative ability, please.

A. To me it is very broad. It could be a procedure log, it could be a letter from a preceptor, it could be a certificate of training from a continuing medical education course. It could be a letter from a program

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1 director verifying that he or she has watched that
2 practitioner perform certain procedures. I see it as
3 being broad.

4 Q. Can that term include anything other than a surgeon's
5 actual ability to perform that surgery?

6 Mr. Driggers: Objection, I think she has
7 answered that question.

8 The Court: Overruled.

9 Q. (By Mr. Corbin) In other words, does it also include
10 the surgeon must have done surgery on a human?

11 A. That could be part of it, yes sir. It could be part
12 of it.

13 Q. Any more important part of that?

14 A. I'm not sure.

15 Q. Assume that a surgeon wanted to do a particular type
16 of surgery, he has never done it on a human being,
17 would that satisfy the definition of demonstrative
18 ability?

19 Mr. Driggers: Your Honor, relevance.

20 The Court: I will sustain that. The objection
21 is sustained; please move to your next question.

22 Q. (By Mr. Corbin) Paragraph 5, can you read that to
23 yourself, and I'll ask you to define what that means?

24 A. Yes sir.

25 (Pause)

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1 Q. The first part and this is talking about what a
2 surgeon must have to be qualified, correct?

3 A. Yes.

4 Q. This whole section is probably the most important one
5 to provide protection for patients from unqualified
6 surgeons, correct?

7 Mr. Driggers: Objection, Your Honor,
8 relevance.

9 The Court: Counsel, again, sustained to this
10 line of questioning.

11 Q. (By Mr. Corbin) Do you feel comfortable defining
12 what that term means?

13 Mr. Driggers: Objection, Your Honor, I'm not
14 sure what --

15 The Court: The question is overruled, but I'm
16 not sure, what is the term, counsel?

17 Q. You had read paragraph number 5, the question was, do
18 you feel comfortable as the Credentialing Specialist
19 to talk about what that provision means, or should I
20 ask somebody else.

21 A. I feel comfortable with it. Yes, sir.

22 Q. The first clause, in that paragraph states, quote
23 "performance of a sufficient number of procedures".
24 Would that mean at least one?

25 Mr. Driggers: All right. Relevance again.

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1 **The Court:** Just a moment before you give an
2 answer. The witness has testified that she feels
3 comfortable answering. I'm going to overrule your
4 objection to the extent that she knows, the Court will
5 allow an answer.

6 Q. (By Mr. Corbin) Ms. Enoch, the question was the
7 performance of a sufficient number of procedures,
8 would you at least agree the definition means at least
9 one?

10 A. It is difficult for me to say a certain number,
11 because I get different information, and I need to be
12 able, like I said it could be a letter from a program
13 director, a letter from a preceptor, a letter from
14 someone that Continuing Medical Education course. To
15 put a number, those are the different things that are
16 gathered. Those are the various pieces of paper that
17 is gathered, certificates, letters from other doctors.

18 **The Court:** Please move to your next question,
19 counsel.

20 Q. (By Mr. Corbin) Could a sufficient number be less
21 than one?

22 A. Sufficient number?

23 Q. Procedures, could that be less than one?

24 A. No.

25 Q. The next clause states the doctor must prove quote:

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"The management of a sufficient number of cases".

What does management of cases mean?

A. That is broad also. I think, like I said, it could be a letter from a program director. It could be a training certificate from a continuing medical education course. It could be a Program Director that witnessed, and states, and documentation, that he or she, has watched that person perform those procedures. It is broad.

Q. Yes, Ma'am. I'm not asking you how you prove it. I'm asking you would you agree management of a sufficient number of cases means a surgeon has done at least one.

A. Yes.

Q. You keep talking about a preceptor. Can you tell the jury what a preceptor is and why that is important to ensure a patient's safety?

A. A preceptor is a person that watches you perform a procedure, or assists you in that procedure. They can actually state that you have actually done it or they have watched you do that.

Q. Is it important to have preceptors in your opinion during the credentialing process?

Mr. Driggers: Your Honor Objection.

The Court: Sustain, Counsel. I am going to sustain this entire line of questioning, because it is

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1 beyond the purview of what the witness has testified.

2 Sustained.

3 Q. (By Mr. Corbin) Under that paragraph, another clause
4 states quote, "sufficient patient care contact in all
5 hospitals of the medical staff can properly assist the
6 practitioner's current competence", what does that
7 mean?

8 A. Sufficient care contact.

9 Q. What does incompetence mean?

10 A. The care provided to patients.

11 Q. For all clinical procedures, correct?

12 A. For procedures, yes.

13 Q. Would you agree that provision means if a surgeon
14 wants to get privileges to do a Laparoscopic Nissen
15 Fundoplication procedure he has to prove his current
16 competence to be qualified, correct, under this
17 provision?

18 Mr. Driggers: Your Honor.

19 The Court: Counsel, I'm going to sustain this,
20 there is an objection coming, and again, I'm going to
21 sustain the entire line of questioning, and I'm going to
22 end the questioning of this witness if we continue to move
23 in the areas that are beyond what she has testified that
24 are her responsibilities.

25 Are there further questions on some other issue?

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1 **Mr. Corbin:** Yes sir, yes sir.

2 **The Court:** All right. Then what other issue do
3 you intend to pursue?

4 **Mr. Corbin:** Documents that she reviewed, and
5 she said they are authoritative, specifically about the
6 guidelines.

7 **The Court:** All right. Then you may proceed to
8 that area.

9 Q. (By Mr. Corbin) Ms. Enoch, you mentioned before
10 something about clinical privilege white papers,
11 correct?

12 A. Yes sir.

13 Q. Clinical privilege white papers are documents to which
14 you have access, involving credentialing matters,
15 correct?

16 A. Yes sir.

17 Q. If a hospital can do the credentialing process that
18 you do a couple of different ways. Number one. They
19 can hire someone like you, correct?

20 A. Yes.

21 Q. They can go to an outside source to get that
22 information, too, correct?

23 A. Repeat the question, sir.

24 Q. The hospital can also go to an outside credentialing
25 group to get advice about credentialing matters too,

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1 correct?

2 A. Yes.

3 Q. One outside source that HMA provides to you involves
4 clinical privilege white papers, correct?

5 **Mr. Driggers:** Your Honor, I'm going to object
6 to relevance. I think we need to approach this line of
7 questioning.

8 **The Court:** Counsel, please come up. Just a
9 moment ladies and gentlemen.

10 (Whereupon, a bench conference was held in
11 the presence of the jury but out of the hearing of the
12 jury.)

13 **The Court:** Ladies and gentlemen, I need to have
14 a brief discussion with counsel on the issues about further
15 questioning of the witness. Let me ask you, if you would
16 please, to step to your jury room, and we will be with you
17 shortly. Thank you.

18 (Whereupon the jury exits the courtroom at
19 11:00 a.m.)

20 **The Court:** All right. Mr. Corbin, you proposed
21 now to ask this witness who has testified that her job is
22 clerical in nature about guidelines and to what extent do
23 you intend to inquire the witness?

24 **Mr. Corbin:** I'm going to ask her questions that
25 she answered under oath in her deposition that in fact her

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1 job is more than just clerical. That in fact her duty is
2 to gather information and guidelines on outside sources.
3 In fact, she has done that. I identified the documents
4 that they actually used, she has access to, she identified
5 that guideline is authoritative and reliable. They pay
6 thousands of dollars for it. And I think I have a right to
7 ask it.

8 **The Court:** All right. response?

9 **Mr. Driggers:** Yes sir. Your Honor, we are
10 talking about material. A company that Carolina Pines
11 brought in to talk about credentialing in January 2005. If
12 anything, number one, it is irrelevant, has nothing to do
13 with the issues of this case in credentialing Dr. Mincheff
14 to do a Laparoscopic Nissen in 2001.

15 Number two, if you get past that, at best is you
16 call a subsequent measure that they take to address
17 credentialing. I don't think it is even that. It's just
18 not relevant. It wasn't that they had these materials in
19 place. Ms. Enoch wasn't there. The involved in this case.
20 She certainly didn't testify that she referred or reviewed
21 any of these for the time period we are talking about.

22 **The Court:** How is it relevant to the case, to
23 this specific case?

24 **Mr. Corbin:** They could have gotten this
25 information before Ms. Person's surgery. This guideline

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1 was published by their credentialing consultant in 2000, a
2 year or more before the surgery. They consider the
3 guideline to be authoritative. The guideline references
4 information from 1994. The guidelines are based on
5 information from 1994. She acknowledged it was reliable
6 and authoritative. He is still doing the same procedure.
7 She told me in her deposition, Your Honor, he would not
8 meet these guidelines, because he has not done enough of
9 these procedures. If you believe these guidelines are
10 true, he has not done enough procedures.

11 **The Court:** Counsel, what we have here is on the
12 stand as our first witness. A witness who states that her
13 job as a Credentialing Specialist is really somewhat
14 secretarial in nature. Not a decision maker. You
15 continually go into this issue about what would be the
16 right decision. This is the wrong witness. I didn't want
17 to say this in front of the jury, but we are an hour and a
18 half into this case, and there have been many objections
19 that I have sustained continuously, and this is just not
20 appropriate. I'm not going to let it go any further. If
21 you have witnesses or questions of this witness about her
22 role, then feel free to ask it. But it is just not
23 appropriate, and also as an experienced trial lawyer, which
24 both of you are, if you will look to your left, the jury is
25 out to lunch. This is not going anywhere. It is just not

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1 an appropriate use of our time here in the beginning of
2 this case to continually trod in areas that are beyond this
3 witness' purview.

4 Mr. Corbin: If I may, please.

5 The Court: Yes, sir.

6 Mr. Corbin: I'd like to at least proffer some
7 information. I would like to have the Judge take judicial
8 notice of her deposition and sworn testimony, where in fact
9 she said that she does review these clinical white papers.
10 It's in her book that she reviews. She considers this
11 information to be reliable, and she admitted if the
12 hospital wanted to know it before Ms. Person's surgery, and
13 certainly could have gotten it. She admitted that the
14 guideline was developed using SAGES from 1994 and 1996,
15 certainly before Dr. Mincheff did the surgery. She further
16 admitted that it's a good guideline. She said that Dr.
17 Mincheff, if you go by this guideline, would not have
18 enough numbers. I think it is very relevant. For your
19 information, the guideline says it must be twenty-five
20 during the year before he applies and must do ten every
21 year after that.

22 The Court: But counsel, isn't there another
23 witness that this would come in through?

24 Mr. Corbin: No.

25 The Court: Your expert who can testify to these

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1 areas rather than be tortured with what we are doing.

2 **Mr. Corbin:** Okay. All I want then, Your Honor,
3 is what she stipulates is reliable information. How do I
4 do that unless through her? If I get Barker up here he is
5 going to say I don't know anything about this. This lady
6 knows about this.

7 **The Court:** Then you have two witnesses that
8 have come up here and say we don't know anything about it.
9 Is that not what you are seeking to get from the jury? You
10 have a witness over here who doesn't know anything about
11 it, and you have a professional who doesn't know anything
12 about it, and the response to that is that nobody knows
13 anything about it.

14 **Mr. Corbin:** No, it's not. Her answer is that
15 she does know about it. And I think I'm entitled to ask
16 it.

17 **The Court:** Well this is not the answer we are
18 getting today

19 **Mr. Corbin:** Your Honor, it's Exhibit Number 38.
20 It's a critical white paper that she had read; she is
21 familiar with it. She knows about it. She has a duty to
22 understand what it means. She reads these types of
23 documents in her profession at the hospital. The hospital
24 had access to this document before Ms. Person's surgery.
25 They have access to it now. They still allowed Dr.

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1 Mincheff to do it, when under this guideline from their
2 consulting firm he was not qualified.

3 **The Court:** All right. your response, Mr.
4 Driggers.

5 **Mr. Driggers:** Yes sir, Your Honor. Her
6 testimony was that this guideline or any guideline, she
7 would review or gather at the request of the medical
8 Credentialing Committee. They would say, we need to get
9 this paper, or can you get us this thing for us to review?
10 She would get it and give it to them. She might look at it
11 before she'd give it to them, but she did nothing without
12 the request of the committee first. So that is why I
13 approached the bench earlier when he started asking about
14 medical literature, because that is her testimony. It's
15 all part of the producing process.

16 **The Court:** Counsel, what evidence do you have
17 from deposition or any other source that her word was
18 anything more than information gathering?

19 **Mr. Corbin:** Her deposition.

20 **The Court:** What line and page?

21 **Mr. Corbin:** You know, I can do that. Your
22 Honor, I don't mind taking the time to do it, but I think
23 this is relevant, too. Page 24. Lines 9-13.

24 Q. Besides the Clinical

25 Privilege White Paper

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1 Guideline this exact document
2 involving this particular
3 procedure, do you know of any
4 other guidelines involving
5 this particular procedure?

6 A. Other guidelines, no.

7 **Mr. Driggers:** This is not relevant, Your Honor.
8 She does not know any because that is not what she deals
9 with in her job.

10 **The Court:** Mr. Driggers, may I hear it please?
11 Thank you, be seated. Go ahead.

12 **Mr. Corbin:**

13 Q. Ms. Enoch, I would ask you
14 about the White Papers of the
15 Credentialing Resource
16 Center. I believe the actual
17 procedures and guidebook that
18 you use is published by the
19 credentialing resource
20 center, is that correct?

21 A. Yes.

22 Q. In that particular guidebook
23 that you use at the hospital
24 it also has some Clinical
25 White Papers contained within

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the book, correct?

A. Yes.

Q. Have you ever reviewed the
Clinical White Papers the
Greeley Resource Center
involving, Laparoscopic
Nissen Fundoplication?

A. Yes.

The Court: All right. Where in the deposition,
I don't have it yet, do you have an admission by this
witness that her role was anything more than clerical?

(Pause)

Mr. Corbin: Page 15 starting with line 22.

Q. Being a professional
credentialing person, Ms.
Enoch, would you agree that
part of your duty is to
become and maintain knowledge
of medical --

A. Yes.

The Court: Counsel, I do not find that to be
sufficient.

Mr. Corbin: I haven't finished reviewing it.

The Court: Well, I'll be glad to give you
another minute.

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(Pause)

Mr. Corbin: I think this is relevant Your Honor to what I propose to do. The next question was,

Q. What do you consider to be a reliable resource of information involving Laparoscopic Nissen Fundoplication surgery, you are indicating clinical white papers, correct?

A. Yes.

The Court: All right. The minute is up. Anything further?

Mr. Corbin: No, I would just ask the Court to incorporate whatever is in her deposition and my position that experts will testify she does have more than just a clerical duty. She has identified this particular document as reliable, and I would like to ask her questions about it.

The Court: All right. Counsel, I am going to sustain the objection and decline to allow you to do that. And before we bring the jury in, and get back into another area, I am going to sustain the objection to any thing, any question that would relate to the decision made by the credentialing panel, because this is not the appropriate

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1 witness to ask these questions of.

2 I also note, we have Dr. Mincheff here and at your
3 insistence. We have summoned him at approximately 9:00
4 this morning, it is now 11:15, and while of course he is
5 here as an essential witness, his patients are suffering
6 because they obviously have appointments and things that
7 are being cancelled. What is your intention about calling
8 Dr. Mincheff?

9 Mr. Corbin: Like I indicated to you, all I want
10 is a stipulation that those three or four pages are his,
11 that's all.

12 The Court: Do we need to call the physician for
13 this purpose which is what your position was earlier, Mr.
14 Sweeney?

15 Mr. Sweeney: He was going to publish those into
16 evidence and read them to the jury.

17 The Court: Right, I understand.

18 Mr. Sweeney: I think it's hard to do that with
19 Dr. Mincheff here so we can comment on those, so yes sir.

20 The Court: All right. then, so that those who
21 are here for this proceeding that have other places to be,
22 how much longer do you believe your direct on Ms. Enoch
23 will be?

24 Mr. Corbin: Five minutes, Your Honor, with the
25 jury.

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1 **The Court:** And cross-examination for Ms. Enoch
2 will be how long?

3 **Mr. Driggers:** Not long. Ten minutes.

4 **The Court:** All right. Very good, then that is
5 the Court's ruling, and if you wish to place a deposition
6 into evidence, I'm will let you make it a Court's exhibit
7 so anyone reviewing this case will have that opportunity to
8 do that.

9 All right. Please bring in the jury.

10 (Whereupon, the jury comes into the
11 courtroom at 11:15 a.m.)

12 **The Court:** All right. Ladies and gentlemen,
13 welcome back. I sustained the objection to the line of
14 questions about the guidelines. If you have further areas,
15 please move forward, Mr. Corbin.

16 Q. (By Mr. Corbin) Ms. Enoch, is it fair to say that
17 your function at Carolina Pines, the authority they
18 give to you, is nothing more than being a clerk?

19 A. I do not understand your question, sir.

20 Q. The authority that Carolina Pines gives to you as a
21 Credentialing Specialist, isn't anymore authority than
22 just being a mere clerk.

23 A. Could you explain what you mean by a mere clerk?

24 Q. Do you consider yourself being nothing more than a
25 mere clerk?

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1 A. A mere clerk, I perform clerical duties, is that what
2 you mean by clerk?

3 Q. Is that all you perform?

4 A. What I do is broad. I do clerical functions.

5 Q. Is that all you do?

6 A. It is a part of it.

7 Q. What else do you do besides clerical work?

8 A. I organize meetings, committee meetings.

9 Q. What is the most important thing that you do?

10 A. The most important? It is hard for me to pinpoint one
11 particular thing. I organize meetings. I credential
12 practitioners. I interact with different departments.

13 Q. Credential practitioners, that is just clerical work?

14 A. I think I don't understand what you mean by clerical.
15 Gathering data, typing documents, I do that.

16 Q. And no authority to do anything else besides clerical?

17 A. Authority?

18 Q. In other words, research, something besides clerical
19 work, are you authorized to do that?

20 A. I thought you said authority. I process paperwork,
21 yes sir. I type documents. I interact with different
22 departments.

23 Q. Is it fair to say you function as a clerk?

24 A. Yes.

25 Q. Okay, that's all I have.

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1 The Court: Thank you, now cross-examination.

2 Mr. Driggers: Yes Your Honor, briefly.

3 Cross Examination by Mr. Driggers

4 Q. Good morning Ms. Enoch.

5 A. Good morning.

6 Q. I will not keep you much longer. Just a few things to
7 clear up.

8 First of all Ms. Enoch, your employment began at
9 Carolina Pines when?

10 A. March of 2004.

11 Q. So you weren't employed at Carolina Pines in 2001,
12 correct?

13 A. No, sir.

14 Q. The year Ms. Person's surgery happened?

15 A. No, sir.

16 Q. Isn't it true that in your role, you are a Medical
17 Staff Coordinator; is that correct?

18 A. Yes sir.

19 Q. You know all aspects of the credentialing process,
20 correct?

21 A. Yes sir.

22 Q. Does it involve more than that, medical staff does
23 other functions besides just credentialing?

24 A. Yes sir.

25 Q. So that is one part of a larger process that you

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1 helped with the medical staff.

2 **Mr. Corbin:** Objection, Your Honor. Leading.

3 **The Court:** Overruled, he is on
4 cross-examination.

5 Q. Is that correct?

6 A. Yes sir.

7 Q. Explain to the jury what is the medical staff; who is
8 the medical staff when you use that term?

9 A. Practitioners, it could be doctors, it could be family
10 nurse practitioners or CRNA's or physician's
11 assistants.

12 Q. Okay. So whenever any of those people that work in
13 the hospital, any of those professionals, have a
14 question, or need information about the hospital, they
15 go to you, is that correct?

16 A. Yes sir.

17 Q. That's not just about credentialing?

18 A. No, sir.

19 Q. In regards to credentialing just to make it clear --

20 **The Court:** Counsel, we need you to speak a
21 little louder if you would. Make sure our jury can here
22 you too. Just speak a little more loudly for our court
23 system.

24 **Mr. Driggers:** I will.

25 Q. (By Mr. Driggers) In regards to credentialing, your

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1 role is to receive an application for privilege or
2 permission to work at the hospital, correct?

3 A. Yes sir.

4 Q. By one of those professionals you just talked about?

5 A. Yes sir.

6 Q. When you get that information, then you help verify
7 that information, correct?

8 A. Yes sir. Primary source verification.

9 Q. So if they come from another hospital, you will call
10 that hospital and see if they really worked there, is
11 that right?

12 A. Yes sir.

13 Q. Okay, if they went to some courses, you will say, you
14 need to send me some documentation for that, correct?

15 A. Yes sir.

16 Q. So you just verify information, that is given to you,
17 correct?

18 A. Yes sir.

19 Q. Do you have any authority or discretion to not give an
20 application onto the medical Credentialing Committee?

21 A. Do I have any authority too not?

22 Q. Right, if they ask you for an application, can you
23 say, no, you can't?

24 A. No, sir. I do not have that authority.

25 Q. If they ask for getting information about an

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1 application that the Credentialing Committee may have,
2 they go to you to help get whatever other information
3 they need, correct?

4 A. Yes sir.

5 Q. So in regards to credentialing, your role is simply
6 again, you've said it many times, gathering
7 information.

8 A. Yes sir.

9 Q. You have never given a doctor privilege to do any
10 procedure, correct?

11 A. No, sir.

12 Q. That is not within your job or your authority,
13 correct?

14 A. No, sir.

15 Q. In all of these other terms that we were going through
16 in the by-laws are those information, again, if you
17 are involved in, that is when doctor's request
18 information from you, correct?

19 A. Yes sir.

20 Q. I think we missed it just a minute ago in your
21 beginning question with Mr. Corbin, but give us a
22 little bit of your background. Where did you go to
23 school?

24 A. South Carolina State University in Orangeburg.

25 Q. You have a bachelor's degree in what?

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1 A. Business management.

2 Q. Prior to that where did you go to high school?

3 A. Hartsville High.

4 Q. That is a four-year degree, that you obtained, at
5 South Carolina State, correct?

6 A. Yes sir.

7 Q. You began working at Carolina Pines in 2004, correct?

8 A. Yes sir.

9 Mr. Driggers: That is all the questions, I
10 have. Oh, just a couple more, Your Honor.

11 The Court: Go ahead.

12 Q. (By Mr. Driggers) When we talked, when I asked you
13 earlier that you don't have authority to make any
14 decisions for giving permission for a physician to do
15 a procedure, correct?

16 A. Yes.

17 Q. That would be, privileging where you actually
18 privilege or give permission to a physician, right?

19 A. Yes.

20 Q. So your job is involved with credentialing.

21 A. Yes, I use primary source verification.

22 Q. When I say credentialing, I mean you gather
23 information.

24 A. Yes sir.

25 Q. You verify it.

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1 A. Yes, sir.

2 Q. You give it to the committee, Credentialing Committee
3 of the hospital and then their role is privileging,
4 giving that, looking at that information and deciding
5 if they should approve it.

6 A. Yes sir.

7 Mr. Driggers: That is all the questions I have.

8 The Court: Is there a redirect?

9 Mr. Corbin: None.

10 The Court: All right. Ma'am you may step down.

11 Ms. Enoch: Thank you, sir.

12 Mr. Driggers: Your Honor, I would want to
13 reserve the right to maybe recall Ms. Enoch on other
14 matters of our own case. I don't think they would object,
15 give up that right.

16 The Court: All right. very good.

17 (Whereupon, Ms. Enoch steps off the stand
18 at 1:25 p.m.)

19 The Court: Please call your next witness.

20 Mr. Corbin: We would call Dr. Tom Mincheff
21 simply to identify four records for us.

22 The Court: All right. please come forward to
23 take the oath of the witness.

24 Thomas Mincheff, M.D.

25 Being Duly Sworn Testifies as Follows

001048

1 Clerk of Court: Have a seat up there for me,
2 please.

3 The Court: Counsel, you may proceed.

4 Direct Examination by Mr. Corbin

5 Q. Dr. Mincheff, I just want to ask you, is this a copy
6 of Ms. Person's surgical --

7 A. -- May I get my glasses?

8 The Court: Yes sir.

9 (Pause)

10 A. I am sorry.

11 Q. Dr. Mincheff, can you identify what is Plaintiff's
12 Exhibit Number 33, please? What is that document?

13 A. This is a progress note.

14 Q. Was it, in fact, prepared by you?

15 A. Yes, it was written by me.

16 Q. On what date, please?

17 A. Well there are two notes here. One from 4/29/2001 and
18 the next one is 4/29, same date.

19 Q. Does that involve your surgery on Ms. Person?

20 A. The one on 4/29 involves a procedure note on a left
21 pleural effusion, that is a collection of fluid in the
22 left chest in which I did a left thoracentesis, where
23 you tap the fluid off from the left chest.

24 Q. The next note, does that relate to Ms. Person's
25 surgery?

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1 A. Yes. Yes, it does.

2 Mr. Corbin: Very well. Your Honor, I would move
3 to introduce as Number 30.

4 The Court: Any objections?

5 Mr. Driggers: None.

6 The Court: Plaintiff's Number 30 into evidence.
7 Without objections take a moment so we will mark it, note
8 this into evidence. Without objection, you may proceed
9 counsel.

10 Whereupon, Plaintiff's

11 Exhibit Number 30 was marked

12 and admitted into the Record.

13 Q. (By Mr. Corbin) Dr. Mincheff, this won't take long.
14 I just want you to identify the documents of exhibit
15 Number 31. That, in fact, is your April 30, 2001
16 progress note involving Ms. Person, correct?

17 A. Yes, that is correct.

18 Mr. Corbin: Your Honor I move to introduce that
19 as Number 31.

20 The Court: Any objection?

21 Mr. Driggers: No, sir.

22 The Court: All right. Plaintiff's 31, let's
23 mark that as being admitted into evidence without
24 objections. Go ahead counsel:

25 Whereupon, Plaintiff's

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Exhibit Number 31 was marked

and admitted into the Record.

Q. Exhibit Number 32, Dr. Mincheff is your progress note involving Ms. Person dated April 30, 2001, correct?

A. That is correct.

Mr. Corbin: Now I move to introduce exhibit Number 32.

The Court: Any objection?

Mr. Driggers: No, sir.

Q. Dr. Mincheff,

The Court: All right. just a moment, did you say no?

Mr. Driggers: No sir, no objections.

Whereupon, Plaintiff's

Exhibit Number 32 was marked

and admitted into the Record.

The Court: All right. What we do ladies and gentlemen is our court reporter, has a lot of papers around here and a lot of them already have an exhibit, but when it goes into evidence, our court reporter, makes a mark on it which is an "A" which tells us that document is admitted, and that is what we are doing to make sure we have everything straight. What's in evidence and what is not. Are we done? Please proceed.

Q. Dr. Mincheff, Exhibit Number 33 is your discharge or

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1 transfer summary involving Ms. Person dated April 30,
2 2001 at Carolina Pines, correct?

3 A. Yes. That's it.

4 Mr. Corbin: Your Honor, we would move to
5 introduce Plaintiff's Exhibit Number 33.

6 The Court: Any objections?

7 Mr. Driggers: No.

8 The Court: Let's mark that as admitted without
9 objections.

10 Whereupon, Plaintiff's

11 Exhibit Number 33 was marked

12 and admitted into the Record.

13 Mr. Corbin: That is all I needed at this time,
14 Dr. Mincheff. Thank you.

15 The Court: Cross-examination.

16 Cross Examination by Mr. Driggers

17 Q. Dr. Mincheff, Exhibit Number 30, first of all there
18 are some markings on these exhibits. Are these yours
19 the highlighted portions?

20 A. No, that is not mine.

21 Q. So someone else highlighted the copies of these
22 records, that you identified, correct?

23 A. Correct.

24 Q. Dr. Mincheff, are these or any of your records, are
25 they necessarily final records from the time they hit

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1 the book for more information to be gathered after a
2 note is written?

3 A. Once a note is written it is written. It is just part
4 of the entire medical record.

5 Q. Can there be information that is not contained in the
6 note of hospital treatment of patient?

7 A. There is some thought processes that are not in that
8 note.

9 Q. How about any conversations that are not part of
10 necessarily a medical record?

11 A. That is correct.

12 Q. So you strive to make it as complete as possible, but
13 there are times when it may not be complete. Is that
14 correct?

15 A. That is correct.

16 Q. That is true for any patient that you may treat, is
17 that correct?

18 A. That is correct.

19 Mr. Driggers: That is all I have.

20 The Court: Redirect.

21 Mr. Corbin: Not at this time.

22 The Court: Any objection to release the witness
23 at this time? Plaintiff?

24 Mr. Corbin: Your Honor, later on in the case,
25 we might need Dr. Mincheff again, but not at this time.

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1 **The Court:** Defendant?

2 **Mr. Driggers:** No sir, Your Honor.

3 **The Court:** You are free to go if you wish, you
4 are free to remain if you wish.

5 **Dr. Mincheff:** Thank you, Your Honor.

6 **The Court:** Please call your next witness.

7 **Mr. Corbin:** Your Honor, at this time, we call
8 Miss. Laura Voigt to the witness stand.

9 **The Court:** Please come forward and take the
10 oath of a witness.

11 **Laura A. Voigt**

12 **Being Duly Sworn Testifies as Follows**

13 **Clerk of Court:** Have a seat right there, please.

14 **Voir Dire Examination by Mr. Corbin**

15 A. Good morning.

16 Q. Ms. Voigt, could you please state your complete name
17 for the record.

18 A. Laura A. Voigt

19 Q. Ms. Voigt, where do currently you live, please?

20 A. In Louisville, Missouri.

21 Q. How far is that from St. Louis.

22 A. About an hour away.

23 Q. Ms. Voigt, what is your profession, please.

24 A. I am a consultant for several types of people. I
25 assist attorneys with cases and I also do

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1 credentialing for a local company where I live. I do
2 all of their credentialing and then every two years, I
3 do all of their recredentialing also.

4 Q. Ms. Voigt, do you have any certifications from any
5 national organizations involving credentialing
6 physicians.

7 A. Yes.

8 Q. Which ones, please?

9 A. In 1989, I received the Certified Professional Medical
10 Services Management Certification. And then in 1999,
11 I received the Certified Provider Credentialing
12 Specialist Certification.

13 Q. Which organization, please?

14 A. That is through NAMSS.

15 Q. In general, what is NAMSS.

16 A. It is the National Association of Medical Staff
17 Services. That is what it stands for. They are the
18 pioneers, if you will, in hospital credentialing of
19 doctors.

20 Q. Besides the two certifications you have from NAMSS,
21 the CPSM and the CPCSC, does your organization award
22 any higher certifications for expertise?

23 A. They absolutely do not and they have nothing to do
24 with any degrees either.

25 Q. Can you tell the jury your background involving

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1 credentialing in hospitals?

2 A. Yes. I have twenty-one years of experience at
3 credentialing doctors. I started --- I'm sorry, I
4 have to look it was such a long time ago --- I started
5 in 1985 at the Jewish Hospital at Washington
6 University, which is in St. Louis. I started
7 credentialing doctors there. That is where I started
8 my credentialing career at and I was there for ten-
9 years and then I went to Anheuser-Busch in St. Louis
10 where I also did all the credentialing of all the
11 providers for the employee/health program.

12 Q. Ms. Voigt, what is JCAHO?

13 A. It is the Joint Commission as we call the Joint
14 Commission for short. The Joint Commission is a
15 national company that certifies hospitals in the
16 United States. Their main goal is quality for
17 patients as well as the employees, the staff, the
18 doctors. It's an overall quality control
19 organization.

20 Q. What significance, if any, does credentialing have
21 involving patient safety?

22 A. I'm sorry?

23 Q. What significance does credentialing have, involving
24 patient safety in hospitals?

25 A. It's the most important part. Credentialing is the

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1 most important part to assure patients get quality
2 care and don't get injured.

3 Q. Are Credentialing Specialists in hospitals mere
4 clerks?

5 A. No, sir.

6 Q. Are members of NAMSS taught that in your profession
7 you are a mere clerk?

8 A. No.

9 Q. Are the duties and responsibilities that hospitals
10 give to Certified Credentialing Specialists nothing
11 more than clerks?

12 A. I wasn't sure, what you just asked.

13 Q. The duties that you have in your profession as a
14 Credentialing Specialist, those in hospitals, are they
15 mere clerks?

16 A. Absolutely not.

17 Q. What should a Certified Credentialing Specialist do in
18 a hospital?

19 A. You have to know a lot of the background of
20 credentialing, because when you are going through the
21 applications, you have to look for the red flags. You
22 have to know that if the doctor has listed on his CV
23 if there is a gap in service for six months or a year,
24 that would be a red flag. There is a lot of different
25 ones. If they have a lot of malpractice suits against

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1 them, that would be a red flag. So you have to be
2 trained to actually look for those red flags and to
3 know and be able to pick up on anything out of the
4 norm that would have to go before the department heads
5 attention.

6 Q. If a surgeon is applying for a privilege in a hospital
7 has not done it for nine years, is that a red flag?

8 A. Absolutely. That is why the Joint Commission requires
9 that you recertify all of the doctors every two years.
10 They have to be reappointed every two years to the
11 medical staff to make sure that all their information
12 is kept up to date.

13 Q. As a Credentialing Specialist in a hospital, would you
14 have any duty to determine the current activity level
15 of a surgeon?

16 A. Yes, you would.

17 Q. How would you do that and what does that mean, please?

18 A. It's done differently in different hospitals. A lot
19 of times it would be obtained off of a computer
20 program and more likely than not obtained from the
21 quality assurance department.

22 Q. If a Credentialing Specialist at a hospital were to
23 receive an application for a privilege and research
24 indicates he has not done it for nine years, what are
25 you supposed to do?

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1 A. I would immediately take that application along with
2 the authoritative literature to the Chief of that
3 Department and make him very aware of that.

4 Q. What do you mean --- The position that Ms. Enoch holds
5 at Carolina Pines as being a member of the
6 organization of NAMSS, do you think she has any duty
7 to be familiar with the medical literature?

8 A. I do.

9 Q. What is that duty, please?

10 A. You need to be aware of it because you are the first
11 point of contact for all of this information coming
12 across your desk. You need to have an awareness of
13 that information so you can take it to the Chief of
14 that Department.

15 Q. If a surgeon is Board Certified, does that mean he can
16 do any surgery he wants.

17 A. No, it does not. Joint Commission Standards even
18 states that Board Certification alone is not enough to
19 grant any type of privilege to the doctor.

20 Q. If a surgeon is qualified to do an open type surgical
21 procedure, is he also qualified to do the laparoscopic
22 procedure.

23 A. No.

24 Q. If a surgeon has not done open reflux surgery for
25 about nine years, and he applies for the very first

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1 time to the laparoscopic reflux surgery, what would
2 you do?

3 A. You would have to deny those privileges until he
4 either obtained more training on the open, because all
5 of the authoritative literature states that you cannot
6 have the laparoscopic part of the privileges if you do
7 not have the open part of the privileges.

8 Q. If a hospital does not authorize or permit a member of
9 NAMSS to research medical literature involving your
10 applications, what are your thoughts about that? Do
11 you follow me? If a hospital tells Ms. Enoch, for
12 example, Carolina Pines does not give her authority to
13 research medical issues in the journals being a member
14 of NAMSS, what do you think about that?

15 A. Well, it is a big help to the Chiefs of Service, the
16 Department Chiefs have so many other responsibilities
17 that they need to be doing that it is a great resource
18 for any hospital to have for their Medical Staff
19 Coordinator to be up on all that information, because
20 if the Medical Staff Coordinator doesn't do it,
21 somebody has to do it and so then it has to fall to
22 the Chief of the Department or to the Medical
23 Executive Committee.

24 Q. You indicated that a Credentialing Specialist would
25 review authoritative literature, did in fact you

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1 review literature regarding Ms. Person's type of
2 surgery?

3 A. I did.

4 Q. Do you know of any authoritative literature involving
5 Ms. Person's type of surgery?

6 A. There is actually a lot of it. The one that is most
7 relevant to her surgery does come from a group called
8 SAGES. SAGES is a laparoscopic society and the
9 correct name of that is Society of American
10 Gastroendoscopic Surgeons. It's a mouthful; that's
11 why they call it SAGES. But they do publish very good
12 guidelines for the doctors who do these types of
13 procedures.

14 Q. What is the importance of national organization
15 guidelines involving particular surgical procedures to
16 credentialing?

17 A. It gives the doctors of the committees who make the
18 decisions and gives them the guidelines they need in
19 order to grant the privileges. These associations are
20 made up of thousands of doctors across the country who
21 specifically do these procedures. So they are very
22 experienced at it, and very knowledgeable about it,
23 and they are the ones who write these guidelines.

24 Q. Do those guidelines contain minimum thresholds or
25 maximum thresholds?

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1 A. Minimum thresholds.

2 Q. In other words, if you don't meet these minimums, you
3 don't qualify, correct?

4 A. That is correct.

5 Q. Under the SAGES guidelines --- did you review Dr.
6 Mincheff's deposition?

7 A. I did.

8 Q. In Dr. Mincheff's deposition, did he testify under
9 oath about his training, education and experience?

10 A. Yes, he did.

11 Q. Based upon your review of his deposition, do you have
12 an opinion as to whether or not he would meet minimum
13 standards of the SAGES guidelines?

14 A. Yes. Dr. Mincheff stated that he attended two
15 different courses of this lap nissen procedure that he
16 performed. They were both two day classes, which is
17 good because doctors who don't get the training in
18 their residency, this is, in fact, how they get it.
19 They go to these two day classes where they actually
20 do hands on experience on a pig and then they come
21 back to their hospital with their training
22 certificate, and the part that got left out of this
23 equation was when Dr. Mincheff came back from his
24 training, he should have performed his first, actually
25 his first twenty-five procedures with an experienced

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1 surgeon who already had the privileges in that
2 procedure.

3 Q. Did, in fact, he do that?

4 A. No, he didn't. He had only done surgery on two pigs
5 when he received the privileges at Carolina Pines to
6 do this procedure on a human being.

7 Q. Dr. Mincheff was first given privileges at Carolina
8 Pines in 1996.

9 A. Correct.

10 Q. Carolina Pines had opportunities every two years to
11 reevaluate, correct?

12 A. Correct.

13 Q. Through his deposition, which I think was in 2005 or
14 whenever it was, even at that point in time, had he
15 gained enough experience, in your opinion, to safely
16 do Ms. Person's surgery?

17 A. For the laparoscopy portion of the surgery, he had
18 done approximately eight ever in his life after
19 receiving the training. So prior to Ms. Person, he
20 had done eight Laparoscopy Procedures, but he still
21 should not have had that privilege granted to him,
22 because he had done zero of the Open Procedures, and
23 all the authoritative documentation for these
24 associations say that you cannot even have the
25 laparoscopic portion of the privilege until you are

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1 qualified at the open portion of the procedure.

2 Laparoscopy is a great thing for people who have to
3 have surgery because they don't have to cut you open,
4 they just do two or three little incisions and the
5 healing time is a lot better and it is wonderful for
6 the patient. But if something goes wrong during that
7 procedure and the doctor has to convert to the open
8 where they have to cut you open, that doctor has to
9 know how to do the open procedure as well as the lap.
10 Dr. Mincheff had not done any of those open procedures
11 in ten years per his own testimony.

12 Q. Ms. Voigt, do you know of any published guideline or
13 any hospital where Dr. Mincheff would be given
14 privilege to do Laparoscopic Nissen Fundoplication
15 procedure having not done the open for better than ten
16 years?

17 A. None.

18 Q. Ms. Voigt, can you explain to us what the learning
19 curve is involving surgical procedures?

20 A. Yes. The learning curve - the Department of Health
21 and Human Services published a paper on learning
22 curves for this particular procedure. The learning
23 curve is between twenty-five and fifty procedures
24 before you are considered an expert at doing this.
25 Now when Dr. Mincheff went and took his training at

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1 Duke, he was told by his instructor who trained him
2 about the learning curve also, being anywhere between
3 twenty and fifty procedures. SAGES suggests that the
4 learning curve is twenty-five to cases before
5 obtaining proficiency. That is also what the U.S.
6 Dept. of Health and Human Services also says that the
7 learning curve is twenty-five to thirty procedures
8 before you can become proficient at this procedure.
9 Another thing that I would like to compare it to is
10 that this lap nissen procedure is a lot more
11 complicated than for instance a lap coli, which is
12 having your gall bladder taken out, by this new way of
13 doing it, the laparoscopic, where they only make the
14 three incisions. The learning curve on the lap coli
15 is much lower. It is only fifteen to twenty and on
16 the lap nissen, it is twenty-five to thirty, because
17 it is a much more complex laparoscopic procedure.

18 Q. Ms. Voigt, are you aware of any medical literature
19 anywhere that would support Carolina's position that
20 Dr. Mincheff was in fact qualified to do the lap
21 procedure not having done the open for nine to ten
22 years?

23 A. No, none at all. In fact, the Medical Executive
24 Committee chairman, the doctor who was running the
25 meeting at the time to give privileges to Dr. Mincheff

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1 was a member of SAGES and he knew of the SAGES
2 guidelines. He knew what they required a learning
3 curve of twenty-five to thirty before you could give
4 privileges to obtain unrestricted privileges. Also,
5 Dr. Cooler, who was the Department Chair at the time,
6 he also was a member of SAGES and was well aware of
7 the guidelines, and that is both, per their own
8 testimony in their depositions.

9 Q. Do you have an opinion whether or not you believe
10 Carolina Pines ignored the SAGES guidelines?

11 A. I think they had to ignore it, yes. Even their own
12 Committee Chairperson ignored that, because he
13 testified he was well aware of what the guidelines
14 were.

15 Q. Ms. Voigt, did you review Carolina Pines by-laws?

16 A. I did.

17 Q. In general what, are by-laws for a hospital?

18 A. Medical staff by-laws are --- first of all, they are
19 required in every hospital. And they are important
20 enough that when a new doctor comes on the medical
21 staff, they have to sign a paper that says they agree
22 to abide by the hospitals by-laws. The by-laws are a
23 framework and a foundation that the medical staff
24 operates off of at every hospital.

25 Mr. Corbin: Your Honor, at this time, I'd like

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1 to submit Ms. Voigt to you and ask you to accept her as a
2 Certified Credentialing Specialist and expert.

3 **The Court:** All right. there is a Motion that
4 the witness be admitted as an expert witness in this area,
5 what says the defense?

6 **Mr. Driggers:** Your Honor, we acknowledge that
7 she is qualified as an expert in South Carolina law, but
8 we'll let the jury decide the degree of her expertise.

9 **The Court:** Do you have questions for the
10 witness about expertise?

11 **Mr. Driggers:** We'll have questions during
12 cross.

13 **The Court:** All right. ladies and gentlemen, so
14 that you will understand, the witness has been offered as
15 an expert witness. Our previous witnesses have testified
16 as lay witnesses. The difference between a lay witness,
17 and most witnesses are lay witnesses, and an expert witness
18 is this, because of some degree of training, skill,
19 experience, or knowledge in a particular area, the witness
20 is allowed to testify in that particular area and not only
21 tell about what they saw or observe, which is what a lay
22 witness testifies to, but they also, an expert can testify
23 to what opinion they derived from what they saw or what
24 they heard. That is the difference between an expert and a
25 lay witness.

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1 Now, please understand, ultimately it is up to the
2 jury to determine what the credibility and believability of
3 any witness is whether it is expert or lay and furthermore,
4 it is up to you, the members of the jury, to determine
5 whether any witnesses testimony should be given credence or
6 credibility. The purpose of an expert witness in
7 testifying is not to somehow control your judgment, but it
8 is to assist you in matters of fact that you are called
9 upon to decide within the case. You may, again, give it
10 such credibility or believability as you deem it to be
11 entitled to. With that understanding and without
12 objection, the witness is qualified as an expert in the
13 area of credentialing.

14 Mr. Corbin: Thank you, judge.

15 The Court: Mr. Driggers.

16 Mr. Driggers: On further reflection, we'd like
17 to ask some questions at this time.

18 The Court: Counsel, you waived that because
19 what we do is before I decide is when the questions would
20 have been allowed. So we will move forward. Go ahead.

21 Direct Examination by Mr. Corbin

22 Q. Ms. Voigt, the answers that you have given to me at
23 this point, have they been based on a reasonable
24 degree of certainty as a Credentialing Specialist?

25 A. Yes, sir.

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1 Q. Would you frame the rest of your testimony based upon
2 a reasonable degree of certainty as a Credentialing
3 Specialist for me, please?

4 A. Yes sir.

5 Q. You indicated that you reviewed the by-laws. Upon
6 your review of the by-laws and you talk about
7 guideline violations, did you note any violations of
8 Carolina Pines' own by-laws.

9 A. Yes sir.

10 Q. Could you go through those and tell the jury what the
11 violations were?

12 A. Yes. As you heard a little bit about by-laws this
13 morning, as I said they are the foundation of how the
14 medical staff has to operate on a day to day basis.
15 They do also contain, if you will, policies and
16 procedures of how certain aspects of their jobs are to
17 be performed. So under the article of Appointment and
18 Reappointment, it talks about the criteria, that the
19 hospital uses, to first of all give a doctor, to
20 appoint a doctor to the medical staff of the hospital,
21 and secondly to grant them the privileges that will
22 allow them to do the certain types of procedures that
23 they are requesting they want to do. Under their
24 Appointment and Reappointment section, one of their
25 first criteria states that the applicant shall have

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1 experience, training and demonstrative ability to
2 perform the privileges they are requesting. So one of
3 the first things the hospital is looking for out of an
4 applicant who is applying for privileges is that they
5 have experience doing these procedures that they are
6 requesting to do, they have had the training to do
7 these procedures, and that they can demonstrate to the
8 hospital that they have the ability to do these
9 procedures that they are requesting to do. So that is
10 the first point under their Appointment Policy
11 Procedure, if you will.

12 Q. Ms. Voigt, do you have any way possible that Dr.
13 Mincheff given his experience level could have
14 provided sufficient experience to prove he can safely
15 do it?

16 A. No, because zero in ten years is no experience at all.

17 Q. Please continue.

18 A. The next item is that the doctor has a consistent
19 ability to carry out --- And another thing that I'd
20 like to tell you about is a lot of these words are
21 taken right out of the Joint Commission Standards.
22 Since the Joint Commission accredits a hospital and
23 Carolina Pines is accredited by the Joint Commission.
24 The Joint Commission has a book of standards this
25 thick that hospitals have to follow in every area, not

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1 just in the medical staff, but all the way down to the
2 laundry and food services. And so Joint Commission
3 publishes these guidelines or these standards that
4 hospitals have to follow. And so Joint Commission
5 does have standards on how doctors have to be
6 credentialed at hospitals. So a lot of these words
7 are taken right out of those Joint Commission
8 Standards and that is okay. A lot of hospitals do it
9 that way. They write their by-laws that way and that
10 is fine. The hospital by-laws say that the doctor has
11 to have consistent ability to carry out his clinical
12 privileges, and that is another place where they
13 violated it.

14 Q. How so, please?

15 A. Well because if you haven't done a procedure for ten
16 years, there is no consistency there, and the hospital
17 would really have no idea if the doctor still knew how
18 to perform that procedure or not.

19 Q. Did Dr. Mincheff still get the privilege to do the
20 operation?

21 A. He did.

22 Q. Please continue.

23 A. And that is why the medical staff by-laws say what has
24 to be followed is that the doctor has to perform a
25 sufficient number of procedures and a sufficient

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1 number of cases, so that the medical staff can
2 properly assess the doctor's current competency for
3 all clinical privileges they are requesting. And Dr.
4 Barker testified to this in his deposition also. Dr.
5 Barker who runs the committee, who granted Dr.
6 Mincheff the privileges, that is who Dr. Barker is.
7 He was the Chairman of that committee in 2001. Dr.
8 Barker also stated in his testimony that the committee
9 does do this. They check the doctor's utilization of
10 each privilege they are looking for to make sure that
11 they have done that procedure.

12 Q. Was Dr. Mincheff's experience of no open surgeries
13 involving Ms. Person's operation for nine years enough
14 to satisfy Carolina Pines?

15 A. It appears to be.

16 Q. Please continue. And, let me ask you this Ms. Voigt.
17 The sufficient number of procedures that Dr. Mincheff
18 had to prove he had to get the privilege, could that
19 be anything less than one?

20 A. No, it could not. In fact, I would like to go back to
21 the authoritative literature that talks about this
22 particular procedure that was performed, and the SAGES
23 guideline. Now this is for reappointment. Now keep
24 in mind, for the initial appointment that was in 1996
25 when Dr. Mincheff first got privileges and that is

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1 where the twenty-five to the thirty cases comes in to
2 play at the initial privileges. Then every two years,
3 a doctor has to be reappointed to the medical staff
4 and his privileges have to be regranted to him every
5 two years. He has to apply for them again. SAGES
6 publishes that a doctor has to have five to ten, a
7 doctor has to do five to ten lap nissen per year to
8 maintain proficiency. The Greeley white paper that you
9 have heard them talk about today, a white paper is a
10 paper that is published to assist Medical Executive
11 Committees in making privilege determinations and
12 decisions. In fact all of this information is
13 published for that reason. They are guidelines that
14 the hospitals can follow. The Greeley white paper
15 requires twelve Lap Nissens done per year to maintain
16 proficiency. Dr. Crechlaw was interviewed by Mr.
17 Greeley who put this clinical white paper together on
18 the lap nissen privilege and this Dr. Krinchlow from
19 Harvard Medical School, he recommends ten cases being
20 done per year to maintain proficiency. And then there
21 is also the Journal of Digestive Surgery.

22 Q. Ms. Voigt --

23 A. Yes, sir.

24 Q. -- May I ask you, has Dr. Mincheff ever done 10 of Ms.
25 Person's procedures in one-year during his entire

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life?

A. No, he stated in his deposition that he does one procedure every two to three years, of the open and the laparoscopic type.

Q. Please continue.

A. The Journal of Digestive Surgery also gives the guidelines of having to do five to ten per year because this is such a complex laparoscopic procedure that all of these authoritative sources say between five to twelve per year must be performed for a doctor to maintain proficiency at this complex procedure. And as I just stated, Dr. Mincheff said he does one every two to three years, and the hospital is still granting him the privilege to do this procedure.

Q. Please proceed.

A. When a doctor is up for, well, any decision whether it be the initial appointment or the reappointment, the first person, who puts that information together after the Medical Staff Coordinator, all of that information goes to the Department of Surgery Chairman. The Chairman has several responsibilities. The Chairman in this case would have been Dr. Cooler. And the Chairman has several responsibilities that the Chairman has to do within his department. One of those responsibilities is ongoing surveillance of all

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1 the doctors who have clinical privileges in his
2 department. Ongoing surveillance is double word that
3 was taken right out of the Joint Commission Manual and
4 that's okay, a lot of hospitals do it. But ongoing
5 surveillance refers to proctoring. What a proctor is,
6 a proctor is a doctor who already has these
7 privileges, he has been doing them, he is very
8 experienced at it. So as I said, when Dr. Mincheff
9 went and took this class, that was the right thing to
10 do. When he came back from his class, he should have
11 been proctored for at least his first twenty-five
12 cases as all of the literature states. But in this
13 medical staff requirement of ongoing surveillance,
14 every doctor who gave a deposition in this case, they
15 all said none of the doctors at Carolina Pines had
16 ever been proctored. Back in 2001, proctoring was not
17 a --- was not something the hospital did even though
18 it was recommended by all of these associations. It's
19 also recommended by the American College of Surgeons
20 who is another association that publishes guidelines
21 for hospitals to follow when they are granting
22 privileges to these doctors.

23 Q. Ms. Voigt, you reviewed Carolina Pines' by-laws and
24 from what you understand from sworn deposition
25 testimony, how many violations did you find of their

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own by-laws that affected Ms. Person's care?

A. Thirty-eight, by-laws violations.

Q. Ms. Voigt, do you have any information about whether Ms. Person's care by Dr. Mincheff was even monitored by the committee?

A. I don't. I don't.

Q. In other words, did anything happen because of Ms. Person's care?

A. No, that is another whole other part of the Joint Commission Standards is that --- you have --- and hospitals have this, it's called Quality Assurance Departments. Hospitals are continuously wanting to improve their quality of care for patients, so they have or they are supposed to have quality processes and procedures in place. One of those would be the Performance Improvement Committee. Dr. Mincheff, testified that even after all of the problems that Ms. Person --- Well, let me go back a second. What initially happened in this case was that Ms. Person's pancreas was clipped in this procedure. The clipping of the pancreas is not even a long complication of this procedure. If any of you have had surgery, you know the doctor will say, Okay, this is the procedure you are having and these are all the things that could go wrong during that procedure.

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1 **Mr. Driggers:** Your Honor, I object to the
2 testimony of the medical detail. A Credentialing
3 Specialist can talk about credentialing issues, but this is
4 a medical testimony.

5 **The Court:** Sustained. This is beyond purview
6 for which the witness was admitted as an expert. Please
7 move to the next question.

8 **Mr. Corbin:** Yes, sir.

9 Q. Ms. Voigt, as of the depositions that you reviewed in
10 2005 or so, has Ms. Person's complications, changed
11 anything at the hospital?

12 A. No, they have not, because in 2005 when Dr. Mincheff
13 gave his testimony and his deposition, that is when he
14 said he was still doing one of these procedures every
15 two to three years. And all of the authoritative
16 literature clearly states that ten to twelve is what
17 is required per year to maintain proficiency.

18 Q. Ms. Voigt, you've talked about the Joint Commission,
19 and their review of hospitals. In your experience and
20 based upon your knowledge of this case, do you believe
21 the Joint Commission was actually as made aware of Ms.
22 Person's situation and reviewed it?

23 A. No, probably not because the way that Joint Commission
24 --- when they go into a hospital and when they do the
25 medical staff section of the review, they typically

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1 pull ten to fifteen charts out of every single doctor
2 that has privileges on the medical staff. So
3 apparently Dr. Mincheff credential file was definitely
4 not one that was pulled by the Joint Commission when
5 they were there to review the hospital.

6 Q. Does Carolina Pines by-laws at least contain the right
7 words?

8 A. Yes it does, the reason they took the wording right
9 out of the Joint Commission Standards is because when
10 the Joint Commission reviewers come to your hospital
11 to review your hospital, your by-laws is one of the
12 first documents they look at. Then they look to see
13 if you are following your by-laws.

14 Mr. Corbin: Thank you, Ma'am. I believe that
15 is all I have.

16 The Court: Cross-examination?

17 The Court: How long do you expect it to take,
18 counsel?

19 Mr. Driggers: It will take at least an hour.

20 The Court: All right. Let's come up and let's
21 just talk about the schedule for a moment, please.

22 (Whereupon, a bench conference was held in
23 the presence of the jury but out of the hearing of the
24 jury.)

25 The Court: Ladies and gentlemen, let's do this.

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1 It has been a while since you've had a break and let's take
2 our lunch break now. We will come back for
3 cross-examination afterwards and Ma'am, let me just suggest
4 instructions for you during the break. Because you are a
5 witness under testimony, please don't talk to either lawyer
6 because that would be inappropriate. Be back at 1:30 and
7 we will begin cross-examination at 1:30. Please be back in
8 the jury room at 1:30. Lunch is on your own and with
9 whomever you have it, please don't discuss the case. Have
10 a nice lunch. We will see you at 1:30. Everyone stay
11 where you are while our jury departs. You can leave those
12 in your seats; if you'll just turn them upside down, no one
13 will have access to them. Have a nice lunch.

14 (Whereupon, the jury departs at 12:12 p.m.
15 for their lunch recess.)

16 **Mr. Corbin:** Your Honor, would it be appropriate
17 if my paralegal took Ms. Voigt to get a hamburger or
18 something?

19 **The Court:** That's fine, just not to discuss the
20 merits of the case or potential testimony.

21 Now is there anything further for our record
22 before we go today? From the plaintiff? Hearing nothing.
23 Defendant, anything for our record before we close? Court
24 is in recess until 1:30.

25 (Whereupon, the Court took a lunch recess.

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1 from 12:13 p.m until 1:40 p.m.)

2 **The Court:** Our jury is back; please be seated.
3 And Ma'am, if you want to come back to the witness stand,
4 please do.

5 Are we ready for cross?

6 **Mr. Corbin:** I want Dr. Mincheff to stay because
7 they won't let the records come in unless he identifies
8 them so I hate to make him stay, but I have to. It will be
9 later on this afternoon, a couple of hours down the road.
10 I've asked to do it now.

11 **Mr. Sweeney:** We can put the records in; I do
12 not have a problem with doing that. But every case is a
13 presentation, and we don't want to have them put in at a
14 time where he just reads them to the jury out of context or
15 something like that. That is our only problem. So we will
16 agree to their admissibility now, if they just come in and
17 sit there and then when a witness has to testify to them,
18 he can show them the records and publish them at a later
19 date.

20 **The Court:** All right. Have we had this
21 discussion before? Are you hearing this for the first time
22 or have y'all already discussed this or?

23 **Mr. Corbin:** We've discussed it in detail, and
24 that is why I want Dr. Mincheff to stay so we can get them
25 into evidence. It's my understanding once something is in

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1 evidence, either party can use it.

2 **The Court:** All right. I assume there is not a
3 records custodian. Dr. Mincheff's time is extremely
4 valuable to have him sitting here.

5 **Mr. Corbin:** I agree.

6 **Mr. Sweeney:** It doesn't have to be Dr. Mincheff
7 for that. I believe he is going to stay here and watch
8 some of the rest of this today, but --

9 **Mr. Corbin:** It just seems like a waste of time
10 --- if we could do it now outside the presence of the jury
11 and get those records in and let him leave.

12 **The Court:** Do you oppose --- You are saying
13 that you --- tell me why you are requiring Dr. Mincheff to
14 stay here, because that is what I'm hearing, counsel,
15 because by failing to agree, you have a professional
16 witness sitting out there.

17 **Mr. Sweeney:** Dr. Mincheff is not the person who
18 would authenticate these records anyway, so we are not
19 forcing Dr. Mincheff to stay.

20 **The Court:** Well, you could say, the records
21 come in, and then he would be gone if you wanted him to
22 leave.

23 **Mr. Sweeney:** Well --

24 **The Court:** What I just said is a fair
25 statement.

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1 **Mr. Sweeney:** Yes, sir. Let me just get
2 clarification. This lady is going to finish her testimony
3 and then the records would come in.

4 **Mr. Corbin:** Absolutely.

5 **Mr. Sweeney:** Okay, well in that event, we don't
6 object. We'll just let them come in.

7 **The Court:** May we take a look at what records
8 we are talking about? Is there an agreement about that?

9 **Mr. Sweeney:** They are right here. But I did
10 --- the last set of records we agreed to had some yellow
11 markings and stuff on them, which really isn't appropriate
12 and I

13 **The Court:** Counsel, I know, and that is why I
14 looked right at Mr. Driggers and I said, is there an
15 objection. No objection, and for all I knew --- I saw the
16 yellow highlights, and they could have had hand-written
17 notes on the thing. I just assumed y'all were going to
18 look and say well no, I don't agree to that, I don't agree
19 with that, but when it came in without an objection, it
20 came in. That is for you to object to. And there was
21 none.

22 **Mr. Sweeney:** I think the pages we were handed
23 did not have the yellow marks on them.

24 **Mr. Corbin:** I don't know if that is an issue.

25 **The Court:** That's all right. They are in

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1 evidence and if y'all will work out a resolution, that is
2 fine, but I do not want to hold the jury any longer. Is
3 there an agreement that these are the records that are
4 coming in?

5 **Mr. Sweeney:** Let us take a look at them during
6 the deposition, and we can agree at the end, I'm sure.
7 During the testimony.

8 **The Court:** All right. But what started this
9 whole thing is whether or not Dr. Mincheff has to stay
10 here, that is what began this inquiry.

11 **Mr. Sweeney:** No, I think this is okay.

12 **The Court:** All right. Let's mark them, place
13 if there is no objection.

14 **Mr. Corbin:** If there not anything that is not
15 in here, we can put in here.

16 **The Court:** Very good. Bring those to our court
17 reporter, so she can mark them as being admitted.

18 **Mr. Corbin:** We do not need Dr. Mincheff to
19 stay, Your Honor.

20 **The Court:** All right. Very good. If he wishes
21 to stay that is certainly of his own volition, but he is
22 not required to stay.

23 **Mr. Corbin:** Yes sir.

24 **The Court:** Later on this afternoon I'm going to
25 ask each side of the case if it is raining outside and I'm

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1 going to see whether or not we can get an agreement on some
2 issue that is pending here in the courtroom.

3 **The Court:** That's Plaintiff's 1 and 2?

4 **The Court:** It's two volumes of Plaintiff's
5 Exhibit Number 1 in evidence without objection.

6 Please bring in the jury. Mr. Medlin, I want you
7 to seat Ms. Brooks in the Foreperson seat please.

8 **Whereupon, Plaintiff's**

9 **Exhibit Number 1 and 2 was**

10 **marked and admitted into the**

11 **Record.**

12 (Whereupon the jury enters the courtroom at
13 1:45 p.m.)

14 **The Court:** All right. Is everyone comfortable?
15 Ms. Brooks, I am going to ask, Ma'am, if you would serve as
16 our jury foreperson, and that is why I asked if you would
17 sit in that seat, and that is why there is a little bit of
18 confusion about the seats. Thank you for agreeing to do
19 that. And, I'll talk with you a little bit further in the
20 presence of all of your colleagues about the
21 responsibilities of the foreperson. Again, thank you for
22 your service.

23 Now, while this case continues, ladies and
24 gentlemen of the jury, I'm going to ask Ms. Brooks to sit
25 in that seat every time and Mr. Smith as alternate to sit

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1 in that seat every time. If the rest of you wish to move
2 around within the box, you may move around amongst
3 yourselves if you wish to do so. You will recall we ended
4 the morning hour with a conclusion of direct-examination.
5 We will now get a cross-examination.

6 **Mr. Driggers:** If it pleases the Court, thank
7 you, Your Honor.

8 **Cross Examination by Mr. Driggers**

9 Q. Ms. Voigt, good afternoon.

10 A. Good afternoon.

11 Q. Isn't it a fact you have no medical training?

12 A. Not as a doctor, no.

13 Q. You have never been to medical school?

14 A. No.

15 Q. You have never been trained as a nurse?

16 A. No.

17 Q. You have never had any formal medical training, is
18 that correct?

19 A. Correct.

20 Q. That is correct?

21 A. That is correct.

22 Q. Okay that is correct. You couldn't perform a medical
23 procedure in a hospital if you wanted to, correct?

24 A. That is correct.

25 Q. Again, you don't have any medical training whatsoever?

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1 A. As stated previously.

2 Q. In fact, the last time you worked in a hospital was,
3 you said, 1992, correct? A Jewish Hospital, in St.
4 Louis, Missouri, right?

5 A. That's correct.

6 Q. So the last fourteen years, you have not even worked
7 in a hospital setting, correct?

8 A. Correct. Credentialing is done the same no matter
9 where you do it. That is correct.

10 Q. I appreciate that; if you would just answer my
11 questions, Ms. Voigt, and we will get along more
12 quickly.

13 A. I am.

14 Q. You are not qualified in this case to give any medical
15 opinion, are you?

16 A. As far as clinical activity?

17 Q. I am talking about medical opinions, medical
18 treatment?

19 A. That is correct.

20 Q. Okay, because you don't have any medical training,
21 right?

22 A. That's right.

23 Q. And you have heard the Court earlier describe and you
24 were offered as a credentialing expert, correct?

25 A. Correct.

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1 Q. And credentialing involves no medical treatment
2 whatsoever, does it?

3 A. That is correct.

4 Q. Okay, now, in fact, credentialing as we have already
5 heard it described involves simply gathering
6 information, verifying that information and presenting
7 it onto a Medical Committee composed of doctors,
8 correct?

9 A. No, that is not correct. That is how you described
10 it, but that is not exactly how it's done.

11 Q. Would you say it involves gathering information,
12 verifying it through a primary source, identifying
13 problems then passing it on up to the Credentials
14 Committee, those steps?

15 A. In a nutshell. But you have to have a lot of
16 knowledge of what you are doing, when you are doing
17 this process. It is not just a secretarial position.

18 Q. Do you remember when we took your deposition back in
19 August, actually twice in August? Do you remember?

20 A. Yes, sir.

21 Q. First time by video sitting on cameras. I want you to
22 go back to that day, and I'm going to hand you a copy
23 of that deposition, and see if you could verify that
24 for the record.

25 A. Yes.

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1 Q. That is the original deposition, correct?

2 A. Uh-huh.

3 Q. We just, unsealed it. It's been sitting there taped
4 up since August the third, right?

5 A. If you say so.

6 Q. All right. Now I want you to look at page nineteen.

7 A. Okay.

8 Q. And read for me, lines 15-22.

9 A. Okay, it says, no of course not. I would gather all
10 the information and verify it through the primary
11 source that the doctor provides with their medical
12 staff application form. Then I would discuss that
13 with the, if there were any red flags that came up, I
14 would discuss that with the chief of that department
15 and then it goes to the credentials committee or
16 executive committee.

17 Q. You are describing the credentialing process there,
18 correct?

19 A. I'm not sure; I have to read back here.

20 Q. The earlier question you answered "no, of course not",
21 was the question that you had not ever given privilege
22 to any physician anywhere, correct?

23 A. Your question as stated on the record was, you could
24 give credentials to doctors to practice at Jewish
25 Hospital.

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1 Q. Okay and what was your answer?

2 A. No, of course not.

3 Q. Okay, that is not in your role at all, never has been
4 in your role, correct?

5 A. Giving privileges is not in my role.

6 Q. For those seven years that you worked at Jewish
7 Hospital ending in 1992, you never gave a doctor
8 credentials, correct?

9 A. I never gave a doctor privileges.

10 Q. Privileges, correct?

11 A. Correct.

12 Q. And you heard earlier testimony from the Medical Staff
13 Coordinator of Carolina Pines who described the same
14 process, that she did in her job, correct?

15 A. Basically, not to the extent that I used to do it
16 though.

17 Q. But as we just read from your testimony, medical
18 credentialing involves gathering information, correct?

19 A. Correct.

20 Q. Verifying that information, correct?

21 A. Correct.

22 Q. It involves you seeing if there is any problem with
23 that verification if it's not correct?

24 A. You have to have the knowledge to be to identify the
25 problems.

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1 Q. Right and we talked about that earlier.

2 A. Not exactly, no.

3 Q. How you gather that knowledge.

4 A. Not exactly, no.

5 Q. After you gather the knowledge then you identify
6 problems if there are any in the application, right?

7 A. You have to know the knowledge to be able to identify
8 them, yes.

9 Q. And you don't have any discretion whatsoever in making
10 the decision on that application, correct?

11 A. No, that's not correct.

12 Q. You don't have any discretion whatsoever to deny or
13 grant the privileges concerning the application,
14 correct?

15 A. That is correct.

16 Q. Okay, you discuss it with your Medical Staff
17 Coordinator, who I'm sure most of the medical staff
18 chairman is a doctor, correct?

19 A. Correct.

20 Q. And then that would go on to a larger committee of
21 doctors, correct?

22 A. That is correct.

23 Q. And then that would go on to an even larger committee
24 sometimes of other physicians, right?

25 A. No, after the Credentialing Committee it goes to the

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1 Board of Directors.

2 Q. Isn't there a level in between where it goes to the
3 Medical Executive Committee where there is Chairmans
4 of each Committee?

5 A. In 2001, they didn't have a Credentialing Committee.
6 The Medical Executive Committee did serve as the
7 Credentialing Committee.

8 Q. And both are composed of physicians?

9 A. The Medical Executive Committee is composed of
10 physicians, that is correct.

11 Q. And then it goes on up to the Board, correct?

12 A. That is correct.

13 Q. And the Board even has a significant, panel of
14 physicians, correct?

15 A. Not usually, no.

16 Q. At Carolina Pines, are you saying it does not?

17 A. I'm saying overall in general usually the Board of
18 Directors is not primarily made up of doctors.

19 Q. Do you know how many of the Board of Carolina Pines
20 Regional Medical Center is composed of physicians?

21 A. I don't know that.

22 Q. Okay, now, just so we are straight because we have had
23 some confusion on that. Then credentialing involves
24 the gathering of that information verifying it and
25 then passing it on up to the committee, correct?

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1 A. That is correct.

2 Q. And privileging involves taking that information,
3 analyzing it, determining whether the doctor should
4 have permission to work in that hospital, correct?

5 A. That is correct.

6 Q. Okay. Now, the last time you worked in a hospital was
7 1992, correct?

8 A. That's correct.

9 Q. And I believe your testimony was you never even, at
10 that point in time, participated in any application
11 for laparoscopic privileges, correct?

12 A. No, that is not correct.

13 Q. In 1992?

14 A. We had laparoscopic surgery privileges at Jewish when
15 I was there.

16 Q. But you didn't participate in reviewing the granting
17 of laparoscopic privileges, correct?

18 A. Do you mean in granting the privilege itself?

19 Q. Yes.

20 A. That is correct.

21 Q. Now, in 1992, at Jewish Hospital there weren't any
22 Laparoscopic Nissen Procedure there, correct?

23 A. I don't know.

24 Q. Isn't it true that the laparoscopic nissen privilege
25 wasn't even developed in 1992, the last time you

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1 worked in a hospital?

2 A. I don't believe, no that's not true because, Dr.

3 DeMaria said, he was credentialed to do these

4 privileges in 1992.

5 Q. Okay, so that was the year they were first available,
6 correct?

7 A. It could be. I don't know if he got in when they were
8 first available or not, but that might be the time.
9 I'm not sure.

10 Q. All right. So, not having a medical degree, of any
11 type, correct?

12 A. Correct.

13 Q. Not having worked in a hospital for the last fourteen
14 years.

15 A. Which is irrelevant, yes.

16 Q. Is it true?

17 A. Since 1992 if that's been fourteen years, then yes.

18 Q. Not ever having given a doctor permission to perform
19 any procedure in a hospital?

20 A. As far as privileges go, that is correct.

21 Q. Okay. And not even having given any kind of vote, or
22 authoritative say on whether a doctor can practice in
23 any particular hospital, correct, in any of that time?

24 A. No, I did sit on the committee.

25 Q. Are you saying you voted on that committee, you passed

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1 judgment on physicians?

2 Mr. Corbin: Your Honor, please, I would ask
3 that the witness to have a chance to fully respond.

4 The Court: All right. Counsel, so we can keep
5 a record, I'm going to sustain that. Please let the
6 witness finish before you move onto your next question.

7 Mr. Driggers: Yes sir, Your Honor.

8 A. Oh that's right. At Jewish Hospital, when I sat on a
9 peer review committee with a vote, that was at
10 Anheuser Busch.

11 Q. You worked for Anheuser Busch for a while.

12 A. Eight years.

13 Q. Okay, that is a beer company in St. Louis, right?

14 A. Right.

15 Q. In that role you were part of a committee that
16 reviewed mental health physicians basically, right?

17 A. Which the credentialing is done exactly the same way
18 for a mental health provider as it is for a surgeon.

19 Q. Okay, but there wasn't any review of any surgical
20 procedures in that line of work, right?

21 A. That's correct.

22 Q. No medical procedures at all, right?

23 A. Uh'm, yes, that is true.

24 Q. Okay. So again, you haven't worked in the medical
25 field of credentialing since 1992?

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1 A. No, that is not true. I currently credential
2 cardiologists, which do surgical procedures, and like
3 I keep saying, the credentialing is done the same way
4 whether you are doing a psychiatrist, a cardiologist,
5 or a surgeon. The guidelines and the standards are
6 exactly the same for every type of specialty.

7 Q. But you haven't done - do you understand the case that
8 we are here for today?

9 A. I understand the case we are here for.

10 Q. We are here today for an allegation that a hospital

11 A. -- I understand the case we are here for.

12 Q. An allegation that a hospital somehow failed in their
13 role of granting privileges.

14 A. Correct.

15 Q. And you haven't worked in any function in a hospital
16 setting since 1992.

17 A. I have not worked in a hospital since 1992, that is
18 correct.

19 Q. Okay, now, you came over eight hundred miles here
20 today, I guess, is that right?

21 A. I don't know; I didn't count them.

22 Q. Okay from St. Louis to Darlington.

23 A. That is correct.

24 Q. You must have passed through --- I tried to count it
25 up --- or passed over I should say, six states,

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1 correct?

2 A. I have no idea.

3 Q. Missouri, Illinois,

4 A. I didn't look which way the plane flew and I didn't
5 look at a map before --

6 Mr. Corbin: Your Honor, excuse me, excuse me

7 Mr. Driggers: I'll withdraw the question.

8 Mr. Corbin: Excuse me, please.

9 The Court: Is there an objection?

10 Mr. Corbin: Objection, irrelevant.

11 Mr. Driggers: I'll withdraw the question, Your
12 Honor.

13 The Court: Withdrawn.

14 Q. (By Mr. Driggers) How about this, will you tell the
15 jury how many hospitals do you guess you flew over
16 between St. Louis and here?

17 Mr. Corbin: Your Honor, objection, irrelevance.

18 The Court: Counsel, what is your relevance?

19 Mr. Driggers: Your Honor, I'm just trying to
20 see how many other medical staff personnel that would have
21 been that could have come here today to talk about medical
22 issues, and all the things we've heard for the last few
23 hours in this Court.

24 The Court: I'm going to sustain the objection.
25 Move to your next question.

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1 **Mr. Driggers:** Yes sir, Your Honor.

2 Q. (By Mr. Driggers) Now medical, you said you worked
3 for Medical Credentials Consulting, correct?

4 A. Yes.

5 Q. That is your business?

6 A. Uh-huh.

7 Q. And I think you described it earlier as being a
8 business, that is just yourself, correct?

9 A. Correct.

10 Q. Are you the only employee?

11 A. Yes.

12 Q. You are the only member of the Board, if there is one?

13 A. There isn't one.

14 Q. But you are Medical Credentials Consulting.

15 A. That is correct.

16 Q. Okay, and, in fact, it is run out of your home,
17 correct?

18 A. Correct.

19 Q. And it has been since you have been in operation,
20 right?

21 A. Correct.

22 Q. There is no one else, that has any, financial interest
23 in, Medical Credentials Consulting, correct?

24 A. Correct.

25 Q. Now you have a home on the internet too, correct?

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1 A. I have a website.

2 Q. MedicalCredentials.org?

3 A. Correct.

4 Q. And we talked about that at your deposition, and you
5 told me that you do have that website, correct?

6 A. Uh-huh.

7 Q. That is the address.

8 A. Yes, sir.

9 Q. And you are responsible for the information, that is
10 contained on there, correct?

11 A. Yes sir.

12 Q. Okay, can you identify this document?

13 A. This is a lengthy exchange program that I belong to
14 and it's a marketing company is what it is. And this
15 is page 5 of my website, which is titled Links and it
16 is strictly a marketing website thing.

17 **Mr. Driggers:** Your Honor, I'd like to offer
18 that as Defendant's Exhibit Number 1, admitted without
19 objection.

20 **Mr. Corbin:** No objection.

21 **The Court:** All right. Let's mark that as
22 Defendant's Exhibit 1, admitted without objection.

23 **Whereupon, Defendant's**

24 **Exhibit Number 1 was marked**

25 **and admitted into the Record.**

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1 Q. (By Mr. Driggers) Now on the side on the page as
2 identified and marked, you said it was marketing,
3 correct?

4 A. It's called Linkmarket.net, and it's a site where you
5 just trade links with other people who have similar
6 businesses as yours.

7 Q. Okay, and yours has a great deal of links to other
8 attorneys, correct?

9 A. Uh'm, I really don't know. I would have to say no,
10 that is not correct. There are three pages of
11 underlinks, and only two or three attorney resource
12 links.

13 Q. Okay, has the exhibit been marked?

14 **The Court:** It is.

15 Q. Do you see on Exhibit 1, a link or a marketing tool as
16 you said, for Attorney Finder?

17 A. Yes.

18 Q. Okay, how about for Accident, Law, and Use?

19 A. That is just use information.

20 Q. Okay, how about Asbestos Injury?

21 A. Yes, that one is on here.

22 Q. Okay, how about best Atlanta, Georgia DUI lawyer?

23 A. Yes, that one is on here.

24 Q. How about best Criminal Lawyers?

25 A. Yes, that one is on here.

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1 Q. Divorce lawyers?

2 A. Yes.

3 Q. Medical Malpractice Attorney, Los Angeles?

4 A. That one is on here.

5 Q. Okay, and Texas Injury Lawyers?

6 A. Yes, the people I trade links with have, you know,
7 anything to do with being an attorney or the law
8 business affects the business that I am in.

9 Q. Okay, and, in fact, on the site it states on there
10 that you tell attorneys, or help assist them with
11 medical credentialing.

12 A. I'm sorry, what was the question.

13 Q. That you help attorneys if they have issues with
14 medical credentialing.

15 A. But, what was the leading part of that question?

16 Q. That information is also on the website, the fact that
17 you have those services available.

18 A. It is not on this link page, no. It's on my main
19 website.

20 Q. Okay, that is what I was asking.

21 A. Yes.

22 Q. Now, uh'm, in roughly 90% of those cases according to
23 your testimony earlier, you were working with and
24 helping attorneys who are bringing lawsuits, correct?

25 A. You mean the cases I have done in the past?

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1 Q. I'm talking about as of your testimony on August 3,
2 2006.

3 A. Most of my testimony has been for the plaintiff,
4 because even though I have reviewed many defense
5 cases, after reviewing them I discovered that the
6 hospital did in fact do something wrong. And I told
7 the attorney I was not able to help him or her,
8 because I was not able to work for them because of
9 that finding.

10 Q. But 90% of the cases that you have gone and given
11 testimony and come to court is representing people who
12 are bringing actions, correct, against hospitals?

13 A. As far as coming to court, no. This is my second
14 trial and my first trial was a defense case and this
15 is my second trial, which is a plaintiff case and that
16 is 50%.

17 Q. Okay, let's go again to your deposition.

18 A. You did say coming to court, and that is where I'm at
19 today, that is court?

20 Q. Can I ask you to refer to page 32, of your deposition?

21 A. Sure.

22 Q. Describe on pages, excuse me, just read for us, pages
23 --- lines 16-25, excuse me.

24 A. And out of those eleven total instances, eight of
25 those are, excuse me, nine of those were for the

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1 plaintiff. Is that right? Well eight of them are.
2 One is not disclosed, and I can't recall which one
3 that is. Through what line, I'm sorry?

4 Q. Twenty-five.

5 A. There is one instance for the defense where you gave
6 both trial and deposition testimony, correct? That is
7 correct of what is listed on here. Okay.

8 Q. Okay. Ms. Voigt, would you agree with me that you
9 have a tremendous incentive to find violations of
10 these different standards and guidelines that you have
11 been talking to us about today?

12 A. Absolutely not. I review records and I report on what
13 I see according to my twenty-one years of experience
14 in this field.

15 Q. Okay. I'm going to ask you to identify this document.
16 Can you identify that?

17 A. Yes, this is my consulting agreement, but I don't
18 know, what date this was printed.

19 **Mr. Driggers:** We would like to offer Ms.
20 Voigt's consulting agreement as Exhibit Number 2.

21 **Mr. Corbin:** No objection.

22 **The Court:** Let's take a moment and mark that
23 into evidence please, without an objection in the records.
24 Excuse me, counsel, Defendants 2 in evidence without
25 objection.

1001102

Whereupon, Defendant's

Exhibit Number 2 was marked

and admitted into the Record.

The Court: Go ahead, counsel.

Q. (By Mr. Driggers) Ms. Voigt on your consulting agreement you are paid a hundred and fifty dollars an hour, correct?

A. Correct.

Q. And I believe it states there is a four hundred and fifty dollars per hour initial retainer for you to have before you can begin, before you start your work.

A. That is a three-hour retainer. That comes off the first bill, correct.

Q. Now, if you have to testify in a deposition, the charge is six hundred dollars according to your consulting agreement.

A. No, that is not what it says.

Q. What is the charge for six hundred?

A. Three testimony trial days.

Q. Okay. Is it true you charge four hundred dollars a day for traveling to give your testimony?

A. Yes, that is what this one says. No, no, no. That is just the travel day of getting there. That is a one time travel day charge in coming here.

Q. And I believe at the time that we took that deposition

001103

1 on August 3, you had worked thirty-one hours in
2 reviewing this material, correct?

3 A. Approximately.

4 Q. Okay, that is one hundred and fifty dollars an hour.

5 A. That is correct.

6 Q. You said you take off the initial retainer fee from
7 that, correct?

8 A. Yes.

9 Q. Assuming you have done more work since August 3,
10 reviewing this file, correct? You've done more than
11 thirty-one hours that we accounted for the deposition.

12 A. Oh yes, I have done trial prep.

13 Q. Okay, and how many hours have you done trial prep?

14 A. About two and one half.

15 Q. Okay, now, it says in there if you actually come to
16 trial, like we are here today, you have a \$1,250 per
17 day charge, correct?

18 A. That is correct. I don't know anybody who works for
19 free. Where do you get the \$3,200 from?

20 Q. Your thirty-one hours at one hundred and fifty dollars
21 an hour less the four hundred and fifty.

22 A. Oh.

23 Q. So as you sit here today, at least, and I think I have
24 not accounted for everything, we have over five
25 thousand dollars in fees in this case, correct?

001104

1 A. If your numbers are accurate, then that is correct. I
2 don't have a calculator handy.

3 Q. We took another deposition in this case, August 31, we
4 had to reconvene.

5 A. Yes. I'm not sure on the date, but you did have to do
6 my deposition twice, because you asked for some
7 additional information.

8 Q. Okay. So there were two depositions, right?

9 A. That is correct.

10 Q. Now, isn't true, Ms. Voigt, that if you don't identify
11 any problems in your review, there is no deposition,
12 correct?

13 A. I'm sorry.

14 Q. If you don't identify any problems in your record
15 review, then we don't have that deposition on August
16 3, correct?

17 A. The only reason we had a second deposition was because
18 you wanted a copy of my entire file, and you wanted to
19 stop the deposition until you got those records.

20 Q. I was asking about the first deposition.

21 A. I don't understand your question.

22 Q. If you don't find any problems in the hospitals
23 records, we don't, it doesn't proceed to a deposition
24 stage, correct? And certainly not to a trial stage,
25 correct?

1 A. If --

2 Q. If you don't identify any problems with the hospital's
3 by-laws, whether they followed the guidelines, all the
4 things, that you have been testifying about today, if
5 there is not trial.

6 A. That is not true, because in that case that I took,
7 the defense case that I took, I didn't find any
8 problems that the hospital did at all. And that was
9 the only reason I accepted that case is because there
10 were no problems by the hospital and that case went to
11 deposition and trial also. So no, your answer is
12 absolutely false.

13 Q. Okay. So your work to this point has gotten in excess
14 of \$5,300.

15 A. If your figures are correct.

16 Q. Okay.

17 A. I mean that is what it says on the board.

18 Q. Now, Ms. Voigt, you testified that you thought it was
19 proper for Dr. Mincheff to serve on the Medical Staff
20 of Carolina Pines Regional Medical Center, correct?

21 A. I didn't hear you.

22 Q. You testified that it was fine for Dr. Mincheff to
23 serve on staff at Carolina Pines Regional Medical
24 Center, correct?

25 A. Sure, anybody could be on the Medical Staff.

001106

1 Q. You agree that Dr. Mincheff has to ask permission at
2 the hospital to perform surgical procedures, correct?

3 A. He has to have the privileges granted to him, correct.

4 Q. And what he does is, he has to submit materials to the
5 hospital, correct?

6 A. That is correct.

7 Q. In this case, you haven't spoken with Dr. Mincheff,
8 have you?

9 A. No, sir.

10 Q. You haven't spoken with, you mentioned other
11 physicians, Dr. Cooler?

12 A. No, sir.

13 Q. Dr. Barker?

14 A. No.

15 Q. You haven't had any contact with anyone at Carolina
16 Pines Regional Medical Center?

17 A. That is correct.

18 Q. Okay, you haven't talked with individuals on any of
19 those committees?

20 A. No, sir.

21 Q. You haven't spoken to anyone on the Board?

22 A. That is correct.

23 Q. And your opinions today are based on deposition
24 testimony that you were provided from Dr. Mincheff,
25 correct?

001107

1 A. It is based on a whole big pile of information that I
2 have reviewed during this thirty-one hours, correct.

3 Q. I'm speaking of the facts of the case. Whatever you
4 --- Whenever you read the deposition testimonies.

5 A. Yes, so am I.

6 Q. And you read deposition testimonies of Dr. Barker and
7 Dr. Cooler, correct?

8 A. I did.

9 Q. And you told us what you got from that information,
10 correct?

11 A. Yes.

12 Q. And if those numbers and that information was
13 different, your opinions could change, correct?

14 A. I'm not sure, you mean if he had actually done fifteen
15 opens instead of zero in the last ten years, is that
16 what you mean?

17 Q. Well, if he had done any numbers that are different
18 from what you read in transcripts, your opinions could
19 change, correct?

20 A. I guess it would depend on what the new number was and
21 if it coincided with the authoritative journals and
22 all of the authoritative information in this case.

23 Q. Your main criticism of the hospital surrounds whether
24 Dr. Mincheff had done a sufficient number of
25 Laparoscopic Nissen Funduplications and also whether

001108

1 he had done a sufficient number of open nissen
2 funduplications, correct?

3 A. No sir, that is not the only piece. The hospital was
4 not following their by-laws in several areas. The
5 hospital was well aware of Dr. Cooler who openly
6 states he is not comfortable doing open nissen and he
7 still has those privileges. So it is not only about
8 Dr. Mincheff.

9 Q. I asked you earlier if you remember when we took your
10 deposition again or reconvened your deposition on
11 August 31, 2006.

12 A. I do.

13 Q. Remember you said you didn't remember, it started
14 sometime, right.

15 A. I said I remembered the second deposition; I wasn't
16 positive of the date.

17 Q. See if you can identify that.

18 A. Yes, that is the second half.

19 Q. I want you to turn please to Page 9 and just read the
20 first 2 lines.

21 A. The first two lines, state: My main criticism is
22 against the hospital for granting Dr. Mincheff these
23 privileges at all. But the question that was asked to
24 me when I responded to that answer was, what other
25 category would you place or any other criticism that

1 you would have other than those two. And if you back
2 up, on that entire page.

3 Q. I've got another question for you, Ms. Voigt.

4 **Mr. Corbin:** Your Honor, please.

5 **Mr. Driggers:** I'm asking about one specific
6 line, Your Honor, and now she is wanting to publish more.

7 A. Which is out of context with the question.

8 **The Court:** Let the witness answer, your
9 question, Counsel. Please go ahead, ma'am.

10 Q. (By Mr. Driggers) Go ahead, Ms. Voigt.

11 A. I did answer what I just read, but the question that I
12 answered, that to was, you were going through my file
13 that I had sent to you, so we could do the second
14 deposition and you were talking on Page 8 about what
15 my criticisms are against Carolina Pines. And we were
16 talking about grouping them into categories so that
17 you could handle them better in asking the questions.

18 Q. Okay. And your main criticism is Dr. Mincheff got
19 these privileges at all. Page 9, lines 1 and 2.

20 A. Hold on. I wasn't finished.

21 Q. Okay.

22 A. It had to do with the violation of the by-laws, the
23 violation of the Joint Commission Standards and the
24 SAGES. I mentioned all of that in the previous
25 question prior to me answering what I just answered

001110

about my main criticism. So they were all included in that answer and you took the two lines. You took my testimony out of character. So, that is why I wanted to explain my answer.

Q. Okay. Your opinion is based on Dr. Mincheff's ability to perform the nissen fundoplication are from --- you mentioned several times, an organization called SAGES which we've talked about, you have identified and gone through some of their papers and literature, correct?

A. That is one area.

Q. But you are not a member of SAGES, correct?

A. No, but Dr. Cooler and Dr. Barker are both members of SAGES.

Q. We'll hear from them later, and they will tell us about SAGES.

A. Okay, good.

Q. Are you a member of SAGES, yourself, that is what I would like to know?

A. No sir, I'm not.

Q. What I want to know is, is SAGES for a select group of surgeons, correct?

A. Uh'm --

Q. --- Correct?

A. SAGES, is for doctors who do laparoscopic procedures.

Q. Which are surgeries, right?

001111

1 A. Or Gastroenterologist.

2 Q. Okay, and Dr. Mincheff is a member of SAGES, correct?

3 A. He said he was. I don't know if he still is, but he
4 was at one time.

5 Q. It's correct that Dr. Mincheff has even published
6 material for SAGES, correct?

7 A. That I don't know.

8 Q. Dr. Mincheff, would you at least concede that Dr.
9 Mincheff is better able to tell us about SAGES and
10 it's guidelines having been a member for several
11 years, and having actually published material under
12 the organization's name, than yourself?

13 A. Does he know the guidelines better, is that your
14 question?

15 Q. Would he be better able to tell us about those
16 guidelines?

17 A. I don't think so because he may or may not know about
18 them, but following them is a different story.

19 Q. Okay, let's go through this again. You don't have any
20 medical training, correct?

21 A. That is correct.

22 Q. You are not a nurse?

23 A. That is correct.

24 Q. You have not worked in a hospital since 1992?

25 A. That is correct.

! 001112

1 Q. You are not a member of SAGES.

2 A. That is correct.

3 Q. You've never been a member of SAGES.

4 A. That is correct.

5 Q. You couldn't be a member of SAGES even if you wanted
6 to because it is a group of doctors, correct?

7 A. Probably.

8 Q. Okay and you are telling the jury that you have a
9 better understanding of SAGES the group than members
10 who publish under the name of the organization.

11 A. I know what their by-laws state. I would think the
12 chairperson knew what their guidelines were too when
13 he granted the privileges. And that is all I'm
14 telling the jury is the facts as I read them in
15 depositions.

16 Q. Now guidelines, in fact, are different from standards,
17 would you agree to that?

18 A. Well we talked about this in my deposition so I looked
19 them up, and these are the definitions from Webster's
20 dictionary. A guideline is an indication or an
21 outline of a policy or conduct, and a standard is
22 something set up as a rule for measuring, or as a
23 model to be followed. Now both of those are
24 important.

25 Q. Okay, but they could have been different. Correct?

1001113

1 A. Uh'm --

2 Q. -- Just answer yes or no.

3 A. -- not very different.

4 Q. Okay. Now you would agree that there is only one
5 standard that hospitals are required to meet as far as
6 their performance. That is JACO we are talking about.

7 A. If they want to keep their Joint Commission
8 accreditation then yes, the answer to that is yes.

9 Q. And JACO sets standards for hospitals, correct?

10 A. That is correct.

11 Q. In fact you testified earlier that JACO sets the
12 standard --

13 A. -- Yes --

14 Q. -- Okay, in fact, you testified earlier that JACO is
15 the standard bearer that hospitals are required to
16 meet, correct?

17 A. That JACO is what?

18 Q. They set the standard of care, again, for hospitals.

19 A. Well, what I said earlier, was that the main purpose
20 of this quality, quality of care for patients and also
21 quality for all the employees of the hospitals all the
22 way down to the food service workers, and the laundry
23 workers for the entire hospitals. It's not just the
24 medical staff section.

25 Q. And that is why it sets the standard for all parts of

001114

1 the hospital personnel, correct?

2 A. That is correct. They have a book of standards.

3 Q. And it is a very rigorous process, correct?

4 A. Correct.

5 Q. In fact, JACO themselves say if you want to become
6 accredited or even apply it takes about a year to even
7 prepare for that event is that correct?

8 A. No, they don't say that. In fact, they do unannounced
9 surveys at this time. They are going into hospitals
10 without even telling the hospitals they are coming,
11 which is how they should have been operating all along
12 so hospitals would always be ready for Joint
13 Commissions.

14 Q. I was asking for the initial survey that takes about a
15 year to prepare.

16 A. I have to say no, because my experience with the Joint
17 Commission --- and I'm not sure they were doing these
18 unannounced surveys in 2001, but they come in with no
19 warning at all, so why would they want to give you a
20 year to prepare.

21 Q. I was just going to show you a page from JACO and if
22 you would just look at that to see if it references a
23 nine to twelve month period to prepare for an initial
24 survey.

25 A. This twelve months you are talking about here is that

0001115

1 they require a twelve month track record of standards
2 implementation. They are telling you to - for an
3 initial survey, allow nine to twelve months of
4 preparation before the survey date.

5 Q. And that is because of the rigorous process, correct?

6 A. I suppose. This doesn't make sense to me because I
7 know that they do surprise surveys now, unless the
8 initial first survey is probably business regarding
9 only the initial survey for a hospital. And the Joint
10 Commission, comes back every three years, to re-survey
11 the hospital.

12 Q. And they come in with a team of --- it's not just one
13 person coming in to inspect the hospital, they have
14 various people inspecting various aspects of the
15 hospital.

16 A. Well they have a doctor who comes in, an administrator
17 and a nurse. So there is only three reviewers that
18 come into the hospital.

19 Q. When they come, they spend several days, correct?

20 A. They can. It depends on the size of the hospital.
21 Anywhere from one day to three days.

22 Q. And then they take whatever they find and they go back
23 and see if it fits with the standards they have set
24 for hospitals, correct?

25 A. Basically, yes.

001116

1 Q. And then they issue reports as to what their findings
2 are.

3 A. Yes, they do.

4 Q. And those reports are available for people to see to
5 compare how hospitals are rated and how they do.

6 A. Portions of the reports are available.

7 Q. Okay. And you would agree that JACO leaves their
8 standards of specific things up to the individual
9 hospital, correct?

10 A. No, JACO publishes the standards exactly as it reads,
11 but what they leave up to the hospital is how the
12 hospital implements that standard, and how they are
13 going to make sure their hospital follows that
14 standard. The minute details, they do leave up to the
15 hospitals.

16 Q. Are you aware Carolina Pines is accredited by JACO?

17 A. Yes I am.

18 Q. And you reviewed those performance reports that we are
19 talking about since you can access them, correct?

20 A. Yes.

21 Q. And you looked at other information about Carolina
22 Pines I think in your deposition from their internet
23 website, about whether they were accredited, and how
24 many patients they serve, and that kind of thing,
25 correct?

001117

1 A. I just looked to see if they were accredited or not
2 and where they got --- Joint Commission has a scoring
3 grid that they use from one to five, with one being
4 the best and if you score, like I said Joint
5 Commission comes back every three years to peer review
6 the hospital unless you score a three, four or five in
7 any area of the hospital, then they have to come back
8 in six months to make sure that you get that area up
9 to par to a better score.

10 Q. Okay. Like you said earlier, when JACO, reviews
11 hospitals, it goes into all different areas, correct?

12 A. Correct.

13 Q. Not just medical care, correct?

14 A. Correct.

15 Q. All of the other services that are provided there.

16 A. Everything that is done in a hospital.

17 Q. Okay.

18 A. Maintenance, everything.

19 Q. Okay. There has been a lot of talk about patient
20 safety. That is the goal of JACO, correct?

21 A. Well it's one of them, not the goal, but one of them.

22 Q. Okay, but it's one of the goals, correct?

23 A. It's one of the biggest goals, yes.

24 Q. And we've talked about how it has been stated
25 throughout the trial this far at least, that the

001118

1 number on way to improve patient safety is through the
2 credentialing process. Would you agree with that
3 statement?

4 A. Yes, I would.

5 Q. Okay. But there are other ways, right, to improve
6 patient safety.

7 A. Well credentialing is probably the most important one.

8 Q. Okay. Why don't I just come up if I may, Your Honor?
9 Can you identify what this placard is?

10 **The Court:** Please speak up Ma'am, you are off
11 Mic. so we can all hear you.

12 A. Okay. This is a new process that the Joint Commission
13 is going to. They actually did not start this process
14 until 2004, which was after The Person's case in 2001.
15 But they are publishing patient safety goals for
16 hospitals, and this actually goes hand in hand along
17 with the surprise surveys that they are doing now
18 because their philosophy is, if you are doing all of
19 these patient safety goal things all the time, then
20 you don't need to know when Joint Commission is coming
21 to your hospital because your hospital will always be
22 doing these things. And you should, should always be
23 able to pass a Joint Commission Accreditation Survey.

24 Q. These are the National Patient Safety Goals for
25 hospitals, correct?

0001119

1 A. As of 2006.

2 Q. As of 2006, correct?

3 A. Correct.

4 Q. And there are seven different goals or seven different
5 things identified, correct?

6 A. I see seven, yes.

7 **Mr. Corbin:** Your Honor, excuse me, objection,
8 relevance. 2006.

9 A. This is 2006.

10 **Mr. Driggers:** The questions about patient
11 safety were for any type of time.

12 **The Court:** Counsel, I will give you some
13 limited --

14 **Mr. Driggers:** -- Not much longer, Your Honor

15 **The Court:** Limited in the way you pursue this
16 issue, but again on reply, or on redirect there may be
17 issues that come up about this further with Mr. Corbin, and
18 I'll give you an opportunity to cross on this if you wish.

19 Q. (By Mr. Driggers) My only question to you, Ms.

20 Voigt, is out of the top seven things that JACO has
21 identified for patient safety, credentialing is not
22 among those, are they?

23 A. That is because this is hospital wide; this does not
24 just deal with the medical staff.

25 Q. Right, but are for patient safety, correct?

0001120

1 A. You can read it. That is what it says, yes, but this
2 is a whole process that did not even begin until the
3 year 2004, and these were not even published until
4 2006. And I have other publications that say
5 credentialing is the biggest patient safety reward if
6 you will --

7 Q. -- But as we are sitting here, and what they have
8 given us as of right now, their National Patient
9 Safety Goals, credentialing is not among those.

10 A. I did not read any --- I did not read all of those
11 because of time, but if you ask one person for the
12 Joint Commission they would never tell you that
13 patient safety was not one of their top goals.

14 Q. I'm not saying it's one of their top goals, I'm saying
15 it is those other goals, that contribute to patient
16 safety, you testified --

17 A. -- The whole entire hospital --

18 Q. -- Right, works for patient safety --

19 A. -- Yeah, I'm not going there with you because --

20 Q. -- And they work for these goals, correct?

21 **The Court:** One at a time, please counsel.

22 Q. -- These goals help support patient safety --

23 A. Well, like I said, I didn't read them all because it
24 is irrelevant because this just started in 2006.

25 Q. All right. JACO helps hospitals promote patient

001121

1 safety. You at least have to agree with that,
2 correct?

3 A. Yes.

4 Q. Okay and they do that by the rigorous examination
5 process that they have, correct?

6 A. Yes that is correct, but I'm only familiar with the
7 medical staff section. I have sat in on Joint
8 Commission Surveys before, but only on the medical
9 staff section.

10 Q. We will talk about that, but they do have over forty-
11 five, I think, different areas to review for the
12 performance reports.

13 A. Something like that. Whatever hospital wide.

14 Q. The medical staff is, one of those, correct --

15 A. -- Correct --

16 Q. -- And in fact, they just don't limit it to medical
17 staff, JACO actually goes in and examines
18 credentialing, isn't that right?

19 A. There are four areas related to medical staff that
20 they rate. Credentialing is one of them and by-laws
21 is another one. And I forget the other. There are
22 different sections; they change them periodically over
23 the years, but credentialing and by-laws are always
24 two of their main ones.

25 Q. I want you to look at a performance report and see if

001122

1 you can identify that.

2 A. What year is this?

3 Q. 1997.

4 A. Oh, yes. This hospital has a more recent one than
5 1997. They have one that was done in 2002, so this
6 one is probably irrelevant, but I will look at it if
7 you want me to.

8 Q. Go ahead. I was going to ask you what rating did the
9 hospital receive for credentialing in 1997?

10 A. I'm going there. They received a score of one for
11 credentialing.

12 Q. One is the highest compliance rating they can receive,
13 correct?

14 A. Yes, but if I could explain.

15 Q. I would just like to ask you to answer the question.

16 A. But the jury needs to know --

17 **Mr Corbin:** Excuse me, Ms. Voigt, objection.

18 **The Court:** Objection sustained. Counsel, let
19 the witness answer your question and then you can follow
20 with another question, if you wish. Go ahead, Ma'am.

21 A. The jury needs to know that when the Joint Commission
22 Surveyor comes into the Medical Staff Office to review
23 the whole area of credentialing whether there is fifty
24 doctors on staff or five hundred doctors on staff, the
25 Joint Commission pulls anywhere between ten to twenty

001123

1 credential files. They hand you a list when they walk
2 into your office and they say these are the doctors
3 and the credential files we want to look at. So, of
4 course, the Joint Commission can't review all five
5 hundred of the doctors on staff files, so they pull a
6 sample of those files, and those are the only files
7 the Joint Commission looks at. So if there are fifty
8 to hundred doctors on the medical staff that would
9 determine how many files are pulled, so when Joint
10 Commission comes in, they will only pull ten medical
11 staff files and that is how they do the process.

12 Q. All right. How about --- Let's look at this one.
13 This is --- They have referred to this earlier, can
14 you identify that?

15 A. Okay, yes, because since they come every three years
16 that is 97 and this is 2000.

17 Q. Correct. What is credentialing, identify that please
18 for the jury?

19 A. This is the Joint Commission Report or at least it
20 appears to be for Carolina Pines Regional Medical
21 Center from 2000.

22 Q. What score; what rating did Carolina Pines Regional
23 Medical Center receive for credentialing in the year
24 2000?

25 A. On this one they received a one, for credentialing and

001124

1 a three for their by-laws which is a type one for
2 their recommendation.

3 Q. And that is for credentialing?

4 A. Yes, sir.

5 Q. Okay.

6 A. Because they only come every three years.

7 Q. Let's look at this; can you identify that for the
8 jury?

9 A. In 2003; they were not due to be back.

10 Q. What does that report say?

11 A. That is not a good thing if they came back in only two
12 years instead of three years because Joint Commission
13 only comes every three years, so I don't know what
14 this is all about.

15 Q. What year was that?

16 A. 2003.

17 Q. They come every three years?

18 A. Okay, I'm sorry, I thought it said 2002. Yes. They
19 got a one in credentialing and a two on the by-laws
20 this time.

21 Q. So another one in credentialing in 2003?

22 A. Yes for the ten files that were pulled and reviewed.

23 Q. JACO, of course, does its review of Carolina Pines
24 credentialing process, do they? They review other
25 hospitals as well, correct?

001125

1 A. Yes, they review --- They can review every hospital in
2 the country. It's a voluntary thing for the hospital
3 to request Joint Commission to come in and do that.

4 Q. What report do you have identified that I just handed
5 up to you?

6 A. I don't know how to say it.

7 Q. It's McLeod.

8 A. McLeod Health?

9 Q. Correct.

10 Mr. Corbin: Excuse me, please. Objection,
11 relevance as to what happens at McLeod.

12 Mr. Driggers: Your Honor --

13 The Court: Counsel, let me get you to come up
14 and let's talk just a moment here.

15 (Whereupon, a bench conference was held in
16 the presence of the jury but out of the hearing of the
17 jury.)

18 The Court: All right. Ladies and gentlemen,
19 there is a matter I need to take up outside of your
20 presence. Yet again, I'm going to ask you to step to the
21 jury room. Enjoy your break and we will be with you
22 shortly.

23 (Whereupon the jury departs the courtroom at
24 2:40 p.m.)

25 The Court: All right. Just one moment, please.

001128

1 (Pause)

2 The Court: All right. Counsel, we will be
3 glad to have put on the record what the issue seems to be.

4 First of all, please state your basis of the
5 objection, Mr. Corbin, and let's start there and we will
6 let Mr. Driggers respond.

7 Mr. Corbin: Your Honor, the objection was
8 relevance. The sole issue in this case for this jury to
9 decide was whether or not Carolina Pines and no one else in
10 the world violated JCAHO standards as well as the other
11 guidelines and standards we have talked about. Whether or
12 not anyone else in the world had trouble with other
13 patients is absolutely totally irrelevant.

14 The Court: Mr. Driggers, what is your response
15 to that?

16 Mr. Driggers: Your Honor, our response is this.
17 This case we are defending allegations of negligent
18 credentialing. We have had the plaintiff's expert identify
19 the standard of care to be Joint Commission on the
20 Accreditation of Healthcare Organizations as the standard.
21 And so, first of all, we are now showing how our hospital
22 rates according to that standard. And secondly, how other
23 hospitals in the area rate according to --- these are
24 published standards. That is why they are there on the
25 internet, for people to look and compare and review and

0011270

1 rate different facilities.

2 **The Court:** Well, tell me how that bears on this
3 incident, of what McLeod's rating is by the Joint
4 Commission.

5 **Mr. Driggers:** Because the evidence it's going
6 to show that whether it's McLeod or whether it's Carolina's
7 Medical Center, whether it's Palmetto Richland, whether
8 it's Palmetto Baptist, whether it's MUSC or even Duke
9 University Medical Center. No one has gotten, consistently
10 over the last ten years, the highest marks you can get for
11 credentialing. But Carolina Pines Regional Medical Center
12 has. We think it is relevant for the jury to know that
13 information. Compare that as being --- because that is the
14 standards to identify.

15 **Ms. Voigt:** That is not true.

16 **The Court:** Response.

17 **Mr. Corbin:** I just think it's immaterial. I
18 realize that we can go anywhere in the country, and I can
19 see what other hospitals in the country have done and what
20 other hospitals have done. They want to show other bad
21 surveys to indicate to this jury we are not so bad. But
22 the issue is whether or not they violated the standards,
23 not anybody else in the world.

24 **The Court:** Counsel, I liken this to a speeding
25 case. You have a wreck case, someone was speeding and then

1 you could show a chart over here that someone else caused
2 the wreck and they were speeding ten miles an hour more,
3 and that they were worse. I don't see how that has bears
4 on the issue of what other parties who are at bar here did
5 or did not do. This just seems to me to be not relevant to
6 the case at hand. Mr. Sweeney, do you want to weigh in on
7 this, go ahead.

8 **Mr. Sweeney:** Could I do that, thank you, Your
9 Honor? I think the way it weighs in on this is, within the
10 standard of care, there is exceptional work and then there
11 is not so exceptional work. The one, two, three, four,
12 five stands for different values that are given to various
13 hospitals. We've got the highest value that you can have.
14 But other hospitals that are good and I know Mr. Driggers
15 is going to ask this is, isn't Duke a good hospital? Other
16 hospitals are good have a two or a three, and we are even
17 better, and I think that is very relevant because it not
18 only shows our score, but it shows our score in relation to
19 other people. Unlike the example you used of who is
20 speeding and who is not speeding, this is really a positive
21 thing. If I say I am an "A" student, and I went to Harvard
22 University, that means a little bit more than if I say I am
23 an "A" student and I went to some place in the Bahamas.

24 **Ms. Voigt:** May I say something?

25 **The Court:** Just a moment. Probably not, Ma'am.

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1 We'll let the lawyers weigh in on this.

2 Ms. Voigt: Okay.

3 The Court: Go ahead, counsel.

4 Mr. Sweeney: Otherwise, it is the standard, it
5 does adequately express the standard, but it doesn't, ---
6 to have the standard be meaningful, it has to be compared
7 to how other people score.

8 The Court: By that same argument, to be
9 meaningful, I feel like someone from the Joint Commission
10 should be here to say, these are the criteria, this is
11 exactly specifically what we do, this is what happened at
12 McLeod. Without that type of information, really is giving
13 the jury information that they are not really able to, none
14 of us are able to assimilate into this midst of what
15 happened here, and I don't think it is --- I don't think
16 it's probative evidence, and I don't think it's relevant to
17 this issue, and if you wish to mark for the record
18 something as a Court's Exhibit, I will be glad to let you
19 do that, but I will sustain the objection. It's not
20 relevant. Do you wish to mark something for the record?

21 Mr. Driggers: Yes, Your Honor.

22 The Court: All right.

23 Mr. Driggers: This is just a representation of
24 the chart.

25 The Court: All right. Very good.

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1 Whereupon, Court's Exhibit
2 Number 3 Was Identified for
3 the Record.

4 **The Court:** Tell me how much longer do you
5 believe your cross, not to limit you, but just to know, so
6 I can decide about taking a break.

7 **Mr. Driggers:** It will be through in about
8 fifteen minutes.

9 **The Court:** All right. let's go ahead and
10 finish this before all of us take our break and then give
11 you re-direct and that way our witness will be able to meet
12 her travel schedule.

13 So Mr. Medlin, let's bring in the jury, please.

14 **Mr. Corbin:** May I inquire, there is no
15 additional McLeod stuff up there?

16 **Ms. Voigt:** No, I gave it back to him.

17 **The Court:** Let's just take approximately a five
18 minute break. I'm going to sit here and do a couple of
19 things.

20 (Whereupon, Court reconvenes at 3:00 p.m.)

21 **The Court:** All right. we have resolved the
22 matter. I think all of our jurors are back so let's bring
23 in the jury.

24 (Whereupon, the jury enters the courtroom at
25 3:00 p.m.)

S8 001131

1 **The Court:** Welcome back to the courtroom; I
2 trust you had a nice break. As you will recall we stopped
3 for an objection; I sustained the objection; please move
4 forward to your next line of questioning Mr. Driggers.

5 **Mr. Driggers:** Thank you, Your Honor.

6 Q. (By Mr. Driggers) Ms. Voigt, we just reviewed some
7 Carolina Pines' performance reports from JACO,
8 correct?

9 A. Yes sir.

10 Q. We saw that on every occasion, they received the
11 highest rating for credentialing, correct?

12 A. Yes sir.

13 Q. Would you agree it is difficult to obtain that rating?

14 A. No, sir. It's not.

15 Q. I want to show you the 2000 report you referred to
16 earlier. Again, that is a one provision.

17 A. Score of one, yes. That score of one is on the ten
18 applications that I explained earlier, that is
19 correct.

20 Q. And in addition to having the scores there, it tells
21 you what percentage of other hospitals got that score,
22 correct?

23 A. Yes it does.

24 Q. Okay. And for some of those categories, it's pretty
25 high. About 90% or possible, get a one on governance,

1 right?

2 A. Yes.

3 Q. In management, a lot of hospitals get high scores on
4 management, right?

5 A. Yes, it says 97%

6 Q. How about for credentialing? How many hospitals got
7 the high score for percentages or credentialing?

8 A. I'm trying to see for what time period this is for.

9 Q. Okay.

10 A. That would be 45%.

11 Q. So, less than half of the hospitals, who are getting
12 rated for credentialing, get the highest score?

13 A. That's what this says.

14 Q. Okay. Well let's look at some others. Here is 2003.

15 A. Okay.

16 Q. Flip over to the credentialing score for 2003.

17 Carolina Pines 2003, updated performance report from
18 JACO, the standard bearer for hospitals.

19 A. This one is up to 50%.

20 Q. Okay, so 50% got the highest score that time for
21 credentialing, right?

22 A. Yes.

23 Q. Okay again, for those other categories, it is much
24 easier, or at least more hospitals get the highest
25 score, correct?

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1 A. Uh'm, except for infection control, that is not very
2 good.

3 Q. Okay, but with credentialing it's much more difficult
4 than other categories to obtain the highest score; you
5 do agree with that, correct?

6 A. No, not exactly. Like the design of the environment,
7 that is only 41%. Implementation of safety plan, that
8 is 33%. There is a lot of low percentages in these
9 various categories.

10 Q. And among those lower percentages, is for
11 credentialing, correct?

12 A. Credentialing is at 50%, and here availability of
13 patient specific information is 30%. There are lower,
14 a lot lower ones, 33%.

15 Q. Just to make this clear for the jury so it doesn't get
16 lost in the numbers. According to JACO's own
17 information, only half or less, from the two reports
18 we have seen, of all the hospitals they reviewed, of
19 all the hospitals they go in and bring their team, of
20 all the hospitals they go in and stay for days, less
21 than half get a top number one score for
22 credentialing, correct? Lower half.

23 A. Yeah, this says 50%, but, again, I don't know what
24 this, this report doesn't say what the time period is
25 for that 50%. I see that in 2003 it's 50% and in 2000

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1 it was 48% or whatever, but it doesn't say what the
2 time period is and I don't know what the time period
3 is, but you're right, it is 50%.

4 Q. Would you agree that it is more difficult to get the
5 high score in that category than other categories that
6 JACO reviews?

7 A. Not necessarily, no.

8 Q. Every time Carolina Pines has been, or Byerly
9 Hospital, has had JACO come in from their
10 headquarters; bring their team of a doctor, nurse,
11 administrator; stay under the time period of multiple
12 days it takes to conduct the JACO review; every time
13 that they have been reviewed, they got a number one
14 top score for credentialing.

15 A. In 2003, and in 2000, and in the one previous to that,
16 but that is not every time. They come every three
17 years like I said. But in the last three years, three
18 times that we have looked at, yes they have gotten a
19 one.

20 Q. For the last nine years, isn't it?

21 A. I said three times, I didn't say years, so yes, that
22 would be nine years, you're right.

23 Q. So for the last nine years, Carolina Pines has met
24 every standard or criteria that JACO has put, to them
25 in regards to credentialing, correct?,

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1 A. On those ten cases only that the Joint Commission
2 reviewed out of however many doctors are on the
3 medical staff, they reviewed ten credential files.
4 So to answer your question, on those ten credentials
5 files, the answer is yes.

6 Q. So after ten years, multiple teams through coming in,
7 doctor, nurse and administrator, staying for several
8 days, reviewing whatever records they want. You say
9 they pull ten, but they can pull whatever records they
10 want, correct?

11 A. Only the doctor reviews the medical staff section, the
12 other two don't --

13 Q. -- I know, the doctor can pull whatever files he
14 wants, so after ten years --

15 **The Court:** One at a time, let him finish his
16 question, please --

17 A. -- He said, right and so I answered, he actually
18 interrupted, me.

19 **The Court:** Make sure that she is able to finish
20 her response. Restart the question.

21 Q. -- I'm sorry. I will. After ten years of this
22 rigorous review process, half or less in the hospitals
23 nationwide, get a top review. After all those teams
24 coming in, reviewing Carolina Pines' records, no
25 deficiencies have been found in regards to their

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1 credentialing, correct?

2 A. In those ten files --

3 Q. -- Okay --

4 A. -- that is correct.

5 Q. But it took you, a few months in reviewing the
6 documents you have identified to find thirty-eight
7 Carolina Pines violations in regards to credentialing,
8 correct?

9 A. It took me one hour to read through the by-laws and
10 find the thirty-eight violations, what is your point?
11 How long to do what?

12 Q. My point is your one hour is that more efficient than
13 ten years of JACO work, is that your testimony?

14 A. I have no idea. What you are even comparing, makes no
15 sense to me. I'm sorry.

16 **Mr. Driggers:** That's all the questions, I have,
17 Your Honor.

18 **The Court:** Is there a re-direct?

19 **Mr. Corbin:** Short.

20 **The Court:** Go ahead.

21 **Redirect Examination by Mr. Corbin**

22 Q. Ms. Voigt, just a little housekeeping. Exhibit Number
23 37, is that the credentialing white paper about which
24 you have been testifying?

25 A. Yes sir.

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1 Q. I'd like to introduce that I think, without objection.

2 Mr. Driggers: I don't object.

3 The Court: Let's mark it as admitted. In
4 evidence without objection.

5 Whereupon, Plaintiff's

6 Exhibit Number 37 was marked

7 and admitted into the Record.

8 Q. (By Mr. Corbin) In addition, Ms. Voigt, is this the
9 compilation of the authoritative literature by which
10 you testified in this case?

11 A. Yes sir, it is.

12 Mr. Corbin: Permission to introduce this as
13 well, into evidence without, objection.

14 Mr. Driggers: I don't think there is an
15 objection, I just have to --

16 The Court: Please take a look.

17 Mr. Driggers: No objection.

18 Mr. Corbin: Thank you.

19 The Court: Without objection. What Number is
20 that?

21 Madame Court Reporter: Number 37.

22 The Court: Without objection, it is in
23 evidence.

24 Q. Ms. Voigt, Mr. Driggers, he didn't give you a copy of
25 anything from your website except the links, correct?

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1 A. The links page, that is correct.

2 Q. That was it?

3 A. Uh-huh.

4 Q. And on the links page, that is for people who are
5 linked to your website, correct?

6 A. It is strictly for advertising purposes, they have
7 discovered that the more relevant links you have on
8 your website, the more people may look at your
9 website. I, it's relatively a new concept to me, but
10 it is strictly advertising.

11 Q. In other words, if somebody wants a link into your
12 site, they can.

13 A. That's correct.

14 Q. Mr. Driggers didn't ask you whether the American ---
15 what is the American Medical Association.

16 A. The American Medical Association is an association of
17 doctors across the entire country. Actually it
18 involves doctors and surgeons and administrators and
19 they prepare --- their main reason for existence is
20 education, education of doctors, education of
21 administrators. They do a lot of work with hospitals.
22 They have a very wide range of responsibilities.

23 Q. Pretty reputable group of doctors?

24 A. Very reputable.

25 Q. And in fact, the American Medical Association decided

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1 to link to your site, too, didn't they?

2 A. Yes sir, that is correct.

3 Q. What is the Merk. manual? In short, what is that?

4 A. I believe it is just medical information. I am not
5 really positive. I know that I have heard of it and I
6 have looked through it a little bit, but I'm not
7 positive exactly what it is.

8 Q. Did, in fact, the MERK. manual also link to your
9 website?

10 A. Yes sir, because it's there.

11 Q. What, in general, is Medscape or WebMD?

12 A. WebMD is a very popular website for the public use
13 regarding any medical issue people have. They can go
14 there and ask any medical questions about symptoms
15 they are having or anything else. That is for the
16 public use, that WebMD, and it's very popular.

17 Q. Has, in fact, WebMD decided to link up with you?

18 A. Yes sir.

19 Q. Ms. Voigt, you were asked about your consulting fee.

20 A. Yes sir.

21 Q. Ms. Voigt, if I ask you to lie on the witness, would
22 you?

23 A. If you asked me what?

24 Q. To lie on the witness stand for me, please, would you
25 do it?

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1 A. I absolutely would not.

2 Q. Are you willing to lie to make your fee in this case?

3 A. Absolutely would not.

4 Q. Are you willing to risk your reputation for the
5 highest certifications for the national organization
6 by lying in this case to make a fee?

7 A. Absolutely not.

8 Mr. Corbin: Thank you, Ma'am.

9 The Court: All right. You may step down.

10 Ms. Voigt: Thank you.

11 The Court: Counsel, please call your next
12 witness.

13 Mr. Corbin: Your Honor at this time we would
14 publish certain parts of Ms. Person's medical record into
15 evidence. It should take ten minutes or less.

16 The Court: All right. Counsel, if you wish to
17 come around for the publication, you may. What that means
18 is that some of the documents in evidence will be shown to
19 you now, members of the jury.

20 Mr. Corbin: The first document Your Honor, is
21 Dr. Mincheff's, April 29, 2001 surgery notes involving Ms.
22 Person. In part it states quote, "patient appears more
23 comfortable after thorasynthesis, concerned about value
24 obtained, amylase now high which is concerning for a
25 probable pancreatic injury.

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1 The next exhibit please. Your Honor, this is Dr.
2 Mincheff's, April 30, 2001 progress notes, talking about
3 Ms. Person. It states, I have explained the situation to
4 the patient and she appears to be very understanding. She
5 is aware of the injury to the pancreas, which we will
6 follow carefully. If there is no improvement, then the
7 next step to consider is ERCP, to define ductile systems
8 and point of injury, which I think is in the tail, where
9 exposure was also difficult. A splenectomy and resection
10 of the tail is certainly a possibility. But hopefully, we
11 can prevent this. I would discuss this problem with
12 specialist at Richland. The patient is aware of the plans
13 and agrees.

14 Next document, please. The next document, Your
15 Honor, is Dr. Mincheff's progress note on Ms. Person, in
16 his handwriting, dated April 30, 2001. It states, I have
17 reviewed the case with Dr. DeMichele and I will transfer
18 the patient to Richland Memorial for evaluation and further
19 treatment. I feel the patient has an injury to the tail of
20 the pancreas. Unfortunately, the result of the difficult
21 dissection and exposure and control of bleeding from the
22 short gastric. The patient and family are aware of the
23 findings. I have explained everything in detail and the
24 family and patient appear comfortable with my decision.

25 The next exhibit, please. Your Honor, the next

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1 portion from Dr. Mincheff's April 30, 2001 transfer summary
2 involving Ms. Person. Ms. Person is identified at the top
3 indicates she was admitted to Carolina Pines on October 25,
4 2001. She was transferred October 30, 2001. Dr.
5 Mincheff's admission diagnosis were

6 One. Severe Gastroesophageal Reflux Disease.

7 Two. Hiatal hernia.

8 Dr. Mincheff's discharge diagnosis were:

9 One: Severe gastroesophageal reflux disease.

10 Two: Status post attempted Nissen

11 Fundoplication Open Heal Procedure.

12 Three: Left plural effusion and

13 Four: Pancreatic Ascites Secondary to an
14 Iatrogenic Injury to the Tail of the Pancreas.

15 That would be the publication part, Your Honor.

16 **The Court:** Very good.

17 **Mr. Corbin:** Your Honor, are you ready for the
18 next witness?

19 **The Court:** I am.

20 **Mr. Corbin:** At this time, we call Ms. Ruthie
21 Person to the witness stand, and Your Honor, I would ask
22 permission, may she remain seated in her wheelchair, and
23 may we push it close to the witness stand?

24 **The Court:** All right. And, counsel, do we have
25 some issue about some photographs, and do we need to

1 discuss those before we move on?

2 **Mr. Corbin:** Probably so Your Honor. Yes sir.

3 **The Court:** All right. let me get you to come
4 up to the bench if you will for just one moment. Now, Ms.
5 Person just be comfortable where you are. We will be with
6 you in a moment.

7 (Whereupon, a bench conference was held in
8 the presence of the jury but out of the hearing of the
9 jury.)

10 **The Court:** All right. Ladies and gentlemen, you
11 are going to feel like a ping-pong ball here in a minute.
12 But let me just say this to you. There are some
13 photographs that are going to be introduced in Ms. Person's
14 testimony that I need to discuss with counsel, and I need
15 to do that outside of your presence. I'm going to give
16 you, yet another break and we will be with you in a moment.
17 Thank you for your understanding.

18 (Whereupon the jury exits the courtroom at
19 3:18 p.m.)

20 **Mr. Corbin:** Your Honor, her wheelchair broke,
21 and Ms. Voigt is trying to fix it, Your Honor.

22 **The Court:** All right. very good. While we do
23 that let's talk for a moment.

24 **Mr. Corbin:** Yes, sir.

25 **The Court:** The first thing I want to talk about

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1 is our alternate juror. This is the first time I have had
2 parties that didn't agree about how the alternate was to be
3 selected when we have two. And I have learned some law
4 today. There is a Rule 47(b) of the South Carolina Rules
5 of Civil Procedure, and that rule says that the alternate
6 jurors in the order in which they are called shall replace
7 jurors who depart. That is not the word, but that is what
8 it says. All right. But there is also a Statute,
9 §14-7-1340 which says that the alternate jurors when there
10 is more than one shall be pulled at random as we did this
11 morning. Upon further reflection on this, the civil rules
12 apply and control the civil cases, the statute controls
13 general sessions and we chose at random the juror and that
14 was not in compliance with Rule 47(b). If the Court is
15 going to enforces Rule 47(b), then we would unseat one
16 juror who came as an alternate and seat the other one
17 because Mr. Smith was the first chosen. Ms. Tetter was
18 second chosen.

19 Now, what says the parties about how you wish to
20 resolve this? There is no harm at this point in that there
21 have been no deliberations, but if the parties agree to
22 leave it as it is we will, but if they don't, then the
23 Court will need to correct it. What says the plaintiff?

24 **Mr. Corbin:** I would prefer to leave it as it is
25 Your Honor with the consent of the defense. I just don't

1 want to make it appear like somebody has done something to
2 be removed. At this point, he felt like he was going to be
3 part of this jury and I would just prefer to not do that.

4 **The Court:** Personally, I hesitate to reverse in
5 front of the jury because they will wonder, where did I get
6 my training, and why, don't I know what I am doing, but
7 nevertheless, that decision is purely with the defense and
8 I don't ask you to make it in regard to my comment. I just
9 made, I want you to make it in regard to what is best for
10 your case as you perceive it to be. What says the defense?

11 **Mr. Sweeney:** Your Honor, for the defense, we
12 would prefer to seat alternate number one, the original one
13 that should have been seated.

14 **The Court:** Well, when the jury comes out, I am
15 going to explain to them that by my error I chose the
16 Statute over the Rule, and it was a mistake, and we will
17 switch the jurors.

18 **Mr. Corbin:** No objection, Your Honor. I
19 consent.

20 **The Court:** All right. Very good. The next
21 issue, I want to discuss with you are the photographs,
22 which were handed up to me and they were your numbers, four
23 through twenty-nine. And let me just simply tell you what
24 my holdings are, again, because you could not be in
25 agreement on the photographs. This is what the Court has

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1 decided. Numbers seven, eight and nine appear to be
2 pictures of the same graft from different angles; you will
3 have to choose one of those as duplication is not
4 necessary. Numbers ten and eleven are duplicate pictures;
5 choose one of those.

6 **Mr. Corbin:** Excuse me, Your Honor. My pen just
7 died. I'm sorry, Your Honor. I got seven, eight and nine,
8 I can pick one.

9 **The Court:** Choose one of seven, eight and nine
10 Choose one of ten and eleven. Choose one of twelve and
11 thirteen. Fourteen and seventeen are unnecessary as they
12 are duplicative. Choose one of nineteen and twenty.
13 Twenty-one is unnecessary because it is depicted in other
14 photographs. Twenty-four, twenty-five and twenty-six are
15 duplicative, choose one. Twenty-seven, twenty-eight and
16 twenty-nine are duplicative, choose one. Now after
17 reviewing the photographs, I note that they show conditions
18 which may have, as the defense complains, may have some
19 prejudicial impact. But I find that they are probative in
20 that they appropriately show the conditions either not too
21 long after the time of surgery or in present day. And I
22 think they are very probative for that reason on the issue
23 of damages, I have eliminated unnecessary duplication to
24 reduce the prejudicial impact, and the remaining
25 photographs, I think, are appropriate evidence before the

1 Court.

2 Now do you wish to respond to what the Court has
3 ruled?

4 **Mr. Sweeney:** No sir, only to except to the
5 extent that we believe they should all be excluded, and I
6 just to preserve my objection to that. The other thing, I
7 want to be sure that the Court has ruled this is the form
8 they will be presented as well, these pictures, as they are
9 in that manual. In other words, what I mean by that is
10 that there will not be some giant blow-up coming into the
11 courtroom or anything like that.

12 **The Court:** How do you intend to publish these?

13 **Mr. Corbin:** Your Honor, I would like permission
14 to show it on the screen, so all the jurors can see it at
15 the same time.

16 **The Court:** When you say on the screen, are you
17 talking about in the old mode that produces this size
18 picture, or are you talking about the use of the computer
19 that will fill the frame that you have on your camera?

20 **Mr. Corbin:** That will essentially fill the
21 frame which is in fact smaller than a L-mode. I've used
22 L-mode before with a screen that is much larger

23 **The Court:** What is the size of the picture
24 frame of the viewing unit?

25 **Mr. Corbin:** It is a forty-two-inch t.v. and I

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1 selected that so the jury box is twenty or thirty feet
2 long, and ten feet away, and I felt that was appropriate so
3 they could see it.

4 **The Court:** All right. And do you have a
5 response to that?

6 **Mr. Sweeney:** Yes sir. I think that is highly
7 prejudicial, and I believe that does far outweigh the
8 probative value. I do, accepting for a moment the Court's
9 ruling, on the pictures themselves, that has a certain
10 amount of prejudice attached to it. There is no way to
11 escape that. The Court has a balancing process that it has
12 to engage in. But when you start putting it on the big
13 screen and doing all this kind of stuff, I think you run
14 the risk, a substantial risk, of having an even greater
15 degree of prejudice and there is no additional probative
16 value. So we do object to the use of the screen.

17 **The Court:** All right. I'm going to overrule
18 your objection. For the following reasons: First of all,
19 for reasons of efficiency, it is more appropriate to show
20 the picture on the screen. I don't find that enlarging it
21 to the point that it will fit on the tv screen is going to
22 further highlight any of the injuries, in fact, it will
23 assist some of these photographs apparently in an effort to
24 either show a particular scar or the mesh that was on the
25 plaintiff's abdomen, and these would be appropriately

1 depicted by being shown. The Court is going to allow the
2 use of the screen in the courtroom and the photographs to
3 go into evidence back to the jury room, consistent with the
4 reduction of photographs and the choices given by the Court
5 for the plaintiff. Your exception is noted for the record.

6 **Mr. Sweeney:** Thank you. Let me make an
7 additional --- anticipating, what I think might happen, let
8 me make an additional observation and request as well of
9 the Court. And that is, if the pictures are to be shown on
10 the screen then it should be shown during the time the
11 testimony concerns that picture, and not left on there
12 during the whole time the witness is testifying, not left
13 on there at any other time. And certainly, let me ask the
14 Court, too as well, and I've asked counsel for this, when
15 the screen is finished being used, I would respectfully
16 request that it be turned a little sideways as it had been
17 before so that I can see the jury myself and see how they
18 are reacting.

19 **The Court:** That is fair enough.

20 **Mr. Corbin:** We have in fact done that.

21 **The Court:** We would ask you only to show the
22 photograph that falls under discussion. Move on. After
23 you finish the photographs, please cut it off.

24 **Mr. Corbin:** Yes sir.

25 **The Court:** Fair enough?

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1 **Mr. Corbin:** That is our intent. I can only
2 show one at a time. Yes, sir. Your Honor, it will take me
3 a while to go through these.

4 **The Court:** Go ahead.

5 **(Pause)**

6 **Mr. Corbin:** Your Honor, may I ask a question,
7 please?

8 **The Court:** Yes.

9 **Mr. Corbin:** Was your ruling that 10, 11, 12, 13
10 were in, or did you say pick between 10 and 11?

11 **The Court:** No, 10 and 11 are duplicates, choose
12 one. Twelve and 13 are duplicates, choose one.

13 **Mr. Corbin:** Okay, I understand.

14 **(Pause)**

15 **The Court:** Mr. Corbin, just tell me when you
16 are ready.

17 **Mr. Corbin:** Yes sir.

18 **The Court:** Mr. Corbin, are we ready?

19 **Mr. Corbin:** Yes sir.

20 **The Court:** All right. Are you set-up for your
21 television viewers?

22 **Mr. Corbin:** Your Honor, may I make certain that
23 we have these photographs.

24 **The Court:** Yes, sir. Go ahead. Please.

25 **Mr. Corbin:** It's kind of a complicated

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1 procedure. And I want to make certain that I did
2 everything appropriately.

3 **The Court:** Go ahead.

4 **Mr. Corbin:** Can I tell you the ones we'd like
5 to use? Four, five, six, seven, ten, thirteen, fifteen,
6 sixteen, eighteen, nineteen, twenty-two, twenty-three,
7 twenty-six, and twenty-nine.

8 **The Court:** Very good. That complies with the
9 Court's requirements.

10 **Mr. Sweeney:** Can I get a clarification on that?
11 I probably wrote the wrong thing down when I did.

12 **The Court:** I'll let you do that privately.
13 Just step over and get with the --

14 **Mr. Sweeney:** -- I thought with the Court
15 perhaps.

16 **The Court:** Go ahead.

17 **Mr. Sweeney:** I thought that Your Honor said
18 that fourteen through seventeen were unnecessary or
19 something like that?

20 **The Court:** I said fourteen and seventeen are
21 unnecessary.

22 **Mr. Sweeney:** Okay, I had fourteen through
23 seventeen. I apologize.

24 **The Court:** Fifteen and sixteen are okay.

25 **Mr. Sweeney:** Oh, I had fourteen through

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seventeen, I apologize.

The Court: No, sir.

Mr. Corbin: Your Honor, can we agree these are exhibits, now?

The Court: Well --

Mr. Corbin: Or do I need to go through each one and have --

The Court: I think probably the best thing is to mark them over objection, there is an objection.

Mr. Sweeney: Yeah, he can mark them over objection, that's fine, and he can introduce them over objection.

The Court: I will not require you to object again at the point they are going to be introduced. We'll just note that they are in the record over objection.

Mr. Sweeney: Okay.

The Court: All right. Ms. Person, are we ready to get your wheelchair fixed, ma'am?

Ms. Person: Yes, sir.

The Court: All right. Mr. Corbin, while our jury is out, do we want to go ahead and have Ms. Person move up to the place, so we can make sure she is situated appropriately?

(Pause)

The Court: All right, ma'am, that's good. We

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1 may want you to turn out a little bit --- Is it comfortable
2 for you to turn your head to the jury, or do you need to
3 turn your body to where you will be facing a little more,
4 Ms. Person?

5 Ms. Person: This is fine.

6 The Court: You're fine? All right. Very good.

7 Now, let's do a voice check, to make sure we can
8 pick you up when you speak. Just tell us your name, please
9 Ma'am.

10 Ms. Person: Ruth J. Person. Ruth J. Person

11 The Court: All right, good.

12 Mr. Corbin: Can I please remind Ruthie to speak
13 up during the testimony?

14 The Court: You may. Anything further before
15 you bring the jury in?

16 Mr. Corbin: No sir, not from the plaintiff.

17 The Court: Let's bring in the jury please.

18 (Whereupon, the jury enters the courtroom at
19 3:41 p.m.)

20 The Court: All right. The photographs are in
21 evidence over objections of the defendant.

22 Whereupon, Plaintiff's

23 Exhibit Numbers 4, 5, 6, 7,

24 10, 13, 15, 16, 18, 19, 22,

25 23, 26, and 29 were marked

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1 and admitted into the Record.

2 **The Court:** All right. Ladies and gentlemen,
3 welcome back to the courtroom. And I want to say to Ms.
4 Tetter and Mr. Smith, I want to begin with an apology
5 because I made a mistake earlier today, and I wanted to
6 tell you a little bit about South Carolina Law and
7 sometimes it is the nuances and differences that will catch
8 one by surprise no matter how often you work with it.
9 There is a different rule for Criminal Court as to Civil
10 Court as to how you seat an alternate juror when you have
11 more than one. On the civil side you seat the jurors in
12 the number or order in which they were chosen as
13 alternates. On the criminal side, you seat the juror by
14 making a random draw. Unfortunately, this morning I chose
15 the criminal side for a civil case and what I need to do is
16 ask Mr. Smith and Ms. Tetter to switch seats because I
17 seated the incorrect alternate juror. And so I'm going to
18 let you sit outside there Ms. Tetter if you will there Ms.
19 Tetter outside the jury box, and Mr. Smith, if you will sit
20 in the jury box. I apologize for that error. It was
21 completely my error. Thank you for your understanding.

22 All right. Now any objection with the procedure
23 that has been employed by the Court in seating alternate
24 juror from the plaintiff?

25 **Mr. Corbin:** None, Your Honor.

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1 **The Court:** Defendant?

2 **Mr. Driggers:** None, Your Honor.

3 **The Court:** All right. Very good. Now, please
4 call your witness, if you would.

5 **Mr. Corbin:** Yes sir. At this time we call Ms.
6 Ruthie Person, and ask permission to have her in her
7 wheelchair next to the witness stand for being sworn.

8 **The Court:** Very good. Permission granted and
9 let's place Ms. Person under oath.

10 **Ruth J. Person**

11 **After Being Duly Sworn Testifies as Follows**

12 **Direct Examination by Mr. Corbin**

13 Q. Ms. Ruthie, I would ask you to please speak loud
14 enough so everybody can hear you in response to my
15 questions. Will you do that please?

16 A. Yes sir.

17 Q. Can you tell us first of all, what is your complete
18 name?

19 A. Ruthie J. White Person

20 Q. How old are you Ruthie?

21 A. Forty-seven.

22 Q. Now instead of sitting up on the witness stand, you
23 are sitting in a wheelchair, correct?

24 A. Yes sir.

25 Q. Would you have difficulty climbing those steps?

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1 A. Yes sir.

2 Q. Ms. Person, I would ask you would you have difficulty
3 getting out of your wheelchair and walking to me?

4 A. I have a little problem, but I would walk if you want
5 me to.

6 Q. Would you please do that? Do you need assistance from
7 your daughter, or can you do it by yourself?

8 A. If my daughter would help me please.

9 Q. Yes, Ma'am.

10 (Pause)

11 Q. Why does your right foot kick out so far when you
12 walk?

13 A. Because they have taken muscle out of my right leg, it
14 is there from the leg --- It is two and a half inches
15 shorter than my right leg.

16 Q. Please turn around and walk back. Would you help her
17 back in the chair please, Lori?

18 (Pause)

19 Q. Ruthie, where do you live?

20 A. 310 Campbell Street.

21 Q. How long have you lived in Hartsville?

22 A. Twenty-eight years.

23 Q. Who lives with you on Campbell Street?

24 A. No one at the present moment.

25 Q. Are you married?

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1 A. Divorced.

2 Q. Do you have children?

3 A. Yes sir.

4 Q. What are your children's names please?

5 A. Kelly Jermaine White, Lori, Jan White Sanders.

6 Q. Do you have grandchildren?

7 A. Yes sir.

8 Q. Who are they and what are there names please?

9 A. Kelsey Renee White, Kiarra Jerea White, Kristina

10 Danielle White

11 Q. Who is Kelsey's father?

12 A. My son Kelly.

13 Q. How old is Kelsey, please?

14 A. Kelsey is nine years old.

15 Q. Whose child is Kiarra?

16 A. Kiarra belongs to my daughter, Lori.

17 Q. How old is your grandchild, Kiarra?

18 A. She is seven.

19 Q. Christina's parents are who, please?

20 A. Kelly.

21 Q. What is Christina's age, please?

22 A. Two.

23 Q. Do you have trouble sitting for long periods of time?

24 A. Yes, sir.

25 Q. Any troubles controlling your bowels?

1 A. Yes, sir.

2 Q. Are you presently in pain?

3 A. Yes, sir.

4 Q. Do you stay in pain?

5 A. Yes, sir.

6 Q. Ruthie, do you understand if you need to leave the
7 courtroom that you have permission to do so?

8 A. Yes, sir.

9 Q. What troubles do you have climbing up stairs?

10 A. If I go up stairs, I have to sit on my tooshie and go
11 up backwards. And it just takes a while for me to do
12 that. And if the stairs are too low like that, there
13 is no way for me to get down on my own to sit on the
14 steps to push up to get up and go up the steps.

15 Q. You crawl up the stairs on your butt?

16 A. Yes, sir.

17 Q. Did you do that before Dr. Mincheff's operation?

18 A. No, sir.

19 Q. Were you in a wheelchair before Dr. Mincheff's
20 operation at Carolina Pines?

21 A. No, sir.

22 Q. Did you have trouble controlling your bowels before
23 your operation?

24 A. No, sir.

25 Q. Did you have trouble walking from the wheelchair to me

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1 before your operation at Carolina Pines?

2 A. No, sir.

3 Q. Ruthie, on April 25, 2001, did you have some surgery
4 at Carolina Pines?

5 A. Yes, sir, I did.

6 Q. Who did your surgery, please?

7 A. Dr. Thomas Mincheff.

8 Q. Did Dr. Mincheff explain why you needed surgery in
9 April 2001 for what condition?

10 A. He did explain it to me.

11 Q. What condition please?

12 A. The condition was I had GERDS very bad.

13 Q. What is GERDS?

14 A. GERDS, is acid reflux.

15 Q. Did you have GERDS before the operation?

16 A. Yes, sir.

17 Q. The operation was to fix it?

18 A. Yes, sir.

19 Q. Did it work?

20 A. No, sir, it didn't.

21 Q. Do you still have GERDS?

22 A. A little bit, sir.

23 Q. Ruthie, in general, did you have medical complications
24 at Carolina Pines? Did you have troubles there?

25 A. Yes, sir.

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1 Q. Did Dr. Mincheff, before the operation, tell you how
2 long you would be in the hospital?

3 A. Yes, sir, he did.

4 Q. What did he say?

5 A. He told me the procedure would take --- I would be in
6 the hospital for about two days.

7 Q. Did Dr. Mincheff tell you, before the operation, about
8 how much it would cost?

9 A. No, sir, he did not.

10 Q. Did you spend more than two days in the hospital after
11 your operation?

12 A. Yes, sir, I did.

13 Q. Not only spending time at Carolina Pines, were you
14 transferred to another hospital?

15 A. Yes, sir, I was.

16 Q. Which hospital, please?

17 A. I was transferred to Richland Memorial Hospital.

18 Q. Ruthie, did you get a bill from Carolina Pines?

19 A. Yes sir.

20 Q. Plaintiff's exhibit Number 3, can you identify that as
21 your medical bill from Carolina Pines?

22 A. Yes sir.

23 Mr. Corbin: Permission to introduce it into
24 evidence?

25 The Court: What says defense?

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1 **Mr. Sweeney:** We have no objections.

2 **The Court:** Let's mark it without objection,
3 Plaintiff's #3 into evidence.

4 **Whereupon, Plaintiff's**

5 **Exhibit Number 3 was marked**

6 **and admitted into the Record.**

7 **Q.** (By Mr. Corbin) Ms Ruthie, the bill that you got
8 covered your time at Carolina Pines from April 25
9 until April 30, 2001, correct?

10 **A.** Yes sir.

11 **Q.** The bill that you got was thirty or forty pages long,
12 correct?

13 **A.** Yes, sir.

14 **Q.** When you got the bill from what happened to you in the
15 hospital, whose name was on that bill?

16 **A.** Health Management Association.

17 **Q.** Ruthie, before the operation at Carolina Pines, did
18 you have any previous health issues?

19 **A.** Yes, sir, I did. I had some issues, but I was
20 functional.

21 **Q.** What is papillary necrosis?

22 **A.** Papillary necrosis is a deterioration of my kidneys.
23 It is a disease which there is no cure for.

24 **Q.** Have you ever required dialysis because of that
25 condition?

1 A. No, sir. They told me I am not a candidate for
2 dialysis.

3 Q. Did you need a kidney transplant before the operation
4 at Carolina Pines?

5 A. No, sir.

6 Q. The way you function now, is it worse than before the
7 operation?

8 A. Yes sir.

9 Q. Before the operation, did you have chronic fatigue, a
10 condition called Fibromyalgia?

11 A. Yes sir, I did.

12 Q. In general what are those conditions?

13 A. Chronic fatigue is a virus that I had gotten from my
14 husband. It was sexually transmitted from my husband
15 to me.

16 Q. What would that condition do to you before the
17 operation?

18 A. The chronic fatigue just made me very very tired, very
19 weak. I had no energy to do anything.

20 Q. Have you ever received a social security disability?

21 A. Yes, sir.

22 Q. For what conditions, please?

23 A. For the papillary necrosis.

24 Q. Was that before the operation?

25 A. Yes, sir.

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1 Q. From the Social Security Disability for your papillary
2 necrosis and chronic fatigue, do you know how much you
3 receive per month because of your disability?

4 A. Yes, sir.

5 Q. About how much?

6 A. Five hundred and sixty-two dollars a month. I believe
7 it is five-sixty-two a month.

8 Q. Ruthie, before your operation at Carolina Pines, how
9 were you dealing with your physical problems?

10 A. I did well. I could function. I could drive. I
11 could walk. I rode a bicycle. I taught my
12 grandchildren how to drive. I did cartwheels. I did
13 flips to teach my grandchildren. I would go on school
14 trips to help chaperone. I mean, I had, functioning
15 in my body, and I don't have that now.

16 Q. Ms. Ruthie, before April 25, 2001, did you have any
17 surgeries before then?

18 A. Yes, sir.

19 Q. An appendectomy?

20 A. Yes, sir.

21 Q. Did you have a gall bladder procedure?

22 A. Yes, sir.

23 Q. Did you have some kind of procedure on your foot?

24 A. Yes, sir.

25 Q. Before Dr. Mincheff's operation at Carolina Pines,

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1 these other surgeries, did you ever have complications
2 from them?

3 A. No, sir, I did not.

4 Q. Did Dr. Mincheff ever treat you before April 25, 2001?

5 A. Yes, sir, he did.

6 Q. What did he do?

7 A. He did my appendicitis. He did my gall bladder. He
8 did my lumpectomy. I think he did my foot, too.

9 Q. Lumpectomy involves removing a lump from your breast,
10 correct?

11 A. Yes, my left breast.

12 Q. Did you trust Dr. Mincheff before this operation in
13 2001?

14 A. Yes, sir.

15 Q. Did you feel any kind of bond with him before 2001?

16 A. Yes sir, I did.

17 Q. Do you still trust him?

18 A. No, sir.

19 Q. Do you trust Carolina Pines?

20 A. No sir, I don't.

21 Q. After what happened to you at Carolina Pines on April
22 25, 2001, are you ever going back to that hospital for
23 any additional treatment?

24 A. No, sir.

25 Q. Will you ever allow Dr. Mincheff to do any surgery on

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1 you in the future?

2 A. No, sir.

3 Q. Ruthie, Dr. Mincheff, he spoke to you about your
4 surgery years before, didn't he?

5 A. Yes, sir.

6 Q. And I believe it was in 1997 or 1998, correct?

7 A. Yes, sir.

8 Q. So three or four years before your surgery, he wanted
9 to do it way back then too, didn't he?

10 A. No, sir. He did not want to do it back then. He told
11 me there was a procedure to be done, and down the road
12 I probably would need to have the surgery done, but I
13 did not need it then.

14 Q. How did he describe the surgery to you?

15 A. He didn't describe it to me until on the twenty-fifth
16 of April. He told me what they were going to do. It
17 takes about --- it is about a forty-five minute
18 procedure because I kept aspirating. And he said what
19 they were going to do is, take something and scrape
20 the lining of my stomach up, and take the stomach
21 lining and wrap it around my esophagus so I could ---
22 you know --- so I wouldn't keep aspirating. He said
23 because I was literally dying in my own bodily fluids.

24 Q. Based upon what he told you, did you feel like you had
25 to have the operation?

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1 A. Yes sir, I did, because he told me I was going to die.
2 That it kept going back to my lungs.

3 Q. Ms. Ruthie, before the operation in 2001, did Dr.
4 Mincheff tell you about his experience?

5 A. No, sir.

6 Q. Did he say anything about his previous results, good
7 or bad?

8 A. No, sir. He did not.

9 Q. Did he tell you that when he first got privileges, his
10 experience consisted of operations on laboratory
11 animals?

12 A. No, sir. He did not.

13 Q. Did he tell you before 2001 that he had only done ---

14 **Mr. Sweeney:** Excuse me, may it please the
15 Court? Counsel is leading the witness.

16 **The Court:** Counsel, you cannot lead your own
17 witness.

18 Q. (By Mr. Corbin) Ms. Ruthie?

19 A. Yes, sir.

20 Q. If Dr. Mincheff would have told you, my experience
21 doing this surgery consisted of operating on two
22 laboratory animals, going to a couple of courses at
23 Duke --

24 **Mr. Sweeney:** May it please the Court, that is
25 just another way of leading. It suggests the answer and

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1 also includes facts that are not in evidence.

2 **The Court:** I'm going to sustain the objection,
3 counsel. Let me talk to the jury about that.

4 Ladies and gentlemen, when the witness is on
5 direct examination, you cannot ask a leading question. A
6 short example of a leading question is if this were a car
7 accident case and you were asking about the color of the
8 car, an appropriate question on direct would be, what color
9 was the car, but if you say, is the car blue, that is not
10 appropriate, that is leading because contained within the
11 question is the answer, and that is a leading question.
12 You cannot ask leading questions on direct examination,
13 because you can't lead your witness around with leading
14 questions. You can ask them on the cross examination.

15 So with that explanation, I'll sustain the objection.
16 Please let your witness testify without leading her. Go
17 ahead, counsel.

18 Q. Ruthie, when Dr. Mincheff was talking about you having
19 to have surgery in 2001, did he give you any other
20 option to consider?

21 A. No sir, he didn't. He didn't give me any other
22 options, because I had been on medication for all
23 those years, Prilosec, Propolsid, he added Zantac,
24 and in the process it just got worse, so therefore
25 there was no other alternative.

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1 Q. If you had been given an option for medication that
2 would have treated your GERDS instead of the
3 operation, would you have chosen the medication?

4 A. Yes, sir.

5 Q. Ms. Person, did Dr. Mincheff say anything about
6 potential complications?

7 A. No, sir. The day he showed me, that was on April 20,
8 he told me there would be no complications. He said
9 it would take up to forty minutes, tops. And he went
10 and came to explain it to me, he went, and got the
11 encyclopedia, he came back and opened the book, and he
12 showed me the procedure of how it was done. He said
13 don't worry about it, I've done it before, don't worry
14 about it. He closed the book and said I will see you
15 Thursday morning, and I said okay.

16 Q. Did you believe him?

17 A. Yes, sir. I believed what he told me. I mean, because
18 he had done my other surgeries.

19 Q. Ms. Person, if you had been aware that inexperienced
20 surgeons have higher complication rates, would you
21 have told him yes?

22 Mr. Sweeney: Your Honor, again, same objection,
23 leading.

24 The Court: Counsel, I'm going to sustain that
25 too. The point assumes the fact, that the Court is not

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1 aware it is in evidence.

2 Q. (By Mr. Corbin) Ms. Person, you have heard,
3 testimony in this case from Ms. Voigt, correct?

4 A. Yes sir.

5 Q. If you would have been told about the learning curve
6 and the requirements that the surgeon do twenty or
7 twenty-five procedures, if you would have known Dr.
8 Mincheff did less than that, would you have given him
9 permission to do it?

10 A. No sir, I would not.

11 Mr. Sweeney: Same objection.

12 The Court: I'm going to overrule your
13 objection.

14 Q. (By Mr. Corbin) Would you have given him permission
15 if he gave you that information?

16 A. No sir, I wouldn't.

17 Q. Ms. Voigt, indicated that Dr. Mincheff's instructor
18 who taught him how to do your surgery told him, do not
19 do this by yourself during the first twenty
20 operations.

21 Mr. Sweeney: Again, Your Honor, I object. This
22 is --

23 The Court: -- What is the basis of your
24 objection?

25 Mr. Sweeney: Well, first of all, this is

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1 re-testifying for another witness. This is not a proper
2 questioning, for Ms. Person. This is him trying to
3 characterize what a previous witness has said. She has
4 already said she wouldn't have had the operation.

5 **The Court:** Counsel, I am going to agree with
6 counsel that this evidence is already in from another
7 witness. To recount it is somewhat speculative in the way
8 you pose your question. I am going to sustain the
9 objection and direct you to move on to another area,
10 please. Thank you.

11 Q. (By Mr. Corbin) Ruthie, Exhibit Number 10, is that
12 you Ruthie?

13 A. Yes.

14 Q. Did you look like that before you went to Carolina
15 Pines?

16 A. No, sir.

17 **Mr. Corbin:** May I hand this to the jury please?

18 **The Court:** Is it on the screen?

19 **Mr. Corbin:** Yes, sir. We will take it off.

20 **The Court:** Counsel, do you wish to publish it
21 at the same time you are going to use the other
22 photographs?

23 **Mr. Corbin:** Yes, sir.

24 **The Court:** You may.

25 **Mr. Corbin:** Please take it off the screen.

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1 **The Court:** Counsel, let me do this, the jury is
2 going to have photographs in the jury room, and rather than
3 send those through, we allowed you to use the screen to
4 avoid having to pass them through the jury. Let's bring
5 them back, if you will --

6 **Mr. Corbin:** -- Yes sir,

7 **The Court:** -- And just use the screen and the
8 jury will have the photographs during their deliberation.
9 Thank you.

10 I don't say that to keep something from you, I
11 just simply do not want to confuse you as we have
12 photographs in the jury room and have some on the screen.
13 Please proceed.

14 Q. (By Mr. Corbin) Ruthie, if anyone would have told
15 you, you could have a complication like that from the
16 surgery, would you agree to do it?

17 A. No, sir. I wouldn't advise anybody to have it done.

18 Q. Ruthie, if we could go back to Carolina Pines what
19 happened on April 25; can you tell us what you
20 remember about that particular day in the hospital?

21 A. No, sir. I can't.

22 Q. Tell us what you remember.

23 A. I remember I got there, and got prepped, and my
24 surgery was scheduled for 10:00. They were running
25 behind, so therefore my surgery was put off until

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1 about 11 or 11:30. The nurse came in, they wheeled me
2 into the O.R. And I remember looking at the clock and
3 it wasn't 12:00 yet. I remember I said a prayer. I
4 also remember after saying a prayer, I looked at them
5 and said, I will see y'all after a while. I told my
6 daughter and my daughter-in-law that. After a while,
7 I had a bad experience, and I remember when I coded.
8 I remember that. I remember having an, out of body
9 experience.

10 Q. What do you mean?

11 A. I remember when I died and I remember that. And I
12 remember when I felt myself come up, like my spirit
13 leave my body and I came up. And I could see my
14 children in the waiting room. I could see Dr.
15 Mincheff in the O.R. leaning up against the wall with
16 his foot, with one foot propped up against the wall.
17 I can remember that. I can remember two nurses in
18 there. One was leaning over me, and she was like
19 shaking her head, and the other one was crying because
20 they were upset. And I remember seeing my children
21 and they were upset.

22 Q. Tell me what you recall when you woke up from
23 anesthesia; how did you feel?

24 A. When I woke up from anesthesia, I looked around and I
25 was in the dark, and I couldn't half talk.

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1 Q. You couldn't talk?

2 A. I couldn't half talk; it was like every breath was my
3 last one. And Dr. Mincheff was in there, and I asked
4 what happened to me. And I was real small and I was
5 so cold --- I was so cold. And as fast as they gave
6 me blood, it was running right back out. And I asked
7 what happened to me and he just said, I'm worried
8 about you. They took me in from there, they went on
9 to take me to ICU, and that was about 8:30 that night
10 because I looked at the clock, and I see my daughter
11 and my son, my daughter-in-law standing there. And I
12 seen them standing there and my daughter looked and
13 she asked what's wrong with my Mama. I was wrapped up
14 from head to toe like I was a mummy. My legs, my
15 head, it was like I was in a coffin or something. I
16 was wrapped up like that.

17 Q. Why were you so cold?

18 A. I was so cold, because my body temperature had dropped
19 so low and they put plastic things on it to make it
20 warm, to try to get my body temperature back up and
21 circulating.

22 Q. Did you receive a blood transfusion?

23 A. Continuously, yes.

24 Q. How did you feel when you were given your blood
25 transfusions?

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1 A. I was very, very, cold and I kept shaking. And even
2 though the light was on my bed, I actually was shaking
3 so bad until I moved my bed. I was so cold. I have
4 never --- I was cold to my bones. I was just very,
5 very, cold.

6 Q. Ms. Ruthie, Caroline Pines records indicate your
7 surgery lasted from 10:50 a.m. until 3:55 p.m. a
8 little bit more than five hours. How does that
9 compare to what Dr. Mincheff told you?

10 A. That's a long, long time. If you tell me forty
11 minutes, forty minutes to a couple of hours later,
12 that is a long time. And my family was worried about
13 me. They called back there, and that is a long time.
14 That is hours later than what you say.

15 Q. Ms. Ruthie, you said you lost a lot of blood and
16 needed transfusions. Your records indicate that you
17 lost 1900 cc's --

18 **Mr. Sweeney:** May it please the Court, counsel
19 is trying to testify continually about what the records
20 reflect --

21 **The Court:** I sustain. Just ask your questions
22 without giving the information.

23 Q. (By Mr. Corbin) Do you know how much 1.90 liters of
24 liquid would be?

25 A. No sir, I don't.

001175

1 Q. Can you look at this bottle and read to the jury that
2 number?

3 A. Yes sir. 1.89 f.

4 Q. Ms. Ruthie, did you receive morphine?

5 A. Yes sir.

6 Q. Did you receive other pain medications?

7 A. Yes sir.

8 Q. Did the pain medications make you feel better?

9 A. No, sir. They did not.

10 Q. Did you have a fever during those four or five days?

11 A. Yes sir, I did.

12 Q. Did you have a fever every day?

13 A. Yes sir, I did.

14 Q. Did you have any troubles breathing?

15 A. Yes sir, I did.

16 Q. How so, please?

17 A. Like every breath was my last breath. It was like,
18 example of how my breathing was, MR. ANDERSON: ,
19 shallow, I could hardly breathe.

20 Q. Now, were you asked the questions by nurses to rate
21 your pain on a scale of zero to ten?

22 A. Yes sir.

23 Q. Ten being the most pain you can feel, correct?

24 A. Yes sir.

25 Q. When the nurses would ask you from time to time to

001176

1 rate your pain, what would you say?

2 A. I would hold my hands up and say ten.

3 Q. Ruthie, have you ever had a rectal tube inserted in
4 your body?

5 A. Yes, sir.

6 Q. Before your operation at Carolina Pines, did you ever
7 have a rectal tube inserted in your body before?

8 A. No, sir.

9 Q. What is a rectal tube?

10 A. A rectal tube is a tube they put inside your body to
11 see if you have any vital signs working, if you can
12 pass any gas or anything.

13 Q. Did you have an NG tube stuck down your nose?

14 A. Yes sir, I did. I still have the scars.

15 Q. Did anything drain; where did the tube go through your
16 nose?

17 A. It went down to my stomach.

18 Q. Did anything drain out of that tube from your stomach?

19 A. Yes, sir.

20 Q. Tell the jury what kind of stuff would drain.

21 A. My flesh, the stitches and staples.

22 Q. I'm talking about through the tube, Ruthie, what
23 liquids would come through the tube?

24 A. The green stuff, and my tissue.

25 Q. Green stuff and tissue?

001177

1 A. Yes, you could see flesh, pieces of flesh. Because
2 the tube kept getting stopped up and the nurse had to
3 keep coming in there to unstop it.

4 Q. Did you receive any Tylenol suppositories at Carolina
5 Pines?

6 A. At first I did, before --- after they did the rectal
7 tube.

8 Q. What was the purpose of all the Tylenol suppositories,
9 that you got, do you know?

10 A. To break the fever.

11 Q. During those four or five days there at Carolina
12 Pines, did you sleep well at night?

13 A. No, sir.

14 Q. Tell the jury how you felt during the night.

15 A. I was hurting so bad; I had never felt pain like that
16 in my life. And I still live with that pain. It is a
17 bad, bad burning pain, like you are on fire. It just
18 hurts. I just hurt. I never hurt like that in all my
19 life.

20 Q. Did you receive insulin after Dr. Mincheff's surgery?

21 A. Yes, sir.

22 Q. Before the surgery at Carolina Pines, did you ever
23 need insulin earlier?

24 A. No sir, I didn't.

25 Q. Do you know why, or did Dr. Mincheff indicate why you

001178

1 needed insulin after he operated on you?

2 A. Yes, sir.

3 Q. Why did you need it?

4 A. Because he told me, the tail of my pancreas had gotten
5 cut.

6 **Mr. Corbin:** Madam Court Reporter, did you get
7 that?

8 **Madam Court Reporter:** Yes, sir.

9 Q. He told you your pancreas had been cut?

10 A. Yes sir.

11 Q. How many times did you receive insulin at Carolina
12 Pines? Was it more than once?

13 A. Yes, sir.

14 Q. Now Ruthie, the bandage that you were talking about,
15 if we could talk about the ones wrapped around your
16 stomach, do you remember those?

17 A. Yes, sir.

18 Q. Tell this jury what the condition of your bandages
19 around your stomach or on your stomach would be, and
20 how you felt about those bandages.

21 A. Excuse me. When I first came to myself and I seen
22 them, my stomach was like this, like I was about ten
23 months pregnant, and all of this was packed, and it
24 was all sores and green, rotten smelling. I smelt
25 like something that was dead. And as fast as they

0001179

1 would change it, they would have to change it again.
2 It just scared me so bad. I've never seen nothing
3 like that.

4 Q. Would it soak your blankets?

5 A. It soaked through the sheet, the blankets, my whole
6 bed. Even the sheets, they pull you --- Just ran
7 everywhere. Everywhere.

8 Q. Ruthie, did Dr. Mincheff tell you why you needed blood
9 every single day at Carolina Pines?

10 A. Because, I had lost a little blood, but they never
11 told me how much. And I asked why do you keep giving
12 me blood, and my children asked. The just said
13 because I lost a little blood. Just a little.

14 Q. Did you have nausea at Carolina Pines?

15 A. Yes.

16 Q. Did you have vomiting at Carolina Pines?

17 A. I kept from throwing up because something was stuck in
18 my throat, and I told them I couldn't get it out. And
19 they patted me on my back and they still couldn't get
20 it out. So I would gag and throw up something, but I
21 still couldn't get whatever that was there that was
22 stuck. I could not get that out.

23 Q. What did it feel like on the inside, of your body
24 trying to get out?

25 A. Like something big that wanted to come out of me, but

1 I couldn't cough to get it out.

2 Q. Ruthie?

3 A. Yes.

4 Q. Go back and tell this jury what happened. Tell them
5 about the worst nausea and vomiting that you had at
6 Carolina Pines.

7 A. While I was there, I did start vomiting and when it
8 finally came out, there was a hunk of flesh like this.
9 And it was pink. It had stitches in it. It had
10 staples in it, and you could see them. That was my
11 body, my flesh. My daughter ran and got the nurse and
12 the nurse came in there. She looked at it and she
13 took it out and flushed it in the toilet.

14 Q. Ruthie, where was that hunk of flesh when you threw it
15 up? Where did it go?

16 A. I threw it all up in my hands.

17 Q. It was actually in your hands?

18 A. Yes.

19 Q. Were you close enough to see what it was?

20 A. Yes.

21 Q. How did it feel?

22 A. Disgusting. Like you handle chicken liver or liver,
23 you know how the shreds are. That is what I felt
24 like. That is what it looked like, only it was
25 bigger. And it stunk like rotten meat, just the way I

001181

1 smelt, rotten.

2 Q. Did you tell Dr. Mincheff about your gagging episode?

3 A. Yes.

4 Q. Did you get an x-ray of your stomach after that?

5 A. Yes.

6 Mr. Corbin: Court's indulgence, Your Honor.

7 Your Honor.

8 (Pause)

9 Mr. Corbin: Permission to put Exhibit Number 35
10 on the screen, which is in evidence?

11 The Court: All right.

12 Mr. Corbin: It is a post-surgical CT-Scan of
13 Ms. Person's abdomen on 4/27/2001 at Carolina Pines.

14 The Court: Is that part of the medical record
15 that was earlier placed in evidence?

16 Mr. Corbin: It is.

17 Mr. Sweeney: I can't see how she can testify to
18 the medical records, Your Honor. It may be an admissible
19 document, it certainly is, but it's not certainly she is
20 competent to testify about.

21 The Court: All right. Counsel, do you intend
22 to publish it as part of the evidence, or do you intend to
23 ask questions of Ms. Person?

24 Mr. Corbin: No, I'm going to publish it as part
25 of the evidence. What the x-ray, found in her stomach.

001182

1 **The Court:** You may do that.

2 **The Court:** Let's just make sure we are clear,
3 counsel. You put in a large medical exhibit. There was
4 not an objection. Plaintiff's Exhibit Number 35 is marked
5 separately, and is not in evidence. I want to make sure
6 you were aware of that. What you are getting ready to
7 show, though, is part of the greater evidence and it is in,
8 but the specific number 35 is not.

9 **Mr. Corbin:** For record-keeping purposes, I
10 would like permission so they can identify what this
11 document is out of thousands of pages, mark it separately.
12 I think it's Exhibit Number 35.

13 **The Court:** Any objection to marking number 35
14 separately?

15 **Mr. Sweeney:** No Your Honor.

16 **The Court:** All right. Let's do that. Do you
17 have it in your hand?

18 **Mr. Corbin:** Yes, sir.

19 **The Court:** Let's mark it as admitted, please.
20 You may proceed.

21 Whereupon, Plaintiff's
22 Exhibit Number 35 was marked
23 and admitted into the Record.

24 **The Court:** You may proceed, counsel.

25 **Mr. Corbin:** This is Ms. Person's CT-Scan of her

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1 abdomen taken at Carolina Pines for shortness of breath,
2 nausea and vomiting on April 27, 2001. In relevant portion
3 it states, indication post-surgical dyplasia. The findings
4 of the CT-Scan were an NG tube is seen in the stomach. The
5 stomach is distended and filled with fluid and debris.
6 There is a large amount of ascites in the left upper
7 abdomen. Lesions are seen in the left aspect of the spleen
8 consistent with infarctions or post-surgical trauma. There
9 is a surgical clip seen near the interior tip of the
10 spleen. There is fluid collection seen around the left
11 lobe of the liver. The pancreas, kidneys, adrenals and
12 abdominal aorta look normal. No extravasion of the oral
13 contrast is seen into the fluid collection to suggest
14 post-surgical leaking in this patient, who has had a recent
15 open Hiatal hernial repair. Post-surgical changes are seen
16 in the midline of the upper abdomen. The impression was
17 Ms. Person had a large amount of free fluid in the left
18 upper abdomen.

19 Q. Ruthie, do you know what debride is?

20 A. The dead tissue. Trash.

21 **Mr. Corbin:** Take it off please.

22 Q. Did you ever have trouble at Carolina Pines with a
23 rapid heart beat?

24 A. No, sir.

25 Q. Your blood sugar, was it ever elevated or up beyond

001184

1 normal?

2 A. No, sir.

3 Q. If your records indicate your blood sugar was 286, do
4 you even know what that means?

5 A. Yes, sir. That means my pancreas was acting up and
6 that would cause my blood sugar to go up.

7 Q. Did you ever receive phenergran from the hospital?

8 A. Yes, sir.

9 Q. Do you know what phenergran is?

10 A. Yes sir, something for nausea to calm the stomach.

11 Q. Did you ever feel at Carolina Pines that you were
12 getting better?

13 A. No, sir. Because, I called my children into the room.
14 I talked to Kelly and Lori and my daughter-in-law and
15 my son-in-law and I told them to please stay together
16 because I did not think I was going to make it. And I
17 asked them to remember that I loved them and to tell
18 my grand babies that I love them. And I told them to
19 hold them and please pray for me because I wasn't
20 ready to give up yet. That is what I asked them and
21 that they get along together, and love each other and
22 be there for each other.

23 Q. Ms. Ruthie, did Dr. Mincheff do anything to you to
24 remove fluids from out of your body?

25 A. Yes sir, he did.

001185

1 Q. Tell us what happened, please?

2 A. I was so swoll, and I was having such a hard time
3 breathing that it was like I was going to pop any
4 minute. And that Saturday morning, he took me back to
5 surgery, and he cut my left breast from about here to
6 the back, and put a drainage tube into the lung to
7 drain the excess fluid out of me. He also had to put
8 a tube in the spleen, I believe, or the pancreas to
9 drain also.

10 Q. Ruthie, do you know who Dr. Barker is, Gary Barker?

11 A. Yes sir. I do.

12 Q. Has Dr. Barker ever been your family doctor?

13 A. Yes sir. He was.

14 Q. For how long?

15 A. Maybe about twenty-years. My baby just turned twenty-
16 six, so maybe nineteen or twenty-years.

17 Q. Where would you see him when you went to visit him as
18 a doctor?

19 A. In Society Hill, that was where his office was at that
20 time.

21 Q. For years?

22 A. Yes sir.

23 Q. Would you know Dr. Barker if he walked in the
24 courtroom?

25 A. Yes, sir.

1 Q. Would you be shocked if Dr. Barker says that he
2 doesn't remember who you are?

3 A. How can you forget your patient?

4 Q. Did Dr. Barker treat you at Carolina Pines in the
5 hospital after Dr. Mincheff's surgery?

6 A. No, sir.

7 Q. Did you know him well enough that if he walked in your
8 room and spoke to you and your eyes were open to know
9 who he was?

10 A. Yes, sir.

11 Q. Are you aware because of the complication that you had
12 at Carolina Pines of Dr. Barker ever being in charge
13 of management of your medical care?

14 A. Can you repeat that please?

15 Q. Did you even see him there?

16 A. At the hospital?

17 Q. Yes, Ma'am.

18 A. When I was in there?

19 Q. Yes, Ma'am.

20 A. No, sir.

21 Q. Ruthie?

22 A. Yes.

23 Q. You were transferred to Palmetto Richland Hospital in
24 Columbia, right?

25 A. Yes, sir.

1 Q. The date of that was April 30, 2001.

2 A. Yes, sir.

3 Q. Tell the jury what your condition was on the date of
4 transfer. How did you feel? How did you look? What
5 were you thinking?

6 A. I didn't think I was going to be here that day. My
7 breathing was shallow and shallow and shallow until
8 you could not understand what I was trying to say to
9 you. And, I was so swollen. Dr. Mincheff came in the
10 room and he described to me, you know, how in the
11 hospital they have these boards where you can right
12 your name and the town and stuff.

13 Q. Was the door open or closed when he came in?

14 A. The door was open when he came in, but after he
15 entered the room, he closed the door.

16 Q. Was anybody else in the room beside Dr. Mincheff and
17 you at that time?

18 A. No, sir.

19 Q. Tell the jury what Dr. Mincheff told you right before
20 the transfer.

21 A. He said, Ruthie, I spoke to a couple of friends of
22 mine over the weekend in Charleston, and in Columbia.
23 He said, frankly, I don't know what else to do. So he
24 said, in a day or two, I'm going to send you to
25 Charleston or Columbia. And I asked him, I said, what

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1 did you do to me?. And that is when he wrote on the
2 little board, he told me cut my spleen, and my
3 pancreas and my colon up. Those were his words. He
4 erased the board after he told me that. Within maybe
5 a half an hour or forty minutes later, medical
6 transport was there to get me. So the nurse --- I
7 asked her too, could you please call my daughter and
8 my son, and let them know they were taking me out.
9 And they called my daughter-in-law over here in
10 Florence and they got to the hospital just as they
11 were taking me out to put me in the ambulance to take
12 me to Columbia.

13 Q. Did you get a pain shot before you got in the
14 ambulance?

15 A. Yes, they gave me something for pain to help me with
16 the ride, they said.

17 Q. Did any of your family members ride with you in the
18 ambulance from Darlington to Columbia?

19 A. No sir, because they would not allow them to. My
20 daughter wanted to ride with me and they said she
21 could not ride. Because I was hooked up to so many
22 machines. My neck and stuff and they said if they had
23 to do something to me it wasn't room for her to ride
24 so she got sick. At that time her husband had to come
25 and drive her to the hospital in Columbia.

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1 Q. That ride from Carolina Pines to Palmetto Richland
2 took probably more than an hour.

3 A. Yes sir, it did.

4 Q. Tell the jury what your thoughts were at that point in
5 time.

6 A. My thoughts were I was a lot worse than they had led
7 me to believe. I thought I was dying. I thought I
8 was not going to see my children or my grand babies
9 anymore. That is what I thought.

10 Q. Ruthie, you got to Palmetto Richland on April 30,
11 2001, but before you left you indicated Dr. Mincheff
12 spoke to you, correct?

13 A. Yes sir.

14 Q. And you were sitting here when I read what he actually
15 wrote in his notes about that conversation, correct?

16 A. Yes sir.

17 Q. Dr. Mincheff's notes indicate when he told you in
18 detail what he did to you that you were very
19 comfortable with him, is that the truth? Were you
20 comfortable with him?

21 A. I was comfortable with him prior when he did my
22 hysterectomy and that stuff, but I wasn't comfortable
23 after I was hurt like that, No, sir. I was hurt.

24 Q. Were you very understanding with Dr. Mincheff like his
25 notes said after he told you this?

001190

1 A. I kept asking him, why, what happened. I want to know
2 what happened to me.

3 Q. Were you pleased with him?

4 A. No, sir. No, I can't say I was pleased. I was hurt.

5 Q. You went to Palmetto Richland. About how long did you
6 have to stay there?

7 A. I think the first time was like three months, from
8 April-July.

9 Q. The records indicate April 30, 2001 through July 2,
10 2001. Does that sound right?

11 A. Yes, sir.

12 Q. A little over two months.

13 A. Yes, sir.

14 Q. Ruthie, if someone were to tell you that those doctors
15 in Columbia are the ones who hurt you, not Dr.
16 Mincheff at Carolina Pines

17 **Mr. Sweeney:** May it please, the Court?
18 Objection. Question is improper. It's argumentative. It's
19 editorializing, demeaning, all of those things.

20 **Mr. Corbin:** In direct response to opening
21 statements --

22 **The Court:** Counsel, overruled to allow the
23 question in response to Opening Statement. You may
24 proceed.

25 Q. (By Mr. Corbin) Ms. Ruthie?

001191

1 A. Yes sir.

2 Q. When Mr. Sweeney, during opening statements indicated
3 that your troubles really were caused after you left
4 Carolina Pines by those Columbia doctors, what would
5 you want to tell him?

6 A. I would tell him, excuse me sir, I was told to respect
7 my elders, but you are lying.

8 Q. Are you pleased with the Columbia doctors?

9 A. Yes sir, I am. I am still here.

10 Q. Without those Columbia doctors, do you have any
11 opinion as to whether or not you would have survived?

12 A. No, sir. I think they got me out of Carolina Pines
13 before I died. Again. Excuse me.

14 Q. Ruthie, did you receive lots of medical care at
15 Palmetto Richland?

16 A. Yes sir, I did. Yes sir, I did.

17 Q. Did you have pain at Palmetto Richland?

18 A. Yes sir, I did.

19 Q. Did you have breathing problems?

20 A. Yes sir, I did.

21 Q. Have you ever been on a respirator because you could
22 not breathe on your own?

23 A. Not until I got to Richland. They said they did not
24 have a choice but to put me on one, or I would not
25 have made it. I talked to my children and they told

001192

1 them they had to put me on the respirator, because I
2 was not --- and they were really shocked I made it as
3 long as I did from the time I had the surgery. They
4 were shocked I was still living. That was their
5 words.

6 Q. Your breathing problems, Ms. Ruthie, you indicated
7 earlier you had troubles, you were panting at Carolina
8 Pines. Do you blame the Columbia, doctors because you
9 needed a respirator to live? Do you blame the
10 Columbia doctors?

11 A. No, sir. Blame them for what?

12 Q. Because you had a respirator, do you blame them?

13 A. I'm thankful for them. They saved my life.

14 Q. Do you know, well in Columbia, did they take a CT-Scan
15 of your stomach?

16 A. Yes sir, they did.

17 Q. Did the CT-Scan show damage to your spleen?

18 **Mr. Sweeney:** May it please the Court, again,
19 that is not her area of expertise.

20 **The Court:** Sustained. That would not be
21 something the witness would be aware of, what the CT-Scan
22 showed.

23 Q. (By Mr. Corbin) Ms. Ruthie, do you know what the
24 term necrotic pancreas means? Do you know?

25 A. I know the word necrotic means deteriorate. It's dead

0001193

1 tissue.

2 Q. Do you have personal experience with a necrotic
3 pancreas?

4 A. Yes sir, I do.

5 Q. How did you have treatment for the necrotic pancreas
6 in Columbia? What did they do with the dead tissue?

7 A. The dead tissue came out my urethra and looks just
8 like chicken liver. I mean it is just real real fine,
9 you know. It only comes out like if I am real
10 stressed or I'm sick, other than that I am fine, as
11 far as the necrosis goes.

12 Q. Ms. Ruthie, do you know what the surgical procedure
13 involving a debridement of your pancreas is?

14 A. Yes sir, I did.

15 Q. Did you have surgical debridement of your pancreas in
16 Columbia?

17 A. Yes sir.

18 Q. What happened when you had surgical debridement of your
19 pancreas, what did they do?

20 A. They took me to the OR and I was opened. This was all
21 gone. I had none of this, just one big hole. You
22 could lay your leg in it if you wanted. They would
23 take me down and they would wash it out. They would
24 take a small scalpel and scrape all of the dead off.
25 And then they had to wash me down. They debrided it

001194

1 just about every other day, sometimes every day. Does
2 that answer your question, sir?

3 Q. Yes it does. Were you in a coma in Columbia?

4 A. Yes, sir.

5 Q. About how long were you actually in a coma in
6 Columbia?

7 A. Seven weeks.

8 Q. Several weeks?

9 A. Seven, I believe.

10 Q. Seven. Do you know why you were in a coma?

11 A. Yes, sir.

12 Q. Why please.

13 A. They told me they had to induce me in a coma, because
14 the pain was so excruciating until my body could not
15 tolerate it even though they were giving me medication
16 to help me cope with the pain. It wasn't doing me any
17 good, so they felt my body needed time to rest while
18 they did what they had to do.

19 Q. Ms. Ruthie, did you have a stroke?

20 A. It happened while I was in the first coma, yes sir.

21 Q. When you came out of the coma, tell the jury if you
22 could, talk, walk, say the alphabet, what could you
23 do?

24 A. When I came out of the coma, I had to learn to walk
25 all over. I had to learn to talk all over. I had to

1 learn my alphabet, which my grand babies taught me. I
2 had to have speech to learn to speak again. I had to
3 relearn my phone number, my address. I did not even
4 know who my children were.

5 Q. Your children?

6 A. I did not know who they were when I first saw them. I
7 did not even know my grand babies.

8 Q. I'm sorry, please go ahead, Ruthie.

9 A. When I came out of the coma, the nurse called my
10 daughter and told her that I came out of the coma. It
11 seemed like she got there in a minute to me, because I
12 had such a lapse in time. When she opened the door, I
13 looked at her and I did not know who she was. I just
14 kept looking and looking and she smiled, and when she
15 smiled at me she looked like my mother at me and I
16 bust out crying. She ran to me and she said, Momma,
17 don't cry. And she told me what her name was and the
18 little boy came in and he took --- and my son and
19 daughter-in-law came that night. When I came out of
20 the coma, I called my daughter Mommy.

21 Q. You called her Mommy?

22 A. And I called my son my daddy, because I forgot who
23 they were. My mentality was like a child. So they
24 had me to do everything for me. So in my mind, I
25 wasn't me. I was, you know, a child, a little child.

001196

1 Q. Ms. Ruthie, still at Palmetto Richland Hospital the
2 first time, did you have a tracheotomy?

3 A. Yes, sir.

4 Q. Do you know full well what a tracheotomy is?

5 A. Yes, sir.

6 Q. Have you had more than one tracheotomy?

7 A. Yes sir, I have.

8 Q. Tell the jury what the doctors do to give you a
9 tracheotomy.

10 A. I'm sorry. In order for them to give you a
11 tracheotomy, you have to have a problem where you are
12 not able to breathe on your own. If your breathing is
13 very very shallow. What they do is cut right down
14 here and they cut all the way through the bone, your
15 esophagus bone and that esophagus bone, they cut all
16 the way through that and they insert a tube in. The
17 tube is about this big and it enables you to breathe.
18 It has a cap on the ends of it and it is to help you
19 breathe, and they hook it up to the ventilator. They
20 have a long hose to ventilate to help you breathe
21 because you can't breathe on your own.

22 Q. Ms. Ruthie, the couple of tracheotomies that you have
23 had, the first Palmetto Regional stay, about how long
24 did you have to have --- you always have, the
25 tracheotomy, but how long did you have to have the

001197

1 tube in the tracheotomy wound?

2 A. The whole time I was there. They did not take it out
3 until the day before I came home.

4 Q. Two months?

5 A. Yes, sir.

6 Q. During the first visit to Palmetto Richland you talk
7 about the tracheotomy, and the tubes, and different
8 things. Do you know what a colostomy is?

9 A. Yes sir, I do.

10 Q. Do you have any personal knowledge of what I colostomy
11 is?

12 A. Yes sir, I do.

13 Q. Can you tell the jury what a colostomy is?

14 A. Yes sir. It is when they cut into your intestines,
15 your stomach, through to the intestines and they pull
16 out a part of your intestine and that is called the
17 stoma? and you have a weight which goes onto your body
18 the weight is to hold the bag. You cut the shape
19 around the stoma? and put weight, then you put your
20 bag on to make sure you clip your bag. At the end of
21 your bag, you role it up and you clip it. Your
22 colostomy is directly into your intestines. So
23 therefore, as fast as it goes it, it comes right back
24 out. It does not get processed. It is the worst
25 smell in the world you could ever smell. Believe me

001108

1 and even now I don't have it, but I still have the
2 smell as if I had the colostomy. It will light your
3 whole house up. If I had it now, believe me, the
4 whole courtroom would know I had a colostomy. That is
5 just how strong it is. I mean, because naturally
6 coming right out of your system.

7 Q. The waste, is coming out of your system, into a bag
8 attached to your side, correct?

9 A. Yes sir. It was connected under my right breast.

10 Q. Did you ever take that colostomy --- the records
11 indicate you got it in June 2001 and you had it until
12 January 2003, a little over two years, does that sound
13 right?

14 A. Yes sir. Yes sir, I did.

15 Q. During the Richland Memorial hospitalization, did you
16 need what is called abdominal washouts, infection
17 drain, and chest tubes?

18 A. Yes sir.

19 Q. Did the Columbia doctors have to open your belly?

20 A. Yes, sir.

21 Q. Did you have what is called a colon resection in
22 Columbia?

23 A. Yes, sir.

24 Q. In general, can you tell us what a colon resection is?

25 A. Yes, sir. Part of my colon that was damaged, they had

1 to cut that out and give me the colostomy, because the
2 waste was going, my stool was going in my body, and
3 that was keeping me septic. So, that is why I had to
4 have the colostomy.

5 Q. Ms. Ruthie, when you got out of Palmetto Richland the
6 first time in July of 2001, was your stomach actually
7 still opened.

8 A. Yes sir, it was.

9 Q. Do you know why when you got out of the hospital your
10 stomach had to actually be open?

11 A. Yes sir. I do.

12 Q. Why?

13 A. They told me my stomach had to be open because I had
14 so much extensive damage that was done to me from the
15 first surgery at Carolina Pines that they had to leave
16 me open in order for my body to heal from the inside
17 out. And that is why my body needed time to rest; the
18 stomach needed to rest. So therefore, that is why I
19 was still open. All I had was just a graph over my
20 stomach. They took the skin off of my right thigh,
21 just maybe like two layers of skin and covered the
22 intestines, but literally, you saw the intestines. So
23 I named my stomach Hermie, the Monster.

24 Q. You can actually, when you got home from Columbia the
25 first time, look down and see your intestines?

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1 A. Yes sir, you could.

2 Q. When you got home from Columbia, was anybody living
3 with you at that time?

4 A. Yes, sir.

5 Q. Who, please?

6 A. My daughter, Lori and my grand baby, Kiarra.

7 Q. Did you have to do anything special to care for your
8 open belly after getting out of the Columbia hospital?

9 A. Yes sir, I did, twice a day.

10 Q. Tell this jury what routine you had to go through for
11 about two years with your stomach out.

12 A. In the morning when I took my bath, I had to make sure
13 I cleaned it with the blue cleaner and bathe my upper
14 body first. I could not get in the shower whatsoever,
15 or the bathtub whatsoever for two years. I could only
16 bathe at the sink or my daughter bathed me in a basin.
17 We had to do the stomach, clean it with the cleanser,
18 after the cleanser we had to use the Vaseline, mesh
19 strips to put over it, and it had to be that wide to
20 cover my side, because all of this was just open, from
21 underneath my breast under to my pubic area. After
22 that we had to put Syledyncream on top. After the
23 Syledyncream was applied, we had to take a four by
24 four and put it on top of that. I also had to wear
25 what was called a Montgomery Strap which is about this

1 wide and split in the middle, so it would stick to my
2 side on each side where my skin was. You would hook
3 it with either rubber bands or safety pins, like you
4 would crochet, in out, in out. That is how it was.
5 It was tight. It was to hold the stomach together to
6 keep from busting that open.

7 Q. You stayed like that for two years?

8 A. Yes sir.

9 Q. On top of that you had your colostomy bag attached to
10 you?

11 A. Yes sir.

12 **Mr. Corbin:** Your Honor, may we approach?

13 **The Court:** You may. Come up here if you will,
14 counsel.

15 (Whereupon, a bench conference was held in
16 the presence of the jury but out of the hearing of the
17 jury.)

18 **The Court:** All right. Ladies and gentlemen, I
19 told you we would end the proceedings at five for those of
20 you who have not yet voted, and wanted the opportunity to
21 do so. We are going to break here.

22 Ms. Person I want to tell you in front of the
23 jury Ma'am, please, because you are a witness under
24 testimony, do not discuss your testimony with your attorney
25 or with the attorneys for the other side during the evening

1 break. We will come back tomorrow morning and take up
2 right where we are. All right. That will not be
3 appropriate to talk with them about your testimony in any
4 fashion. All right?

5 **Ms. Person:** Yes sir.

6 **The Court:** All right. Now, Ladies and
7 gentlemen of the jury, please, as I asked you last night,
8 don't discuss the facts of this case with anyone. Just get
9 a good night's rest. We are going to start back at 9:00
10 tomorrow morning. If you will be in the jury room at 9:00,
11 then we will begin at 9:00.

12 Have a nice evening. Let everyone else remain
13 while our jury departs the courtroom. We will be glad to
14 take those up for you.

15 **Mr. Corbin:** Ms. Ruthie, I will see you about
16 8:30 or so in the morning.

17 **The Court:** All right. before we close our
18 records for the day is there anything further for the
19 record from the plaintiff?

20 **Mr. Corbin:** Your Honor, there is one issue. It
21 was my understanding that the Columbia records that I did
22 not have to give to the Records Custodian down here, and
23 all that kind of stuff, I thought we had an agreement to
24 introduce them. Is that still the agreement?

25 **The Court:** Are we on the record, this

1 discussion? Speak up Mr. Driggers so we can hear you.

2 **Mr. Driggers:** Yes sir. I wasn't sure what you
3 intended for publication, but I can definitely do that for
4 the records.

5 **Mr. Corbin:** Your Honor, my intent is to publish
6 most of it through Dr. DeMaria. There might be one or two
7 documents through Ms. Person, minimum, but mostly through
8 Dr. DeMaria.

9 **The Court:** All right.

10 **Mr. Sweeney:** May it please the Court, this is
11 the anticipation that we have not discussed any medical
12 records regarding Ms. Person. She is not a trained medical
13 person. She can't testify as to the truth or accuracy or
14 anything else on those records. And to have them simply
15 published by the plaintiff's attorney is prejudicial to us.
16 There are times and places to do those things and it isn't
17 during the course of the examination of his own witness.
18 So we believe that if they come in at all, there is a time
19 to do that, but not during her deposition to ask her
20 questions like Ruthie, isn't it true that on the CT-Scan on
21 such and such a date at such and such a time, she can't
22 possibly testify to that. That is hearsay.

23 **The Court:** I would agree with you counsel. And
24 I am not certain how you intend to do that tomorrow or not,
25 but I will ask you not to do that with the witness, because

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1 again, that does ask for a medical opinion to review a CT-
2 Scan, and I sustain the objection. Do not do that.

3 **Mr. Corbin:** Fair enough.

4 **The Court:** Counsel, let's take a moment, is
5 there anything further for our record before we close the
6 record?

7 **Mr. Driggers:** I just wanted to check on the
8 record, Your Honor. We've been talking all week about the
9 Order, the Summary Judgment, and I know that other things
10 are happening, and I just didn't want us to be perceived as
11 waiting some request or --

12 **The Court:** The Order is not yet prepared. I'm
13 unable to work on it during the course of the trial,
14 because of the differences of opinion on several issues.
15 And it should not be done while we are at trial, and I
16 simply have not had the opportunity in the evenings to
17 complete it. Hopefully, we will do that tomorrow.

18 **Mr. Driggers:** Thank you, Your Honor.

19 **The Court:** All right. Very good, let's close
20 the record. Thank you.

21 **Mr. Sweeney:** I'm sorry, Your Honor. May I ask
22 a question?

23 **The Court:** Yes sir.

24 **Mr. Sweeney:** If this case is not concluded on
25 Thursday, is it Your Honor's desire to take Friday off and

1 then go to Monday, or how will the Court do this?

2 **The Court:** All right. First of all, we will go
3 on into Friday; it would be my intention. But also I'm
4 scheduled for a term of Common Pleas in Georgetown. I'm
5 sure all of you are scheduled elsewhere, too, next week.
6 It would be my intention, depending upon where we find
7 ourselves, to go on into Saturday if we could conclude it
8 Saturday. If we can't, then we are going to go on into
9 Monday anyway, then that may change the equation, but my
10 hope would be that we would finish this case by Thursday.
11 That hope begins to pail, but if not we will probably go on
12 into Friday and then finish it Saturday if that is what it
13 takes. All right. Counsel, let's go back in chambers a
14 moment, off the record, and talk for a few minutes.

15 This Court is now in recess until 9:00 tomorrow
16 morning.

17 (Whereupon, the second day of Court ends at
18 5:05 p.m. on Tuesday, November 7, 2007.)

001206

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

RUTH J. PERSON,)

Plaintiff)

versus)

CAROLINA PINES REGIONAL)
MEDICAL CENTER)

Defendant)

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

VOLUME 2 OF 3

200R-CP-16-0322

NOVEMBER 06, 2006

to

NOVEMBER 14, 2006

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Daryl J. Corbin, Esquire
Attorney for the Plaintiff

Martin S. Driggers, Jr., Esquire
William O. Sweeney, III, Esquire
Attorneys for the Defendant

Pamela Ozment-Cartee
Circuit Court reporter

001207

(Whereupon, The Court comes to order at 9:08 a.m. on Wednesday, November 8, 2006.)

DAY THREE OF TRIAL

The Court: Ladies and gentlemen, we are told that the jury is here. Are we ready to proceed to go on the record?

Mr. Corbin: Yes, sir.

Mr. Driggers: Yes sir. Your Honor, I just wanted some clarification, if I could about what witnesses for sheer planning purposes. I know he said we were starting today. I just want to try to, best as I could, what that situation is from yesterday.

The Court: Can you tell us to avoid shutdowns?

Mr. Corbin: Yes, sir.

Mr. Driggers: None today.

Mr. Corbin: We have Dr. DeMaria from Duke. He will take two or three hours or so. We have Dr. DeMichele who will take two or three hours or so. We have Ms. Person who I think will take a couple more hours and I suspect that will be it today. If we go beyond that, it will probably be Lori White for a couple of hours. And then we get into Dr. Wood in other issues.

The Court: I did not hear any of your physician's names in that mix.

Very good. Please bring in the jury.

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1 (Whereupon the jury enters the courtroom at
2 9:12 a.m.)

3 **The Court:** All right. Ladies and gentlemen,
4 welcome back to the courtroom. I trust that you had a nice
5 evening, and thank you for being back on time this morning.

6 Let me ask, is there is any member of the jury panel
7 who has had a discussion about the facts of this case with
8 any third party, or contacted concerning this case since
9 were last together; if that applies to you, please raise
10 your hand. All right. Let the record reflect then that no
11 one has raised their hand. Thank you again for complying
12 with the Court's instruction.

13 Ms. Tetter, are you comfortable there in the
14 alternate seat today? I think we have everybody situated
15 today. Thank you for your understanding of the confusion
16 yesterday.

17 You will recall at the end of the day yesterday
18 we were in the plaintiff's direct examination of the
19 plaintiff, Ms. Person. Ms. Person, we will call you back
20 to the stand at this time and resume your testimony.

21 (Whereupon Ms. Person returns to the stand
22 at 9:14 a.m. for Direct Examination by Mr. Corbin)

23 Q. (By Mr. Corbin) Good morning, Ruthie.

24 A. Good morning.

25 **The Court:** Mr. Corbin, before you begin, Ms.

1 Person, do you remember, Ma'am, you remain under oath from
2 yesterday?

3 Ms. Person: Yes, sir.

4 The Court: Very good, you may proceed.

5 Q. Ms. Ruthie, after you got out of Palmetto Richland
6 Hospital the first time in July 2001, and came back
7 home for a while, what doctor was your primary
8 treating doctor who knows more about you than anybody
9 else?

10 A. That would be Dr. DeMichele.

11 Q. Who is Dr. DeMichele?

12 A. Dr. DeMichele, is my Neurologist.

13 Q. Do you know of any doctor that would know any more
14 about your condition than Dr. DeMichele?

15 A. No, sir.

16 Q. Ruthie, you told us, that before the operation you
17 were coping with your disabilities. Can you cope with
18 the disabilities that you have now?

19 A. No, sir.

20 Q. Tell us what is going on.

21 A. I am at the point where I can't hardly eat food
22 because I choke, so therefore when I eat the food the
23 nutrients from the food doesn't digest. So therefore,
24 I have to drink a bottle of Pedialyte a day and three
25 bottles of Boost or Ensure to compensate for my

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1 nutrition.

2 Q. How do you walk, Ms. Ruthie?

3 A. I walk with my walker, or either with my cane. The
4 right leg is turned out, and is very, very painful
5 because my hip and pelvis is not in socket. It is
6 dislocated. So it is very, very painful. It is not a
7 pain that I can take a pill to get rid of. The pain
8 is a burning like fire, intense pain. It is twenty-
9 four hours a day. The stomach hurts all of the time.
10 I have a large hernia in my stomach. It is constantly
11 painful.

12 Q. What kind of medications do you currently take, if you
13 can remember them?

14 A. For the pain?

15 Q. Let's start with all the medications that you take,
16 Ruthie.

17 A. Duragesic patch for pain.

18 Q. What is a duragesic?

19 A. A duragesic patch is a combination of morphine and
20 another pain killer that I have to wear every three
21 days, which I change every three days. You wear it
22 for seventy-two hours.

23 Q. What happens if you don't have your morphine patch?

24 A. I am in a lot of excruciating pain.

25 Q. What other kind of medications or items that you need

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1 because of what happened to you?

2 A. I wear a Lidoderm patch, which Lidoderm is for pain
3 also. It has anesthesia in it; I wear that for twelve
4 hours a day. I also take folic acid. I take
5 Estradiol. I take B-12 twice a week.

6 Q. Why do you take B-12 twice a week, and how do you take
7 it?

8 A. I take it by injection. I give it to myself because
9 my blood stays low, and it give me a little bit more
10 energy to function. I take a one-a-day multivitamin.
11 I take Kador which is potassium because my potassium
12 drops sometime. When it gets below eleven, it makes
13 me very, very sick to the point that I even pass out
14 sometime. I take Dermadex that is to help keep the
15 fluid off of my lungs from building up around my heart
16 for the swelling. I also take Paxil, which is for
17 anxiety. I also take Xanax which is for panic and
18 anxiety attacks.

19 Q. What do you mean you have panic and anxiety attacks?
20 What are you afraid of?

21 A. I am afraid of dying. I am afraid if someone walks up
22 behind me, and I don't know they are behind me, I just
23 freak out. I can't help it; it is just something that
24 I do.

25 Q. Do you have any concerns about your stomach?

1 A. Yes sir, I do.

2 Q. What concerns do you have about your stomach today?

3 A. It constantly hurts. I have no control over my body
4 sometimes. I do not have retention to hold; when I
5 have to go, I have to go if I can make it there. I am
6 just not me anymore.

7 Q. Do you wear a seatbelt when you drive a vehicle?

8 A. No sir, I don't wear a seatbelt.

9 Q. Why would you not wear a seatbelt?

10 A. I can't wear anything constrictive across the stomach
11 or the pelvis because it is very painful and
12 therefore, I can't let anything tight rub or irritate
13 the skin on top, because it hurts very bad.

14 Q. What happens if you take a blow to your stomach?

15 A. There is a possibility if I take a blow to the
16 stomach, my intestines would come back out.

17 **The Court:** Ma'am, please speak up, remember you
18 are facing away from our court reporter. Thank you for
19 speaking as loudly as you can.

20 Q. (By Mr Corbin) Ms. Ruthie, Plaintiff's Exhibit
21 Number 2, which I believe is in evidence without
22 objection your medical expenses, correct?

23 **Mr. Sweeney:** No objections.

24 **The Court:** It is not in at this point. May I
25 see Number 2 at this point?

1 All right. Plaintiff's Number 2 in evidence without
2 objections.

3 Whereupon, Plaintiff's

4 Exhibit Number 2 was marked

5 and admitted into the Record.

6 Q. (By Mr. Corbin) Ms. Ruthie, Plaintiff's Exhibit
7 Number 2, is this a list of your medical expenses from
8 the point of your surgery at Carolina Pines until the
9 present day?

10 A. To my knowledge.

11 Q. Can you read to the jury the number that represents
12 your medical expenses from your complications?

13 A. Yes, sir.

14 Q. What is that number?

15 A. \$663,531.71

16 Q. \$663,531.71, correct?

17 A. Yes, sir.

18 Q. In addition Ms. Ruthie, beside your past medical
19 bills, do you have certain medical expenses you still
20 have to pay?

21 A. Yes, sir.

22 Q. Is this a chart of your monthly expenses arising from
23 the complications?

24 A. Yes, sir.

25 Mr. Corbin: Your Honor, we would move to

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1 introduce that.

2 **The Court:** Without objections. Plaintiff's
3 Exhibit Number 40, in evidence without objections.

4 **Whereupon, Plaintiff's**

5 **Exhibit Number 40 was marked**

6 **and admitted into the Record.**

7 **Mr. Corbin:** Thank you.

8 Q. (By Mr. Corbin) Ms. Ruthie, if I could go down this
9 list and ask you to explain what some of these things
10 are. It says you are required to have Poise pads
11 twice a month. Tell the jury what Poise pads are?

12 A. Poise pads are something that I use --- Poise pads are
13 something that I use for protection to keep from
14 soiling my clothes all up, even though sometimes I
15 still mess up, but it is to help protect me.

16 Q. Did you need Poise pads before you went to Carolina
17 Pines?

18 A. No, sir.

19 Q. The second item, is the adult diapers, I'm sorry, the
20 Poise pads are \$26.96 a month, correct?

21 A. Yes, sir.

22 Q. What are Poise Adult Diapers?

23 A. I have to wear diapers every day, because I never know
24 when I'm going to have an accident.

25 Q. Did you have to wear diapers before you went to

1 Carolina Pines?

2 A. No, sir.

3 Q. The total monthly expense for that is what, please?

4 A. \$35.58.

5 Q. The next two items are cotton wipes and baby wipes.
6 Why do you need those?

7 A. I use them to cleanse myself and make sure I am clean
8 when I have an accident on myself or even when I use
9 the bathroom to make sure I am clean, so I don't get
10 an infection or anything. I have to make sure my body
11 is very clean.

12 Q. Ms. Ruthie, you indicated you spent twenty months with
13 your stomach exposed at home. Did you ever have an
14 infection at home?

15 A. No, sir.

16 Q. The next reference is Pedialyte. You need thirty
17 bottles a month at \$2.77 per bottle for \$83.10 a
18 month. Why do you drink Pedialyte, please?

19 A. I drink Pedialyte, because I have to have a bottle a
20 day as compensation nutrition which I am not getting
21 from food.

22 Q. You mentioned the vitamins that you need three
23 bottles, a three months supply, and it cost \$4.28 a
24 month, correct?

25 A. Yes, sir.

1 Q. The next reference is two stool softeners. What is
2 that and why do you need it?

3 A. I have to have a stool softener to keep my stool soft
4 where it gives it a little firmness where it is not
5 just water all the time.

6 Q. Did you need the stool softener before you went to
7 Carolina Pines?

8 A. No, sir.

9 Q. The next reference is something called Boost. What is
10 that please?

11 A. Boost, is a nutritional drink. Like if you can't eat
12 regular food, it is a meal in a bottle or a can.
13 Boost and Ensure compensates my nutrition.

14 Q. In addition, Ms. Ruthie, on this expense chart, you
15 have a charge for a motorized wheel chair. Do you
16 really need that? Do you need a motorized wheel
17 chair?

18 A. Yes sir, I do.

19 Q. What is the cost of that, please?

20 A. \$6,102.94.

21 Q. In addition, there is a reference to a three position
22 lift chair. Why would you need a lift chair?

23 A. I have a lift chair because of the way my stomach is,
24 and with my leg being out of socket, it enables me to
25 stand up. It lifts me all the way up to my feet.

1 When I go to sit back down all I do is back up and I
2 am able to sit, and therefore there is no strain and
3 no pulling in my groin area, it comes apart and starts
4 draining.

5 Q. If someone were to really say you don't need, all of
6 these things Ruthie, what would you say?

7 A. I would say, yes sir, I do.

8 Q. In addition, you have prescription costs to this point
9 from the complications of \$29,026.96. Do you
10 anticipate you will have to take these medications in
11 the future?

12 A. Yes, sir.

13 Q. As long as you live?

14 A. Yes, sir.

15 Q. Will you ever get better?

16 A. No sir, I'm not.

17 Q. How much do the medications cost per month for the
18 rest of your life?

19 A. \$852.72

20 Q. Ruthie, can we look at some photographs, and will you
21 tell the jury what those photographs show?

22 A. Yes, sir.

23 Q. What I would like to do is, when you got out of
24 Palmetto Richland Hospital the first time in July,
25 this first series relates to August 2001, all right?

1 A. Yes, sir.

2 Q. Do you remember what your condition was when you first
3 got back from Palmetto Richland in August 2001?

4 A. Yes, sir.

5 Q. Ms. Ruthie, this first exhibit is Plaintiff's Exhibit
6 Number 7, in evidence. And first of all, is that your
7 leg?

8 A. Yes sir, it is.

9 Q. This was taken August 1, 2001. Tell the jury what was
10 going on with your right leg at that time.

11 A. At that time, what they had did, I came home with my
12 leg, it had not healed up, and it took months for it
13 to heal. Where my skin had been removed for a graph
14 to put over it to make me a stomach. That is my leg
15 with no skin.

16 Q. Painful?

17 A. Very painful.

18 The Court: Just a moment, counsel.

19 (Pause)

20 The Court: Counsel, what we are experiencing,
21 and I should tell you that when we actually have a
22 transcription being made, or a stenographer working as our
23 court reporter, there are two things happening. She is
24 taking what is being said, but there is also a tape that is
25 being made, in case the jury needs any testimony played

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1 back, because you can never recreate it exactly. Our
2 taping system is not picking up Ms. Person's voice, because
3 it is somewhat low, and she is facing away from us. We
4 will take a moment and move a microphone or two so we can
5 pick up what is happening here. While that is being done,
6 I will tell you a lot of times in cases juries will send us
7 note that will say, may we have the testimony of witness
8 "X." And, under the system we use in South Carolina, there
9 is not a real time transcription that is being made. In
10 other words, it is not being printed out. That is a
11 process that takes some time, and if someone orders this
12 transcript later on, it may take thirty days or more to
13 provide a transcript. So, if the jury needs testimony
14 played back, we use a tape recording system, and actually
15 play back a tape recorder for you. I just tell you that
16 for your information. That is just another difference on
17 t.v., because in the real world, because on television
18 there is a transcript immediately available, people look at
19 it, review it, and we are not able to do it at this point
20 in South Carolina's courts.

21 (Pause)

22 Madame Court Reporter: Thank you, Judge Baxley.

23 The Court: Sure. Now, do you need to move your
24 microphone here, or anything, amplification microphone?

25 Madame Court Reporter: No, sir.

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1 **The Court:** All right. The last question for
2 the jury is, are you able to hear Ms. Person? Are you able
3 to hear on the back row? Counsel, are you able to hear?

4 **Mr. Corbin:** Yes, Your Honor.

5 **The Court:** All right. Very good, you may
6 proceed Mr. Corbin.

7 **Q.** (By Mr. Corbin) Ms. Ruthie, the next photograph
8 taken August 1, 2001, is already admitted, which is
9 Exhibit Number 4 in this case. Can you look at that
10 photograph, Ms. Ruthie, and tell the jury what that
11 shows?

12 **A.** Yes sir, I can.

13 **Q.** What does it show, please?

14 **A.** That photograph shows all the markings, all the marks
15 you see, there was a wire in my body on both sides of
16 my body. That is wear I had my trach. That is where
17 it was sewed out at. The marks here where I had my
18 central line, and those tubes were all in my neck for
19 nutrition. I was hooked to different monitors, and
20 what not, but that is scary.

21 **Q.** This shows your first tracheotomy, correct?

22 **A.** Yes, sir.

23 **Q.** Ms. Ruthie, Exhibit Number 11-B, which is Court's
24 Exhibit 5-A, which, I believe, is a close-up of the
25 tracheotomy wound, correct?

1 A. Yes sir, it is.

2 Q. It shows additional scars on the other side of your
3 neck?

4 A. Yes, sir. It does.

5 Q. Ruthie, the next photograph, August 1, 2001, 11-C
6 which is Plaintiff's Exhibit 6-A or 6, can you look at
7 this photograph, and tell the jury what it shows,
8 please?

9 A. Yes, sir. Yes, sir.

10 Q. What does it show?

11 A. That is my back on my left side. The markings you see
12 where those tubes and hoses for drainage. You can
13 see the scar on my left breast where the tube was put
14 in for drainage for the lung. You can see where the
15 tubes were put on my spleen and my pancreas, and also
16 --

17 Q. -- I'm sorry, go ahead.

18 A. All of this, it is there.

19 Q. Ms. Ruthie, you said yesterday that Dr. Mincheff had
20 done what is called, a thoracentesis where he stuck
21 the tube in you to drain out 600 cc's of fluid.

22 A. Yes, sir.

23 Q. Would that relate to these scars in this picture?

24 A. Yes, sir. That is the scar on my breast. This scar
25 here.

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1 Q. Thank you. The next photograph, Exhibit Number 10,
2 can you look at that photograph, and tell the jury
3 what it shows, and what your thoughts are about that
4 photograph?

5 A. This is a picture of me showing where my trach is
6 taken out, and I have a small hole there. My central
7 line marks and this is my stomach. This is all of my
8 stomach.

9 Q. Ruthie, does this photograph have anything to do with
10 papillary necrosis, or chronic fatigue that you had
11 before the operation or sickle cell trait?

12 A. No sir, it does not.

13 Q. Ruthie, you are single?

14 A. Yes, sir.

15 Q. The next picture is --- or Exhibit is, O-11-J which is
16 Plaintiff's Exhibit Number 13. Another photograph,
17 Ruthie, taken on August 1, 2001. Can you look at that
18 photograph, and tell the jury what that shows?

19 A. This photograph here shows the stomach and also shows
20 a little of the colostomy bag on the side.

21 Q. Can you actually see the stomach?

22 A. Yes, that is my intestines. This is what you see.
23 That is the intestines.

24 Q. Again, this has nothing to do with anything that
25 happened to you in your life before the surgery,

1 correct?

2 A. No, sir. You can even see where it goes down to my
3 pubic area and my groin right here, and where my bone
4 is out of socket.

5 Q. Ms. Ruthie, did you stay like that until January 2003?

6 A. Yes, sir.

7 Q. Your colostomy bag which was in one of those
8 photographs did you ever, have a chance to go in
9 public, or go in a restaurant, with a colostomy bag?
10 Tell us your thoughts about that.

11 A. My daughter took me out and it was my first time out.
12 I went to the doctor that day for my checkup.
13 Afterwards, we went to Ryan's in Columbia.
14 Everything, gas and everything goes in the bag, and
15 some people went by, and you can't help what is coming
16 out of you, because you have no control of it. It
17 just comes out in the bag. Some people went by me,
18 and they smelled me, and I didn't have an accident,
19 they just smelt where I was passing gas. But you have
20 no control of what comes out in the bag. Some people
21 came by me and smelled me and said, oh my God, what is
22 that odor, and I knew it was me, I mean, and I asked
23 my daughter to take me out, because I was very, very
24 embarrassed. I was very embarrassed.

25 Q. Ruthie, before the Carolina Pines complications, did

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1 you enjoy a social life, going to restaurants and
2 being with friends?

3 A. Yes sir, I did. Yes sir, I did. I would go out with
4 my girlfriends. We would go out to dinner. I would
5 go out with my family to dinner. I would go on school
6 trips as a chaperone with one of my girls and her
7 teacher, and I would go chaperone her classroom of
8 kids. I enjoyed children, you know.

9 Q. Ruthie, during this time between the first and second
10 hospitalizations in Columbia, you indicated you stayed
11 in your home and Lori stayed with you.

12 A. Yes, sir.

13 Q. Did anybody else stay in the house with you?

14 A. My granddaughter.

15 Q. What is her name please?

16 A. Kiarra.

17 Q. Were you capable of caring for yourself in that
18 condition shown by those photographs? In August 2001,
19 could you have done it by yourself?

20 A. No sir, I could not.

21 Q. Over the months has your leg wound, the appearance of
22 your leg wound somewhat improved?

23 A. Yes, sir.

24 Q. Do you know what an Incisional Hernia of your stomach
25 is?

1 A. No, sir. I don't know, but I asked what it was.

2 Q. Did your stomach come out?

3 A. Yes.

4 Q. Do you know why your stomach actually came out further
5 than what it is in those photographs? What was going
6 on?

7 A. Because of the infection that I had inside of my body.

8 Q. Now your stomach came out sometime before Christmas of
9 that year, right?

10 A. Yes, sir.

11 Q. Okay. Did you have a good Christmas that year,
12 December 2001?

13 A. No, sir.

14 Q. Plaintiff's Exhibit Number 16, taken December 19,
15 2001, six days before Christmas. Can you look at that
16 photograph, Ms. Ruthie, and tell the jury what is
17 going on with you right before Christmas?

18 A. This is a picture of my intestines. This is just the
19 graft and the graft is very, very dead, very dead.
20 The whiteness you see under there are your intestines.
21 That is what it is. The little browning is just the
22 skin that was over to protect. Just a sheer layer of
23 skin, but that is what the intestines look like. You
24 could see them move, and everything.

25 Q. Did your stomach stay in that condition for a couple

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1 of years?

2 A. Yes sir, they did.

3 Q. The next photograph, Ms. Ruthie, is exhibit 11-M, is
4 Plaintiff's Exhibit Number 15, again taken right
5 before Christmas 2001. Can you look at that and tell
6 the jury what that shows?

7 A. It shows your intestines, and it also shows right down
8 here in this area here, it was dark, and there is like
9 a hole there, which the hole is still there. It also
10 shows you see right here like a little hump. The
11 little hump is where my pelvic bone is two and a half
12 inches higher than the other side of my pelvis. I
13 named it Hermie, because it is like a person and it
14 became a part of me. I named it Hermie, because
15 Hermie was the monster. And that is what it looks
16 like to me.

17 Q. It looked like a monster to you, but what affect did
18 it have on your grand babies, when they would see you
19 around Christmas time 2001? Do you want to talk about
20 that?

21 A. My oldest granddaughter, Kelsey, she is nine now. She
22 was four when this happened. She told me that she was
23 scared of me. And she was in school then, and you
24 know, they have Grandparent's day and I wanted to go,
25 but she told me she did not want me to come. So I

1 asked her why, and she told me because I had the holes
2 in my neck, I talked funny, I walked funny, and I had
3 to be in a wheelchair and she didn't want anybody to
4 see me, to know that I was her grandmother. She has
5 never seen my stomach, but she has seen my leg, and if
6 she comes in this house to the day if she sees my leg,
7 she turns around and walks out. She says she doesn't
8 want to stay there because she doesn't want to look at
9 me. My other grand baby, Kiarra, she was a year and a
10 half when it happened. And I guess by her being
11 younger she didn't verbally say anything. But she
12 went in my daughter's room one day and she found my
13 daughter's baby doll, which was a Baby Alive. She
14 took the doll and she said, Momma I am going to make
15 the doll look like you. And I said what do you mean
16 Kiarra, and she said, I want it to look like you,
17 because I love you, and that way when you go back to
18 the hospital, I will have you still here with me. So
19 I said okay, and I thought she was just going to wrap
20 it up in some clothes, you know and cuddle it like she
21 would do me. But instead, she took the baby and she
22 went in the room, and when she came back out, she had
23 made the doll, she made a trach on it, she made a
24 stomach on it, she made a colostomy on it. She made a
25 central line in my arm also. She also made a leg and

1 she wanted. She showed it to me, and I looked at it
2 and she said here, Grandma and I looked, and I just
3 started crying, because she was just a baby and I
4 scared her because this is how she sees me. Do you
5 understand what I am trying to say? She portrays me
6 as --- that is how she sees and she still sees me like
7 this now. Of course she tells me she loves me and it
8 will be, all right.

9 Q. Ruthie, what is this?

10 A. This is my baby and this is what she thinks of me.
11 And she told me it's pretty.

12 Q. She said it's pretty?

13 A. Because, it's Mamma. But she doesn't like the
14 bandages and stuff. So this is my trach. This is my
15 intestines, and this is my colostomy, and that is my
16 thigh, and this is my arm.

17 (Pause)

18 Q. Ms. Ruthie --- I'm sorry. Are you okay, Ruthie?

19 A. Yes, sir.

20 Q. Before Christmas 2004, go back to 1999 did Christmas
21 have any significance in your family to you?

22 A. Yes, sir.

23 Q. Explain, please. How did you feel about Christmas;
24 what did you do before these complications?

25 A. That was a joyous time. I mean, I would fix dinner.

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1 I had my children. I had my grand baby, Kelsey. I
2 didn't have Kiarra, then. But I had the oldest one.
3 My friends would come over. We would have dinner
4 together, and it was just one big family, you know, a
5 get together. Everyone was really enjoying themselves
6 and I could cook. I used to bake and make cakes and
7 pies for people during the holidays. I can't half
8 cook now. I can make instant grits.

9 Q. Instant grits?

10 A. Yes, sir. I can cook them in the microwave, and I can
11 make the little smokies and hotdogs in the microwave.
12 I make toast. I make coffee, and instant potatoes. I
13 cook them real good now too.

14 Q. Do you have any more big Christmas celebrations with
15 your cooking, Ruthie?

16 A. No, sir.

17 Q. Those days are gone?

18 A. Yes.

19 Q. Could you get on the floor Christmas 2000 before these
20 complications, and play with these grand kids open the
21 toys, and have a good time?

22 A. Yes sir, I could. I could get on the floor, I crawl
23 around, do the little pony rides with them sitting on
24 my back. You know how we do. I taught them how to
25 play jacks, jacks and ball. I taught them how to play

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1 kick-ball. How to ride a bike. I would hold the bike
2 and taught them how to ride their bicycle. I was
3 very, very --

4 Q. -- Were you a good Grandma?

5 A. I was a Great-Grandmother.

6 Q. Any more pony rides?

7 A. No, sir.

8 Q. Any more jacks?

9 A. No, sir.

10 Q. Any more kick ball?

11 A. There is nothing anymore, except reading them a book,
12 or giving them a hug.

13 Q. Ruthie, did you have emotional difficulties coping
14 with how you felt, your appearance, your grand babies
15 reaction to you, and other people's reaction to you,
16 after you got out of Palmetto Richland Hospital?

17 A. Yes sir, I did.

18 Q. Did you receive any counseling for your emotional
19 problems?

20 A. Yes sir, I did.

21 Q. Who is Dr. Dora Winsaroba?

22 A. She is the psychologist that worked with me to help me
23 deal with my problem, to help me accept myself, or try
24 to accept myself the way I am now.

25 Q. Ms. Ruthie?

1 A. Yes, sir.

2 Q. Christmas 2001, with your stomach exposed like this,
3 did you know to live, you needed more surgery?

4 A. Yes sir, I did.

5 Q. Were you looking forward after what had happened to
6 you, to go back again, and have more surgery?

7 A. No sir, I wasn't. But I went to Dr. Windsorova,
8 because she helped me get to the point where I knew I
9 had to have the surgery, and she helped me. She
10 helped me cope daily. She helped me with the fact I
11 had to have more surgery. And I was not looking
12 forward to it. But she let me realize I had to have
13 it, because I was at risk with being that way.

14 Q. Did she get you to a point after a couple of years
15 where you could consent to having more surgery on your
16 stomach? Did she help you do that?

17 A. Yes sir, she did.

18 Q. Did her therapy work?

19 A. Yes sir, she did.

20 Q. Dr. Windsorova's bill, which is part of Exhibit Number
21 2, indicates you went to her for counseling from
22 November 2001 through December 2004. Her bill is
23 \$11,400.00. Ruthie, did you really need her?

24 A. Yes sir, I did.

25 Q. Did you go back to Palmetto Richland on December 3,

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1 2002, for more surgery?

2 A. Yes sir, I did.

3 Q. Do the records indicate you stayed there until January
4 6, 2003 staying the month of December through the
5 first part of January the next year, correct?

6 A. Yes sir, I did.

7 Q. You spent Christmas at the hospital in Columbia?

8 A. Yes, sir.

9 Q. Another tough Christmas?

10 A. Yes sir, and New Year.

11 Q. Do you think you could have a good Christmas this
12 year?

13 A. I don't look forward to holidays now. Holidays used
14 to mean something to me, but they really don't mean
15 anything to me now, because I can't enjoy it like I
16 used to.

17 Q. Ruthie, did the Columbia doctors put your stomach back
18 in the cavity and close it?

19 A. Excuse me, sir?

20 Q. In Columbia, do you know what the purpose of the
21 surgery in Columbia was?

22 A. Yes, I do.

23 Q. What was the purpose, please, in January 2003?

24 A. The purpose in doing the surgery was to put my stomach
25 back together whereas they had to cut part of the

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1 colon off to reconnect it back to the rectum, close
2 the colostomy up, and put the intestines back in place
3 and close me up. And pull the muscle from my knee all
4 the way up out of my tooshie on the right side and
5 push it to make me a stomach, because they said with
6 all of the trauma my body had been through, they could
7 not take a chance on putting anything foreign, or
8 plastic, or anything in me. It had to be from my own
9 body, whatever they used, to make me a stomach.

10 Q. Taking the muscle, you indicated from your knee, up
11 your thigh, to your hip, and around your tooshie,
12 taking that muscle out and using that to hold your
13 stomach in, did it affect your ability to walk?

14 A. Yes sir, it did.

15 Q. What kind of troubles do you have, walking?

16 A. It is very painful for me to walk. My leg is shorter,
17 and my right leg is extended out. My foot goes to the
18 right. It is very, very painful so they had to give
19 me a brace to wear on my legs that enables me to stand
20 up and walk a little bit, but the leg gives out. It
21 is very painful. It is painful to walk, because it is
22 out of joint. My pelvis and hip are out of joint, so
23 it is very, very painful and they can't put it back in
24 place. You feel my bone. You can see my bone.

25 Q. Were you on a respirator again for the second time?

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1 A. Yes, sir.

2 Q. Did you have another tracheotomy cut in your throat
3 the second time?

4 A. Yes, sir.

5 Q. Did you need a respirator to assist you breathing for
6 the second time?

7 A. Yes, sir.

8 Q. Did you have more infections?

9 A. Yes sir, I think so.

10 Q. Do you know whether or not you are at a high risk for
11 infections in the future, because of all these
12 complications from Carolina Pines?

13 A. Yes, sir.

14 Q. Who came up with the idea to use your thigh and leg
15 muscle to hold your stomach inside its cavity? What
16 was his name?

17 A. Dr. Wasserman.

18 Q. Ruthie?

19 A. Yes.

20 Q. From Plaintiff's Exhibit Number 2, you have listed,
21 your Palmetto Richland Memorial Hospital expenses, for
22 the treatment those doctors, provided to you at the
23 hospital. Are you satisfied with what those Columbia
24 doctors did?

25 A. I am satisfied that I still have my life, yes, sir.

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1 Q. Do you believe that the amount of their medical bills
2 that they sent to you for saving your life are
3 reasonable?

4 Mr. Sweeney: May it please the Court, Your
5 Honor, he is, editorializing her bill?

6 The Court: Sustained.

7 Mr. Sweeney: I do have an inquiry I would like
8 to make of the Court. Could we take about a ten minute
9 break, or so?

10 The Court: Do you want to come to the bench?

11 Mr. Sweeney: Well, yes.

12 (Whereupon, a bench conference was held in
13 the presence of the jury but out of the hearing of the
14 jury.)

15 The Court: I will sustain the objection to the
16 question, please rephrase the question.

17 Mr. Corbin: Your Honor, for your information, I
18 have not said anything, and the photographs.

19 The Court: All right.

20 Mr. Corbin: I don't know when it was taken
21 down, but it's not there.

22 The Court: Very good.

23 Q. (By Mr. Corbin) Do you have any opinion, Ruthie,
24 whether or not the medical bill you got from Columbia
25 was necessary for you?

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1 A. Yes, sir.

2 Q. Do you believe the bill from Columbia was reasonable?

3 A. Yes, sir.

4 Mr. Sweeney: Again Your Honor, she is not
5 competent to testify --

6 The Court: Overruled, the Court will overrule
7 that, she can speak to her opinion on that.

8 Q. (By Mr. Corbin) Ruthie, your medical bills, from
9 Palmetto Richland Memorial Hospital on your Exhibit
10 indicates from April 30 until July 2, 2001, that bill
11 was \$258,400.15.

12 In addition, you have got additional bills
13 in August 2001 of \$645.38 and \$1,296.86.

14 August 7, 2002 you have an additional bill
15 from Palmetto Richland Memorial Hospital of
16 \$786.00.

17 On October 16, 2002, Palmetto Richland's
18 bill for that day was \$2,131.00.

19 The time you stayed in the hospital from
20 December 2, 2002 through January 6, 2003 was
21 \$214,258.99.

22 In addition, you got a bill on January 9,
23 2003 in the amount of \$1,420.00.

24 Ruthie, do you believe any of those expenses from
25 Palmetto Richland Memorial Hospital have anything to

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1 do with your previous disabilities?

2 A. I don't understand.

3 Q. The bills that you got from Palmetto Richland Memorial
4 Hospital?

5 A. Yes, sir.

6 Q. Do they have anything to do with papillary necrosis?

7 A. No, sir.

8 Q. Anything to do with chronic fatigue?

9 A. No, sir.

10 Q. Anything to do with, Sickel Cell Trait?

11 A. No, sir.

12 Q. Ms. Ruthie, the next photographs that I want to show
13 you involve your appearance and condition on July 30,
14 2003. This would be after the doctors in Columbia put
15 the stomach back in, correct?

16 A. Yes, sir.

17 Q. The first photograph is exhibit 11-0 or O, Plaintiff's
18 Exhibit 18, taken July 30, 2003. You had been out of
19 the hospital about seven months. Can you tell the
20 jury what that shows?

21 A. Yes, sir.

22 Q. What does that show?

23 A. This is a picture of my right leg where you see my
24 incision here from the knee on. This black mark here
25 had one on each side of the knee with a drainage tube,

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1 because the leg kept draining so they had bulbs in it
2 to drain. They took them off the day before I came
3 home, on the side right here. On the other side of
4 the incision you can see where that is the graft where
5 they took --

6 Q. Ms. Ruthie, the next photograph was also taken July
7 30, 2003, 11-P, Plaintiff's Exhibit Number 19. Can
8 you look at that photograph, and please tell the jury
9 what it shows?

10 A. This is a picture of my right leg. This is my
11 incision that goes all the way up into my groin area
12 and it goes up to the pubic area. This is how my leg
13 looks. The graft is bigger than this. This is only a
14 small part that you see. This is a piece of skin, a
15 piece of meat that hangs down like a little boy's
16 whistle --- that's a nice way to say it, right? It
17 hangs down like that on my side. This here is my
18 special panty I had to wear at that time, and I still
19 have to wear now, and I wear it on top.

20 Q. Ms. Ruthie, the next photograph taken July 30, 2003,
21 Number 22-A, is Exhibit Number 22. Please look at
22 that Ruthie, and tell the jury what it shows.

23 A. This is a picture of my abdomen and my incision how it
24 goes all the way across under the left breast. This
25 right here is where I have a drainage tube for my

1 pancreas. This, this here is my intestines. This
2 here is the graft. That is the intestines. These
3 here are also drainage sites where I had the tubes.
4 This here is where --- around here is where it was
5 trying to close. And my hand looks like this because
6 it stays so swollen for so long, and that is why my
7 hand looks like that.

8 Q. Ruthie, it has been more than three years since those
9 particular photographs were taken. Are you getting
10 better?

11 A. No, sir.

12 Q. Do you sleep better?

13 A. No, sir.

14 Q. Comparing your hurt and your burning to the way it was
15 three years ago, is it getting any better?

16 A. No sir, it's not. It's the same burning. It's the
17 same pain --- very very intense.

18 Q. Do you still have lots of social friends, get
19 together?

20 A. No sir, I don't. All the friends that I had and
21 associates that I had that I thought were my friends,
22 after I got sick, they don't accept me the way that I
23 am anymore. I don't have social gatherings anymore.
24 I'm not invited anywhere because even though I don't
25 have the colostomy, I don't have full control of my

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1 rectum. So therefore, I'm prone to pass gas or have
2 an accident, and it still smells like a colostomy.
3 Therefore, I don't go anywhere. I pretty much stay in
4 the house in my room. Because I feel safe in my room.

5 Q. Ruthie you are, forty-seven I think?

6 A. Yes, sir.

7 Q. You were forty-one or forty-two when you had your
8 operation at Carolina Pines.

9 A. Yes, sir.

10 Q. You are a single woman.

11 A. Yes. Yes, sir.

12 Q. What are your thoughts about having an adult
13 relationship with a man, or falling in love, having a
14 relationship and then getting married some day, what
15 do you think about that?

16 A. There is no chance that that is going to happen. My
17 body is so severely distorted. I am no good to a man.
18 Not unless he has a disability like me and he can
19 accept me the way I am, and that is not likely. I am
20 a young woman and this is my life. I have no future
21 for intimacy because I am not able. I have no place
22 to say I will remarry. I mean people look at me when
23 I am out with my daughter going through a store, even
24 my church members look at me funny. They don't
25 receive me as I used to be. Regardless of what my

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1 disabilities are, I am still Ruthie. Nothing has
2 changed, I mean my body has changed. I may look a
3 little different, but my heart is still the same, but
4 they don't see me that way anymore. So, I am learning
5 how to accept me for me. I have to go forward for me.
6 And I know I don't have much time. I know that, but
7 what time I have I want to be happy. And my
8 grandchildren make me happy. Having my daughter and
9 my son-in-law, having my son and my daughter-in-law,
10 that is my family. There is no one else because
11 people don't want to be bothered.

12 Q. Ms. Ruthie, you mentioned Dr. DeMichele. Do you trust
13 him?

14 A. Yes sir, I do.

15 Q. Has he been your doctor for a long time?

16 A. Yes sir, he has.

17 Q. Do you tell him things you don't tell other people?

18 A. Yes sir, I do.

19 Q. Have you ever thought about hurting yourself?

20 A. Yes sir, I have.

21 Q. What did you tell Dr. DeMichele?

22 A. Does my daughter have to hear this?

23 Mr. Corbin: Lori, please leave. One minute
24 please.

25 (Pause)

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1 Q. (By Mr. Corbin) Ruthie, tell the jury what thoughts
2 you have expressed to Dr. DeMichele.

3 A. I have had thoughts where I wanted to die. I had
4 thoughts I wanted to kill myself. I have thoughts
5 that I could not go on any longer, because I was
6 tired. I am tired of feeling alone.

7 Q. Please speak up, Ruthie. I am sorry.

8 A. I am tired of feeling alone and by myself. I don't
9 sleep. I don't half eat. I barely function. I've
10 realized that I have life, but I don't have much
11 quality to my life now, and yes I did tell him that.
12 I did.

13 Q. Ms. Ruthie, I want to show you some photographs taken
14 a week ago and ask if these few photographs fairly
15 represent some of your conditions. Exhibit 11-T,
16 Plaintiff's Exhibit Number 23 taken last week, does
17 that show your tracheotomy holes?

18 A. Yes, it does.

19 Q. Will it get any better?

20 A. No sir, it won't and they said that because I had my
21 Trachs so close together is why my hole is so deep, so
22 therefore, that is why I have the gagging and the
23 choking. They said I could have surgery to open it,
24 but then I would have to have a permanent Trach. I
25 don't want that. Because I worked very very hard,

1 very hard to get to the point where I am now. And
2 each day for me is a victory for me. I don't care how
3 small or how big, it is a victory for me, because I
4 had to change my thoughts and realize, I was being
5 selfish by wanting to do something to myself to bring
6 on grief, for my family, to bring more grief to my
7 family. Do you understand what I am saying? That
8 would put more pressure on them. They already have to
9 accept me the way that I am, but if I would have done
10 something to hurt myself, that would be more
11 devastating to them and my grand babies. So I am
12 learning how to accept Ruthie for Ruthie. And whoever
13 can't accept me, then you aren't my real friend in the
14 beginning. That is how I feel.

15 Q. Ruthie, why with all of your complications and
16 difficulties, why have you fought so hard to be able
17 to sit in a wheel chair and talk to a jury? Why?

18 A. Why? I look at myself every day. I look from my head
19 to my feet. I think of the pain that I am in every
20 day. I don't have a day that I can say, I'm pain
21 free, because I am always in pain, always. I look at
22 the scar; I look at my body and it's not a pretty
23 sight. So if it's not pretty to me, I know it's not
24 pretty to y'all. And I wouldn't dare, no way in the
25 world would I want anybody to have to go through and

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1 live the way I live. I wouldn't want anyone to have
2 to suffer, to feel the pain that I feel. I wouldn't
3 want anyone to have to ride in their car, and when
4 it's summertime, have a blanket over their leg,
5 because of it being on fire because of the graft in
6 it. I have to cover it to protect it. I wouldn't
7 want anyone else to feel that. I wouldn't want anyone
8 else to suffer by being separated from their family
9 and have to learn your family all over. I also would
10 not want anyone --- my family has suffered, not just
11 me, my children, my grandchildren, they have all
12 suffered. My son is thirty-three-years-old and do you
13 realize he can't even talk about it. I am his Mother.
14 He told me how he felt, but he can't talk about it.
15 My daughter can, but my son is emotionally scarred.
16 My daughter is. My grand babies are. One can't
17 accept me, and one has a doll after me. We have all
18 suffered through this, and I would not want anyone
19 else to have to suffer. or go through a procedure like
20 I went through that did not work. No, I would not
21 recommend it to anyone. I love animals, and I had a
22 cat and I wouldn't even want my cat to have the
23 surgery done if it was human. No, I would not. That
24 is my personal feeling. That is how I feel. And if
25 it can prevent someone else from having it and living

1 their life like I live when your body comes out
2 distorted, you look mutilated, no, I feel bad, and no,
3 I would not anyone else to experience. No, I would
4 not.

5 Q. Have you done all you can do to prevent that from
6 happening in the future?

7 A. Everyone that I know that suffers from GERDS, and I do
8 know, a good bit of people that have GERDS. Some have
9 it as bad as I have it. Yes, I talk to them and I
10 tell them, look at me, would you choose to wind up
11 like me? I tell them I wouldn't recommend it to
12 anyone. No.

13 Q. Ms. Ruthie, in the next photograph, Exhibit 11-W,
14 Exhibit Number 26, does that show how your leg appears
15 today?

16 A. Yes, sir.

17 Q. Will it ever get any better?

18 A. No, sir.

19 Q. That is as good as it gets?

20 A. This is my leg. This is my right leg. My right leg
21 is a half a size larger than my left. This is where
22 it goes up in my groin area, you see right there, that
23 is my body sticking out. No.

24 Q. Ms. Ruthie, the next photograph, Exhibit 11-C, is
25 Plaintiff's Exhibit Number 29 taken November 1, 2006.

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1 Can you look at that please, Ruthie, and tell us your
2 thoughts?

3 A. This, this is Hermie. This is my other half. You can
4 see Hermie goes under my breast. It goes all the way
5 over to my side. You can see the bone extended out,
6 right there. You can see the hole here where I walk
7 or stand too much; this will drain.

8 Q. It will drain?

9 A. Yes.

10 Q. What comes out?

11 A. Puss and a little blood. The skin right here in my
12 groin area, you can see, is very very thin. If I walk
13 or stand too long, it comes open. So I have to put
14 Neosporin on it to keep it from getting infected.
15 That is what they told me to put on it. That is what
16 they told me to put on this area, so that is what I
17 put. I am sorry, you gentlemen have to see me like
18 this, but this is part of me, and now you see all of
19 me. But this is Hermie, and as you can see the
20 roughness here, that is where it is still scaly. The
21 scale comes off. This is me and it is not going to
22 get any better. Where you see white that is the
23 intestines. You see there is no pinkage there. No
24 blood gets to that area. When I eat my food stops
25 right here, where that pucker is. That is my food

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1 pocket. So I have to wait for my food to go down.

2 Sometimes it comes right out. Sometimes it takes an
3 hour. But this is Herman and it's part of me.

4 **Mr. Corbin:** Thank you, Ma'am. Please answer
5 any questions that Mr. Driggers or Mr. Sweeney have.

6 **The Court:** All right. Ladies and gentlemen
7 before we begin cross-examination, we are going to take our
8 morning break at this time. If some of you wish to go
9 outside and take a break, we will certainly permit you to
10 do that. Please don't discuss the case.

11 Lets everyone else remain where they are while our
12 jury departs the courtroom.

13 **The Court:** All right. The Court will be in
14 recess now for fifteen minutes.

15 (Whereupon a recess was taken from 10:30
16 a.m. until 10:58 a.m.)

17 **The Court:** Mr. Medlin, please bring in the
18 jury.

19 (Whereupon the jury enters the courtroom at
20 10:58 a.m.)

21 **The Court:** All right. Ladies and gentlemen,
22 welcome back to the courtroom and we are ready for
23 cross-examination now and you may proceed, Mr. Sweeney.

24 **Mr. Sweeney:** Thank you, Your Honor. May it
25 please the Court?

Cross Examination by Mr. Sweeney

Q. Ms. Person can you hear me okay?

A. Yes, sir.

Q. The first thing I want to say to you is I am sorry ever so much, and I hope you do understand that there are some questions that I have to ask you. Do you understand that?

A. Yes, sir.

The Court: Counsel, excuse me, speak up please. There is a block by that television. We can't see you; our court reporter can't see you. Please make sure she can hear you.

Mr. Corbin: With Mark's assistance, we can put that down.

The Court: That would helpful to do that for our court reporter.

Q. (By Mr. Sweeney) Thank you. I am going to be asking you a few questions, and they are questions that you have been asked before. They are in all of your depositions, but I need to ask you here today in the courtroom. So I will try not to hold you up a long time, but I want you to know that I appreciate the fact that you will be answering my questions, and I will do my best to be fair to you. Okay?

A. Thank you.

001249

1 Q. Let's talk about the time that you elected to have the
2 nissen surgery, the surgery you had from Dr. Mincheff.
3 At the time that you did that, you knew the person who
4 was going to be operating on you, you knew Dr.
5 Mincheff, did you not?

6 A. Yes, sir.

7 Q. He had operated on you successfully before. Is that
8 not true?

9 A. Yes, sir.

10 Q. You were familiar with the fact that he is a skilled
11 surgeon, and that he had skillfully operated on you in
12 the past, isn't that correct?

13 A. When you were saying --- May I ask you a question?
14 When you were saying, skillfully, do you mean the
15 procedure that he had done like my appendix and stuff?

16 Q. Absolutely.

17 A. Okay, yes, he was skilled in doing my appendicitis,
18 and my gall bladder, yes, sir.

19 Q. I mean it only make sense you don't go back to the
20 same surgeon if you don't think he did a good job the
21 last time he operated on you; isn't that true?

22 A. Yes, sir.

23 Q. So you were satisfied then, each time, that he had
24 performed a service for you, is that correct?

25 A. Yes, sir.

001250

1 Q. Now on one occasion, at a time when you had a second
2 hysterectomy operation, he actually went in and fixed
3 things up after another doctor had had a failed
4 surgery. Isn't that correct?

5 A. Yes, sir.

6 Q. Okay. Dr. Robertson had some difficulty on the first
7 procedure and so Dr. Mincheff went in on the second
8 procedure, and took over and everything worked out
9 reasonably well. Is that correct?

10 A. Yes, sir.

11 Q. Enough so, that you felt comfortable having him
12 operate on you other times. Isn't that true?

13 A. Yes, sir.

14 Q. The appendicitis that you referred to was actually a
15 little more complicated, than a simple appendicitis.
16 You had a hematoma wrapped around your appendix, did
17 you not?

18 A. Yes, sir.

19 Q. All right. He did your gallbladder surgery, as well,
20 did he not?

21 A. Yes, sir.

22 Q. And I believe you said he did a Lumpectomy, as well.

23 A. Yes, sir.

24 Q. All right. And in each of those cases, he performed
25 skillfully; enough so that you were willing to let him

001251

1 do it again, correct? To operate another times.

2 A. Yes, sir. May I say something, please?

3 Q. Sure.

4 A. Yes, when he did my appendix, there was a large
5 hematoma, and that is why he had to finish up the
6 hysterectomy.

7 Q. All right. At any rate, you have, not only do you
8 have a good prior experience before all of this with
9 Dr. Mincheff, but you have a little bit of knowledge
10 about the medical community yourself, do you not?

11 A. Yes, sir.

12 Q. You graduated from high school in Brooklyn, New York,
13 and after that you became trained to be a nursing
14 assistant. Isn't that right?

15 A. Yes, sir.

16 Q. And you trained at the Byerly Hospital which is
17 Carolina Pines predecessor. Isn't that right?

18 A. Yes, sir.

19 Q. You became a certified nursing assistant.

20 A. Yes, sir.

21 Q. So, you're not a medical expert, but you know enough
22 about how a hospital operates to know what a good
23 hospital is, don't you?

24 A. Can you explain that again now, please?

25 Q. Sure, I mean, just from being there, just from

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1 studying there, just from having so many operations
2 there, just from being a nurses assistant, you get a
3 feel for what it is like in a hospital, and you can
4 tell when things are run well or when they are not run
5 well. Isn't that true?

6 A. Yes, sir.

7 Q. And you must have felt that that ran pretty well,
8 because you continued to go there for your
9 operations, did you not?

10 A. Yes, sir.

11 Q. You are in a position, a bit of an insider, so you
12 know the reputation of the doctors, you know the
13 reputation of the hospital, isn't that correct?

14 A. Not exactly, sir, for the simple reason, I did private
15 duty. I am a licensed nursing assistant, but I did
16 private duty. I did not do it in the hospital. And
17 my training was at Hartsville Career Center. But we
18 did a final training at Byerly Hospital.

19 Q. Yes Ma'am. The final training at Byerly, and I'm not
20 trying to say you knew everything about the hospital.
21 You know a little bit more than most people; is that
22 fair to say?

23 A. Probably, sir. But I have been around sickness all of
24 my life.

25 Q. That's right.

001253

1 A. With my family, so pretty much, yes sir, I know a good
2 bit about sickness.

3 Q. Then prior to this event, this series of events, you
4 had had all of your surgeries, all of your procedures,
5 pretty much at Carolina Pines Hospital, had you not?

6 A. Yes, sir.

7 Q. And so had your other family members, many of whom
8 have very severe disorders, isn't that correct?

9 A. No, sir. None of my family members had surgery at
10 Carolina Pines. No, sir. My Mother was at McLeod.

11 Q. All right. But at any rate, you chose Carolina Pines
12 when you had your surgery, isn't that correct?

13 A. Yes, sir.

14 Q. And furthermore, you chose Dr. Mincheff, when you had
15 your surgeries, at least some of them, isn't that
16 correct?

17 A. Sir, I didn't actually choose Dr. Mincheff. Dr.
18 Barker who was my family physician, my medical
19 physician, Dr. Barker referred Dr. Mincheff to me. As
20 a matter of fact, he sent Dr. Mincheff to me. That is
21 how I became acquainted with him.

22 Q. Well, let's get to that. You had an option of who
23 could operate on you, in your appendicitis operation,
24 did you not?

25 A. No sir, because at that time, Dr. Mincheff was the

001254

1 only doctor that wasn't doing anything that day. So
2 that is how I got Dr. Mincheff.

3 Q. Okay. All I'm asking is a very simple question. When
4 it came time for you to have these surgeries, where
5 people are going to be invading your body with medical
6 equipment, and doing things like that, you had a
7 choice, you had some say in who your doctor was going
8 to be, and when you chose, you chose Dr. Mincheff
9 virtually every time. Isn't that correct?

10 A. Yes, I chose Dr. Mincheff after he did my first
11 surgery, and he found the hematoma the second surgery.
12 After the second surgery, I felt comfortable with him
13 to do you know --

14 Q. -- And that's all I'm getting at.

15 A. Okay.

16 Q. And you are in a position to know his reputation. You
17 are in a position to know his skill, or at least have
18 some knowledge about it. You are in a position to
19 know those things to some degree, correct?

20 A. Yes, sir.

21 Q. Now, you knew something else about Tom Mincheff as
22 well, Dr. Mincheff, didn't you. You knew that he
23 cared about you personally.

24 A. Yes, sir.

25 Q. I mean, he had genuine affection for you, wouldn't you

001255

1 say?

2 A. I can't say exactly sir that it had been genuine. I
3 know we had a repertoire with each other.

4 Q. Okay, well let's say that he was putting it on. If he
5 was putting it on, at least he had a good bedside
6 manner, isn't that right?

7 A. Yes, he had a good bedside manner with everyone.

8 Q. Okay. He's that kind of guy, isn't he?

9 A. Somewhat.

10 Q. Okay. Let's talk about the decision to have the
11 nissen procedure to begin with. A short time before
12 you were to have that procedure, you developed
13 pneumonia, did you not?

14 A. Yes, sir.

15 Q. And you were treated at Carolina Pines for that by Dr.
16 Barker. Is that correct?

17 A. Yes, sir.

18 Q. Dr. Barker is a family practitioner, is he not?

19 A. Yes, sir.

20 Q. You learned from that experience going to Dr. Barker
21 that you had what was called bilateral pneumonia.
22 That is you had pneumonia in both lungs, is that
23 correct?

24 A. No sir that is not. I saw Dr. Smith, which was the
25 pulmonary doctor at Carolina Pines. He was the one

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1 who told me that I had bilateral pneumonia.

2 Q. All right. You are a little ahead of me, but let's
3 get to that. Both Dr. Smith who was a Pulmonologist,
4 and you don't have any problem with Dr. Smith, do you?

5 A. No, sir.

6 Q. Dr. Barker who is a family doctor, you don't have any
7 problem with him?

8 A. No, sir.

9 Q. Both of them said that you had bilateral pneumonia,
10 isn't that correct?

11 A. Yes, sir.

12 Q. And that you were running high fever at the time.

13 A. Yes, sir.

14 Q. And that you were chronically throwing up. That means
15 throwing up all the time. Correct?

16 A. Yes, sir.

17 Q. Uncontrollably.

18 A. Yes, sir.

19 Q. And that you had severe aspiration.

20 A. Yes, sir.

21 Q. And that means that the fluid, this reflux fluid that
22 we are talking about, is not just in your tummy, it is
23 in your lungs eating away at the lung lining, isn't
24 it?

25 A. Yes, sir.

001257

1 Q. Okay. In fact, a chest x-ray was done of your
2 esophagus at the request of Dr. Barker or Dr. Smith,
3 and it showed that, in your words, that your lungs
4 were being eaten by acid and have holes in them from
5 the aspiration, isn't that right?

6 A. Yes, sir.

7 Q. And Dr. Barker told you that you were continuing to
8 aspirate because of the esophagus, correct?

9 A. Yes, sir.

10 Q. All right. And you knew yourself that it was a
11 serious situation because the acid was strong and
12 because you just couldn't stop upchucking, correct?

13 A. Yes, sir.

14 Q. All right. And Dr. Barker said, the acid was getting
15 into your lungs.

16 A. Dr. Smith told me that not Dr. Barker.

17 Q. Well, if you said Dr. Barker in your deposition, then
18 you just had the names mixed up?

19 A. Yes. I'm sorry.

20 Q. Okay. At any rate, Dr. Barker told you that you were
21 going to need an operation, and he suggested that you
22 have either Dr. Mincheff or his partner Dr. Harris do
23 the operation, correct?

24 A. No, sir. He mentioned Dr. Mincheff.

25 Q. You said in your deposition, which you did, that he

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1 mentioned Dr. Mincheff or Dr. Harris; you were in
2 error, then?

3 A. Excuse me for a minute please. Yes, sir. It was Dr.
4 Harris. Okay. Dr. Harris and Dr. Mincheff.

5 Q. Okay. All right. You had to choose between the two of
6 them, correct?

7 A. Yes.

8 Q. So before Dr. Mincheff ever got involved in this
9 aspect of the case, both Dr. Smith and Dr. Barker had
10 told you that because of the aspiration you needed an
11 operation, and they had recommended that you use
12 either Dr. Mincheff, or his partner Dr. Smith, I mean
13 Dr. Harris, correct?

14 A. Yes, sir.

15 Q. At the time when Dr. Barker made that recommendation
16 to you, you said to send you Dr. Mincheff, because he
17 knows you and he has bonded with you. Is that right?

18 A. Yes, sir.

19 Q. So, given the choice between those two surgeons, you
20 chose Dr. Mincheff.

21 A. Yes, sir.

22 Q. And you could have chosen anybody else too, for that
23 matter, but you chose Dr. Mincheff.

24 A. Yes, sir.

25 Q. All right. Then at your request, Dr. Mincheff was to

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1 be sent in to see you, but low and behold he just
2 happened to be in a nearby office meeting with another
3 patient, and he was summoned in from the hall into
4 your presence. Isn't that correct?

5 A. Yes, sir.

6 Q. All right. He didn't even know you were there at the
7 time, and you didn't know he was there.

8 A. No, sir.

9 Q. Now in your presence, Dr. Barker explained to Dr.
10 Mincheff what the findings were, and what was going
11 on. Isn't that correct?

12 A. Yes, sir.

13 Q. So that not only does Dr. Mincheff know what the
14 problem was, but you could know it by listening to
15 them. Is that right?

16 A. Yes, sir.

17 Q. Dr. Barker who had also spoken to Dr. Smith the
18 Pulmonologist, confirmed the problem that was there
19 and recommended surgery; isn't that correct?

20 A. Yes, sir.

21 Q. Now, so we will know the decision on surgery was
22 something that Dr. Mincheff had discussed with you as
23 a possibility, years before because of the seriousness
24 of your reflux. Isn't that correct?

25 A. Yes, sir. He said it was possible within a couple of

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1 years that I may need surgery.

2 Q. So, when he had that discussion with you, he explained
3 to you problems that could come from aspiration and
4 other things about deterioration that might mean that
5 you would need that surgery someday. Isn't that
6 right?

7 A. No, that wasn't really explained to me right then.

8 Q. At the time Dr. Mincheff talked to you about the
9 possibility of you having surgery, this is way in the
10 past, he told you that as you got older, as the
11 problem got worse, you might need surgery. Isn't that
12 correct?

13 A. Yes.

14 Q. All right. So it is fair to say that at least several
15 years before the operation that he actually did, he
16 had discussed with you the possibility that it would
17 need to be done, but he hadn't rushed you into doing
18 it. He wasn't anxious to go and do it. He told you
19 to wait until such time that it is necessary. Isn't
20 that right?

21 A. I don't remember him telling me to wait. He told me
22 it would get worse, but I really don't recall him
23 telling me to wait right then.

24 Q. All right.

25 A. He just told me it would get worse.

001261

1 Q. I'm just going by what you said in your deposition.

2 A. Yes, sir.

3 Q. That it would get worse, but there was no need to do
4 it now, because it didn't have to be done then. It
5 might have to be done later. Right?

6 A. Yes, sir.

7 Q. And that later date came when you saw Dr. Barker and
8 Dr. Smith and they recommended, now is the time,
9 you've waited long enough. They didn't use the words
10 you've waited long enough, but they said, now is the
11 time. Isn't that right?

12 A. Yes.

13 Q. All right. Now as a result of your discussion with
14 Dr. Barker and Dr. Mincheff together in that room, you
15 asked, what am I supposed to do, I keep throwing up,
16 what do I do, what do I do. Isn't that right?

17 A. Yes I, asked them, why do I keep throwing up.

18 Q. And with Dr. Barker there, Dr. Mincheff told you, he
19 said, Ruthie, I can do an esophageal wrap for you.
20 Isn't that right?

21 A. He said I could have surgery done, and he could do the
22 wrap.

23 Q. Yes Ma'am. And he said that with you and Dr. Barker
24 there, isn't that correct?

25 A. Yes, sir.

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1 Q. You mentioned something about Dr. Mincheff not being
2 thoughtful, but when Dr. Mincheff called you Ruthie,
3 that was a term of affection, was it not? He knew
4 you.

5 A. I can't say that sir, because everyone calls me
6 Ruthie.

7 Q. No Ma'am, I mean lots of doctors call you Ms. Person
8 or Next. Dr. Mincheff called you Ruthie.

9 A. Dr. Mincheff called me Ruthie, but so do other doctors
10 call me Ruthie.

11 Q. Okay. I hope so.

12 A. They don't necessarily say Ms. Person--

13 Q. -- But the idea is that a nickname, it is a term of
14 endearment, is it not? I didn't know you to be
15 Ruthie. I just read this thing that says Ruth White
16 Person. To know that you are Ruthie means somebody
17 knows something about you. It's like calling me Bill
18 instead of William.

19 A. Not necessarily, Mr. Sweeney, not if I tell you, you
20 can call me Ruthie instead of Ms. Person.

21 Q. All right. Well, we'll get into this later. At any
22 rate, at that time with Mr. Barker there, Dr. Barker
23 there, it was explained to you how the operation would
24 be performed. But you were told to wait until you
25 recovered from the pneumonia and then if you wanted

1 the operation, to come see Dr. Mincheff, isn't that
2 correct?

3 A. What I was told, Mr. Sweeney, was after the pneumonia
4 cleared up, I was sent home. And Dr. Mincheff told me
5 to come to the office. I went to his office for my
6 checkup, and I still had a little pneumonia in one of
7 the lungs.

8 Q. Here is my question. Dr. Mincheff told you in the
9 presence of Dr. Barker that after they explained to
10 you the operation, what it would entail, to come see
11 him but not to do until, if you wanted to, but not to
12 do it until after you recovered from the pneumonia.
13 Isn't that right? That's what you said in your
14 deposition.

15 A. Yes, sir.

16 Q. Okay. He didn't rush you into the decision right
17 then. Ruthie you've got to decide now, right?

18 A. No, what was said, when I got to his office, Ruthie
19 you have to have it done now, but I'm going on a trip.

20 Q. All right. So Dr. Barker, Dr. Smith, Dr. Mincheff,
21 your family doctor, the Pulmonologist and a surgeon
22 were all indicating to you at that time that the
23 operation appeared necessary, correct?

24 A. Yes, sir.

25 Q. Now for a week or so later, after all the upchucking,

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1 when you were not forced to make any decisions at all,
2 but was told to defer them, after all that, after a
3 week later you recovered from the pneumonia, were
4 discharged from the hospital and then you chose to go
5 make an appointment with Dr. Mincheff to see about him
6 doing the operation for you. Isn't that right?

7 A. No, sir. When I got my discharge slip, on it, it said
8 for me to go see Dr. Mincheff.

9 Q. It recommended that you do that?

10 A. Yes.

11 Q. All right. So you didn't have to though, that's just
12 a recommendation, isn't it?

13 A. That was for him to check my checkup to see the doctor
14 when you get out of the hospital.

15 Q. Ms. Person all I'm trying to establish is the truth,
16 and that is, that after you got out of the hospital,
17 you voluntarily went to Dr. Mincheff and at that time
18 approached him about doing the operation. Isn't that
19 right?

20 A. Because I was asked to, yes, sir.

21 Q. All right. Okay. You wouldn't have done it if you
22 hadn't been asked to?

23 A. No.

24 Q. You said many times during your deposition how awful
25 that aspiration was, how terrible the upchucking was,

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1 all of that and you weren't interested in maybe taking
2 care of that?

3 A. Yes, sir. But I was on every medication they could
4 possibly give me.

5 Q. And they weren't working were they?

6 A. No sir, they weren't.

7 Q. Okay, so an operation is what comes when the
8 medication isn't working, isn't that correct?

9 A. Yes, sir.

10 Q. All right. Now, you then went to Dr. Mincheff's
11 office for an examination, correct?

12 A. Yes, sir.

13 Q. Nobody has been forcing you to do anything, make
14 decisions that you've got to operate now, you have to
15 do that, none of that happened. It was you going to
16 the office for an examination first, correct?

17 A. Yes, sir.

18 Q. In the exam room, Dr. Mincheff took out a book and you
19 said it was a dictionary, but I think you probably
20 meant an encyclopedia. I do that all the time.

21 A. Encyclopedia.

22 Q. But he took out a type of medical encyclopedia and in
23 that medical encyclopedia, he showed you the anatomy
24 of the esophagus, did he not?

25 A. Yes, sir.

1 Q. He showed you where it was in the body, what it looks
2 like when it's healthy, the organs that are near it
3 and what it does for the human being in the body. Is
4 that correct?

5 A. Yes, sir.

6 Q. All right. Then he opened the encyclopedia to a
7 different portion of the encyclopedia and he showed
8 you, what an esophagus looks like that has been
9 damaged. Is that right?

10 A. Yes, sir.

11 Q. All right. And he showed you not only where in the
12 body it is located, but how the operation would be
13 done. Isn't that correct?

14 A. Yes, sir.

15 Q. Okay. Now your reaction at that time was, according
16 to your deposition, he's done all my other surgeries.
17 It's not like I don't know him.

18 A. Yes, sir.

19 Q. Okay. You did ask him if he had done the operation
20 before, correct?

21 A. I don't recall asking him that. Not at hand.

22 Q. All right. At any rate, during the course of the talk
23 with Dr. Mincheff, it wasn't just all business, there
24 was some friendly talk back and forth between y'all,
25 wasn't there?

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1 A. What do you mean, friendly? Hi, how are you doing?

2 Q. Yes, sure, things like that, but more than that. You
3 asked him some question like, oh, what am I going to
4 do, and he said to you, oh Ruthie, you just have some
5 of everything, and you all laughed together, didn't
6 you?

7 A. Yes, sir.

8 Q. Okay. So we're talking about a situation where the
9 doctor is not your friend, like he visits you at your
10 home all the time, but a friendly yet professional
11 relationship. Isn't that right?

12 A. Yes, sir.

13 Q. All right. Now in that discussion with you, he
14 mentioned some of the complications that could occur
15 with this type of operation, did he not?

16 A. No, sir. He did not tell me anything about
17 complications. I don't recall that.

18 Q. Well, he told you about internal bleeding.

19 A. No, sir. He did not tell me about internal bleeding.

20 Q. Ma'am, I'm just trying to help you. On page seventy-
21 six, of your deposition, you indicated that he told
22 you about internal bleeding.

23 A. I don't recall that at the moment, sir.

24 Q. All right. But you don't deny that he did tell you
25 that.

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1 A. He may have told me, yes, sir.

2 Q. All right. and you don't deny that when he was
3 showing you pictures of the esophagus and where it's
4 located and he discussed what the other organs were
5 that were near there, and what all --- He didn't just
6 draw and say that's the esophagus, it was in there
7 with all the other organs that were surrounding it.

8 A. When we looked at the book, sir, he showed me the
9 pictures in the book. He did not draw anything then.
10 And he also did not point out the other organs at that
11 time. No, sir. I don't recall that.

12 Q. You could not see them for yourself. They are labeled
13 too, but he did tell you. We'll keep going on.

14 When the surgery was scheduled, you weren't under
15 any stress or pressure to do it. You weren't
16 upchucking, throwing up like you had been. They
17 waited until a time when you were relatively calm and
18 could make an informed choice. Isn't that true?

19 A. Yes, sir.

20 Q. In addition to which, the operation had already been
21 recommended by two other doctors, other than Dr.
22 Mincheff who was going to be the surgeon, correct?

23 A. Yes, sir.

24 Q. Now, after you had this discussion where he showed you
25 in the book all the things in the encyclopedia about

1 the --- and it's a medical encyclopedia so we will
2 know it's not the World Book, right?

3 A. Yes, sir.

4 Q. And he showed you all the things in there, he spoke to
5 you again before you had the surgery in his office,
6 when he discussed the labs, and the x-ray, and the
7 EKG, and things like that that are done before the
8 surgery actually takes place. Isn't that correct?

9 A. We spoke that one time when I went to the office about
10 the procedure. Did he order for me to have, the EKG
11 the primary test, before the surgery?

12 Q. Now, on the day of the labs --- that the labs were
13 taken, the nurse at the hospital asked you if you knew
14 about the operation and what it entails, did she not?

15 A. Yes, she did.

16 Q. And she had, you recite to her what was going to be
17 done in the operation, is that correct?

18 A. Yes, she did, and told me to explain it the best of my
19 ability.

20 Q. And you did explain it to her to the best of your
21 ability, is that not correct?

22 A. Yes, sir.

23 Q. All right. I'm sorry. At that time, the nurse had
24 you sign an Informed Consent Form for the surgery,
25 anesthesia, and a special procedure to be performed.

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1 Is that not correct?

2 A. This paper here?

3 Q. Yes Ma'am.

4 A. Yes, sir.

5 Q. That Ruthie J. Person, at the bottom, it is your
6 signature, is it not? Ruth J. Person.

7 A. Yes, sir.

8 Q. That says Ruth actually, right?

9 A. Yes, sir.

10 Mr. Sweeney: Your Honor, I would like to
11 introduce this item into evidence.

12 Mr. Corbin: No objection, any hospital records
13 can come in.

14 Mr. Sweeney: I understand that, but I would
15 like for it to be a separate --

16 The Court: All right. Come forward, counsel
17 and hand it to our court reporter so we can mark it
18 separately as being admitted.

19 Whereupon, Defendant's

20 Exhibit Number 3 was marked

21 and admitted into the Record.

22 The Court: Defense 2, without objection, in
23 evidence.

24 Q. (By Mr. Sweeney) Ms. Person, you've already
25 identified your signature on here, is that correct?

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1 A. Yes, sir.

2 Q. I just want to go over the form itself. First of all,
3 that form is not only signed by you, but every line of
4 that form was explained to you by that particular
5 nurse, was it not, Ma'am?

6 A. Sir, I'm looking, I was reading it, we went over the
7 top.

8 Q. She explained each paragraph. Paragraph by paragraph
9 to you, did she not? That is what you said in your
10 deposition.

11 A. Yes.

12 Q. Let's look at a couple of paragraphs in there because,
13 let's look at number two, and see if you read that the
14 same way I do.

15 I further consent and
16 authorize the performance of such
17 additional surgeries and
18 procedures whether or not arising
19 from presently unforeseen
20 conditions considered necessary or
21 desirable in the judgment of my
22 doctor or those of the hospital
23 medical staff, who serve me.

24 Is that correct? Is that what it says?

25 A. Yes, sir.

001272

1 Q. And then paragraph ten, does that say.

2 I acknowledge that I have
3 been given an explanation of, and
4 opportunity to ask questions about
5 my condition, the procedures to be
6 used and the risk and hazard
7 involved, the alternative forms of
8 treatment and anesthesia, and the
9 risk of nontreatment. I believe I
10 have sufficient information to
11 give this informed consent.

12 Is that correct?

13 A. Yes, sir. That's what it reads.

14 Q. I certify that this form has been explained to me that
15 I have read it, or have had it read to me, that I
16 understand its contents, and that all blanks have been
17 filled in before I signed it. Is that what I say?

18 A. Yes, sir.

19 Q. And then you did sign it after the blanks had been
20 filled in.

21 A. Yes, sir.

22 Q. Now, even then before the surgery, Dr. Mincheff saw
23 you one more time, did he not?

24 A. Before the surgery?

25 Q. Yes Ma'am. Let me ask you, unless you need to read

001273

1 that, let me just set it down and give it to the Court
2 reporter.

3 **The Court:** Counsel, while you are talking about
4 that document, that actually was incorrectly marked. It is
5 Defendant's Number 3, now in evidence, without objection.
6 We already have a two, thank you.

7 Q. You saw him one more time before you actually did the
8 operation and that was in the waiting room, or
9 receiving room before you actually wheeled in to do
10 the operation. Is that right?

11 A. No, sir. I saw him before then.

12 Q. You saw him before then too, but the time I want to
13 get into is, at the very time before you were operated
14 on. He had an operation before you, right? He had
15 one, and that ran a little bit over, right?

16 A. Yes, sir.

17 Q. So he might have known that you might have been a
18 little anxious, right? That's what I would assume?

19 **Mr. Corbin:** Objection, Your Honor. What Mr.
20 Sweeney would, assume.

21 **The Court:** Sustained.

22 Q. (By Mr. Sweeney) At any rate, whatever his motive
23 was, he came to cheer you up by saying, Hi Ruthie, how
24 are you doing, didn't he?

25 A. Yes, sir.

001274

1 Q. In a caring and affectionate way, trying to make you,
2 feel comfortable, would you agree with that?

3 A. I, was already comfortable. Yes, sir.

4 Q. Now we know that the surgery did not come out the way
5 everyone hoped it would, and we, will get into that in
6 a minute. But after the first surgery was done, you
7 were placed in the hospital there at Carolina Pines
8 for a couple of days, were you not?

9 A. Yes, sir.

10 Q. After that first surgery, Dr. Mincheff had to do some
11 other procedures on you as well. He had to put a
12 drain into the pelvic for some drainage that had
13 resulted in that surgery, isn't that true?

14 A. Yes, sir.

15 Q. Once again, you or your family members, anybody, could
16 have chosen who was going to do that particular
17 procedure, isn't that correct?

18 A. Sir, I wasn't in the condition to say who could do it.
19 I could barely talk.

20 Q. Yes Ma'am. You were not feeling very well, but you
21 were able to talk, and you were able to hear, because
22 Dr. Mincheff came in for four or five days. He came
23 in every day you were in that hospital, and he talked
24 to you more than once. He talked to you on several
25 occasions as he made his rounds, did he not?

001275

1 A. Yes, sir. And when I spoke with him, my breathing, my
2 speaking was very, very shallow.

3 Q. Sure, it was harder to understand you, but it could be
4 done. You could articulate. You could speak. It was
5 just more difficult.

6 A. It was very difficult.

7 Q. And that was because the first procedure hadn't gone
8 the way everybody hoped it would, and you knew that.

9 A. May I say --

10 Q. -- Is that true or not true?

11 A. No, it didn't go the way we thought it was going to
12 go. No, sir.

13 Q. And even so, Dr. Mincheff put in the drain when
14 another doctor could have just as easily done it.
15 Isn't that your request also, wasn't it?

16 A. I am not sure about that Mr. Sweeney, if that was at
17 my request --

18 Q. -- Let me ask you this. Neither you, nor any member
19 of your family said something like, don't let Dr.
20 Mincheff touch me again. Isn't that true?

21 A. I don't know. I don't recall saying that.

22 Q. No, I know you didn't. Nobody said something like
23 that. It was okay for Dr. Mincheff to do the second
24 procedure. Correct?

25 A. The second procedure when he put the tube in, I was

001276

1 not in a condition to tell him, yea or nay whether he
2 could do it.

3 Q. Your family, they could also speak, couldn't they?

4 A. Yes, my son and daughter could speak, but I don't
5 think he conferred with them.

6 Q. Now, while you were in the hospital there at Carolina
7 Pines, the recovery from the surgery, Dr. Mincheff
8 came in and saw you every day in the hospital, even at
9 times like 3:00 a.m. at night. The night of the
10 second surgery, he saw you at 3:00 a.m. that night,
11 didn't he?

12 A. Yes, sir. He did.

13 Q. Okay and three or four times at night, checking on
14 her. In fact, you mentioned being cold in there. He
15 told you one of the reasons you were cold, was because
16 you were having blood transfusions and they do lower
17 your body temperature. He told you that, didn't he?

18 A. Yes, sir. I was receiving blood.

19 Q. You could communicate with Dr. Mincheff. You told him
20 those things and he talked to you about that.

21 A. Yes, I was shaking my head yes.

22 Q. Now, in the problem that you had at Carolina Pines
23 Hospital, you developed Pancreatitis as a result of
24 the operation that Dr. Mincheff did.

25 A. Yes, I had developed it, yes.

001277

1 Q. Let me ask you something. You have made several
2 statements here about Dr. Mincheff cutting your bowel,
3 cutting your stomach, cutting your spleen. He never
4 did any of those things, did he?

5 A. Mr. Sweeney, when I was in the room, Dr. Mincheff told
6 me he did that. That morning when he came in and told
7 me he was going to transfer me, he spoke to some
8 friends of his in Charleston, and some in Columbia and
9 within a day or two he was going to transfer me to one
10 of them. Dr. Mincheff drew on the board, the little
11 chalkboard in there, exactly what he did to me and
12 told me what went wrong.

13 Q. Ma'am, my question to you is this. Are you saying
14 that he told you that he cut your bowel?

15 A. Yes sir, he did.

16 Q. You haven't learned to this day that that happened at
17 Richland Memorial Hospital.

18 A. No, sir. I haven't learned that to this day.

19 Q. And he told you that he cut your stomach?

20 A. Yes, sir.

21 Q. And you haven't learned to this day that if that
22 happened, it happened at Richland Memorial?

23 A. No, sir. I didn't.

24 Q. Nobody has told you that?

25 A. No, sir.

001278

1 Q. I'm sorry for what you have been through. These
2 pictures that we saw, those pictures show you after
3 your visit to Richland Memorial Hospital, don't they?

4 A. Yes, sir.

5 Q. At any rate, because he was concerned about something,
6 Pancreatitis, Dr. Mincheff called on some colleagues
7 of his in Charleston, and in Columbia to provide
8 additional help. Isn't that correct?

9 A. Yes, sir.

10 Q. He asked you to choose between Charleston and
11 Columbia, which one would you want to go to, which was
12 easier for you, easier for your family? Where would
13 you prefer to go? Isn't that correct?

14 A. Yes, sir.

15 Q. And you chose Columbia, isn't that right?

16 A. Yes, sir.

17 Q. You made that choice?

18 A. Yes, sir.

19 Q. Even after your transfer to Columbia, Dr. Mincheff
20 tried to stay in touch with you, did he not?

21 A. Not to my knowledge, I was not told that.

22 Q. He saw your mother-in-law in the hospital, and told
23 her to have you call him, and made himself available
24 to you, but you never wanted to do that. Isn't that
25 right?

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1 A. No sir, that is not true. He saw my mother-in-law in
2 the hospital, because my father-in-law was in a room
3 over from me, that is how he saw my mother-in-law.
4 But my mother-in-law never relayed a message to me, I
5 mean, to contact him. If anything, he should have
6 contacted me.

7 Q. I'm only going by what you told me in your deposition,
8 and that is that he said if you wanted to talk with
9 him that he was available, but you never did that.
10 Isn't that right?

11 A. No, I never called him from Columbia.

12 Q. And you got the word, because you know that, because
13 that is what your mother-in-law told you.

14 A. Yeah, but I did not call him.

15 Q. Let's talk about some things. There is no question
16 you have been through a good bit. But I think it is
17 important, and I apologize for this to talk about,
18 what doctors, I guess, call your premorbid condition,
19 and that is what you were like before; so let's do
20 that.

21 Since 1996, you have been on social security,
22 total disability because of papillary necrosis, which
23 is a kidney disease, chronic fatigue, and
24 Fibromyalgia, correct?

25 A. Yes, sir.

001280

1 Q. For years before this incident occurred at Carolina
2 Pines you have been in poor mental and physical
3 health, isn't that correct?

4 A. Yes, I have been in, not poor health where I couldn't
5 function, I was functioning. I could function and do
6 what I wanted.

7 Q. For years prior to the surgery in 2001, you've been
8 taking numerous --- antidepressant, antianxiety
9 medications, Valium, Paxil, things of this nature, for
10 things you are taking now. Isn't that correct?

11 A. Yes, sir.

12 Q. The prognosis in other words the future for that was
13 that you were going to be, you took them without any
14 breaks from the time that you first began taking them
15 all the way up to the operation, and you have taken
16 them all the way since. Isn't that correct?

17 A. No, sir. There was a break. There were a couple of
18 breaks.

19 Q. There were?

20 A. Yes sir, there was, when I was in the hospital.

21 Q. You don't take them in the hospital, because you are
22 going to be operated on --- but let me, ask you this.
23 You had chronic depression, chronic anxiety, that were
24 all being treated by those antidepressant drugs and
25 antianxiety medications since the 1990s. Isn't that

001281

1 correct?

2 A. Yes, sir.

3 Q. That's all I'm asking.

4 A. Would you like to know why?

5 Q. No Ma'am. But I think I will find out in a minute
6 because I have another question.

7 Mr. Corbin: Your Honor, if it please --

8 The Court: I will give you redirect on that
9 issue.

10 Mr. Corbin: Thank you.

11 Q. (By Mr. Sweeney) You described in your deposition
12 that your Fibromyalgia and the chronic fatigue were
13 real bad before 2001, and it caused you pain all over
14 your body. Isn't that correct?

15 A. Yes, sir.

16 Q. You had no energy to do anything literally. Correct?

17 A. Yes, sir.

18 Q. And these are illnesses that cannot be cured. But
19 there are some things you can do to help you function
20 with those, is that correct?

21 A. Yes, sir.

22 Q. But during the course of your treatment for those
23 things, consistently without interruption except in
24 the hospital, you took numerous pain medications, and
25 have taken them virtually since the 1990s up til

001282

1 today. Isn't that correct?

2 A. No, sir.

3 Q. That is not correct?

4 A. No, sir. That is not right for the simple reason Dr.
5 Mestonovich, which is my Nephrologist told me the less
6 pain medication you take, the better it is for your
7 renal system.

8 Q. Actually a pharmacist told you at one time to quit
9 taking medication at all. You were taking way too
10 many. Isn't that right?

11 A. That was a misunderstanding at Wal-Mart. That had
12 nothing to do with me.

13 Q. The pharmacist at Wal-Mart?

14 A. Yes, sir.

15 Q. Prior to 2001, you were been treated consistently for
16 Fibromyalgia, which is pain all over the body, it
17 could be any place, in one place and then goes to
18 another place, stuff like that, correct?

19 A. Yes, sir.

20 Q. And you were taking pain medications for those, and
21 you were trying to take less in your words. You were
22 under medication --- under a prescription all of that
23 time, isn't that correct?

24 A. Yes sir, but I did not take the medication all the
25 time.

001283

1 Q. Now you had been treated for severe depression for
2 many years before 2001?

3 A. Yes, sir.

4 Q. You were taking Valium, Xanax, Paxil, Wellbutrin all
5 before 2001.

6 A. I just started taking Wellbutrin since 2001. I wasn't
7 taking it before.

8 Q. What they do is they switch your medications from time
9 to time. They will put you on one thing, for a while
10 and then move you to something else, isn't that how it
11 happens?

12 A. Yes, but I was not taking it before 2001.

13 Q. Are you pretty sure of that? It really doesn't
14 matter, but you are taking one or the other during
15 those times. Correct?

16 A. Oh, yes sir.

17 Q. You've never been without them during the many years
18 since the 1990s.

19 A. No sir, I haven't.

20 Q. And they treat you for anxiety --- You have been
21 treated for anxiety, correct?

22 A. Yes, sir.

23 Q. For poor sleep?

24 A. Yes, sir.

25 Q. In addition to that --- I think as far as the other

001284

1 medical conditions that you have had, you have had two
2 hysterectomy procedures, correct? We've already
3 talked about those one by Dr. Robertson and one by Dr.
4 Mincheff, because of bleeding from the first one,
5 correct?

6 A. Yes, sir.

7 Q. Complications, if you will, correct?

8 A. Yes, sir.

9 Q. Your tubes and ovaries were removed, and you've been
10 taking hormones since that time?

11 A. I was not taking a hormone at first; they gave me a
12 hormone a couple of years later.

13 Q. But you were doing that well before 2001?

14 A. Yes, sir.

15 Q. You had a prior gall bladder?

16 A. Yes, sir.

17 Q. A prior breast biopsy, correct?

18 A. Yes, sir.

19 Q. You are on Norvasc for blood pressure medication?

20 A. I was told I was taking Norvasc; it was not for my
21 blood pressure; it was for like a diuretic.

22 Q. You had prior surgery, two times for carpel tunnel
23 syndrome, one time on the right, and months later on
24 the left, correct?

25 A. Yes, sir.

001285

1 Q. And you had prior irritable bowel syndrome, correct?

2 A. Yes, sir.

3 Q. Let me ask you about that. That is a chronic problem
4 that does not go away. Isn't that right, irritable
5 bowel syndrome?

6 A. Well, I guess it depends on the person and their diet,
7 but I stuck to my diet.

8 Q. Yes Ma'am. But you had prior irritable bowel
9 syndrome.

10 A. Yes, sir.

11 Q. Prior acid reflux; we know that or GERDS, right?

12 A. Yes, sir.

13 Q. Again, that is a chronic problem that does not go
14 away, and has resulted in aspiration in your case,
15 correct?

16 A. Yes, sir.

17 Q. Prior to 2001, you have seen a kidney doctor in
18 Charleston. Your urine had to be checked periodically
19 at Care south to see if it had particles of kidney in
20 the urine. Isn't that correct?

21 A. Yes, sir.

22 Q. And this is a chronic illness as well. All of these
23 with the exception of the operation are chronic
24 illnesses that will not go away; they are there
25 forever, are they?

1 A. Yes, sir.

2 Q. Prior to 2001, you have used Advair inhalers for your
3 lungs for congestive heart failure, correct?

4 A. Yes, sir.

5 Q. Prior to 2001, you had been in a motor vehicle
6 accident in 1993, as a result of that you had injuries
7 to your lumbar spine, the fourth, fifth and sixth
8 vertebrae, isn't that correct?

9 A. Yes, sir.

10 Q. Knocked out of alignment, correct?

11 A. Yes, sir.

12 Q. You had a prior heart catheterization, correct?

13 A. Yes, sir.

14 Q. And you had significant sleep problems before 2001.

15 A. Yes, sir.

16 Q. You also had real bad allergies, pollen, dust, things
17 of that nature.

18 A. Yes, sir.

19 Q. And, you have had asthma, and took Saldeen for that,
20 correct?

21 A. Yes, sir.

22 Q. And, again, Ma'am, the asthma is chronic, it is not
23 going away, it is not going anyplace?

24 A. It is better.

25 Q. Good. Ms. Person's you have been on a special diet

001287

1 for years because the potassium dropped, you had had
2 --- you had chronic fluid problems; isn't that right?

3 A. I would not say chronic; they are under control. They
4 are fine now.

5 Q. You have been on a special diet for more than ten
6 years prior to 2001, because of the acid reflux,
7 correct?

8 A. A bland diet, yes, sir.

9 Q. Now each time you have had an operation someplace ---
10 do you do all of your operations at Carolina Pines?

11 A. No, sir. I think I had a surgery at McLeod one time
12 --- yes, my heart cath was done at McLeod.

13 Q. Okay. They do the heart stuff don't they at McLeod?

14 A. Yes.

15 Q. Each time you had an operation, or a procedure, or
16 whatever hospital it was at, you would have had
17 complications, potential complications explained to
18 you, would you not?

19 A. Yes, sir.

20 Q. And each time you would have had to have be told that
21 there are alternative to the operation, but the
22 operation is being recommended. Isn't that correct?

23 A. Can you elaborate on a little more, please?

24 Q. Yes, ma'am. Each time you would be told that there
25 were alternatives to the operation, correct?

001288

1 A. No. No, I can't say that sir, because with the
2 surgery I had with the GERDS's there wasn't another
3 alternative.

4 Q. No, ma'am. I am asking you about all the other
5 surgeries that you had?

6 A. No. They had to take my appendix out. I mean, it could
7 have ruptured, I mean, there was no other alternative.

8 Q. Let's get to this. When you had the gallbladder
9 surgery, you went up and was told that the gallbladder
10 surgery had a number of complications regarding
11 possible damage to other organs in your body when the
12 operation is being done, is that correct?

13 A. No, sir, I was not told that.

14 Q. Nobody told you that? Okay.

15 A. No one told me --

16 Q. --- You did not know that?

17 A. No, sir, I did not know that.

18 Q. When you had the hysterectomy, you were not told that
19 there are damages that could take place --- go over
20 other portions of your body in the course of a
21 hysterectomy other organs?

22 A. No sir, I was not. I was just told they were just
23 going to remove my tumor.

24 Q. All right. You had a Colonoscopy by the Indian
25 doctor. I will never pronounce his name right.

001289

1 A. Dr. Vasudena.

2 Q. But you admitted that he told you there could be
3 bleeding and sluffing of tissues just from a
4 colonoscopy, correct.

5 A. Yes, sir, he did, so excuse me.

6 Q. I have two reasons for asking you about all these
7 procedures.

8 First, we have to know, what you look before the
9 operation.

10 Secondly, all of these things played a chronic
11 illness, that tend to bother a person who has mental
12 disorder, do they not?

13 A. Well, sir, it depends on what you consider is mental
14 disorder. Are you talking about someone being
15 mentally retarded, or just mentally incapable of
16 functioning, or just everyday stress?

17 Q. Okay. Everyday stress, is that a disorder?

18 A. No, I am asking.

19 Q. You were on total disability from Social Security, is
20 that everyday stress?

21 A. No, that was because of the condition my body was in.

22 Q. Okay. But because of that a lot of events that took
23 place in your life can be very difficult to deal with,
24 is that not correct?

25 A. Yes, sir. I have had some very difficult times, yes.

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1 Q. And I am sorry; if I could, I would be doing something
2 else today. But you have had marital problems. You
3 have been separated for seven years. Your divorce was
4 in 2003, separated seven years before that. Isn't
5 that correct?

6 A. Yes, sir.

7 Q. You've been with sickle cell disease, and only have a
8 trait, but it had to be difficult for your depression
9 and everything else to be told you had to go through
10 all the tests and have it looked at it, that wasn't
11 easy was it?

12 A. Sir, honestly speaking, for me to deal with Sickle
13 Cell Trait, is no big deal. My brother had the
14 disease and so therefore to deal with the trait is
15 nothing. You don't go through any of that.

16 Q. You have two brothers that have it, and have it full
17 blown, do they not?

18 A. I have one brother that has it.

19 Q. You said two in your deposition but just one?

20 A. Yes.

21 Q. Your oldest granddaughter has it?

22 A. Yes, she does.

23 Q. That does not scare you to think that somebody had to
24 go through all those tests to make sure you only have
25 the trait and do not have the full-blown disease

001291

1 itself?

2 A. Now when you are born for African-Americans they
3 automatically do the test to see if you have Sickie
4 Cell. But it takes two negatives to make a positive.

5 Q. You have been caring for, your daughter, Marie, who
6 has Sickie Cell is that correct? Who has Sickie Cell,
7 isn't it Morene's child who has that?

8 A. No, sir. My son's child has Sickie Cell.

9 Q. That could be the one, I misunderstood, so I
10 apologize. Lori herself had a grave traumatic
11 pregnancy, and for one and half years you took care of
12 Lori and a baby?

13 A. Yes, sir.

14 Q. Lori had a mast on her pituitary for four years and
15 her body was completely out of wack, correct?

16 A. Yes, sir.

17 Q. I know you did these things, and I am sorry you had to
18 go through them but all of these things were stressful
19 things that caused people with depression, and chronic
20 fatigue, and all of this to have problems don't they?

21 A. Yes, sir, it did cause me to be depressed, because
22 that was my daughter.

23 Q. All right. So we will know, Lori also has a history
24 of pancreatitis?

25 A. She had a bought with pancreatitis in the hospital --

001292

1 Q. -- After her pregnancy?

2 A. Yes, sir.

3 Q. There were other things that can cause it other than
4 an operation?

5 A. Yes sir there is, but in Lori's case her intestines
6 fell on the floor.

7 Q. Where was this?

8 A. At McLeod.

9 Q. Okay. Her intestines fell on the floor?

10 A. Yes, sir.

11 Q. Did you sue McLeod?

12 A. We had a case.

13 Q. You have had the weight problems for a long time I
14 guess. I hate to ask these things but so we will know
15 because weight and fluid problems are part of your
16 condition now, but that is a longstanding thing isn't
17 it?

18 A. Yes, I also have a thyroid condition, so that is why I
19 retain the weight.

20 Q. The thyroid condition, pre exit this surgery by Dr.
21 Mincheff, doesn't it?

22 A. Yes, I have thyroid condition.

23 Q. You had a run in at Sears, and that didn't do you any
24 good, right?

25 A. No, sir, it did not.

001293

1 Q. All right. Let me just ask you a few more questions.
2 Dr. Windsorova?

3 A. Windsorova, yes, sir.

4 Q. She has been the only person to provide psychological
5 or psychiatric treatment for you, is that correct?

6 A. Yes, sir.

7 Q. The last time you saw her, was February of this year,
8 correct?

9 A. Yes, sir.

10 Q. So you have not needed to go back to her?

11 A. No, sir, I have not been back to her.

12 Q. Dr. Bynoe, treats you for the gastric and other
13 problems, and you have not been back to him for years,
14 correct?

15 A. I think I saw Dr. Bino late last year or either
16 earlier this year for a checkup, and that was it.

17 Q. It would be. When I took your deposition that was two
18 years ago, and you had seen him for years until then
19 and have seen once since then, is that correct?

20 A. I think so.

21 Q. Dr. DeMichele, who is a neurologist isn't it?

22 A. Yes, sir, he is.

23 Q. He does not deal with the pancreas, or the stomach, or
24 the heart, or the liver, or the spleen, or colon, or
25 any of those things, is that right?

001294

1 A. No, sir, he doesn't.

2 Q. You have not seen those doctors --- Do you see those
3 doctors periodically for checks, but you have not seen
4 them other than that have you?

5 A. Just for checkups, yes, sir.

6 Q. All right. And I wanted to ask one other thing too.
7 Did you say, that you had suffer colon damage as well
8 at Carolina Pines?

9 A. Yes, sir.

10 Q. Who told you that?

11 A. It was drew on the board. Dr. Mincheff drew it on the
12 board.

13 Q. Are you sure he just did not show you where you colon
14 is, and show you where all these places are?

15 A. Sir?

16 Q. There is a reason that I ask this, because the medical
17 records will speak for themselves, but the colon was
18 damaged at Richland Memorial?

19 A. Sir, I didn't know that.

20 Q. When did you find that out?

21 **Mr. Corbin:** Your Honor, please. She's is
22 trying to fully explain.

23 Q. (By Mr. Sweeney) I'm sorry, I did not mean --

24 A. I did not know that. I knew what was showed to me,
25 and what was told to me at Carolinas Pines. I can only

1 go by that. No one told me anything at Richland about
2 that.

3 Q. The only doctor you are seeing now regularly is Dr. D.
4 Shah, correct?

5 A. Yes, sir. Would you like to know why?

6 Q. No, Ma'am. But I am sure he will tell us later on.
7 But let me, ask you this. You were seeing him with
8 what regularity, was it a month or something like
9 that?

10 A. I see him probably twice a month.

11 Q. Twice a month?

12 A. Two or three times. No, no, excuse me. I see him
13 once to every two to three months. One time.

14 Q. Okay, that's what I thought.

15 A. Yes.

16 Q. So you were seeing him with that regularity before all
17 these things took place weren't you?

18 A. No, sir, I would see him like once every six months
19 pretty much.

20 Q. His medical records can tell us. At any rate, I only
21 have about five or six more questions.

22 In your current situation you can drive an
23 automobile?

24 A. Yes, sir.

25 Q. In fact, you just got a new Buick Rondevue, in April

1 of this year, correct?

2 A. Yes, sir, I did.

3 Q. You are the only owner of that vehicle?

4 A. Yes, sir, I am.

5 Q. You presently live alone, and have been caring for
6 yourself for the last three and half months?

7 A. Yes, but my daughter and daughter-in-law, they come by
8 every other day. They take turns.

9 Q. You had a fender bender, but you were not injured in
10 it?

11 A. No sir, I wasn't.

12 Q. You don't own a cell phone, or any sort of an
13 emergency device or anything like that?

14 A. No, sir.

15 Q. I understand that even with all of things I ask you
16 that you have suffered as a result of the surgeries
17 that had been performed on you, since Dr. Mincheff's
18 operation, correct?

19 A. Explain that to me again, please.

20 Q. Yes, ma'am. Where were those surgeries performed on
21 you that resulted in the picture that you showed us
22 today?

23 A. The pictures like that?

24 Q. Yes, ma'am.

25 A. That is after Richland.

1 Q. After Richland?

2 A. Yes, after they fixed me.

3 Q. Nobody has told you that is where your colon was
4 perforated, or that is where your bowel was damaged,
5 or that is where any of these other injuries took
6 place?

7 A. No, sir.

8 Mr. Sweeney: Thank you. That is all I have.

9 The Court: Is there any redirect?

10 Mr. Corbin: Short, Your Honor.

11 Redirect Examination by Mr. Corbin

12 Q. Do you mind if I call you Ruthie?

13 A. You can call me Ruthie. All of y'all, may call me
14 Ruthie.

15 Q. You were asked questions of Mr. Sweeney, and I think
16 he has been sitting in the courtroom. Is that him
17 sitting over here?

18 A. Yes, sir.

19 Q. Has he come up and hugged you during this proceeding?

20 A. No, sir.

21 Q. You were asked about him saying, Oh, Hi, Ruthie with
22 affection, and caring for you. Do you remember those
23 questions?

24 A. Yes, sir.

25 Q. We spent months in the Columbia hospital?

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1 A. Yes, sir.

2 Q. Because of Dr. Mincheff's surgery, right?

3 A. Yes, sir.

4 Mr. Sweeney: Your Honor, I would object again.
5 That is leading.

6 The Court: All right. I am going to sustain,
7 although you are on redirect, you are not leading --

8 Mr. Corbin: I understand.

9 The Court: All right. Go ahead.

10 Q. (By Mr. Corbin) Okay. Ms. Ruthie, if Dr. Mincheff
11 really had affection for you, did he send you a get
12 well card in Columbia?

13 A. No, sir.

14 Mr. Driggers: That is leading as well, Your
15 Honor.

16 The Court: Well --

17 Mr. Driggers: -- I don't know if he can ask it
18 but that is leading.

19 The Court: All right Counsel, actually it does
20 contain an editorial comment. Your better question would
21 be, did you get a card. Go ahead.

22 Q. (By Mr. Corbin) Did Dr. Mincheff, send you a get
23 well card?

24 A. No, sir, he did not.

25 Q. Did he come to your intensive care unit and visit you?

1 A. No, sir, he did not.

2 Q. The second time you were in Columbia in the hospital
3 any get well card from Dr. Mincheff?

4 A. No, sir.

5 Q. Did he come to your room and see you, Ms. Ruthie, to
6 see how you were doing?

7 A. No, sir.

8 Q. When you got home after the first hospitalization, did
9 Dr. Mincheff come to your house and check on you?

10 A. No, sir.

11 Q. Three years after being out of Palmetto Richland has
12 he, taken the time to come and see you?

13 A. No, sir.

14 Q. Now, you were asked about your chronic GERDS condition
15 lasting forever. What was the purpose of Dr.
16 Mincheff's surgery on you, Ruthie?

17 A. It was to repair my esophagus. To get rid of the
18 GERDS.

19 Q. Did the surgery work?

20 A. No sir, it did not.

21 Q. You were asked a question about the stress on you,
22 because you had to care for your sick daughter. Were
23 you able to care for her? Did you do it?

24 A. Yes sir, that was my daughter. I bathed her. I feed
25 her. I dressed her. She was grown, but she had a

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1 horrible pregnancy, and that was my child, and I did
2 what I was suppose to do.

3 Q. Could you do it now?

4 A. No, sir, I could not.

5 **Mr. Corbin:** Thank you, ma'am.

6 **The Court:** All right. Is there anything
7 further you wish to follow?

8 **Mr. Sweeney:** No, Your Honor.

9 **The Court:** Ma'am, you may return to the table
10 is you wish.

11 **Ms. Parson:** Thank you, sir.

12 **The Court:** Thank you. Counsel, come up and
13 let's talk about scheduling a moment, please.

14 (Whereupon, a bench conference was held in
15 the presence of the jury but out of the hearing of the
16 jury.)

17 **The Court:** All right. We were just discussing
18 scheduling. By the way, as we've had testimony you may
19 have seen me talking once or twice here, and I don't want
20 you to think I'm not paying attention, but we had a little
21 bit of work with the heat system here. We are trying to
22 make it a little warmer in the courtroom, and please let us
23 know if you are not comfortable. I notice that most of you
24 are wearing jackets. It has been a little cool in here. And
25 if you are not comfortable, please let your bailiff know

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1 that, and we'll try to react to it as best we can. I will
2 tell you that the thermostat on the wall doesn't always
3 control the temperature in this room. I don't understand
4 how it works but it's complicated.

5 Secondly, the next witness is going to take ---
6 the direct examination would take us beyond the lunch hour.
7 I have a matter which I set some weeks ago with attorneys
8 coming in from around The State at 2:00. What I am going
9 to do is, give you a break until 2:15. That is a two-hour
10 lunch, that's a little bit longer than we would normally
11 take, but for scheduling reasons that is really the best
12 thing we can do.

13 So have a nice lunch, lunch will be on your own.
14 Please don't discuss the facts of the case with anyone.
15 But be back in the jury room at 2:15, and we will see you
16 at that time.

17 Lets everyone else, remain where they are while
18 our jury departs.

19 (Whereupon, the jury exits the courtroom at
20 12:14 p.m.)

21 **The Court:** All right, we will be in recess now
22 until, staff until 2:00 p.m. We will start back with staff
23 at 2:00 p.m. This case most likely 2:15 p.m. or a few
24 minutes thereafter.

25 Counsel, after you speak with your clients, let's

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1 go back and talk again in chambers on several of the
2 issues.

3 (Whereupon, a recess was taken from 12:14
4 p.m. until Court goes down at 2:15 p.m. 2:35 p.m.)

5 **Bailiff:** They are all here Judge.

6 **The Court:** All right. Please bring in the
7 jury.

8 **Bailiff:** All right, sir.

9 (Whereupon, the jury enters the courtroom at
10 2:35 p.m.)

11 **The Court:** Ladies and gentlemen, welcome back
12 to the courtroom. Thank you again for your patience. It
13 is a little warmer in the courtroom then when you last
14 left, and I note that some of you have your wraps around.
15 Are you uncomfortable? The jury room is considerably
16 cooler than it is out here in the courtroom, at least when
17 I checked after you all left after lunch. We're working on
18 that too. We cut the fans off in the room to try to make
19 it more comfortable for you. But if you become
20 uncomfortable here in the courtroom, please let me know
21 that during the course of the afternoon.

22 Mr. Corbin, please call your next witness.

23 **Mr. Corbin:** Your Honor, at this time we would
24 call Dr. Eric J. DeMaria of Duke to the witness stand,
25 please.

1 **The Court:** Please come forward and take the
2 oath of a witness.

3 **Eric Joel DeMaria, M.D.**

4 **First Being Duly Sworn Testifies as Follows**

5 **Voir Dire Examination by Mr. Corbin**

6 Q. Welcome, Dr. DeMaria.

7 A. Thank you.

8 Q. Could you please state your complete name for the
9 record?

10 A. My name is Eric Joel DeMaria.

11 Q. Dr. DeMaria, how old you, please?

12 A. Forty-seven.

13 Q. Where do you currently live?

14 A. I live in Raleigh, North Carolina.

15 Q. Where is your current profession?

16 A. I am a general and microscopic surgeon.

17 Q. Do you hold any particular positions as general
18 surgeon in North Carolina?

19 A. I work at Duke University. I am a Professor of
20 Surgery. I am Chief of the Duke Surgery Service at a
21 Hospital at a Hospital called Durham Regional Hospital
22 in Durham, North Carolina. I am Chief of the
23 Laparoscopic Surgery Program at Duke and the Obesity
24 or Weight Loss Surgery Program, and a Vice Chairman of
25 the Department of Surgery.

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1 Q. How long have you held the particular positions at
2 Duke?

3 A. About sixteen months.

4 Q. Before having those positions at Duke, where did you
5 work?

6 A. I was on the faculty at the Medical College of
7 Virginia, in Richmond, Virginia.

8 Q. Did you hold any particular positions with the Medical
9 College of Virginia?

10 A. I hold a number of positions over the fifteen-years
11 give or take that I was there. Ultimately, I was a
12 Professor of Surgery. I was Chief of General Surgery
13 at the Medical College of Virginia. I was also
14 Director of the Laparoscopic Surgery Program and the
15 Weight Loss Surgery Program there.

16 Q. Are you Board Certified, Dr. DeMaria?

17 A. Yes.

18 Q. In which medical specialties, please?

19 A. In Surgery.

20 Q. Can you give the jury the benefit of your educational
21 background starting with high school?

22 A. High school, I grew up in Massachusetts. I attended
23 public high school in a town called Needham,
24 Massachusetts. I then went to Boston University in
25 Boston, and was a member of what is called the Six

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1 Year Medical Program, where they assign unsuspecting
2 high school kids up for full time in medical school
3 with week vacations here and there. So I did college
4 and medical school sort of back to back in six years.
5 Then I went to Brown University where as a Surgical
6 Resident. I spent seven years at Brown University
7 which included two years dedicated to research. And
8 then I joined the Faculty at MCB as a technical
9 surgeon in 1998.

10 Q. Dr. DeMaria, do you belong to any medical
11 organizations or societies, and if you do, tell us
12 about the most important ones, please.

13 A. There are a number. I am a fellow of what is called
14 the American College of Surgeons, which is the
15 largest, professional society of surgeons, in the
16 United States.

17 I am a member of a society called SAGES which the
18 Society of American of Gastrointestinal Endoscopic
19 Surgeons which is the largest professional society in
20 the United States which deals with Laparoscopic
21 surgery.

22 I am a member of what is called the ASBS,
23 American Society for Bariatric Surgery, which is
24 weight loss surgery in the United States. I am a
25 member of a number of National Societies.

1 Q. Dr. DeMaria, could you tell us in general your
2 experience doing Laparoscopic surgeries, and then tell
3 us your experience doing Laparoscopic Nissen
4 Fundoplication Procedure?

5 A. Laparoscopic surgery in the United States, really came
6 into being around 1989 1990 and that was right around
7 when I finished my surgery training. As a faculty
8 member at the Medical College of Virginia, I was one
9 of the people learning for the first time how to do
10 Laparoscopic surgery. I began doing Laparoscopic
11 Nissen Fundoplication Surgery one to two years after
12 that, probably about 1992. We had been doing
13 gallbladder surgery and some hernia surgery before
14 that. But we managed occasion courses at the Medical
15 College of Virginia, brought in visiting professors to
16 show us how to do these operations. And that was
17 right at the beginning of my tenure as a fully
18 credential surgeon.

19 Q. Dr. DeMaria, about how many Laparoscopic Nissen
20 Fundoplication Procedures do you think you have
21 performed, if you could estimate?

22 A. Probably a hundred and fifty to two hundred.

23 Q. Do you have any teaching experience involving fellows
24 or physicians to do Laparoscopic surgery?

25 A. I do. During my tenure at the Medical College of

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1 Virginia, starting in 1995 until I left in 2005, so
2 for ten years I ran the education program for
3 Laparoscopic Surgery. Two parts of that are
4 important. One is that we would hold courses several
5 times a year, up to six times a year looking at
6 different Laparoscopic procedures and we would invite
7 surgeons to come in from the outside and watch surgery
8 that we were doing, and have lectures and talk about
9 how the operations should be done and so forth. In the
10 year 2000 I started what is called a Fellowship
11 Program. And this is for surgeons who have finished
12 their regular training, and want to specialize in
13 laparoscopic training. So beginning in the year 2000
14 I always had at least one fellow spending a year
15 working with me, and now actually at Duke we have
16 three fellows every year who work with us learning
17 these types of advance laparoscopic procedures for a
18 year commitment.

19 **Mr. Corbin:** Your Honor, at this time we would
20 submit Dr. DeMaria to the Court as an expert in general and
21 laparoscopic anti reflux surgeries.

22 **The Court:** All right.

23 **Mr. Sweeney:** Your Honor, we agree that he is
24 entitled to give opinion testimony in that field.

25 **The Court:** All right, then without objection.

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1 Are there any questions for the witness concerning
2 expertise?

3 Mr. Sweeney: Not at this time, but certainly we
4 will have questions for him later.

5 The Court: Very good. Then without objection,
6 the witness is found to be an expert as requested.

7 And ladies and gentlemen of the jury, again,
8 please remember an expert opinions are given for the
9 purpose, not of controlling your judgment but for assisting
10 you in matters of fact that are before you, and you should
11 give it what weight you deem it to be entitled to.

12 Please proceed, counsel.

13 Direct Examination by Mr. Corbin

14 Q. Dr. DeMaria, I did not want to go through your entire
15 C.V. or resume, but it appears to be tens of pages of
16 long, is the correct?

17 A. I don't know how long it is, sir. I do know it is too
18 heavy.

19 Q. It's too heavy? Have you ever published any journal
20 articles in medical journals?

21 A. Yes.

22 Q. Have you actually written text books or text book
23 chapters --

24 A. Yes.

25 Q. In laparoscopic surgical books?

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1 A. Yes.

2 Q. Dr. DeMaria, can you tell us, and educate us, what the
3 pancreas is, what function it has, and what could
4 happen if something happen to your pancreas.

5 A. The pancreas is an endocrine organ which is like a
6 gland organ that sits in the abdomen behind the
7 stomach. The pancreas as it functions --- One of the
8 things we know most commonly that it does, is that it
9 makes insulin, and if you don't have enough insulin
10 you become diabetic. That is one of its functions.

11 The other function that it has is to make
12 digestive juices that are secreted into the GI tract
13 to help digest food. So it really has two functions.
14 Injury of the pancreas or --- And I should say injury
15 for a number of different reasons can set up a
16 condition called pancreatitis, and pancreatitis can be
17 a severe life threatening condition. What is believed
18 to happen if the pancreas is injured, is that the
19 inflammation sets in, and then the glands because of
20 those digestive enzymes that it makes can actually
21 start to digest itself and that process can become
22 very severe and lead to very severe infection in the
23 pancreas. So, injury to the pancreas can occur for a
24 number of reasons; it can happen from sometimes the
25 medications can injure the pancreas. Sometimes

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1 gallstones and alcohol those things can injure the
2 pancreas. Or a direct injury to the pancreas can
3 happen. For example, a shootings incidence and car
4 crashes can cause the pancreas to be injured and
5 pancreatitis develops. So there are a number of ways
6 the pancreas can be hurt and cause problems.

7 Q. Can surgical mishap injure a patient's pancreas?

8 A. Yes.

9 Q. Dr. DeMaria, same questions with respect to the
10 spleen. What is it, the purpose, what effect would
11 damage have upon it?

12 A. The spleen is a different type of organ. It is mostly
13 involved in storing and taking care of blood cells in
14 the abdomen. And the spleen is not behind the stomach
15 like the pancreas is but it is actually sort of next
16 to the stomach sort of to the side of the stomach. The
17 spleen by nature of holding blood, the major problem
18 with the spleen is that it can bleed, and there can be
19 a fair amount of bleeding from the spleen if that is
20 injured. One of the most common ways the spleen is
21 injured is by trauma. For example, car accidents.
22 People are usually familiar with the idea that a
23 patient could be in a car crash and injure the spleen
24 and bleed and they need to have that spleen removed to
25 stop the bleeding. So the spleen is an organ that you

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1 can live without, but it does compromise your ability
2 to fight infection sometimes to not have a spleen.

3 Q. Dr. DeMaria, can surgical mishap damage a patients
4 spleen?

5 A. Yes.

6 Q. Dr. DeMaria, in general, what records did you review,
7 involving Ms. Ruthie Person's case?

8 A. I reviewed the hospital records from Carolina Pines. I
9 reviewed records from the physicians who treated the
10 patient. I reviewed records from Richland Memorial
11 after the patient was transfer to that facility, and I
12 reviewed deposition testimony from the patient and the
13 surgeons and so forth.

14 Q. Dr. Mincheff's deposition, did you read it?

15 A. Yes, sir.

16 Q. Let me read to you section from Dr. Mincheff's
17 Deposition and tell me what your thoughts were when
18 you read it. Page 57, lines 14 - 22.

19 **Question:** When this Ms. Person was
20 transferred to Palmetto Richland in Columbia did
21 she have pancreatitis when she got there.

22 **Answer:** I believe so.

23 **Question:** So she had developed
24 pancreatitis in Hartsville, correct.

25 **Answer:** Yes.

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1 **Question:** Are you responsible for that?

2 **Answer:** I believe I am.

3 Do you concur with Dr. Mincheff's opinion that he
4 caused her pancreatitis?

5 A. Yes.

6 Q: Next reference is page 82, lines 5 - 23.

7 **Mr. Sweeney:** May it please the Court, these are
8 leading questions. This witness is fully capable of saying
9 what he relied on without having counsel read either read
10 it, or asking a leading question.

11 **The Court:** Response.

12 **Mr. Corbin:** I am asking him if he's read this
13 and what was his response.

14 **Mr. Sweeney:** The problem it's only part of the
15 deposition, and the context is not clear when he says I
16 believe the causing that certainly it isn't the way it
17 happened during the operation, and he is responsible for
18 it. I think the witness needs to testify as to what he
19 believes to be the cognitive stuff.

20 **The Court:** All right, counsel, come up and
21 discuss this right here one moment.

22 (Whereupon, a bench conference was held in
23 the presence of the jury but out of the hearing of the
24 jury.)

25 **The Court:** You may proceed.

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1 Q. (By Mr. Corbin) Dr. DeMaria, would you agree that
2 Dr. Mincheff, when he indicated in his deposition that
3 Ms. Person would not have had any other medical
4 complications without pancreatitis coming first.
5 Would you agree with him?

6 A. Yes, I do.

7 Q. Dr. DeMaria, would agree with Dr. Mincheff, in his
8 deposition when he said, that without pancreatitis
9 probably within two or three days she would of been
10 out of the hospital. Agreed?

11 A. Agreed.

12 Q. Would you agree with Dr. Mincheff's Deposition
13 testimony that without pancreatitis Ms. Person
14 probably would have been out of the hospital in two or
15 three days, and her doctor's bill probably would have
16 been ten thousand dollars or less? Agreed?

17 A. Ten thousand or less, yes, I agree with that.

18 Q. Dr. DeMaria, would you agree with Dr. Mincheff's
19 Deposition testimony that without pancreatitis Ms.
20 Person probably would of never had intra-abdominal
21 compartment syndrome. Agreed?

22 A. Yes.

23 Q. Dr. DeMaria, would you agree with Dr. Mincheff's
24 Deposition testimony that without the pancreatitis Ms.
25 Person probably would have never had Multisystem

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1 Dysfunction; would you agree?

2 A. Yes.

3 Q. Would you agree with Dr. Mincheff's Deposition
4 testimony that if Ms. Person got pancreatitis during
5 the surgery it would be his fault? Do you agree with
6 me?

7 A. I do believe that pancreatitis developed from events
8 during the surgery and he clearly has suggested in his
9 own testimony that he is responsible for events that
10 happened in the operating room. So I guess I agree
11 with that. It sounded like he paraphrased it a little
12 bit.

13 Q. Would you agree if he said in his deposition, quote:
14 "I have to admit that if she had gotten pancreatitis
15 it would be, you know, from the surgery that would be
16 my fault." Agreed?

17 A. Do I agree that he said that or do I agree --

18 Q. Yes.

19 A. Yeah. I read that, yes, so I do believe he said that.

20 Q. Do you agree with Dr. Mincheff, in his deposition when
21 he said, if I did cause a break in the pancreas then
22 it would be beneath the standard of care in this case.
23 Agreed?

24 A. I agree, but --- excuse me, my voice, I'm sorry, I am
25 fighting off a cold here. Let me take one second if I

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could, please.

Q. Sure.

The Court: Yes, sir. You may do that.

Dr. DeMaria: Pardon me.

The Court: Yes, sir. Do you need to step away?

Dr. DeMaria: No. I will be okay in a second. Okay, here we go. Let's see how it goes.

A. I think that during a procedure such as this, there are injuries that can occur that are injuries that violate the standard of care, and I think there are injuries that can happen potentially in the best of hands. And I think it is overly self-critical to say that absolutely no matter what the mechanism of the injury was, I have deviated from the standard of care. So I would not agree with that quotation.

Q. Well, let me ask you this way, Dr. DeMaria. And when I ask you, for an opinion during your testimony, would you please base it upon a reasonable degree of certainty. Would you do that, please?

A. Yes, sir.

Q. Based upon your review of the medical records, and the other documents that you mentioned; do you have an opinion whether Dr. Mincheff failed to satisfy the standard of care involving Ms. Person's treatment?

A. I do.

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1 Q. Please explain why.

2 A. Well to follow the last line of thought as I said, I
3 think there are injuries that can occur during surgery
4 that are injuries that can be within the standard of
5 care, and there are injuries that can occur that are
6 deviations from the standard of care. It is my
7 opinion in this case that it is more likely than not
8 that this mechanism of injury to the pancreas occurred
9 as one that would be a deviation from the standard of
10 care from the performance of Nissen Fundoplication
11 Surgery.

12 Q. Do you have an opinion, as to why Ms. Person --- Do
13 you have an opinion, as to why Dr. Mincheff during the
14 surgery failed beneath the standard of care? How did
15 he do it, and why?

16 A. Well that is a question that requires somewhat of a
17 complex answer. Let's start with what we know about
18 the pancreatitis that the patient suffered.

19 This was a pretty significant pancreatitis, and
20 this was pancreatitis that within a few days of
21 surgery had lead to fluid collections both in the
22 abdomen and in the chest that were drained with
23 catheters, and these came back confirming that there
24 was fluid that came from the pancreas.

25 Generally speaking an injury to the pancreas that

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1 lead to that much trouble with fluid building up it
2 had got to be a pretty significant injury, and it
3 would be my opinion that it is more likely than not
4 that we are not talking about little bit of bruising
5 from touching the gland, but rather an injury that is
6 significant and potentially involves the central part
7 of the pancreas where the duct is in the pancreas and
8 that is part of the pancreas that hold the fluid,
9 those are the digestive enzymes juices that I
10 mentioned before. Unfortunately, there is no absolute
11 proof that this ductile or part of the pancreas was
12 injured, because the patient was so sick that the
13 appropriate tests too confirmed that were in fact, not
14 done, and I am not critical of the fact that they
15 weren't done because they could of made her sicker to
16 do those tests. But the bottom line is that I think
17 it is reasonable from a medical stand point to
18 interpret the rapidity and severity of this
19 pancreatitis with this pancreas related fluid
20 collections represented, a major pancreas injury
21 including an injury to that duct. Now having said
22 that you have to look at, you know, what types of
23 injuries could happen that would injure the duct to
24 the pancreas. And we're talking about injuries such as
25 a fairly deep cut in that gland surface, or a clamping

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1 of the gland, or a tying off of part of the gland, or
2 even placing sutures or stitches deep into the gland;
3 so there are a number of things that could do this.

4 During the operation there were several time
5 points where such events could have occurred. The most
6 notable, I think is when there was bleeding, and the
7 bleeding was in the areas of the short gastric vessels
8 which are next to the spleen and the pancreas, and the
9 surgeons in their description of events as well as the
10 Operative Reports talked about bleeding in this area
11 and having to get control and put clamps in and so
12 forth. On my opinion it's most likely that the
13 pancreas was injured during those interventions, and
14 that beyond that this is a time of the surgery where
15 surgeons generally recognize that an injury to the
16 pancreas could occur, and therefore go back and
17 reinspect the area to make sure that the pancreas has
18 been protected. That is part of our job as far as the
19 standard of care, and I believe that is not mentioned
20 in the Operative Report. I don't believe that that
21 transpired in this case. So again, it is sort of level
22 of certainty that I feel comfortable saying that this
23 is a more likely than not scenario, but this is the
24 way this injury developed and that that would be
25 consistent with a very significant surgical injury to

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1 the pancreas rather than just a scrapping or a
2 bruising of the gland.

3 Q. Dr. Dearie, do you have an opinion as to whether or
4 not Dr. Mincheff's experience doing Ms. Person's
5 surgery contributed to the failure to meet with
6 standard of care?

7 A. My opinion is that Dr. Mincheff's relative lack of
8 experience with the procedure contributed to the
9 difficulties and complications in this case.

10 Q. Can you tell the jury what you have learned about Dr.
11 Mincheff's qualifications, and if you could break it
12 down Laparoscopically and open, and how it effects
13 your opinion about the standard of care in this case.
14 In other words what was his experience.

15 A. My understanding is that Dr. Mincheff had perhaps
16 assisted in four or five similar procedures during
17 surgical residency training. Although the majority of
18 these procedures were in children. And generally
19 speaking the procedure in children does differ from
20 the procedure in adults. These were open
21 Fundoplication procedures. That subsequently he had
22 some experience during military service with perhaps
23 one open procedure over a number of years, and that
24 after that there was some experience with Laparoscopic
25 Anti Reflux Surgery which would include both the

1 Nissen Procedure that was attempted here
2 Laparoscopically as well the Hill procedure done
3 Laparoscopically, which is ultimately what was done
4 with open surgery in this case. But the total amount
5 of that experience was in the range of say eleven
6 procedures, as I recall.

7 Q. Dr. DeMaria, you indicated that you are a member of
8 SAGES?

9 A. Yes.

10 Q. Are you familiar with SAGES guidelines involving this
11 particular laparoscopic procedure?

12 A. Yes.

13 Q. What is your opinion, as to the reliability of SAGES
14 guidelines?

15 A. My opinion is, that it is a very helpful guideline,
16 particularly for surgeons, interested in developing
17 new procedures in their repertoire as well as for
18 hospital looking at surgeons qualifications to see if
19 they are appropriate to do those procedures.

20 Q. Dr. DeMaria, and we have already introduced the 1994
21 SAGES guidelines, about the Laparoscopic procedures.
22 I want to read one sentence to you and tell me your
23 thoughts about it. The basic premise is that the
24 surgeon must have a judgment and training to safely
25 complete this procedure as intended, as well as have

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1 the capability too immediately proceeded to a
2 traditional open procedure when circumstances do
3 indicate. Do you agree with that statement?

4 A. Yes.

5 Q. Is that statement important?

6 A. I think so, yes.

7 Q. How so, please?

8 A. Well, the backup for any laparoscopic procedure is to
9 fall back on the open surgical techniques. In other
10 words, if one is attempting to do a laparoscopic
11 procedure which is the small incision scope type
12 surgery that we do so often these days, there are
13 generally speaking two situations where a surgeon has
14 to shift gears and open up and take care of the
15 situation open.

16 One is that the surgeon has inspected the area
17 and had decided that the procedure cannot be safely
18 attempted laparoscopically.

19 The other -- and that can be for a variety of
20 reasons like adhesions from old surgery and things
21 like that.

22 The other is that the surgeon is actually
23 attempting to perform the procedure laparoscopically
24 and runs into a problem and that problem needs to be
25 fixed and can't be fixed by laparoscopic surgery. In

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1 that situation there really is no other choice but to
2 be able to open the patient, and take care of the
3 problem right there.

4 Q. Did Dr. Mincheff start out doing the Laparoscopic
5 Nissen Procedure on this Ms. Person?

6 A. Yes.

7 Q. Because of complications, did he need to convert or
8 change to the open procedure?

9 A. Yes.

10 Q. Ms. Person's surgery was in 2001. Dr. Mincheff had
11 last done or had done one open procedure on an adult
12 in 1991 with no experience for ten years doing this.
13 Do you have an opinion as to whether or not he was
14 qualified in 2001 to do Ms. Person's open procedure?

15 A. There is a bit of a challenge in surgery today to
16 figure out when surgeons are credentialed for open
17 procedures in an area where open procedures are not
18 often done. However, if you read the guidelines
19 documents they talk very clearly about the appropriate
20 surgeon to do laparoscopic surgery with a certain
21 procedure is the one who does a fair amount of open
22 surgery with that procedure and therefore has set the
23 stage to have the skills and the knowledge and the
24 ability to open the patient if needed. My sense is
25 that the surgeon in this case really did not have a

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1 strong foundation in open procedure, and I have not
2 seen information that would change my mind about that
3 as a description of his open procedure background for
4 anti-reflux surgery. I would take that into account,
5 and I believe many Credentialing Boards would take
6 that into account in deciding if a laparoscopic
7 procedure is appropriate. I do not think this
8 individual had the open surgery background to be
9 credentialed for this operation nor the laparoscopic
10 background to be credentialed.

11 Q. Dr. DeMaria, if somebody were to tell you that Dr.
12 Mincheff's qualifications are such that any hospital
13 in the country will let him do Ms. Person's surgery,
14 what do you say about that?

15 A. I would disagree.

16 Q. Why so?

17 A. Well I have first hand familiarity with a total of
18 four hospital environments in which I have been
19 privileged to perform this Nissen Fundoplication
20 Surgery, and it's my opinion that none of the four
21 would have granted this physician privileges to do
22 this procedure. Those four would include two large
23 University Hospitals. For what that is worth,
24 sometimes the standards in those places maybe a little
25 different. But also I've sought credentials and

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1 received credentials in two community hospitals over
2 the years. One in Richmond at a place called
3 Chippingham Medical Center that was a community
4 hospital of about two hundred and fifty beds outside
5 of Richmond, and more recently here in --- well not
6 here in South Carolina the other Carolina in Durham at
7 Durham Regional Hospital which is Community County
8 based hospital now leased by the Duke Health Care
9 System, but none the less, the hospital that has
10 private practice doctors, and University doctors
11 working side by side, and I am familiar with their
12 credentialing guidelines, and my opinion is that he
13 would not have been granted privileges at that
14 hospital either.

15 Q. Dr. DeMaria, based upon Dr. Mincheff's deposition
16 testimony, and the experience indicated in it, do you
17 believe he sufficiently qualified in experience to
18 obtain laparoscopic privileges in 1996 at Carolina
19 Pines?

20 A. Generally laparoscopic privileges or --

21 Q. -- No, sir --

22 A. -- specific to this procedure?

23 Q. Specific o this particular case, yes, sir.

24 A. Well I certainly know that the credentialing bodies
25 that I've dealt with have required what it is usually

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1 referred to as proctoring for cases before granting
2 privileges for independent performance. Proctoring is
3 where another surgeon comes in, and observes and/or
4 assistance in the surgery, a surgeon who is
5 credentialed for the procedure, and then writes a
6 report to the Medical Credentialing body of the
7 hospital that signs off or doesn't sign off on that
8 individuals ability to safely perform the procedure.
9 In every hospital that I have been associated with has
10 developed such criteria requiring proctoring and all
11 have them in place to my knowledge, everyone that I am
12 familiar with by the mid 1990s.

13 Q. The blood loss that you anticipate from a Laparoscopic
14 Nissen Fundoplication Procedure would be about how
15 much?

16 A. The typical blood loss for a Laparoscopic Nissen
17 Fundoplication Procedure is perhaps a 100cc's of
18 blood, often less than that.

19 Q. In Ms. Person's surgery done by Dr. Mincheff she loss
20 about 1900 cc's of blood, nineteen times normal. What
21 does that tell you?

22 A. I am pretty sure there was bleeding, I would think
23 --- No, I mean seriously. It is a fair amount of
24 bleeding. Now there are some major blood vessels in
25 the area of this surgery that if injured can bleed

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1 quite a bit and cause quite a bit of trouble. So, I
2 would anticipate that such, you know, a major source
3 of bleeding was encountered.

4 Q. With that amount of blood loss be consistent with Ms.
5 Person's testimony that he had injured her pancreas
6 and spleen during the operation. Can that cause
7 bleeding?

8 Mr. Sweeney: If it please the Court, I would
9 just like to have a continuing objection, as to how counsel
10 characterizes the testimony of Dr. Mincheff.

11 The Court: Actually, I believe a comment about
12 something the Plaintiff testified to, but --

13 Mr. Sweeney: Whomever he is talking about.

14 The Court: The Court will sustain the
15 objection, Counsel, it would not be necessary for you to
16 characterize the testimony. The jury, has heard the
17 testimony and please delete that from your question. Go
18 ahead.

19 Q. (By Mr. Corbin) An injury to the pancreas and the
20 spleen, is that consistent with significant blood
21 loss?

22 A. Well as we talked about those two organs in some
23 detail, the more likely organ to be associated with
24 blood loss is injury to the spleen. The pancreas
25 itself is not necessarily a very bloody organ if you

1 injury it. Bleeding may not be the main problem for
2 most of those patients. However, having said that,
3 again there are significant blood vessels, running
4 right along aside the pancreas that could account for
5 that type of blood loss.

6 Q. Dr. DeMaria, I would hand you Plaintiff's Exhibit
7 Number 1, which includes the Carolina Pines Records of
8 the anesthesia for Ms. Person's surgery, and would
9 refer you to the section that indicates sudden blood
10 loss of eight to 900 cc's for a total at that point of
11 the operation of 1300 cc's of blood. You see that?

12 A. Yes, sir.

13 Q. That occurred at about 1:00 p.m. an hour and half into
14 the operation. Can you tell what is going on at that
15 point?

16 A. It looks to me that it is about 12:45 give or take a
17 few minutes when the events, if I am reading
18 correctly.

19 Q. Yes, sir. And what time did the operation start?

20 A. It looks like about 10:30.

21 Q. So, we're two hours and fifteen minutes into it and
22 for some reason there is a sudden blood loss of eight
23 to 900 cc's of blood. What are your thoughts about
24 that?

25 A. Well, I think that would be compatible with giving

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1 into some type of blood vessel that would do a fair
2 amount of bleeding, in a short period of time.

3 Q. Dr. DeMaria, also this operation, what would be a
4 normal length of this particular procedure?

5 A. The lap Nissen?

6 Q. Yes, sir.

7 A. I don't disagree with the surgeons testimony, that it
8 would be about an hour of surgery.

9 Q. Ms. Person's surgery was five hours. Does that tell
10 you anything about what happened during it, or Dr.
11 Mincheff's experience level?

12 A. Well, there are, certainly different way to interpret
13 a long procedure. You know, clearly it is not
14 compatible with an average course of events, or a
15 typical course of events as far as, you know, it's
16 indicative of problems and complications I would say.

17 Q. Dr. DeMaria, you talked about the pancreas being
18 injured, causing fluids --- Did you review some CT-
19 Scan reports of Ms. Person?

20 A. Yes.

21 Q. The April 27, CT-scan of Ms. Person's abdomen, stated
22 the stomach is distended and filled with fluid and
23 debris. There is a large amount, of ascites in the
24 left upper abdomen. What does that mean, the ascites?

25 A. Ascites is fluid. It is usually a thin fluid. It

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1 suggests that it is not blood when it is called
2 ascites.

3 Q. Do you have an opinion, as to where probably the
4 ascites, the fluid from the ascites was coming from?

5 A. That fluid was subsequently drained with a catheter
6 and found that it contained high level of amylase,
7 which suggest the pancreas is the ideology of that.

8 Q. In other words the fluid is coming from the pancreas?

9 A. Yes.

10 Q. The next thing indicated on those records says lesions
11 are seen in the left aspect of the spleen. Consistent
12 with infarctions or post surgical trauma. In this
13 particular case what, do you think that means?

14 A. Well, the differential diagnosis of legions like that
15 in the spleen really is, it could be cut on the
16 surface, or small areas where the blood supply has
17 been lost to that part of the spleen which can leave
18 little defects in the picture of the spleen on a CAT
19 scan. So, I mean, clearly there has been some degree
20 of injury to the spleen related to the surgical
21 procedure that would be my conclusion.

22 Q. In relation to the tail of the pancreas where is the
23 spleen?

24 A. The tail of the pancreas sits very inconveniently in
25 the middle of the spleen, so the pancreas often goes

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1 right up into that area of blood vessels in the middle
2 of the spleen and they can be very close together.

3 Q. Dr. DeMaria, it further indicates a large amount of
4 free fluid in the left upper abdomen. What is that
5 significance, please?

6 A. Well it is the same thing we talked about related to
7 ascites. It is free fluid, fluid that is not blood,
8 but in this case was subsequently confirmed to mostly
9 likely be fluid from the pancreas.

10 Q. Dr. DeMaria, Ms. Person's chest x-ray, taken on 4/27
11 indicates that her lungs were under inflated. There
12 was hazy density seen in the left lower chest
13 consistent with plural effusion, and atelectasis --

14 A. -- Atelectasis.

15 Q. Is that how you say that? I don't know. What does
16 that mean, and what is the significance of that?

17 A. Well, the Atelectasis goes hand and hand with the
18 under inflation, after patients have abdominal surgery
19 that causes pain. They tend not to be able to take
20 comfortable deep breaths, and x-rays findings can come
21 up that show areas of collapse within the lungs.
22 Lungs can't expand fully, because of the limitation
23 from the pain. The other finding though, as I recall
24 was fluid, which is not a routine finding after
25 abdominal surgery, fluid in the chest.

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1 Q. What do you believe the source of that fluid was in
2 the chest?

3 A. Well that fluid was also drained - diagnostically
4 drained with a needle and found that it contained high
5 levels of amylase consisting with fluid from the
6 pancreas.

7 Q. Okay. Dr. DeMaria, on April 28, Ms. Person, had a
8 precutaneous abscess drainage. In general, what is
9 that, please. Of the left subcutaneous region.

10 A. That is needle and a catheter put into that part of
11 the body, which is subcutaneous area that under the
12 diaphragm on the left side in the area where the
13 stomach and that is where the fluid was.

14 Q. The document indicates that approximately 800 cc's of
15 fluid was drained out of the collection. Was the
16 source of that fluid, in your opinion, was what?

17 A. It was pancreatic fluid.

18 Q. Next document, please. Dr. DeMaria, this is the April
19 29, Operative Report involving thorasynthesis. In
20 general what is thorasynthesis?

21 A. It is the same concept is what we were just talking
22 about with draining the abdominal fluid, but now
23 applied it to fluid in the chest where a needle is put
24 into the chest to drain fluid that needs to be
25 removed.

1 Q. The document indicates Ms. Person had a sympathetic
2 infusion on the left. What is that, please?

3 A. Sympathetic infusion is a term that refers to fluid
4 that builds up in the chest because of the some
5 process either in the lung or in the abdomen that is
6 an irritation or inflammation and fluid would
7 accumulate there in sympathy or sympathetically, I
8 guess, without being the primary problem. In fact
9 that this was not a sympathetic infusion, but it was
10 found to have elevated levels of amylase raising the
11 concern that this was also fluid from the pancreas.

12 Q. The report indicates that straw color fluid was
13 aspirated and the needle was pulled back, and 600 cc's
14 straw colored fluid was removed. Is that consistent
15 with fluid from the pancreas?

16 A. It is consistent but it is not diagnostic, and that is
17 where you have run test on the fluid itself looking
18 for that enzyme level -- that amylase level to make
19 the connection to the pancreas.

20 Q. And, in fact, was that connection made, the amylase
21 was found?

22 A. Yes. Elevated amylase.

23 Q. The next document, Dr. DeMaria, involves a CT-Scan
24 taken of Ms. Person upon her arrival at Palmetto
25 Richland Hospital in Columbia. In that particular

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1 document the scan was taken May 1, I believe, or May 2
2 --- When Ms. Person arrived in Columbia they took a
3 CT-Scan on May 2 and in that particular CT-scan it
4 states, quote "A fairly large left plural effusion is
5 present with associated lower lobe atelectasis
6 present. Evaluation --- Again that is consistent with
7 pancreatic fluid?

8 A. Clearly only by virtue of the tap of the fluid that
9 showed the amylase level but it has already been
10 diagnosed as pancreatic fluid so to me there is just
11 more of it now.

12 Q. The document continues quote: "The exam of the
13 spleen reveals multi hypo-disc wedge-shaped areas,
14 internally, laterally, and inferiorly, consistent with
15 lacerations to the spleen." What does that mean?

16 A. Lacerations, are like cuts in the surface. They can
17 extend, fairly deep into the spleen.

18 Q. Do you believe, that condition relates to Dr.
19 Mincheff's surgery?

20 A. Yes.

21 Q. How so, please?

22 A. Well, the findings as described would be most
23 compatible with surgical injury to the spleen.

24 Q. Dr. DeMaria, you have reviewed the depositions and
25 medical records; do you have an opinion as to what the

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1 cause of Ms. Person's injuries is? What caused them?

2 A. The problems in this case were directly a result of
3 bad pancreatitis, and it is my opinion that surgical
4 injury to the pancreas caused those problems.

5 Q. How does that relate to Dr. Mincheff's failure to meet
6 the standard of care?

7 A. Well we're talking about a very uncommon complication.
8 Injury to the pancreas significant enough to cause
9 these fluid collections within the matter of a couple
10 days, the amount of illness that this patient
11 developed over the course of days, this is a very
12 significant case of pancreatitis. And I believe that
13 that is most consistent with direct injury of that
14 pancreas gland at the time of the surgery. Now as to
15 what happened to it that would be somewhat a matter of
16 conjecture. I would suppose that it was clamped or
17 injured during bleeding control attempts, but there
18 are other things that could have happened to it, but I
19 believe that the evidence is most supportive that
20 something really cut or broke into that gland deep
21 enough to cause a lot of fluid to leak out, and lot of
22 pancreatitis to develop.

23 Q. Dr. DeMaria, there had been some discussion about Ms.
24 Person's treatment in Columbia, and what caused a
25 perforation of her colon. Can you tell this jury what

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1 pancreatitis in general, does to the in side of the
2 human body, and what effect that would have on the
3 colon?

4 A. When pancreatitis gets severe and those digestive
5 enzymes leak out into the abdomen, they can cause a
6 lot of trouble for other organs, sometimes close by
7 and sometimes even far away depending on how much of
8 that fluid leaks out.

9 The way to probably think about it best is that
10 your digestive enzymes they are job is to break down
11 the food that you eat and turn it into digestible
12 mush. Well the bad news is that the organs are
13 composed of the same types of things that you need
14 like protein, and these enzymes do a pretty good job
15 of chewing up protein. So when these enzymes get
16 loose inside the body and start to digest tissues
17 there is a tremendous inflammatory reaction. There is
18 a tremendous amount, of injury to adjacent organs.
19 And as this process develops a lot of times scare
20 tissue forms and can be very severe in the area of
21 where all of this damage is done. So what you have is
22 a situation where there is no longer normal plains
23 between the tissue. We surgeons count on those plains
24 so that we can separate organs, and do our job when we
25 have to operate on somebody. But the whole thing ends

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1 of being like one great big hard mass inside the
2 abdomen.

3 An organ like the colon may or may not be
4 directly involved by those enzymes trying to digest
5 it. That is one mechanism that a hole in the colon
6 can occur with pancreatitis. The colon blood vessels
7 are very near the pancreas, and those enzymes can
8 actually travel right up to the colon and work a hole
9 in that organ by direct injury; or the surgeons when
10 they are trying to operate and clear infection can,
11 inadvertently injury the colon. Because many times it
12 is a soft spot in the middle of a lot of dense
13 hardness inside the abdomen. So if you imagine that
14 your feeling and touching structures inside, the super
15 hard ones are not the ones that are necessarily the
16 ones that are going to break under your contact with
17 them, but rather the soft ones where you might injure
18 or put your finger inside, or what have you. It's very
19 treacherous to operate on severe pancreatitis; injury
20 is very common.

21 Q. Do you have an opinion, Dr. DeMaria, as to which
22 institution you believe Ms. Person's colon was
23 perforated?

24 A. I believe it was perforated as part of her management
25 at Richland.

1 Q. Do you have an opinion as to whether or not the
2 Richland physician violated the standard of care,
3 because her colon was perforated?

4 A. My opinion is they did not, and that it was result of
5 this severity of the pancreatitis that that happened.

6 Q. Dr. DeMaria --

7 **The Court:** Counsel, let me ask you. How much
8 longer do you think your direct will be. Do you want to
9 conclude before day break?

10 **Mr. Corbin:** Not very much longer. Do you want
11 to break now?

12 **The Court:** All right. No, go ahead.

13 Q. (By Mr. Corbin) Dr. DeMaria, what is your
14 experience with what is called Incisional Hernias?

15 A. Incisional Hernias are pretty common part of busy
16 General Surgery Practice which is what I have. I have
17 taken care of a large number of those over the years.

18 Q. Have you ever seen a photograph of Ms. Person's
19 current condition of her abdomen?

20 A. Yes, I have.

21 Q. Dr. DeMaria, in your opinion will that condition ever
22 improve?

23 A. No. I do not believe it will.

24 Q. Do you anticipate it worsening over the years?

25 A. Any patient who has a complex hernia does have some

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1 risks for future problems from that hernia. My sense
2 would be that it's unlikely that anyone would
3 recommend elective surgical repair for such a hernia
4 given the patient's history of very bad pancreatitis
5 and complications of that pancreatitis. But, there is
6 a small chance that an emergency situation could arise
7 requiring surgery to treat the problem.

8 Q. If, in fact, Ms. Person requires any type of surgery
9 to her abdomen in the future, would she be at severe
10 risks because of all these prior complications?

11 A. Yes.

12 Q. How so, please?

13 A. Organ injury is probably the number one potential
14 problem inside the abdomen. There is going to be dense
15 scar tissue most likely, and organs are going to be
16 stuck together. It's going to be very hard to separate
17 them. The ability to actually successfully repair
18 hernias like this is very difficult as well, because
19 the muscles generally don't want to come back
20 together. A hernia is like a hole in the muscle. The
21 muscle is spread apart, and it is very difficult often
22 to bring that muscle back together and sew it
23 together. Mesh material, permanent patch material
24 almost always needs to bridge the gap, so it is a
25 complex repair.

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1 Q. Ms. Person when she was in Columbia the doctors had to
2 induce a comma, what is the purpose of that?

3 A. The purpose of that is to manage a patient with very
4 severe overall illness who requires total support of
5 all bodily functions, and putting the patient in a
6 comma takes them out of the equation to some extend.
7 We don't have to worry about the patient moving and
8 dislodging tubes, or having any problems from the
9 patient's inadvertent movements. The other part of
10 that is that part of this patient's management was for
11 what you mentioned earlier the Abdominal Compartment
12 Syndrom. And in that situation the abdomen is opened
13 and left opened, so you obviously don't want the
14 patient moving around just in case some of the stuff
15 that belongs on the inside might end up spilling out
16 through that open abdomen; so you got to sort of put
17 the patient to sleep, if you will, like they're under
18 anesthesia so that you can take control of that
19 situation.

20 Q. Dr. DeMaria, do you call in Dr. Mincheff's deposition
21 when he indicated he got his two or three day course
22 studies at Duke with Dr. Embanks?

23 A. Yes.

24 Q. Do you know who Dr. Embanks is?

25 A. Yes.

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1 Q. Do you recall Dr. Mincheff indicating when he
2 completed Dr. Embanks' short course he instructed him
3 as a learning curve of twenty procedures before you do
4 it on your own?

5 A. I do recall.

6 Mr. Driggers: I object to the form. It
7 characterizes the testimony of Dr. Mincheff.

8 The Court: Who will be cross examining the
9 witness?

10 Mr. Sweeney: I will.

11 The Court: Objection, Mr. Sweeney?

12 Mr. Sweeney: Yes, sir. Same objection. He
13 beat me to it.

14 The Court: And again, what is the objection?

15 Mr. Sweeney: Simply that he is trying to
16 characterize testimony of a witness, and doing it in an
17 unfair way out of context.

18 The Court: All right. I'll sustain that,
19 counsel. Please do not, again, that testimony is not in
20 evidence at this point from that position. Please ask you
21 question without paraphrasing.

22 Mr. Corbin: Yes, sir.

23 Q. (By Mr. Corbin) How do you know Dr. Embanks?

24 A. I've known Dr. Embanks since about 1992. He and I were
25 not that far apart geographically. He in Duke and me

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1 Richmond, Virginia. I visited him on a couple of
2 occasions and then ultimately when he left Duke I
3 basically took his job.

4 Q. You have Dr. Embanks' job responsibility?

5 A. Yes.

6 Q. Do you have additional responsibilities beyond what
7 Dr. Embanks had at Duke?

8 A. Yes.

9 Q. What are those additional responsibilities?

10 A. Dr. Embanks was also professor of surgery at Duke.

11 Dr. Embanks did not do weight loss surgery as I do and
12 did not direct that programs and Dr. Embanks was not a
13 Vice Chair of the Department of Surgery as I am.

14 Q. Dr. DeMaria, have you charged a fee in this case for
15 your expert services?

16 A. Yes.

17 Q. Dr. DeMaria, instead of spending a day or more for
18 this case coming to Darlington, could you have done
19 surgery at Duke?

20 A. Yes.

21 Q. A full day of surgery at Duke would be about how many
22 operations, please, that you could have done instead
23 of coming here?

24 A. I usually do three to five operations in a day, so I
25 would say four as an average.

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1 Q. On average from the four surgeries what would be your
2 fee from each one?

3 A. The charges for those procedures would be in the range
4 of about eight thousand dollars.

5 Q. What is your fee for testifying today? Is it less
6 than eight thousand dollars?

7 A. Yes.

8 Mr. Corbin: That is all I have. Thank you, Dr.
9 DeMaria.

10 The Court: All right, before we have cross
11 examination, we are going take a break at this time. I am
12 going to ask you, please, sir, don't talk with either
13 attorney, because you are a witness under testimony, but if
14 you wish to step down and take break you may do so.

15 Ladies and gentlemen, please enjoy your break,
16 and lets everyone else remain where they are while our jury
17 departs the courtroom.

18 (Whereupon, the jury departs the courtroom
19 at 3:42 p.m.)

20 (Whereupon, a recess was taken from 3:42
21 until 3:57 p.m.)

22 The Court: If we have to change locations one
23 of the problems we are going to have is finding a courtroom
24 that is adequately seat the full jury panel. The
25 thirteenth juror is a problem, and my preference would be

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1 to release the alternate, but I would only do that if the
2 parties would agree to accept the anonymous verdict of
3 however many jurors we have, but it would at least be ten.
4 That is ten or more anonymous verdict, would you accept
5 that which would allow me to release our alternate at the
6 end of the day. What says the Plaintiff?

7 **Mr. Corbin:** Absolutely.

8 **The Court:** What says the Defense?

9 **Mr. Sweeney:** We will do that.

10 **The Court:** All right, Now, I hesitate to tell
11 the alternate that she has to go, but because she has
12 invested her week she may be interested and caught up in
13 the case for all I know, and I hesitate to do that. I may
14 give the alternate the option. I just have to think about
15 how I am going to handle that. But I probably need to
16 handle that today. Also at the end of the end day, I am
17 going to tell the jury that we will not work Friday, we
18 will not work Saturday, but we will come back next week so
19 they can make whatever work plans. And before I release
20 the alternate I need to know whether that is a catastrophe
21 turn of events for any particular juror we would need to
22 deal with. So I probably will have that discussion with
23 them at the end of the day.

24 **Mr. Corbin:** Do we know where we're going yet,
25 Your Honor?

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1 **The Court:** No. Mr. Suggs is working full time
2 on that. All right, anything else before we bring in the
3 jury?

4 **Mr. Corbin:** No, sir.

5 **The Court:** Are you ready to go, Dr. DeMaria?

6 **Dr. DeMaria:** Yes, sir.

7 **The Court:** All right, please bring in the jury.

8 (Whereupon, the jury enters the courtroom at
9 3:57 p.m.)

10 **The Court:** Ladies and gentlemen, welcome back.
11 As you will recall we had ended direct examination now we
12 are in cross examination. Mr. Sweeney, you may proceed.

13 **Mr. Sweeney:** May it please, the Court.

14 **Cross Examination by Mr. Sweeney:**

15 Q. Dr. DeMaria, can you hear me okay?

16 A. Yes, sir.

17 Q. Dr. DeMaria when, were you first contacted about this
18 case?

19 A. I don't recall the exact date. I think maybe 2004.

20 Q. All right. And who contacted you, was that Mr.
21 Corbin's office?

22 A. I believe so.

23 Q. All right. Is it fair to say that prior to 2004 you
24 know absolutely nothing about this case?

25 A. I think that's fair, yes.

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1 Q. And that is at least three years after the incident
2 itself, is that correct?

3 A. I believe that's true, yes.

4 Q. All right. Is it also fair to say that you are not
5 personally familiar with Carolina Pines Hospital?

6 A. That is fair to say.

7 Q. You have never even been there have you?

8 A. Correct.

9 Q. You wouldn't know how to get there from here?

10 Mr. Corbin: Your Honor, excuse me, object to
11 relevance.

12 Mr. Sweeney: I think it's extremely relevant.

13 The Court: Overruled.

14 Q. (By Mr. Sweeney) You wouldn't even know how to get
15 there would you?

16 A. Not without help, no, sir.

17 Q. All right. You have spoken to no witnesses in this
18 case, is that fair to say?

19 A. That is fair to say.

20 Q. All right. You have had no conversations, or
21 clarifications, or explanations from any of the
22 doctors in this case, is that right?

23 A. No personal clarifications by direct communication
24 with anyone, correct.

25 Q. All right. You have had no direct communications with

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1 any hospital personnel in this case is that true?

2 A. Correct.

3 Q. Or any what we call fact witnesses, people who are non
4 medical people, you have not consulted with any of
5 them is that correct?

6 A. Correct.

7 Q. You haven't spoken with anybody at Richland Memorial
8 Hospital about this case?

9 A. Correct.

10 Q. Now the deposition testimony that you were asked
11 about, you would agree with me the deposition
12 testimony can be taken out of context, would you not
13 agree with that?

14 A. I think I can. I think mine sometimes has been.

15 Q. Sure. And all you know about this case is from
16 materials supplied to you by the Plaintiff's attorney
17 is that correct?

18 A. That is correct.

19 Q. Now I believe you testify in a lot of cases; is that
20 true?

21 A. I have testified a number of times, yes.

22 Q. All right. Do you do that under a business name or do
23 you do it under your own name?

24 A. Under my own name.

25 Q. But you do have a side business as an expert witness

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1 is that true?

2 A. I have testified in a few cases for approximately ten
3 years.

4 Q. All right. Now you mentioned the money you could make
5 doing surgeries. You don't do surgery every day do
6 you?

7 A. No, sir.

8 Q. I wouldn't think so. And the days you are not doing
9 surgery you are not making money doing surgery are
10 you?

11 A. I am not making money doing surgery but I am seeing
12 patients and do other clinical duties.

13 Q. All right. In this particular situation are you making
14 six hundred dollars per hour is that correct?

15 A. Yes, sir.

16 Q. What is your bill to date?

17 A. I don't recall. I think the amount for appearance
18 today is \$3,600 or something like that.

19 Q. And that certainly, covers just today is that right?

20 A. May it's \$4,800, sir.

21 Q. That is for today?

22 A. For spending the day, yes.

23 Q. Traveling down here from Duke, going back to Duke?

24 A. I usually don't charge an hourly rate for my travel
25 but rather for the lost day.

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1 Q. All right. So, if you weren't here with us today, you
2 would be treating patients, who might need your help,
3 is that what you're saying?

4 A. Yes.

5 Q. Okay. How about Ms. Person, have you treated her in
6 any way, provided any treatment for her?

7 A. No, sir.

8 Q. Have you provided any recommendations for her?

9 A. No, sir.

10 Q. Have you consulted with any of her current treating
11 physicians about how to take care of her or anything
12 like that?

13 A. No, sir.

14 Q. All right. Now I know you mentioned that you were a
15 member of the American College of Surgeons, is that
16 correct?

17 A. Yes.

18 Q. And is that a prestigious organization?

19 A. Yes.

20 Q. Are you aware that Dr. Mincheff is also a fellow of
21 the American College of Surgeons?

22 A. Yes.

23 Q. Are you aware that the American College of Surgeons
24 has a certain ethical coding with regard to testifying
25 in lawsuits?

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1 A. Yes.

2 Q. And, part of that ethical code is, that you have
3 signed a statement saying you will provide objective
4 testimony in a case, is that correct?

5 A. I don't remember the details but I wouldn't be
6 surprised.

7 Q. I wouldn't be either. Did you do it in this case?

8 A. Hand it to me, and let's find it.

9 Q. You don't have though do you? You haven't done it.

10 A. Nobody has handed it to me to sign it, but I will sign
11 it.

12 Q. I think it's your obligation.

13 A. I don't think so, sir.

14 Q. All right. You are currently at Duke Hospital is that
15 right?

16 A. Yes.

17 Q. Durham Regional Hospital?

18 A. Yes.

19 Q. And do you regard those as good hospitals, good sound
20 hospitals, with good sound practices?

21 A. I do, generally speaking, yes.

22 Q. I would think so.

23 **The Court:** Do you need to take a break?

24 **Juror:** No, sir, we are having trouble hearing
25 his responses over here in the jury.

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1 **The Court:** All right, thank you. If you would,
2 speak I was asking you if you worked at Duke Hospital and
3 if you regard them as being a good hospital?

4 **Dr. DeMaria:** Yes.

5 **Q.** (By Mr. Sweeney) With the proper credentialing
6 features in place?

7 **A.** I think so.

8 **Q.** All right. Now all hospital practices are monitored
9 by a group called JACO, are they not?

10 **A.** Yes. The Joint Commission, yes.

11 **Q.** All right. And when they do that they graded on
12 various aspects of a hospital's performance, by
13 numbers do they not, one through five?

14 **A.** Yes.

15 **Q.** One, is the best, five is the worst, is that right?

16 **A.** Yes.

17 **Q.** All right. And one of those things they grade are
18 credentialing, is that not true?

19 **A.** I'm pretty sure they do. I can't recall seeing a JACO
20 report, but I'm sure they do.

21 **Q.** All right. But you wouldn't deny, that the last three
22 reports for Duke Hospital, on terms of credentialing
23 are three, three and two would you?

24 **A.** I don't know that. I have no way to know that. If
25 you're telling me, it's true well I don't have a

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problem believing you.

Q. You will accept that, so I don't have to show you the reports?

A. I don't have any independent way to confirm or deny that so if you're under oath you're welcome to testify to that.

Q. Do you happen to know that Carolina Pines has always had ones during that same time period?

A. I do not.

The Court: All right, now, just a moment counsel. Members of the jury, can you hear the witness better? All right, very good. Thank you for speaking more clearly.

Dr. DeMaria: I have been leaning into the Microphone a little better.

The Court: All right. Very good. And, it maybe if you are a little further away from it and speak clearly, it may actually pick up better. Go ahead, counsel.

Q. (By Mr. Sweeney) So that we will know, one is the best, correct?

A. That is what you told me, yes.

Q. You don't know that?

A. I don't know that independently, no. I'm usually not involved in the JACO reviews.

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1 Q. Okay.

2 A. That is an administrative function.

3 Q. Two is listed as only as acceptable isn't it?

4 A. Again, sir, you are teaching me, I don't know these
5 things.

6 Q. And three is even more deficient. And would you agree
7 with that?

8 A. I am listening. I am learning. I don't know this.

9 Q. Did you know that --- Did you know that bylaws of Duke
10 Health Raleigh --- Do you know their bylaws?

11 A. I don't have any function at Duke Health Raleigh nor
12 privileges there, sir, so I would have any reason to
13 know their bylaws.

14 Q. Well would it surprise you that they have no
15 requirements --

16 **Mr. Corbin:** Your Honor, excuse me, please.

17 Objection, relevance. It's not even his hospital.

18 **The Court:** All right. What is your relevance,
19 counsel?

20 **Mr. Sweeney:** My relevance is that many
21 hospitals including the ones at Duke do not have procedures
22 for a number of Nissen procedures that need be done. They
23 do not have numbers.

24 **The Court:** I am going to sustained the
25 objection because again, it's not a hospital in which the

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1 witness has testified, he has familiarity or has worked
2 with privileges.

3 Q. (By Mr. Sweeney) All right. Let me ask you about
4 your own hospital then?

5 A. Yes, sir.

6 Q. Does your own hospital have a certain number of
7 required Nissen procedures that must be done in order
8 for a person to be able to do the procedure?

9 A. Yes. Durham Regional Hospital has a process for
10 credentialing for advanced laparoscopic procedures
11 which requires both the number of cases done, as well
12 as outcome analysis on cases done, as well as letters
13 of support from relevant observers to document the
14 individual surgeon can seek privileges in this area.
15 This goes to a committee where it is discussed.

16 Q. All right. I don't want to discuss the credentialing
17 process, my question was limited than that. My
18 question is, I would like to know if your hospital
19 bylaws say that a person before they can do a Nissen
20 procedure must have done a certain number of others
21 procedures, a specific number?

22 A. I have reviewed the Durham Regional Hospital bylaws,
23 and there is no mention of any number for any
24 procedure, in the bylaws of the hospital. It is
25 simply not something that is in the bylaws document

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1 nor should it be.

2 Q. Well let's discuss credentialing and privileging.

3 Credentialing, let's discuss that first if we can. Is
4 that fair?

5 A. Sure.

6 Q. They are separate procedures, are they not,
7 credentialing and privileging, they work together but
8 they are separate procedures is that not true?

9 A. I don't see how.

10 Q. Well let's do it this way. Credentialing involves
11 gathering of information regarding documents for
12 submission to various committees, does it not?

13 A. It does.

14 Q. Do you agree with that?

15 A. Yes.

16 Q. All right. The credentialing person checks to see if
17 the information provided is accurate?

18 A. Yes.

19 Q. All right. They verify the information that is
20 submitted?

21 A. Yes.

22 Q. They could check their recommendations from other
23 people, experience and training, those would be on the
24 basis of submission to them, is that not correct?

25 A. Yes.

001355

1 Q. It is performed largely by a medical staff secretary,
2 something like that, is that not true?

3 A. Yes.

4 Q. And that function is largely clerical that we just
5 discussed, is that not right?

6 A. Yes.

7 Q. Once the credentials are compiled by this clerical
8 person, a request for privileging goes to the various
9 hospital committees then, is that not true?

10 A. Yes.

11 Q. So the credentialing person like Ms. Voigt, do you
12 know her by the way, who was here?

13 A. No.

14 Q. Who just does credentialing? She gathers the
15 information, and maybe puts it in a folder and that
16 goes to the -- and makes sure it is accurate, and then
17 that goes to the privileging committee of various
18 hospital committees who decide whether or not the
19 surgeon should be allowed to practice. Isn't that
20 right?

21 A. Yes.

22 Q. Those surgical committees, those various committees
23 consist of doctors is that not true?

24 A. Yes, doctors are involved.

25 Q. All right. These are people in a small community like

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1 Darlington who would have first hand knowledge as to
2 the abilities and confidence and reputation of doctors
3 seeking that request would it not?

4 **Mr. Corbin:** Objection, Your Honor, foundation.
5 How would he know what they do in Darlington, or what they
6 are thinking.

7 **Mr. Sweeney:** I think that is true of all
8 hospitals.

9 **The Court:** There is an assumption within your
10 question. I am going to overrule your objection. Again,
11 the jury is listening and can make that determination if
12 the question is fully appropriate.

13 Go ahead, you may proceed.

14 Q. (By Mr. Sweeney) Did you understand the question?

15 A. I think so. And, you know, what I know and understand
16 of the process, there is committee review. The
17 committee involve physicians, and there is a usual
18 departmental review as well, which involves the Chief
19 of Service, and the Chief of the Department signing
20 off and so forth. Presumably, all those individuals
21 are aware of the information that you suggest they are
22 aware of. I'm not always convinced that that is true,
23 but presumably.

24 Q. All right. And even the last Deliberative Body the
25 Board of Directors can have surgeons and people like

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1 that on it can it not?

2 A. Yes.

3 Q. Now just so we will know that is the process that Dr.
4 Mincheff went through in order to be privilege to
5 perform operations at the hospital is that not correct

6 A. I don't know the details of the process in place at
7 that hospital, sir.

8 Q. Okay. You do not know of, any violates then, or any
9 steps that they skipped, or people who were asleep at
10 this step, or anything like that?

11 A. I do not.

12 Q. Okay. Now, if the person is privileged then he is
13 authorized to perform that type of operation; is that
14 correct?

15 A. I think it depends upon the rules of the particular
16 institutional, whether there is privilege in specific
17 procedure or a category of procedures.

18 Q. All right. Well let's say it's for the Nissen
19 procedure. He is authorized to perform that procedure,
20 that means, he's privileged?

21 A. Yes, sir.

22 Q. All right. The privileging is then reviewed every two
23 years is that correct?

24 A. I think it varies depending on the institution.

25 Q. All right. Well maybe that is why some hospitals get

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1 a one, and some hospitals get a two or a three is that
2 right?

3 A. I don't know but perhaps you are right.

4 Q. Okay. At any rate, Carolina Pines does it every two
5 years, but when they happens the person goes through
6 the same process does he not?

7 A. The hospitals that I've been familiar with, yes. The
8 process is repeated for re-certification, re-
9 credentialing.

10 Q. To summarize, the credentialing process is just the
11 gathering of the information, making sure that they
12 information is accurate before it is forwarded onto
13 the committee of doctors who review it and decide
14 whether it grants privileging, right, is that correct?

15 A. I don't disagree with that.

16 Q. All right. In privileging, it means that the person
17 who is privileged is entitled to use the resources of
18 the hospital, and to perform operations that he ---
19 that person deems necessary at that hospital is that
20 not correct?

21 A. Yes.

22 Q. All right. In other words, the hospitals don't review
23 each operation that goes on and go through ten
24 committees to find out if somebody should do that
25 operation. They simply privilege the person to do

1 those types of operations, isn't that correct?

2 A. There is usually a separate process in place to look
3 at individual cases of concern.

4 Q. Of concern, yes sir. Now in this case we know that
5 Dr. Mincheff was not a hospital employee, but someone
6 using the hospital resources and facilities, and
7 therefore he must be privilege to do the operation,
8 correct?

9 A. Yes.

10 Q. All right. Now do you have a Medical Staff Secretary
11 at your operation, at your hospital?

12 A. Yes.

13 Q. Would you expect her or him to determine what
14 privileges you receive at the hospital?

15 A. No.

16 Q. Nor would you expect Ms. Voigt to who is simply a
17 credentialing person to determine what privileges you
18 receive would you?

19 A. Correct.

20 Q. Or does he not for that matter, anybody who is just a
21 credentialing person doesn't determine who does the
22 operations, they just gather the information, correct?

23 A. Yes, sir.

24 Q. All right. Thank you. Now there are certain red
25 flags --- Oh, let me ask you this. Have you ever been

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1 on a Privileging Committee?

2 A. Yes.

3 Q. When was that?

4 A. Medical College of Virginia.

5 Q. I am curious because when I asked you in your
6 deposition, you indicated that you were not in such a
7 committee.

8 A. It kind of involved into such a committee. It was the
9 Invasive Procedure Committee, who was not originally
10 charged with privileging, but that did evolve over a
11 period of several years.

12 Q. Now there was mention of red flags -- I know you
13 missed that, but red flags were warning signs ---
14 let's assume for a moment they are warning signs about
15 credentialing. Dr. Mincheff has no lawsuits against
16 him prior to would you agree with that?

17 A. I believe that is true, yes.

18 Q. All right. A red flag though on your credentials
19 might be that you've had four lawsuits against you, is
20 that correct?

21 A. Yes, sir.

22 Q. One of those lawsuits involved this same Nissen
23 Procedure, did it not?

24 A. Yes, sir.

25 Q. And they've had a paid expert to come in and testify

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1 against you in that case didn't they?

2 A. I believe so.

3 Q. One of those four cases was a death case, somebody
4 died.

5 A. Yes, sir.

6 Q. Okay. Now Ms. Voigt said, that you needed at least
7 ten Nissen Procedures per year to remain current on
8 Nissen, no exceptions. You don't have that do you?

9 A. I think I do, yes, sir.

10 Q. Let me ask you this. At the time of your deposition
11 you testified that in the five years before your
12 deposition you had done only ten laps and two opens.
13 That is not ten a year?

14 A. Yes, it was ten a year.

15 Q. In other words when you said ten and two that was a
16 mistake?

17 A. My intent was to say ten plus two per year.

18 Q. Okay.

19 A. I put that data together on a hundred and fifty cases.
20 I did not come up with those by doing ten procedures.

21 Q. Do you have a list of those ten, do you have that some
22 place?

23 A. I have an abstract that had been submitted on the
24 numbers of those cases that we have done, and when I
25 say we, I mean myself plus my trainees.

1 Q. Now for litigation purposes, working with lawyers do
2 you receive about thirty cases per year, is that
3 correct?

4 A. To review, yes, sir.

5 Q. All right. You are deposed maybe ten times a year?

6 A. Yes, sir.

7 Q. You began these reviews in 1996, this work with
8 lawyers and litigation, correct?

9 A. Yes.

10 Q. At the time of your deposition before the deposition
11 was even take at that time you had charged \$5,700, do
12 you recall that in your deposition?

13 A. I don't recall that, no.

14 Q. But you did charge for the deposition that as well,
15 did you not?

16 A. Yes.

17 Q. And then you're charging for today?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. Are you still under \$8,000, I'm not real good with
22 math?

23 A. I think so, as I recall --- Well no, it's probably
24 right about there. It is a number of hours involved in
25 a case.

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1 Q. Let me ask you, we need to really know what happened
2 here, and not just talk about various funduplications,
3 and aneurysm, or some other medical terms, we need to
4 get to the bottom line of it. Is it fair to say that
5 without the pancreatitis resulting, there would be no
6 sequence of events leading to Ms. Person's troubles
7 that sent her to Richland Memorial Hospital?

8 A. I think that is accurate, sir.

9 Q. Let's talk about how pancreatitis can result. There
10 are many ways that pancreatitis can result during an
11 operation that did not mean the physician was
12 negligent, isn't that true?

13 A. Yes, sir.

14 Q. In fact, there is no real way to test for it before
15 you do the operation. If it happens, it happens, and
16 it is an unfortunate event that occurred, is that not
17 correct?

18 A. There are ways to test for it before the operation,
19 but certainly there is no way to predict that
20 individual patient might get pancreatitis from one of
21 a number of ways that may have nothing to do with the
22 operation itself.

23 Q. That is my very point. It would have ben unreasonable
24 to do all types of testing to see if she had pre-
25 existing pancreatitis, and even if you had done this

1 you might not have found it, isn't that true?

2 A. Yes.

3 Q. Okay. So you don't have any problem with the fact they
4 would have had the operation even though pancreatitis
5 showed up, correct?

6 A. That is correct. I do not prescribe to the theory that
7 pancreatitis was present spontaneously or from some
8 secondary cause at the time of the operation.

9 Q. All right. Now there is such a thing as idiopathic
10 pancreatitis, is that not correct?

11 A. Yeah, I believe we talked about it in my deposition.

12 Q. Yes, sir. That happens with no instigating factors,
13 that can be identified at all, isn't that correct?

14 A. Yes, sir.

15 Q. It is a spontaneous event that takes place whereby
16 pancreatic fluid appears and nobody knows why. Isn't
17 that right?

18 A. Yes.

19 Q. That can happen, isn't that true?

20 A. It can happen.

21 Q. All right. There is also post operative pancreatitis
22 in patients who have shock or low blood flow, isn't
23 that correct?

24 A. Yes, sir.

25 Q. And you can get shock many ways, one of them is by a

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1 loss of blood, is that not correct?

2 A. Yes, sir.

3 Q. And just because a patient loses blood does not mean
4 there was medical negligence, isn't that true?

5 A. Yes, it is true.

6 Q. All right. Nor it can result --- pancreatitis can
7 result from blunt pressure or retraction on the
8 pancreas where the pancreas is simply being
9 manipulated and pancreatitis occurs, isn't that right?

10 A. Yes, that is true.

11 Q. Now in all three of those incidences it is not below
12 the standard of care if they appear, is that not true

13 A. So the three are idiopathic, post operative with blood
14 loss, and pressure or retraction of the pancreas?

15 Q. Sure.

16 A. Yes, I would say that all three of those are
17 circumstances in which pancreatitis can develop in
18 which there is no negligence and certainly no
19 deviation from the standard of care.

20 Q. All right. Now let's talk about the damage to the
21 tail of the pancreas. No one has documented damage to
22 the tail of that pancreas have they?

23 A. In this case?

24 Q. Yeah, that is the one I'm interested in.

25 A. Yes, in Ms. Person's pancreas.

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1 Q. Nobody has documented that?

2 A. Right. I think I commented on it on my earlier
3 testimony, that for clinical reasons the definitive
4 tests to localize an area of injury in the pancreas,
5 which is presumably in the tail based on
6 probabilities, that test was not done and it was
7 appropriate that test was not done.

8 Q. Let's talk about that for a minute. There was a CT-
9 Scan was done, correct?

10 A. Yes.

11 Q. Did you review that scan or did you just read the
12 report?

13 A. I read the report.

14 Q. Okay. So you haven't even looked at the films in this
15 case?

16 A. I have not seen the film.

17 Q. Okay. I mean just so --- I don't know if these ladies
18 and gentlemen, but a CT-scan reads a lot like an x-
19 ray. It is something you can look at and spot for
20 yourself, correct?

21 A. Well there are certainly better individual to do that.
22 There are trained radiologist to read CARPAL TUNNEL
23 SYNDROME, which are the people who read the reports.

24 Q. Okay. But you haven't done that?

25 A. I have neither written a report, nor reviewed the x-

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1 rays myself.

2 Q. All right. And at the time that Ms. Person was feared
3 to have pancreatitis by Dr. Mincheff, he did get that
4 right, she had pancreatitis?

5 A. Yes, sir.

6 Q. He was afraid that there might be a problem so he
7 recommended that a test be done at Richland Memorial
8 to tests as to whether or not there had been
9 pancreatic damage, is that not true?

10 A. Yes, sir.

11 Q. And the surgeons at Richland Memorial elected not to
12 do that because it wasn't necessary, isn't that
13 right?

14 A. Well a combination of two factors. And this is
15 exactly what we were talking about a moment ago.
16 This is a test called the NRCT. It is sort of an
17 invasive test. You have to go down and actually put a
18 little tube into the pancreatic duct, and inject dye
19 into the pancreas and take x-rays. So question number
20 one is this necessary? Is the patient being treated
21 for pancreatitis? Is everything that can be done to
22 manage the pancreatitis is being done? So you can
23 argue that it is not absolutely necessary. You
24 wouldn't add very much other than knowing exactly what
25 the inside duct of the pancreas looks like.

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1 The second reason that the test wasn't down was
2 because since the patient had pancreatitis there is
3 some risks to doing that. In other words, injecting
4 that dye under pressure can actually make her
5 pancreatitis worse. And when you have patient who is
6 very sick from pancreatitis, the thing you want to do
7 least is make the patient sicker, especially is there
8 is not a lot of information to be gained from the
9 test. So clearly this is a situation where I think
10 very reasonably looking at the risk benefit the
11 decision was made not to do the test. Now
12 unfortunately, that is the test that would help all of
13 us to really know what happened to this pancreas, but
14 is was not done.

15 Q. That is not the only way you would know?

16 A. Well there is indirect evidence, but that would be the
17 most direct x-ray examination fo the pancreas.

18 Q. Let me tell you, there is direct evidence. That is Dr.
19 Mincheff who performed the operation would see it and
20 he did not say it was there did he?

21 A. At the time of the --- He report he didn't, but he did
22 certainly speculate on pancreatic injury.

23 Q. Yeah, it could have happen, but he did not see it, and
24 it can be seen.

25 A. Could he not see it, or did he not mention it, sir?

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1 Q. Well, I mean what kind of doctor would --- who sees
2 it, he can go in and fix it in five minutes, can't he?

3 A. I can go in there and fix it in five minutes.

4 Q. All right. So if he sees it, he would have taken care
5 of it wouldn't he?

6 A. I would think the standard of care would have required
7 taking care of it.

8 Q. Okay. So can we --- Will you give him --- Do you know
9 Dr. Mincheff?

10 A. I do not.

11 Q. Will you give him just on the basis of being an
12 ordinary doctor credit to say that he --- Maybe he had
13 a golf game or something, why wouldn't he fix it?

14 A. The pancreas is a very intimidating organ, and many
15 doctors believe that manipulation, or working on the
16 pancreas can actually precipitate more problems with
17 pancreatitis.

18 Q. He had Dr. Banister with him at the time he did the
19 operation. Do you mean to tell me that those two
20 surgeons saw that, did not write it down, and did not
21 do anything about it, and just close her up, is that
22 right?

23 A. There are alternative interpretations of this. One is
24 they did not look. There was significant bleeding.
25 We know there is eight or 900 cc's blood loss at a

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1 certain time and point during the operation, and there
2 was probably a lot going on in the operating room at
3 that time clamps being placed, ties being placed and
4 so forth. When facing a complication like that that
5 occurs suddenly many times surgeons are just relieved
6 to control the acute problem and don't necessarily go
7 back and look around and inspect what they have done.
8 They don't want to screw up more bleeding, and it may
9 be they did not make the effort to go and look. You
10 don't necessarily have to see a problem in dramatic
11 evidence when you are dealing with a situation like
12 this.

13 Q. That is just totally speculation isn't it? You don't
14 know what they did?

15 A. I do not. But I think I understand the mechanism of
16 the injury as I testify.

17 Q. Let me ask you a specific question. There was no
18 laceration of the spleen at Carolina Pines, is that
19 correct?

20 A. I don't know how it happened if it didn't happen at
21 Carolina Pines.

22 Q. When the catheter was put in at Carolina Pines, clear
23 fluid came out, not blood. That is a clear indication
24 that there is no laceration to the spleen, is that not
25 true?

1 A. That is not true. You are making the assumption that a
2 laceration by necessity would cause enough bleeding to
3 be the problem. Laceration can occur without
4 significant bleeding, not necessarily all that common
5 to the spleen, but it doesn't mean that there was
6 bleeding.

7 Q. I thought you said there was a lot of bleeding here.
8 Nineteen times the amount, if I remember correctly.

9 A. So when we had post operative fluid in the area on day
10 two or day with drainage of that fluid it wasn't
11 blood, so clearly the doctors did a good job of
12 stopping the bleeding.

13 Q. Okay, let's talk about that. Bleeding, again, anatomy
14 performed under surgery is not uniform. It is not the
15 same for everybody, do you agree with that, doctor?

16 A. I agree.

17 Q. And some people are bleeders. They bleed more than
18 other people, right?

19 A. Certainly, you can have problems with individual
20 patients where you may lose more blood in a procedure.
21 This is an awful lot of blood to have just on that
22 patient.

23 Q. Okay. And what you talked about this might have been
24 nicked or that might have been --- you don't know of
25 any specific item that was nicked do you?

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1 A. No, I think we do, because of testimony of the surgeon
2 that the short gastric vessels were a problem, and
3 there were bleeding from those.

4 Q. What surgeons where those you were talking about so we
5 will know?

6 A. Dr. Mincheff and Dr. Banister.

7 Q. Did she have a normal size colon?

8 A. The report from the surgeons was that the colon was
9 distended at the time of the procedure.

10 Q. What does that mean?

11 A. It means that it was inflated.

12 Q. Real large, is that what is means?

13 A. It was --- They reported that it was in their way.

14 Q. All right. And that is, in fact, why they converted
15 fm a laparoscopic to a open surgery, is that right?

16 A. I believe that that has been testimony.

17 Q. That is not an unreasonable thing to do is it?

18 A. No, but it usually doesn't take two hours to figure
19 that out.

20 Q. But some people are more complicated than others is
21 that right?

22 A. Well, you know, I sort of went through the, you know,
23 the usual mechanisms of conversions.

24 One is you really identify fairly quickly you
25 can't do the procedure. I would put distended colon

1 into that group. You know you can't visualize what you
2 need to do, because the colon is in the way. That is a
3 pretty quick assessment.

4 Q. -- Let me ask you. We've all been to have surgeries,
5 or meeting with doctors where you cannot even get seen
6 that day for a surgery because the one before us took
7 way too long or something like that happen. That
8 didn't mean the doctor was in there committing
9 malpractice, did it?

10 A. Of course not.

11 Q. It meant that there were complications that arose that
12 he was taken care of.

13 A. Yes.

14 Q. Okay. And that is the same with Ms. Person. She can
15 have whether it's two hours, three hours, or five
16 hours, if there are complications that need to be
17 addressed, that doesn't mean that the cause of the
18 time because somebody --

19 A. It does not imply, medical malpractice, I agree.

20 Q. Okay. Now let's talk about the bowel perforation. The
21 bowel --- first of all, the colon was not perforated,
22 right. The colon was not cut by anybody. Do you
23 agree with that?

24 A. I agree that no one, you know, has reported that they
25 have cut the colon, yes.

001374

1 Q. All right. Now let's talk about the spleen just for
2 that. Do think the spleen, those marks on the spleen,
3 just of easily could have been marks when people were
4 moving it to get it out of the way or something else
5 isn't that right?

6 A. Yes, they could be retraction injury with cracking in
7 the spleen from that, yes.

8 Q. All right. Okay. None of which would be malpractice
9 is that fair?

10 A. I would agree with that.

11 Q. All right. Now, let's go from there to bowel
12 perforation. A bowel perforation took place at
13 Richland Memorial Hospital did it not?

14 A. Yes.

15 Q. Okay. No question about that?

16 A. Yes, sir.

17 Q. All right. Without the bowel perforation there would
18 be no colostomy, is that correct?

19 A. Correct.

20 Q. Without the bowel perforation there would be no
21 hernia, is that also correct?

22 A. That may not be correct, because of the degree of
23 pancreatitis and the problems with that area. It is
24 possible that the patient may have been managed with
25 an opened abdomen ultimately in the absence of the

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colon perforation.

Q. I am only asking you what you said in your deposition. You said there would be no big retro hernia without the bowel perforation. Do you recall saying that?

A. No.

Q. On page seventy one.

A. Okay, I believe you.

Q. Will you take my word for it?

A. I'll trust you.

Q. Why would you say that then if you're saying now?

A. Because, I guess, it's a different interpretation.

You know, probabilities are what we are talking about not exact knowledge or information, but any patient who has been through critical illness certainly has a risk, of getting a hernia in the incision.

Q. All right. Let me ask you this. You saw the pictures that counsel showed you, correct?

A. Yes.

Q. It's not attractive, right?

A. Correct.

Q. You wouldn't have that picture if it hadn't been for the bowel perforation, is that correct?

A. I've seen abdomens in patients who have had very bad pancreatitis that look very similar to that without bowel perforations.

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1 Q. Sure. But I want to talk about Ms. Person. We
2 wouldn't have Ms. Person picture there, if it were not
3 for the bowel perforation at Richland Memorial
4 Hospital, isn't that correct?

5 A. Her course of events is such that that is probably
6 true, but there remains a chance that she could have
7 experienced the same type of hernia, and other open
8 wound problem just from pancreatitis.

9 Q. Now, when Ms. Person, had her problems with the
10 pancreatitis whatever its cause, he went back and
11 tried to take care of it with a subsequent procedure
12 did he not. Didn't he put a drain in?

13 A. Yeah, a precutaneous drain.

14 Q. And the precutaneous drain the idea behind that is to
15 avoid the kind of surgery that was taking place at
16 Richland Memorial Hospital, isn't that correct?

17 A. Not really.

18 Q. You don't think so

19 A. No. First of all the purcutaneous drain is not a
20 procedure that the surgeon undertakes, but rather the
21 radiologist undertakes under direction from the
22 surgeon who is managing the patient. The point there
23 was to drain the fluid both diagnostically --- In
24 other words figure out why it was there, as well as
25 hopefully to do therapy by draining off that fluid,

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1 and hopefully making the patient better.

2 Now later in Richland's time course we are
3 talking about, yeah, there is fluid to drain, but
4 there is also concern that there may be infection and
5 abscess in the area of the pancreas, and that is a
6 whole different level of concern.

7 Q. Do you recall in your deposition saying if the drain
8 had been used at Richland Memorial rather than
9 surgical intervention the pancreatitis could have been
10 controlled, and she wouldn't have had an open abdomen
11 as we see in that picture?

12 A. Here we have gone full-circle, sir, to see concerns
13 about paraphrasing. This is one of the more
14 complicated clinical decision making algorithms in
15 general surgery; is when to put drains in verses
16 opening the abdomen for bad pancreatitis. So, I don't
17 think we can simplify or paraphrase that discussion
18 particularly well out of context.

19 Q. I don't mean to paraphrase it, but I do mean to do
20 talk about Ms. Person. And you were asked if they had
21 used a drain at Richland Memorial Hospital rather than
22 the surgical invention, pancreatitis could have been
23 controlled, and she wouldn't have had an open abdomen,
24 and you said yes.

25 A. Because it implies that if the drain was all that was

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1 necessary then she wouldn't have had an open abdomen
2 and that is, in fact, true; however, it is not my
3 belief that only a drain was necessary.

4 Q. In other words what you are saying is, you don't
5 believe the people at Richland Memorial Hospital
6 committed malpractice, but they did what they thought
7 was reasonable choice but they were faced with a
8 number of choices, and if they had left the drain in
9 place she would not have had an open abdomen?

10 A. Not just that but the description by the doctors at
11 Richland of what they found when they operated which
12 included significations in areas of bad pancreatitis
13 and that many times required much more than simply
14 drain.

15 Q. They operated fourteen days after she got to Richland
16 Memorial did they not?

17 A. Yes.

18 Q. During which time the drain was in place, Ms. Person
19 was sitting up eating normal meals, and talking to
20 people, isn't that right?

21 A. Yes.

22 Q. Now, the operation done at Carolina Pines, where the
23 pancreatitis appeared the appearance of pancreatitis
24 doesn't mean that the standard care was not met, is
25 that true?

1 A. That is true.

2 Q. Okay. Just so we're clear. Your testimony that Dr.
3 Mincheff fell below the standard the care in your
4 opinion based on your belief as to what took place is
5 that correct?

6 A. It is my opinion, based on my review of the records,
7 and the testimony, and my familiar with these types of
8 procedures, that my opinions are what I hold to be,
9 you know, to be more likely than not.

10 Q. You are not authorized to speak on behalf of any
11 organization when you say that, that is simply your
12 opinion?

13 A. Yes, sir.

14 Q. You haven't reported Dr. Mincheff to any disciplinary
15 group of any kind?

16 A. Correct.

17 Q. Okay. Now, let's talk about Dr. Mincheff, and his
18 privileging. He hasn't just been privileged at
19 Carolina Pines, he has been privileged at other places
20 to do these operations has he not?

21 A. I don't recall.

22 Q. Well how did he do them in the Armed Services?

23 A. Good question.

24 Q. Well he didn't do it out in the field, right. I mean,
25 nobody got wounded in the pancreas, he did it in a

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1 hospital, right?

2 A. Apparently, yes, sir.

3 Q. Okay. Have you ever been in the Armed Services
4 yourself?

5 A. No, sir.

6 Q. Okay. I would assume that a Military Hospital has a
7 credentialing process, does that sound fair?

8 A. I do not have an opinion.

9 Q. Really. How do you reckon they privilege people to do
10 the work?

11 A. I don't know. I really don't. I don't know if JACO
12 sends out review or not.

13 Q. All right. When the procedure was done by Dr.
14 Mincheff, you don't contend that any independent acts
15 of negligence was done by any other personnel is that
16 correct?

17 A. Correct.

18 Q. Do you know of other independent acts of negligence on
19 behalf of his assistant, Dr. Banister?

20 A. Correct.

21 Q. The hospital did not choose Ms. Person for this
22 operation?

23 A. True.

24 Q. The hospital did not tell her that it needed to be
25 done, it was done by a private physician, correct?

1 A. Yes, sir.

2 Q. You mentioned something, Dr. Mincheff is the captain
3 of the ship, I guess you would say, as the Chief
4 Surgeon for this particular operation, correct?

5 A. Yes.

6 Q. And you read as I did when he said it would be his
7 responsibility, he wasn't saying he did something
8 wrong he was just saying it happened on my watch,
9 isn't that right?

10 A. Yes.

11 Q. Okay. So in fairness that is not an admission that he
12 did something that is simply him saying it took place
13 when I was there and I was the guy in charge?

14 A. Yes, sir.

15 Q. And you would expect that of the physician wouldn't
16 you?

17 A. The attending surgeon is the surgeon of record, and is
18 the one who is responsible for the patient's care in
19 the operating room, yes, sir.

20 Q. Is that consistent with the same man you were telling
21 us about who would see this thing, and not try to fix
22 it that he could do in five minutes, see this damage
23 to the pancreas, it is not the same guy is it?

24 A. I guess I have said, I have no personal connection to
25 the physician we are talking about, Dr. Mincheff. I

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1 don't know him well enough to know other than his
2 records.

3 Q. Let's talk about the Nissen Procedures first of all.
4 The first thing is that this a Laparoscopic Procedure,
5 correct?

6 A. It was attempted Laparoscopically in this individual
7 patient, yes. It had been done for decades open.

8 Q. All right. Like a lot of surgeries a lot of things
9 appendectomy, they cut you wide open and take out our
10 appendix, right?

11 A. Yes.

12 Q. And now typically if they can not do it they will use
13 a laparoscope, so instead of a having a scar, what did
14 we use to call them, the bathing suit scars. Instead
15 of having that bathing suit scars we now you just have
16 little hole where the thing went in and the appendix
17 is removed by a laparoscope, correct?

18 A. Generally speaking, more than one little hole.

19 Q. Well I understand that.

20 A. Yes.

21 Q. But the concept is it is less invasive --- if you can
22 do it, it's a good idea, stuff like that. But it's
23 new stuff, right?

24 A. It is new technology and very different than open
25 surgery.

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1 Q. All right. And it has been progressing in terms of
2 credentialing and things like that. The whole time
3 from the time that you started in 1992 --- Was it two
4 or three, I can't remember what you said?

5 A. Two is I think is what I said for Nissen.

6 Q. Okay. From the time you started you didn't have much
7 in the way of credentials when you started did you?

8 A. That is Correct.

9 Q. In fact, based on your testimony today, your
10 credentials would be grossly deficient when you
11 started it wouldn't they?

12 A. With the exception of the proctoring part where had
13 brought in experts to supervise.

14 Q. It's probably more than that. It's probably you were a
15 capable surgeon in other field of similar endeavors,
16 is that fair to say?

17 A. I would go beyond that. I was the busiest surgeon
18 during open Nissen Fundoplication in adult at the
19 institution.

20 Q. All right. Now Dr. Mincheff, was also a good surgeon
21 in other fields of endeavor similar to yours but, of
22 course, not as prestigious. Would he be entitled to
23 have privileges to perform this operation as well,
24 would he not?

25 A. I think that the privileges to perform advanced

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1 Laparoscopic Surgery really do not relate to the
2 reputation or prestige of the individual surgeon, but
3 rather to the amount of work they've done to become
4 privileged for those procedures. As an example, I
5 worked with a guy named Harvey Surgerman in Richmond
6 who is an international expert in obesity surgery, who
7 when Laparoscopic Obesity Surgery came along even
8 though he is internationally known, he had to go to
9 beginner courses and do animal labs and work under
10 supervision of a junior person in order to become
11 privileged in the procedure. And it is a very similar
12 situation with an operation like Laparoscopicness.

13 Q. Dr. Mincheff, before he was approved at Carolina Pines
14 was approved at other hospitals to do Nissen
15 Fundoplication Procedures, was he not?

16 A. As I said before, I didn't know that but you --

17 Q. -- Okay. We will ask him if he was. Does that mean
18 that those hospitals all fell below the standard of
19 care by authorizing him to those operations as well?

20 A. The question in my mind, and it goes to the
21 information that I do not know, and I think I
22 testified that I do not know when I was deposed; is
23 how my experience he has surgically operating on
24 stomach and the esophagus? Because if you tell me
25 that this is an individual surgeon who has done

1 hundreds of cases operating on those organs, the
2 esophagus and the stomach, then I would agree with
3 you, that I a fair amount of experience in the
4 category of surgery that is gastroesophageal surgery
5 like the Nissen Fundoplication. So I would agree with
6 you that Open Nissen Fundoplication is a reasonable
7 privilege for a surgeon with a great deal of
8 experience in Esophageal Gastric Operations. However,
9 if the contrary is true, if the sum-total of his
10 experience with Gastroesophageal Surgery is this
11 experienced in anti-reflux surgery then I do not
12 believe that he meets the standard for privilege.

13 Q. Let me just ask you --- This is five years after this
14 surgery, this is four years after a loss suit was
15 brought, this is two years after you were first
16 contacted in regards to this case, and you are sitting
17 here today telling us that a man can be qualified by
18 experience to do this very operation if he has certain
19 criteria that he can meet, and you don't know whether
20 Dr. Mincheff has that criteria do you?

21 A. We discussed it when I was deposed two years ago, sir,
22 and I did not know then --

23 Q. -- But you not know.

24 A. How am I supposed to know?

25 Q. You don't keep lists of things like that?

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1 A. Me, about his experience?

2 Q. Well, you're to notify --

3 A. -- How would I know what his experience is, sir?

4 Q. -- Sir, you are up here to testify that he committed
5 malpractice, because he didn't have --- and that the
6 hospital was negligent because he didn't have the
7 credentials, and you don't know what his credentials
8 were?

9 A. I would be happy to be educated about that. I asked
10 what his experience was when I was deposed, and you
11 never brought that information to me.

12 Q. That's not true. There are things like subpoenas ---
13 Where do you think these stacks of information came
14 from?

15 A. I don't know, as an expert witness, am I supposed to
16 subpoena information from other physicians am I?

17 Q. All right. Let's assume that I hid the ball from you,
18 or somebody hid the ball from you, that doesn't change
19 the fact you're coming into this courtroom today, five
20 years later telling the jury that a man who has
21 committed a malpractice, and that hospital was
22 negligent because they let him do this operation when
23 you don't have the slightest idea how many operations
24 he's done, or whether or not those operations qualify
25 him to be credentialed and privileged to do this

operation, isn't that true?

A. That is untrue. You are right there is information that I don't know. I don't know the names of his children. I don't know a lot of the information about this gentleman. I am here on this stand to tell the truth as I understand it and offer my opinion. Now because in evidence has never been given information that would clarify this type of case experience I know of no way to obtain that evidence other than by participating in the process.

Q. Well, Dr. Mincheff was deposed was he not. We just had the privilege of listening to some of his deposition testimony read out of context didn't we?

Mr. Corbin: Your Honor --

The Court: Sustained.

Mr. Sweeney: He said it was read out of context. I'm sorry.

The Court: Well Counsel, you've done the same thing you've accused Mr. Corbin of doing. Sustain the objection.

Mr. Sweeney: All right.

The Court: Go ahead. You may answer.

Q. (By Mr. Sweeney) He's been deposed.

A. Yes, sir, and that information, is not in his deposition.

1 Q. So the right questions weren't asked?

2 A. I brought that out in my deposition to years ago, sir.

3 Q. So two years ago, all you were saying by that --- you
4 were saying two years, you were saying he was
5 committing malpractice. You were alleging he was
6 committing malpractice, and the hospital was negligent
7 in allowing to do the operation --

8 A. -- Based on the information that had seen.

9 Q. Which was, zero.

10 A. No, sir. Based on the information that I had seen
11 regarding his experience with anti-reflux surgery,
12 which is a special category of surgery. Now I am
13 leaving opened the door for what you've suggested,
14 experienced isn a category of surgery,
15 Gastroesophageal Surgery, that might be so extensive
16 that it justifies his privileging in the area of open
17 Nissen Fundoplication. We have not gotten into the
18 topic of Laparoscopic Fundoplication, which under the
19 best of circumstances, in my opinion, he does not meet
20 appropriate criteria for privileging under any
21 circumstances, period. We are talking very specific
22 in my mind about open anti-reflux surgery.

23 Q. There was a comment made in opening statement that
24 before he operated on Ms. Person, all he had done was
25 work on a couple of pigs, that's not true is it?

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1 **Mr. Corbin:** Your Honor, excuse me, please.

2 Mischaracterization.

3 **Mr. Sweeney:** No, sir, that is my recollection,
4 Your Honor.

5 **The Court:** Again, counsel, I am going to
6 overrule, because the jury has heard all this. They will
7 determine whether that is an appropriate recollection.

8 Q. (By Mr. Sweeney) Before he operated on Ms. Person,
9 he had just --- He had done more than operate on two
10 pigs, isn't that right?

11 A. Yes, sir.

12 Q. All right. Now let's talk about the Nissen surgery
13 itself, if done Laparoscopically that --- When you
14 begin a laparoscopic surgery, you're kind of hopeful
15 that that is all you will have to do, right. I mean
16 that is you hope for, isn't that true?

17 A. I would hope that if you undertake a laparoscopic
18 procedure, your hope is you can complete the procedure
19 with laparoscopic techniques.

20 Q. Right. Okay. But isn't it true that one in ten of
21 these procedures fail, and there is only about a 90%
22 success rate?

23 A. Yeah, I think that is a reasonable estimate.

24 Q. Okay. Even for you, there is strong number of cases
25 that have to be converted to open surgery, correct?

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1 A. There are cases that have to be converted to open
2 surgery. That number is not, you know, all that
3 common in the current decade, but in the earlier time
4 frame of development of the procedure it was much more
5 common.

6 Q. And that really depends on what happens when you get
7 in there, isn't that right?

8 A. Yes, in part.

9 Q. All right. So I mean, for the most part, a person
10 hopes that when they go for laparoscopic surgery it
11 will be a forty-five minute operation. With the
12 laparoscope, one out ten people, get disappointed by
13 that don't they?

14 A. I don't see where the one and ten came from, sir.

15 Q. Well, the one and ten are converted mostly to open
16 surgeries.

17 A. In my opinion that number is way too high. I mean,
18 you were talking about failure of the procedure in
19 long-term that 90% are successful and that is, ten-
20 year follow up data that has been published actually
21 with openness Nissen Fundoplication. That is not the
22 conversion rate Laparoscopic Nissen in my opinion.

23 Q. Simply because you convert a laparoscopic to open does
24 not mean that a malpractice has occurred?

25 A. Correct.

1 Q. Okay. And it does happen with enough regularity you
2 can actually, put a number on it one in ten, one in
3 fifteen or whatever number you want to choose, isn't
4 that right?

5 A. Yes, you can.

6 Q. Not one in a million?

7 A. Correct.

8 Q. Okay. So it's fairly common then although you likely
9 not?

10 A. Conversion from Laparoscopic to Open Nissen is, by
11 itself not even a complication. It is not something
12 that we would present at a complication's conference
13 to discuss it as a complication.

14 Q. All right. Now you do a fair amount of revisional
15 anti-reflux surgery, correct?

16 A. Yes.

17 Q. And it is true that one and ten Nissens fail. There
18 is about a 90% success rate isn't that true?

19 A. Well, the 10% is not necessarily failure of the
20 procedure, but either failure or other problems
21 arising from the procedures that are actually
22 sometimes worse than the original problem.

23 Q. And that's really my point. The failure doesn't mean
24 anybody did anything wrong it just means that
25 procedure didn't work?

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1 A. Correct. As a matter of fact, those numbers have been
2 reported by a guy named Tom Hassler (Phonetic) who is
3 considered one of the international experts in Nissen
4 Fundoplication Surgery.

5 Q. Okay. So, a successful Nissen is not also going to
6 result in a 100% cure of reflux, even though the
7 operation itself is successful?

8 A. Correct. Yes.

9 Q. And that is where you don't have to convert that is
10 where everything goes right, and it still doesn't
11 necessarily cure --

12 A. -- True --

13 Q. -- It's hard to find many things that cures something.
14 One of the things that you tell the patients is, it is
15 not a sure permanent cure it may result in improvement
16 that goes away over time, correct?

17 A. Yes.

18 Q. All right. So it may work for a short time, or a long
19 time, then you might have the problems reoccur?

20 A. Yes, it is possible.

21 Q. All right. And that doesn't mean anybody did anything
22 wrong?

23 A. Correct.

24 Q. You also advise your patient there is a risk of
25 injury?

1 A. Yes.

2 Q. Bleeding is one of the things you talk about?

3 A. Yes.

4 Q. Stomach problems, esophagus problems, damage to organs
5 in the vicinity, isn't that true?

6 A. Yes.

7 Q. And just because you tell them that, you are not committing
8 malpractice doing that, you are telling them that
9 because that could happen if you do it the right way?

10 A. Yes.

11 Q. Okay. Now this lady in terms of having to have this
12 operation, needed, this operation did she not?

13 A. She certainly had the disease. She had
14 Gastroesophageal Reflux Disease, yes.

15 Q. All right. Well, do you know Dr. Smith, her
16 Pulmonologist?

17 A. I do not.

18 Q. Do you know, Dr. Barker her family doctor?

19 A. No.

20 Q. And I know you said --- have already said you don't
21 know Dr. Mincheff, her surgeon, right?

22 A. Yes.

23 Q. So, if the three of them if they recommended that she
24 have the surgery, as she testified you don't disagree
25 with that do you?

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1 A. No.

2 Q. Okay. In fact, proof of aspiration such as she had,
3 would really push the equation in the direction of the
4 surgery, isn't that correct?

5 A. I would disagree that there is any proof of aspiration
6 here.

7 Q. I see. And you can get that from doctors whose
8 records?

9 A. There is no documentation other than a Pulmonologist
10 claiming the pneumonia was aspiration. There is no
11 bacteria isolate to confirm aspiration. There is no
12 proof. Now there is a lady who also had some other
13 medical problems that set her up for pneumonia, like
14 heart failure, history and so forth.

15 Q. Perforated bowels, was caused at Richland Memorial
16 Hospital, correct?

17 A. Yes.

18 Q. The colon was perforated just by virtue of the severe
19 pancreatitis?

20 A. It was either a complication of the pancreatitis
21 itself, or the management of the pancreatitis, yes.

22 Q. Okay. At Richland Memorial Hospital?

23 A. Yes.

24 Q. Okay. The colon could have been injured by
25 manipulation that was unrepresentable?

1 A. Agreed.

2 Q. And that was at Richland Memorial Hospital?

3 A. Agreed.

4 Q. Okay. The goal of sever pancreatitis management is
5 usually to avoid an operation, isn't that correct?

6 A. Yes.

7 Q. Richland Memorial did the operation?

8 A. Yes.

9 Q. All right. But, that is a judgment call, isn't it?

10 A. Correct.

11 Q. And you don't find that --- They are not party to this
12 lawsuit, and you don't find any medical negligence on
13 their part, is that right?

14 A. Yes.

15 Q. All right. There is such a thing as spontaneous
16 pancreatitis, called idiopathic and it happens when no
17 instigating factors to be identified, correct?

18 A. Yes.

19 Q. Let me ask you about the causes of pancreatitis. What
20 is the number one cause of pancreatitis in general in
21 people?

22 A. Depends where you are but alcohol and gallstones are
23 the number one and two.

24 Q. And let's get to that. Alcohol is number one, and
25 gallstones are number two, is that correct?

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1 A. They are one and two, yes.

2 Q. All right. The colon was disolorizalized (phonetic)
3 at Richland Memorial Hospital is that not true?

4 A. Disolorizalized is the --

5 Q. Easy for you to say.

6 A. Yeah.

7 Q. That happen at Richland Memorial Hospital?

8 A. Yes, sir.

9 Q. Okay. That is where --

10 A. That is part of the injury mechanism where the
11 covering is damaged so it becomes more susceptible to
12 injury.

13 Q. Where you go into the colon with large bowel spillage,
14 correct?

15 A. Well disolorizalized is usually not that full
16 thickness injury but it sets up a situation where it
17 is very easy to get the rest of the way in and cause
18 spillage.

19 Q. SAGES, is an organization that you mentioned and Ms.
20 Voigt mentioned but that is a Laparoscopic Society
21 isn't that true?

22 A. It's a GI Surgical Organization that includes both
23 Endoscopy which looking down the stomach with a scope
24 and Laparoscopy.

25 Q. Anyway, SAGES is a Laparoscopic Society that doesn't

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1 go into the details of what the scope or the
2 experience and training for open operations, isn't
3 that correct?

4 A. Yes, usually.

5 Q. All right. So SAGES would only be the mechanism by
6 which you evaluate whether a person can do the
7 laparoscopic to begin with, correct?

8 A. Yes. Usually the SAGES Guidelines will include some
9 statement that the surgeon should be credentialed and
10 privileged to perform the open type of procedure as a
11 platform for the laparoscopic procedure.

12 Q. I understand that but in terms of its criteria --

13 A. -- Correct --

14 Q. -- It implies the laparoscopic, is that not true?

15 A. Yes. Yes.

16 Q. And in a sense that is irrelevant, because if the
17 injury occurs like you say it occurred, it occurred
18 during the open operation not a laparoscopic
19 operation, correct?

20 A. Yes, that is my belief, yes, sir.

21 Q. So all the talk we're doing here about the
22 laparoscopic operations in a sense, is not all that
23 critical, because that is what she got into, is that
24 right?

25 A. I agree.

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1 Q. So Ms. Voigt's testimony --- Anybody who comes in and
2 tells us all about these SAGES Guidelines, who is a
3 medical secretary, staff secretary, that isn't really
4 relevant to how the mechanism of injury occurred,
5 isn't that true?

6 A. Right. The SAGES Guidelines really has very little to
7 do with the concept, if you appropriately perform open
8 anti-reflux surgery.

9 Q. Now SAGES does say that a strong capable open surgeon,
10 that is a surgeon who does open surgeries, can always
11 fall back on the open procedure as a management
12 problem that they might have with the laparoscopic,
13 isn't that right?

14 A. Yes.

15 Q. All right. And the criteria there, are strong
16 capable, isn't that right?

17 A. Yeap.

18 Q. You don't know whether he's a strong capable surgeon
19 or not, because you don't know what his credentials
20 are, and you don't know anything about him?

21 A. All I know is what has been reported as far as
22 experience in anti-reflux surgery?

23 Q. That is all you have, one area of surgery?

24 A. Yes, sir.

25 Q. But he doesn't have to just have experience in that

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1 one area, he can have it all over the place and that
2 would be enough wouldn't it?

3 A. I didn't testify that he could have it all over the
4 place, I testified that esophageal gastric surgery --

5 Q. -- Okay --

6 A. -- Is extensive experience in that would allow in my
7 opinion a physician to be privileged in open anti-
8 reflux surgery.

9 Q. All right. So in terms of whether he should have been
10 credentialed that really implies to open surgery if
11 we're going to talk about the mechanism of injury, the
12 fact that she is injured, and you believe that a
13 surgeon can be credentialed by a hospital for Open
14 Nissen Fundoplication by having a significant strength
15 of gastric and esophageal surgery in the twenty to
16 thirty operation range, isn't that right?

17 A. Sir, are you saying that I said that?

18 Q. Yes, that is what you said --

19 A. -- Okay --

20 Q. -- Under oath.

21 A. I don't disagree with it.

22 Q. Okay.

23 A. I was just curious of where it came from. It sounded
24 like me.

25 Q. You know I can't make that stuff up. I'm just not that

001400

1 good. But the point is, twenty or thirty of those
2 operations you're talking about is enough experience
3 and you don't whether he had that or not?

4 A. Correct.

5 Q. Okay. If he had it he's qualified?

6 A. In my opinion, yes.

7 Q. So a surgeon who becomes familiar with and experienced
8 with operating on the esophagus, the stomach and areas
9 in there can be probably be credentialed to do a
10 Nissen open, correct?

11 A. It is refreshing that you reading from my deposition,
12 because I do remember talking about that.

13 Q. Well you agree with it don't you?

14 A. Yes.

15 Q. Okay. And you're just not aware of what his
16 experience is --

17 A. -- Yes --

18 Q. -- Except a Nissen --

19 A. -- Yes.

20 Q. All right. SAGES does not go into what appropriate
21 strengths for open, correct?

22 A. Strong and capable, I think what you said.

23 Q. That's it. And, you know, there is a good reason for
24 that, I mean that is judgment. I mean, doesn't some
25 judgment have to come in here?

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1 A. Well, actually the basis is supposed to be residency
2 training, in Gastroesophageal Surgery. What we are
3 usually talking about with privileging is, what do we
4 do with surgeons who are past their residency training
5 who wish to become involved in procedures that are
6 new. So the concept as I see it is, a way to bring
7 those surgeons in and say that they are capable and
8 depending on the residency experience those numbers
9 may be sufficient for a surgeon to get open privileges
10 for Nissen Fundoplication.

11 Q. All right. And you just mentioned residence, you
12 didn't take a residency in Nissen Fundoplication is
13 that fair to say?

14 A. Me?

15 Q. Yes, sir.

16 A. No. I don't think there is one.

17 Q. You didn't take it then?

18 A. Yes, sir, I did not.

19 Q. SAGES, philosophically tends to avoid actual numbers
20 of operations to be done, except to say, sufficient
21 and adequate and signed off by the Chief, is that
22 correct?

23 A. Yes. Usually the department head is also asked to
24 police that area.

25 Q. SAGES, is not part of the credentialing of Open Nissen

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1 procedures?

2 A. Yes.

3 Q. Are you all right?

4 A. Yeah, I'll be all right. Thank you.

5 Q. Okay. We have got a lot of doctors here to take care
6 of you, if you need one.

7 A. I might need one, thank you.

8 **The Court:** Counsel, let me ask, how much long
9 do you think your across will be.

10 **Mr. Sweeney:** Fifteen minutes. I want these
11 folks to be able to get out of here. I'm fidgeting myself.

12 **The Court:** All right.

13 **Mr. Sweeney:** If we could take about a two
14 minute break if that would be the Court's desire?

15 **The Court:** Does anyone need to take a break?
16 No, we're good.

17 **Mr. Sweeney:** I apologize, I just have these
18 questions.

19 **The Court:** Go ahead.

20 Q. (By Mr. Sweeney) So a surgeon can be credentialed
21 by a hospital for Open Nissen procedures for having
22 significant experience in Gastroesophageal Surgery in
23 twenty to thirty of each?

24 A. Correct. You've already said that.

25 Q. And a surgeon who becomes experienced and familiar

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1 with operation on the esophagus and stomach probably
2 are capable of doing the open Nissen, correct?

3 A. Yes.

4 Q. All right. And you saying that Dr. Mincheff committed
5 malpractice that the hospital should not have let him
6 do it even knowing it is very likely by virtue of the
7 questions that I am asking you a good deal more than
8 that?

9 A. I have no way of knowing if it's likely or not. I can
10 understand your line of questioning but I have not
11 been presented with the information.

12 Q. Well you could say you don't know you don't have say
13 the guy's committed malpractice. I mean I don't know.

14 A. In my view, I was hired to come in here and speak the
15 truth as I understand it and give my opinions and that
16 is what I hope I am doing.

17 Q. Give me just one minute, I think I am at the end of
18 my --

19 A. Yes, sir.

20 Mr. Sweeney: have no further questions.

21 The Court: Is there redirect?

22 Redirect Examination by Mr. Corbin

23 Q. Dr. DeMaria, you said sometimes attorneys take your
24 deposition testimony out of context, correct?

25 A. Very many people take my testimony out of context.

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1 Q. Well, let's clear up. You were asked those questions
2 about, oh, my gosh, you have been sued four times,
3 right?

4 A. Yes.

5 Q. One person died, right?

6 A. Yes.

7 Q. Tell this jury what your involvement in those four
8 lawsuits was, what happened?

9 A. The disposition of those cases after the suits were
10 called, and the people who treated the patients were
11 deposed, the suits against me were all dismissed.

12 Q. All four, right?

13 A. Yes.

14 Q. The questions about the blood --- you were asked
15 questions about, what if something were cut would you
16 expect it to bleed after the operation. Do you recall
17 that line of questioning?

18 A. Yes.

19 Q. Why was Ms. Person getting blood transfusion ordered
20 by Dr. Mincheff of two units each, April 25, April 26,
21 April 28, why did she keep on needing all this blood?

22 A. Well she had had a major hemorrhage during the
23 procedure, 1900 cc's of blood is, you know, in the
24 range of 40% of a person's blood volume, so catching
25 up with that requires some transfusion.

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1 **Mr. Corbin:** Dr. DeMaria, I appreciate your
2 time, thank you, sir.

3 **The Court:** All right, you are free to step
4 down.

5 **Mr. Sweeney:** Let me just ask one additional
6 question.

7 **Re-cross Examination by Mr. Sweeney**

8 Q. Major hemorrhaging does not mean that there is
9 malpractice, it just means that there is a lot of
10 bleeding, correct?

11 A. Correct.

12 **Mr. Sweeney:** Thank you.

13 **The Court:** This is your witness, do you wish to
14 follow?

15 **Mr. Corbin:** No, sir.

16 **The Court:** All right, sir, you may step down.
17 Thank you.

18 All right, ladies and gentlemen, we've come to
19 the end of the day. Just one moment, please. I am going
20 to ask you to be back in the jury room tomorrow morning at
21 9:00 and we will begin at 9:00 tomorrow morning but before
22 you leave let just discuss one thing with you and I want to
23 give you as much heads up as I can so that you will have an
24 opportunity to react to it.

25 You've seen the Clerk coming and speaking with me

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1 a couple of times this afternoon, and what we have been
2 attempting to do is do some rescheduling. It appears that
3 after discussion with the attorneys that this case may go
4 beyond this week. We also have a vacation, a holiday on
5 Friday. Many of you, I assume, have holiday from your
6 work. You may have plans with your family, and it would
7 not be my intention that we would work on Friday, nor on
8 Saturday. Meaning we would come back after we finish the
9 day tomorrow that would be Thursday, on Monday to finish
10 the case. It appears to me and I cannot be certain that
11 the case may go as far as Monday, Tuesday and perhaps into
12 Wednesday when you begin your deliberations. Again, that
13 is an absolute estimate, there is no certainty in that.

14 When we started this week, I talked with you
15 about scheduling, and the fact that you all bring busy
16 lives to the courtroom, that this is an interruption in
17 your lives. I ask that if any of you have a catastrophic
18 problem with being summoned this week to jury service. I
19 want to give you some time to think over night. I am going
20 to ask you tomorrow morning whether any of you have some
21 catastrophic result with your schedule, work, life, family,
22 whatever it may be if this case goes over, and we will talk
23 with you about that for purposes of how I define
24 catastrophic. For example, I am scheduled on Monday
25 morning with a hundred and fifty jurors just as we began

1 this week to start a term of Court in Georgetown County,
2 South Carolina with cases on The Roster, the lawyers are
3 ready to go, and we are in the process now of rearranging
4 that, and so we are going to some difficulty to accommodate
5 the needs here in this case in which we are presently
6 engaged. I would hope that in your lives you would be able
7 to do that as well and cope as best you can with this
8 schedule change I'm discussing with you, but again tomorrow
9 I will give the opportunity to discuss with me first-thing
10 how this may impact you individually, and we will have an
11 opportunity to discuss that. Again, that is information
12 only, please don't discuss the facts of the case with those
13 loved ones at home. You might certainly wish to discuss
14 with them what I just talked with you about the schedule
15 and we will see you at 9:00 tomorrow morning. I have a good
16 evening, ladies and gentlemen.

17 (Whereupon, the jury departs the courtroom
18 at 5:20 p.m.)

19 **The Court:** All right, Court will be in recess.
20 Anything further for our record?

21 **Mr. Corbin:** Yes, sir.

22 **The Court:** Well let's just wait one moment
23 until we hear the door close, please. All right.

24 **Mr. Corbin:** Your Honor, tomorrow I intend to
25 publish the video of Mr. Castleberry, and if there is going

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1 to be a dispute about it I would like to have the dispute
2 resolved because it affects my scheduling tomorrow.

3 **The Court:** You talking about you need to
4 resolve now?

5 **Mr. Corbin:** Yes, sir.

6 **The Court:** And under what rule or precedent,
7 you propose to publish the deposition?

8 **Mr. Corbin:** Your Honor, I believe it's Rule 37,
9 which specifically indicates that a party can publish the
10 deposition of an adverse party, executive, managing agents,
11 and representatives in an authoritative position. There is
12 no higher person in this organization locally, than Mr.
13 Castleberry in his title is Chief Executive Officer.

14 **The Court:** All right, response, Mr. Driggers?

15 **Mr. Driggers:** Yes, sir, Your Honor, a couple of
16 things.

17 First of all, the complete and total purpose of
18 the deposition of David Castleberry was going to the
19 control issues and the whole matter involving HMA which we
20 have already discussed and indicated that is not
21 necessarily a part of this case or trial at all. That was
22 the whole purpose of the deposition is to discuss Carolina
23 Pines relationship with HMA. There is no discussion of
24 credentialing, the medical care of Ms. Person, that was the
25 only reason it was taken, so first of all say, we don't

1 think those are issues even relevant to the case and
2 shouldn't be published to the jury that way.

3 Secondly, more practically speaking, just as in
4 the witness's deposition we had numerous objections during
5 the deposition, that will take time. I'm not sure when Mr.
6 Corbin has planned on resolving those objections, editing
7 the tape. Certainly in no condition to hit the play button
8 and show it to the jury in the fashion it is right now.

9 Mr. Castleberry is also somebody who is here but
10 any testimony he has it not relevant because it all goes to
11 the issue of control by the parent corporation. I think
12 with the status this is simply a case of Carolina Pines
13 Regional Medical Center. We have certainly has enough
14 testimony and witnesses and their evidence to fill up a
15 week and a half without Mr. Castleberry being part of it.

16 **The Court:** All right. What are the issues that
17 you wish to bear on what is before this jury?

18 **Mr. Corbin:** Control is one. And because my
19 expert witness, Dr. Oliver Wood, indicated for him to
20 testify about the ability to pay, he needed to learn about
21 control issues. He indicated that is important for him to
22 take the CEO, and I did that and ask questions he wanted me
23 to ask.

24 The second thing is that I did, in fact, ask Mr.
25 Castleberry about the credentialing processing. I asked him

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1 about the duty of the hospital owed to Ms. Person. I asked
2 him about the duty of the hospital involving quality
3 efficient care issues, so it wasn't just about control, it
4 was about several things. If you knock him out Dr. Wood
5 can't testify.

6 **The Court:** Well what prevents you from using
7 32(a)(5), which is to publish excerpts by providing them to
8 the other side in advance, and giving them an opportunity
9 to respond to it of course, and just publishing portions of
10 it as opposed to getting into all of these objections and
11 publishing the entire thing?

12 **Mr. Corbin:** Your Honor, the reason I took the
13 video tape deposition of both Ms. Enoch and Mr.
14 Castleberry was so I could avoid the boring process of
15 reading depositions parts. I think under The Rule, I have a
16 right to publish it.

17 **The Court:** Yes, sir, you can. I'm not saying
18 read it from the paper, I'm talking about publishing a
19 portion as opposed to saying we want to publish the whole
20 thing. They said the issues that are not relevant whether
21 or not that is the case I'm not certain, but is there not,
22 some portions of it, as opposed to the entire deposition
23 that you need to publish?

24 **Mr. Corbin:** Your Honor, the deposition I think
25 is like an hour and twenty-five minutes long. It is a

1 video deposition. It is not difficult to watch. The
2 objections, I don't think, will take any time to resolve.
3 We can easily --- if he is going to object to something I
4 could easily mute it for thirty seconds, or fifteen
5 seconds, or ten seconds, and I don't think it is a mammoth
6 task.

7 **The Court:** All right, just a moment. All
8 right. 32(a)(2) allows the use of it, Mr. Driggers. The
9 deposition of a party or anybody taken with the deposition
10 was an officer, director or managing agent, so clearly he
11 would meet that provision of the rule.

12 **Mr. Driggers:** Yes, sir, Your Honor, again I
13 agree that Rule applies to Mr. Castleberry that is not my
14 position. The position is I think all of his testimony
15 goes to matters that, Your Honor, has indicated at least so
16 far are not going to be issues, that we will look at any
17 way which is the controlling relationship of HMA to use
18 those numbers for whatever purposes Dr. Wood is going to
19 use them

20 **The Court:** Well --

21 **Mr. Driggers:** -- and number two just
22 practicality --

23 **The Court:** -- Excuse me, counsel, just one
24 moment.

25 The first thing I need to do then is, decide

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1 whether or not HMA is, I assume, is a party here.

2 **Mr. Driggers:** Yes, sir.

3 **The Court:** The hour is late. What I would ask
4 you to do is in preparing that deposition, is that Mr.
5 Corbin be able to delete or have it indicated so you can
6 speed by the portions that involve HMA. We will just have
7 to meet back here at 8:30 in the morning and decide whether
8 or not HMA is going to be a party.

9 **Mr. Corbin:** The whole deposition is about HMA
10 and the whole issue is, Your Honor, the ability to pay.
11 I've got to introduce evidence of ability to pay, if the
12 jury considers ability to pay, and it is my responsibility
13 to introduce evidence of the ability to pay for Carolina
14 Pines. Carolina Pines is not under your Order, not under
15 by subpoenas through financial data, they have given me,
16 absolutely nothing.

17 **The Court:** All right. Why has there not been
18 financial information, Mr. Driggers?

19 **Mr. Driggers:** Your Honor, first of all the
20 issue that we're arguing here is, who is the Defendant in
21 this case, and if it is Carolina Pines Regional Medical
22 Center, then there is an issue of ability to pay. Their
23 issue is their ability to pay, and if there is a portion of
24 the testimony, that go to that I would certainly Mr.
25 Castleberry's deposition can be played with that all day

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1 long. That is one of the reasons it was taken.

2 **The Court:** That -- that --

3 **Mr. Driggers:** -- They can talk about whatever
4 their income is or however he wants to have Carolina Pines
5 ability to pay judged. Yes, he can testify about Carolina
6 Pines ability to pay if that is an issue.

7 **The Court:** All right.

8 **Mr. Driggers:** We just don't think --

9 **Mr. Corbin:** We're not withholding --

10 **Mr. Driggers:** -- Excuse me, HMA ability to pay
11 is not an issue.

12 **The Court:** Do you have Carolina Pines financial
13 information?

14 **Mr. Corbin:** Nope. Don't even have tax returns.
15 I've gotten zero from my subpoena. Zero from yours.

16 **The Court:** Okay. Why not?

17 **Mr. Driggers:** Your Honor, first of all the tax
18 returns we have been --- we are trying to get tax
19 information for Mr. Corbin --- Doing that since the Order
20 was given, since Mr. Castleberry's deposition was taken
21 just last week. That is something I am still --- and the
22 trial is this week, so I have been doing this in addition
23 to trying to still comply with Mr. Corbin's request for
24 that. I mean, Mr. Castleberry can come and testify or
25 whoever about Carolina Pines ability to pay if that is an

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1 issue --

2 **The Court:** So your position is that it is not
3 HMA, but it is Carolina Pines, and you haven't given
4 Carolina Pines information. Is this what I am hearing, Mr.
5 Driggers?

6 **The Court:** This is not a perfect way to
7 discover a lawsuit.

8 **Mr. Driggers:** Your Honor, we have produced Mr.
9 Castleberry to testify, and he has already been deposed on
10 these issues. That is one reason he was ordered to testify
11 was to talk about the ability to pay. We produced him for
12 that purpose.

13 **The Court:** All right. Did it cover these issues
14 in the deposition?

15 **Mr. Corbin:** He told me that if they have a bill
16 to pay HMA pays it. He told me that HMA does all the tax
17 information.

18 **Mr. Driggers:** He didn't ask those questions,
19 Your Honor.

20 **The Court:** Well, but have served an
21 Interrogatory asking for this information?

22 **Mr. Corbin:** Yes, I have. And you ordered them
23 to give it.

24 **The Court:** Mr. Driggers, it sounds like we're
25 hiding the ball here, and this has been a consistent thing.

1 **Mr. Corbin:** In fact, Your Honor, October 26
2 was your absolute deadline date. I have been trying to get
3 it for two years.

4 **The Court:** All right.

5 **Mr. Corbin:** Your Honor, you ordered them no
6 later than October 26 to comply. I have gotten zero.

7 **Mr. Driggers:** Your Honor, we're still -- We are
8 in the mist of getting that information, and part of that
9 is the whole issue of Mr. Castleberry's deposition. Do you
10 remember when we had that conference ordering him to be
11 deposed, that was one of the issues that we were still
12 trying to get this information --- this was just last week,
13 and so we sat for --- one reason he's the best person that
14 can get that information quickest, and that is why he sat
15 there for an hour and a half for deposition testimony.
16 We're not objecting to him being able to be deposed, or
17 testify, or play the deposition, just not as to issues for
18 HMA. If it is --

19 **The Court:** Yes, sir, but you just off my point
20 here, Mr. Driggers. Again, haven't you --- Didn't I tell
21 you to produce this information. And see, now you confront
22 me with the issue of, well, all right if won't be HMA but
23 we're not telling you what Carolina Pines is. That is just
24 not an appropriate way to respond to Discovery in a
25 lawsuit. And you put me in a box at 5:30 in the afternoon

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1 when this confronts to try to make it respond and answer a
2 question, when I don't know what all the information is
3 that is out there.

4 **Mr. Driggers:** Your Honor, I will say one more
5 time, and I apologize for being confusing, but we received
6 the Order, and we were instructed to produce all of that
7 host of information, meaning things about what the control
8 or the relationship was for HMA to Carolina Pines.
9 Included in that was tax returns for Carolina Pines, I
10 believe, and I believe that was the only thing that went to
11 Carolina Pines specifically. We have been --- And, since
12 that time getting that information together. We came up
13 against the eve of the trial. Mr. Corbin said I just want
14 to depose the CEO that will give us that information right
15 away, the quickest. I said I'm still gathering the
16 information. You said, send him for a deposition so we
17 did. And that was the best way we knew to get that
18 information and the quickest way and, of course, the Court
19 ordered that. So weren't trying to hide or keep anything
20 from anybody. I mean Carolina Pines certainly has -- ah --
21 ah -- financial information and Mr. Castleberry is
22 certainly the person who would answer those questions. So,
23 again, we don't object to him testifying, they have playing
24 portions of his deposition that pertain just to Carolina
25 Pines, but for issues of control of HMA for due process

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1 reasons and everything else, we have been arguing about in
2 regards to HMA from the beginning. HMA is not a party to
3 this lawsuit, Your Honor, Carolina Pines is.

4 **Mr. Corbin:** Your Honor, Dr. Wood will testify
5 that HMA does business as Carolina Pines. Carolina Pines
6 really is HMA, and the reason they are having so much
7 trouble to tell me what Carolina Pines is worth, is because
8 it really is HMA. They do consolidated tax returns. Dr.
9 Wood who is very astute in knowing these things gave me a
10 list of twenty or thirty questions, and his response to me
11 on every single answer they gave to me was Bingo. There is
12 no difference, you know, they are playing a game over
13 there. Carolina Pines is absolutely solely owned and
14 controlled by HMA. They can't give me that information
15 because it's HMA's stuff. They don't want me to have it.

16 **The Court:** Well it would seem for lack of
17 having Carolina Pines information I am going to have to let
18 the HMA information in, Mr. Driggers. What else, do I have
19 here available.

20 **Mr. Driggers:** Your Honor, and of course we
21 dispute the points Mr. Corbin made, but even if they are
22 all true, Mr. Corbin has had every opportunity for the last
23 however many years to name HMA, to make specific
24 allegations against HMA, and have us defend a lawsuit
25 against HMA, and that has not been done. We are here going

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1 into Thursday of trial and he's wanting to amend his
2 Complaint or state the allegations against a completely new
3 entity.

4 **The Court:** Well actually no. One of the issues
5 of punitive damages is the Defendant's ability to pay. If
6 they Defendant Carolina Pines, actually has the resources
7 of HMA at its disposal then that affects the ability to pay
8 without naming HMA as a party.

9 But gentlemen, it's just too late in the day to
10 make a snap decision that will have significant impact in
11 this case. So I need to think about this overnight and I
12 will just suggest that you come back tomorrow morning and
13 we will have to be here at 8:30 and make whatever decision
14 we will make.

15 All right, Court will be in recess until that
16 time.

17 (Whereupon, the third day of trial ends at
18 5:35 p.m. on Wednesday, November 8, 2007.)

1 (Whereupon, The Court comes to order at 9:02
2 a.m. on Thursday, November 9, 2006.)

3 DAY FOUR OF TRIAL

4 The Court: Good morning, everyone. I understand
5 there are some issues that we need to discuss before the
6 jury comes out and I will be glad to hear from counsel.

7 Mr. Sweeney: Two issues, Your Honor, I would
8 like to bring up. They should be brief. I don't think
9 they will be a problem. I hope not.

10 First with Dr. DeMichele, who we understand is
11 the first witness. I just want to be sure that I don't have
12 any surprises. New tests done, new reports, or none of
13 that stuff.

14 Mr. Corbin: Okay.

15 The Court: Very good.

16 Mr. Sweeney: And then I have no problem. The
17 second with that is we were thinking of how to expedite
18 things, believe it or not, and I had a brain storm. I don't
19 get very many of them but I had one. But I had to get
20 permission this morning so I just got it this morning. But
21 in terms of all this stuff about the ability to pay and Dr.
22 Wood's testimony, and the other testimony that the other
23 CEO and so forth like that, I believe all of that can be
24 completely and totally obviated, and to do so is all we
25 have to do is stipulate that, and I wrote it out just

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1 briefly. The ability of Carolina Pines Medical Center to
2 pay appropriate damages if admitted is not an issue in this
3 case. So to the extent that is one of the factors that
4 must be considered in the analysis that is done by the
5 Court, and done by the jury in awarding any kind of
6 damages, we would stipulate to that, and that means we
7 don't need those depositions, nor do we need Dr. Wood.

8 **The Court:** Very good. Defendant offers the
9 stipulate. What is Plaintiff's position?

10 **Mr. Corbin:** I reject it. They are just saying
11 that Carolina Pines can pay appropriate judgment. It does
12 not go for the ability of how much it can pay. Dr. Wood's
13 will testify not only what they can pay but in fact the HMA
14 in this Courtroom has actually paid judgments of the
15 hospital in death cases. So I think Dr. Wood, need to
16 testify to this jury about his research of HMA and what his
17 conclusions are, about their ability to pay and how much.

18 **The Court:** All right, I would not require
19 Plaintiff to stipulate. I appreciate the offer but
20 Plaintiff has the right to put up Plaintiff's evidence if
21 Plaintiff wishes to do so. Do you have response, counsel?

22 **Mr. Sweeney:** Yes, sir, I do. The first
23 response is this, the issue is not how much money they have
24 that is never an issue in considering punitive damages. The
25 issue is only that is one of the factors that is considered

1 that must be considered whether or not the ability to pay
2 damages is there. If that is stipulated then there is no
3 need for an inquiry as to how much that is. That is still
4 up to the jury to award an appropriate sum if they deem
5 that necessary.

6 The second thing is the issue of HMA being a
7 party to this lawsuit. We are strenuously objecting to
8 that on due process and other grounds, because HMA is not a
9 party to this lawsuit.

10 And, further, if I may --- and I am sorry I don't
11 mean to run on, but the issue that he wants to preserve are
12 simply the factors that are prejudicial in the presentation
13 of damages in a case of how rich is your client, how rich
14 can he be. Those are the very things that the Courts are
15 extremely concerned about in terms of how that affects the
16 jury's ability to make reasonable decisions on damages. So
17 on those grounds we would respectfully request that the
18 testimony be withheld and the stipulation be imposed.

19 **The Court:** All right. Counsel, I decline to do
20 that for the following reasons. And let me just state for
21 the Record at this juncture so that one reviewing it will
22 have this information all together.

23 The Court has declined to bifurcate this trial
24 into punitive damages and liability, because of the
25 lengthening of the trial that would either be duplicative

1 of some testimony or calling of witnesses that would
2 required.

3 This is Thursday, the fourth day of trial, tomorrow is
4 a holiday. This case is already going into next week and
5 provisions and arrangements are being made by the Court,
6 staff, attorneys and everyone else involved, and the Court
7 simply declines to delay this matter in any way because of
8 press of other issues that confront all of us.

9 Secondly, running throughout this case there has
10 been a theme of allegations by the Plaintiff that the
11 Defendants have not participated in discovery. Have been
12 less than forthcoming, have not been cooperative, and in
13 Plaintiff's terms have engaged in consistent discovery
14 abuse. Again this is the claim of the Plaintiff.

15 The Court has been called upon multiple times in
16 either telephone conference, or hearing scheduled, or
17 whatever was necessary to resolve some issue that has
18 arisen in Discovery. At one point the Court agreed and
19 felt the Plaintiff's allegations about Dr. Henniford, the
20 expert witness, were correct and the Court excluded Dr.
21 Henniford as witness simply because of the failure of the
22 Defendant to produce the witness, to advise as to what the
23 witness would be testifying to, and cooperate as required
24 by the Rules of Discovery. The Court later reversed that
25 decision, because this is a novel case, and I felt it very

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1 difficult for the Defendant to be stripped of a witness
2 that goes straight to the crux of the issue when we are
3 confronted by a novel matter.

4 With regard to the HMA issue however, the Court
5 again finds the same situation. The Defendants have not
6 produced financial information of Carolina Pines. This was
7 after being requested through discovery for a period of
8 over two years by the Plaintiff and this was after a direct
9 Court Order of October 26, compelling the Defendants to do
10 that. And even this morning there is no financial
11 information before this Court at least that I am aware of
12 that would give the financial information about Carolina
13 Pines.

14 The Plaintiff says that this is because Carolina
15 Pines and HMA are basically the same entity that there is
16 evidence of control by HMA, billing by HMA, decisions by
17 HMA and that Carolina Pines is HMA. The Court's opinion is
18 it is only fair to allow the Plaintiff to go forward with
19 this evidence because the Defendant has not produced any
20 Carolina Pines information that this jury could look at.
21 The Plaintiff was forced to go get Dr. Wood because of the
22 Defendant being less than forthcoming, and not providing
23 financial information. David Castleberry, the CEO's
24 testimony is necessary for Dr. Wood's testimony. The Court
25 finds it appropriate to allow the deposition to go forward,

1 and to allow the issue of HMA's value and worth to come in
2 simply on the issue of the Defendant, Carolina Pines
3 ability to pay if in the testimony there is sufficient
4 evidence of control, and authority, and if you wish to call
5 it oneness of the entities that would allow that evidence
6 to go forward, and be considered by the jury. The Court
7 does not find that to be a suit against HMA. HMA is not a
8 party. The Court is well aware of that. But, if their
9 finances are the same as Carolina Pines or they fund
10 Carolina Pines, or pay Carolina Pines bills, well then this
11 evidence should come to the jury. For all these reasons,
12 the Court has made the decision that it has.

13 Now, with that on the record, is there anything
14 further, any other issues we need to address this morning?

15 **Mr. Corbin:** If I may please, Your Honor.
16 Talking about surprises, and I hate to harp on this, but
17 October 26' you did issue an Order. I've had troubles for
18 two years. You did issue an Order of October 26. It is
19 important to me, because it is an issue about Dr.
20 Mincheff's reputation doing these surgery. They raised all
21 that point yesterday beating away on Dr. DeMaria. And you
22 ordered the hospital to give me his Operative Reports and
23 discharge summaries for these procedures, and he testified
24 under oath, he had done maybe eleven or more of these
25 procedures.

1 In response to your Order and in response to my
2 subpoena they gave me two, and it is critical in this case,
3 and his reputation, how he has done these procedures before
4 he did Ms. Person. I did not get discharge summaries. I
5 wanted surgery summaries, because that is where the meat is
6 in this case. If you have complications and have to
7 transfer who has almost died it is in the discharge
8 summary. Now they tell me they can't find this stuff.
9 They can't find my stuff that you ordered them to give me
10 that is important to me.

11 Now yesterday they made it a big point and I have
12 subpoenaed the records that have been used in this case --
13 the typical standard Interrogatories in this case. It is
14 coming. And you see it coming and I see it coming. They
15 raised that point yesterday. Well, gosh, Dr. Mincheff, he's
16 done twenty or thirty of these surgeries, oh, yeah, we got
17 it, we're coming. I haven't seen any of that.

18 **The Court:** All right.

19 **Mr. Corbin:** Now I've talked about surprises
20 that is where it is going to be. Now should sanctions be
21 appropriate. What I was going to do, Your Honor, at the
22 conclusion of this case, I think it is clear from my
23 perspective, abuse, intentional violation of your Order.
24 They spend their time doing things that help them. But
25 stuff that helps me that they are ordered to do, set it

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1 aside, we can't find it. We don't know where it is. Now at
2 the end of this case I was going to ask you to at least
3 give me, because I can't get the information from them, to
4 at least give me a charge about adverse inference. Under
5 the law, Your Honor, and I've got the statute and if they
6 violate the law so be it. But under the statute they are
7 absolutely required for ten years to have these records.
8 They say they can't find them.

9 **The Court:** All right. You wish to respond, Mr.
10 Driggers?

11 **Mr. Driggers:** Yes, sir, Your Honor.

12 **The Court:** Counsel, I don't mean to limit you,
13 and I am going to give you a full opportunity to discuss
14 this. But it is 9:15 a.m. --

15 **Mr. Driggers:** I know. It won't take long, Your
16 Honor.

17 **The Court:** Let our record show that it has been
18 consistently this week that I have been unable to start
19 this case at the beginning of the day no matter how early
20 or how late I go. Go ahead, Mr. Driggers.

21 **Mr. Driggers:** Yes, sir, Your Honor. The
22 instructions to providing the records from Carolina Pines
23 again came on October 26, which was a week or so before
24 this trial began. Your Honor, we've searched we've got the
25 record, we've got --- and we don't have the records we

1 can't provide. Certainly that is available for Mr. Corbin
2 to ask on who got what records, or to use that as
3 something, but we've given them what we have and that is
4 just what we have. And I can't do more than that. I can't
5 fabricate records that we can't put our hands on. Again,
6 it is just because these aren't just sitting all in a nice
7 neat room at Carolina Pines they are being stored. These
8 are all the records for the whole hospital for the last ten
9 years. They are stored in different places. They are
10 catalogued according to different standards. And it just
11 takes an amount of time to do that. I believe Mr. Corbin
12 insinuated that that was something that he had asked for
13 two years, which that is not the case. The instruction we
14 got for these specific things that he's arguing about was
15 just about a week before the trial began.

16 **The Court:** All right, counsel. What happens in
17 the event of a patient emergency for which this form of
18 information may be necessary. What does the hospital do?

19 **Mr. Driggers:** You might could get it from the
20 doctor himself. You might could go to the doctor's office.
21 I'm sure they maintain records on their patients. Dr.
22 Mincheff, of course, is not a party to this case. He's been
23 deposed by the Plaintiff, that whatever subpoenas are or
24 information you got from Dr. Mincheff is completely apart
25 from anything we would have been able to get or provide and

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1 that, of course, on the part of the case for years. If he
2 wanted to know, how many procedures, Dr. Mincheff had done
3 or how the discharge summaries came out he deposed Dr.
4 Mincheff two years, three years ago, however long that was.
5 And I can tell you we are not going to walk in here with a
6 bunch of discharge summaries, and operative notes that you
7 he doesn't have, because we don't have them. We will come
8 in here and call testimony, but we don't have anything
9 other than he already has.

10 **The Court:** All right. The Court will take this
11 matter under advisement, realizing that this will have to
12 be resolved at some point later in the day most likely.

13 **Mr. Driggers:** One further thing, Your Honor, it
14 doesn't have to be resolved right now; I just want to
15 reserve our right, and I know you have made a decision
16 about the Castleberry Deposition. There are specific
17 objections that we have that I think need to be addressed
18 by the Court under Rule 30(h), and I don't know if we do
19 that over lunch or when, but I think before it's played for
20 the jury we need to have some resolutions to some of our
21 objections.

22 **The Court:** I will hear from you further at some
23 point. You don't intend to publish it right now do you,
24 counsel. All right, anything further before we bring in
25 the jury?

1 **Mr. Corbin:** No, sir.

2 **The Court:** All right. Mr. Clerk, I should have
3 ask you to do this while I was out here talking. I think
4 the best way to have this discussion with the jury, about
5 difficulty for scheduling next week would be for you to go
6 back in the jury room ---

7 (Whereupon, a bench conference takes place
8 between Judge Baxley and the Clerk of Court regarding a
9 juror).

10 **The Court:** Counsel, let me discuss one other
11 issue. We have one juror --- First of all before I even
12 begin that.

13 Let's go back for our Record, because this
14 discussion occurred off the record. I asked yesterday
15 realizing we may have to move somewhere next week. We may
16 have a smaller jury box. We may have a less spacious
17 accommodation although we are working to try to preserve
18 this room, and it looks like we will be able to. I asked
19 you if, because we are going into next week if you would
20 agree that if we lost some jurors in the process by the way
21 if we did that you all would agree to accept a verdict, a
22 unanimous verdict by ten or more jurors, and I want to go
23 back again and ask. What says the Plaintiff?

24 **Mr. Corbin:** Absolutely, Your Honor.

25 **The Court:** All right. What says Defense?

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1 **Mr. Driggers:** Your Honor, we agreed to that.

2 **The Court:** All right, we have one juror who
3 tells us that because of a business commitment that he has
4 on Monday, and an assistant who, is going to be out I think
5 he may run a steel company of some sort, he is not able to
6 be here Monday. My intention would be to bring that
7 witness out, offer to release him now, seat the alternate
8 and we will move forward with twelve. Now what says the
9 Plaintiff?

10 **Mr. Corbin:** That is fine with me, Your Honor.

11 **The Court:** All right. Defendant. And again,
12 let's make sure we stated this correct. He didn't say that
13 he absolutely could not be here. His response was that it
14 was a distinct hardship to work that out.

15 **Mr. Driggers:** We, you know, we picked those
16 jurors because we had confidence in them. We would like for
17 you to make an inquiry and make sure that he really is not
18 able to attend. He may very well relent if the Court says
19 the kinds of things that, you know, you would normally. You
20 know, like you said about your own schedule.

21 **The Court:** Please speak up so we can be sure to
22 hear you. All right, but my intention would be in working
23 with a juror is, that I am going to give him the benefit of
24 the doubt. We are the ones moving the case over to next
25 week and that was unexpected for him no matter what the

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1 circumstance may be, so I would tend to give any benefit of
2 doubt to that juror.

3 **Mr. Corbin:** I would appreciate that, Your
4 Honor. I don't want him to resent that he has to stay here.

5 **The Court:** All right, let's all remain where we
6 are, and I am --- Well first of all, is there an objection
7 to this Mr. Sweeney, this procedure?

8 **Mr. Sweeney:** Well not only --- I mean I like
9 the juror, Mr. Corbin doesn't want the juror.

10 **The Court:** All right.

11 **Mr. Sweeney:** But for that reason the only thing
12 I would like to say is I would like Court to, you know, to
13 just ask him if he can attend I would like for him to
14 attend.

15 **The Court:** Very good. Please bring the juror
16 out, just the one.

17 (Whereupon, the juror Rudy Robinson, Juror
18 Number 92, is brought in front of the Court.)

19 **The Court:** Good morning.

20 **Mr. Robinson:** Good morning.

21 **The Court:** Please tell me your name, sir?

22 **Mr. Robinson:** Rudy Robinson.

23 **The Court:** Yes, sir, Mr. Robinson, good morning
24 to you. I understand from the Clerk that you had a
25 discussion with him that to go over into next week, and

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1 particularly Monday presents a hardship for you. Tell me
2 what the circumstances of that hardship is, please?

3 **Mr. Robinson:** Well, I own my own business and
4 I've got a guy that helps me, and he's got to be out Monday
5 for some family problems, and we are just going to have to
6 shut down. That is my only alternative. And I hate to
7 complain because I know this is a good thing to do and it
8 is interesting.

9 **The Court:** Well I appreciate your cooperative
10 spirit. In other words, there is no one else there that can
11 run the business and it would shut down on Monday?

12 **Mr. Robinson:** Yes, sir.

13 **The Court:** All right, sir. How many people work
14 in that business?

15 **Mr. Robinson:** Just two.

16 **The Court:** All right. That, again, I realize
17 that carrying over to another week was an unexpected event
18 for you, and the Court would release you if you wished to
19 be released and there would be no way I could let you just
20 miss Monday and come back on Tuesday to start back with us,
21 so if you wish to be released we should do that now.

22 **Mr. Robinson:** If that is going to put you in a
23 bind, I don't want to do that.

24 **The Court:** Well, we have an alternate and so we
25 still have our number of jurors, which is why we have an

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1 alternate and the Court can accommodate you and will
2 accommodate you, sir. So I have no objection to your
3 request.

4 **Mr. Robinson.** Okay.

5 **The Court:** All right, then what we will do at
6 this point is we will release you now. There is no need
7 for you to stay today if we are going to seat someone else
8 at the end of the day, so I am going to release you now. I
9 am going to step down and shake your hand for your service.
10 Thank you, Mr. Robinson. I have enjoyed working with you.

11 **Mr. Robinson:** As I have enjoyed here.

12 **The Court:** I hope it has been a positive
13 experience, and I will let Mr. Suggs give you any further
14 information about what you need, or a work excuse because
15 you run your business but any other accommodation we can
16 provide. Have a good day.

17 (Whereupon, that witness was released from
18 service in this case).

19 **The Court:** All right. Is there any objection to
20 the action taken by the Court from the Plaintiff?

21 **Mr. Corbin:** None, Your Honor.

22 **The Court:** From the Defendant?

23 **Mr. Driggers:** No, Your Honor.

24 **The Court:** All right. Please bring in the jury.

25 (Whereupon, the jury enters the courtroom at

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1 9:23 a.m.)

2 **The Court:** Good morning, ladies and gentlemen.
3 All right, welcome back to the courtroom. Let me ask if
4 there is any member of this jury panel since we were last
5 together who has had any discussion about the facts
6 concerning this case, or who has been contacted by anyone
7 concerning this case; if that applies to you, please raise
8 your hand? Let's let the record reflect that no one has
9 raised their hand. Thank you again for complying with the
10 Court's request.

11 The first thing I want to do is, Ms. Tedder,
12 finally after moving in and out of the jury box, I am going
13 to ask you to take your seat in the jury box if you would
14 now, and thank you..

15 (Whereupon, Mr. Tedder was seated as a juror
16 in this case.)

17 I will tell you that as you heard in the
18 discussions with Mr. Suggs in the jury room Mr. Robinson
19 who runs his own business had a conflict with having to
20 shut his business down on Monday if he carried over with
21 us. The Court finds that to be --- First of all it is an
22 unexpected event that we would be working on Monday, and
23 that he could not have anticipated that his hardship is
24 sufficiently perfect to release him and I released him as a
25 juror in the case. And I don't know if you got to speak to

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1 him on the way out but he sends his goodbys to his
2 colleagues of these last several days.

3 All right, let me revisit one issue with you that
4 we discussed yesterday and that is about scheduling. And a
5 question may have arisen about while we aren't working on
6 Friday. I will tell you that Friday is a State Holiday. We
7 have a little bit of a difference, I guess, of roles here,
8 because Ms. Ruby for example, our Bailiff, the Clerk staff,
9 Mr. Suggs and others are county employees. The county is
10 not celebrating Veteran's Day. The county has other
11 holidays that the State doesn't get. I am a state employee.
12 The Court reporter is a state employee. Our law clerk is a
13 state employee. Now, when I realized that this case was
14 going to run into Friday I will just tell you I sent an
15 email to our Chief Justice, and advised her that we were
16 going to run into the Holiday. And I will tell you that it
17 is not, uncommon that business before the Court will
18 somehow run into the weekend or run into a holiday. And if
19 we got into the regular business of allowing that to
20 happen, well sooner or later almost all the Monday or
21 Friday holidays would be consumed by the press of business
22 which is before us at the moment. It doesn't mean that I
23 want to inconvenience anyone else. It doesn't mean that
24 this business here is so unimportant we will just stop on
25 Friday and wait until Monday. But when it became clear that

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1 we were going to go beyond the weekend anyway, it just
2 seemed appropriate that those who would be impacted by our
3 decision to work through and would lose a holiday as a
4 result of it should not be put to that. I hope that hasn't
5 somehow created a scheduling conflict or issue for you, but
6 I will tell you that even if we worked on Friday and worked on
7 Saturday it is most likely we will be here on Monday and so
8 I hope with that understanding it gives you a little
9 clearer picture of what dynamic went into that decision,
10 not to work tomorrow, or Saturday, and come back on Monday.

11 All right, you will recall that we were in the
12 Plaintiff's case and remain so. Please call your next
13 witness, Mr. Corbin.

14 **Mr. Corbin:** Your Honor, at this time we would
15 call Dominic DeMichele to the witness stand, please.

16 **Domenic John DeMichele, M.D.**

17 **First Being Duly Sworn Testifies as Follows**

18 **Dr. DeMichele:** Good morning, Your Honor.

19 **The Court:** Let's begin by having the witness
20 spell his name in full for us, please.

21 **Dr. DeMichele:** D-O-M-E-N-I-C, middle name John
22 J-O-H-N, Last D-E-M-I-C-H-E-L-E.

23 **Mr. Corbin:** Thank you, Dr. DeMichele.

24 **Direct Examination by Mr. Corbin**

25 **Q.** Dr. DeMichele, what is your profession?

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1 A. I am a physician, sir.

2 Q. Are you board certified in any particular medical
3 specialty?

4 A. I am board eligible in neurology. I am certified in
5 Neuroradiology.

6 Q. Can you give this jury the benefit of your educational
7 background, please, starting with college?

8 A. Ladies and gentlemen, I went to Syracuse University. I
9 took a Bachelor's Degree in Biology. I moved onto
10 Georgetown University in a combined M.D. Ph.D.
11 Program. I finished that. I did an Intensive Care
12 Medicine Fellowship at Georgetown University. A
13 Neuroradiology Fellowship at the National Institution
14 of Health in Bethesda, Maryland. A Neurology Residency
15 at Georgetown University. And in 1990 the training was
16 over and my family and I moved to Florence, South
17 Carolina, where I have been in practice since.

18 Q. Dr. DeMichele, do you know Ruth Persons?

19 A. I have known Ms. Persons for several years.

20 Q. Dr. DeMichele, have you ever provided medical care to
21 Ruthie?

22 A. For several years.

23 Q. Given the fact that you have provided her with medical
24 care, are you familiar with her medical conditions?

25 A. Yes, sir.

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1 Q. Have you been Ruthie's physician after April 25, 2001
2 when she had her surgery?

3 A. Yes, sir.

4 Q. In fact, were you Ruthie's physician before she had
5 the Carolina Pines surgery?

6 A. According to record, long before.

7 Q. Are you aware based upon your conversations with
8 Ruthie, and review of the medical records, that for
9 whatever reason she had some complications from
10 surgery?

11 A. Yes, sir. After the fact, I tried to get her to a
12 Gastroenterologist and a General Surgeon because this
13 is out of my realm of expertise. And she was seen, but
14 they declined the patient so essentially, although I
15 am a neurologist, I am taking care of all of medical
16 needs because no one will take care of her basically.

17 Q. You mentioned the Gastroenterologist that is Dr.
18 Vasudena, we have heard about him from Columbia,
19 correct?

20 A. Yes, sir.

21 Q. Dr. Nyugen, is a Gastroenterologist in Columbia. You
22 sent Ms. Person to him for examination, correct?

23 A. Yes, sir.

24 Q. Could he do anything else to help her?

25 A. No, sir. He backed off and he wouldn't admit her to

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1 his practice as a patient.

2 Q. In addition, Dr. DeMichele, you said that one that you
3 one time referred Ruthie to a surgeon?

4 A. Yes, sir. She had what is called lymphadenopathy. We
5 have lymph nodes in our groin and ordinary we can't
6 feel them but hen they become reactive and response to
7 any kind of insult with trauma or whatever, infection,
8 mononucleosis, they become enlarged and palpable and
9 you can feel them. Ms. Person, they were the size of
10 a silver dollar at least, and they were blocking the
11 flow of something called lymph fluid which is an ultra
12 filtrate of blood from her legs back to her heart. I
13 was in fear of her losing her leg, literally. And the
14 purpose of that consult was to have a general surgeon
15 look at her, and I thought the nodes should be taken
16 out to reestablish flow. The surgeon, he apologized
17 and he wouldn't touch her.

18 Q. Is she a surgical risk?

19 A. Yes, sir. Nobody would want to put her to sleep,
20 although this could be done under epidural anesthesia.

21 Q. Does Ms. Ruthie still have troubles with the swollen
22 lymph nodes in her legs?

23 A. Yes, sir. Her legs are two, two and half times the
24 normal dimension. They really don't fit her body, and
25 if you put pressure on tissue it doesn't bounce back,

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1 and that is called bloody edema which means fluid has
2 leaked out of the blood vessels, and it is in
3 something called the dirt space, which is in the
4 tissues. It is not being reabsorbed and brought back
5 to the heart. If it is not being reabsorbed and
6 accumulates and something has to give. And what gives
7 is the size and diameter of her legs, which in my mind
8 poses a risk for development of blood clots in the
9 legs. Perhaps you have heard of pulmonary emboli, or
10 blood clots that can get thrown from the leg into the
11 right heart to the lung. And in many times the
12 patient is dead by the time they hit the floor, and if
13 not, they are in for a long hospital tour and that is
14 what I was trying to avoid, and I was not successful.

15 Q. Dr. DeMaria?

16 A. Sir?

17 Q. DeMichele -- Dr. DeMichele --

18 A. Thank you.

19 Q. -- Did Ruthie have troubles with the lymph nodes
20 before the operation at Carolina Pines?

21 A. No, sir. And I examined her on a regular basis for
22 years. It was not a problem.

23 Q. What causes that particular swelling of the lymph
24 nodes?

25 A. As I said it could be a reaction to infection, trauma,

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1 and in her case it was secondary to a disruption of
2 blood flow back to her heart. The nodes were blocking
3 the femoral veins, and to some extent the femoral
4 arteries. And you can think of a lymph node being a
5 gate -- a restricted gate, obstructive gate and I
6 wanted them out and I couldn't do it.

7 Q. Dr. DeMichele, and you are aware of the surgical
8 trauma, the coma, the bad pancreatitis, all the
9 surgical procedures Ms. Ruthie went through, correct?

10 A. Yes, sir.

11 Q. In your opinion what caused the lymph nodes?

12 A. Some disruption of lymph flow. What the actual
13 incident was, I don't know. Was it from the
14 pancreatitis, could be, but fact the fact is that she
15 came to my office more than once, and I don't know if
16 the jury has seen her abdomen or not?

17 Q. Yes, they have.

18 A. I brought that. It's not a normal anatomy anymore.
19 It's been disrupted. Multiple systems are involved,
20 and what this particular system, caused the problems
21 with the lymph nodes, I don't know, but it didn't
22 happen out of nowhere. This lady was normal salt of
23 the earth person that comes back to me very sick, very
24 disfigured, and in constant pain that I have not been
25 able to eliminate, and she has been changed.

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1 In the time line -- the only thing that breaks
2 the time line that would point to what happens to her
3 is she had some kind of procedure where something went
4 wrong, I don't know what, I was not there, and this is
5 the result. And you've got to understand that this is
6 not an isolated case. These things happen all the
7 time. Doctors, hospitals, they are human entities.
8 We all make mistakes. Everybody. And I am not saying
9 that anybody at the hospital, or a doctor in
10 particular in made a mistake, but something obviously
11 happens to this woman that was before hand in tact. I
12 was taking care of her for relatively minor things
13 like carpel tunnel syndrome, not life threatening, in
14 a coma, cardiac arrest, brain dead, awake again and
15 having to have many surgical procedures to try to put
16 Humpty Dumpty back together again. I mean I don't know
17 what happened.

18 Q. Dr. DeMichele, and I understand the position that I
19 put you in, and I apologize but would you agree that
20 and you are not pointing the finger at any anybody,
21 whatever happened during all this surgical trauma,
22 whether or not it was a mistake or the greatest care
23 in the world --- Whatever happened during then entire
24 process would you agree that was the cause of the
25 lymph flow?

1 A. Yes, sir. On what we found out --- we came across
2 another piece of evidence where would mitigate the
3 current facts.

4 Q. Yes, sir. Dr. DeMichele, besides the problems with her
5 lymph nodes being swollen, you mentioned that Ruthie
6 had some pre-existing trouble before this Carolina
7 Pines surgery?

8 A. Sure she did.

9 Q. Did you know the severity about those conditions and
10 how she was coping with them?

11 A. She had something called carpel tunnel syndrome, which
12 is a nerve entrapment at the wrist. This particular
13 nerve operates this finger, this finger, this finger
14 and sometimes half of this finger. At one point I sent
15 her to an orthopaedic hand specialist, and she had
16 what is called a carpel tunnel release which is you
17 make an incision here, extend it down to the palmar
18 crease here. You open it up. You free up this dense
19 tissue that is crushing this nerve. You close it up.
20 You send the patient home the same day. She had done
21 once by Dr. Sid Martin, I believe it was the right
22 hand, and subsequently, I had to have the other hand
23 taken care of for her. Dr. Martin had relocated. I
24 believe, I'm not sure, I think Chicago, I'm not sure.
25 I sent her to a neurosurgeon who also does the surgery

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1 named Ken Kammer and he performed the same surgery on
2 Ruthie on the opposite side. Carpel Tunnel Syndrome
3 is surgery, it is no guarantee that you're going to
4 get back any function, because nerves are very
5 unforgiving, and the whole point was to prevent her
6 from, or trying to prevent or stall the use of her
7 hand.

8 Q. Dr. DeMichele, this has nothing to do with the
9 surgery, correct?

10 A. Not at all.

11 Q. Okay. What is papillary necrosis?

12 A. Papillary necrosis is a problem with a patient's
13 kidneys. It can happen congenitally, you can be born
14 with defective kidneys, or it can be acquired. It is
15 something that you get after birth. I don't know
16 exactly where Ms. Person's papillary necrosis came
17 from. but in essence what it amounts to is the portion
18 of the kidney, it ultimately delivers what we call
19 urine, and urine is a super ultra filtrate of blood.
20 These openings in the kidney are they are dead.
21 Necrosis is Latin for dead, and her kidney is not
22 filtering blood the way it should. Where this came
23 from, I don't know. Oddly, it can come from Tylenol.
24 It could be from a virus. I mean there is a laundry
25 list of things that cause this, and I don't know what

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1 caused this, but she's got it.

2 Q. Did she have it before the operation?

3 A. Yes, she did.

4 Q. Okay. What is Chronic Fatigue or sometimes people
5 call it Fibromyalgia?

6 A. Chronic fatigue and Fibromyalgia are very vague or
7 relative terms for possibly someone that has
8 persisting mononucleosis, a viral infection. I
9 personally --- Again, this is a personal view. This is
10 not a matter of research. I believe chronic fatigue
11 does exist as an entity. I believe Fibromyalgia is
12 not a true clinical diagnosis as Post Polio Syndrome
13 or was found for a while in the late 80's, early 90's.
14 That was the trending diagnosis, Post Polio Syndrome.
15 We found out later it doesn't exist. I believe that
16 if a doctor looks long enough and hard enough the
17 reason a patient is labeled with Fibromyalgia which is
18 term that actually doesn't mean anything. Fibro, means
19 tissue. Myalgia means pain. If you do look carefully
20 enough, and hard enough you will find the reason for
21 those complaints, and now in Ruthie, I did.

22 Q. What did you find, doctor?

23 A. She has degenerative disc and bone disease in her
24 spine. And that alone is enough to explain a way the
25 Fibromyalgia, capillary necrosis, or borderline kidney

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1 malfunction is enough to explain chronic fatigue. If
2 you talked to any patient who has kidney problems, one
3 of their main complaints is that they are always
4 tired.

5 Q. Dr. DeMichele, did Ruthie have this capillary necrosis
6 and the chronic fatigue before the operation at
7 Carolina Pines?

8 A. According to my records she did. I did not make that
9 diagnosis. She came to me with it.

10 Mr. Corbin: All right. The Court's indulgence,
11 sir.

12 The Court: Certainly.

13 Q. (By Mr. Corbin) Dr. DeMichele, I would like to show
14 you Plaintiff's Exhibit Number 15.

15 A. Yes, sir.

16 Q. And would ask you can you tell the jury what that is?

17 A. This is an enlarged photograph of my patient, Ms. Ruth
18 Persons, there to the waist.

19 Q. Dr. DeMichele, that particular photograph of Ruthie --

20 A. -- Yes.

21 Q. Does that condition have anything in the world to do
22 with chronic fatigue or papillary necrosis?

23 A. No, sir.

24 Q. You mentioned that Ruthie had some trouble with
25 walking.

1 A. Yes, sir.

2 Q. Did you have trouble walking before the operation?

3 A. No, sir. She was actually quite spry.

4 Q. Plaintiff's Exhibit Number 26. Can you please look at
5 that sir, and tell the jury what that is?

6 A. It is a photograph of lower extremity. It's not a
7 torso photograph. It's just the lower extremity. There
8 is a large incision site on it, and it's markedly
9 swollen. And I assume this is of Ms. Person, although
10 I can't identify her by face.

11 Q. Dr. DeMichele, was that condition in the photograph
12 have anything to do with Ruthie's pre-existing
13 conditions before the operation?

14 A. No sir, not by a stretch.

15 Q. The next photograph is Plaintiff's Exhibit 13. Would
16 you please look at that sir, and tell the jury what
17 that appears to be?

18 A. Again, this is an enlarged, well-done detailed
19 photograph of an abdomen that has what appears to be
20 Marlex Mesh on the lower back quadrant and the rest of
21 the site is open to the environment. This is called
22 an evisceration, which I have seen many times and
23 essentially involves the disruption of a suture line
24 after it has been placed. So essentially a patient
25 has an operation for anything, and the closure site

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1 for whatever reason burst, and the patient has to heal
2 by something called secondary intention. Primary
3 intention is when you actually close the patient up
4 with whatever number of layers of suture material that
5 you need. Secondary intention is when the wound is
6 broken open and has to heal from the inside out and
7 that is what I am looking at here.

8 Q. Dr. DeMichele, the condition that you see in that
9 photograph --

10 A. -- Yes, sir.

11 Q. -- Does that have anything in the world to do with
12 Papillary Necrosis?

13 A. No, sir.

14 Q. Anything in the world to do with chronic fatigue?

15 A. No, sir.

16 Q. Dr. DeMichele, Plaintiff's Exhibit Number 5, would you
17 please look at that, sir, and tell the jury what that
18 is?

19 A. This is an 11 ½ by 12 photograph. I can recognize
20 this as Ms. Person. And it is from about here, down
21 too here and it shows multiple puncture sites, mostly
22 likely from trying to get a catheter and subclavian
23 vein. It also shows a tracheotomy site where the
24 trachea would have to be entered, so she could be
25 breathed. The only time you do this kind of thing is

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1 when a patient cannot breath on his or her own and has
2 to be assisted. Sir, are you asleep?

3 Q. Let's Continue. Dr. DeMichele, would Ruthie's
4 condition in that photograph have anything to do with
5 the papillary necrosis or chronic fatigue?

6 A. No, sir.

7 Q. Dr. DeMichele, I would like to show you Exhibit 19.

8 A. Yes, sir.

9 Q. Could you please tell the jury, what that photograph
10 shows?

11 A. Again, this is not actually 8 ½ by 11, it's an off
12 size photo. It shows a lower extremity that is
13 markedly swollen, and has prior suture lines in it.

14 Q. Do the suture lines indicate that she had surgery at
15 that site previously, correct?

16 A. Yes, sir, it does.

17 Q. The fact that she had had that particular type of
18 surgery, did that affect her ability to walk?

19 A. People have this kind of surgery all the time for
20 bypass, and vein graph. I don't think the suture line
21 itself caused her problems with walking, but I do
22 think the enormity of her lower extremities and lose
23 of feeling --- We walk and maintain balance because we
24 can feel the floor, we can feel the environment, she
25 can't. Ms. Parson's can't. And the last time I saw

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1 her and prior to that she had taking to a cane,
2 because she needs that stability, and a fall in her
3 case is not that same as you or I taking a spill.
4 Because underneath that abdominal graph site that is
5 all scar tissue, it is all very easily disrupted. I
6 told her to stop driving. If she is driving I know
7 it's against the law, but I told her not to wear a
8 seatbelt, because if she gets in a fender-bender, it
9 could all happen again. She doesn't want to go through
10 this again and neither do I. And the fact is, she
11 wouldn't survive another go around in my personal
12 opinion.

13 Q. Dr. DeMichele, the next photograph, sir, is Exhibit
14 Number 6. Please examine the photograph and tell the
15 jury what you see.

16 A. Again, I assume this is of Ms. Person. It was taken
17 on August 1, 2001. and it shows multiple scars over
18 her torso. Apparently, in the aftermath of healing,
19 near healing, incomplete healing, scarring.

20 Q. Would anything in that photograph deal with or be
21 related to papillary necrosis or chronic fatigue?

22 A. No, sir.

23 Q. The next photograph, Dr. DeMichele, is Exhibit Number
24 22. And, I can represent that, is in fact, Ms.
25 Person's stomach.

1 A. Yes, sir. This is a photograph of midline secondary
2 intention healing with significant scarring.

3 Q. Again, Dr. DeMichele, that photograph has nothing to
4 do with papillary necrosis or chronic fatigue,
5 correct?

6 A. No, sir. No.

7 Q. Did you treat Ms. Person after she came back from
8 Columbia, and notice where they had taken the skin
9 graft off her right side?

10 A. Yes, sir.

11 Q. Dr. DeMichele, this photograph, Exhibit Number 7, sir,
12 please look at that and tell the jury what you see.

13 A. This is the denuded area of the Ms. Person, where a
14 large area of skin was taken off to graft an open
15 wound site. The wound is very granulated. It's about
16 a foot long, maybe a bit longer, and it's in the
17 process of healing or trying to heal.

18 Q. Dr. DeMichele, the next photograph is Plaintiff's
19 Exhibit 10. Did you ever see Ruthie in that
20 condition?

21 A. I actually Counsel, I saw her, worse than this. This
22 is healing, this is an abdominal wound. It is showing
23 -- Sir, can the jury see these or just me?

24 Q. Yes, sir. It is on the screen here. They can see it
25 absolutely, yes, sir.

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1 A. Thank you.

2 Q. Yes, sir.

3 A. This is a dissecting site that is healing by secondary
4 intention, it is rather extensive. There is a
5 tracheotomy site where she had to be put on a
6 ventilator or the machine to breath for her. There
7 are multiple puncture wounds in her neck, around her
8 collar bone, probably from something called subclavian
9 line, which is a large line to get the fluids into the
10 heart. When a patient's veins are collapsed and you
11 can't get access anywhere else.

12 Q. Dr. DeMichele, and Ruthie has testified about the bag
13 in that photograph on the right side.

14 A. That is a colostomy, sir, and that is a diverting
15 maneuver to put the bowel at rest, and I don't know if
16 any of you are familiar with a colostomy, by it's an
17 external appliance where feces or stool is dumped into
18 the environment into a bag rather than in the commode.
19 There are many different reasons for doing this, but
20 it is not something, the doctor, or the patient takes
21 likely. This is a major medical and social problem.

22 Q. Dr. DeMichele, you said some social problems. Ruthie
23 had that bag for about twenty months.

24 A. Yes, sir, I know.

25 Q. What do you mean by social problems?

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1 A. These bags are not sewn to the skin. They can fall
2 off. They frequently do. If it is hot outside, and the
3 patient is perspiring, the bag falls off, and he or
4 she if in a public area, is surrounded by stool, by
5 feces. I would consider that as embarrassing.

6 Q. Dr. DeMichele, could you look at Plaintiff's Exhibit
7 Number 29.

8 A. Yes, sir.

9 Q. And please tell the jury what that shows.

10 A. This shows a nearly complete secondary intention
11 healing with multiple areas of scaring, adhesions,
12 traction, the abdominal wall. So that if you didn't
13 know, what you were looking at you wouldn't know what
14 you were looking at.

15 Q. Dr. DeMichele, have you actually palpated or felt Ms.
16 Person's scaring in her abdomen?

17 A. Yes, sir. It is --- The texture is granular, like
18 leather. It does not feel like skin. In places I can
19 put my hand and grab or palpate and feel her large
20 intestine. In other areas of the incision they did
21 --- they did not close her right tandem, and you can
22 put your fingers up through it, which is why I told
23 her to try to avoid driving and not to wear a
24 seatbelt.

25 Q. Will that condition in your opinion ever improve?

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1 A. Counselor, it is tough to predict the future. With
2 our current technology, I would say no, twenty-years
3 from now, we are working on Nano Technology where
4 cells are programmed like computers, to go in and fix
5 tissue, kill cancerous cells, and this is still on the
6 drawing board. Ruthie is 48 or 49 years old, and I
7 don't think it will happen in her life time.

8 Mr. Corbin: I would like for Ms. Person to
9 leave the room at this time, please sir.

10 The Court: You may do so ma'am. You may leave,
11 Ms. Person.

12 Mr. Corbin: Thank you, Judge.

13 (Pause)

14 Mr. Corbin: May I proceed?

15 The Court: Yes, sir.

16 Q. (By Mr. Corbin) Dr. DeMichele, Ruthie testified that
17 she did have some anxiety issues before the surgery
18 and from time to time she had depression. Were you
19 aware of that?

20 A. Yes, sir. I have treated her for chronic major
21 clinical depression in the past and currently. And
22 currently it has gotten worse to the point where she
23 says her house is tidy, but her bedroom isn't because
24 she never leaves it. She doesn't want to leave the
25 house. She thinks everybody is looking at her. She

1 won't be walking down a beach, because she will turn
2 heads for the wrong reason. She is completely
3 disfigured. She is still below the marrying age, but
4 the fact is, people look at appearances she would have
5 to find a very warm hearted man before she could start
6 a relationship with anybody.

7 Q. Dr. DeMichele, have you noticed a change in Ruthie's
8 personality from before the operation until the
9 present?

10 A. Yes, sir. She is a changed person.

11 Q. How so, please?

12 A. Anybody would be. You can't have something like this
13 happen to you and not be changed. I have argued
14 actually with her about this, but you can't tell
15 someone that had had this happened to, to straighten
16 up because it will not happen.

17 Q. Do you believe Ruthie trusts you?

18 A. I don't know, but at this point she does not have a
19 whole lot of options, because I'm the only one that
20 will take care of her.

21 Q. Has Ruthie confided in you thoughts about hurting
22 herself?

23 A. Yes, sir. She has suicide ideology. And I told her
24 if she hurt herself, when I died I would come and find
25 her, and beat the living -- out of her.

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1 Mr. Corbin: Thank you, Doctor.

2 The Court: Cross Examination.

3 Mr. Sweeney: Yes, sir. Thank you, Your Honor.

4 May it please the Court? Thank you, Your Honor.

5 The Court: Yes, sir.

6 Cross Examination by Mr. Sweeney

7 Q. Good morning, again.

8 A. Good morning, counselor.

9 Q. Dr. DeMichele, by training and experience you are a
10 neurologist, is that correct?

11 A. Yes, sir. I am a Neuroradiologist.

12 Q. Yes, sir. As I understand it, you are not board
13 certified with neurology?

14 A. No, sir.

15 Q. You are board eligible?

16 A. Right.

17 Q. So, you have never taken the exam?

18 A. I signed up to take them when I got here, but because
19 of the call schedule, I couldn't go.

20 Q. I am asking this really for other reasons, but when a
21 person actually becomes board certified, they have to
22 take the exam periodically again, to remain board
23 certified?

24 A. It depends. When I came out, you only had to take
25 them once. Now, they have to be repeated.

1 Q. But, at any rate you have not taken them?

2 A. No, sir, I have not.

3 Q. Your prior business was DeMichele Neurological
4 Services; is that correct?

5 A. That's correct.

6 Q. Prior to that you were employed by a Neurologist in
7 Florence?

8 A. In 1990 that is what brought me here.

9 Q. And, all I am trying to do by asking these questions,
10 is when you have a sign that says DeMichele
11 Neurological Services, it is reasonable that you are
12 telling everybody that you are a Neurologist, right?

13 A. Certainly.

14 Q. As I understand it, you are not here to testify as to
15 credentialing; is that correct?

16 A. No sir, not at all.

17 Q. Counsel asked you about certain operations, but you
18 don't even know what hospital her injury took place
19 in, is that correct?

20 A. I actually --- I still don't. I don't know what
21 hospital, I don't know what doctor, and frankly, I
22 don't care, because that is not why I am here.

23 Q. Right. I understand that, but it just needs to be
24 clarified.

25 A. Okay.

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1 Q. So, you have no opinion whether anybody committed
2 malpractice?

3 A. Opinion or evidence? You know I don't want to try to
4 mince words.

5 Mr. Corbin: Your Honor, excuse me please. He
6 asked, do you have an opinion about malpractice in this
7 case?

8 The Court: Just a moment counsel. Objection
9 sustained. Let the witness respond to your question,
10 please.

11 Mr. Sweeney: I thought I was. He asked me a
12 question back.

13 A. (Dr. DeMichele) Yes, I thought it was. It was very
14 hard at the time to charge responsibility for
15 something like this. I don't know who did what. All
16 I know is that I have a patient that was intact, and
17 she came back dismembered. I don't know who did it.

18 Q. My question was this. You told me today that as you
19 were sitting out here, you had no opinions?

20 A. I still don't. I wasn't there.

21 Q. That's all I wanted.

22 A. No, I don't. I wasn't there. None of the jurors were
23 there. We have to rely on second hand information as
24 I do and the jury does, and as His Honor does.

25 Q. Now, as I understand it, you have no hospital

1 privileges anywhere?

2 A. I was on call every night or every other night from
3 1990 until I believe 1997. At that point I filed for
4 divorce on the grounds of adultery. It was granted.
5 I was given full custody of my daughter, and was also
6 admonished by the Court not to have a female present
7 at night or over night. Because of that, for a while,
8 I took my six-year-old to the hospital frequently.
9 Late at night, the middle of the night, and that
10 constitutes child abuse, or I would get a staff member
11 from the office to come to the house and sit so I
12 could go and take care of someone who had just had a
13 stroke or whatever. I wasn't dropped from the
14 hospital. I have a clean record at all of the
15 hospitals here. I have inactive licenses which I
16 brought in New York, Maryland, and an active South
17 Carolina licenses which has never been soiled here or
18 any of the other two states that I just mentioned.

19 Q. So, the short answer to my question is that you have
20 no medical privileges anywhere, is that correct?

21 A. Yes, sir.

22 Q. And have had none since 1999?

23 A. Approximately.

24 Q. You do have an operating room in your current office,
25 correct?

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1 A. Yes, sir.

2 Q. You monitor your own operations there basically?

3 A. Yes, sir. That has become quite a common practice
4 now.

5 Q. You currently practice with Eastern Carolina Medical
6 Associates, is that correct?

7 A. Yes, sir.

8 Q. And, I believe you described that as a multiple
9 disciplined organization, where most of the other
10 practitioners are not --

11 A. No, sir. Two of the practitioners are M.D.'s. My
12 employer is Doctor Joseph Carter. He is a D.C., I
13 believe.

14 Q. He is a Chiropractor?

15 A. That's right. And his practice is pretty much limited
16 to acupuncture.

17 Q. All right.

18 A. The other two employers are M.D.'s.

19 Q. Well now, has that changed since I took your
20 deposition or not? Friday, one doctor was leaving --

21 A. I am not sure of the spelling, and one named, Collin,
22 who, I believe, is from Darlington. And,
23 specifically, I answered a lot of questions Friday, I
24 don't remember if that was one of them or not. But, I
25 did not hide the fact that these two other physicians

1 in practicing they are FUS.

2 Q. All right. Let me ask you this. Neurologist do not
3 normally deal with gastric, bowel, colon, or stomach
4 problems directly, those are normally dealt with by
5 other specialist are they not?

6 A. Yes, sir. And that is why I have diverted Ms. Person
7 to a gastroenterologist and a general surgeon.

8 Q. She has had plenty of doctors, and/or gastric, bowel,
9 and stomach doctors in the past. Are you saying none
10 of them will see her anymore?

11 A. Not at present sir. The last two that I have sent her
12 to, have sent me back letters, one a
13 gastroenterologist, one a general surgeon. They
14 backed off, the case and sent her back to me.

15 Q. No, sir. In terms of backing off the case, you sent
16 her on August 7 of this year, to Dr. Frank Lee, who is
17 a Board Certified Surgeon in Florence, didn't you?

18 A. Yes, one I did.

19 Q. Dr. Lee, he examined her, did he not?

20 A. According to the record he did.

21 Q. He sent you this examination record?

22 A. Right, he said he would not be following her, as a
23 result of prior surgeries.

24 Q. No, sir. He said I will not recommend any surgery
25 for her; isn't that what he said?

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1 A. Sir, I don't have that document in front of me. If
2 you will give me a minute.

3 (Pause)

4 A. May I read to you, sir?

5 Q. Sure.

6 A. I suspect her groan adenopathy is from all of this
7 extensive surgery that she has had.

8 Q. He also said did he not that, I cannot feel any real
9 groan adenopathy, isn't that what he said, the
10 surgeon, who specializes in that? I underlined it in
11 mine.

12 Mr. Sweeney: May I approach, and just show you?

13 The Court: Yes, sir.

14 A. No, he does not address that.

15 Q. No, he does not address that. He says --- There is
16 just a sentence here, and you know how lawyers are.

17 A. Yes.

18 Q. I underlined it. I cannot feel any real groan
19 adenopathy; didn't he say that?

20 A. We apparently have two different notes. If you have
21 that note that's fine. I don't. But this, the note
22 that I signed off on stated, dated 8/7/2006 I suspect
23 that her groan adenopathy is from all of this
24 extensive surgery that she has had.

25 Q. So he saw her twice, I'm sorry?

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1 A. Apparently, and I don't have that note. But, he can't
2 address the problem of adenopathy, if she doesn't have
3 any. I can't explain that.

4 Q. Let me ask you this about other doctors, and I don't
5 know who they might be, but other doctors are not
6 refusing to look at her, and examine her, they are
7 just not doing --- they are just not recommending
8 surgery or they are not recommending specific action;
9 isn't that the case?

10 A. Basically, what they are saying is there is nothing to
11 do.

12 Q. So, if you imply that they are not seeing her, because
13 they don't like her --

14 A. -- No, sir.

15 Q. That is not the case.

16 A. No, sir. That is not what I meant.

17 Q. All of the doctors, that have treated her in the past,
18 have her on what is called the PRN basis, come back if
19 you need to?

20 A. As needed.

21 Q. As needed, right. So, she is free to go back and see
22 them as she needs to, and that would be people who
23 specialize in gastric, bowel, colon, or stomach
24 problems; is that right?

25 A. I would, assume so, sir.

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1 Q. Now, there is no question that she has problems now
2 that she has not had in the past; is that correct?

3 A. I would say that is accurate, sir.

4 Q. Your office has seen her for years, regarding a
5 tremendous number of problems that she has had over
6 those years; is that right?

7 A. Yes, sir.

8 Q. In fact, as I understand it, when we talked on Friday,
9 your chart is actually four large boxes on her, and
10 you can't even find the things before 1999, because
11 those two volumes are just kind of out of date?

12 A. No, they are not out of date, she has two. My office
13 staff found two out of four volumes, after turning
14 storage upside down. The problem is, we still have
15 the records, but earlier this morning, before Court
16 was summoned, I heard the plaintiff counsel address
17 defense regarding lost records. That happens ---

18 **Mr. Sweeney:** May it please the Court, that is
19 not responsive to my question. Any discussions we had
20 before this trial began are not properly before this Court.

21 **The Court:** All right, sir. Then move, onto
22 your next question then counsel.

23 Q. All I want to know, I am not accusing you of anything.

24 A. I know.

25 Q. All I want to know is that she has four volumes of

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1 Meds, and she has been seeing you for years, and
2 years, and years, and years?

3 A. That's correct.

4 Q. That's all I wanted to know.

5 A. That's correct, sir. I am sorry.

6 Q. On the chart that we do have, it begins on October 19,
7 1999, and it begins with words, that she comes in for
8 followup, so we know that she has been seeing you for
9 a long time.

10 A. Yes, sir. That is correct.

11 Q. That is really all I wanted to know. The first
12 document that has her first chart in it says, she is
13 complaining literally of headaches at that point?

14 A. Yes, sir.

15 Q. The second segment says she has Carpal Tunnel
16 Syndrome, Fibromyalgia, Papillary Necrosis, all the
17 things you talked about?

18 A. Yes, sir.

19 Q. So, at least as far as the records go starting with
20 that, these are long term things that she has had for
21 a long time?

22 A. That is correct.

23 Q. She has had this Carpal Tunnel for this disc problem
24 in her neck?

25 A. Well, she has a double cross injury. She has a

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1 problem in her neck, and Carpal Tunnel Syndrome, which
2 are unrelated; but produce what is called double
3 cross. So you can fix the problem here, her heart
4 problem here anatomically is distant and unrelated.

5 Q. Let me talk to you about severe papillary necrosis.
6 You are not an expert in that, that is really not your
7 field?

8 A. No, sir.

9 Q. That would require somebody who does what is called a
10 Nephrologist?

11 A. A Nephrologist, that is correct.

12 Q. But anyway, certainly you are a medical doctor, and
13 severe papillary necrosis can lead to uncontrollable
14 weight gain?

15 A. Yes, sir.

16 Q. Extreme swelling?

17 A. Yes, sir.

18 Q. Fluid that goes under the skin that one can palpate?

19 A. Yes, sir.

20 Q. Her fluid overload complaints --- At one time she had
21 fluid overload complaints that you thought were
22 related to some of the medications (that she was
23 taking?

24 A. Yes, sir.

25 Q. So you changed her medications?

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1 A. I have changed her Meds. many, many times.

2 Q. And, in fact, all of these Meds. she is taking they
3 all have side effects don't they?

4 A. Every medicine has good and potentially adverse
5 effects.

6 Q. Some of them have side effects for weight gain, some
7 of them have side effects for edema, some of them have
8 side effects for tingling, some of them have side
9 effects for neurological problems?

10 A. Yes, sir. But the problem is to jump to the
11 conclusion, or inference that her problems were caused
12 by medication is a very large leap. The kind of edema
13 that you are talking about is someone who is about
14 ready to go on dialysis, or become a kidney transplant
15 participant, which she is not a candidate for.

16 Q. She has not progressed to that stage?

17 A. No, but what you are describing --

18 Q. -- The disease itself though should get better, get
19 worse --

20 A. It can do anything, like any disease.

21 Q. Sometimes these sensations can be manifested or not
22 manifested.

23 A. Absolutely.

24 Q. In her particular case, and this is a chronic
25 situation she has had, longstanding, and she will have

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1 the rest of her life?

2 A. That is correct.

3 Q. And it is not related to the surgery?

4 A. No, sir. I never implied that it was.

5 Q. I know that, but we need to clarify the issue.

6 A. In my mind it is clear. She came to me with a
7 diagnosis of papillary necrosis.

8 Q. Now the Fibromyalgia is the same is the same kind of
9 thing, you have been treating that for years, and
10 years, and years, and will have to be treated pretty
11 much for the rest of her life?

12 A. She is going to require continued medical care for the
13 rest of her life.

14 Q. You mentioned in passing that that is kind of an
15 unusual diagnosis because there is a split of
16 authority. Some people say it does not exist, and
17 others say it does?

18 A. It is my opinion that it doesn't exist.

19 Q. But, I understand. But it is a diagnosis for which
20 she has been given a 100% disability?

21 A. Yes, sir. But, I am not sure if it was from the
22 Fibromyalgia, or a compilation and combination of all
23 of the problems.

24 Q. All right. At any rate, the way Fibromyalgia manifest
25 itself, or the reasonable thing that you are talking

1 about, the things you said, she will have pain in one
2 spot, pain in another spot, pain in another spot,
3 severe pain, and nobody knows why it is there, or
4 where it came from?

5 A. That is correct, sir.

6 Q. And, you believe that in her case, her Fibromyalgia
7 was linked to chronic depression, and cervical disc
8 disease, and a sleep disorder?

9 A. Yes, sir.

10 Q. All of which have been there for a long time?

11 A. Yes, sir.

12 Q. In fact, because of this Chronic Fatigue Syndrome,
13 which also has a psychiatric or psychological
14 dimension, you tried to get her on many occasions to
15 go see a psychologist and stuff?

16 A. Absolutely.

17 Q. She has refused to do that?

18 A. Sir, I don't remember if she refused, could not afford
19 it, I don't know why she did that.

20 Q. At any rate, she has balked at it?

21 A. I would not call it balking. Like I said sir, I don't
22 know.

23 Q. But, for whatever reason, she is totally disabled by
24 Social Security for all of these things for years and
25 years?

1 A. Yes, sir.

2 Q. I know that she has had all of these other things
3 since --- But, we are trying to draw a picture here.
4 This lady, is seeing you, or is coming into your
5 office every month for years and years, correct?

6 A. When she was doing ever month, when she was doing
7 well, PRN.

8 Q. And, she is getting drugs like Paxil, Wellbutrin,
9 Valium, Ambien, Xanax, Cater, Lasix, Advair,
10 Synthroid, Estradiol, Albuterol, Percocet?

11 A. Yes, sir.

12 Q. Those were drugs that --- These are treatable
13 diseases, or are controllable diseases, diseases that
14 will not go away, the Fibromyalgia, the Papillary
15 Necrosis, those are all lifetime, the gift that keeps
16 on giving, is what you keep telling me?

17 A. Yes sir, that is correct.

18 Q. She will continue to need those Meds. for life?

19 A. Or something other than what she is on now.

20 Q. What Meds. is she taking now that she wasn't taking
21 before?

22 A. Well, I can't go back to records that I don't have. I
23 really can't answer that question accurately.

24 Q. Let me ask you this way. The Meds. that she was
25 taking before were anti depressants for major

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1 depression?

2 A. Correct.

3 Q. That is what they are for?

4 A. Correct.

5 Q. Those are not little drugs, those are big ones, some
6 of them anyway?

7 A. I would call them middle of the road, people don't get
8 --- They don't become euphoric anti depressants, it
9 doesn't --- the newer ones don't change your way of
10 thinking, and the newer ones are also a double-edged
11 sword in that they are for chronic pain relief which
12 she has.

13 Q. One of the other drugs she has taken is Ambien,
14 correct?

15 A. Yes, sir.

16 Q. Ambien is for a sleep disorder?

17 A. Yes, sir.

18 Q. The Xanax is for anti anxiety?

19 A. That is correct, sir.

20 Q. Some of the drugs are for asthma?

21 A. That is correct, sir.

22 Q. For thyroid problems?

23 A. Correct, sir.

24 Q. Percocet is a narcotic pain killer?

25 A. That is correct, sir.

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1 Q. Albuterol, to help her breath?

2 A. That's right.

3 Q. Irritable Bowel Syndrome, she has this as well?

4 A. Yes, sir.

5 Q. Irritable Bowel Syndrome is kind of one of those funny
6 diseases too, nobody is quite sure, what causes it?

7 A. Not yet.

8 Q. But, you described that to me as being the kind of
9 disease that causes a person to have little bowel
10 control in public, and that it is very common; is that
11 correct?

12 A. That is correct, sir.

13 Q. That preexisted all that took place with whatever
14 operation she had?

15 A. That is correct.

16 Q. Now, some of the problems with some of these physical
17 diseases is, if you have depression already, that will
18 cause you to react more negatively to the physical
19 problems, correct?

20 A. In general, yes, sir.

21 Q. And they, kind of prey off of one another, is that
22 right? I mean, the extreme mental disorders will
23 have an effect on extreme physical disorders, they go
24 back and forth.

25 A. Depression, exacerbates pain, a sleep disorder, it is

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1 a manifestation of depression. Evisceration is not a
2 manifestation of depression.

3 Q. And, I believe, --- I asked you how much of this
4 problem was due to the before and after picture, and
5 that is not really something that you could say,
6 right? That is really just a quantify --

7 A. -- Nobody can quantify it. That is not possible.

8 Q. So, about all you can do is ask the question, and
9 guess?

10 A. That is correct.

11 Mr. Sweeney: Thank you doctor, that is all I
12 have.

13 The Court: Yes, sir. Is there redirect?

14 Mr. Corbin: Briefly, Your Honor.

15 Redirect Examination by Mr. Corbin

16 Q. Dr. DeMichele, all of the photographs that you have
17 examined, do they have anything in the world to do
18 with medication, or side effects?

19 A. No, sir.

20 Q. The Ambien, Ms. Ruthie has nightmares?

21 A. Yes sir, she does.

22 Q. Has she relayed to you what kind of nightmares she
23 has?

24 Mr. Sweeney: Your Honor, I object. That is not
25 ---

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1 **The Court:** How is that proper redirect?

2 **Mr. Corbin:** He asked specifically about the
3 Ambien, the sleep apnea --

4 **The Court:** Overruled. The Court will give --
5 Ladies and gentlemen, redirect is only for new issues
6 brought up in cross. And, I find that to be an appropriate
7 question. You may proceed.

8 A. (By Dr. DeMichele) Sir, I can answer that. Ms.
9 Person was a very upbeat, outgoing, young woman, whom
10 now has, when she does sleep nightmares about this
11 happening all over again. Having her abdomen split
12 open again, dreams of dying, and this is normal for
13 medically what she has been through. What I don't
14 like is the suicidal ideation, but there is nothing I
15 can do about that.

16 Q. (By Mr. Corbin) Dr. DeMichele, you were asked about
17 how long Ms. Ruthie needs to take her medicine?

18 A. Forever, as long as she lives.

19 Q. Let's talk about as long as she lives. Her normal
20 life expectancy.

21 **Mr. Sweeney:** Your Honor, that is not proper.

22 **The Court:** How do you connect that to a new
23 issue brought up?

24 **Mr. Corbin:** He asked how long would she have to
25 take her medicines, and I can ask him how long she will

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1 have to take her medicines?

2 **The Court:** That is not proper. Counsel, that
3 is an issue that would have gone into during direct, and I
4 will not allow you to proceed.

5 **Mr. Corbin:** Thank you Dr. DeMichele.

6 **Dr. DeMichele:** Thank you, sir.

7 **The Court:** Dr. DeMichele, you are free to step
8 down. Watch your step coming out of the witness box.

9 **Mr. Corbin:** Your Honor, may we approach?

10 **The Court:** Yes, you may. We will most likely
11 take a break at this time.

12 All right, ladies and gentlemen, let's take our
13 morning break at this time. I am going to let you go back
14 to your jury room. Enjoy your break, and we will see you
15 in a few minutes.

16 (Whereupon, the jury exits the courtroom at
17 10:32 a.m.)

18 (Whereupon, a recess was taken from 10:32
19 a.m. until 10:53 a.m.)

20 **The Court:** All right. Folks, let's go on the
21 record. We have been talking off the record. I have been
22 presented, and here just now on the Bench for the first
23 time, a copy of Mr. Castleberry's Deposition Transcript,
24 that is a written copy, attached to it is the front of it,
25 and on the front of it there must be --- I am going to

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1 guess there are a hundred objections that were noted during
2 this deposition by Mr. Driggers for the defense, and they
3 are set forth on a chart. The parties cannot agree on
4 anything. Mr. Corbin wishes to publish the deposition, and
5 because Mr. Castleberry is the Controlling Agent, Manager,
6 actually the CEO at the Hospital, he has the right to do
7 that under Rule 32(a)(2).

8 Rule 30(h)(8) has to do with
9 objections on a video taped deposition,
10 and the Rule says, that if there are
11 objections, upon the written request of
12 any party submitted to the Clerk of
13 Court, the video taped deposition along
14 with the written transcript will be
15 submitted to the Clerk, in advanced,
16 who then transmits it to the Court who
17 can then rule in advance on the
18 objections.

19 I have not had the benefit of that, and I find
20 that there is no written request here before me, under Rule
21 30(h)(8), and therefore, I simply cannot honor the multiple
22 objections to the form. I am going to overrule all of
23 them. I am going to give the opportunity now to the
24 defense if they have some substantive content objection, I
25 will be glad to hear you at this point.

1 **Mr. Driggers:** All right, Your Honor. We object

2 --

3 **The Court:** How many of those do you expect
4 there are, Mr. Driggers?

5 **Mr. Driggers:** I am trying to see, Your Honor.
6 There would be possibly -- ah -- ten or fifteen.

7 **The Court:** All right. Please tell the jury
8 that we will be with them momentarily. All right, the
9 first one is, Mr. Driggers?

10 **Mr. Driggers:** All right, Your Honor. On page
11 12, the question that we believe is argumentative. Mr.
12 Corbin asked Mr. Castleberry, are you having a difficult
13 time about control of HMA over you? He certainly has
14 asked other questions regarding that, and we just felt that
15 was an improper question.

16 **The Court:** Overruled.

17 **Mr. Driggers:** Page 15. There are some
18 questions about other hospitals HMA owned, which we believe
19 to be irrelevant. We are dealing with HMA's ownership of
20 this particular hospital, and the issues regarding it. So,
21 we think any issue about there being others, the number, or
22 any of that information would be irrelevant.

23 **The Court:** Well, there is no specific number to
24 a number of hospitals or the names of any hospitals is
25 there?

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1 **Mr. Driggers:** Fifteen line four, he asked how
2 many, and the number there is given.

3 **The Court:** All right. What do you say about
4 three and four on Page fifteen?

5 **Mr. Corbin:** First there is an objection to the
6 form, and secondly it goes directly to the ability of
7 inherent to pay.

8 **The Court:** All right. Your objection to the
9 form is on line 7, and I will overrule your objection to
10 the form of the question.

11 **Mr. Driggers:** All right, Your Honor. Beginning
12 on Page 25, I believe with line 11 going through Page 28
13 line 14 is on a series of questions regarding a payment
14 system. How HMA monitors financial information at the
15 hospital.

16 Your Honor, the issue in this case is control if
17 any is a credentialing plan, or privileging control, and
18 that is the only control issue in this case. So, we
19 believe any of this talk about financial information is
20 irrelevant.

21 **The Court:** All right, response?

22 **Mr. Corbin:** Yes, Your Honor, it is relevant to
23 Dr. Wood --- also, objection to the form, but Dr. Wood
24 will --

25 **The Court:** This is a very difficult task.

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1 Gentlemen, this is very difficult to plunge the Court into
2 the deposition without understanding the nuance, the
3 substance of it, the flow of it, with the jury sitting in
4 the back room. This is very unfair to the jury. It is
5 unfair to the Court.

6 Dr. Wood has not reviewed the Deposition?

7 Mr. Corbin: Yes sir, he has. Dr. Wood
8 indicated that is important for control, the control every
9 single day.

10 The Court: But, you believe it is necessary to
11 publish and play the deposition?

12 Mr. Corbin: Yes, sir. I do.

13 The Court: For what reason?

14 Mr. Corbin: Because, I think the jury needs to
15 see the CEO testifying about all of these issues.

16 Mr. Sweeney: May I say something, Your Honor?

17 The Court: Yes, sir.

18 Mr. Sweeney: The only way this is remotely
19 important, is that if it goes to the issue of whether or
20 not punitive damage award can be permitted, and, if so,
21 what the amount is. The only consideration the jury needs
22 to know, is if they can base a determination on whether or
23 not the defendant has the ability to pay a reasonable
24 punitive damage award. We have agreed to stipulate to
25 that. Honestly, beyond my advocacy role, this is all that

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1 this is about, and the issue does not need to be beaten to
2 death.

3 **The Court:** I just don't think it is fair for
4 the Court to control how the plaintiff wishes to present
5 it, and I realize that it would be much easier. But, by
6 the same token, there appears to me that in this case to be
7 a dispute about the control. These issues go to payment,
8 and payment, of course, would be part of control, and how
9 the financial operations function. I am going to overrule
10 those objections on that basis Mr. Driggers.

11 **Mr. Driggers:** Okay.

12 **The Court:** Tell me your next series of
13 objections.

14 **Mr. Driggers:** On Page 30, beginning at line 3,
15 there is a long question about, wouldn't it be the decent
16 thing to do, or the problem, so my objection is
17 mischaracterization of the testimony, and argumentative as
18 to the form of the question.

19 **The Court:** I will overrule the objection,
20 because I am unable to determine if it is a
21 mischaracterization, because I cannot review the previous
22 pages.

23 **Mr. Driggers:** The same for Page 34, line 10.
24 Question: Wouldn't it be the decent thing for HMA to do?
25 It is argumentative, and not relevant.

1 **The Court:** I will sustain that objection.

2 **Mr. Driggers:** Page 34, just so it is clear for
3 the record, lines 10 through 15.

4 **The Court:** Well, I have 10 through 12 --

5 **Mr. Driggers:** -- I'm sorry --

6 **The Court:** -- in my sheet, let me review that.

7 **Mr. Driggers:** Fifteen goes to the answer after.

8 **The Court:** All right. And, through 15. Ten
9 through 15, on Page 34, overruled.

10 **Mr. Driggers:** Beginning on Page 36, line 10 is
11 a series of questions that continues on, I believe, to page
12 38 line --- I guess line 8. But, that whole line of
13 questioning is in regards to marketing, regarding
14 advertising different services. There is clear testimony
15 in this case that Ms. Person, came to a doctor, and be
16 treated for, and it happened to be using Carolina Pines to
17 do the procedure. There is no relevance to any marketing.

18 **The Court:** I will overrule the objection.
19 Those questions simply do not just go marketing issues, but
20 they also go to control of marketing policies and
21 procedures and input with regard to that. Overruled.

22 **Mr. Driggers:** Okay. Line --- Page 39,
23 beginning with line 7, there is a series of questions that
24 goes on through --

25 **The Court:** I am going to overrule those Mr.

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1 Driggers, they deal with the bias or credibility of the
2 witness.

3 Mr. Driggers: Okay. Again on Page 39, there is
4 a series of questions regarding different securities,
5 Exchange Commission, press releases, documents, that
6 continues on through Page 43, I believe. We maintain that
7 is not relevant, whatever FCC press releases, don't bear
8 any issues on the case.

9 The Court: How is it relevant, counsel?

10 Mr. Corbin: The FCC absolutely has to tell the
11 truth under those press release. Dr. Wood will testify
12 that the press releases indicate statements that were told.

13 The Court: All right. I am going to overrule.
14 Are there any other substantive issues?

15 Mr. Driggers: Yes sir, Your Honor. Beginning
16 on Page 55 line 3, there is a line of questioning that
17 continues on to Page 57 line 24 regarding a Chromed
18 Emergency Room Program, that assist in treating patients.
19 This case has nothing to do with Emergency Room treatment,
20 or anything akin to it. So, we would object, to that as
21 not being relevant to the case.

22 The Court: All right. How is this relevant,
23 Mr. Corbin?

24 Mr. Corbin: To show control, Your Honor. They
25 even have programs that they give to the local hospitals,

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1 indicating how to diagnose patients, how to treat patients,
2 it goes directly to control, and was not even on their list
3 to begin with.

4 **The Court:** I am going to overrule the
5 objection.

6 **Mr. Driggers:** Beginning on Page 64 lines 7 and
7 continuing on through Page 67 through the end, I believe,
8 and maybe on Page 68 is also a series of questions about
9 professional liability insurance, coverage, all matters of
10 insurance, discussions.

11 **The Court:** Thank you. What ability would you
12 have to put liability insurance coverage in as an issue?

13 **Mr. Corbin:** First of all, let me start on Page
14 64 has nothing to do with those issues.

15 **The Court:** Well, I meant Page 65 at line 9.

16 **Mr. Corbin:** Okay. Your Honor, who pays
17 insurance absolutely shows control. They not only pay
18 insurance for Carolina Pines through the Corporate Office.
19 They also have a self-insurance program where they have a
20 hundred million dollars in reserve to pay claims.

21 **The Court:** All right. I am going to exclude --
22 - I am going to sustain beginning at Page 65, beginning at
23 line 9, through any further reference of insurance
24 coverage, and it appears to me that that ends --- The last
25 that I see is Page 67 at line 13, excuse me, actually it

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1 goes to the bottom of Page 67.

2 **Mr. Driggers:** Page 68 as well Your Honor,
3 reference to self-insurance products.

4 **The Court:** All right. Through 68 at line 9,
5 because I believe the reference to insurance is not
6 appropriate for this proceeding.

7 **Mr. Corbin:** Yes, sir.

8 **The Court:** All right. Are there any others,
9 Mr. Driggers?

10 **Mr. Driggers:** I believe there are, Your Honor.
11 On Page 69 beginning at line 19 through 23 there are
12 questions about whether HMA recruits physicians to work.
13 And, the testimony in this case is Dr. Mincheff is not --

14 **The Court:** Overruled. It is about recruiting
15 physicians to work at Carolina Pines, and that has to do
16 with control. Anything further?

17 **Mr. Driggers:** Just give me one more minute.

18 **(Pause)**

19 **Mr. Driggers:** On Page 77 beginning at line 12,
20 there is a series of questions that continues on until Page
21 79 line 1 about whether borrowing money, or debt, those
22 kinds of questions, which we do not believe, is an issue in
23 this case, also not relevant.

24 **The Court:** It has to do with the financial
25 operations, and funding those operations. I will overrule,

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1 because that has to do with the issue of control.

2 Is there anything further?

3 **Mr. Driggers:** Yes sir, Your Honor, there is at
4 least one. On Page 83 beginning on line 2, continuing on
5 basically through the end of the Deposition, Mr. Corbin's
6 question on the bottom of Page 84 --

7 **The Court:** What does the CEO attending this
8 trial have to do with this case?

9 **Mr. Corbin:** I issued a subpoena for him. I
10 sent him the money for a plane ticket of \$325.00 to come.
11 If he does not come, I would ask the Court for an Adverse
12 Inference. He is the Chairman of the Board.

13 **The Court:** All right.

14 **Mr. Corbin:** Let me finish. He is the leading
15 person in this corporation. He is the most knowledgeable
16 person about the financial worth in this corporation. In
17 2005 his bonus was \$26 million.

18 **The Court:** All right, counsel. That has such a
19 prejudicial impact to it, I am going to sustain that
20 objection. Whether or not that is here, that may become an
21 issue, but going into this in the deposition, I don't think
22 is necessary.

23 **Mr. Corbin:** Yes, sir.

24 **The Court:** All right. That concludes direct
25 examination.

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1 **Mr. Corbin:** Where do we need to do that, Your
2 Honor?

3 **The Court:** That is through, beginning at line 2
4 on Page 83 to the end of your questioning which is line 22
5 on Page 84.

6 All right. Is there anything further?

7 **Mr. Driggers:** Yes, sir. Just for the record.
8 I do want to hand up, and I am not sure how to mark it as
9 an Exhibit. Just the Notice we first received. This would
10 be offered at trial, which is dated November fifth.

11 And, we again renew our objection under Rule 30
12 that procedures have not been properly followed, so we
13 object just for the record to the playing of this
14 Deposition, and the relevance of discussion.

15 **The Court:** The objections are noted, and
16 overruled for the reasons given.

17 Now, do you have any issues, any objections, Mr.
18 Corbin?

19 **Mr. Corbin:** Absolutely, none.

20 **The Court:** To keep from having to work the
21 volume of the equipment, it is just not going to be the way
22 to do this. I am going to direct you to play the entire
23 deposition, except to turn the volume down on those
24 objections that I have sustained.

25 **Mr. Corbin:** Yes, sir. Your Honor, can I ---

1 Can I speak to my clerk for thirty seconds?

2 The Court: Yes sir, you may.

3 Mr. Sweeney: Sir, just by way of clarification,
4 you say turn the volume down, do you mean to turn it off
5 during --

6 The Court: Off.

7 Mr. Sweeney: Yes, sir. Thank you.

8 The Court: I do mean, off.

9 Mr. Sweeney: It is just the advocate. I
10 apologize.

11 The Court: No, thank you. And, we should be
12 clear on that. I did not mean to say turn it down, I meant
13 to say turn it off, mute it.

14 Mr. Corbin: Yes, sir. Mute it.

15 The Court: Please bring in the jury, if they
16 are still here.

17 All right. Court's Exhibit 4, has been noted for
18 the record, Mr. Driggers.

19 Whereupon, Court's Exhibit
20 Number 4 Was Made a Part of
21 the Record.

22 (Whereupon, the jury enters the courtroom at
23 11:22 a.m.)

24 The Court: All right, ladies and gentlemen I
25 hope you didn't think we had forgotten about you back

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1 there. Thank you for your patience, as we resolved some
2 issues that will speed the playing of this next deposition.
3 The plaintiff proposes to publish to you a video deposition
4 that was taken, as opposed to calling a live witnesses,
5 which is the plaintiff's right to do so, and you may
6 proceed.

7 **Mr. Corbin:** Your Honor, at this time, we
8 request permission to play the video tape deposition of Mr.
9 David Castleberry, who is the Chief Executive Officer at
10 Carolina Pines, taken November 2, 2006.

11 **The Court:** All right. Permission granted.

12 **Mr. Corbin:** In addition, Your Honor. May we
13 tell the jury that from time to time, we may need to view
14 down certain testimony?

15 **The Court:** You may do so, and I will tell you
16 that I have sustained certain objections that are in the
17 record, and am requiring counsel to mute that portion, that
18 particular portion to which the objection is sustained.

19 Any other objections that you hear, but continue
20 to play the volume, the objection was overruled.

21 All right. Please proceed.

22 **Video Deposition of David Castleberry**

23 **Was Published to the Jury**

24 **Mr. Corbin:** Your Honor, may we approach?

25 **The Court:** You may. Do you want to cut that

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1 off?

2 (Whereupon, a bench conference was held
3 during the presentation of Mr. Castleberry's Deposition, in
4 the presence of the jury, but out of the hearing of the
5 jury.)

6 **The Court:** All right. Ladies and gentlemen
7 let's do this. I know that publication of a Deposition can
8 be a tedious event. So, what I am going to do, and invite
9 you to join me, I am just going to stand right here where I
10 am for a moment, if you feel like you may need to do that
11 to sort of break the atmosphere, just feel free to stand
12 right where you are, be comfortable. And, rather than
13 leave the courtroom, we will just take a little break
14 standing here if you wish. And we will start back in a
15 minute or two.

16 Counsel tells me that the remaining time of the
17 Deposition may be somewhere between thirty-five to forty
18 minutes.

19 All right. Is everybody okay? Then be seated at
20 your convenience. Does anybody need to take a break. Then
21 hearing none, then you may restart the Deposition.

22 **Mr. Corbin:** Thank you, Judge.

23 (Whereupon, the video was restarted for the
24 jury.)

25 **Mr. Driggers:** Your Honor, may we approach?

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1 **The Court:** You may. Do we need to cut it off?

2 **Mr. Driggers:** Yes, sir.

3 **Mr. Corbin:** Just briefly.

4 (Whereupon, a bench conference was held
5 during the presentation of Mr. Castleberry's Deposition, in
6 the presence of the jury but out of the hearing of the
7 jury.)

8 **The Court:** You may continue the presentation,
9 Mr. Corbin.

10 (Whereupon, the video was restarted for the
11 jury.)

12 **The Court:** While you have it off, for a moment,
13 Ma'am, are you comfortable, I noticed you are fanning, are
14 you okay?

15 **Ms. Person:** Yes, sir. I'm all right.

16 **The Court:** Are you sure, do we need to get you
17 some water or something?

18 **Ms. Person:** No, I'm sure. I'm all right.

19 **The Court:** All right. Very good. Please
20 continue, Mr. Corbin.

21 (Whereupon, the video was restarted for the
22 jury.)

23 **Mr. Corbin:** That will be it, Your Honor.

24 **The Court:** Good. Ladies and gentlemen, we will
25 take our lunch break. What I am going to ask you to do ---

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1 Just one moment, please. Counsel, step up very quickly, so
2 we can tell the jury a little bit more about our afternoon.

3 (Whereupon, a bench conference was held in
4 the presence of the jury but out of the hearing of the
5 jury.)

6 **The Court:** All right. Ladies and gentlemen I
7 am going to ask you to be back at 2:30 if you would.
8 Please enjoy your lunch. Lunch is on your own. You are
9 free to go at this time.

10 (Whereupon, the jury departs the courtroom
11 at 1:04 p.m.)

12 **The Court:** All right. Court will be in recess
13 until 2:30.

14 (Whereupon, a recess was taken from 1:05
15 p.m. until 2:36 p.m.)

16 **The Court:** Just one moment, please. Ladies and
17 gentlemen, I'm told we have some issues about Doctor Woods
18 testimony prior to calling the jury back. I will be glad
19 to hear from you, Mr. Sweeney or Mr. Driggers.

20 **Mr. Sweeney:** May it please, The Court? Your
21 Honor, there are a couple of things that I would like to
22 anticipate in Doctor Woods Deposition that would be highly
23 prejudicial and I would like to discuss them now so that
24 they do not happen.

25 The first is, we got the impression somewhere

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1 that Doctor Woods is going to be showing portions of the
2 video tape deposition of Mr. Castleberry, and then asked to
3 comment on those portions. I do not know if that is
4 accurate. If it is accurate we certainly have an objection
5 to the direct presentation of direct testimony in that way.

6 **The Court:** All right --

7 **Mr. Corbin:** -- It is inaccurate. If Dr. Wood
8 wanted to sit here, and look with the jury, to see Mr.
9 Castleberry's live testimony. He has reviewed the
10 transcript. He's going to refer to Mr. Castleberry's
11 testimony in part of his presentation.

12 **The Court:** Very good.

13 **Mr. Sweeney:** That's not a problem then. We
14 will just move on.

15 The second, is that any information about stock
16 distribution, or ownership interest of individuals, we
17 think would be, and is completely and totally irrelevant in
18 this case. There is a primary owner of the stock of HMA.
19 Mr. Schoen, I believe, is his name. Whether he owns it, or
20 I own it, or anybody else owns it, really is not at issue.
21 If there is any testimony at all that has any relevance
22 whether ham was responsible financially for Carolina Pines,
23 not whether or not they have one shareholder or a thousand
24 shareholders.

25 **The Court:** Very good. Is there some issue

1 about that, Mr. Corbin?

2 **Mr. Corbin:** Is there what?

3 **The Court:** Do you intend to discuss the fact
4 that the HMA may be owned by one person or primarily by one
5 person?

6 **Mr. Corbin:** No, sir. I think compensation of
7 key executives is important. But, no we are not going to
8 say it is a huge corporation. It is worth four or five
9 million dollars, and I'm not going to say somebody owns all
10 of it.

11 **The Court:** All right.

12 **Mr. Sweeney:** Along those lines, and Mr. Schoen
13 himself, I would just ask the Court to instruct him not to
14 make any references to any individuals.

15 **Mr. Corbin:** I think we need to do that, Your
16 Honor, because it shows the depth of the compensation,
17 shows how HMA'S spends its money, and shows the ability of
18 HMA'S to pay. Doctor Wood will testify the executive
19 compensation is very important in terms of ability to pay.

20 **Mr. Sweeney:** May it, please The Court? I don't
21 think that has any relevance, and I think it has a high
22 degree of prejudice to the case, as to how much these
23 people make, their salaries are. The issue here is whether
24 or not HMA'S can respond to a South Carolina verdict, not
25 whether or not they are paying their people high sums of

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1 money.

2 He has already said in fact --- Frankly, he just
3 told you he wasn't going to do it, and now he tells you he
4 is going to do it, which is what we thought. He just said
5 that he is going to try and bring in the evidence of what
6 various people make, and that is not proper.

7 **The Court:** Well, Counsel, if the witness
8 testifies, and again, this is a witness that the Plaintiff
9 had to go out and procure, so Plaintiff has previously
10 argued to The Court, because the defense was not
11 forthcoming with financial information.

12 If a witness testifies that the salary of
13 particular individuals is indicative of an ability to pay,
14 and gives some factual or testimonial basis for that
15 opinion, then that becomes relevant to this proceeding,
16 even though you say prejudicial, it does have some
17 prejudicial impact, as does almost every other fact that
18 comes in evidence. It has probative value, and depending
19 on the probative nature and importance of it given by the
20 witness, The Court may or may not allow it at that time. I
21 cannot emblanket, admit it, or deny it coming into evidence
22 at this point.

23 **Mr. Sweeney:** May I briefly respond? The case
24 of Bryan versus Waste Management specifically says, there
25 are many different ways to show corporations, and ability

1 to pay is one of which is executive compensation.

2 **The Court:** Very good.

3 **Mr. Sweeney:** Of course, we don't believe that
4 applies, but, of course, we believe you have heard us on
5 that already.

6 The next is, the thing I believe I ought to go
7 ahead and pass this up to you then, because Dr. Wood's
8 testimony is subject to an Interrogatory response that we
9 received on October 4 of this year. That Interrogatory
10 response says: Dr. Wood is an Economist who will testify
11 at trial about HMA's financial status, ability to satisfy
12 an award of actual and punitive damages and that it just
13 says that he is available for Deposition. So, anything
14 beyond their ability to pay should be not an issue, and I
15 think it goes without saying that the salaries that they
16 pay their people, do not --- since they do not prevent them
17 from paying --- Since they do not prevent them from being
18 able to pay, they are therefore irrelevant.

19 **Mr. Corbin:** Your Honor, if I may. That is page
20 1, page 2, was if you recall, because the unnecessary delay
21 in taking Mr. Castleberry's Deposition, it could have been
22 taken before Dr. Wood. There was a Motion to Quash it,
23 Your Honor. They were ordered within forty-eight hours to
24 produce Mr. Castleberry. I raised at that point in time
25 that Mr. Castleberry Deposition talked about control

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1 issues. Dr. Wood instructed me what to ask him, and he
2 wants to discuss control issues. After I got the
3 deposition back, Dr. Wood reviewed it, and I did supplement
4 it, as quickly as possible, and, I think, even before I got
5 the deposition back, that --- Dr. Wood will testify about
6 HMA's financial and operation control at Carolina Pines
7 Regional Medical Center, and its obligation to satisfy
8 judgment in this case.

9 **The Court:** All right.

10 **Mr. Sweeney:** And, let me just say that
11 controlling issues are personal, not relevant to the
12 inquiry and ability to pay, since we are willing to
13 stipulate that Carolina Pines has the ability to pay.
14 Therefore, a whole line of testimony is --- We are only
15 willing to stipulate to that by the way if this evidence
16 doesn't come in.

17 **The Court:** All right.

18 **Mr. Sweeney:** The whole line of questioning is
19 nothing more than to prejudice the jury and waste time.

20 Let me, if I could though, pass up and ask for a
21 trial exhibit, Court Exhibit please, and let Mr. Corbin's
22 letter to us and opposing Interrogatories.

23 **The Court:** All right. We will mark that as a
24 Court's Exhibit. If there is something you wish to add to
25 it?

1 **Mr. Corbin:** I do. He did not have the
2 Supplement.

3 **The Court:** All right. We will mark that as
4 Court's Exhibit Number 6.

5 **Mr. Sweeney:** Could I see the Supplement, Your
6 Honor?

7 **The Court:** Yes, sir.

8 Whereupon, Court's
9 Exhibit Number 6 Was
10 Marked and Made a Part
11 of the Record.

12 **The Court:** All right. Mr. Sweeney, I'm going to
13 respectively deny your Motions at this point. Again,
14 please raise them contemporaneously if you believe there is
15 some violation of Rules or inappropriate testimony, at the
16 time testimony is being given.

17 **Mr. Corbin:** Your Honor, again, if there is any
18 issue as to whether or not they actually received this,
19 this is the actual fax transmission sheet.

20 **The Court:** Let's add that to number six, please
21 for whatever value it may have to those reviewing this
22 record.

23 Please bring in the Jury.

24 (Whereupon, the jury comes into the
25 courtroom at 2:45 p.m.)

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1 **The Court:** All right. Ladies and gentlemen,
2 welcome back to the courtroom. I trust you had a nice
3 lunch.

4 Mr. Corbin, please call your next witness.

5 **Mr. Corbin:** Your Honor, at this time we would
6 call Doctor Oliver Wood, an Economist from Columbia to the
7 witness stand.

8 **The Court:** Please come forward and take the
9 oath of a witness.

10 **Oliver G. Wood, Jr., Ph.D.**

11 **After Being Duly Sworn Testifies as Follows**

12 **Voir Dire Examination by Mr. Corbin**

13 Q. Dr. Wood, would you please state your complete name
14 for the record?

15 A. Oliver G. Wood, Junior.

16 Q. Where do you currently live?

17 A. Columbia.

18 Q. Where are you from originally?

19 A. I grew up in Greer.

20 Q. How long did you live in Greer?

21 A. Eighteen years.

22 Q. Would you please describe your educational background
23 to the Jury, please?

24 A. I have a Bachelors Degree in Business Administration
25 from the University of South Carolina, a Masters

1 Degree in Economics from the University of South
2 Carolina, a Doctorate in Economics from the University
3 of Florida.

4 Q. Would you describe your professional background,
5 please?

6 A. I was hired by the University of South Carolina in
7 1965 to teach Economics and Banking and Finance
8 Courses. I taught at the University for twenty-nine
9 years as a Distinguished Professor of Merit.
10 Translated that means I'm retired from teaching.

11 Q. I hope you feel like teaching today a little bit. Did
12 you serve in the military?

13 A. Yes, I served on active duty in the United States Navy
14 from 1959 to 1961.

15 Q. Did you serve in the Reserves?

16 A. Yes, 1961 until 1987.

17 Q. At what rank did you retire from the Naval Reserve?

18 A. Captain.

19 Q. Do you have an practical experience in the business
20 world, Dr. Wood?

21 A. Yes. I have helped start eleven banks and two savings
22 and loan associations. I served on the Board of
23 Directors of Edisto Farms Credit for about eight
24 years. I served on the Egg-First Investment Policy
25 Committee in Columbia, the old Federal Land Bank for

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