

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002522
Case No. 2010-CP-5743

RECEIVED
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SC Court of Appeals

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and
Upstate Lung & Critical Care Specialists, PC,

Appellants,

v.

Ray E. "Chuck" Thompson, and Charles M. Fogarty, MD,

Respondents.

**RECORD ON APPEAL
VOLUME III**

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Gregory J. Feldman, MD, Joseph A.	)	
Boscia, III, MD, and Upstate Lung and	)	
Critical Care Specialists PC,	)	PLAINTIFFS' REPLY TO
	)	DEFENDANTS' BRIEF
Plaintiffs,	)	OPPOSING PLAINTIFFS'
	)	MOTION FOR
vs.	)	RECONSIDERATION
	)	
Ray E. "Chuck" Thompson	)	
and Charles M. Fogarty, MD,	)	
	)	C.A. NO.: 2010-CP-42-5743
Defendants.	)	
	)	

Plaintiffs, Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., and Upstate Lung & Critical Care Specialists, PC (collectively, "Plaintiffs") hereby submit this Reply to Defendants' Brief Opposing Plaintiffs' Motion for Reconsideration of the Court's Order Granting Defendants' Motion for Summary Judgment dated and entered July 20, 2017 (the "Order"). For the reasons set forth herein and in Plaintiffs' Motion for Reconsideration, Plaintiffs' respectfully submit that their Motion for Reconsideration should be granted and respond:

Defendants misstate both law and fact in their assertions that Plaintiffs' Complaint alleges that the entire underlying medical malpractice lawsuit was a willful act or that its publication was a willful act.

Defendants misstate Plaintiffs' stipulation regarding the three (3) fraudulent July 21, 2005 office visit notes generated by both Defendants.

Misstatements of Law and Fact Regarding Plaintiffs' Cause of Action

Defendants misstate both law and fact in their assertions that Plaintiffs' Complaint alleges that the entire underlying medical malpractice lawsuit was a willful act or that publication thereof was a willful act. Plaintiffs' Complaint alleges that the "permanent brain injury" scheme was the foundation of the abuse of process claim – not the mere filing of the underlying medical

malpractice action. (Pls.' 2nd Am. Compl. ¶¶ 108-114) Plaintiffs testified there were aspects of the underlying medical malpractice action that were debatable, but not the "permanent brain injury" scheme, which the lack of foundation was discovered in 2008 through the 2008 MRI, and depositions of Drs. Grace and Fogarty. Plaintiff Feldman readily admitted that the pneumothorax was debatable in the underlying medical malpractice litigation. However, the patient was not permanently harmed by this complication, therefore, no possible brain injury. (Feldman Dep. p. 109, lns. 1-16) However, the Defendants intended and abused the process by forwarding the "permanent brain injury" scheme, which was discovered in 2008 to be nothing but a corruption of the facts. At all times, Defendants knew the "permanent brain injury" scheme was false and worked together in an effort to keep it viable for their own reasons as detailed in Plaintiffs' Second Amended Complaint. Respecting Plaintiffs' Complaint, *Food Lion, Inc. v. United Food & Commercial Workers Inter. Union*, 567 S.E.2d 251, 351 S.A. 65 (S.C.App. 2002) stands for two important points. First, the mere filing of a lawsuit does not give rise to a tort. Second, a tort may lie in the abuse within a lawsuit and not just within the entire lawsuit.

As previously stated at the hearing and supporting memorandum, the publication of the lawsuit cannot be a willful act in satisfaction of the pleading requirement as the required "willful acts" in an abuse of process cause of action, nor did Plaintiffs' allege in their Complaint that the publication of the underlying lawsuit was a willful act. (Pls.' Mem. Opp. Defs' Am. MSJ 6-7; Pls.' Mtn Recon. 2-6) Rather, Plaintiffs' testified that they garnered the necessary knowledge and belief of the required elements in 2008. (Feldman Aff. ¶ 22; Pls. Br. 2-4, 6, 8-10; Pls.' Mem. Opp. Defs. Am. MSJ 7-10)

Misstatement of Stipulation Regarding the Fraudulent July 21 Office Notes

In their Brief Opposing Plaintiffs' Motion for Reconsideration, Defendants, page 3, mischaracterize the stipulation concerning the three (3) fraudulent July 21 "medical notes" by stating "Plaintiffs stipulated that no later than August 2006, they possessed facts and evidence reflecting the alleged improper and willful acts that Feldman testified were committed by Fogarty prior to the MMA's being filed and directly caused the MtMA to be filed against Plaintiffs." (Defs.' Br. 6) This is a complete misstatement of the stipulated fact. Plaintiffs only stipulated that from a number of different sources, they had received production from Defendants and third-parties that contained all the various fraudulent notes. (King Depo. p. 95, ln. 19 through p. 97, ln. 7) However, that is the only stipulation Plaintiffs' made concerning the three (3) July 21, 2005 fraudulent notes. Plaintiffs vehemently deny that they "possessed facts and evidence reflecting the improper and willful acts" of Defendants until 2008. Defendants misstate the nature and intent of Plaintiffs' stipulation regarding the receipt of the three (3) fraudulent July 21, 2005 office visit notes.

Defendant Thompson is an Officer of the Court and he did not produce all three (3) July 21, 2005 "medical notes" within his possession, communications with Defendant Fogarty respecting said notes or their requested selected version destruction, and other discoverable information within his file pursuant to Mr. Gunn's subpoena. (Gunn Dep.; King Dep.) The fact there were three (3) fraudulent July 21, 2005 office notes was not discovered by Plaintiffs until the April 1, 2016 discovery production by Defendants in this case. Further, it was not until the April 1, 2016 discovery production by Defendants in this case that Plaintiffs were provided with a copy of a fax from Maria Kimbrell, on behalf of Defendant Fogarty, telling Defendant

Thompson to destroy one of the previously provided July 21, 2005 office visit note and replace it with the one attached therewith. (THOMPSON 000536) Interesting to note, this was not the final Thompson/Fogarty note, nor the actual fraudulent note over which the case was tried.

Therefore, it was impossible for this to be the basis of Plaintiffs' Complaint, because it was not known in 2010 due to Defendants intentionally and successful efforts hiding it from Plaintiffs as evidenced by the depositions of attorneys Gunn, King and Anthony, as well as, physician testimony in the depositions of doctors Waid, Smith and Alleyne's affidavit that said multiple notes are a deviation of the standard of care and unknown to each of them, including experts retained by Defendants. (Gunn Dep. p. 46, lns 5-13; King Dep. P.29, lns. 3-11; Anthony Dep. p. 43, lns. 1-14; Waid Dep. P. 20, lns. 11-16; Smith Dep P.19, lns 4-13, p. 17, lns. 8-24, p. 29, lns. 19-20; Alleyne Aff. ¶¶ 6-15) In short, no "reasonable person" could have discovered the multiple notes scheme.

Conclusion

"When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Anthony v. Padmar, Inc.*, 307 S.C. 503, 415 S.E.2d 828 (Ct.App.1992); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986). However, factual statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists. *Gilmore*, 290 S.C. 53, 348 S.E.2d 180." *Higgins v. Medical University of South Carolina*, 486 S.E. 2d 269, 326 S.C. 592 (S.A. App., 1997)

An outstanding issue is the date on which Plaintiffs' knew or should have known they had a cause of action against Defendants. Defendants fail to provide such date. Plaintiffs did not know they had a cause of action for abuse of process until 2008, despite Defendants erroneous claims that Plaintiffs held this belief as of some undesignated date conveniently outside the three year statute of limitations. (Feldman Aff. ¶ 22) "The date on which a plaintiff should have discovered his cause or causes of action is an objective question. Graham v. Welch, Roberts & Amburn, LLP, 743 S.E.2d 860, 862 (S.C. Ct. App. 2013). ... 'If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury.' Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 697 S.E.2d 644, 654 (S.C. Ct. App. 2010); see also Maher v. Tietex Corp., 500 S.E.2d 204, 207 (S.C. Ct. App. 1998) ('The jury must resolve conflicting evidence as to whether a claimant knew or should have known he had a cause of action.') (Citation omitted)." *Gentry Tech of S.C., Inc. v. Baptist Health S.Fla., Inc.* (D.S.C., 2015) "All that is required is that 'sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial.' Anderson, 477 U.S. at 249." *Id.*

"In a ruling on a motion for summary judgment the court's function is to determine whether such a genuine issue exists, not to resolve any existing factual issues ...' 6 J. Moore, Federal Practice 56.15(1), at 2281 (2d ed. 1953). It is the duty of the court, on a motion for summary judgment, not to try issues of fact ... On a motion for summary judgment, the inferences to be drawn from the underlying facts contained in the record must be viewed in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 369 U.S. 654, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962). It is also demanded that the ruling be made on the

record the parties have actually presented, not on one potentially possible. *Madeirense Do Brasil, S/A v. Stulman-Emrick Lumber Co.*, 147 F.2d 399 (2d Cir. 1945). It is further recognized that the 'papers supporting the movant are closely scrutinized, whereas the opponent's are indulgently treated.' *Bohn Aluminum & Brass Corp. v. Storm King Corp.*, 303 F.2d 425 (6th Cir. 1962).” *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (S.C., 1972) As case law requires, in viewing all of the evidence in the record in the light most favorable to the non-moving party, in the instant case, Plaintiffs, summary judgment should be denied. The fact that the date on which Plaintiffs knew that they had a cause of action is in dispute, summary judgment must be denied and the conflicting evidence must be resolved by a jury. As such, Plaintiffs respectfully request that this Court grant Plaintiffs’ Motion for Reconsideration, thereby granting a hearing.

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Spartanburg, SC
August 18, 2017

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	) Case No(s): 2010CP4205743
Gregory J. Feldman, M.D.,	)
et. al.,	)
Plaintiff,	)
-VS-	) TRANSCRIPT OF RECORD
William Mark Casey, et. al.	)
Defendant.	)

February 18, 2012
Spartanburg, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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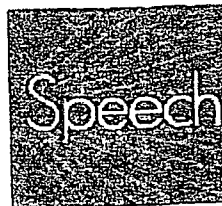
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I N D E X

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 18th day of February, 2011 at approximately 2:42 p.m.)

THE COURT: All right. Let's see here.

(Pause.)

All right. What motions do we have pending today?

MR. MANN: Your Honor, Milton Mann here on behalf of the Plaintiffs. I think I speak with counsel. We have worked very hard for our discussions today to kind of streamline the issues that are currently before the Court.

THE COURT: All right.

MR. MANN: Uh, there had previously been filed an Affidavit of Default in this case. There had been filed a motion to set aside that default as well as affidavit. The parties have agreed that both of those items are simply going to be withdrawn from the record.

THE COURT: Okay.

MR. MANN: And I believe Mr. Henrikson would agree that his answer is to be accepted at the time that it was filed as being the file time date.

THE COURT: All right.

MR. HENRIKSON: I think just a Form 4 order

1 probably would be good enough for that.

2 THE COURT: All right.

3 MR. HENRIKSON: Unless you would like me to
4 submit something more formal.

5 THE COURT: Yeah, we can -- we can -- uh,
6 we'll just do a Form 4 if that's acceptable to you
7 all.

8 MR. HENRIKSON: Certainly.

9 MR. MANN: So that would hopefully clean
10 that up.

11 THE COURT: Okay.

12 MR. MANN: Which leaves various motions to
13 dismiss. Plaintiff's Complaint has basically two
14 causes of action in it. The first cause of action
15 is an abuse of process claim. The second cause of
16 action is a civil conspiracy claim. Uh, through
17 discussions with counsel, uh, the Plaintiffs are
18 hereby dismissing, with agreement of counsel, Count
19 2. So the civil conspiracy claim will be
20 dismissed. We would also like to put on the record
21 that it will be dismissed without prejudice. It
22 will not be Rule 5'd unless there are subsequently
23 discovered facts in any ongoing litigation.

24 THE COURT: All right.

25 MR. MANN: So hopefully, that will just

1 limit our discussions today as to a motion to
2 dismiss the first count of Plaintiff's Complaint.

3 THE COURT: All right.

4 MR. MANN: And with that, I will sit down
5 and be quiet.

6 THE COURT: No, I -- and I appreciate you
7 laying that out. That's great. All right.

8 MR. MANN: Thank you, Judge.

9 THE COURT: Uh, and who all has -- I've got
10 a brief here from Dr. Fogarty. Uh, is there anyone
11 else who has a motion to dismiss today?

12 MR. MOONEYHAM: Good afternoon, Your Honor.
13 Ellen Cheek for Dr. Fogarty, Joe Mooneyham for Mark
14 Casey and Matt Henrikson for Chuck Turner --
15 Thompson, who is standing beside me. I need to get
16 all the Chucks in my head. Uh, our motions have
17 essentially been carried forward and been, I hope,
18 provided to you today.

19 THE COURT: Okay.

20 MR. MOONEYHAM: Dr. Fogarty had appeared pro
21 se previously. Ms. Cheek is here on his behalf
22 today. She's done a very done memorandum. I saw
23 the memorandum back in July which is the same
24 memorandum that I would suggest would be
25 appropriate today.

1 THE COURT: Okay.

2 MR. MOONEYHAM: I remember if you -- did you
3 file?

4 MR. HENRIKSON: I think -- this is actually
5 the third time that we will have argued these. I
6 think I may have filed something earlier on, but I
7 would join in those other two memoranda. It said
8 exactly the same thing as they apply to Mr. Thomas,
9 especially -- particularly regarding the first
10 cause of action which is all that we're here for at
11 this point.

12 THE COURT: All right. All right. All
13 right. Yes, sir.

14 MR. MANN: And Your Honor, again, just from
15 the Plaintiff's side of the table, in the interest
16 of trying to get this case moved forward, it's been
17 on the docket for over a year. Uh, we've been
18 wrangling a little bit with the motions to dismiss
19 and things of that nature. I have no objection to
20 any and all -- and, hopefully, if there's any other
21 hidden within the record that all motions to
22 dismiss are decided today.

23 THE COURT: Okay. Okay.

24 MR. MANN: We're in agreement that that's
25 what we're here for.

1 THE COURT: And I'm happy to hear those.
2 I'll be very candid, Mr. Mooneyham and Mr.
3 Henrikson, with you and tell you I have not yet
4 read any of the briefs other than Dr. Fogarty's
5 brief that I got to my office. I will, however,
6 hear argument from everybody and I will look at
7 those.

8 MR. HENRIKSON: Yes, ma'am. If you don't
9 have any objection -- it's somewhere in the file.
10 The file is probably voluminous.

11 THE COURT: Right.

12 MR. HENRIKSON: I'll hand up a copy of mine
13 if you'd like.

14 THE COURT: All right.

15 MR. HENRIKSON: As I said, and I was not
16 kidding, it's sort of --

17 THE COURT: Okay. All right.

18 MR. HENRIKSON: I'll hand one up. We've all
19 seen this.

20 MR. MANN: Uh, no, I'm sorry. No objection
21 whatsoever. Thank you, Judge.

22 THE COURT: And let me just put on the
23 record because I know there is -- after reviewing
24 the brief, I learned that there is an attorney, a
25 member of the bar, involved in this case. Let me

1 just say I suspect that probably that's why I was
2 assigned the case. There's not been too many
3 traveling judges come through. And I'm from
4 Greenville. Although I am familiar with Mr.
5 Thompson, to my knowledge, I've never had any case
6 with him or, to my knowledge, have had no dealings
7 with him as far as I know.

8 MR. MANN: Your Honor, for the record as
9 well, we have -- the Plaintiff has no objection to
10 your involvement. We welcome you and thank you.

11 THE COURT: All right. All right. Very
12 well.

13 MR. WILKES: Same, Your Honor, with this
14 defendant.

15 THE COURT: All right. All right. All
16 right. Well, thank you very much. I did want to
17 make it clear in case there was ever any question,
18 uh, about something like that. All right. With
19 that being said, even though there may not be an
20 order filed, let's go ahead and start with Dr.
21 Fogarty.

22 MS. CHEEK: Thank you, Your Honor.

23 THE COURT: Uh-huh.

24 MS. CHEEK: May it please the Court.

25 THE COURT: Yes, ma'am.

1 MS. CHEEK: My name is Ellen Cheek. My
2 partner Michael Wilkes and I represent Dr. Charles
3 Fogarty in this case. As you know, we're here
4 today on Dr. Fogarty's motion to dismiss
5 Plaintiff's second Complaint. And we ask the Court
6 to dismiss this pleading because it's barred by the
7 three-year statute of limitations and because the
8 pleading does not allege an actionable claim for
9 abuse of process.

10 Uh, Your Honor, I appreciate your reviewing
11 the brief beforehand. As you know from reviewing
12 it, the case -- this case arises out of an
13 underlying medical malpractice case which was filed
14 against the Plaintiffs in this case by one of Dr.
15 Fogarty's patients, Mark Casey, who is also a
16 defendant in this case. The third defendant in
17 this case, Attorney Thompson, was Mr. Casey's
18 lawyer in that underlying suit.

19 Now, it's not a tort for a doctor to treat
20 patients or for a doctor to perform a medical
21 opinion about a patient or to tell that opinion to
22 a patient's lawyer or to give that opinion as an
23 expert in a medical malpractice case. However,
24 that's essentially what the Plaintiffs are claiming
25 in the present suit.

1 They claim that Dr. Fogarty committed a tort
2 when he saw Mr. Casey as a Plaintiff -- as a
3 patient after Mr. Casey had received medical
4 treatment from the Plaintiffs. When Dr. Fogarty
5 formed the medical opinion that Mr. Casey had
6 sustained a brain injury from that treatment,
7 Plaintiffs claimed that Dr. Fogarty engaged in
8 wrongful conduct when he told that medical opinion
9 to Mr. Casey's lawyer and also, uh, gave his
10 opinion in the underlying medical malpractice
11 lawsuit.

12 They claim, Plaintiffs claim that Mr. -- Dr.
13 Fogarty's conduct was wrongful because essentially
14 Dr. Fogarty and Dr. Feldman, one of the Plaintiffs,
15 used to practice medicine together. They had an
16 acrimonious breakup. Uh, they operate competing
17 medical research facilities. And Plaintiffs claim
18 that, as a result, Dr. Fogarty doesn't like the
19 Plaintiffs, he harbors ill-will toward them. And
20 as a result, there's no way that Dr. Fogarty could
21 have treated Mr. Casey or formed a medical opinion
22 or testified in the underlying medical malpractice
23 case in a manner that wasn't tortuous.

24 Uh, but as Your Honor well knows, courts are
25 concerned with whether litigants can plead and

1 prove actionable claims. This is an objective
2 legal determination. Courts don't undertake to
3 delve underneath causes of actions to analyze
4 whether parties in underlying lawsuits or their
5 experts or lawyers have bad feelings toward each
6 other. Whether someone likes the people on the
7 other side or even had a bad motive in bringing the
8 lawsuit aren't elements of the claim and it's not
9 something the courts determine. Even spiteful
10 motives or ill-will toward another party does not
11 warrant an abuse of process claim.

12 Uh, and this makes sense. It's probably rare,
13 if not existent, case in which litigating parties
14 are actually friends and like each other. Our
15 court system would certainly ground to a halt if
16 litigants -- if the court attempted to determine
17 whether the feelings of the litigating parties or
18 motivations of the litigants and lawyers were
19 something actionable in themselves. Yet, these
20 feelings and underlying competition is exactly what
21 Plaintiffs have sued Dr. Fogarty for in this case.

22 And if you will allow me, Your Honor, this
23 case is therefore one that threatens the conduct,
24 not only of patient care by doctors, but also
25 litigation and malpractice litigation in general.

1 It threatens to chill doctor's care of patients by
2 exposing them to civil suit every time they see
3 another doctor's patient and make the medical
4 determination that there had been, uh, either not
5 proper treatment or that the person, the patient
6 had sustained an injury. Uh, it threatens to chill
7 all experts participating in lawsuits by exposing
8 them to civil liability each time they advance an
9 opinion that another side, uh, believes is against
10 his interest or is just wrong.

11 Fortunately for us and, uh, I might say for
12 the case in general, Plaintiffs' case can not go
13 forward. This is because the abuse of process
14 claim is governed by a three-year statute of
15 limitations that expired before Plaintiffs brought
16 this suit in 2010. And, uh, even if this were not
17 the case, even if it were not time-barred, the
18 allegations of the Second Amended Complaint itself
19 failed to state an actionable claim for abuse of
20 process.

21 **THE COURT:** I've got a question for you on
22 the statute of limitations. I don't want to throw
23 you off your argument, but I do have one. As I was
24 reviewing your brief, one question I had is, uh, --
25 I believe on the abuse of process statute of

1 limitations, your argument was that the statute did
2 run, uh, when the first lawsuit was filed. Uh,
3 what about this allegation of the MRI and, uh, that
4 there was an MRI done secretly and then an
5 anonymous letter was then sent to the defendants in
6 the original lawsuit? Uh, I didn't see a date when
7 that happened. But wouldn't that be -- and I'm
8 really asking for some argument on this. I just --
9 it struck me. Wouldn't that be when the Plaintiffs
10 of this case might have become aware that there was
11 some sort -- that there could be some sort of
12 conspiracy going on?

13 MS. CHEEK: Uh, well, respectfully, Your
14 Honor, with respect to the abuse of process claim
15 by, I believe, by its definition, the abuse of
16 process alleged by Plaintiffs in this case is the
17 filing and maintenance of the underlying medical
18 malpractice action. They knew when that lawsuit
19 was filed, on the date of its filing in 2006 that
20 the process had been issued. They believed at that
21 point that it had been abused.

22 They had treated Mr. Casey. They knew at that
23 point, according to the Second Amended Complaint,
24 Casey had already been to them complaining "I'm not
25 right. I'm having trouble." Therefore, -- well,

1 and the Plaintiffs alleged that they didn't believe
2 him and they weren't going to support those type of
3 allegations either factually or with respect to his
4 disability claims. Instead, they ceased treating
5 him. So that was back in 2004.

6 Uh, we believe that when the actual claim was
7 filed in 2006, they knew two things. They knew
8 that a claim had been filed. They knew that they
9 believed the claim was baseless and was an abuse of
10 the legal process. That's when they discovered the
11 abuse. I do realize that there are allegations in
12 the Complaint about an MRI.

13 If you will allow me, I was not involved in
14 the underlying lawsuit. But what I understand
15 generally was that during the course of discovery,
16 uh, that a consulting opinion -- MRI was obtained.
17 I -- well -- I'm foundering here a little bit
18 because I don't know the facts too well. But in any
19 event, that an MRI was obtained out of state in
20 North Carolina, uh, for Mr. Casey. And, uh, all
21 right. So I've got a date.

22 Is that when the MRI was obtained?

23 MR. MANN: That's my understanding.

24 MS. CHEEK: Okay. Attorney Mann believes it
25 was obtained on 2007.

1 THE COURT: Okay.

2 MS. CHEEK: In 2000 -- February 4, 2007.

3 THE COURT: Okay.

4 MS. CHEEK: At that point, Your Honor, the
5 action that Plaintiffs claim was an abuse of
6 process was ongoing. I understand that the, uh,
7 Plaintiffs allege that this was somehow
8 circumstances in support of their, uh, conspiracy
9 claim that was dropped earlier today.

10 THE COURT: Okay..

11 MS. CHEEK: But in any event, we believe
12 that discovery -- discovery rule applies to the
13 date that it was first, uh, instituted and not by
14 other perhaps continuing or ongoing abuse through
15 the lawsuit itself.

16 And, Your Honor, uh, if you will allow me, the
17 brief that Dr. Fogarty filed in support of his
18 claim also covers the Court's concern with respect
19 to some sort of continuing abuse rule. There was
20 no -- the statute begins to run when the abuse is
21 discovered or should have been discovered and not
22 when the underlying action ends.

23 Likewise, uh, with respect to medical
24 malpractice cases, Supreme Court has explained that
25 it's not a period of time that -- for example, in

1 medical malpractice cases, where a patient says,
2 well, it wasn't just the first time the tort
3 happened, it happened multiple times during his
4 care of me. The Court has declined to adopt that
5 type of continuing tort, uh, rule with respect to
6 the tolling of the statute of limitations and
7 always hands it back to the first main event. In
8 this case, we believe that's clearly the filing of
9 the underlying action.

10 Your Honor, have I answered your question?

11 THE COURT: You have. You very much have.

12 MS. CHEEK: Hauntingly probably. But, uh,
13 also as the Court knows, uh, I have an outline.
14 Bear with me for a minute.

15 THE COURT: That's alright. Take your time.

16 MS. CHEEK: Perhaps at this point, I'll
17 cover what my understanding or the basic facts in
18 the underlying action. I think they do blend into
19 the statute of limitations issue as well as the
20 abuse of process elements claim argument. Uh, from
21 what I understand, Mr. Casey, in 2004, experienced
22 chest pains at work. He went to a hospital and a
23 chest x-ray was conducted. Uh, the chest x-ray
24 that was read by one of the Plaintiffs -- or when
25 seen by one of the Plaintiffs --

1 Forgive me, Gentlemen, for not having these
2 all down.

3 But the chest x-ray that was taken of Mr.
4 Casey showed a screw in the chest x-ray. Uh, this
5 screw, I believe it turns out, was out of the form
6 that surrounds the x-ray. It was not in Mr.
7 Casey's chest.

8 Uh, Plaintiffs did two bronchoscopies to
9 determine whether there was something, in fact, in
10 Mr. Casey's chest. The first was a flexible
11 bronchoscopy. The next was a rigid bronchoscopy
12 that's, I believe, a metal tube that you insert
13 down. During this rigid bronchoscopy, uh, Mr.
14 Casey suffered what is known medically as a
15 pneumothorax where air gets outside the lung cavity
16 and was then hospitalized for a few days
17 afterwards.

18 After he was released from the hospital, uh,
19 Mr. Casey went back to Plaintiffs and said, "I'm
20 not right. I'm having trouble with my balance.
21 I'm having difficulty. I think something's wrong."
22 Uh, Plaintiffs declined to, uh, support his
23 contentions and also cease treating, uh, Mr. Casey.

24 Subsequently, Mr. Casey started seeing a
25 psychologist, uh, in Spartanburg and also went to

1 see another doctor, Dr. Fogarty, who is also a
2 pulmonologist just like the Plaintiffs in this
3 case. Uh, when Dr. Fogarty started seeing Mr.
4 Casey, uh, he determined, in his medical opinion,
5 Mr. Casey had suffered some sort of neurological
6 issue. Dr. Fogarty also reviewed some of the
7 medical, open medical records in relation to the
8 bronchoscopies that had been performed and
9 determined in his medical opinion that the standard
10 of care had not been met with respect to Mr.
11 Casey's treatment and that Mr. Casey had suffered,
12 uh, some sort of brain injury as a result.

13 Turns out that the actual visits, I believe,
14 of the possible brain injury were an embolism that
15 had gotten into his blood stream during this
16 pneumothorax. Traveled his brain. Blocked an
17 artery and resulted in -- resulted in brain injury.

18 Your Honor, uh, the -- although I was not
19 involved in that lawsuit, the, uh, -- I understand
20 that the medical malpractice suit, uh, went
21 forward. It was tried before a jury. The jury
22 actually found that the defendants did not engage
23 in malpractice. But I will point out that, as you
24 well know, that does not -- a jury determination of
25 malpractice doesn't mean that Mr. Casey was not

1 injured.

2 But back to the, uh, arising of the claim
3 again, we believe that it arose upon the Second
4 Amended Complaint filing. At that time, Plaintiffs
5 knew that Casey was complaining of an injury.
6 Plaintiffs knew that they didn't believe that he
7 have one. Therefore, when the suit was filed, uh,
8 we believe that's when the statute was tolled.
9 Likewise, even though Plaintiffs claim they didn't
10 know Dr. Fogarty's involvement, the case law is
11 clear, Your Honor, that the fact that somebody
12 doesn't have a theory of recovery or even know the
13 identity of all tortfeasors does not prevent the
14 statute from running.

15 Uh, regarding the failure to state a claim,
16 uh, an abuse of process, as the Court knows, is the
17 employment of legal process for some purpose other
18 than that for which it was intended by the law to
19 affect and the improper use of a regular issued
20 process. Uh, I know the Court is aware of these
21 cases, but I thought it might be helpful at this
22 point to give a couple of examples of what courts
23 have held to be an abuse of process.

24 One was in the Huggins versus Winn-Dixie case,
25 249 S.C. 206 from 1967 in which a store manager,

1 uh, stopped the fellow for, uh, having a package of
2 ham in his pocket. And when he said did you forget
3 about the ham, the man said, oh, yes, I did, and he
4 offered to pay for it. At that point, the store
5 manager took the man into the back and said I
6 actually believe I want you to pay \$10. The man
7 said why. Well, it's because I think you took some
8 food from this store on another occasion. The man
9 said I didn't take the food on the other occasion.
10 I'm not going to pay you your \$10.

11 So it wasn't for the ham. It was for this
12 other -- trying to get the guy to pay \$10. The guy
13 refused. The manager had the police called. The
14 court found that that was not the proper issuance
15 of process because the manager wasn't trying to get
16 the guy arrested for shoplifting. He was trying to
17 coerce him to pay the \$10 for food he claimed he
18 didn't take.

19 The second one is more contemporary. A 2009
20 case, (inaudible) where a police chief had a deputy
21 arrested for some moonlighting payment-related
22 violations in order to force that deputy to testify
23 against another officer who was under
24 investigation. Those are some cases that abuse of
25 process did lie and I'll try to briefly address why

1 it doesn't lie in this case.

2 **THE COURT:** All right.

3 **MS. CHEEK:** To sustain abuse of process, the
4 Plaintiff pleading has to allege two elements. One
5 that the process was issued, or in this case,
6 lawsuit was brought for an improper purpose. And
7 two, that the willful acts were not authorized by
8 -- that willful acts not authorized by the process
9 were taken through which the process was abused.

10 Uh, courts of this state have been very clear
11 that a bad motive or collateral reasons, even
12 spite, uh, do not sustain abuse of process claim.
13 Uh, also, importantly, uh, the improper purpose
14 element, the first element is met only when the
15 defendant has attempted to coerce the Plaintiff in
16 some manner, uh, to give the defendant a collateral
17 advantage such as paying the money such in the ham
18 case.

19 And our court has explained that in order for
20 coercion to occur, there has to be some event
21 outside the process itself. There has to be some
22 communication between the defendant and the
23 Plaintiff where the defendant is trying to coerce
24 the Plaintiff saying, you know, if you don't do
25 this, I'm going to have process issued against you.

1 Plaintiff's Second Amended Complaint fails to
2 plead this improper purpose element because they
3 haven't alleged that Dr. Fogarty had any contact
4 with the Plaintiffs before or regarding the medical
5 malpractice action. For example, uh, Dr. Fogarty
6 didn't say to Dr. Feldman, if you don't quit, uh,
7 engaging in medical research like I am than I'm
8 going to have this lawsuit or try to get somebody
9 to file this lawsuit and I'm going to have to
10 testify as a witness in it and make your life
11 difficult. In fact, the Complaint doesn't allege
12 any contact between Dr. Fogarty and Plaintiffs at
13 all so, by definition, improper purpose can be
14 established.

15 Plaintiffs also haven't alleged the required
16 willful act element because it's only satisfied
17 that the defendant engaged in some definite act
18 that is related to the judicial process and that's
19 not authorized by it. And South Carolina case law
20 makes clear that in order for this claim's element
21 to be satisfied, the Plaintiff must allege that the
22 process, in this case, the medical malpractice
23 action, was undertaken for the sole or primary
24 purpose other than a legitimate name. It's not
25 enough again that the process is pursued with some

1 sort of collateral purpose in mind, even a spiteful
2 or vengeful mind.

3 In the Second Amended Complaint, Plaintiffs
4 haven't alleged that the malpractice action was
5 brought solely or primarily for an ulterior
6 purpose. And the facts of the Complaint actually
7 reveal that, uh, that action was brought by Casey
8 to entrust his claims that the defendant -- that
9 the Plaintiffs in this case engaged in malpractice.
10 Plaintiffs do claim that the defendants had various
11 ulterior motives for, uh, supporting the lawsuit or
12 being engaged in it. But again, these ulterior
13 reasons, even spiteful ones don't make a lawsuit
14 wrongful. Uh, I'm getting close to closing, Your
15 Honor.

16 THE COURT: Okay.

17 MS. CHEEK: Uh, further, the Second Amended
18 Complaint doesn't allege that Dr. Fogarty
19 committed, uh, acts that in themselves were
20 improper. He wrote notes in a patient's file.
21 Obviously, that's not improper. Obviously, it
22 wasn't related to the action. He, uh, developed a
23 theory of doctor -- Mr. Casey's injury, that while
24 Plaintiffs believe it was wrong, there was not
25 improper about a doctor's forming a patient

1 assessment and writing it in the notes. And also,
2 Plaintiffs claim that Dr. Fogarty was a member of
3 this litigation team. Uh, but there was nothing
4 wrongful about a physician serving or consulting in
5 an expert capacity in respect to a malpractice
6 suit.

7 Uh, Your Honor, in closing, and I again do
8 appreciate your having reviewed our brief. But
9 everyday, this clerk sees litigants and parties at
10 odds with each other. Uh, some cases go, uh, for
11 Plaintiffs awards. Some are defense verdicts.
12 There's a lot of hurt and disagreement that walks
13 the halls of the courtroom. Uh, and, uh, this
14 doesn't mean, however, that those hurt feelings or
15 even bad or improper motives can create causes of
16 action. Plaintiffs' abuse of process claim is not
17 only barred for that reason, because it doesn't
18 state a cause of action, but also for the primary
19 reason that it is time-barred.

20 We appreciate the Court's attention. If you
21 have any other questions, maybe not about the
22 underlying action specifically, I'll be happy
23 to ---

24 THE COURT: No, that's fine.

25 MS. CHEEK: --- try to answer them.

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THE COURT: Appreciate it.

Mr. Mann, if it's alright, I'm going to allow you to respond to all three again.

MR. MANN: That's what we agreed to ---

THE COURT: All right.

MR. MANN: --- beforehand, Judge.

THE COURT: All right.

MR. MANN: Thank you.

THE COURT: Very well. All right. Who's up next?

MR. MOONEYHAM: I'll go next, Your Honor.

THE COURT: All right.

MR. MOONEYHAM: May it please the Court.

Joe Mooneyham --

THE COURT: Yes, sir.

MR. MOONEYHAM: Joe Mooneyham for Mark Casey. I certainly won't repeat anything that Ms. Cheek said with regarding to the time-bar issue. We concur and join in her argument on that issue. The actual filing of the lawsuit would be the time at which the abuse of process cause of action is when the statute of limitations would start to run. That filing occurred more than three years before this second lawsuit was filed.

Our contention is because the cause of action

1 is abuse of process, then the process triggers the
2 time -- uh, events that were unrelated to the
3 process. I would contend that even things like
4 discovery abuse -- I'm not suggesting discovery
5 abuse occurred -- but even things like that would
6 not be part of the process itself. The process is
7 the actually abuse of the legal proceeding. So
8 months later, the proceeding was initiated. The
9 time to respond to that had begun to run. In this
10 case, the three years would have run out before the
11 second lawsuit was filed.

12 Secondly, uh, as it relates to Mr. Casey
13 specifically, the Plaintiffs' first cause of action
14 alleges some conduct by Mr. Casey at paragraphs
15 106, 107, uh, and then alleges damages at 115 and
16 116. But if you look at those specific paragraphs,
17 and I actually quoted these for you in my
18 memorandum, uh, the Plaintiffs allege that Mr.
19 Casey willfully used legal proceedings in an effort
20 to continue to receive narcotic drugs and in an
21 effort to continue to receive disability benefits.
22 At the time this event occurred, he was employed at
23 Michelin and had an opportunity to receive short
24 and long-term disability benefits. The allegation,
25 I think, is that because the Plaintiffs in this

1 case refused to cooperate in his efforts to
2 continue these benefits, he filed this lawsuit.

3 The problem with that argument is that neither
4 of those two activities or efforts by him, if true,
5 would have caused him any damages. The defendants
6 aren't damaged in any way -- pardon me. The
7 Plaintiffs aren't damaged in any way, uh, by Mr.
8 Casey's conduct if he filed a lawsuit in an attempt
9 to get those, uh, -- to continue those benefits.

10 They allege that his efforts to continue
11 receiving narcotic drugs or to receive disability
12 benefits, uh, damage their reputation, there's no
13 proximate causation between those. Of course, as
14 has already been eluded to and I'm not going to
15 belabor this -- this matter was, apparently, quite
16 hotly contested. I was not involved in the
17 underlying malpractice case either. But motions
18 for summary judgement were filed. The trial lasted
19 several weeks. Experts were called and flown in
20 from all over the country.

21 So clearly, the underlying lawsuit itself was
22 meritorious to the extent that it would be
23 required. Even if there were ulterior motives, the
24 focus of the litigation from this case's
25 perspective was an intent to establish the

1 malpractice claim rather than the various -- uh,
2 I'll sit down.

3 THE COURT: Okay. Thank you, sir.

4 MR. MOONEYHAM: Thank you, ma'am.

5 THE COURT: Mr. Henrikson?

6 MR. HENRIKSON: Thank you. May it please
7 the Court?

8 THE COURT: Yes, sir.

9 MR. HENRIKSON: Your Honor, I had the luxury
10 of having two lawyers smarter than me go first. I
11 join in their arguments and in their briefs. I
12 would just point out a couple of things. Your
13 Honor asked the question about the MRI which is --
14 and I'll be happy to answer any questions specific
15 about that. My understanding is that even if the
16 MRI was somehow to be the issue which started the
17 clock, which I don't believe it is, I believe it's
18 actually the filing of the lawsuit.

19 THE COURT: Okay.

20 MR. HENRIKSON: But even so, my
21 understanding is that the MRI and the discovery of
22 the MRI occurred prior to the three-year period.

23 THE COURT: Okay.

24 MR. HENRIKSON: I could be wrong about that.
25 That's actually not in the pleadings. I'm trying

1 to limit all of our argument to what's in the
2 pleading ---

3 THE COURT: Sure.

4 MR. HENRIKSON: --- because we're here for a
5 motion to dismiss.

6 THE COURT: All right.

7 MR. HENRIKSON: The one thing that I would
8 point out that I think Mr. Mooneyham did a good job
9 of talking about is that, to me -- and the reason
10 that this is a motion to dismiss and not a motion
11 for summary judgement is that, with respect to the
12 abuse of the process cause of action, in the
13 Complaint itself, uh, it is alleged and thereby
14 admitted that all of these issues, including the
15 issues of punitive damages, all went to the jury.

16 So in addition to failing to plead that there
17 was, that the primary ulterior purpose was
18 something wrongful, uh, the issues as they run to
19 the malpractice action, uh, all went to the jury.
20 The jury decided some times -- the jury -- I been
21 on both ends of a jury verdict. It doesn't
22 necessarily mean that your side was right or wrong.
23 It means the jury was persuaded to come to one
24 result or the other.

25 In this case, it's alleged in the Complaint,

1 so it makes this proper argument for motion to
2 dismiss. I believe there can not be an abuse of
3 process in a case where all the issues actually go
4 to the jury and are decided, even the issues of
5 punitive damages.

6 The other important thing, uh, in this case,
7 Your Honor, is that lawyers obviously have an
8 obligation under the professional rules of
9 responsibility that, uh, that if a lawyer has a
10 legitimate legal and factual position, that lawyer
11 has a duty, uh, to pursue it in a case such as
12 this. In this case, it is without controversy that
13 there were numerous experts on both sides,
14 including experts, uh, that testified that Mr.
15 Casey had brain damage, that he had injuries caused
16 which were related to, uh, the Plaintiffs who were
17 the defendants in the underlying suit.

18 And with that information with Dr. Fogarty,
19 noting that there was a brain injury, which is
20 alleged in the Complaint, uh, with Mr. Casey
21 alleging that he had what he felt were, uh,
22 cognitive difficulties, Mr. Thompson was obligated
23 to pursue those arguments, those legal positions
24 and those factual positions in his case. To do
25 otherwise would have been, uh, to violate his duty

1 under the rules of professional responsibility. So
2 when you're talking about now going back against a
3 lawyer for an abuse of process, it is equality as
4 chilling as you would if the court were to allow
5 such cause of action to stand against the doctor
6 who treats a patient and is essentially being sued
7 because he put a notation in a record.

8 Here, you have a lawyer who has a client who
9 makes a complaint, uh, makes a, uh, -- reports
10 facts which support the cause of action which
11 ultimately go to the jury. Uh, that lawyer has a
12 heightened duty and a responsibility under the
13 rules, uh, to prosecute that case, uh, to the best
14 of his ability, uh, vigorously. But the rules
15 require that, uh, -- and diligently. And that's
16 what happened in this case.

17 THE COURT: And so you're -- you're arguing
18 about it going to the jury -- just so I'm clear.
19 Your argument about it going to the jury, is that
20 something akin to probable cause and, uh, -- a
21 finding of probable cause in a malicious
22 prosecution case. Is that kind of where we --

23 MR. HENRIKSON: I believe so. It's not one
24 of the -- uh, it's not one of the requirements of
25 abuse of process, but I think what it does is it

1 demonstrates a lack of some other purpose. And
2 again, here, there's a failure to allege
3 specifically that the primary ulterior purpose was
4 to do something other than, uh, prosecute a medical
5 malpractice cause of action.

6 In this case, there may have been a situation
7 where, uh, Dr. Fogarty didn't like the plaintiff or
8 the defendant doctors in the underlying case.
9 There's no evidence that Mister, uh, -- there's
10 nothing alleged that Mr. Thompson or Mr. Casey knew
11 of these doctors or had any hard feelings against
12 them or anything like that. Mr. Thompson was, uh,
13 simply prosecuting, uh, a client's rightful claim,
14 uh, -- he had a right to claim. He didn't, uh, --
15 the jury ultimately decided whether he had a right
16 to, uh, recover. But he certainly had a right to,
17 uh, file the lawsuit. Based on the information
18 which is included in the Complaint, uh, the only
19 reasonable inference to draw is that there was
20 information, uh, given to, uh, Mr. Thompson from
21 Dr. Fogarty and from Mr. Casey which would have
22 required any lawyer, uh, to pursue, uh, -- if he
23 wanted to take the case, of course, uh, to pursue
24 those.

25 And so -- but I do believe that the fact that

1 the case did go to the jury on all issues and the
2 fact that that's alleged in the Complaint is just
3 further support for the fact and what it does is it
4 illustrates, uh, that there is a -- this lack of
5 any pleading and proof that there was primarily an
6 ulterior purpose for this. But certainly, there's
7 no pleading of proof that Chuck Thompson had any
8 ulterior purpose other than to try to get, uh,
9 recovery for his, uh, for his client.

10 So those are the things that I would add, Your
11 Honor. I would join in the other arguments as
12 well, specifically as, uh, to the statute of
13 limitations. Uh, but I think that in this case,
14 it's just a failure to properly plead facts
15 sufficient to support, uh, an abuse of process
16 cause of action. For those reasons, I think the
17 court should dismiss the, uh, -- dismiss the first,
18 uh, first cause of action.

19 THE COURT: All right. Thank you, sir.

20 All right. Yes, sir.

21 MR. MANN: Thank you, Judge. I don't know
22 how much of this paper I'm going to need, but I'm
23 going to bring some of it up here.

24 THE COURT: Okay.

25 MR. MANN: And Judge, I'm going to do my

1 very, very best to be brief. Uh, your questions
2 indicate that you've had an opportunity to review
3 the Complaint. And Judge, given that this is a
4 motion to dismiss our Complaint is our memorandum.
5 Okay. It's laid out in 20 pages. We take great
6 exception to the conduct that's occurred, uh, both
7 in the underlying case and, uh, -- and quite
8 frankly, some of the actions that occurred even
9 before -- before either litigation.

10 Uh, Ms. Cheek and I met each other, as
11 paragraph 25 indicates. Uh, paragraph 25 indicates
12 that there was previous litigation between Dr.
13 Feldman and Dr. Fogarty. We met because she
14 represented Dr. Fogarty in that action. So there
15 has been, without a shadow of a doubt, a downplay
16 of the animosity, motivations and things of that
17 nature that are within the four corners of the
18 Complaint. I'm going to do everything I can to
19 stay within these four corners of the Complaint
20 because what I've listened to so far has been one
21 after another motion for summary judgement. And I
22 look forward to discussing those motions for
23 summary judgement at the appropriate time after
24 discovery has occurred.

25 For example, the 25 pages -- again, 20-page

1 Complaint, 25-page memorandum of Dr. Fogarty, uh,
2 is replete with arguments, inferences and things of
3 that nature that are not in the light best suited
4 for the nonmoving party. They go well without and
5 beyond the four corners of the document.

6 Uh, but many things are spot-on. Procedural
7 history are spot-on. Uh, Dr. Fogarty's counsel are
8 well-learned. They state many, many absolute
9 positive points with respect to the law. But it
10 goes too far. It is a memorandum in support of a
11 motion for summary judgement, not a memorandum in
12 support of a motion to dismiss.

13 Again, relationship between parties has been
14 touched upon. But the relationship between the
15 parties is not just between Dr. Fogarty and Dr.
16 Feldman. It goes much deeper than that. Uh, at
17 the time, uh, the Plaintiff's counsel, uh, Mr.
18 Thompson, uh, his current wife was working for Dr.
19 Fogarty. Uh, Mark Casey, the Plaintiff, his sister
20 worked at the hospital. Knew Dr. Fogarty very,
21 very well. All these facts are alleged within the
22 Complaint.

23 These individuals knew each other. That's why
24 it came together. That's why this cause of action
25 happened. That's why the medical malpractice case

1 hung around for as long as it did because these
2 individuals were working for ulterior motives. The
3 ulterior motives don't have to be in synch. All of
4 them don't have to take a vote and say that our
5 ulterior motives are one in the same.

6 And again, for the purposes of our discussion
7 today, within the four corners of the Complaint,
8 the willful acts as to what these individuals were
9 trying to do and trying to accomplish as best as we
10 know today prior to discovery are alleged in 106,
11 107 and 108, 109, 110, 111, 113, 114. And the term
12 "willful" and "willingly" is used repeatedly. Why?
13 Because that's the requirement of the pleading at
14 this juncture.

15 Respecting the statute of limitations
16 argument, Dr. Fogarty's allegation says that
17 there's just a vague toss of the 11th hour that
18 there's nothing really respecting as to when
19 Plaintiff's counsel or when Plaintiff knew that
20 their rights had been infringed upon. And I take
21 exception to that because paragraphs 39, 40 and 41
22 and 42 succinctly allege that there were active
23 actions by Dr. Fogarty and by inference -- and
24 again, the inferences are drawn in the best light
25 to my client --- that their involvement was being

1 hidden. It was being shielded. Paragraph 41 says,
2 December 22nd, 2008 is when that all came to light
3 during his deposition. That's well within the
4 statute of limitations. But irrespective, good,
5 bad, poor or in-between, the statute of limitations
6 argument is primarily angled at motion for summary
7 judgement.

8 So, Judge, I simply and humbly ask -- I'm
9 trying to streamline this process. I'm trying to
10 get up to the plate so we can get some discovery
11 started and get this party started, for lack of a
12 better term. And I do want to get this case moved.
13 I do want to get this case resolved. Okay.

14 My clients feel like they have been taken out
15 behind the woodshed. And if you read the
16 Complaint, they have been. And so I humbly ask
17 that we get this case moving forward, that the
18 motions to dismiss are denied. In the alternative,
19 please tell me where I'm deficient. If I can't
20 plead it out of my action as shown today, I'll be a
21 big boy. I'll pick up my briefcase and go home.

22 THE COURT: All right.

23 MR. MANN: Thank you, Judge.

24 THE COURT: Thank you.

25 All right. Uh, well, I do -- as I told you in

1 the outset, I had not reviewed, uh, the memorandum,
2 uh, submitted on behalf of Mr. Casey or Mr.
3 Thompson. I do want to do that as well. I did
4 want to review the Complaint again in light of all
5 the parties' arguments. I'll be issuing a decision
6 very shortly.

7 I will tell you that I am just a -- just to --
8 just to let you know. I will be on vacation next
9 week, but I would anticipate the following week
10 that I'll issue a decision. All right. Thank you.

11 MR. HENRIKSON: Thank you, Judge.

12 MR. MANN: Thank you, Your Honor.

13 THE COURT: Thank you. Good to see y'all.

14 (WHEREUPON, the proceedings conclude at
15 approximately 3:36 p.m.)
16
17
18
19

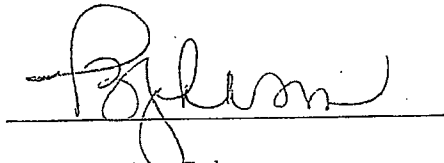
CERTIFICATE

40

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg, South Carolina, on this 28th day of February, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

A handwritten signature in cursive script, appearing to read "T. B. Johnson", is written over a horizontal line.

Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

GREGORY J. FELDMAN, M.D.,
JOSEPH A. BOSCIA, III, M.D.,
UPSTATE LUNG AND CRITICAL
CARE SPECIALISTS, P.C. AND
DEVENDRA T. SHANTHA, M.D.,

PLAINTIFFS,

-VS-

WILLIAM MARK CASEY,
RAY E. "CHUCK" THOMPSON AND
AND CHARLES M. FOGARTY, M.D.,

DEFENDANTS.

2010-CP-42-05743

TRANSCRIPT OF RECORD

JUNE 20, 2017
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. KEITH KELLY

APPEARANCES:

ATTORNEY FOR PLAINTIFFS:

F. MILTON MANN, JR., ESQ.

ATTORNEYS FOR DEFENDANTS:

MATTHEW H. HENRIKSON, ESQ.
ELLEN S. CHEEK, ESQ.
MICHAEL B. T. WILKES, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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P-3	AFFIDAVIT OF GREGORY FELDMAN, MD	19	19
P-4	AFFIDAVIT OF JOSEPH BOSCIA, MD	19	19

1 **THE COURT:** William Mark Casey, et al. Good morning,
2 gentlemen, lady.

3 **MR. HENRIKSON:** Good morning, Your Honor.

4 **MR. MANN:** Good morning, Your Honor.

5 **MR. HENRIKSON:** Your Honor, my name is Matt Henrickson.
6 I represent Chuck Thompson in this case. Ellen Cheek and
7 Mike Wilkes represent Dr. Fogarty.

8 Mark Casey is, I guess, has not been -- I've not seen
9 an order of stipulation of dismissal yet. It has been
10 represented to us that he has been or is going to be
11 dismissed.

12 Mr. Casey is represented by Joe Mooneyham. And, again,
13 our understanding is that he's in the process of being
14 dismissed from the case. And Mr. Mooneyham is not here
15 today based on that.

16 **MR. MANN:** And, Your Honor, I apologize profusely. Mr.
17 Mooneyham and I agreed upon stipulation to dismiss -- a
18 dismissal order. It's not a real brief case. Just so ---

19 **THE COURT:** Okay. Get that to me ---

20 **MR. MANN:** But ---

21 **THE COURT:** --- and I'll ---

22 **MR. MANN:** But that is an accurate representation. And
23 I don't want the Court to think poorly of Mr. Mooneyham for
24 not being here.

25 **THE COURT:** No problem. Just get that ---

1 **MR. MANN:** Because ---

2 **THE COURT:** --- to me.

3 **MR. MANN:** --- our issues have been resolved.

4 **THE COURT:** All right. Yes, sir.

5 **MR. HENRIKSON:** Yes, sir. Your Honor, the Defendants
6 have filed a lengthy brief. And I don't want to go into
7 everything. I just wanted to see if the Court has had the
8 opportunity to review that. And if so, what I'd like to do
9 is hit some of the highlights of that, which I think is
10 important.

11 **THE COURT:** I have reviewed it. And in addition to
12 reviewing this, you have provided some materials about six
13 weeks ago or so, a month ago, something came to me, right
14 after we had a conference call or something, I thought.

15 **MR. HENRIKSON:** We filed some exhibits along with the
16 memorandum. And then in the last twelve hours it's been
17 probably a hundred different filings of various depositions
18 and exhibits and other things.

19 In any event, Your Honor, in this particular case the
20 simple part of it is the fact of the knowledge that the
21 Plaintiffs in this case had with respect to their having a
22 claim for abuse of process. But the complicated part or the
23 reason that these -- the briefs are so long, I think, and
24 the exhibits are so voluminous is because the complicated
25 part is the effort to which, I think, the Plaintiffs in this

1 case have gone to sort of obfuscate all of that and tried to
2 divorce themselves from the clear and undeniable fact.

3 The -- this case -- what is before the Court is a
4 motion for summary judgment on the statute of limitations.
5 The sole cause of action in the case is abuse of process.
6 And everyone agrees that the three year statute and that the
7 complaint in this case was filed October 27, 2010.

8 We believe that the evidence is clear, Your Honor, that
9 the Plaintiffs had an active formed belief that they had a
10 cause of action specifically for abuse of process and for
11 other causes of action against the very Defendants who are
12 in this case now back in 2006 and no later than August 11 of
13 2007, which was outside of the three year statute.
14 Specifically the exhibit 1 to our brief, which is Dr.
15 Boscia's deposition, exhibit number 69, which is an August
16 11, 2007 email from Dr. Feldman to Dr. Boscia entitled civil
17 conspiracy.

18 This is -- this was a surprise, Your Honor, in the
19 deposition of Dr. Feldman because we requested all emails,
20 you know, from the time the lawsuit was filed. And we were
21 told that there were no emails that existed before 2008.
22 They couldn't find them despite the fact that Spencer King,
23 Dr. Feldman's attorney, testified that Dr. Feldman was a
24 prolific emailer to the extent that at the beginning of the
25 lawsuit he had to request JUA assistance in having Dr.

1 Feldman not email him as much about wanting to sue Dr.
2 Fogarty and Chuck Thompson.

3 And so for whatever reason they weren't able to produce
4 any emails from 2007 or 2006, but one of them slipped
5 through. It was an embedded email in a 2008 email that they
6 did produce.

7 And in that case all emails, all documents in this case
8 have been stipulated to be authentic. Everyone has agreed
9 that it is -- it was sent on the date that it says it was,
10 it was sent from the person that it was sent to -- says it
11 was sent from and sent from the person it was supposed to be
12 or says it was sent from.

13 The -- in this case Dr. Feldman, after having done
14 voluminous research on a countersuit suing Dr. Fogarty and
15 suing Chuck Thompson had a -- had been doing this research,
16 and he emailed Dr. Boscia, the other Plaintiff in this case,
17 his partner, telling him we have at least Casey plus his
18 lawyer and possibly Fogarty plus Chuck Thompson's wife. As
19 for abuse of process, that is already fact. He had no right
20 to speak to the press about the trial matter.

21 So the very simple part of this, Your Honor, is that as
22 of August 11, at the latest 2007, which is three years and
23 three months prior to their filing of the lawsuit, the
24 Plaintiffs in this case have a specific formed belief that
25 they have a cause of action for abuse of process against Dr.

1 Fogarty and against Chuck Thompson and they failed to act on
2 it within the required three years.

3 We look at -- we look at the proof of that, Dr.
4 Feldman's testimony was that when he got the lawsuit in 2006
5 he knew immediately that it was a fabrication. He knew
6 immediately that it was anatomically impossible for the
7 procedure that he did to result in brain damage. He knew
8 that immediately.

9 He testified that they were -- he was immediately
10 damaged when a week after the lawsuit was filed in 2006 he
11 read a Spartanburg Herald Journal article. He said that it
12 was extraordinarily damaging to him. So he knew that there
13 was a wrongful act. And he knew that there was an abuse of
14 process at that point.

15 When he's asked in his deposition about why he filed
16 the lawsuit, his testimony is because of the scheme from Dr.
17 Fogarty. We're suing Dr. Fogarty for not seeing Mr. Casey.
18 We're suing Dr. Fogarty for fabricating the scheme, and
19 that's why we're suing him.

20 He was sued for -- the legal purpose was to hang his
21 colleagues, to embroil them in multi-year litigation and
22 destroy their careers. That's what he's getting sued for.
23 And I'd like to hand up this excerpt from Dr. Feldman's
24 deposition, the basis for the lawsuit on page 77 and 76.
25 This is where I'm taking these quotes from.

1 And in terms of suing Chuck Thompson -- he's asked why
2 he was suing Mr. Thompson. And his statement was, under
3 oath in his deposition, was that Mr. Thompson filed the --
4 filed the lawsuit for the illegitimate purpose of trying to
5 obtain Social Security disability, that he needed to have
6 the lawsuit in order to fabricate the disability claim. And
7 so in filing the lawsuit for that purpose the illegal -- the
8 legal process was abused by Mr. Thompson.

9 And he said on behalf of Casey. That's another part.
10 He filed the lawsuit for Dr. Fogarty to follow his agenda.
11 So in filing the lawsuit on behalf of Dr. Fogarty the legal
12 process was abused, correct? And his answer was yes.

13 Now the reason that I bring this up, Your Honor, is
14 because now at the eleventh hour Mr. or Dr. Feldman has
15 changed his tune and filed an affidavit where he realizes
16 that by saying that -- sticking to his deposition testimony
17 he loses clearly on the statute of limitations. And so now
18 he filed an affidavit Friday, I believe, where he changes
19 his testimony and says that the abuse of process claim does
20 not allege the newspaper article as a wilful act based on
21 the above acts, and facts, and information. Plaintiffs'
22 lawsuit is based on information received during the
23 depositions of Dr. Grace, Dr. Wade, Dr. Fogarty and the
24 fraudulent MRI, all of which occurred in 2008.

25 Now, the South Carolina Appellate Courts have

1 recognized sham affidavits as those being filed last minute
2 for the purpose of trying to create a question of fact for
3 the sole purpose of defeating summary judgment. And I think
4 the telling thing here that the McMaster case sets out
5 several factors, the most important of which, I think, is
6 that there's no explanation whatsoever for the reversal in
7 testimony.

8 This was filed -- Dr. Feldman's deposition was taken in
9 October of 2016. So however many months ago that was,
10 they've had that much time to correct it if it was wrong.
11 They chose literally to -- the business day before the
12 hearing to file this affidavit.

13 We think the Court would be proper in excluding this
14 affidavit and excluding Dr. Boscia's affidavit, which is
15 simply a me-too affidavit. Dr. Boscia says I approve Dr.
16 Feldman's actions and adopt them as my own is essentially
17 what he says. So whatever Dr. Feldman says, I'm okay with
18 it no matter what it is. We think that these affidavits
19 should be -- should be excluded.

20 Dr. Alleyne's affidavit, which was also filed on
21 Friday, that actually is helpful. That sets forth the
22 opinion that Dr. Fogarty breached the standard of care by
23 having three different versions of an office note. You may
24 recall, we were here last summer, at the end of last summer.

25 **THE COURT:** Um-hum (affirmative).

1 **MR. HENRIKSON:** The Plaintiffs were alleging that we
2 had failed to produce different versions of this note. And
3 they got Desa Ballard involved. And she filed ethics
4 complaints against everybody. And then we were able to
5 point out that you actually had all these notes in your
6 file. And they said, oh, sorry, never mind.

7 We have since come to a stipulation that all three of
8 these notes were in the lawyer's file for Dr. Feldman and
9 Dr. Boscia as of July of 2006. Is that correct? So that's
10 our stipulation. They admit now, okay, we really had all
11 these notes, we just couldn't tell them apart. August 2006.

12 The telling thing about the notes is that when Dr. --
13 and this is brought out of the brief, I believe, Dr. Feldman
14 sees the different language and realizes there's a different
15 note. He characterizes the differences as minor.

16 In his deposition he says, oh, it's the biggest
17 difference in the world. It's the lynchpin for the whole
18 medical malpractice case. That's why we're suing Dr.
19 Fogarty. He had all that information in August of 2006.

20 The other telling thing is when you put Dr. Boscia, in
21 his deposition, you put all three of these notes in front of
22 him, pointed out the differences and his testimony under
23 oath was I don't see any significant difference between
24 these three notes. So we think that that's just another red
25 herring that the Plaintiffs are trying to use to obfuscate

1 to take the -- the spotlight off of the fact that in August
2 of 2007 they knew they had an abuse of process claim.

3 Dr. Feldman, the emails are clear. He's consistently
4 asking Spencer and Milton Mann, can we sue these guys? Why
5 can't we sue these guys?

6 In January of 2008 he emails Mr. Mann, this is before
7 the MRIs, before any of those depositions, this is before
8 the things that he alleges in his sham affidavit that were
9 the bases of the lawsuit. And he says, clearly we can sue.
10 We can have an abuse of process claim. Why -- why can't we
11 sue these guys? So he knows -- even before these things
12 happen, he's begging his lawyers to file a lawsuit.

13 And maybe they're thinking of malicious prosecution. I
14 don't know. But they keep telling him, you can't do
15 anything until the lawsuit is over and you have won. So
16 they keep putting him off and putting him off. And whether
17 that's good or bad legal advice, that's not an issue in the
18 summary judgment.

19 Now, Dr. Feldman is acutely aware of the problems that
20 face him with summary judgment in this case. He's gone
21 through extraordinary lengths to avoid it. Again, we don't
22 have any emails mysteriously from 2007 or 2006.

23 And the interesting thing occurred during depositions
24 of Dr. Feldman and Dr. Boscia. Dr. Feldman's deposition
25 started on a Monday, went to a Tuesday. We weren't able to

1 finish him. We had Dr. Boscia deposed on a Wednesday. And
2 then we finished up Dr. Feldman on a Thursday -- on a
3 Friday.

4 Dr. Feldman was told while he was under oath he was not
5 to discuss his testimony with anyone. When we started Dr.
6 Boscia's deposition on a Wednesday at 9:00 we asked him if
7 he had any contact with Dr. Feldman, and he said that he had
8 spoken with Dr. Feldman the night before about the
9 testimony.

10 And we asked him if Dr. Feldman advised him that he was
11 under oath and was not supposed to be discussing it with
12 him, and he said no. I asked Dr. Boscia what the substance
13 of the conversation was, and he said he couldn't remember.

14 And I said, well, you know, I mean, you're a medical
15 doctor. This conversation was twelve hours ago, you're
16 telling me you don't remember what you discussed with Dr.
17 Feldman? And he said, well, we generally discussed
18 timelines, but I don't remember what we really talked about.

19 Well, during the course of the deposition and during
20 breaks and at lunch I just happened to notice that Dr.
21 Boscia was texting on his phone. When we -- after lunch we
22 reconvened, I asked him if he had had any contact with Dr.
23 Feldman since 9:00 that morning and he said that he had.

24 And he revealed to us that he had received emails from
25 Dr. Feldman regarding this case and regarding his testimony,

1 and that he had had a phone call with Dr. Feldman during
2 lunch where they discussed this case and his testimony, and
3 they talked about timelines. And so I asked him if any of
4 that refreshed his recollection of his conversation with Dr.
5 Feldman the night before.

6 And suddenly he began to remember that he was told by
7 Dr. Feldman that they didn't know anything before 2008. And
8 that was the timeline that they were instructed -- that Dr.
9 Boscia was instructed to follow, that he wasn't to know
10 anything before 2008 because that protected, in Dr.
11 Feldman's mind, them on the statute of limitations.

12 So we have Dr. Feldman, who's under oath, admittedly,
13 and talking to another witness, who's under oath, and he's
14 trying to get him to say that they don't -- they don't
15 remember anything before 2008. And that's essentially what
16 Dr. Boscia did until we showed him this exhibit, the email
17 from 2007, which was a surprise to him.

18 And he said he didn't remember it. He admitted, you
19 know, I must have received it. I must have read it. I must
20 have gotten it from Dr. Feldman, but I don't remember
21 anything else about it.

22 So what we have, Your Honor, is a real effort, I think,
23 by the Plaintiffs to try to defeat what is a justified
24 motion for summary judgment in this case. They have --
25 again, they've filed about eighty-nine exhibits in the last

1 day. This motion, 2:00 in the morning.

2 That's fine. I was able to read it at six. I'm not
3 prejudiced by that at all. I didn't read all the exhibits
4 that they filed. But I think that it's just for the purpose
5 of either creating a record on appeal or being able to get
6 up and say, look at all this, Your Honor, there's got to be
7 a question of fact in there somewhere, which we've all heard
8 famously uttered at one point or the other.

9 But the truth of it all is is that they cannot get away
10 from the basic fact that in August of 2007 Dr. Feldman and
11 Dr. Boscia were convinced that they had a cause of action
12 for abuse of process against Dr. Fogarty and against Dr. --
13 and against Mr. Thompson, and they did not bring that cause
14 of action for three months and -- three years and three
15 months until after they had that. And under the law in
16 South Carolina that is absolutely a violation of the statute
17 of limitations.

18 Usually when you argue statute of limitations cases
19 you're arguing about, well, were there enough facts for this
20 person to have been put on inquiry notice? Here, it's
21 completely different.

22 This is an email where they're saying absolutely we
23 know we have this. Abuse of process has already happened.
24 It's already a fact. That's what he says. And this is, you
25 know, I was telling Ms. Cheek, this is the, you know, the

1 2007 version of a selfie where, you know, Dr. Feldman and
2 Dr. Boscia are saying, hey, look at us, we've got a cause of
3 action. That's exactly what this is. And they can't get
4 away from it.

5 They raised, I think, an argument under equitable
6 estoppel, but they had all of this information in front of
7 them. Nobody was keeping anything from them in 2006 and
8 2007. They admitted they had all three of these notes.

9 If they thought there was a difference, they could have
10 looked through them. They didn't even ask Dr. Fogarty in
11 his deposition about any of these notes because there
12 weren't any -- there wasn't any material difference between
13 the three.

14 I mean, we asked Billy Gunn and Spencer King about it.
15 And they said -- they admitted having the notes. And they
16 said, well, if we'd known there was a difference we would
17 have asked him about it. But even they couldn't perceive
18 that there was a significant difference between these
19 versions of the notes. Again, that's just a red herring
20 trying to divert the Court's attention from the email and
21 the clear convincing evidence that they knew they had a
22 cause of action in 2007.

23 Also, the one other point about the equitable estoppel
24 argument, they don't allege at any point that they relied on
25 that in any way. There was nothing in 2006 and 2007 that

1 the Defendants in this case did to hide or obfuscate the
2 facts which Dr. Feldman and Dr. Boscia knew that they had a
3 cause of action for abuse of process in 2006 and 2007.

4 The -- I would be delighted to answer any questions.
5 There's a lot of material. I know Your Honor has spent a
6 lot of time reading the brief. I don't want to go over
7 again everything in the brief. I tried to hit what I think
8 are the main points. But I'll be delighted to answer any
9 questions that you may have.

10 **THE COURT:** Okay. I don't have any at this time.
11 Anybody else?

12 (No response)

13 **THE COURT:** Mr. Mann.

14 **MR. MANN:** Thank you, Your Honor. May I approach?

15 **THE COURT:** Yes, sir.

16 **MR. MANN:** And let me talk while I walk. Yesterday we
17 made selection of documents and things of that nature that
18 we wanted to upload. This is two copies, one for your
19 clerk.

20 **THE COURT:** Okay.

21 **MR. MANN:** And that's our memorandum with the
22 supporting affidavit or, excuse me, supporting material
23 within it.

24 And I'm chagrined. I'm just going to absolutely
25 apologize that the E-File System requires that all materials

1 be broken down to eight gigabytes is my understanding. And
2 so the materials that were filed yesterday were depositions
3 that had been taken in this case to date. And that is Dr.
4 Feldman's, Dr. Boscia, Dr. Shantha, Billy Gunn, Spencer
5 King, Dr. Randy Wade and also Dr. Wilson Smith. I believe
6 that's all the depositions that were uploaded.

7 And so each of those depositions give the nature of the
8 attachments and things of that nature, requiring that they
9 be broken down. That's why there's eighty or ninety
10 exhibits that have been uploaded.

11 Prior to getting started I need to reference this. And
12 I apologize that I'm a little disjointed because over the E-
13 Filing System, as Matt correctly stated, we were up over
14 2:00 last night.

15 Your Honor, I'd like to mark this as Plaintiffs'
16 exhibit 1. This is nothing more than the underlying
17 appellate decision remanding this case after the case was
18 dismissed by Judge Verdin. Here's a courtesy copy for the
19 Court.

20 (Whereupon Plaintiffs' exhibit 1 was marked and given
21 to the Court)

22 **MR. MANN:** And looking at this decision when it was
23 remanded, I'd like to call the Court's attention to the
24 third page. In the third page the court says that the
25 essential elements of the abuse of process are, (1), an

1 ulterior purpose, and (2) a wilful act in the use of process
2 that is not proper in the regular content of the proceeding.

3 And the court sent back and said Feldman, Casey, et al.
4 litigants, you need to put dates as to what the wilful acts
5 are. And that's what we have attempted to do with several
6 different things.

7 Let me also hand up, Your Honor -- these were filed for
8 the court system. I believe everybody has a copy, but I
9 brought some for everyone. And let me mark this as exhibit
10 number 2. Let me get these marked, Judge, and we can talk
11 about them very briefly.

12 (Whereupon Plaintiffs' exhibits 2, 3 and 4 were marked
13 and given to the Court)

14 **MR. MANN:** Your Honor, I have nothing but the highest
15 respect for opposing counsel. I think we've had a good
16 working relationship. A lot of information in this case, a
17 lot of things that everyone has to go over.

18 Thursday, this past Thursday afternoon we received
19 their book of memorandum, which, of course, the Court
20 received, over fifty pages of argument. And we were waiting
21 for that to finalize our positions and our affidavits.
22 Pursuant to the rule, the affidavits were timely filed and
23 they were served. And I've not heard an argument that they
24 were not timely filed.

25 Are the affidavits self-serving? Of course. That's

1 what we're here for. We're here to, of course, represent
2 our positions, okay?

3 And the problem that we have with Defendants' argument
4 is the newspaper article was fully, absolutely investigated.
5 I would stipulate Dr. Feldman is a one hundred percent
6 involved client. I mean, he is -- he's going to read every
7 piece of paper. He's going to look at every single thing.
8 He's going to ask every single question that he thinks is,
9 you know, that's appropriate or give an explanation as to
10 why he doesn't understand what is going on.

11 When he saw the newspaper article, he was furious.
12 Stipulations that we can make is, number one, he knew when
13 the newspaper article came out. He is a very active client.
14 And he is definitely incensed by it.

15 He felt the filing of the lawsuit should not have ever
16 happened. He felt that it was medically impossible. He
17 felt that his former business partner had it out for him.
18 Those are stipulations -- I don't think anyone would object
19 to those stipulations?

20 **MR. HENRIKSON:** I think those are the facts.

21 **MR. MANN:** I do. I totally agree with that. However,
22 the problem that we have is looking at the newspaper
23 article, it's not part of the process, it's not a wilful
24 act. Dr. Fogarty testified under oath, I had nothing to do
25 with the newspaper article.

1 William Mark Casey, I had absolutely nothing to do with
2 the newspaper article. And the Rule of Ethics protects Mr.
3 Thompson from talking to the press as long as it is
4 consistent with the public documents and things of that
5 nature.

6 That is the purpose of Dr. Feldman's affidavit. It
7 can't be a wilful, or ulterior, or a part of misusing the
8 process. It's notice. It's a measure of damages. It flows
9 from what they were doing. But that is not a wilful act
10 that has been pled within the complaints at all. It is
11 purely there for the damages. It is purely there to show
12 exactly the consequences of the abuse of process that was
13 going on in the underlying case.

14 So the Defense coming in and saying that this newspaper
15 article serves as a wilful act with an ulterior purpose to
16 affect the process when they have testified under oath we
17 had nothing to do with the newspaper article is pretty
18 disingenuous. And that's the basis of the email. That's
19 the basis of the affidavit. It's the basis of Dr. Feldman's
20 investigation. And he rejected that the newspaper article
21 was a wilful act.

22 Did he want to sue these individuals? I will also
23 stipulate, absolutely. But he had to have the wilful acts
24 to support him bringing a cause of action.

25 Now, looking at the materials that we've provided to

1 you, Spencer King and Billy Gunn as well as Dr. Randy Wade,
2 one of the testifying experts, as well as Dr. Fogarty's
3 business partner, Dr. Wilson Smith, everyone testified, we
4 didn't know there were three versions of the same note. We
5 had absolutely no clue that there were three versions of the
6 same note.

7 And, Your Honor, we would be trying this case on the
8 same note, the undoubtedly note but for -- but for Dr.
9 Feldman going through a hundred, excuse me, eighty plus
10 thousand pages that was produced in this case on April 1st.

11 And he found a fax cover sheet from Chuck Thompson's
12 wife, Marie Gambrell, at the time, who was working for Dr.
13 Fogarty from Dr. Fogarty saying, you know what, my original
14 version of that note, let's just take that and let's just
15 wad it up and let's throw it in the trash can. I want you
16 to replace that note with this note.

17 There are three versions of this note. And let me pull
18 out some exhibits. Your Honor, may I set this gently up
19 here?

20 **THE COURT:** Yes, sir.

21 **MR. MANN:** Thank you, Judge.

22 And to quickly go through here. The first exhibit has
23 been Bate stamped in this matter as Thompson number 065553,
24 which was something that was, of course, produced through
25 him. And I'm sorry. This goes to the MRI. We'll get there

1 in just one second, Judge. I'm sorry.

2 (Pause)

3 **MR. MANN:** Okay. I'm sorry. Talking about the
4 newspaper article, we're at Thompson 065565. And at the
5 bottom of William Mark Casey's deposition, which was taken
6 toward the end of 2007, he was asked, did you see an article
7 that came out in the Herald Journal about this? About this
8 lawsuit? Yeah, I did. The reporter did not interview you?

9 (Pause)

10 **MR. MANN:** Your Honor, I'm missing a page. But his
11 response was, no, I did not speak with her. So year --
12 toward the year end of 2007, the date of his deposition is
13 on the cover page in the attachments, he is denying any
14 involvement whatsoever with the newspaper article.

15 Dr. Fogarty also, as we've already said, Thompson
16 017907 also states, did you discuss this, the content of
17 this article with Ms. Leonard before it was published?
18 Before it was -- no, I -- I don't even know who Ms. Leonard
19 is. And she was, of course, the reporter with the
20 Spartanburg Herald Journal.

21 So, again, we're looking at the situation where we've
22 got one email where Dr. Fogarty is venting. He is furious
23 about a newspaper article and yet his investigation clearly
24 indicates they denied any involvement. He had a right to
25 rely upon that, Judge, and a right also in his determination

1 of wilful acts and ulterior purposes as it relates to the
2 process.

3 So, looking at another email from Dr. Fogarty, this, of
4 course, was produced. This is marked Mann 001005. It is, I
5 believe, included within the material.

6 As of September, end of 2007, I think Fogarty will deny
7 he told his sister -- talking about Mark Casey's sister --
8 Thompson anything definite. And if he did, they took it out
9 of context unless disability evaluation is incriminating.
10 And that is also two of the other things that were uploaded,
11 the entire Aetna disability file and the entire Social
12 Security file, both of which were obtained in the year 2008.
13 So even after this email that they're talking about, Dr.
14 Fogarty, I mean, excuse me, Dr. Feldman is actively trying
15 to investigate the situation and determine what's going on.

16 The lynchpin is not just the three notes, which we'll
17 get to in just a minute. The lynchpin was Dr. Grace's
18 deposition. Dr. Grace's deposition contained, which was
19 also taken in 2008, Dr. Grace's deposition contained a
20 multitude of office visit notes where Dr. Grace was one of
21 William Mark Casey's treating physicians. He was referred
22 to him by Wilson Smith. And he, of course, was providing
23 services originally looking in as to whether or not William
24 Mark Casey had Post Traumatic Stress Disorder.

25 And so when his deposition was -- occurred in 2008 we

1 received the office visit notes where William Mark Casey, of
2 course, is talking with his therapist and providing
3 information. This is Thompson 062453, dated 11/5/04.
4 Charlie Fogarty is helping Carol evaluate the medical
5 treatment that Mark has received and the outcome.

6 During his deposition Dr. Fogarty testified, I saw him
7 in the middle of 2005 the first time, which is the infamous
8 7/21 note, which we'll look at the three different versions
9 of that. This was the notice. This was the notice. This
10 laid the underpinning of taking Dr. Fogarty's deposition
11 which showed that he wasn't being truthful, that he was
12 hiding his involvement, that he was not forthright with the
13 discovery process, he was not forthright while Mr. Thompson
14 was sitting here anyway. No, he was involved 11/05. But
15 again, just another example of all the things that were in
16 Dr. Grace's file.

17 This is Thompson 062452. Yet again, Dr. Fogarty is
18 testing, he has provided medical services. This is
19 11/11/04.

20 In all of the medical records that have been produced
21 in this case, first visit that is documented in Dr.
22 Fogarty's records is 7/21/05. He's not being honest. He is
23 providing services secretively on the side and trying to
24 develop a cause of action against his former business
25 partner.

1 Thompson 062451. Dr. Fogarty performed stress test on
2 him, Mark, by -- and breathing tube said that he had the
3 lung function of a sixty year old man. When it comes to Dr.
4 Fogarty's deposition, I believe it's December 22nd, 2008, he
5 testifies that William Mark Casey has absolutely no
6 pulmonary injury. He never produces this stress test, which
7 is a pretty big deal in that it's not just a simple fly by.
8 It creates several documents, not produced.

9 So that on top of the suspicions and things that Dr.
10 Feldman was looking at clearly indicated -- hold on one
11 second. This -- hold on. This man with Mr. Thompson
12 sitting there is not testifying truthfully under oath. He's
13 not producing the documents that we've requested. How is
14 this fair? These are wilful acts.

15 Gunn 001685. This is a letter generated by Spencer
16 King. And it says, we're trying to get discovery started in
17 this case. We need to get this done. We want to take these
18 individual's depositions. We want to know what's going on
19 in this case.

20 Not only in defense of the medical malpractice case,
21 but Dr. Fogarty is purely on Spencer's, you know, back as to
22 what's going on. Why are these individuals allowed to bring
23 what I perceive is not a meritory [sic] suit? And what they
24 do is, again, November 19th, 2008, he is still trying to get
25 the date to sit down with Dr. Fogarty to ask questions. So

1 whether or not there is an abuse of process claim, whether
2 or not there's a defense, whether or not -- what is going
3 on, okay?

4 And the second page of the letter that's attached is
5 Gunn 001686. So April 1st, 2016, the parties finally have
6 the confidentiality order that you signed, Judge. And we
7 were allowed to exchange the various underlying court files,
8 my file, Mr. Thompson's file.

9 And looking at this, January 7th, 2005, this is a
10 letter going over to an assistant of Mike Parham because
11 that's where one of the first places, I believe, that Mr.
12 Thompson shopped the case, you know, William Mark Casey's
13 case. And it says in here that I've got a former partner,
14 Dr. Feldman, he wants to remain in the background. He wants
15 to, you know, testify and help with this case, okay?

16 Again, Dr. Fogarty's sworn statement is I wasn't
17 involved with the care and treatment. I wasn't involved,
18 you know, until the 7/21 note. This was never produced,
19 Judge. This clearly should have been produced. He was
20 being treated as an expert witness before the designation of
21 an expert witness.

22 During his deposition, it's in the materials, during
23 his deposition he testified, yeah, I created a document. I
24 did. I created a document with some bullet points, some
25 oversight, you know, to help the Plaintiffs in the

1 underlying case. It was two pages. Those two pages were
2 ultimately attached to his deposition.

3 April 1st we find out it wasn't a two-page document, it
4 was a twenty-something-page document. And Spencer King goes
5 over that in his deposition, which, of course, it's
6 uploaded.

7 Spencer King says, clearly this should have been
8 produced. This is expert witness material that should have
9 been produced. In the underlying case the Defense did not
10 have all the information that they should have had which
11 would have precluded this case being tried in this room for
12 two weeks and was not given to them.

13 We've talked about the three notes, Judge. These are
14 the three notes that were attached to Dr. Fogarty's
15 deposition, excuse me, Dr. Feldman's deposition in this
16 case. Three different versions. And for the benefit of the
17 Court, I'm going to try to refer to them as I think of them,
18 B1, B2, B3. And I'll link that up. Also, common occurrence
19 and an undoubtable occurrence. Three extremely different
20 things.

21 First one over here is number 5 in the underlying case.
22 So that was produced as exhibit number 5 to Dr. Feldman's
23 deposition, which, again, I uploaded it because I wanted the
24 deposition before the Court. It has exhibit sticker number
25 20, Dr. Fogarty because that was attached on 12/22/08 during

1 his deposition. The underlying case was tried on this note.
2 That is the undoubtedly note.

3 Spencer King says in his deposition that the
4 undoubtedly note exceeds the more probable standard to bring
5 a medical -- medical malpractice cause of action. It is
6 pertinent to the Court that this cause of action, the
7 underlying medical malpractice cause of action was brought
8 before the Court before. So there was no deviation of
9 standard of care, affidavits or anything of that nature.

10 And this undoubtedly note was relied upon throughout
11 the case. It was the only incident of any kind of
12 supporting material that William Mark Casey had a brain
13 injury. I mean, this was it. I mean, this was their, you
14 know, million dollar ticket. And this is why the case was
15 pursued because Dr. Feldman undoubtedly caused a brain
16 injury to William Mark Casey.

17 In the Defendants' material they bring up a point that
18 I don't think -- I don't think is a hundred percent correct.
19 They point out that the undoubtedly note is not signed. And
20 we'll talk about that in just one half second, Judge.

21 The second note is the original note. And the second
22 note is the common occurrence note. And the importance of
23 the common occurrence note is Dr. Fogarty realized very,
24 very quickly that it wasn't a common occurrence. As a
25 matter of fact, by the time he testified within his

1 deposition he said, this -- this is like a one time
2 occurrence.

3 **MR. HENRIKSON:** Could I just ask for a point of
4 clarification? When he says the second note, he's talking
5 about ---

6 **MR. MANN:** I'm sorry.

7 **MR. HENRIKSON:** He's talking about the notes -- because
8 I don't think that there's -- there's no evidence or
9 testimony as to the order in which the notes were created.
10 As long as he's just saying the second note on his board,
11 then I'm fine.

12 **MR. MANN:** And ---

13 **MR. HENRIKSON:** And I apologize for interrupting.

14 **MR. MANN:** No, you're fine, Matt. And it's a good
15 point. And I should have indicated what note I'm talking
16 about. But, no, I disagree with him. And we'll talk about
17 how I know that's the first note that was created.

18 The reason that I know that that was the first note
19 that was created is in Spencer King's material his
20 lung/chest chart was put into evidence and pursuant to his
21 subpoena the undoubtedly note, excuse me, the common
22 occurrence note was produced. Also buried within there was
23 the second note.

24 The reason I know the order is I've got Marie
25 Gambrell's fax cover sheet saying you need to replace this

1 note, which is the common occurrence note with the
2 occurrence note. And those were materials that were
3 produced April 1st, 2016. That's how we know the order of
4 the notes.

5 And then, of course, Judge, by the time we get to 2008,
6 December 21st -- 22nd, then Dr. Fogarty reasons the record,
7 the undoubtedly note, and has it attached to his deposition
8 and owns that note. But I'll show you that in just a
9 second.

10 So, again, I think if you look through the materials in
11 the records, it's very, very clear the order of the notes.
12 And, again, we contend you've got three notes, you've got
13 Marie Gambrell's cover sheet from Dr. Fogarty's office going
14 to Mr. Thompson's office saying take the note and throw it
15 away.

16 **MR. HENRIKSON:** Your Honor, ---

17 **MR. MANN:** And that -- and I'll show you the fax. I'm
18 sorry. I'm being argumentative. I'm fine with that, Matt.
19 But I'll show you the fax, Judge. I've got it. But here it
20 is, common accommodation. It wasn't a common accommodation.
21 Totally against his ultimate testimony, Judge.

22 The second note that we discussed -- and, again, this
23 is the note that was attached -- and I'm talking about it a
24 lot. I might as well produce it. And I'm looking at
25 Thompson 000536. And this is a fax transmittal cover sheet.

1 And I'll read it. The 7/21/05 note we discussed
2 earlier to follow. Dr. Fogarty made a few changes, nothing
3 significant. Please update your current copy. Going from
4 common occurrence to occurrence is self-evident. That's a
5 pretty big change, Judge. And, of course, he's doing that
6 to make sure he can maintain this cause of action against
7 his former partner.

8 And, again, you see the, you know, almost like a
9 fingerprint, but you see the streaks. Again, this is from
10 Thompson's file. And you see the streaks -- and, again,
11 I'll represent that the occurrence note was attached, okay?

12 So -- and just to make sure that we show the Court all
13 three. Thompson 003172. Not signed. Going back quickly,
14 Judge, common occurrence note is signed. Revised note sent
15 over, signed. And in the materials Defendants argued that
16 this unsigned note was just purely a draft.

17 The undoubtedly note was the note that the underlying
18 litigation was tried upon. It was the note, as I've said
19 more than once, was attached to Dr. Fogarty's deposition.

20 And looking at his deposition, Thompson 017772, exhibit
21 number 20. As we've discussed earlier, exhibit number 20,
22 undoubtedly unsigned note, introduced at Dr. Fogarty's
23 deposition. And he says -- I can't remember if Billy or
24 Spencer was asking, but the entire deposition is attached to
25 Spencer King's deposition. I can't remember. I can't

1 remember if it was Billy or Spencer.

2 But he shows him the undoubtedly note. And he says,
3 okay, I'm looking at it. Thompson 017773. I see page 3
4 where it says -- it's a typo or misannunciation [sic] during
5 the deposition. Page 3. All right. Third paragraph under
6 comment. Would you read that to us, sir?

7 He reads, Dr. Fogarty, the undoubtedly note. He
8 doesn't say in his deposition, oh, that's just a draft.
9 You've got the wrong note, sir. He doesn't say that. He
10 owns that note. The shell game's playing with these three
11 notes and the fact that no one that has testified knew that
12 there were multiple notes.

13 Mr. Thompson knew there were multiple notes. He had
14 them in his file the whole time. Did he produce those? No,
15 sir, he did not. And that's in your material also.

16 The only note Mr. Thompson produced to Billy Gunn
17 through his subpoena in your client's medical records was
18 the undoubtedly note. These were wilful acts that were
19 discovered in the year 2008 that formed the basis of this
20 lawsuit being brought.

21 We can talk about the MRI, Judge. Are you familiar
22 with the MRI material? And is it appropriate for me to ask
23 a question of the Court?

24 **THE COURT:** Yeah, I've read some of the stuff, but I
25 haven't seen everything within this file in the middle of

1 the night.

2 **MR. MANN:** So the MRI was, of course, an important
3 neurological test that was produced through Mr. Thompson's
4 brother-in-law over in Charlotte, North Carolina. Or,
5 excuse me, the test was arranged to have occurred. The test
6 was done under a fictitious date of birth and a fictitious
7 name. Spencer King's affidavit that is in the material
8 indicates that, no, you know, that wasn't produced, you
9 know?

10 So between Dr. Grace's notes showing that Dr. Fogarty
11 was actively involved in testing, treating, dealing,
12 advising, helping in the litigation prior to his
13 depositional testimony is one of the wilful acts. That was
14 discovered. We had no way to discover that until we had
15 Grace's notes. And then it is confirmed after the April 1
16 production of 2016.

17 So the Defense team to sit here and tell the Court that
18 Dr. Feldman should have known to bring a cause of action
19 based upon the newspaper article that the Defendants
20 themselves denied any involvement with is very disingenuous.
21 Purpose of the affidavits are I realize that there was not a
22 verification of the complaints. And so that was number one.

23 Number two, they believed what they said. They
24 incorporate therein. Dr. Feldman's position is very
25 consistent with I am looking for a reason to protect myself.

1 He is not an individual that is sitting on his hands,
2 watching the clock roll by. And between, excuse me, January
3 1, 2008, the year when all this information is discovered,
4 is well inside the three years of this cause of action being
5 brought in 2010.

6 With the Court's permission, let me just think for one
7 second to make sure I haven't left anything out.

8 (Pause)

9 **MR. MANN:** So going back to the Supreme Court, excuse
10 me, the Appellate Court decision in this case, the proper
11 inquiry in my opinion, Judge, you'll apply the law, of
12 course, and I defer to you, but the proper inquiry is was
13 there an ulterior purpose and were there wilful acts in the
14 process of that? And, Your Honor, the newspaper article
15 doesn't reach that threshold. Thank you, Judge.

16 **THE COURT:** Thank you. Anything briefly?

17 **MR. HENRIKSON:** Very briefly, Your Honor, to address a
18 couple of things. And I appreciate Mr. Mann bringing up the
19 fax, which did not tell Chuck Thompson to wad it up and
20 throw it away. What it said was there are -- there's a
21 couple of changes, not significant.

22 What is significant, Your Honor, is that the note goes
23 from common occurrence to occurrence, which actually waters
24 down the theory. Occurrence is less likely than common
25 occurrence. So Mr. Mann is arguing against himself. The

1 note changes from something more serious down to something
2 less serious. So I don't understand how he's damaged by
3 that.

4 In any event, the undoubtedly note was never signed.
5 And both of these notes were in the record that was produced
6 at Dr. Wilson's deposition in the underlying medical
7 malpractice case.

8 And, moreover, they've already stipulated that as of
9 August 2006 they had -- they were in possession of all these
10 notes. They just didn't realize there was a difference
11 because in truth there is not a significant difference as
12 Dr. Boscia testified.

13 Dr. Fogarty -- prior to any depositions being taken,
14 Dr. Fogarty was identified as a treating and an expert
15 witness. So to say that in his deposition -- to feign
16 surprise that somehow he had been an expert is not -- is not
17 accurate.

18 MR. MANN: Can you ---

19 MR. HENRIKSON: The ---

20 MR. MANN: --- when the designation was, please?

21 MR. HENRIKSON: I don't have the date of the -- the
22 answer ---

23 MR. MANN: Okay.

24 MR. HENRIKSON: The answer to interrogatories were
25 served prior to the depositions being taken. Mr. Casey's

1 deposition was taken August 29, 2007, also outside of the
2 three years.

3 The Court of Appeals, Your Honor, this case was --
4 Judge Verdin dismissed this case. The Court of Appeals told
5 us that because this is a motion to dismiss and the four
6 corners of the complaint did not show the Court of Appeals
7 as to any -- as to when any acts occurred, which would have
8 put the Plaintiffs in this case on notice that they had a
9 potential abuse of process claim.

10 So they sent us back and said our reversal of dismissal
11 of the appellant's abuse of process claim is without
12 prejudice to respondents, to move again once the case is
13 remanded to circuit court. So they sent us to get the
14 witch's broom. Go find out when they knew or should have
15 known that they had a cause of action.

16 And so we came back with something better, more than
17 just, you know, ideas and theories as to when they knew or
18 should have known. We have an actual statement. We have
19 the selfie. We have the actual statement in their email in
20 August of 2007 where they say we had a cause of action for
21 abuse of process against Dr. Fogarty and Chuck Thompson.

22 And the article is not a bad act. The article is proof
23 of damage by the underlying medical malpractice action. The
24 bad act -- the reason that they're suing is clearly stated
25 as being the filing of the lawsuit, which they were damaged

1 by immediately.

2 Dr. Feldman testified, we are suing Dr. Fogarty for
3 fabricating this scheme. He had all of that knowledge in
4 these notes in the records and the fact that he was an
5 expert witness prior to August of 2007.

6 He had to put the word undoubtedly in there in order to
7 get the lawsuit. The reasons that we're suing him is
8 because he created this scheme.

9 The legal purpose was to hang his colleagues, to
10 embroil them in multi-year litigation. That was why -- and
11 that -- they knew that the instant the lawsuit was filed.
12 Dr. Feldman said I knew this was a fraudulent, bogus lawsuit
13 one second after I read it. That was his testimony.

14 And Chuck Thompson's alleged abuse of process was
15 filing the lawsuit. So in filing the lawsuit he had to have
16 the lawsuit in order to fabricate the disability claim with
17 Social Security. So in filing the lawsuit for that purpose
18 the legal process was abused by Thompson on behalf of Casey.
19 That's the other part. He filed the lawsuit for Fogarty to
20 follow his agenda.

21 What we have here is clearly their testimony. This is
22 why we have abuse of -- this is why we filed this lawsuit,
23 not at the eleventh hour or some other theory that amazingly
24 defeats the statute of limitations. This is what they
25 testified to under oath. This is why we filed the lawsuit.

1 It's outside the three years and the Court should grant the
2 motion for summary judgment.

3 **THE COURT:** Okay.

4 **MR. MANN:** Brief ---

5 **THE COURT:** Briefly.

6 **MR. MANN:** Yes, sir. Judge, one thing. Number one,
7 Dr. Fogarty being designated as an expert witness did not
8 occur until after year 2008. And with the Court's
9 permission I would like to supplement and provide a copy of
10 the actual, excuse me, answers to interrogatories where Dr.
11 Fogarty was finally identified as an expert witness.

12 **THE COURT:** Any objection?

13 **MR. HENRIKSON:** No, Your Honor. But I think these
14 answers to -- that there's a designation of experts that the
15 answers to interrogatories identify him as a treating
16 physician and an expert witness. And I believe that's well
17 before the end of 2007.

18 **THE COURT:** Okay.

19 **MR. MANN:** And if I may supplement, I would like to so
20 the Court can see that. And I would argue very, very
21 succinctly that there is a huge difference between being a
22 treating fact witness versus being an expert witness which
23 place different requirements on the information that Mr.
24 Thompson and Dr. Fogarty should have provided, which they
25 did not provide.

1 And there's a -- excuse me. I apologize. I really
2 want to make one last point. The Appellate Court rejected
3 the theory that the mere filing of the lawsuit was a wilful
4 act. There had to be an -- excuse me. There had to be some
5 other ulterior purpose or wilful act that needed to be pled
6 that needed to show when the process was being abused.

7 So I disagree with Mr. Henrikson that the mere filing
8 of the lawsuit was the wilful act with ulterior purpose for
9 the corruption of the process. Thank you, Judge.

10 **MR. HENRIKSON:** He's already argued that it's the
11 million dollar note that is the act, which he had in 2006.

12 **THE COURT:** Okay. It's under advisement. And if
13 you're going to submit anything, you need to get it to me
14 this week.

15 **MR. MANN:** Yes, sir.

16 **THE COURT:** Okay. Anything from anybody else?

17 **MR. HENRIKSON:** Your Honor, thank you very much for
18 your time. I appreciate it.

19 **THE COURT:** Thank you, lady and gentlemen. Thank you.

20 **MR. MANN:** And, Judge, before we go off the record, the
21 only thing I plan to submit is just the answers to
22 interrogatories designating Dr. Fogarty as an expert witness
23 ---

24 **THE COURT:** Okay. Thank you.

25 **MR. MANN:** --- so that we have that here. Thank you,

1 Judge.

2 (Hearing Ended at 10:12 am)

3 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 20th day of June 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 14, 2017

S/Susan W. Hudgins

Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS
7th JUDICIAL CIRCUIT

3 GREGORY J. FELDMAN, M.D., et al.,
4 Plaintiffs,

ORIGINAL

5 vs.

CASE NO. 2010-CP-42-5743

6
7 RAY E. "CHUCK" THOMPSON, et al.,
8 Defendants.

9
10 HEARING BEFORE: HONORABLE KEITH KELLY

11 DATE: October 19, 2017

12 TIME: 2:10 PM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
Spartanburg, SC 29306

15 REPORTED BY: LORA L. McDANIEL,
16 Registered Professional Reporter

17
18 APPEARANCES:

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24
25

1 THE COURT: Feldman vs. Casey, et al. Your motion,
2 Mr. Mann.

3 MR. MANN: Thank you, Your Honor. Being granted
4 some time this morning indicates The Court has read the
5 memorandums that have been supplied. I'm going to rest on
6 those memorandums because I think it explains very clearly what
7 our positions are. And I will do my best to address any
8 questions The Court may have.

9 THE COURT: I don't have any at this time.
10 Yes, ma'am.

11 MS. CHEEK: May it please The Court, Your Honor.
12 My name is Ellen Cheek. My partner, Mike Wilson, and I
13 represent Dr. Charles Fogarty in this action. My co-counsel,
14 Matt Henrikson, represents Chuck Thompson.

15 We appreciate the Court's consideration of our
16 opposition to Plaintiff's Motion for Reconsideration. We ask
17 that The Court deny the Motion. We believe that The Court has
18 ruled fully and properly on Defendant's Summary Judgment Motion
19 in deciding that more than three years before Plaintiffs
20 brought this suit they had an actual belief and stated in
21 writing their knowledge that they had not only been injured by
22 Defendants alleged action with respect to the medical
23 malpractice case at issue, but that they also had stated in
24 writing their understanding that they had certain causes of
25 action and claims arising from that.

1 Based on the emphasis South Carolina puts on
2 statutes and limitations, Your Honor, we believe that The Court
3 made the correct decision. And if you'll allow me to use some
4 demonstrative aides here.

5 MR. MANN: Your Honor, may I sit in the witness box
6 so I can see?

7 THE COURT: Sure.

8 MR. MANN: Thank you, Judge.

9 MS. CHEEK: Your Honor as an introductory and
10 procedural matter, as we have stated in our opposition brief,
11 we believe that Plaintiffs in this case have not met what case
12 law indicates are the standards for revising The Court's
13 judgement. Plaintiffs have not advanced any new argument that
14 they didn't either raise or could've raised when the Motion was
15 heard. There have been no changes in the law. And the facts
16 decidedly have not changed.

17 In addition, Your Honor, under Rule 52, findings by
18 the court, This Court, that Rule specifically provides that
19 findings of fact and conclusions of law are unnecessary in
20 decisions of motions under Rules 12 or 56. To the extent
21 Plaintiffs complain that This Court Order was somehow deficient
22 because a particular factual matter was not addressed, we
23 submit, Your Honor, that procedurally is meritless.

24 Now, between Plaintiffs' initial brief, reply
25 brief, Plaintiffs have made four arguments or four main

1 arguments in support of their Motion For Reconsideration. All
2 of these fail to establish that the Order needs amending or
3 should be amended. First, Plaintiffs argue that Dr. Feldman,
4 in an August 2007 e-mail -- which we've taken the liberty of
5 blowing up here. I know The Court is familiar with it.

6 But Plaintiffs contend that this e-mail cannot
7 support a ruling that the statute of limitations has expired on
8 their claims because Dr. Feldman was wrong or later found out
9 that he was wrong when he -- that a certain Spartanburg Herald
10 Journal article had been published right after the medical
11 malpractice was filed. That article didn't involve the people
12 he thought it involved.

13 Respectfully, Your Honor, this argument fails as a
14 matter of law because the record evidence in this case makes
15 clear that, when Dr. Feldman wrote this e-mail and the other
16 August 2007 and September 2007 e-mails that this Court included
17 in its Order, that he had the belief that the medical
18 malpractice action had been filed based on a July 21st note
19 that Dr. Fogarty had written.

20 Dr. Feldman testified that he believed not only for
21 no less than a second, I believe was his testimony, that the
22 case was valid. And he believed immediately that he had legal
23 claims arising from the medical malpractice action being filed.

24 South Carolina law is clear on this point, Your
25 Honor, as you know. The failure of The Court to assign statute

1 of limitation argument is when the date or the date the
2 Plaintiffs discover an injury. Wiggins v. Edwards instructs
3 that it's not the date the plaintiffs discovered the identity
4 of the wrongdoer.

5 Gibson versus Bank of America instructs it's not
6 the date plaintiff hires a consultant lawyer.

7 Young v. South Carolina Department of Corrections
8 instructs it's not the date the plaintiff knew he had a
9 particular claim.

10 And Gibson, again, says it's not the date plaintiff
11 develops a full blown theory of recovery.

12 What hasn't changed, Your Honor, is the background.
13 The Court is well aware of, in making its Order, when
14 Dr. Feldman wrote this note, he understood that he -- or
15 believed in his mind that he had been injured and that he had
16 legal claims. The claims that he investigated and researched
17 included the abuse of process cause of action. He cannot now
18 claim that the idea of a claim didn't relate to the underlying
19 core facts on which this case is based which, again, is not
20 failure of writing a note, and Dr. Fogarty's and Mr. Thompson's
21 filing a lawsuit based on it.

22 The second argument, Your Honor, that Plaintiffs
23 made in support of their Motion for Reconsideration is that the
24 statute of limitations on their abuse of process claim could
25 not have started running until 2008 because the acts or some

1 acts performed on the basis of that claim that they allege did
2 not occur until 2008.

3 Plaintiffs have had a lot to say about what this
4 case is based on. In their Second Amended Complaint, and
5 Dr. Feldman's deposition and the discovery that was exchanged,
6 again, it was Dr. Fogarty's writing a note and the lawsuit
7 being filed based on that note to form the basis for the claim.

8 Plaintiffs now seek to direct This Court's
9 attention away from these events that Plaintiffs think were
10 wrongful and that, from the get-go of the lawsuit, believe it
11 gave them causes of action to try to tell The Court: No, no, I
12 want you to look at 2008.

13 2008 was certainly the buzz date that Dr. Feldman
14 wanted to remind Dr. Boscia during his deposition when both
15 were under oath. That's the date you want to remember.

16 Seeking to do the same thing with This Court on the
17 eve of the summary judgment hearing, Your Honor, the literal
18 eve of it, Dr. Feldman submitted an affidavit to This Court
19 where he testifies in paragraph number 22 that: Plaintiffs'
20 lawsuit is based on information received during the depositions
21 of Dr. Grace, Dr. Waid, Dr. Fogarty, and the fraudulent MRI,
22 which all occurred in the Year 2008.

23 Arguably, Your Honor, Plaintiffs have not divorced
24 themselves from the core bases of this lawsuit, the note, or
25 the filing of the medical malpractice action.

1 The affidavit is directing The Court's attention to
2 2008. But I respectfully submit the Plaintiffs did not state
3 with This Court: We don't intend to try this case if we get to
4 the jury on anything related to the note. We just would like
5 you to not pay attention to it for the time being. That's
6 certainly improper on The Court's consideration of the record.

7 One of the things Plaintiff has asked This Court to
8 do is to take its Second Amended Complaint only on the
9 allegations of alleged acts occurring in 2008. Again, the
10 Court well knows this is not a Rule 12(b)(6) motion. The Court
11 gets to and did properly consider the entire record when it
12 granted summary judgment in Defendants' favor.

13 Your Honor, we propose that there are only two ways
14 that Plaintiffs' current argument about 2008 could be correct.
15 One would be if South Carolina case law supported the
16 proposition, which is at least alluded to in Plaintiffs' brief,
17 that an act preceding the issuance of process can't be the
18 improper act on which an abuse of process claim is based. That
19 would be one of them.

20 Number two, the only other way we believe that
21 Plaintiffs' argument could be proper is if Plaintiff disavowed
22 and distanced itself from Dr. Feldman's deposition testimony
23 and other record evidence, which it has not done.

24 As to the improper element of an abuse of process
25 claim, this is a matter easily disposed of by The Court, if

1 you'll allow me. The Court of Appeals ruled directly on this
2 issue in Food Lion in 2002, when it held: That the willful act
3 requirement of an abuse of process claim is not limited to
4 those abusive acts occurring after process is issued but
5 includes coercive and extortion acts that caused process of
6 issuance in the first instance.

7 The Supreme Court in Huggins also elaborated on
8 this. It said: If there are acts that affect an entire
9 issuance of process, then that entire process can be an abuse
10 of process. You can have an act preceding the issuance of
11 process, and you can also have an entire case being an abuse of
12 process.

13 Now, Defendants stridently deny that they engaged
14 in any abuse of process or improper acts with respect to the
15 medical malpractice action. However, to the extent that
16 Defendants -- or Plaintiffs have alleged that the acts that
17 they believe were improper -- the issuance of the note, the
18 filing of the lawsuit based upon it were improper -- they
19 certainly do form the cause of action that's been before This
20 Court. This is why we're here today.

21 As to the second way that Plaintiffs could possibly
22 convince The Court that 2008 is the actual date, The Court
23 would have to ignore completely Dr. Feldman's testimony.
24 Instead of his 11th hour affidavit, we have multiple hours of
25 testimony during this deposition last October. This is an

1 example of it from page 76. If you'll allow me to approach,
2 Your Honor. Actually, I have some additional copies of these.

3 Dr. Feldman, Your Honor, specifically tells during
4 his deposition why he is suing Dr. Fogarty, why he is suing the
5 Defendants. In his own language: We're suing Dr. Fogarty not
6 for seeing Mr. Casey, we're suing him for fabricating the
7 scheme. That's why we're suing him.

8 He claims that Dr. Fogarty has concocted the
9 medical note on which the medical malpractice action was filed.
10 That's quoted in the medical malpractice Complaint, and the
11 note that was produced in discovery two or three weeks after
12 the case was filed.

13 Dr. Feldman was clear: This is not a medical
14 record; it's a legal record to file the lawsuit. That's what
15 he's getting sued for. He got caught, okay; he got caught
16 writing a record not for the medical purpose but for the legal
17 purpose.

18 He also talks about the note being the lynchpin of
19 the medical malpractice action. And Your Honor, if you'll
20 allow me, I have five exhibits here. The point in making them
21 repeatedly is that Dr. Feldman testified about this repeatedly.
22 It wasn't an error in diction. It wasn't a misunderstanding of
23 the question. In each one of these and other points of his
24 testimony all support without question what Dr. Feldman wrote
25 in his August 11, 2007 e-mail. It's all consistent. It's

1 always the note. It's always the abuse of process of the
2 medical malpractice action.

3 Again, he's asked: You believe Dr. Fogarty used
4 his involvement with Casey to get a medical malpractice lawsuit
5 filed against you. It's deeper than that.

6 This is what the lawsuit is all about. In his
7 words: Everything else is background.

8 As I just said, this is the centerpiece of the
9 lawsuit.

10 Again, this is what Dr. Feldman believed, and his
11 own counsel in the medical malpractice action testified that
12 these were types of things Dr. Feldman was complaining to him
13 about from the very first meeting after the malpractice action
14 was filed. It wasn't a mistake when he wrote this over a
15 year-and-a-half later. He believed that what had happened to
16 him was wrong. And he believed that he had legal recourse
17 resulting from it.

18 Yet another indication of what is in Feldman's mind
19 comes from page 48 of his deposition where he talks about
20 Dr. Fogarty again: Fabricating the note. Fabricating a
21 medical diagnosis. He has a legal issue. How can he involve
22 these people in a lawsuit and hang them. He created a legal
23 diagnosis without a doubt. He's talking about the undoubtedly
24 language in the July 21st note. Again, it's consistent with
25 what he later writes.

1 These are the reasons, Your Honor, that Dr. Feldman
2 started researching claims and causes of action against these
3 Defendants as early as we believe as 2006. We had very few
4 e-mails that were produced in this case that predated the
5 statute of limitations cutoff. The ones that did get through
6 indicate very clearly, and Dr. Feldman testified that he was
7 actively engaging in legal research in consideration of the
8 claims that he held and believed he held against Defendants
9 from the get-go of his being sued.

10 Again, I've got two more, Your Honor. On page 71,
11 he is explaining about his -- about the scheme that he believed
12 that Dr. Fogarty and Mr. Thompson engaged in: The biggest part
13 of the scheme is the fabrication of the medical record.

14 So the scheme is to use the medical record as a
15 basis of a lawsuit?

16 Correct.

17 And that lawsuit was filed on behalf of Mr. Casey.

18 As to Dr. Fogarty not being a lawyer, Dr. Feldman
19 is very direct. He believes and he states that Dr. Fogarty --
20 well, he uses the word programmed Mr. Thompson to file a
21 lawsuit on his behalf.

22 Finally, Your Honor, as far as deposition excerpts
23 that, again, are completely consistent with Dr. Feldman's
24 stated belief. In this e-mail -- the one subsequent to it that
25 he had a cause of action in the claim against Dr. Fogarty at

1 this period of time -- is this except from page 85 of his
2 deposition. He states here his belief: That the legal process
3 was abused when the lawsuit was filed.

4 He says, yes, on behalf of Casey.

5 Question: In filing the lawsuit on behalf of Dr.
6 Fogarty, also, the legal process was abused; correct?

7 Yes.

8 And finally, Your Honor, the type of evidence that
9 This Court properly considered in granting summary judgment was
10 communications that, likewise, are consistent with
11 Dr. Feldman's stated belief and this August 11, 2007 and
12 subsequent e-mails.

13 Spencer King from the Ward Law Firm, October 10,
14 2007, more than three years before this claim was filed, he
15 writes the claim adjuster, and he says: I'm copying you on
16 some of the e-mails Dr. Feldman has sent me, attempting to
17 direct the litigation. Most of which deal with ancillary
18 issues; minutia says the article in the Herald Journal, all
19 suits against competitors, et cetera, et cetera. Spencer
20 filled in.

21 Those competitors were Dr. Fogarty. He wanted to
22 sue Chuck Thompson also. Spencer says: I directed him to seek
23 legal advice of others. He has his own lawyer if he feels he
24 has redress. My job is to defend this lawsuit. That does not
25 include filing suit against anyone.

1 This Court found that the record was clear; that
2 more than three years prior to filing this lawsuit Plaintiffs
3 had the requisite belief and knowledge of what they believed
4 were the underlying improper acts and improper motive to have
5 the statute of limitations toll and expire before they brought
6 the present lawsuit.

7 Your Honor, a third argument out of four that we
8 have enumerated as being asserted in Plaintiffs' Motion for
9 Reconsideration is that, even if the acts that formed
10 Plaintiffs' abuse of process claim, the acts that they believe
11 were improper and the Defendants maintained were not, that
12 Plaintiffs' statute of limitations could not have begun running
13 before 2008 because Plaintiffs didn't know about those acts
14 before 2008.

15 Your Honor, we've just taken The Court's time to
16 look through just a portion of the record that makes this
17 contention patently unsustainable. Also, Your Honor -- pardon
18 me. I can't see anymore.

19 THE COURT: I have the same problem.

20 MR. MANN: Judge, can we go off the record for one
21 second?

22 THE COURT: Yes.

23 (Off-the-record discussion.)

24 MS. CHEEK: I apologize. I really should get my
25 glasses also.

1 Plaintiffs did believe they had an abuse of process
2 cause of action prior to 2008. We believe that's the only
3 conclusion than can be reached from the record evidence.

4 Finally, Your Honor, number four, Plaintiffs'
5 Motion for Reconsideration argues that The Court Order is
6 insufficient because it doesn't specify a particular bad act
7 that borne the basis of Plaintiffs' abuse of process claim.

8 Couple things on this, Your Honor. Again, I know
9 I've repeated it; Court knows this. Defendants deny that they
10 engaged in any abuse of process or improper act as to the
11 medical malpractice action or otherwise.

12 In addition, Rule 52 spared This Court from having
13 to make any particular finding of facts in its Order. Your
14 Order that you issued granting summary judgment in our favor,
15 appropriately and, based on the evidence, comes to the
16 conclusion that the statute of limitation on Plaintiffs' claim
17 in this case couldn't have began to run, at the very latest, by
18 the date that these August and September 2007 e-mails were
19 written because they show conclusively Dr. Feldman's frame of
20 mind. That is the relevant information for This Court's
21 decision, is what he was thinking, not what The Court might
22 find as a particular proof of claim element and not what
23 Defendants say wasn't that type of act.

24 To the extent that Plaintiffs have argued that the
25 Court of Appeals has asked The Court to render such a finding,

1 we believe that is incorrect. The Court of Appeals, as your
2 Your Honor well knows, entered -- it reversed the trial court's
3 granting of the 12(b)(6) motion. It was confined to the four
4 corners of the Complaint. It was looking to see whether the
5 allegations -- it could pick up from the allegations of the
6 Complaint when it was that the specific point in time in which
7 Defendants committed a willful and improper act, an abuse of
8 illegal process.

9 Court of Appeals says: We don't see that in the
10 Complaint, we're going to send it down. Defendants, feel free
11 to move again when you get to this point.

12 We are at this point. We've done the discovery.
13 Your Honor has recognized it.

14 To the extent that The Court wanted to and it
15 didn't include in the Order, if it had wanted to identify what
16 the Plaintiffs allege was, in fact, an improper act, then
17 Dr. Feldman has been very clear about what that was; writing
18 the note in July 21, 2005 and the filing of the lawsuit. He
19 said it repeatedly.

20 Again, we believe that The Court's Order ruled
21 appropriately on this and that Your Honor has no grounds or
22 reason to have to go back and reconsider or revise its Order.
23 And we ask The Court to deny the motion. Thank you for your
24 time.

25 THE COURT: Thank you.

1 MR. MANN: Your Honor, I would just like to be
2 very, very briefly heard. I know we've taken a lot of time.

3 THE COURT: Tell you what. I'm needed next door
4 for just a minute. If you will stay right there.

5 (A recess transpired from 2:27 p.m. until 2:30
6 p.m.)

7 THE COURT: Mr. Mann.

8 MR. MANN: Your Honor, I don't know where to start
9 with this. I'm going to try to hit a couple quick points, then
10 sit down on my hands. I appreciate you taking the time for us
11 to be heard.

12 THE COURT: Yes, sir.

13 MR. MANN: There are three elements in an abuse of
14 process case; one, of course, what we talked about today;
15 ulterior purpose, willful act. And this conduct was done in
16 this process in the courtroom.

17 Also -- I don't think I will be corrected on
18 this -- that you can infer a willful act -- excuse me. You can
19 infer an ulterior act, the purpose for a willful act; not the
20 other way.

21 It's really clear there's a lot of animosity
22 between these physicians. Dr. Feldman had to have a concrete
23 willful act in order for him to have a basis to bring a
24 lawsuit.

25 Furthermore, I would suggest the Defendants also

1 had the obligation of proving to This Court that there were
2 willful acts conducted that should have been in all three
3 elements of the case; should've occurred, should've been known,
4 were discoverable, were known by the Defendants. And they have
5 failed to do that.

6 You know, the Order, number one, totally, for lack
7 of a better term, does not address what willful act was.

8 Number two, it doesn't address all three of the
9 elements. And so, therefore, if we're talking about dismissing
10 a cause of action on statute of limitation, I believe it's
11 pretty consistent in South Carolina law that you had to know
12 that the cause of action existed. So that's problem number
13 one.

14 Number two, this e-mail is -- and, again, you don't
15 get to read your clients' e-mails. My client is an active
16 little guy. He is thoughtful. He is searching. He is
17 protecting himself. He is concerned.

18 Two problems with this e-mail. First problem is
19 that Defendant Casey denied having anything to do with speaking
20 with the press. Dr. Fogarty, under oath, says he didn't have
21 anything to do with speaking with the press. As The Court
22 ruled on this point: As long as speaking is consistent with
23 the public document in the Complaint, that Mr. Thompson had the
24 right to speak.

25 Furthermore, there is no evidence from the record

1 whatsoever that he did. The only evidence in the record is
2 this e-mail and Dr. Feldman's affidavit that said: I saw this
3 and I asked Spencer King to look into it, and there wasn't a
4 basis there to file a lawsuit.

5 What is in the record is that, based upon Dr. Grace
6 and Dr. Fogarty's deposition, both of which occurred in 2008,
7 then it became clear that the 2005 note was not medically
8 supported. Then it became clear, as listed and incorporated
9 into Dr. Feldman's affidavit that, you know what? That's when
10 we knew. That's when we knew that things were going on outside
11 the process. Medical records were disappearing. Individuals
12 were lying under oath. Secret testing was occurring. Secret
13 testing was being withheld.

14 March 2010, Mr. Thompson told Judge Couch: I
15 instructed my client to lie under oath.

16 MR. HENRIKSON: That is absolutely not true. I
17 hate doing that; I got to do it.

18 THE COURT: Let's move along.

19 MR. MANN: Moving to the end, Judge. There are
20 three time periods in this case. One is the time period of the
21 medical malpractice underneath.

22 Second time period is from when Dr. Feldman filed
23 that lawsuit and what information he had filed.

24 Third time period is after discovery was received
25 in 2016.

1 These excerpts for Dr. Feldman's deposition are
2 taken out of context. They're not related to any point in time
3 whatsoever. They're inconsistent with what he believes and
4 should be rejected on that basis. Thank you, Judge.

5 THE COURT: Thank you. Ladies and gentlemen,
6 anything further? Just keep close watch on your e-mail.

7 MR. MANN: Thank you.

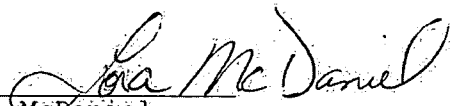
8 (The hearing was concluded at 2:35 p.m.)
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CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 19th day of February, 2018 at Spartanburg,
Spartanburg County, South Carolina.


Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

12
COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-5743

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD,
Upstate Lung & Critical Care Specialists, PC, and
Devendra Shantha, MD,

Appellants,

v.

William Mark Casey, Ray E. "Chuck" Thompson,
And Charles M. Fogarty,

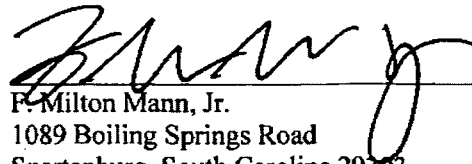
Respondents.

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M. HOPE BLACKLEY

NOTICE OF APPEAL

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung & Critical Care Specialists, PC, and Devendra Shantha, MD, appeal the Orders of the Honorable Letitia H. Verdin dated January 30, 2012, March 21, 2012, and April 30, 2012. Appellants received written notice of entry of the January 30, 2012 Form 4 Order (Exhibit A), indicating a formal order to follow, on February 7, 2012. Appellants received written notice of entry of the March 21, 2012 Order (Exhibit B) on March, 28, 2012. Appellants timely filed their Notice of Motion and Motion for Reconsideration and to Amend (Exhibit C) on April 9, 2012. Appellants received written notice of entry of the April 30, 2012 Form 4 Order (Exhibit D), indicating a formal order to follow, on May 16, 2012. Appellants inquired of the Court, by letter (Exhibit E), on August 24, 2012, as to when a formal order might be expected. Appellants received email notice (Exhibit F) on August 24, 2012, that no formal order would be forthcoming and that a clerical error had occurred indicating a formal order would follow the Form 4 Order dated April 30, 2012.

August 28, 2012


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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) C.A. NO. 2010-CP-42-05743

Gregory J. Feldman, MD, Joseph A.)
Boscia, III, MD, Upstate Lung & Critical))
Care Specialists, PC, and Devendra)
Shantha, MD,)

Plaintiffs,)

Versus)

William Mark Casey, Ray E. "Chuck")
Thompson, and Charles M. Fogarty, MD,)

Defendants.)

DEPOSITION OF
GREGORY J. FELDMAN, M.D.

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of GREGORY J. FELDMAN, M.D. was taken on the 17th, 18th, and 21st days of October, 2016, commencing at the hours of 9:06 a.m., 9:09 a.m., and 1:15 p.m., respectively, in the offices of Wilkes Law Firm, Attorneys at Law, Spartanburg, South Carolina.

REPORTED BY: Rosalind Poole Walters,
Certified Verbatim Reporter-Master

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Also attending: Mr. Charlie Fogarty

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH

MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent waives the right to read and sign the
7 deposition transcript.

8 *****

9 GREGORY J. FELDMAN, M.D., being duly sworn to tell the
10 truth, the whole truth, and nothing but the truth of his own
11 knowledge concerning the matter herein, testified as
12 follows:

13 *****

14 EXAMINATION BY MS. CHEEK:

15 Q. Dr. Feldman, will you please state your name for the
16 record?

17 A. Gregory Jacob Feldman, spells F-as-in-Frank-e-l-d-m-a-
18 n.

19 Q. My name is Ellen Cheek. You and I met a long time ago.
20 I represent Dr. Charles Fogarty in this matter. Other
21 counsel are here representing Mark Casey and Chuck
22 Thompson. I've noticed your deposition for today and
23 tomorrow. I will be asking questions probably the most
24 part of the day, perhaps into tomorrow. These other
25 gentlemen will follow with their own questions.

1 Because the deposition has been noticed for two days,
2 it is considered continuing between the two. So the
3 rules that normally apply during breaks also apply to
4 overnight in this case. That means that you are not to
5 discuss the substance of your testimony with anyone,
6 including your counsel. Is that -- understand?

7 A. Yeah, sure.

8 Q. If you have any questions about my questions, please
9 tell me. Also, if you could wait for my question to be
10 completed before you answer, I will do my best not to
11 interrupt you when you answer. The court reporter, as
12 you know, is taking down what we say. So, to the
13 extent that we can speak clearly and for her benefit
14 relatively slowly, that would be of assistance to her.
15 If you need a break, I certainly am not here to make
16 you uncomfortable, but on some occasion if you can just
17 let me know if you would like a break, then I may want
18 to complete some portion of a line of questioning, but
19 we will try to get to you. Is that acceptable?

20 A. Sure.

21 Q. Now, from a matter of convenience, I am going to define
22 for us and everybody's used in this case a term, "the
23 medical malpractice action." And when I speak of the
24 medical malpractice action, I'm referring to the 2006
25 action that was filed in Spartanburg County Common

1 Pleas Court styled Casey versus Feldman, Boscia,
2 Upstate Lung and Critical Care Specialists, and
3 Devendra Shantha. I'm going to ask the court reporter
4 to mark as an exhibit the Complaint in that case.

5 (Defendant's Exhibit Number 1 marked)

6 EXAMINATION RESUMED BY MS. CHEEK:

7 Q. I'm going to ask you to agree that this is the lawsuit
8 that we are referring to when we say the medical
9 malpractice action. Is that acceptable?

10 A. Yes.

11 Q. The medical malpractice action was filed in 2006.
12 Correct?

13 A. Correct.

14 Q. And you were a defendant in that action. Correct?

15 A. Yes.

16 Q. Mr. Casey was the plaintiff. Correct?

17 A. Yes.

18 Q. Mr. Thompson was Casey's lawyer, the lawyer for the
19 plaintiff in that case. Correct?

20 A. Yes.

21 Q. And Dr. Fogarty in the medical malpractice action was
22 Mr. Casey's treating physician and was also named as an
23 expert witness. Correct?

24 A. Yes.

25 Q. The allegations in the medical malpractice action was

1 that Mr. Casey had sustained brain injury and other
2 injuries as a result of alleged malpractice by you and
3 the other defendants. Correct?

4 A. I'm not recall any other damages other than brain,
5 brain injury, but you may correct me. From my memory,
6 it was just brain damage.

7 Q. In the Complaint, if you will, Mr. Casey also
8 complained of attending depression and some other
9 manifestations that were related to the brain injury.
10 Does that sound familiar?

11 A. No.

12 Q. Do you recall that Mr. Casey alleged that he had
13 suffered an air embolism as a result of a pneumothorax
14 and resulting complications from a rigid bronchoscopy
15 that you performed?

16 A. That is allegation, yes.

17 (Defendant's Exhibit Number 2 marked)

18 EXAMINATION RESUMED BY MS. CHEEK:

19 Q. Dr. Feldman, what's been handed you as Exhibit 2 in
20 this matter is a copy of the Second Amended Complaint
21 that's been filed in this present action, and you filed
22 this action in 2010 against Dr. Fogarty, Mr. Casey, and
23 Mr. Thompson. Correct?

24 A. We, Upstate Lung, myself, Dr. Shantha, and Boscia has
25 filed it in 2010.

1 Q. And those are your co-plaintiffs that you just listed.
2 Correct?

3 A. Correct.

4 Q. This present suit is based on the medical malpractice
5 action. Correct?

6 A. Yes.

7 Q. And you've asserted a claim against the defendants for
8 abuse of process. Correct?

9 A. Yes, correct.

10 Q. Now, the Second Amended Complaint contains a number of
11 allegations, and we're going to go through those in
12 detail during your deposition, but I thought it might
13 be helpful to try to simply or at least summarize your
14 claims---

15 A. If you find it helpful, sure. It's your deposition.
16 (Defendant's Exhibit Number 3 marked)

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. What's been marked as Exhibit 3 is an e-mail chain, and
19 I'm going to direct you to the bottom e-mail, the first
20 in the chain. And---

21 A. Am I correct? This one?

22 Q. Yes, sir.

23 A. Okay, thank you.

24 Q. And so the title of this, to simplify this, this is an
25 e-mail you sent on January 2, 2010 to Attorney Mann and

1 Burns Davison at the JUA. I'm going to ask that you
2 please read that to yourself, and then I have some
3 questions about it.

4 A. Yeah, I did. You want me to read the second page?

5 Q. Yes, please.

6 A. Yeah.

7 Q. Dr. Feldman, does this e-mail accurately summarize your
8 claim for abuse of process in this case?

9 A. This is just one of many e-mails. So if you take it
10 out of context, it does not. If you take it in the
11 context, it does.

12 Q. So you contend -- and, again, we're going to try to
13 work on a summary here. You contend the medical
14 malpractice action was not simply a frivolous lawsuit
15 where a plaintiff will fabricate injuries, for example,
16 your contention, I believe, is that the medical
17 malpractice action was completely false. Is that
18 correct?

19 A. I'll call it fraudulent.

20 Q. Fraudulent. You believe or you had stated to Messrs.
21 Mann and Davison that it was an outright invention of
22 the medical record, medical diagnosis, and evidence.
23 Is that correct?

24 A. Yes.

25 Q. And that is an accurate statement of your position?

1 A. It is accurate statement.

2 Q. You also reference a scheme to file a malpractice
3 lawsuit against you, and that was one that you contend
4 that Dr. Fogarty and Mr. Thompson created in 2004. Is
5 that accurate?

6 A. It is scheme, yes.

7 Q. And you, again, believe that is not based on any facts?

8 A. Correct.

9 Q. Mr. Casey was not medically injured?

10 A. Yes.

11 Q. Dr. Fogarty didn't believe he had been injured?

12 A. Yes.

13 Q. Dr. Fogarty made up a bogus theory about how Casey had
14 been injured?

15 A. Yes.

16 Q. And that was not medically supported. Correct?

17 A. Correct.

18 Q. And that medical diagnosis by Dr. Fogarty was that Mr.
19 Casey had suffered an air embolism as a result of a
20 pneumothorax that occurred during a rigid bronchoscopy
21 you performed. Correct?

22 A. Yes, that's correct.

23 Q. As to Mr. Thompson, you believe that and have alleged
24 that Mr. Thompson used this diagnosis by Dr. Fogarty to
25 file the medical malpractice action. Correct?

1 A. Correct.

2 Q. Again, that theory was false?

3 A. Fraudulent.

4 Q. Dr. Fogarty, Mr. Thompson, and Casey knew this was a
5 baseless diagnosis?

6 A. Fraudulent diagnosis.

7 Q. Okay. And these defendants in this case intended to
8 damage you by filing and obtaining a judgment against
9 you in the medical malpractice action. Correct?

10 A. No, I don't believe that they had any chance to obtain
11 judgment. The damage I would agree with that. There
12 was intent to damage me, yes, and us.

13 Q. And the intent was to damage you by getting an award
14 for medical malpractice against you?

15 A. I cannot get into the frame of mind. Damage me
16 personally, destroy my career, destroy my medical
17 group, destroy everything. That was an intent.

18 Q. Okay, we'll come back to intent shortly. Now, you had
19 mentioned in your e-mail to Mr. Burns, I believe, that
20 Thompson and Casey had done -- I'm looking at number
21 two in the e-mail.

22 A. Okay.

23 Q. That plaintiff, Mr. Casey and Chuck Thompson, are
24 trying to extort money from your insurance company.
25 Correct?

1 A. I can't get into the frame of mind. This is just my e-
2 mail.

3 Q. But you've written this, and in order to obtain -- I
4 believe what you're saying, and please correct me if
5 I'm wrong, that Mr. Thompson and his client want to
6 obtain a judgment against you that they're not entitled
7 to, in your opinion. Correct?

8 A. Well, fraudulent scheme. I cannot really get into the
9 head of Mr. Thompson. Okay? It's just not possible
10 for me. When there's 1800 pages, you picked up on one
11 e-mail that was written in, what, 2010. I'm trying
12 best I can to recollect it, okay, what my frame of mind
13 was then. My frame of mind began to really discover
14 that it is a fraud on many different level. What's
15 motivation for the fraud? Not really Mr. Thompson's
16 psychologist.

17 Q. Mr. Thompson's a lawyer, though. Correct?

18 A. He has a law degree, yes.

19 Q. And he makes his money by suing people. Correct?

20 A. I don't know if he has real estate. I don't know how
21 he makes his money. Let me be very, very clear. You
22 asked me the question of what I thought it was. I
23 thought it was outright fraud. I'm more than ever
24 convinced today that it was.

25 Q. We'll come back to that.

1 (Defendant's Exhibit Number 4 marked)

2 EXAMINATION RESUMED BY MS. CHEEK:

3 Q. Let's take a look at another e-mail.

4 A. What we looking at?

5 Q. It's Exhibit 4, right here. And, again, we're going to
6 look at the second Amended Complaint in detail, but I
7 wanted you to read this e-mail, and while you're
8 reading it, I'll state for the record that this is a
9 March 7, 2010 e-mail from Dr. Feldman to Burns Davison
10 and Attorney Mann, Subject Important.

11 A. Yes, I see that.

12 Q. Now, you describe in this e-mail that the foundation of
13 your case, the present action, is that what you claim
14 was a wrongful act was Mr. Casey's July 21, 2005 visit
15 to Dr. Fogarty. Correct?

16 A. I'm completely misunderstood the question. Foundation
17 of what?

18 Q. So you've written in the first sentence, "What is
19 foundation of the case?" Do you see that in your e-
20 mail?

21 A. I do.

22 Q. And then right under it, you said, "July 21, '05 visit
23 to Fogarty."

24 A. Well, you're reading the e-mail, but you asked me a
25 question what the foundation of my case was or what's

1 written in e-mail?

2 Q. I'm asking you whether this e-mail accurately states
3 what you believe the foundation of your present lawsuit
4 is.

5 A. It doesn't even begin to accurately state anything.
6 This is just e-mail. It's not even close to the
7 foundation of my case. This is just one e-mail.

8 Q. So you're not stating in this e-mail in summary form
9 what you believe the foundation of this lawsuit is?

10 A. Ellen, your question would be equivalent do I believe
11 that in this glass of water there's one drop of water.
12 Yes, there's a tiny drop of water. Yet, there's far
13 more to the water than drop of water.

14 Q. Okay. So there's many bases on which you're filing the
15 case. Is that accurate?

16 A. Well, absolutely.

17 Q. Okay. Now, the July 21 visit is a part of it.
18 Correct?

19 A. Yeah, it's part of the scheme. Yeah, it's part of the
20 scheme, yes.

21 Q. Okay. Now, their brain injury diagnosis on which Mr.
22 Casey's claims in the medical malpractice action were
23 based was one developed by Dr. Fogarty. Correct?

24 A. You're talking about the fraudulent scheme was
25 conceived by Dr. Fogarty? Yes, it was. But developed,

1 it was developed not just by him, but Thompson, Turner,
2 others, but yes, it was -- the scheme was conceived by
3 Fogarty.

4 Q. And then let's talk about -- and we'll actually come
5 back to this Exhibit 4. Dr. Fogarty made at a point in
6 time a diagnosis of Casey. Correct?

7 A. Well, he didn't make a diagnosis. He made a fraudulent
8 diagnosis. Now, remember, you're the lawyer. I'm a
9 physician. We do not see the fraudulent diagnosis as
10 being a diagnosis. So maybe it's semantics for you.
11 That's why I like to clarify it.

12 Q. I understand. So Dr. Fogarty makes a diagnosis, and
13 just so you and I are on the same page, you believe
14 that diagnosis was fraudulent. Correct? And what I
15 want to ask you about is I want to ask you about what
16 the diagnosis is, understanding that you believe that
17 it was fraudulent. But when I ask you questions and I
18 say Dr. Fogarty's diagnosis, I mean the one that Dr.
19 Fogarty wrote down of Mr. Casey. And what that was,
20 what his diagnosis was was that Mr. Casey had suffered
21 a cerebral air embolism as a result of a pneumothorax
22 and resulting complications that occurred during a
23 rigid bronchoscopy.

24 A. Let me try to resolve my difficulty, maybe yours, as
25 well. Creation of fraudulent medical record is not

1 making a diagnosis. If we can overcome the semantics,
2 I'll be happy to answer any question on that subject.

3 Q. Let me think about how we can---

4 A. But otherwise we will continue this exchange.

5 Q. Okay. So when we talk about Dr. Fogarty's diagnosis,
6 can we agree that what I'm referring to when I say Dr.
7 Fogarty's diagnosis is Dr. Fogarty's written opinion
8 written down that Mr. Casey suffered a cerebral air
9 embolism---

10 A. We are at impasse there, because I am not accepting
11 that as a diagnosis. I'm accepting what he wrote.

12 MR. MANN:

13 Let her finish.

14 EXAMINATION RESUMED BY MS. CHEEK:

15 Q. What I'm trying to do is give us a term so that each
16 time I ask you a question I don't have to say Dr.
17 Fogarty's diagnosis that you believe was fraudulent.

18 A. Let's do this. Let's instead of diagnosis use
19 allegation, Dr. Fogarty's allegation. Is that
20 acceptable?

21 Q. Can we use opinion?

22 A. No.

23 Q. Here's what we're going to do. I am going to use the
24 word -- I'm going to stick with Dr. Fogarty's
25 diagnosis.

1 A. Okay.

2 Q. I understand that you believe it was fraudulent, and
3 that's what we're here to explain. And this is the
4 early part of the deposition. You're going to get your
5 chance to tell me why for all of the reasons you
6 believe it was fraudulent, but for purposes of the
7 transcript and court reporter, I'm just going to have
8 to make that determination. Okay?

9 A. It's your deposition.

10 Q. Okay. Dr. Fogarty's diagnosis you allege in your
11 Second Amended Complaint was developed by Dr. Fogarty
12 from sometime in 2004 until he finally published it in
13 a medical record dated July 21, 2005. Is that
14 accurate?

15 A. I'm going to ask you to rephrase the question. What
16 part of your question is accurate?

17 Q. What I'm referring to as Dr. Fogarty's diagnosis was
18 actually you allege that he began forming that opinion
19 in 2004 and he ultimately wrote it in a medical record
20 dated July 21, 2005. Correct?

21 A. Yes, he started to develop this scheme in 2004, and he
22 entered the fraudulent medical record on that day with
23 what you call diagnosis and I call fraudulent
24 statement, yes. He filed a fraudulent statement on
25 that day. I agree with that.

1 Q. Let's talk now about that July 21 note. And during
2 this deposition, I'm going to be referring to the July
3 21 note, but first I want us to get on the same page
4 about what we're talking about when I say July 21 note.

5 (Defendant's Exhibit Number 5 marked)

6 EXAMINATION RESUMED BY MS. CHEEK:

7 Q. In the medical malpractice action, you received a copy
8 of this July 21 note of Dr. Fogarty, and you'll see
9 that the medical malpractice action was used as an
10 exhibit in Dr. Fogarty's deposition and was Bates
11 stamped. I'll represent to you those are Bates stamps
12 added by Mr. Thompson's firm. So my question for you
13 is, you received a copy of this July 21 note in the
14 medical malpractice action. Correct?

15 A. Yeah, this is a defendant exhibit stamped in Dr.
16 Fogarty's deposition. So I believe that was 2008. In
17 2008, that accurately reflect the note.

18 Q. And also during the medical malpractice action, you
19 became aware that there were other versions of the July
20 21 note. Correct?

21 (Defendant's Exhibit Number 6 marked)

22 MR. MANN:

23 Ellen, this version is Number 6?

24 MS. CHEEK:

25 Yes. The one you just got is going to be 6, and

1 then Number 7 is going to be the one that has a small
2 handwritten 9/6/05 on the side of it. Okay?

3 (Defendant's Exhibit Number 7 marked)

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. So Dr. Feldman, I've got a number of e-mails and
6 exhibits from the medical malpractice action where you
7 recognized differences among variations of Dr.
8 Fogarty's July 21 note and you discussed them with
9 numerous people.

10 A. No, I did not.

11 Q. Okay. This will just take a little bit longer for us
12 to work through this. I understand your testimony
13 right now is that during the medical malpractice action
14 you did not receive multiple copies of a July 21 note?

15 A. I did not.

16 Q. Okay. I think the easiest way for us to look at these
17 notes, Dr. Feldman, is to focus on the comment in each
18 one of them.

19 A. May be the easiest for you. Just ask me the question.

20 Q. Well, I need us to take a look at the comment. Okay?
21 So if you'll---

22 A. If you'll just direct me what to look at, I will.

23 Q. In your Exhibit Number 5, if you could please turn to
24 the last page and take a look at the comment there.
25 And I'm going to represent to you that there's a

1 comment in each one of these notes.

2 A. I accept your representation. What page? You want me
3 to look at Exhibit 5?

4 Q. Yes, look at Exhibit 5.

5 A. And you want me to look at the comment?

6 Q. Yes, I do.

7 A. I'm looking at it.

8 Q. I want you to look at the third paragraph under
9 Comment. Okay? We're just going to focus on the
10 language here.

11 A. Okay.

12 Q. And it reads, "with reference to the patient's
13 difficulty concentrating, he undoubtedly had air emboli
14 given his lengthy duration of anesthesia and laser
15 perforation of the endotracheal tree with resultant
16 leakage of air into extra pleural and vascular extra
17 pleural mediastinal and vascular spaces."

18 A. Okay.

19 Q. If you would please look in your Exhibit 6 at the
20 comment, the same paragraph.

21 A. I look at it, as well.

22 Q. If you would look at the third paragraph, the first
23 sentence, it reads differently. It reads, "with
24 reference to the patient's difficulty concentrating,
25 air emboli have been reported as a common complication

1 where there is laser perforation of the endotracheal
2 tree with resultant leakage of air into extra pleural,
3 vascular, and medicinal [ph] spaces."

4 A. It's pronounced mediastinal, but that's okay.

5 Q. Mediastinal?

6 A. Mediastinal spaces.

7 Q. Thank you. I will try my best. You will agree that
8 that's different from the -- I'm going to call this the
9 Bates stamped note. You will agree that's different
10 language?

11 A. Yes.

12 Q. If you will please look at your Exhibit Number 7.

13 A. The one that has writing on it?

14 Q. Correct. Flip to the Comment section. I'm going to
15 read the first sentence of the third paragraph. "With
16 reference to the patient's difficulty concentrating,
17 air emboli have been reported as a complication of
18 laser bronchoscopy even without perforation of the
19 endotracheal tree with resultant leakage of air into
20 extra pleural vascular and --

21 A. Mediastinal.

22 Q. -- mediastinal spaces."

23 A. Right.

24 Q. Among these three notes, the language is different, and
25 the way that I just for my purposes keep them straight

1 in my mind, the Bates stamped note has the term
2 "undoubtedly had air emboli." Okay? The middle note,
3 Number 6, which is what I call the King note, says the
4 "air emboli have been reported as a common complication
5 when there is laser perforation." And then this last
6 one that I call the Gonda note, I think the operative
7 difference is it states, "air emboli have been reported
8 as a complication even without perforation." So you
9 will agree that there are differences among these three
10 notes. Correct?

11 A. I agree with you.

12 Q. Do you recall now in the medical malpractice action
13 picking up on these differences and discussing them
14 with your counsel?

15 A. No, I do not. If I might clarify, the only Bates
16 stamped note is the only thing I had during that time.
17 This is it.

18 MR. HENRIKSON:

19 Five? Was he referring to 5 then?

20 MS. CHEEK:

21 He was referring to 5.

22 MR. HENRIKSON:

23 Thank you.

24 (Defendant's Exhibit Number 8 marked)

25 EXAMINATION RESUMED BY MS. CHEEK:

1 Q. You have been handed what's been marked as Exhibit 8.
2 I'm going to refer you, if you would, to the lower e-
3 mail down here. It's a September 3, 2007 e-mail that
4 you sent to yourself, Subject Stratterra.

5 A. I'm sorry. What e-mail?

6 Q. If you'll look down here, please, sir.

7 A. My September '07? I see it.

8 Q. Yes, September 30, 2007 e-mail you sent to yourself.

9 A. Okay.

10 Q. And do you see there, Dr. Feldman, that you are quoting
11 from a Fogarty record?

12 A. Fogarty lawsuit record, not Fogarty record. I'm
13 quoting from Mr. Waid, Dr. Waid from Charleston.

14 Q. And you'll see that the language that you quote
15 corresponds to the language in Exhibit 7?

16 A. I do not. I did not have that record. This is record-
17 --

18 Q. But you see that the language---

19 A. Ms. Cheek, can I finish my answer?

20 Q. You may.

21 A. It's okay. You can -- it's okay if I can finish it?
22 Okay. What you called in here, I never had that
23 record. This is a direct quote from Dr. Waid,
24 neuropsychologist report that I did have. Okay? That
25 is where the quote comes from.

1 Q. okay. I understand.

2 A. This particular paper that you quote is not Bates
3 stamped. It's saying Thompson record, which we
4 uncovered in May of this year. I never had that
5 record, never saw that record, didn't know about that
6 record ever existed.

7 Q. okay. The language itself that is in the record, you
8 will agree that what you quote from the Waid document
9 is the same language that appears in your Exhibit 7
10 note. Correct?

11 A. I agree with you on a very narrow definition that this
12 particular quote is appear in that note. In no way
13 that I knew that note existed. Dr. Waid did not have
14 any Fogarty notes.

15 (Defendant's Exhibit Number 9 marked)

16 EXAMINATION RESUMED BY MS. CHEEK:

17 Q. If you could please in the same regard look at what's
18 been marked as Exhibit 9. This is a February 16, 2008
19 e-mail from you to Spencer King and Attorney Mann. If
20 you could please read to yourself the first paragraph -
21 -

22 A. I see it.

23 Q. -- and the second. Actually, just read the whole e-
24 mail to yourself.

25 A. Yeah, I see it.

1 Q. Now, you would agree that, again, the language that you
2 are quoting up top is the same language that appears in
3 the Exhibit 7. Correct?

4 A. Yes.

5 Q. And then you're asking Mr. King, "Spencer, you quoted
6 from this record, I can't find it." Correct?

7 A. For the record, Mr. King was a malpractice lawyer who
8 was defending us in the malpractice case and was
9 working for the JUA, and I have asked him the question
10 that you just pointed out that I cannot locate the
11 record and where does it come from.

12 Q. So you have the language; you don't have the record.
13 Correct?

14 A. I had the language from Dr. Waid's quote.

15 Q. And the reason you're asking him about it is this is
16 not the same language that you had read in this Bates
17 stamped note. Correct?

18 A. I don't recall that. I recall that I could not locate
19 what Dr. Waid was referring to, talking about the
20 neurologist. I was more concerned about where it come
21 from, whether it was neurologist or somebody else. So
22 it wasn't in Fogarty, so find me where that come from.

23 Q. So, likewise, during the medical malpractice lawsuit --
24 and we're going to take a look at Exhibit 6. Likewise--
25 --

1 A. You want me to look at Exhibit 6?

2 Q. Yes.

3 A. Okay. I'm looking at Exhibit 6.

4 (Defendant's Exhibit Number 10 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. I'm going to have you pair that up with Exhibit 10
7 right there.

8 A. What record you want me to look at?

9 Q. We're looking at Exhibit 6 and 10 right now.

10 A. Okay. All right.

11 Q. This Exhibit 10 is an e-mail sent from Mitzi Higgins at
12 the Ward firm, which is where Spencer King works, to
13 Attorney Mann and you on February 19, 2008. Do you see
14 that?

15 A. I see that.

16 Q. If you will flip to---

17 A. Look at Exhibit 10 right now?

18 Q. Yes, please. If you will look at page 4 of Exhibit 10,
19 at the bottom there is a Bates stamp---

20 A. And page 4 is -- what is that? Mann 22932?

21 Q. Yes, sir. Look at item 49.

22 A. I see it.

23 Q. Do you see there that there's language quoted, "air
24 embolism had been reported as a common complication
25 where there is laser perforation of the endotracheal

1 tree"? Do you see that?

2 A. I see that.

3 Q. Will you agree that that is the same language that
4 appears in your Exhibit 6 under the comment?

5 A. In the comment, yes.

6 Q. And you will agree with me that your attorney in the
7 medical malpractice case sent you a record that had
8 that exhibit's language quoted in it. Correct?

9 A. That was when? In 2008, February 19? You were quoting
10 Exhibit 10?

11 Q. Yes.

12 A. I agree that the question was posed. You're talking
13 about malpractice case. Right?

14 Q. Yes, sir.

15 A. Yes.

16 (Defendant's Exhibit Number 11 marked)

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. And then, likewise, in Exhibit 11, this is a Master
19 Medical Summary that Mr. King's office prepared in the
20 underlying medical malpractice action.

21 A. You talking about defending malpractice case?

22 Q. Yes.

23 A. Okay.

24 Q. If you will turn to the page labeled page 1616.

25 A. what page we looking at?

1 Q. 1616. King 1616.

2 A. I got it.

3 Q. The language I want to point out to you that's quoted
4 in here from medical records that your counsel received
5 from Lung and Chest, if you can look at 1615, the page
6 right before, we have a Lung and Chest record 43-45, a
7 July 21, 2005 entry date. Do you see that?

8 A. I do. You're talking about 1616. Right?

9 Q. Correct. Actually, the 1615---

10 A. 1615, okay.

11 Q. Sometimes it's just easier for me to -- okay, so this
12 is what I'm referencing right here. Do you see that
13 this is a Lung and Chest record 43-45 dated---

14 A. This is Dr. Wilson Smith's record.

15 Q. Okay. And you see it's dated July 21, 2005?

16 A. Wilson Smith.

17 Q. I see that, but do you see the date?

18 A. Yes, but I also see Dr. Wilson Smith.

19 Q. Okay. If you will flip then to the next page, 1616,
20 and about three-quarters of the way down I'm going to
21 point you to the operative language here. Do you see
22 the sentence beginning, "with reference to the
23 patient's difficulty concentrating"?

24 A. Yes.

25 Q. Would you agree that the language quoted there in Mr.

1 King's chronology is the same language that appears in
2 Exhibit 6, which is what I refer to as the King note?

3 A. In what regard is quote the same?

4 Q. Pardon?

5 A. In what regard is quote the same?

6 Q. Well, is it the same language that is stated here in
7 this Exhibit 6, what I refer to as the King note?

8 A. It's not exactly the same, but brain damage is alleged
9 in both. But I've never -- I've never seen it until
10 you just showed it to me or until recently.

11 Q. But you did receive the Exhibit 10 e-mail. Correct?

12 A. It is not Bates stamped. Correct?

13 Q. Pardon?

14 A. It is not Bates, Bates stamped, is it?

15 Q. It was Bates stamped King, yes.

16 A. No. It's not Bates stamped in original malpractice
17 lawsuit.

18 Q. No. I would represent to you that is your attorney's
19 work product and wasn't produced---

20 A. To prevent difficulties in the future, I only seen
21 Bates stamped records in my medical malpractice
22 lawsuit. If it's not Bates stamped, I have not seen
23 it.

24 Q. Okay.

25 A. By Bates stamp, I'm referring to the Bates stamp in the

1 original litigation.

2 MR. MANN:

3 wait for questions, please.

4 (Defendant's Exhibit Number 12 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. I'm going to hand you what we've marked as Exhibit 12,
7 and I'd like you to read this e-mail to yourself. I'll
8 state for the record this is a May 1, 2010 e-mail from
9 Dr. Feldman to Attorneys King and Mann.

10 A. I see it. When you're saying to myself, what do you
11 mean by myself?

12 Q. I don't want you to read it out loud into the record.
13 I just want you to read the document and let me know
14 when you're finished.

15 A. Yeah, I see it.

16 Q. In the second paragraph, you agree you are quoting from
17 the Dr. Fogarty Bates stamped note, the one that says
18 he undoubtedly had air emboli.

19 A. Yes.

20 Q. Do you agree?

21 A. I agree with that.

22 Q. And then you ask your counsel to compare that language
23 to the Waid note. Correct?

24 A. Correct.

25 Q. Which is what I've called the Gonda note, which is

1 Exhibit 7. And then you quote from this Exhibit 7, the
2 Gonda note or what you called the Waid note. Correct?

3 A. No. I cannot agree with what you just said. I never
4 saw Gonda note. I saw Waid note, which was produced in
5 litigation, and that is what I'm referring to. Now, if
6 you're saying that where the Gonda and the Waid note
7 are similar and so forth, we can discover that in
8 another conversation, but I never saw or had any Gonda
9 notes.

10 Q. Let me make this easier for you and me. Exhibit 7
11 we'll just refer to that as the Waid note.

12 A. It's not a Waid note. It's a---

13 Q. Okay. The reason I want to refer to it as the Waid
14 note is it contains the language that you picked up
15 from Waid's records. That's what you had testified
16 before.

17 A. Let me make it easier for you. Print it out, Waid's
18 note. It's easy to print it out, and then when we
19 refer to the note, then we'll refer to it repeatedly.
20 Won't take a minute.

21 Q. You will agree in Exhibit 12 that you are picking up
22 differences between the July 21 note language from Dr.
23 Fogarty between two sources and you're comparing them.
24 Correct?

25 A. It's incorrect. My problem is that I have Dr. Waid's

1 note, but it's not in Fogarty record. That's what I'm
2 repeatedly trying to reconcile. Okay, I have a Lung
3 and Chest record, Dr. Fogarty record. I also have a
4 sentence from -- I thought that maybe neurologist -- I
5 was looking for where the source of the note was. I
6 couldn't find it in Lung and Chest. Obviously it
7 wasn't there. So I was trying to find where that come
8 from. In my mind, at the time it was existing from
9 neurologist somewhere. So I tried to find where that
10 come from. Okay?

11 Q. Okay.

12 A. So that's it. All I -- I have two notes in entire
13 litigation, Fogarty note and Dr. Waid note. And Dr.
14 Waid note, I repeatedly tried to find where it come
15 from, because it's in the quote.

16 Q. Understood. So you had language from Dr. Waid.

17 A. But I didn't know where it come from.

18 Q. Correct. But you were comparing that to what you did
19 say you had, this Bates stamped note of Dr. Fogarty,
20 and you're discussing this with them. Correct?

21 A. Well, I cannot even know how to answer it better. I
22 was looking for the note from Waid where it come from.
23 So what else I can contribute to the discussion? Ask
24 me a question.

25 Q. All right. You would agree among the three notes that

1 we've looked at here -- and we've marked 5, 6, and 7 --
2 that the diagnosis stated in each one is the same, that
3 Mr. Casey suffered an air embolism and resulting brain
4 damage. Would you agree with that?

5 A. Well, in the final note produced, yeah, I agree with
6 that. In the previous notes, I disagree. He doesn't
7 make a diagnosis in previous note, talk about
8 literature, whatever. But finally, yes, the one that I
9 had in litigation, he made a diagnosis of permanent
10 brain damage, yes.

11 Q. In each one of the notes under the Comment section
12 there is discussion of air embolism. Correct?

13 A. Brief discussion of air embolism, yes.

14 Q. And in each of the notes there's discussion of
15 neurological difficulties resulting from it. Correct?

16 A. There's discussion in each note, yes.

17 Q. So as to those basic points, the notes are the same.
18 Correct?

19 A. No. It's drastically different.

20 Q. Okay. In your Exhibit 12---

21 A. I don't have Exhibit 12. Oh, yeah, I see Exhibit 12.
22 Yes.

23 Q. You, in making the comparison, state that the
24 comparison, that the differences are probably minor.
25 Correct?

1 A. Difference between language or between diagnosis?

2 Q. And you say they're probably minor but curious.

3 Correct?

4 A. Point it out to me exactly what you're referring to,
5 please.

6 Q. (Counsel indicates).

7 A. Okay. "Compared to Waid note" -- I'm going to read it
8 loudly. Okay? "Probably minor but curious. Waid
9 writes: Dr. Fogarty stated with regard to Mr. Casey
10 difficulty concentrating." So the difficulty
11 concentrating, it's minor. Okay? In the diagnosis,
12 it's major. Okay? Medical diagnosis with medical
13 certainty. For medical malpractice case, it's not
14 minor. It's overwhelming major.

15 Q. What is the major difference?

16 A. Medical certainty in the legal arena, it's major, not
17 minor diagnosis in medical malpractice. With medical
18 certainty is a legal definition. Short of medical
19 certainty it's speculation. The difference is like
20 between sky is blue and ocean is blue. Sky is not an
21 ocean.

22 Q. So what you're trying to tell me is in the Bates
23 stamped note the comment undoubtedly is what is
24 different. Is that correct?

25 A. Yeah, it is---

1 Q. When he states that undoubtedly it was air emboli,
2 that's what you're trying to tell me is different from
3 these other notes?

4 A. Yeah. It's a noose on your neck and then the noose
5 being tightened.

6 Q. Okay. So---

7 A. The difference is major.

8 Q. But his degree of certainty of his diagnosis was what
9 was different is what you just told me. These other
10 notes -- all the notes had the same diagnosis. The
11 Bates stamped note is the one that you say when he says
12 undoubtedly, that's the major difference among them.
13 Is that correct?

14 A. We will never ever agree to the diagnosis. I don't
15 know how I can even to escape it. It is not a
16 diagnosis. The noose, which is a fraud, okay, he
17 decided to tighten the noose. Okay? That's it. We're
18 going to hang these people. We're not going to
19 threaten these people. We're not going to put a noose
20 on them. We're going to really kill them. Okay? What
21 you call diagnosis, okay, I cannot call diagnosis, and
22 that's where the probably moral difficulty that you and
23 I are facing today, because I cannot call this
24 diagnosis. It's a tightening of the noose, fraud,
25 whatever language would be preferable for you, but for

1 me diagnosis is unacceptable.

2 Q. Dr. Fogarty's diagnosis we talked about earlier, I
3 understand that you believe that it was fraudulent.
4 Okay? But Dr. Feldman, when I am talking about these
5 documents, for purposes of this deposition I am not
6 asking you to change your opinion, but you and I need
7 to -- when we are talking about what Dr. Fogarty wrote
8 and I say his diagnosis, I'm talking about what he
9 wrote. I understand you---

10 A. This is unacceptable language to me, but move on.
11 Okay? I got what you mean. You got what I mean.
12 We'll move on. You have your definition; I have mine.
13 You define it diagnosis. I define it fraudulent
14 statement. We're speaking about the same from a
15 different position.

16 Q. All right, I think we can move on. The diagnosis among
17 the three notes is the same. The medical certainty
18 with which it's stated in the Bates stamped note is
19 different.

20 A. Yes. It's the highest degree of fraud, yes.

21 Q. Now let's talk about your opinion regarding Dr.
22 Fogarty's diagnosis, and this is when you get to tell
23 me your opinion about it. Now, what I understand that
24 you've told me up to this point is that you believe
25 that what I'm referring to as Dr. Fogarty's diagnosis

1 of air embolism is false and fabricated. Correct?

2 A. I will refer that fraudulent statement is false and
3 fabricated.

4 Q. I see where you've written in the medical malpractice
5 action that you believe it's anatomically impossible
6 for Mr. Casey to have suffered an air embolism. Is
7 that correct?

8 A. I don't even know how to discuss this medical issue,
9 because you're not a doctor. Okay? The fraudulent
10 statement has nothing to do with medicine. Okay?
11 Anatomically correct, anatomically incorrect, it's just
12 a discussion from malpractice lawsuit. It's over. The
13 jury found it to be incorrect. Okay? In my opinion,
14 if you're asking me whether air embolism could be
15 possible back then, it's well explained in the
16 malpractice record it was not possible. But it is not
17 medical opinion that matter to me in this lawsuit. The
18 fraudulent statement can be fraudulent even if it's
19 correct. Okay? The fraud, legal fraud and the fraud
20 that we use in the common language are two totally
21 different things. I'm alleging legal fraud. Okay? A
22 legal fraud is entering the fraudulent statement into
23 the medical record, creating fraudulent medical record.
24 That's what I'm alleging. Now, if you try to go into
25 the medical discussion, absolutely it's not possible.

1 Q. Now, you have emphasized to me your belief that Dr.
2 Fogarty's diagnosis is fraudulent, and I need to
3 understand what you mean by fraudulent. For me, it
4 means that it's false and it's advanced to make others
5 believe that it's true and to rely on it. I would like
6 for you -- if you agree, great.

7 A. Well, let me just clarify it. The creation of
8 fraudulent medical record, of course, is done for other
9 people to rely on it. So with that I agree. That was
10 the purpose of the fraudulent medical record, for other
11 people to rely, lawyers, doctors, but yes, I agree with
12 that.

13 Q. And it also means that -- false means untrue, and
14 baseless means there's no facts supporting it. Is that
15 correct?

16 A. What you call false I call fraudulent, fraudulent
17 meaning to create a fraudulent medical record. The
18 false medical record is somebody can be mistaken. The
19 fraudulent medical record is no mistake. It has a
20 purpose, to perpetrate a fraud, to make other people to
21 rely on it, to convince other people. False is a level
22 below.

23 Q. I'm going to do my best to make these next exhibits go
24 relatively quickly.

25 A. It's your deposition, Ellen.

1 Q. You don't want to sit here longer than necessary, do
2 you?

3 A. Well, I mean, you put this deposition for two days. If
4 we don't finish today, we'll finish tomorrow.

5 (Defendant's Exhibit Numbers 13, 14, 15, and 16 marked)

6 MS. CHEEK:

7 So I have Exhibit 13 is Mann 101. I have Exhibit
8 14 as Mann 18097. I have Exhibit 15 as JUA 1103. I
9 have 16, Gunn e-mails 2505.

10 EXAMINATION RESUMED BY MS. CHEEK:

11 Q. Dr. Feldman, let's take a look at Exhibit 13. This is
12 an August 16, 2007 e-mail you sent to
13 Brycesgrammie@hotmail.com. I think that was Mary
14 Howard, your---

15 A. God bless her soul. She died.

16 Q. But before her death, she was your long-time office
17 manager at Upstate Lung. Correct?

18 A. Yes.

19 Q. Mr. King, a dhill, and then Bronchnu@aol.com is Dr.
20 Boscia. Correct?

21 A. Yeah, and Mrs. Hill is a paralegal for Mr. King.

22 Q. Okay. In this e-mail, you state -- actually, if you
23 could read the first and second sentence of this e-
24 mail, please.

25 A. I did.

1 Q. Actually, out loud. I'm sorry. Could you read into
2 the record the first and second sentences, please?

3 A. You want me to read it out loud?

4 Q. Yes, please.

5 A. "There's not a single report in the literature of
6 permanent psychological/cognitive dysfunction even
7 after alleged or suspected air embolus associated with
8 full neurological recovery. Zero. It is pure
9 fabrication of human mind. As for drugs? Several
10 thousand reports."

11 Q. Are you stating in this e-mail your position that Dr.
12 Fogarty's diagnosis, his air embolism diagnosis is a
13 fabrication?

14 A. I don't know. You bring me back to 2007 in August.
15 Okay? We had no idea what it was. Okay? At the time,
16 the lawsuit wasn't tried. 2006, 2007, nothing was
17 happening. So we're just thinking that it's going to
18 be dropped. So who's might, what might, Fogarty. We
19 didn't even know who is involved back then. Okay? Let
20 me answer this question better for you. The lawsuit
21 was filed in May or June 2006. Nothing was happening
22 until September of 2007. So we just -- we were
23 thinking some kind of error. Okay? So we thought this
24 just going to be dropped. Okay? And that's what
25 they're referring to. Okay? It wasn't referring to

1 Dr. Fogarty, wasn't referring to Mrs. Hill, Mr.
2 Spencer. We're just perplexed. Okay? For year and a
3 half, nothing. Okay? The lawsuit filed and nothing.
4 Okay? The first deposition was taken was in September
5 2007. This is dated August, and we were just
6 completely, you know, is that thing going -- just going
7 to be dropped.

8 Q. We're going to take a look at what was going on in the
9 medical malpractice action shortly. You believe,
10 though, that -- or don't you -- that Dr. Fogarty made
11 up his diagnosis?

12 A. What -- what year are you referring to?

13 Q. Sitting here now.

14 A. Today?

15 Q. Mm-hmm.

16 A. Yeah, he has absolutely fabricated a medical record.

17 Q. Flip over to Exhibit 14, please?

18 A. I'm on it.

19 Q. Okay. This is your November 16, 2008 e-mail to
20 Attorney Mann. Can you read the first five enumerated
21 items there out loud into the record?

22 A. "One, laser with water cooling, never been reported to
23 produce air emboli. Exceedingly rare even with gas-
24 cooling, not common as asserted. Two, pulmonary vein
25 theory is anatomically absurd. Three, neurological

1 brain damage has never happened. Four, no literature
2 that microemboli can even happen with laser procedure,
3 never mind theory of going into the brain and producing
4 permanent brain damage. Five, biased and unqualified
5 expert."

6 Q. Your opinions that you've stated there remain the same
7 today. Correct?

8 A. It is much, much deeper.

9 Q. If you will flip to number 15, please.

10 A. I'm on it.

11 Q. And this is a May 2, 2010 e-mail you sent to a number
12 of people, including Attorney Gunn, Burns Davison,
13 Attorney Mann with a cc to Spencer King. I'm going to
14 direct you down to there's a sentence here that I'm
15 indicating beginning "And." If you could please read
16 that into the record for me.

17 A. For the record, Attorney Gunn was canceled for Dr.
18 Boscia in 2010, and usually he was attorney for Dr.
19 Shantha, but in 2010 he was attorney for Dr. Boscia.
20 Davison Burns was representing insurance company, and
21 Spencer King was representing Upstate Lung and myself.
22 So a lot of it I really sent to the attorneys defending
23 malpractice case and Mr. Burns. But now I'm going back
24 to the original question. What you want me to write --
25 to read?

1 Q. If you can read from where I pointed out where it says,
2 "And it is not just what has been done, perjury."

3 A. "With all due respect, you guys remind me my USSR
4 experience. Do not do that or this. KGB may find out,
5 et cetera."

6 Q. No.

7 A. Okay. "There is no legitimate reason to suborn
8 perjury, work product, admissibility, even materiality,
9 none, when even legitimate, not bogus like this. And
10 it is not just what has been done, perjury. But a
11 necessity to prove that they knew it was fraud, no
12 brain injury ever happened. And who else was involved
13 in procuring this, parentheses Fogarty. Of course I am
14 entitled to depose Chuck on these issues. So I am"---

15 Q. Okay, I'm going to stop you right there, Dr. Feldman.
16 Thank you. And this, again, underscores your position
17 that Mr. Casey had never suffered any brain injury.
18 Correct?

19 A. You talking about Mr. Casey never suffering brain
20 damage?

21 Q. Correct.

22 A. No, he never had brain damage, no.

23 Q. If you will flip to Number 16, this is an April 24,
24 2010 e-mail from you to Messrs. King, Mann, Davison,
25 and Gunn, and you will agree with me that you're

1 discussing Dr. Fogarty. Correct?

2 A. Yes.

3 Q. And if you could read the third paragraph. It's just
4 one sentence there beginning "Many other experiments."

5 A. Point out to me where you want me to read. "Many
6 other"?

7 Q. Right.

8 A. "Many other experiments since this has proven that
9 positive pressure ventilation is not a cause of air
10 emboli during bronchoscopy, theory long disproven."

11 Q. Thank you, sir. And this is underscoring your belief
12 that Dr. Fogarty's theory has no medical basis. Is
13 that correct?

14 A. We're going back into semantics. This is not a theory.
15 It's a fabrication. In this particular case,
16 fabrication did not have neither medical ground, but
17 even -- but if it did or if it didn't, that's not what
18 we allege. It's a fabrication of medical record that
19 we're alleging.

20 Q. Can a diagnosis that is true factually be a
21 fabrication?

22 A. Yeah, of course. For example, if air embolism was
23 reported with water cooling laser, which it wasn't, but
24 if it was, it's still a fabrication. So the underlying
25 medical fact, underlying medical fact, okay, that

1 relate to somebody else, may not be related to Casey
2 and is a fabrication.

3 Q. Okay. I believe what I'm hearing is that your position
4 when you state that it's fabricated and there was a
5 medical record is that it did not happen to Mr. Casey.
6 Correct?

7 A. You're correct in only minor portion of what I'm trying
8 to convey to you, a minor portion, what's medically
9 correct or medically incorrect. The bigger portion,
10 which is what you've been talking about that is
11 medically impossible, okay, the bigger portion is the
12 foundation of the scheme, which is a fabrication of
13 medical record. Okay? The medical record was
14 fabricated. Okay? On that foundation of medical
15 record lawyers got involved, medical experts got
16 involved, court got involved on the fabricated medical
17 record. That is what we allege. If you go back and
18 discuss medicine with me, it is not possible.

19 Q. So as to Dr. Fogarty's diagnosis, your position is he
20 fabricated it despite having facts to the contrary. Is
21 that correct?

22 A. I do not know what facts he had. Okay? I know what
23 facts I have, and yes, he has fabricated it.

24 Q. You believe and you've alleged that Dr. Fogarty
25 reviewed Mr. Casey's medical records. Correct?

1 A. Yeah, he reviewed his medical records, yes. That's not
2 allegation. It's a fact.

3 Q. Right. And then your position is those records have no
4 indication of any air embolism or neurological damage.
5 Correct?

6 A. The records that I have reviewed, Greg Feldman, has no
7 indication of any brain damage. I'm not going to speak
8 for Dr. Fogarty.

9 Q. But do I understand correctly you believe Dr. Fogarty
10 made up his diagnosis by not exploring the facts and
11 ignoring the records?

12 A. No. He has fabricated intentionally. It's a scheme.
13 Okay? You somehow try to ask me a question whether he
14 had some medical -- no. He has a legal, legal issue in
15 mind, how to hang Greg Feldman and company. So he has
16 fabricated medical record with a legal intent, not
17 medical intent. The medicine is a different
18 discussion. It is not part of this lawsuit.

19 Q. But Dr. Fogarty is a physician. Correct?

20 A. He has M.D. degree.

21 Q. And he wrote down in a medical office note a diagnosis
22 that you believe is false. Correct?

23 A. I don't know how we can overcome it. He did not make a
24 diagnosis. He created fraudulent medical record to
25 hang his colleagues, specifically me. Okay? That's

1 what he did. Okay? He has a legal issue, how we can
2 embroil these people in the lawsuit and hang them.
3 Okay? He has created diagnosis, legal diagnosis.
4 What's the difference between medical diagnosis and
5 legal diagnosis? Medical diagnosis is not without
6 medical certainty. It's a differential diagnosis.
7 It's a test and so forth. The legal diagnosis is
8 without a doubt. Okay? That is not medical diagnosis.
9 No physician makes diagnosis without a doubt. Okay?
10 Unsupported diagnosis without a doubt. All right? So
11 this is a legal diagnosis, not medical diagnosis for
12 lawsuit. Now, you may have a difference of opinion.
13 You may have different opinion. You asked me for my
14 opinion.

15 Q. No, I understand what you're saying, is that you
16 believe that Dr. Fogarty wrote in his note a diagnosis
17 for use in a lawsuit, that that's why he wrote that
18 note.

19 A. He mastermind a scheme, yes. Yes. We're getting
20 somewhere.

21 Q. But if Dr. Fogarty had written something that was true,
22 then we wouldn't have a lawsuit. Correct?

23 A. We wouldn't have medical malpractice lawsuit, correct.
24 There would never be medical malpractice lawsuit and no
25 lawsuit today, correct.

1 Q. So what he wrote was false?

2 A. Fraudulent.

3 Q. Now---

4 A. I'm going to try to explain one more time. When you
5 say false, it's medically false. When I say
6 fraudulent, fraudulent, it's a legal terminology.
7 okay? It make no difference to Dr. Fogarty what
8 diagnosis was. Okay? For him the only difference, the
9 only thing was how I can haul these people into the
10 court. That's what it was for. Okay? So false and
11 fraudulent may be not accurate. What medically false
12 was actually legal scheme, fraudulent scheme.

13 Q. Now, can a board certified neurologist examine Casey's
14 hospital records and --

15 A. I'm sure---

16 Q. Let me finish my question -- and support Dr. Fogarty's
17 conclusion that Mr. Casey had suffered an air embolism?

18 A. No physician could support the diagnosis, neither
19 neurologist nor anybody else.

20 Q. So you also believe -- I want to use these definitions,
21 and I've got to make sure I stick to them that I've
22 established here.

23 A. You haven't established any acceptable definition for
24 me.

25 Q. I understand you and I are going to disagree about that

1 all day long, for two days, in fact.

2 A. Yes, and maybe longer. Who knows?

3 Q. Dr. Fogarty's diagnosis, in your belief, was not
4 supported by any medical literature. Correct?

5 A. Sidetrack. It is not supported by physical
6 examination, medical tests, medical literature. It's
7 supported by nothing. Okay? So, but that's a medical
8 discussion. This is not about medicine, this lawsuit.

9 Q. And you've also alleged in your Second Amended
10 Complaint no objective medical investigation into
11 Casey's neurological condition was performed. Correct?

12 A. I'm sorry?

13 Q. You've alleged in your Second Amended Complaint that --
14 and I'm just looking at paragraph 31 -- that no
15 objective medical investigation into Casey's
16 neurological condition was performed by Dr. Fogarty.
17 Correct?

18 A. Yes.

19 Q. You've also alleged in that same paragraph 31 Dr.
20 Fogarty's not a neurologist. Correct?

21 A. He's not.

22 Q. And is a neurologist the only type of medical
23 professional who is qualified or able to determine
24 whether a patient has a mental impairment?

25 A. You're confusing two things. Neurologist is not --

1 mental impairment could be from drugs. It could be
2 from psychiatric illnesses and so forth. We're talking
3 about a lawsuit. In a lawsuit, to make an allegation
4 of permanent medical damage, you have to have an
5 expert. Okay? In the legal arena, not necessarily a
6 neurologist, okay, because in legal arena it's a
7 different definition. For us as a medical profession,
8 of course. For medical profession, for a physician to
9 allege permanent brain damage to hang his colleagues,
10 you will have to have not just neurologist, second,
11 third, and fourth opinion to do that.

12 Q. So for the office note, the July 21 note where Dr.
13 Fogarty wrote that Casey undoubtedly had an air
14 embolism, a neurologist is the only person that can
15 make that diagnosis?

16 A. Morally if you want to hang your colleague, of course,
17 morally. Okay? I would not -- I would absolutely
18 defer, especially talk with my colleague, to the
19 neurologist if there's a neurological problem. Okay?
20 Morally. But this is not a medicine. This is a
21 fabrication. So of course he could not call any
22 physician, not just neurologist. Family practice,
23 anybody. He could not have that. And I would say he,
24 not about just Fogarty. I'm talking about Thompson.
25 Because any physician that would be involved would have

1 said the guy's crazy here. Okay? They weren't crazy.
2 They had a scheme to do. So to involve any physician
3 would have absolutely destroyed their case. It has to
4 be Fogarty. Okay? And they have to very carefully
5 manage other people based on his record, because any
6 independent medical examiner, anyone, doesn't have to
7 be neurologist, family practice, any physician,
8 anybody, nurse practitioner, anybody, okay, would have
9 been death to the -- to the scheme.

10 Q. So, generally speaking, does a doctor have to be a
11 neurologist to be able to assess or determine whether
12 somebody has a mental impairment?

13 A. Yeah, permanent brain damage and mental impairment are
14 two different things. For permanent brain damage, you
15 need to have a CAT scan, MRI. Okay? That's what we
16 need to have to allege permanent brain damage. Okay?
17 Mentally, you defer to psychiatrist if you think it's a
18 mental issue.

19 Q. Can you take a look back at Exhibit 5? This is the
20 Bates stamped note.

21 A. Bates stamped note, I have it. Yes, I have it right
22 here.

23 Q. Take a look at that under the comment, paragraph three.

24 A. I'm looking at it.

25 Q. Now, what I'm reading there is what Dr. Fogarty opined

1 that what Casey undoubtedly had is an air emboli.
2 would you agree with me? And then he in the second
3 sentence says, "He may well have a permanent
4 neurological deficit." So I read, would you agree,
5 that what he says is undoubtedly was the occurrence of
6 an air emboli. would you agree with that?

7 A. Yes.

8 Q. And then as far as a permanent neurological deficit,
9 Dr. Fogarty writes in this note he may well have that.
10 Correct?

11 A. Yes, I do that. Yeah, I see that.

12 Q. And you'll agree that per this Bates stamped note, Dr.
13 Fogarty did not write that he undoubtedly has permanent
14 neurological deficit. would you agree?

15 A. I agree with that, absolutely. In deposition he said -
16 - that's what was so shocking at his deposition, that
17 at his deposition he said it.

18 Q. So in terms of mental impairment, you do not have to be
19 a neurologist or a physician does not have to be a
20 neurologist to assess whether a patient has a
21 neurological impairment. Correct?

22 A. Neurological impairment?

23 Q. Yes.

24 A. Yeah, you have to be a neurologist.

25 Q. What about a mental impairment? Do you have to be a

1 neurologist to assess whether a patient has a mental
2 impairment?

3 A. No. Mental impairment is something has organic and
4 non-organic causes. For example, if you drink a lot,
5 you don't have to be a physician if you see somebody
6 drunk and will smell. You may not know that the
7 patient had a heart attack at the same time, but mental
8 impairment is not a medical term. If somebody on
9 drugs, inebriated, a layperson can see this guy is
10 drunk. That's mental impairment.

11 Q. Now, PTSD is a neurological condition. Correct?

12 A. No. That's incorrect.

13 Q. Do you recall Dr. Smith, when he saw Casey in 2004, he
14 stated that Casey might have PTSD?

15 A. I recall that. I do recall that.

16 Q. Was Dr. Smith capable of making that conditional
17 diagnosis?

18 A. He said he wasn't qualified.

19 Q. In your opinion, was he capable of making that opinion?

20 A. He said he wasn't qualified. I say I am also not
21 qualified as a pulmonologist. Okay? Now, that's what
22 Dr. Smith said. I am not qualified to make that
23 diagnosis. I say, Greg Feldman, I'm not qualified to
24 make that diagnosis. It's really for the -- we defer
25 it to psychiatrist.

1 Q. So was Dr. Smith able to -- I mean, he was able to give
2 the opinion, right, that Mr. Casey may have suffered
3 PTS---

4 A. It's a disease, PTSD. Vietnam vets, people that had
5 their mother killed in -- you know, somebody's been
6 raped in front of them. We defer it to psychiatrist.
7 We don't deal with this diagnosis. I don't know
8 anything about it. I can only read about it. It's a
9 horrific event that must have happened to you. Okay?
10 Okay, to that degree, your best buddy got shot, okay,
11 in Vietnam repeatedly, okay, you're losing friends,
12 friends, friends, friends. That's what is diagnosis
13 about. Okay? So is it possible Mr. Casey has PTSD?
14 It is possible. Am I qualified to make diagnosis? I
15 am not.

16 Q. Are you qualified to say that somebody may have it?

17 A. We as a physician always put down differential
18 diagnoses, absolutely, and then that's a reason for
19 referral. Nowadays insurance companies deny even that,
20 but -- but yes, not my area of expertise. I'm worried
21 about something, I may send. But that has nothing to
22 do with our lawsuit. Fogarty fabricated medical
23 records, not made a diagnosis. So unless we overcome
24 that, overcome that, nothing we just said applicable to
25 fraud.

1 Q. So a differential diagnosis is one where a physician
2 such as Dr. Smith is opining that Casey may have PTSD.
3 Is that a differential diagnosis?

4 A. No. It is off-the-cuff remark. Don't know what's
5 going on. They're telling me that they -- this and
6 that. We send to psychiatrist. It's not a
7 differential diagnosis.

8 Q. What is a differential diagnosis?

9 A. Differential diagnosis is this. Potential -- well,
10 we'll use Casey as a differential diagnosis. Potential
11 drug abuse, potential litigious behavior, don't know,
12 history of depression, let's send to psychiatrist.

13 Q. So the diagnosing physician is listing things that may
14 be the cause of what the patient is exhibiting?

15 A. Complaining, not exhibiting. A complaint. A
16 complaint, unexplained complaint.

17 Q. Is it your opinion that for Dr. Fogarty to have stated
18 that Mr. Casey -- and I'm looking at Exhibit 5 -- Mr.
19 Casey may have permanent neurological defect, that
20 before writing that Dr. Fogarty would have had to have
21 sent Mr. Casey for neurological testing?

22 A. I cannot associate this case with any other discussion.
23 This is a fabrication. He sent him to the lawyer to
24 hang his colleagues. Okay? It made perfect sense for
25 him to write what he did, because for Mr. Thompson he

1 needed without a doubt. Otherwise, he could not sue.
2 So he basically complied -- complied with Mr.
3 Thompson's needs and his own. Okay? Without --
4 without a doubt, without medical certainty case go
5 nowhere.

6 Q. You've alleged, though, in paragraph 33 of the Second
7 Amended Complaint that Dr. Fogarty did not perform any
8 basic neurological exam. Correct?

9 A. No, he did not.

10 Q. And is a neurological exam required before a physician
11 opines whether a patient may have mental impairment?

12 A. Yes.

13 Q. And as to Dr. Fogarty, you believe that his failure to
14 get a neurological test further indicates that Dr.
15 Fogarty's opinion is false. Correct?

16 A. I don't know what to do. It's a fabricated diagnosis.
17 It's a legal diagnosis. He did not do no physical
18 exam, no referral, but on purpose. Okay? He couldn't
19 write it down, all reflexes normal, pupils are equal,
20 and so forth, no evidence of any brain damage. Of
21 course he couldn't refer him to anyone. That would be
22 death of his scheme.

23 Q. So if he referred Casey to a neurological expert, then
24 that expert would have determined that Casey wasn't
25 brain-damaged?

1 A. Nobody would approve for him referring to anybody.
2 This patient did not have a basic neurological exam.
3 Okay? But let's not talk about Casey. Let's talk
4 about another physician.

5 Q. But I want to talk about Casey, though. When you say
6 that -- and I thought I heard you correctly. You said
7 that Dr. Fogarty fabricated it, so he couldn't have
8 sent him to a neurologist for testing. Right? Because
9 if that's what you said, the reason he couldn't have
10 sent him for testing is that testing would have come
11 back stating no brain injury?

12 A. Yeah. Any physician that would examine Casey would
13 have stated there's no brain damage. Not neurologist.
14 Any physician, examining physician, yes.

15 Q. So it would have mattered -- if a neurologist had said
16 that Casey wasn't brain injured, then, in your opinion,
17 there would be no basis for the lawsuit. Correct?

18 A. There was never basis for the lawsuit, not just
19 neurologist. His family physician was enough to say
20 that. You know, it's not enough to say -- to have a
21 complaint to send somebody to neurologist. You have to
22 have a basis to send somebody to neurologist. Casey
23 never had any basis to be sent anywhere because medical
24 record is fabricated. That's not a reason to send
25 somebody to neurologist.

1 Q. So if a neurologist had said that Casey could have
2 suffered an air embolism and neurological defect from
3 it, that would have mattered. Right? There wouldn't
4 have been -- Dr. Fogarty's diagnosis would have been
5 substantiated then. Correct?

6 A. It would matter for a lot of people. It would matter
7 for Casey. It would matter for me. It would matter
8 for my dear friends that been dragged into the lawsuit.
9 Okay? It would have meant a lot, because the case
10 would have been dismissed. Okay? So I'm real upset
11 when you say it wouldn't matter. That really, really,
12 really hurts my feelings. Okay? It would have meant a
13 huge deal. A lot of people's life have all been
14 destroyed. I don't know why you would such callously
15 state something like that.

16 Q. Well, Dr. Feldman, I'm not trying to hurt your
17 feelings, and I apologize if I have. I'm just trying
18 to get to the underlying bases for your lawsuit here
19 and understand them thoroughly. So---

20 A. But you said that it would not matter.

21 MR. MANN:

22 Dr. Feldman, when she asks a question, you answer
23 her question, please.

24 WITNESS:

25 Okay.

1 EXAMINATION RESUMED BY MS. CHEEK:

2 Q. I actually said it would matter, it would have mattered

3 --

4 A. Big deal.

5 Q. -- if a neurologist had said that it was possible for
6 Casey to have suffered an air embolism and neurological
7 damage.

8 A. Yes. If Mr. Thompson would send him to neurologist,
9 Fogarty would not -- Fogarty fabricated the whole
10 thing, but if Mr. Thompson did, yes, it would have
11 ended, ended the case, yes.

12 Q. Well, if a neurologist had said it was possible for
13 Casey to have suffered an air embolism and sustained
14 brain injury, then Mr. Casey's lawsuit against you
15 wouldn't have been dismissed. Right? They would have
16 had an actual basis for bringing the lawsuit. Correct?

17 A. They would not.

18 Q. Your position is that the allegation of air embolism
19 and brain injury was false and no one could have
20 supported it. Correct? So what I'm trying---

21 A. I think that -- how long we have deposition now?

22 Q. Hour and a half.

23 A. Hour and a half. For hour and a half, I try to explain
24 to you it was not false. Okay? It was not
25 differential diagnosis. Okay? It was fabricated. If

1 examining neurologist would see Casey, he would say get
2 out of here, you don't need MRI, you're fine. Okay?
3 If somebody will examine the record, then, of course,
4 this is what it's been inserted for. Okay? They
5 didn't know it was fabricated. Okay? So you have to
6 take things seriously in the legal arena. People's
7 life are at stake. You understand what malpractice
8 lawsuit means for doctor. Right?

9 Q. I do.

10 A. It's the most horrendous thing you can go -- possibly
11 go through. Brain damage? You understand what
12 physician alleged to cause brain damage go through? Do
13 you? Because if you don't, then how can I explain? So
14 yes, this is a fabricated medical record, Exhibit 20,
15 fabricated. All right? Let's say it never existed.
16 Okay? No. No, that was it. Without this there was no
17 case.

18 Q. But Dr. Feldman, I'm going to ask you to work with me
19 here on this question. If a neurologist had said, had
20 examined Casey's records and said it's possible for an
21 air embolus to have occurred and for Mr. Casey to have
22 a brain injury, then there would be a basis for that
23 lawsuit.

24 A. No.

25 Q. So if a neurologist had opened -- and not Dr. Fogarty,

1 a board certified neurologist had been obtained by Mr.
2 Thompson and that board certified neurologist had
3 examined the medical records and said it is possible
4 that Casey suffered an air embolism and is brain-
5 injured, then Mr. Thompson would have had a basis for
6 his lawsuit to proceed. Correct?

7 A. He would not.

8 Q. He would not? Is that because no neurologist could
9 opine whether Mr. Casey had suffered an air embolism in
10 his brain?

11 A. Because the record was fabricated. You cannot submit
12 fabricated record to neurologist. Okay? If the record
13 was not fabricated, okay, then it's not Mr. Casey's
14 case.

15 Q. But Mr. Casey's medical records consisted of a ream of
16 documents. Correct?

17 A. All based on a fabricated medical record.

18 Q. Okay. Let's -- this is July 21, 2005. Correct?

19 A. That's incorrect.

20 Q. No. The date of this note is July 21, 2005. Correct?

21 A. But it's fabricated that date. It is not.

22 Q. But the date printed on this Exhibit 5 is July 21,
23 2005. Correct?

24 A. The fabricated date is July 21, fabricated date.

25 Q. All right. So if a board certified neurologist

1 received Casey's medical records all dated before July
2 21, 2005 such that it didn't include that note, that's
3 what goes to a board certified neurologist, if that
4 neurologist examined those records and said, Mr.
5 Thompson, it's possible that Casey had an air embolism
6 and that he's brain-injured, then Mr. Thompson would
7 have a legitimate basis to file a lawsuit. Correct?

8 A. Hypothetical question would require hypothetical
9 answer. Show me the records and I'll answer that
10 question. Okay? Because you can find probably in
11 legal arena some people to say things. You know, some
12 people testify 1000 times, 800 times, and we all know -
13 - and when I say all, legal system know there's people
14 that do not testify truthfully. Okay? That is one of
15 the plague of legal system. But our legal system is
16 based on opinion and contrary opinion and so forth.
17 That's how legal system is based. It's an adversary
18 system. Okay? So yes; unfortunately, there's people
19 some exist that skew the truth. But fabricated medical
20 record? No. No. This is probably the only case in
21 the world like that, at least that I know of. Okay?
22 So this is a huge difference, okay, making an opinion
23 that are false. That would be opinion for money, and,
24 unfortunately, that happens. Okay? And there's a big
25 difference in fabricating the case to destroy people's

1 life.

2 Q. Let's take a break.

3 (Off the Record; 10:42 -- 10:52 a.m.)

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. Dr. Feldman, before the break we were talking about Mr.
6 Casey's medical records and whether a board certified
7 neurologist could review the records without Dr.
8 Fogarty's note or any treatment or care by Dr. Fogarty
9 and support the opinion or have the opinion that Mr.
10 Casey could have suffered an air embolism and cognitive
11 dysfunction because of it. Is that a possibility?

12 A. I'm going to ask you a hypothetical question one more
13 time. Without fabricated medical record, okay, there
14 was no indication for neurologist to see him.

15 Q. So when we're talking about the fabricated medical
16 record, we're talking about Dr. Fogarty's July 21 note.
17 Correct?

18 A. Well, there's many notes, but they're all marked the
19 same day. So without any of those notes, there would
20 be no indication to send him to a neurologist.

21 Q. And the July 21 note is the one that you believe is
22 fabricated, or Dr. Fogarty's records are what you
23 believe is fabricated. Correct?

24 A. All three and maybe more. They're all fabricated.
25 There's not one note. There's many of them, but

1 they're all fabricated.

2 Q. Mr. Casey's hospital records are not fabricated.

3 Correct?

4 A. No.

5 Q. would it be possible for a board certified neurologist
6 to review Mr. Casey's hospital records and form the
7 opinion that Mr. Casey could have suffered an air
8 embolism and resulting brain injury?

9 A. Our medical system is adversary. People make
10 preposterous conclusions all the time. Okay? For
11 money. All right? So is it -- so the question is is
12 it possible to find board certified neurologist, pay
13 him a lot of money to come up with certain opinion,
14 yes. There would be no indication to send hospital
15 record to neurologist without that note. There would
16 be no such process. Nobody would comment why don't we
17 send medical record to neurologist. Why? Okay? There
18 would be no such a thing. Okay? The neurologist -- it
19 would make just as much sense to send it to neurologist
20 without that note as to oncologist. Okay? Is it
21 possible that some oncologist will come up with
22 diagnosis that it is possible something wrong with his
23 bone marrow? The answer is possible.

24 Q. So let me take away in the hypothetical what you
25 injected about paying the expert a lot of money. I'm a

1 lawyer, and I know sides get experts all the time.

2 A. Correct.

3 Q. Taking away the element of pay for litigation, is it
4 possible for a board certified neurologist to have
5 received Casey's hospital records and formed the
6 opinion that he could have suffered an air embolism and
7 resultant brain injury?

8 A. I understand your question. Board certified
9 neurologist would refuse to opine.

10 Q. Would refuse to opine or would say it's not possible?

11 A. No, refuse to opine. He would say it's a mistake, why
12 you send me those records. Find me a pulmonologist. I
13 mean, you -- you got the wrong specialty. Okay? We're
14 talking about pneumothorax, lung issues. That's who
15 you send the records to. Wrong specialty. The board
16 certified neurologist said you send medical records to
17 wrong specialty, this is a lung case.

18 Q. But in so doing, he would be saying there's no brain
19 injury. Correct?

20 A. He will say I'm not a pulmonologist, why do you send me
21 the records.

22 Q. But if the neurologist were asked to opine whether or
23 not -- so it is a yes or no.

24 A. I can't answer your question. Neurologist would never
25 ask to opine on medical records that has a

1 pneumothorax. It is not possible in our medical system
2 to send medical records to the wrong specialty. Okay?
3 He will say you're mistaken. It's -- I'm a
4 neurologist; I'm not a pulmonologist.

5 Q. But Dr. Feldman, we've been talking earlier about how
6 Dr. Fogarty is not a neurologist and it would take a
7 neurologist to make an assessment of whether Mr. Casey
8 had possibly suffered or had suffered an air embolism
9 and possible brain injury. Correct?

10 A. Well, I want to have a different conversation.

11 Q. So now---

12 A. I never said anything of the kind.

13 Q. Okay.

14 A. I never said it is a medical issue. I never said
15 anything about neurologist or any other physician. I
16 said the record was fabricated. Without that record,
17 without that record absolutely no neurologist would
18 ever heard about this case. There was no reason for
19 it.

20 Q. If Mr. Casey's complaining of cognitive difficulties --

21 A. Right.

22 Q. -- a neurologist could be a professional to whom he is
23 sent. Correct? To see whether there is---

24 A. Psychiatrist. It would be psychiatrist.

25 Q. So if the question is has a patient, just generally

1 speaking --

2 A. Right.

3 Q. -- suffered an air embolism and possible resulting
4 brain injury --

5 A. Okay.

6 Q. -- that would be in the field of a neurologist.
7 Correct?

8 A. This is -- the question you've got to rephrase. You
9 asked me to remove this record. I removed it. Now you
10 have a record of nothing. Okay? You send to
11 psychiatrist. Okay? You do not have a organic record.
12 Okay? Organic record meaning stroke, organic record
13 meaning brain tumor. You're talking about
14 psychological issues. That's psychiatrist.

15 Q. Okay. So that I understand you, your position is that
16 -- let's just say Mr. Casey's hospital records -- that
17 there would be nothing in those records on which a
18 neurologist could form an opinion that he possibly
19 could have suffered an air embolism and brain damage?

20 A. Yeah, there's nothing of a kind of anything, anything
21 that's related to the field neurology of any kind.

22 Q. Now, let's talk about what's referenced in your
23 pleadings as the "scheme," and your pleadings reference
24 a scheme, and I want to make sure that I understand
25 what you're talking about.

1 A. Yeah, absolutely make sure. Yes, I want you to make
2 sure.

3 Q. In paragraph 28, you define the scheme as, "The
4 'permanent brain injury' theory, along with a number of
5 associated allegations of causation"---

6 A. Ellen, I apologize to interrupt. What are you talking
7 about?

8 Q. Let's look at Exhibit 2. There we go.

9 A. Exhibit 2.

10 Q. I'm looking at paragraph 28.

11 A. Twenty-eight. Just a second. Let me find it. I'm on
12 it.

13 Q. Okay. What is defined as the scheme is, "The
14 'permanent brain injury' theory, along with a number of
15 associated allegations of causation due to alleged
16 deviations from the standard of care by Drs. Feldman,
17 Boscia, and Shantha." Does that accurately summarize
18 your definition of the scheme?

19 A. Well, it's number 28. So there's many other definition
20 of scheme. If you want to zero in on 28, the permanent
21 brain injury was a scheme, right.

22 Q. So as I read it, and 28 is the paragraph in which it's
23 defined, the parenthetical, so the scheme has three
24 parts. It's the permanent brain injury opinion, Dr.
25 Fogarty's permanent brain injury diagnosis that we've

1 talked about. That's one part of the scheme. You say
2 associated allegations of causation, and those would be
3 the allegations in the medical malpractice action
4 Complaint of depression and other damages Mr. Casey was
5 alleging. Is that correct?

6 A. Well, when was that written?

7 Q. When was it written?

8 A. Yeah, the Complaint. Do you know?

9 Q. Yes. In the medical malpractice action, the Complaint
10 was filed in May 2006.

11 A. All right. In 2010, I would add -- not 2010. In 2016,
12 in May, I would add fabrication of medical record.
13 Back then, I did not have sufficient information for
14 that. Now I do. Fabrication of medical record. That
15 would be a major part of the scheme. So probably need
16 to amend it.

17 Q. And I think that's what we've been talking about
18 earlier where you say that Dr. Fogarty's diagnosis was,
19 in your opinion, fabricated. Correct? The medical
20 record stating it was fabricated.

21 A. Medical record was fabricated. A diagnosis was
22 inserted into the fabricated medical record,
23 preposterous diagnosis, I agree with you, but,
24 nevertheless, the biggest part of the scheme was the
25 fabrication of medical record.

1 Q. Okay. So the scheme is to use the medical record into
2 which the opinion was inserted as a basis of a lawsuit.
3 Correct?

4 A. Correct.

5 Q. And the lawsuit was filed by Mr. Thompson on behalf of
6 Mr. Casey. Correct?

7 A. I say on behalf of Dr. Fogarty.

8 Q. So Dr. Fogarty's not a lawyer and he was not a patient
9 of yours. Correct?

10 A. Dr. Fogarty? Dr. Fogarty is not a lawyer. That's why
11 he could not file lawsuit himself. Okay? He
12 incorporated Mr. Thompson to file lawsuit on Dr.
13 Fogarty behalf to embroil us in this scheme.

14 Q. And what evidence do you have that Dr. Fogarty did
15 that?

16 A. You ask me the question about anything, and I lay it
17 out all the evidence for you. Okay? I have 1000 pages
18 of evidence. Which one in particular are you referring
19 to?

20 Q. Okay. You just said that Dr. Fogarty had Mr. Thompson
21 file a lawsuit on his behalf. Correct?

22 A. Are you sure we have two days and not three days of
23 deposition? We need to go over---

24 MR. MANN:

25 Dr. Feldman, answer the question. Thank you.

1 EXAMINATION RESUMED BY MS. CHEEK:

2 A. All right. Number one -- I'll be allowed to finish the
3 answer? Because it's going to be like five, ten
4 minutes. I will?

5 Q. If you are answering the question what evidence do you
6 have --

7 A. Yes.

8 Q. -- that Dr. Fogarty had Mr. Thompson file a lawsuit on
9 his behalf --

10 A. Yes.

11 Q. -- you may answer the question.

12 A. Okay. Number one, Dr. Fogarty, Mr. Thompson had a lot
13 in common. Okay? They had the wife working for Dr.
14 Fogarty. Dr. Fogarty pay her salary. Okay? Mr.
15 Thompson did not pay his wife's salary. Dr. Fogarty
16 did. Okay? It is pretty clear in the record that a
17 majority of her time or a big part of her time she was
18 spending on the case. That started in 2004, continued
19 2005, and continued 2006. That proceeded back after
20 the lawsuit was filed from 2006 to 2007. So we're
21 talking about approximately \$200,000 of paid salary.
22 Okay? Working on the case, constructing the case.
23 Okay? Number two, which is probably -- should have
24 been number one. They worked together on constructing
25 the note. He needed to have permanent damage, okay, to

1 proceed with the case, and he could not file the case
2 without Dr. Fogarty promising that Mr. Thompson, I'll
3 back you up. Okay? For what we need is a lawsuit
4 against Feldman and company. Okay? Tomorrow I will
5 bring you the parts of the medical record that you ask
6 me what evidence do you have. Okay? I'll bring you
7 the evidence that I have, okay, from that medical
8 record, which you do, too. It come from the same
9 production, Mr. Thompson production. Okay? I'm going
10 to bring that to you. Okay? I'll be in a better
11 position to say, Ellen, you asked me yesterday the
12 question what evidence do I have. This is the
13 evidence, this is the evidence, this is the evidence,
14 this is the evidence. Okay? That Mr. Thompson was
15 filing a lawsuit on Dr. Fogarty behalf with the full
16 knowledge that all the records are fabricated. I
17 haven't finished yet, Ellen. How much time I have?
18 Can I finish?

19 Q. You may.

20 A. Mr. Thompson knew that that medical record is
21 fabricated. He knew that. Okay? He had discussions
22 with Dr. Fogarty. He had multiple, multiple, multiple
23 records transmitted by Dr. Fogarty to Mr. Thompson. We
24 got none of it in discovery, none of it. I'm going to
25 bring you tomorrow the evidence that will consist of

1 hundreds of pages, hundreds, not one, not two, not
2 four, hundreds. It will take time for me to fully
3 explain to you the depths of Mr. Thompson's knowledge
4 of what Fogarty is up to. He filed a lawsuit on behalf
5 of Dr. Fogarty. It was a case of not being an innocent
6 man, but to a large extent a pawn, a money hungry pawn.
7 But with Fogarty he filed a lawsuit for Casey on his
8 own behalf using his girlfriend, wife, whatever she
9 became, okay, as a conduit. Not what I say, what I
10 will bring you tomorrow.

11 Q. And these communications between Dr. Fogarty and Mr.
12 Thompson, are they communications between Dr. Fogarty
13 and Mr. Thompson about filing the lawsuit on Dr.
14 Fogarty's behalf?

15 A. The jury will come to that conclusion. Okay? Not Greg
16 Feldman. It is a jury that will come to that
17 conclusion the lawsuit was filed on Dr. Fogarty behalf.

18 Q. So what I'm asking about is do you have communications
19 between Mr. Thompson and Dr. Fogarty in which Thompson
20 is saying I'll file this on your behalf, Dr. Fogarty?

21 A. I will present and my partners will present a
22 compelling case for the jury, for the jury to make that
23 conclusion, inescapable conclusion. Okay? when you're
24 dealing with a conspiracy and abuse of process, okay,
25 it's a preponderance of evidence, because conspirators

1 very rarely write down on paper why don't we hang
2 somebody.

3 Q. So you don't have any correspondence from Dr. Fogarty
4 and Mr. Thompson that says, in your words, Mr.
5 Thompson, I'll back you up, do you?

6 A. I do. Okay? Not in the words that you said, but in
7 the words that fully understandable to the jury what
8 they did.

9 Q. Now, if Dr. Fogarty had just seen Casey as a patient
10 after Casey left your care, you wouldn't be suing Dr.
11 Fogarty, would you?

12 A. Explain yourself, the question.

13 Q. If Dr. Fogarty had just seen Casey as a patient, there
14 would be no ground for a lawsuit against him. Correct?

15 A. I wouldn't even know about it. I mean, he's seen many
16 patients.

17 Q. And, likewise, if Dr. Fogarty had just formed a false
18 or fabricated in his mind a theory that you had
19 malpracticed against Casey, you wouldn't be suing him,
20 would you?

21 A. We are suing Dr. Fogarty not for seeing Mr. Casey. We
22 are suing Dr. Fogarty for fabricating the scheme.
23 That's why we're suing him. Somehow you tried to say
24 it's about medicine. It isn't. It has nothing to do
25 with medicine.

1 Q. It's about what Dr. Fogarty wrote down. You're suing
2 him because he wrote down something that was false, in
3 your opinion, and used it as the basis of a lawsuit.

4 A. I don't know why, Ellen, you decided to put words in my
5 mouth. For the past two hours I'm trying to explain to
6 you that he did not write the note for the patient. He
7 wrote the note for the lawyer. It is not a medical
8 record. It's a legal record to file the lawsuit.
9 That's what he's getting sued for. He got caught.
10 Okay? He got caught in writing record, not for the
11 medical purpose, but for legal purpose. A legal
12 purpose was to hang his colleagues, to embroil them in
13 multi-year litigation and to destroy their careers.
14 That's what he's getting sued for.

15 Q. And you had told me earlier that in order to do that,
16 in order to have a record to be used for a lawsuit, he
17 had to put the word undoubtedly in there?

18 A. Yes.

19 Q. So, at its core, what Dr. Fogarty did wrong was he
20 wrote that Mr. Casey undoubtedly had air embolism?

21 A. What do you mean wrong? He changed his note to become
22 a linchpin of his lawsuit, Fogarty lawsuit. That
23 lawsuit was Fogarty lawsuit. He needed a linchpin. He
24 changed it. He changed it way after it was written.

25 Q. Now, Dr. Feldman, Exhibit 5, this July 21 note that Dr.

1 Fogarty was deposed on, that's the note that has the
2 word undoubtedly in it. Right?

3 A. Can I concentrate in answering your question on the
4 number, 7/21? That note was never written on 7/21. It
5 was fabricated much later.

6 Q. How do you know that?

7 A. I promise to bring you tomorrow the evidence. You
8 asked me what evidence do you have. I am bringing you
9 the evidence.

10 Q. But you've also told me that Dr. Fogarty, this note
11 right now that was produced in the litigation, that's
12 the one that has the word undoubtedly in it. Correct?

13 A. But it's a fabricated note. It is not written in July.
14 It's actually probably written sometime in 2006, year
15 later, before the lawsuit. That is not -- this is a
16 fabricated note, totally.

17 Q. This is the note that was produced in the lawsuit.
18 Correct? That's---

19 A. This is fabricated note.

20 MR. MANN:

21 Dr. Feldman, please answer. Excuse me, Ellen.

22 EXAMINATION RESUMED BY MS. CHEEK:

23 A. Yes.

24 Q. This document was produced in the lawsuit. Correct?

25 A. Correct, in 2006.

1 Q. And this is the document that was included in Casey's
2 medical records that were produced in that lawsuit.
3 Correct?

4 A. Yes.

5 Q. And this is the one that you contend has the language
6 in it that Mr. Thompson needed to file the lawsuit.
7 Correct?

8 A. Yes.

9 Q. And we've noticed earlier and you noticed in the
10 malpractice action that there are other notes dated
11 July 21, 2005 that don't have the word undoubtedly in
12 it. Correct?

13 A. Yes.

14 Q. So you told me that this document with this language in
15 it was needed for Mr. Thompson to file the lawsuit on
16 Casey's behalf. Correct?

17 A. On Fogarty behalf and Casey behalf, yes.

18 Q. And that's why Dr. Fogarty put in this document the
19 language that he put in it. Correct?

20 A. Correct.

21 Q. Your allegation in the Second Amended Complaint is that
22 Casey wasn't injured and the scheme was developed not
23 for medical purposes but for purposes of the lawsuit.
24 Correct?

25 A. Correct.

1 Q. And you've alleged that Casey's or Thompson's
2 motivation in filing the lawsuit was to obtain a
3 verdict against you that he wasn't entitled to.
4 Correct?

5 A. We'll ask Mr. Thompson that question.

6 Q. I'm asking what your allegation is.

7 A. My allegation is Mr. Thompson knew that the records are
8 fabricated. He knew that he doesn't have legitimate
9 lawsuit, and he was acting on behalf of his client to
10 help him get through life with a disability, which is a
11 fabricated disability, and he was intending to help Dr.
12 Fogarty in his scheme.

13 Q. So Thompson is trying, in your opinion, to help Casey
14 by getting a verdict for him. Right?

15 A. Disability, fraudulent disability.

16 Q. But he filed a lawsuit. Correct?

17 A. On Fogarty's behalf.

18 Q. And you don't think that the lawsuit was an aim to get
19 a big judgment for Casey?

20 A. He could not get a judgment. He knew that. You're
21 talking about extortion part. Extortion is a criminal
22 offense. Okay? I'm not -- I'm a doctor. I'm not a
23 prosecutor. Okay? So whether he had extortion part or
24 not, okay, that's not for me to decide. Okay? For me
25 it's pretty clear what he was wanting is to obtain a

1 fraudulent disability, fraudulent Social Security,
2 fraudulent that to get -- that's what the lawsuit was
3 for. He sent a lawsuit, copy of allegation, Bates
4 stamped allegation, okay, he sent it to Social
5 Security. He was sending it to Aetna disability, the
6 contents of the lawsuit and so forth. That's what he
7 sending it for. He needed the lawsuit to legitimize
8 his conduct to obtain a fraudulent disability. That's
9 what he needed it for. As far as---

10 Q. But he---

11 A. Let me finish answer, Ellen. I don't interrupt you.
12 He has filed a lawsuit, okay, and extortion part, I
13 didn't know the prosecutor. Whether he got an
14 extortion or not, okay, that's in the criminal area.
15 In my arena, okay, he knew that he could not win that
16 lawsuit. There's just no way. The fabricated record
17 in itself he knew was fabricated. That was it. That
18 was enough.

19 Q. So your position is that Thompson filed a lawsuit that
20 he knew we couldn't win?

21 A. Yeah, he knew that.

22 Q. One does not need a lawsuit to file or obtain
23 disability, do they?

24 A. I'm not a lawyer. I'm a doctor.

25 Q. Your position is, though, that you just stated to me is

1 that Thompson and Casey needed a lawsuit to support
2 their disability claim. Correct?

3 A. Thompson used the lawsuit to obtain a disability. He
4 needed the allegation in the lawsuit of permanent brain
5 damage, all of that, okay, to obtain disability. Why?
6 Because Aetna policy denied any mental depression, drug
7 abuse, and so forth. They paid out two years. That's
8 it. They needed organic brain damage to obtain a
9 disability. It has to be organic. Okay? That's the
10 only way for Casey to receive the benefits. If you
11 don't put -- if you don't put PTSD, okay, as
12 preposterous as that may sound to you, okay, that's not
13 enough, okay, for Casey lawsuit. PTSD was unworkable
14 diagnosis. Okay? For Thompson and Casey, they needed
15 permanent brain injury or something of permanent
16 nature, organic nature, physical nature, something you
17 discover on CAT scan, MRI, something that's tangible to
18 help his benefits. Okay? That's what he needed. All
19 right? Otherwise, from what I know, he couldn't file a
20 lawsuit on PTSD, as bogus as it is. Okay? But he
21 needed that. Okay? Fogarty also knew said that they
22 needed it.

23 Q. Now, Dr. Feldman, you've told me that you don't know
24 whether a lawsuit is needed to file or receive Social
25 Security disability. Yes or no, do you know whether

1 one can file and receive Social Security disability
2 without having a lawsuit?

3 A. I guess I wasted two or three minutes. I'm going to
4 repeat myself.

5 Q. Yes or no?

6 A. I'm going to repeat myself.

7 Q. I'm going to ask you to answer my question.

8 A. I'm going to answer. I'm going to answer your
9 question. In Casey case, he needed organic brain
10 damage. In somebody else's case, not Casey case, okay,
11 I'm not a lawyer. In Casey case, I know for a fact
12 that he needed organic brain damage to receive
13 disability benefits, and that's what was decided
14 between them, that's what they needed. And the
15 lawsuit, the lawsuit, okay, the lawsuit, you ask the
16 lawyers about the legal system. The lawsuit was sent
17 to Social Security, allegations in the lawsuit, and
18 Aetna disability. That's where the lawsuit was needed
19 to give legitimacy to illegitimate fabrication. That's
20 why it was done. They had to have organic. PTSD was
21 not enough.

22 Q. So your position is that Casey and Thompson needed a
23 medical malpractice lawsuit to be filed in order to
24 obtain, apply for and obtain disability?

25 A. To legitimize it. To legitimize it, yes. Yes.

1 Q. Does the filing of a lawsuit, in your theory,
2 legitimize that, or don't you need a verdict that he
3 has been in fact brain-injured, you've malpracticed?
4 Is that what they need? Do they need the verdict or do
5 they just need the paper being filed?

6 A. I wasted five minutes. I'm going to repeat myself one
7 more time. They needed the lawsuit, allegation in the
8 lawsuit. Okay? They needed lawsuit allegations, all
9 right, to disseminate, to give credibility to the
10 outrageous theory. Okay? They also needed it for
11 Aetna disability, because it's only organic brain
12 damage would suffice for them. They would not be
13 passing by PTSD. Okay? They needed it in the lawsuit,
14 because a lawyer, the lawyer, like Mr. Thompson, is
15 free to protect it, or so they -- or they thought they
16 were. In the legal arena, if Mr. Thompson would write
17 all of that to Social Security disability and so forth,
18 okay, outside of the legal process, all right, he
19 couldn't have done it, okay, for that many years. All
20 right? The chicken come home to roost, but he couldn't
21 have done it for that many years. Yes, he needed to
22 pursue all that within the legal arena, because his
23 scheme required legal mess. Mr. Thompson is a lawyer.
24 You know that. He has a legal license. He abused his
25 legal license for that purpose. Okay? He served his

1 legal license for illegitimate purpose. And organic
2 brain damage, that's what he had to have.

3 Q. So I understand, I believe what you're telling me is
4 that the lawsuit was filed for the illegitimate purpose
5 of trying to obtain Social Security disability?

6 A. Aetna disability, Social Security disability, to
7 fabricate disability in general. He needed it to
8 fabricate disability in general. That was his total
9 priority. I've got to have a disability. If you're
10 not disabled, I got to have it. Casey needed it, too.
11 He needed disability. He needed Aetna benefits to
12 continue.

13 Q. So in filing the lawsuit for that purpose, the legal
14 process was abused by Thompson?

15 A. On behalf of Casey. There's another part. He filed a
16 lawsuit for Dr. Fogarty to follow his agenda.

17 Q. In filing the lawsuit on behalf of Dr. Fogarty, also
18 the legal process was abused. Correct?

19 A. Yes. To pursue -- to file it for the agenda, yes.
20 That was a big part of this lawsuit.

21 Q. I'm going to refer you back to the Second Amended
22 Complaint, which is Exhibit 2, please.

23 A. To what page?

24 Q. We're just going to be working with this document for a
25 while, and I will tell you as we start this process,

1 the reason that we are going through your allegations
2 here and talking about the factual bases for your
3 allegations is that the medical malpractice action, as
4 we've discussed before, does form the basis of your
5 claims. So, to the extent that some of this is very
6 well litigated in the underlying case, we're still
7 going to cover some of it.

8 A. It's your deposition, Ellen.

9 Q. All right. In paragraph seven of your Second Amended
10 Complaint, you allege Casey was admitted to Spartanburg
11 Regional Medical Center with chest pain on May 28,
12 2004. Is that correct?

13 A. That's correct.

14 Q. Paragraph eight, a chest x-ray was performed that
15 indicated a small foreign body and that clinical
16 correlation was suggested. Is that correct?

17 A. Correct.

18 Q. Paragraph nine states that Dr. Boscia performed a
19 flexible bronchoscopy which did not reveal an object.
20 Correct?

21 A. I do. I see that.

22 Q. Paragraph 10 states---

23 A. It goes on to say that it did reveal abnormal tissue.
24 You omitted that, but I don't know is it relevant or
25 not to discussion. It say, "Accordingly, Dr. Boscia

1 performed a flexible bronchoscopy, which did not result
2 in retrieval of foreign object, but did reveal abnormal
3 tissue."

4 Q. Thank you. Paragraph 10, Dr. Boscia referred Mr. Casey
5 to you. Correct?

6 A. Yes, for rigid bronchoscopy.

7 Q. Paragraph 11, Mr. Casey was sent home till June 3,
8 2004. Correct?

9 A. When he was admitted for rigid bronchoscopy.

10 Q. Now, the procedure, the rigid bronchoscopy was
11 performed at Spartanburg Regional. Correct?

12 A. It was.

13 Q. Now, before you performed that procedure, you were
14 required to perform a history and physical on Mr.
15 Casey. Correct?

16 A. What paragraph are we talking about?

17 Q. I'm not paragraphing right now. I'm just asking.

18 A. Yes.

19 Q. And you were also required to obtain his informed
20 consent for the procedure. Correct?

21 A. Yes.

22 Q. Now, in order to obtain informed consent from a
23 patient, you must meet with the patient and explain to
24 them the risks and benefits of the procedure. Correct?

25 A. Yes.

1 Q. And one of the first steps in obtaining informed
2 consent is assessing whether the patient is capable of
3 giving informed consent. Correct?

4 A. Yes.

5 Q. And in order for a patient to be able to provide
6 informed consent, they can't be mentally impaired.
7 Correct?

8 A. Define me mental impairment.

9 Q. Have some sort of cognitive impairment that prevents
10 them from knowingly consenting to a procedure and its
11 risks.

12 A. Yeah, let me explain it to you. Comatose patient, no.
13 Inebriated patient, no. Somebody who doesn't know
14 where they are, which is do you know who you are, do
15 you know where you are, do you understand what
16 bronchoscopy is, then yes. Otherwise, it would not be
17 possible to conduct medicine today. Somebody --
18 enormous amount of people have a cognitive impairment
19 that you and I would define. Anxiety. That's common.
20 An anxious person can give consent, yes. Depression,
21 somebody on anti-depressant drug, that's mental. No,
22 that's not defined for the purpose of consent.

23 Comatose person, no. Somebody who has Alzheimer's, no.

24 Q. So you as a physician make this determination?

25 A. We do.

1 Q. Now, in the medical malpractice action, it was
2 established that you did not fill out a history and
3 physical or informed consent on Casey until the morning
4 before the procedure. Correct?

5 A. That's correct. Which is a standard practice, by the
6 way.

7 Q. Are you aware in the medical malpractice case, your
8 attorney, Mr. King, are you aware that he found your
9 obtaining informed consent and the history and physical
10 on the morning before the procedure on Mr. Casey to be
11 significant?

12 A. No.

13 Q. Are you aware that he reported to the JUA that he
14 believed that you should have given a more detailed and
15 documented discussion with Mr. Casey than you gave?

16 A. Never expressed it to me. He said, Greg, informed
17 consent not an issue, everything done fine.

18 Q. What is a 483 letter?

19 A. Show it to me.

20 Q. Do you know what a 483 letter is?

21 A. Yeah. Show it to me.

22 Q. I want you to tell me what it is.

23 A. The 483 letter is, I believe, something research
24 related.

25 Q. Do you know whether it's a communication that the FDA

1 sends?

2 A. Yeah, it's an FDA.

3 Q. Isn't a 483 letter a communication that the FDA sends a
4 researcher for failure to follow protocol?

5 A. In my case, it was an error. It was retracted, and it
6 was a mistake. So that letter that you're referring,
7 it never existed. That's what FDA said, Dr. Feldman,
8 we apologize.

9 Q. So you did receive a 483 letter from the FDA?

10 A. Yeah. We asked what's up, and they apologized. It was
11 intended for the -- actually for the company, not for
12 me, some sponsor.

13 Q. Did you receive---

14 A. Ellen, let me make it clear. It's retracted. If you
15 want me to bring the retraction, I will.

16 Q. Okay. Now, what you and I are referring to is a 483
17 letter that you were issued in or around 2004 or 2005.
18 Is that correct?

19 A. It is retracted.

20 Q. Okay, but that's what we were talking about.

21 A. We're talking about FDA corrected the error. That's
22 what we're talking about.

23 Q. But before the FDA you said issued a retraction. Is
24 that correct?

25 A. They issued a retraction. After they issued that

1 letter, it was retracted. It's been purged out of the
2 record.

3 Q. But between the issuance of the 483 letter and the
4 retraction, there was an investigation of it. Correct?
5 Or an inspection.

6 A. No. There was an interview, and they retracted it
7 because it wasn't against me. It was against the
8 sponsor.

9 Q. And you hired Norton Audits to assist you with the 483.
10 Is that right?

11 A. No. Norton Audits assisted us in FDA compliance. In
12 this particular case, they were not involved because it
13 was retracted.

14 Q. Now, the subject of the 483 that you say was retracted
15 was informed consent. Correct?

16 A. No.

17 Q. What was the subject of that 483?

18 A. I don't recall.

19 Q. Do you recall who Tamera Norton Smith is?

20 A. I know her.

21 Q. Do you recall her advising with respect to a 483
22 inspection that you should keep in mind that you need
23 to --

24 A. I don't recall.

25 Q. -- obtain informed consent?

1 MR. MANN:

2 Let her finish.

3 EXAMINATION RESUMED BY MS. CHEEK:

4 A. I don't recall specific discussions, but Mrs. Norton
5 advising our organization every year on many subjects
6 and have continued to advise us, even today. So our
7 relation is long-standing spanning 12 years.

8 Q. Now, other than that particular 483, have you ever
9 received a 483 letter in any form --

10 A. No.

11 Q. -- or manner?

12 A. No.

13 Q. How long did it take between the issuance of the 483 in
14 2004 or '05 until the retraction?

15 A. It varies, because it was against the sponsor where
16 they tried to -- and it wasn't a study. Okay? It was
17 a register. So what they tried to do, they tried to
18 assemble people like me that will give them information
19 about what has been actually done by the sponsor.
20 okay? That's what they did. And far as my personal
21 situation, okay, I was found to have done nothing wrong
22 personally, and it was retracted, and I was told that
23 the record no longer exists because it was an error.

24 Q. And that did not involve informed consent?

25 A. No.

1 Q. Let's go back to Exhibit 2. I'm looking at paragraph
2 12. Your allegation is---

3 A. What are we looking at? One more time.

4 Q. Paragraph 12, please.

5 A. Page 3?

6 Q. Correct.

7 A. Okay, I'm on it.

8 Q. It states, "Dr. Feldman performed that procedure,"
9 referencing the rigid bronchoscopy, "with Dr. Shantha,
10 who was the attending anesthesiologist." Correct?

11 A. Correct.

12 Q. Now, a CT scan was performed on Casey between the
13 flexible and rigid bronchoscopies. Correct?

14 A. Correct.

15 Q. And that CT scan was negative. It did not show the
16 presence of a foreign body. Correct?

17 A. You talking about lung CAT scan or brain CAT scan?

18 Q. This is the CT scan that was performed of Casey's lungs
19 between the flexible and rigid bronchoscopy.

20 A. Yeah, that was negative.

21 Q. And you performed the rigid bronchoscopy regardless?

22 A. Yes.

23 Q. Now, in the medical malpractice action, your lawyers
24 assessed that you committed malpractice as to Casey by
25 performing an unnecessary procedure. Correct?

1 A. Who said that?

2 Q. Your lawyers.

3 A. No. That's incorrect.

4 Q. So in the medical malpractice action, you're not aware
5 of your lawyers' belief that the rigid bronchoscopy was
6 a questionable procedure, especially in the face of a
7 negative CT scan?

8 A. No. My discussion with my lawyers was very simple.
9 That's what the plaintiff allegations were, not that
10 what I've done was malpractice or anything in any
11 manner that I've done. That's allegation from Mr.
12 Thompson and the crowd.

13 Q. Now, your---

14 A. You know that the jury found that we'd done nothing
15 wrong here. Right?

16 Q. I know what the jury verdict was.

17 A. Okay. Thank you.

18 Q. Now, in the medical malpractice action, the JUA was
19 your malpractice insurer?

20 A. They were.

21 (Defendant's Exhibit Number 17 marked)

22 EXAMINATION RESUMED BY MS. CHEEK:

23 Q. I'm going to hand you what's been marked as Exhibit 17.
24 Dr. Feldman, this Exhibit 17 is a January 15, 2008
25 letter from your lawyer Spencer King to Judy Wilbanks

1 at JUA. Do you see that?

2 A. I do.

3 Q. If you could flip to page 4, the last page, I'd ask you
4 to read the last full paragraph to yourself, please.

5 A. "Apparently Dr. Feldman then filled out informed
6 consent"---

7 Q. I'm sorry if I was unclear. If you could just read to
8 yourself the paragraph beginning, "My synopsis."

9 A. I see it.

10 Q. Do you agree with me that Mr. King writes Ms. Wilbanks,
11 "My synopsis of the case, at this point, is that the
12 rigid bronchoscopy was a questionable procedure,
13 especially in the face of a negative CT, and that if
14 Dr. Feldman was going to do the procedure, there should
15 certainly have been much more detailed and documented
16 discussion with the plaintiff than is present. That is
17 significant"?

18 A. He's summarizing your position, not his own position.
19 His own position after multiple discussions with him
20 was that they had an allegation, a no-brain allegation.

21 Q. So your position is that Mr. King is not asserting his
22 assessment of the case; that's somebody else's?

23 A. Let me read it to you. "We do not believe there is any
24 anatomical connection between an air embolism and a
25 pneumothorax." Okay? That is a discussion that me and

1 Mr. King have. Let me repeat it. "We do not believe
2 there's any anatomical connection between an air
3 embolism and the pneumothorax."

4 (Defendant's Exhibit Number 18 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. Dr. Feldman, this an April 17, 2009 letter from your
7 lawyer Spencer King to Judy Wilbanks.

8 A. Okay.

9 Q. You'll see the first sentence. He writes, "Dear Judy:
10 Please consider this as our pretrial report in the
11 above-referenced case."

12 A. I do.

13 Q. I'm going to ask you to turn to page 3 of the letter.

14 A. Which page?

15 Q. Page 3.

16 A. Which is marked as King 95?

17 Q. Yes, 395.

18 A. That is a document that was produced in this litigation
19 in May of 2016. Am I correct?

20 Q. Are you asking whether the Bates labeled document that
21 I'm holding --

22 A. Right.

23 Q. -- was produced in this litigation?

24 A. Let me just make sure. That is a document that was
25 produced in 2016?

1 Q. Defense counsel obtained this from your medical
2 malpractice counsel at that point, yes.

3 A. In 2016?

4 Q. Yes.

5 A. That one is not addressed to Greg Feldman.

6 Q. But I'm going to ask you to please flip to page 3.

7 A. Just to be sure we're looking at the same page, it's
8 letter to Judy Wilbanks. It is not letter to Greg
9 Feldman.

10 Q. I agree.

11 A. So any question that you have about what Greg Feldman
12 knew is not in this letter. I didn't know about it.

13 Q. I understand.

14 A. Okay.

15 Q. If you'll please flip to page 3, there is a
16 subparagraph titled Defense.

17 A. I see it. 95. Right?

18 Q. Yes, please, 395. If you could read the first
19 paragraph under the Defense subtitle into the record,
20 please.

21 A. "With respect to the rigid bronchoscopy performed by
22 Dr. Feldman, I think a jury will conclude that it was
23 an unnecessary procedure and should not have been
24 performed without significantly more discussion with
25 Mr. Casey. In fact, if Dr. Feldman felt the need to

1 proceed, there should have been much more -- better
2 documentation of the patient appreciation. A
3 pneumothorax is a complication but would not have
4 occurred if the procedure had not been done. It is not
5 believed that the pneumothorax caused any permanent
6 damage to the lungs or chest."

7 (Defendant's Exhibit Number 19 marked)

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. Again, Dr. Feldman, 19 is a communication from Spencer
10 King---

11 A. whoa, whoa, whoa. 19 what?

12 Q. Exhibit 19. I'm sorry.

13 A. Are we done with this exhibit?

14 Q. Yes, sir. This is a May 14, 2009 letter from Spencer
15 King to Judy Wilbanks. In the first sentence, he says,
16 "You asked for a supplement to my trial brief for
17 evaluation." And I'm going read to you from the middle
18 of the second---

19 A. You want me to read it?

20 Q. I'm going to read it this time. I'm going to pick up
21 with, "However, Boscia and Feldman not reviewing the CT
22 ordered Boscia ordered at the conclusion of the
23 flexible procedure, without finding a metallic foreign
24 body and proceeding without discussions regarding the
25 negative finding with Casey, clearly exposed him to the

1 consequence of a pneumothorax and an unnecessary
2 surgical procedure." Do you see that?

3 A. I do.

4 Q. If you'll flip to the second page, I'm reading from, I
5 guess it's the second-to-last paragraph. Spencer King
6 writes, "I think the jury will find this to be a
7 judgment call, but the breakdown came when Boscia and
8 Feldman chose not to look at the CT but concluded the
9 abnormal tissue in the left main bronchus found by
10 Boscia was sufficient justification for the rigid
11 bronchoscopy. Not to have even read the CT and not
12 conferred with the patient about the absence of the
13 mysterious foreign body, in my judgment will cause a
14 jury to conclude medical negligence." Do you see that?

15 A. I do.

16 Q. Do you agree that that's Mr. King's statement of his
17 assessment of the case to your insurer?

18 A. Not to me. I never had discussion like that with him.
19 I think it's a candid assessment of an extortion
20 attempt on JUA, candor assessment that this is what the
21 people are after, the people are after framing these
22 people into the brain damage, these people are to --
23 there's no evidence of any damage either to the lung,
24 the chest. They may be successful, these people. They
25 have -- they have ability and they have determination

1 to present a fraudulent case. Be concerned. I think
2 that was just a candid assessment to the JUA adjuster
3 that, look, you see who we're dealing with. There's no
4 brain damage. There's no lung damage. But who knows?

5 Q. But that's not what Mr. King told you, was it? Mr.
6 King told you that he thought there were actually jury
7 issues as to liability and damages. Correct?

8 A. Thank you for giving me this letter, because I haven't
9 seen it. He's candidly appraising the fraudulent
10 scheme, the fraudulent extortion scheme, but there's no
11 damages.

12 Q. Well, let's take a look at what Mr. King told you.
13 (Defendant's Exhibit Number 20 marked)

14 EXAMINATION RESUMED BY MS. CHEEK:

15 Q. This is a July 28, 2009 letter to Drs. Feldman, Boscia,
16 and Attorney Mann. This is a letter that Mr. King
17 wrote. In the fourth paragraph, he says, "In my
18 judgment, there are jury issues both as to liability
19 and damages. The jury will have support from testimony
20 and evidence should they choose to return a verdict
21 against you. The plaintiff's strongest position is the
22 procedure was performed without fully apprising patient
23 plaintiff of all the circumstances; i.e., the negative
24 CT scan."

25 A. You talking about CT scan of the brain?

1 Q. Of the chest.

2 MR. MANN:

3 wait for a question, please.

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. Do you agree with me that Mr. King is telling you and
6 Dr. Boscia that he believes there are jury issues in
7 this case?

8 A. Is that a question?

9 Q. Do you agree that Mr. King here on July 28, 2009 is
10 telling you and Dr. Boscia and Attorney Mann that, in
11 his judgment, there are jury issues to be decided in
12 the case?

13 A. No, I don't, and I'm going to qualify this question.
14 This is a letter written at our request for JUA to give
15 us full control of the case, that we did nothing wrong,
16 that we want to proceed on our own, that we do not want
17 to have JUA to represent us in a way that will impede
18 our ability to prove our position that it's a fraud,
19 that we cannot discuss fraud with these people, that
20 they are basically on a fraudulent collision course and
21 so forth. Mr. King has apprised us, as any lawyer
22 would, that in the jury system that exists today, that
23 me and Dr. Boscia have significant material risk. We
24 took it under advisement and we really appreciated what
25 he did, but it has nothing to do with the case. It has

1 to do with us, okay, not wanting JUA to worry about it.
2 we knew it was a fraud, that the case cannot be proven
3 other than the fraud. We knew that. Okay? What Mr.
4 King did not know, and neither did I, it's a fabricated
5 case. If he did that, if he knew that back then, okay,
6 he wouldn't write that letter. He knew that was a
7 baseless lawsuit. As a good malpractice lawyer, he
8 defend baseless lawsuit with no lung injury, no brain
9 injury, or no injury of any kind. He knew that.
10 Nevertheless, as a lawyer, he want his client, which is
11 JUA, to know there's a risk in our jury system, and he
12 also want his client, which is Greg and Joe, Feldman
13 with Boscia, to know that I'm not advising you of that,
14 it's your decision, but I'm advising you that because I
15 see in the jury system stranger things happen. In his
16 defense, perhaps even today, he does not know that the
17 records were fabricated. He did not know that. If he
18 had known that, I would have known that, too. He did
19 not know.

20 Q. Now, you discussed with Mr. King the differences in the
21 July 21 note. We've already seen that.

22 A. I discuss with him differences between Dr. Fogarty note
23 and I was looking for neurologist. Where has Dr. Waid
24 got his note? I couldn't find it. I said -- I was
25 repeatedly asking Mr. King to produce me a note which I

1 thought coming from neurologist. Okay? Because the
2 note did not match. Okay? And Dr. Fogarty did not
3 produce it. I in a wild dream would not believe that
4 somebody would fabric the record.

5 Q. But you knew that other physicians whose records you
6 were getting were quoting Dr. Fogarty and that the
7 language they quoted was different than what you had.
8 Correct?

9 A. Ellen, I did not. Okay? Absolutely not.

10 Q. You didn't know that they were quoting Dr. Fogarty?

11 A. 2006, the lawsuit was filed. From 2006 until September
12 2007, nothing was happening at all, nothing. Okay?
13 There was no records that I had. There was no concern
14 that I had, okay, about malpractice issue. I had
15 concern about my personal life, but not about
16 malpractice issue. Okay, I wasn't -- it was like it
17 was a mistake. Mr. Thompson was a partner with Mr.
18 Turner, Noel Turner who had lung cancer. I was taking
19 care of Noel Turner. He was my patient. Okay? Mr.
20 Turner wrote an apologetic letter saying, Dr. Feldman
21 and Dr. Boscia, I don't know nothing about it. So to
22 me, it was a reputable firm that made some kind of
23 strange mistake. I was looking for that. I was
24 looking where is this note that came from, because
25 logically the law firm, in my mind, was highly

1 reputable people. He was a dear patient of mine. He
2 was a gentleman. Okay? In my wildest dream, I could
3 not -- I could not imagine that, what has happened.
4 Okay? It wasn't about Fogarty. It's about people who
5 file the lawsuit. The head of the firm was my dear
6 patient. Okay? And Dr. Boscia's patient. We took
7 care of his severe, severe lung cancer for years, and
8 COPD. Okay? That is the firm that filed the lawsuit.
9 It wasn't about Fogarty. There's got to be something
10 to it. Okay?

11 Q. So your position in 2007 was that you had no awareness
12 that Dr. Fogarty had anything to do with the lawsuit?

13 A. It was two documents I've seen in passing 2007, Dr.
14 Fogarty note, which was in medical language. I will
15 translate it into the English language. Crazy. And a
16 report from neuropsychologist. That's all I have. I
17 had no other records. Didn't really have any reason to
18 look at any other records, because to me this is Mr.
19 Turner, my patient, who write me apologetic letter.
20 This is going to be tossed. Okay? This is a mistake.
21 And indeed nothing was happening, nothing whatsoever.
22 Okay? No deposition. No nothing. So I was -- okay,
23 so I had that letter from Mr. Turner saying, Dr.
24 Feldman, I assure you if I only knew. That was my
25 frame of mind back then. Okay? I didn't know that

1 Thompson was married Kimbrell. I didn't know any of
2 that. I didn't know that the records were fabricated.
3 I had no reason whatsoever even to be concerned. I was
4 concerned about my personal life due to the lawsuit. I
5 had no reason to be concerned that lawsuit was going to
6 go forward. That was a bizarre note, no doubt, but
7 that connection, who would know.

8 Q. So when was it that you had reason to think the lawsuit
9 was going forward?

10 A. Well, we had a deposition with Mr. Casey in 2007. I
11 think it was October, September. And he said nobody
12 told him he had brain damage. So I said that's it, the
13 case is over. All right? That was over. Where my
14 concern started crop up was in 2008. In 2008, there
15 was a deposition of Dr. Paladugu taken in 2008,
16 Paladugu, which he was a hospitalist. And during that
17 deposition, it was produced a letter where they have a
18 -- Thompson and Fogarty have created crazy x-ray.
19 Okay? They sent it. They hook up something to the
20 patient. Wasn't any medical reason. At the lawyer
21 request. I start getting very worried. Whoa, whoa,
22 whoa, whoa, whoa. A lawyer sending a patient for the
23 x-ray to attach something to his body. Not to diagnose
24 pneumonia, not to diagnose any medical condition. In a
25 lawsuit. That was the first sign I start getting

1 worried. Okay? I said, whoa, whoa, whoa, whoa, whoa.
2 A lawyer sending the patient for the x-ray to the
3 doctor's office, a totally unnecessary x-ray. I start
4 getting worried. But after MRI, it was -- it was clear
5 that we got it. We got evidence. After MRI we got it.

6 Q. And when was the MRI?

7 A. I'm talking about MRI of the brain.

8 Q. When was the MRI of the brain?

9 A. We discovered MRI of the brain in 2008, sometime August,
10 September. Anonymous letter was written and actual
11 thing came to -- it was 2009 when we got our hands on
12 it, but -- but that was it. After we got MRI, we knew
13 what we got.

14 Q. So 2008 MRI. Is that right?

15 A. Yes.

16 (Defendant's Exhibit Number 21 marked)

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. Let me hand you what's been marked as Exhibit 21.

19 A. 2008 was anonymous letter.

20 Q. Okay. So what's marked as Exhibit 21 is an October 19,
21 2009 letter from Spencer King to you. Do you see that?

22 A. I do.

23 Q. And in the second paragraph, he states, "You have
24 argued that you did not believe this case has legal or
25 medical merit. I must tell you that it does. There is

1 factual evidence and expert testimony that will be
2 forthcoming in the trial that unnecessary procedures
3 were performed that resulted in damage to Mark Casey."
4 Do you see that?

5 A. I do.

6 Q. And you agree that Mr. King was telling you his
7 assessment of the case at that point. Correct?

8 A. In only one manner. He's try to warn me, Greg, your
9 and Dr. Boscia desire to get JUA uninvolved, uninvolved
10 has consequences for you. That's the only thing. He
11 knew I've done nothing wrong. He said, Greg, I'm going
12 to write you a legal letter, okay, because I cannot as
13 a lawyer advise you to go bare, meaning with no
14 insurance. All of that has bearing on only one thing.
15 Okay? We wanted to proceed to trial. We wanted to
16 file the lawsuit ourselves, okay, because neither
17 contract nor Judge Hayes will let us do that. Judge
18 Hayes took it under advisement and said that our strong
19 desire cannot go forward until the trial, the
20 malpractice trial is over. He wrote an opinion, and he
21 wrote the letter. We were fighting JUA who filed the
22 lawsuit that we must proceed ourselves. Okay, we must,
23 because we understand they have a contractual
24 obligation to the JUA. They're hired by JUA. They're
25 getting paid by JUA. They're working for JUA. But we

1 felt that there is no case. It's absolutely meritless
2 and it began to emerge signs of fraud. We didn't know
3 about fraudulent record. Neither did Mr. King. If he
4 did, he wouldn't write this letter.

5 Q. Now, your position is that Mr. King wrote this letter
6 to you for purposes of the JUA?

7 A. For his own purpose as a lawyer to advise us not to go
8 bare.

9 Q. Do you believe that what Mr. King wrote in this letter
10 is an accurate statement of his belief?

11 A. We're going to ask him. I believe that was accurate
12 statement of his belief that there's exposure, that he
13 as a good lawyer cannot advise me not to have
14 insurance, and I believe that he was trying to be as
15 persuasive as he can that we have a risk. We knew we
16 had no risk.

17 Q. But on paper Mr. King has advised you that he believes
18 the case has legal and factual merit. Correct?

19 A. I do not believe that for a second. You're asking me.
20 we'll ask Mr. King. I did not believe that the case
21 had any merit whatsoever, none. Now, let me sidetrack
22 to that, sidetrack to that, and this is important
23 sidetrack, Ellen. Are you hear -- are you going to
24 shuffle your papers or listen to me?

25 Q. I'm listening.

1 A. Okay. I have told Mr. King, Mr. King, my life is too
2 precious. Okay? I don't want to go forward with this
3 lawsuit. Okay? This is eating us alive. This
4 pneumothorax is nothing. Okay? You can settle
5 pneumothorax. You know, we caused pneumothorax. Yeah,
6 it's -- didn't patient cause no harm, but we caused a
7 complication. I admit it. Okay? I caused a
8 pneumothorax. I don't remember exactly what there is.
9 I haven't seen pneumothorax, but I accept
10 responsibility I caused pneumothorax. I said, I caused
11 pneumothorax. I didn't see any perforation. It could
12 have been postop period. We have patients who have a
13 pneumothorax after postop period from other surgeons.
14 It happens, but I accept responsibility. Okay? You
15 can settle pneumothorax. That's not -- that's not big
16 issue for me. In fact, it's a non-issue for me. Okay?
17 I caused a pneumothorax. But after my good name
18 maligned with bogus and fictitious brain damage, that
19 will never be settled, ever. Okay? If I file a
20 lawsuit -- I am filing a lawsuit. I know you're
21 concerned about me. I know you're concerned about
22 money. It's not about money. Okay? It will never,
23 ever get settled. Okay? But Judge Hayes, as a good
24 judge as he is, His Honor has made a ruling that we
25 have to wait until the trial is over, and we complied

1 with his ruling. We waited. He made a ruling that
2 until the trial will complete, we can do nothing.

3 Q. You're talking about with respect to the JUA you can do
4 nothing. Correct?

5 A. Well, it's -- that's it. You have a contractual
6 obligation to JUA. Okay? Couldn't do nothing until
7 the -- you know, Judge Hayes has decided that he isn't
8 going to rule on it until the lawsuit was over, and
9 when the lawsuit was over, that's -- that was entirely
10 on his Honorable Judge Hayes that he decided to
11 postpone. Otherwise, if we won that case, we won't
12 have a JUA. Okay? You will be dealing with Greg
13 Feldman and Joe Boscia, not JUA. But pneumothorax I
14 told him many a times over, pneumothorax, settle it.
15 It not was my life. It's a minor uneventful
16 complication. It's no big deal. I owned that
17 pneumothorax. I produced a complication. I said it
18 back then. I'm telling you now. It's not an issue,
19 never was. The pneumothorax would have gone away in
20 one day.

21 Q. Now, Mr. Casey was in ICU for three days. Correct?

22 A. For one day.

23 Q. One day?

24 A. Yes.

25 Q. On that point, let's just take a look at your Second

1 Amended Complaint, if you can dig it out.

2 A. Okay. What we looking at?

3 Q. I'll tell you in just a minute. Can you look at
4 paragraph 13?

5 A. I have it.

6 Q. It says, "At the close of the rigid bronchoscopy, Mr.
7 Casey suffered a pneumothorax, a known risk, and was
8 required to stay in the hospital through June 6, 2004."
9 Correct?

10 A. I do, correct.

11 Q. And do you see that that's three days from June 3, the
12 procedure?

13 A. In the hospital. In ICU he stayed one day. He was in
14 ICU because he -- I decided to put -- not I.
15 Anesthesiologist decided to put a tube down. Once
16 you're intubated, you have to be in ICU. I took the
17 tube out next morning.

18 Q. So in the medical malpractice action, your lawyers
19 understood Casey had been damaged as a result of the
20 pneumothorax. Correct?

21 A. No. They knew there was no damage neither to the lung,
22 chest, or brain. They knew that. Okay? They were
23 just concerned about me going bare. We did not want
24 JUA on the case. We wanted to take full control, but
25 Judge Hayes ruled otherwise. The control belongs to

1 them, not to me or Dr. Boscia. That was no damages.
2 okay? Mr. King was concerned about us paying money.

3 (Defendant's Exhibit Number 22 marked)

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. This is 22. We're going to look back at another letter
6 from Spencer King to the JUA. This is---

7 A. This is not to me. Right?

8 Q. No. It's from Mr. King to the JUA.

9 A. Okay.

10 Q. Burns Davison, April 8, 2010. I'll read from the first
11 sentence. "Please consider this as an amended pretrial
12 report." If you can flip to the third page of that
13 report.

14 A. JUA 149?

15 Q. Yes. Do you see that there is a subparagraph at the
16 end of that page called Liability? If you can read
17 that to yourself.

18 A. Mm-hmm, I finished.

19 Q. And it continues to the second page or the last page.

20 A. Okay. April 8, 2010.

21 Q. Yes.

22 A. That was on the eve of the trial.

23 Q. It was. And I should have asked you to do this first.
24 If you could just read the remainder of that letter to
25 yourself, please.

1 A. I'm done.

2 Q. Now, your lawyers believed that Casey would be able to
3 recover for his ICU-related damages. Correct?

4 A. No.

5 Q. As stated in this letter?

6 A. No, no, no, no, no, no. My lawyers were apprising an
7 insurance of the risk. They believed none of the kind.
8 In fact, they would tell me there is no damages to me.
9 Okay? They were apprising -- you're misunderstanding
10 the purpose of the letter. The purpose of the letter -
11 - we go to trial. They knew that we're not settling
12 that. The purpose of the letter was to apprise the
13 insurance company of the risks. He did not know;
14 insurance company did not know that the records are
15 fraudulent. Do you know that they did not know that?
16 You can ask Mr. King. He did not know that the records
17 were fraudulent.

18 Q. Mr. King knew there was a July 21, 2005 note from Dr.
19 Fogarty. Right?

20 A. He did not know it was a fraudulent. We'll ask Mr.
21 King, for sure. He did not. Okay? He did not. If he
22 did, it was his obligation to tell me, Greg, this is a
23 fraudulent record. He never did. Okay? He absolutely
24 had no clue. He was the malpractice lawyer defending
25 malpractice case. He didn't know that it was a fraud

1 case. who would?

2 MS. CHEEK:

3 This is off the record.

4 (Off the Record; 12:11 -- 12:13 p.m.)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. Back again to the Second Amended Complaint. I'm going
7 to take a look at paragraph 56.

8 A. What page?

9 Q. Page 8, paragraph 56. This reads, "Immediately
10 following his hospitalization in June 2004, Mr. Casey
11 actively sought increases in his pain medications and
12 support for his disability claims from Dr. Feldman and
13 Boscia. These requests of Mr. Casey were not medically
14 supported and therefore were denied." So we've talked
15 about the rigid bronchoscopy being performed on June 3,
16 2004. Is that correct?

17 A. We did.

18 Q. And then here, and I believe it's backed up in your
19 medical records that were produced in the underlying
20 case, Mr. Casey came to your office within days of
21 discharge from the hospital. Correct?

22 A. He did.

23 Q. And I'm going to go ahead and mark this as 23.

24 (Defendant's Exhibit Number 23 marked)

25 EXAMINATION RESUMED BY MS. CHEEK:

1 Q. This has been marked as Exhibit 23, and it's a Lung and
2 Chest file that was produced in the medical malpractice
3 action, Dr. Feldman, but at the back of it, about --

4 A. Give me the number.

5 Q. -- three-quarters of the way through at Thompson 32205.

6 A. 32 --

7 Q. Yes, 32205.

8 A. -- 205, and that's a record that produced in Thompson
9 litigation. Correct?

10 Q. Correct.

11 A. Okay. I'm on it.

12 Q. So what I'm looking at within this Lung and Chest
13 production are Upstate Lung records that apparently
14 were received by Lung and Chest after they started
15 treating---

16 A. Yeah, they were requested by Maria Kimbrell, at the
17 time Mr. Thompson girlfriend. She requested the
18 records from us. But that's how they got the Lung and
19 Chest records. Does that refresh your memory?

20 Q. Yes, I appreciate that. I actually knew that, but
21 that's okay. We've got it on the record now.

22 A. Okay.

23 Q. So I am looking at -- just date-wise is what I want you
24 to take a look at.

25 A. Which one?

- 1 Q. It looks to me like on page 3---
- 2 A. Help me out. What page?
- 3 Q. I'm getting there. 32218. I want you to keep your
- 4 finger there.
- 5 A. Just a second. Got it.
- 6 Q. Now I want you to keep your finger there, but then go
- 7 back to 32226.
- 8 A. I have both those pages marked.
- 9 Q. Okay, great. If you'll look at the 32226, what I read
- 10 this to be, that this is a health history that Mr.
- 11 Casey or somebody on his behalf has filled out on June
- 12 8, 2004. Do you see that up at the top?
- 13 A. It was him.
- 14 Q. Okay. So I infer that he's in your office June 8.
- 15 Would you agree?
- 16 A. June 8, yes.
- 17 Q. Then flipping back to---
- 18 A. 2004. June 8, 2004.
- 19 Q. Yes, sir. Then flipping ahead to where you have 32218,
- 20 I see on this Upstate Lung record as June 11, 2004. Do
- 21 you see that?
- 22 A. I see that, yes.
- 23 Q. And Mr. Casey comes back, if you flip ahead to 32214---
- 24 A. You're confusing me. What do you want me to do?
- 25 Q. I want you to go up here to 32214.

1 A. 32214, and I'm still keeping the pages on those? I'm
2 holding three pages.

3 Q. Okay. Can you juggle, too?

4 A. No, but that's okay.

5 Q. All right. So the 32214, there's a date of it looks
6 like an office visit of June 25, 2004. Do you see
7 that?

8 A. June 25, I see that.

9 Q. So you'd agree with me that per your Upstate Lung
10 records, we have Casey appearing at your office June 8,
11 June 11, June 25. Correct?

12 A. Yes.

13 Q. I read from the June 25 note that he is complaining of
14 pacing and walking in circles?

15 A. Where is that?

16 Q. Let's see here. Well, let me ask you, did Casey
17 present at your office with complaints over not being
18 able to sit down?

19 A. Can I come on your side?

20 Q. Sure.

21 A. Well, I don't want to be in anybody's space, but---

22 Q. I just don't know what you're going to do over here.

23 A. Thompson 032226, in underlying medical malpractice
24 litigation number 00377, it's marked June 8, 2004. It
25 is in Casey handwriting.

1 Q. Yes.

2 A. Okay. No complaints. Okay? He marks chest pain, high
3 blood pressure. Okay? And that's it. He had
4 absolutely no complaints of any kind when he came to my
5 office.

6 Q. Okay.

7 A. Chest plain his complaint was. That's the only
8 complaint that we have when we're talking about June 8,
9 2004.

10 Q. So looking at that same document, in this case 32226,
11 for the June 8 follow-up, Mr. Casey has also indicated
12 some muscle, joint, and bone pain, weakness, numbness
13 in back, feet, legs, and neck. Do you see that?

14 A. That's correct.

15 Q. And under Respiratory, he's also checked wheeze?

16 A. He did.

17 Q. Do you see that?

18 A. Yes. When I say---

19 Q. And if you can---

20 A. Sorry. When I said no kind, he indicated by circling
21 something, he wasn't circling anything.

22 Q. He checked it off then. Excuse me. Now, looking at
23 that Bates label in this litigation, that June 25
24 office visit note, the 32214.

25 A. One-four?

1 Q. Yes, please.

2 A. Let me check. Yeah, I got it.

3 Q. Up at the top, Present illness plus reason for visit,
4 there's written, "Gets tired easily, continues to have
5 some chest tightness, reporting chronic back pain,
6 continues to have trouble resting, sister reports he's
7 pacing and cannot sit down because he hurts." Do you
8 see that?

9 A. I do.

10 Q. And then below that it says, "Patient complains of
11 pacing floors and continued not sleeping." Do you see
12 that?

13 A. Yes, one month after procedure. Right?

14 Q. The procedure was on June 3, several weeks after it.

15 A. That's a good question. Did you read nursing notes?
16 He consume ungodly number of narcotics, ungodly.

17 Q. Okay. And then if you could flip to the 32213.

18 A. Which one?

19 Q. 32213.

20 A. One-three. I have it.

21 Q. The page before that.

22 A. I have it.

23 Q. There's a handwritten note. Actually, it looks like
24 two of them. I'm going to refer you to the one at the
25 bottom of the page here.

1 A. where it's saying Boscia?

2 Q. Yes. And then there's a 6/25/04 William Casey. It
3 says, "William Casey: The only question I have for you
4 is what can you do to help me stop walking in circles?"
5 Do you see that?

6 A. I have it. Do you know who wrote it?

7 Q. Do I know who wrote it?

8 A. Yeah.

9 Q. No.

10 A. It wasn't Casey. Right?

11 Q. I don't know who wrote it.

12 A. Okay. Me either. I'm just asking.

13 Q. And then take a look then at 32209, please.

14 A. 32209, I have it.

15 Q. And the date on this is 6/25/04 again. It says page 1
16 of 3. Okay, I'm reading down at the bottom. There's
17 an incomplete -- well, there's a sentence that starts
18 on this page 1 of 3 and then continues to the other,
19 but it says, "Patient reported all he wanted was
20 something that would stop him from pacing all the time
21 and be able to sleep at night." Do you see that?

22 A. Yes, like drugs he's referring to. Right?

23 Q. And it says, "He reported he has to take the Zanaflex
24 just to sleep, but he did not want to just be put to
25 sleep, he just wanted to rest and stop pacing." Do you

1 see that?

2 A. I do.

3 Q. Then, "Patient reported he was able to rest and sit and
4 watch TV before all this happened, and now he just
5 finds himself pacing." Do you see that?

6 A. I see that.

7 Q. So do you agree that when Mr. Casey came back to
8 Upstate Lung within a month of his procedure that he
9 was complaining, among other things, of pacing and
10 walking in circles?

11 A. He was not complaining to me, no, I disagree.

12 Q. Was he complaining to somebody at Lung and Chest of
13 these complaints?

14 A. This is a nursing note. So apparently he told
15 somebody. Never complained to me on anything. Never
16 seen him pacing, never seen him walking in circles,
17 never seen him do anything of any kind.

18 Q. Now, did you see Mr. Casey on any of those occasions?

19 A. Yes, I have.

20 Q. Which date? And if I've missed a date, then please
21 clarify for me. I have June 8, 11, and 25.

22 A. He came in June 8, and I also seen him on end of June.
23 I see him on two occasions. I see him on June 8, and I
24 also see him on 7/7/04, July 7.

25 Q. Can you refer me to a page, please?

1 A. Yes. 207. 32207 as far as the Thompson production.
2 32207.

3 Q. Okay, I see it. Thank you. And that Present illness
4 plus reason for visit, it's stated, "Feels tightness in
5 chest, also complains of --

6 A. Pain in the chest tube site.

7 Q. -- pain at chest tube site, states unable to sleep on
8 that side, feels like heart is racing at times."

9 A. That's all for his complaint.

10 Q. So when Mr. Casey -- well, does your nurse write notes
11 before you see a patient? When the patient comes in,
12 does the nurse see the patient first, generally
13 speaking?

14 A. Well, let me rephrase you. This is definitely before I
15 saw the patient.

16 Q. Okay. And do you read the nursing notes before you go
17 in to see the patient?

18 A. Yes.

19 Q. So on your---

20 A. It's different now. I'm not trying to -- it's EMR now.
21 It's changed. It's electronic medical records. So we
22 don't -- yeah, so back then we did not have that.

23 Q. So when you saw Mr. Casey on June 8, you would have
24 read what the nurse had written before you came in.
25 Correct?

1 A. Yes.

2 Q. And then when you saw him on July 7, you would have
3 read what the nurse had written and then whatever
4 intervening notes. Correct?

5 A. Vital signs, whatever she wrote, you know, complaints,
6 some cough, sputum, dyspnea, wheeze, palpitations,
7 oriented, yes, palpitations, yes, you know, stuff like
8 that, yes. Smoking, quit two weeks ago. You know,
9 she'll give me information. This is a -- right here
10 check mark, check mark. She'll do before I go.

11 Q. Okay. And so---

12 A. But we don't do that anymore. It's a EMR now.

13 Q. And EMR is?

14 A. Electronic medical record. Had it for years now.
15 So...

16 Q. So in paragraph 16 of your Second Amended Complaint,
17 "Following his release from the hospital, Mr. Casey
18 began to complain of pacing the floor, forgetfulness"--
19 -

20 A. whoa, whoa, whoa. I apologize. We are done with this?

21 Q. We're probably still working with it.

22 A. So you want me to go -- you want me to go to this?

23 Q. Yes.

24 A. To what page?

25 Q. Three.

1 A. Page 3.

2 Q. Paragraph 16.

3 A. Page 3, paragraph 16. I am on it.

4 Q. Okay. I'm reading again -- and thank you for getting
5 me in place. "Following his release from the hospital,
6 Mr. Casey began to complain of pacing the floor,
7 forgetfulness, short-term memory loss, and personality
8 changes." Correct?

9 A. I see that.

10 Q. And these are the things that we've also seen reflected
11 in the Upstate Lung notes. Correct?

12 A. Well, from my memory, the nurses wrote a bunch of
13 stuff. Seeking drugs, taking ungodly number of drugs,
14 been told not to combine certain drugs. That's from
15 the nursing notes. Okay? If you want me to pull it
16 out, I'll put it for tomorrow. Okay? So the issue was
17 he's taking ungodly number of drugs. Please don't do
18 it, Mr. Casey. This is detrimental for you.

19 Q. So among the things that you're picking up in the
20 nursing notes or the office visits, among all of those
21 things are complaints about pacing and forgetfulness.
22 Correct?

23 A. Never complained to me of any pacing. I never seen any
24 pacing. I never seen any of the -- he was sharp,
25 sharp, sharp memory. I seen none of it. Okay? Now,

1 you refer me to the nursing note, nursing notes.
2 Apparently, he told something to the nurses. Okay?
3 They ask him why you take it. He told them. That's
4 all I know back then, back then. I was not in
5 litigation for four years. I was not in trial for two
6 days. I was not in deposition for three days. Back
7 then, he complained of chest pain on the tube side,
8 chest tube side, which everybody has, some coughing,
9 wheezing, and he was smoking. That's all. Okay?

10 Q. And then he also complained to your nurses --

11 A. Not to me. Not to me.

12 Q. -- in the nursing notes of some of these other issues.

13 A. This isn't my deposition. You're asking me the
14 question of what he kept complaining to me. He never
15 complained on anything, ever.

16 Q. I understand, and I'm asking you -- what the question
17 is, and I apologize if I was not clear.

18 A. Thank you.

19 Q. In the nursing notes, there are complaints of pacing
20 and walking in circles. Correct?

21 A. And also taking ungodly number of drugs.

22 Q. Okay. Now, pacing, forgetfulness, memory loss, and
23 personality changes, are those symptoms and complaints
24 consistent with somebody who has suffered an air
25 embolism?

1 A. Inconsistent.

2 Q. And do you recall Casey's -- or did Casey's sister,
3 which is Carole Hyslop, I believe.

4 A. Yes.

5 Q. Did you meet with her with Mr. Casey one time?

6 A. I never met Carole in my office.

7 Q. Did you see or hear complaint of Casey not acting like
8 himself. I believe a note was written by your nurse.

9 A. Mrs. Cheek.

10 Q. Yes, sir.

11 A. Casey was acting perfectly himself. He was taking his
12 drugs. Okay? And he complained of nothing other than
13 write me prescriptions. That's all. Okay? Perfectly
14 himself. When you say he was acting not perfectly
15 himself, okay, you are making a statement without ever
16 seeing a patient. Okay? I have. I have seen him
17 before the surgery, in the hospital, in the office. He
18 complained of nothing. Carole may have complained of
19 something, but he complained of nothing, zero. He
20 complained of chest pain, give me -- give me drugs. I
21 say, you know what? You go to the pain management.
22 That's all he complained of. Drugs, drugs, and drugs.
23 That's all he wanted really.

24 Q. So you didn't perform a physical exam of him, did you?

25 A. Sure, I did.

1 Q. You did?

2 A. I didn't perform neurologic. There was no reason for
3 that, but of course I did.

4 Q. And you referred him to Dr. Mironer?

5 A. Yeah. He was seeing Mironer since year 2000. He start
6 asking for drugs. I said, you know what, buddy? You
7 go to the pain management. I don't write you drugs.

8 Q. So you did not think -- so you assessed Casey as
9 seeking drugs and not---

10 A. He complained of chest pain and ask me to write him for
11 prescriptions, okay, pain medicine. I said, you go to
12 the pain management. I am not writing you any pain
13 medicine. That's where you're going.

14 Q. So when you saw Casey, you understood that his
15 complaint was chest tube insertion site pain?

16 A. No. Back pain, chest pain, insertion pain. There's
17 multiple checkmarks. Feet, this, this, this,
18 everywhere.

19 Q. And so you didn't understand that he was complaining
20 about pacing and forgetfulness?

21 A. He never complained on anything to me.

22 Q. Okay. Now, at the time that he did come to you, as far
23 as you know, he had not gone to Dr. Fogarty yet. Do
24 you know whether he had?

25 A. No idea. Okay? whether he did or didn't go, I'm just

1 telling you he came in to see me, okay, wanted me to
2 write him a prescription, wanted me to write out of
3 work, okay, and I start getting concerned. You go to
4 the pain management.

5 Q. So your physical exam of him was what?

6 A. Talking to him, listen to his lungs, okay, and he was
7 wanting to go play golf. I said sure. There's no
8 reason for you not to play golf. But pain medicine,
9 I'm not writing to you.

10 Q. So you also state in your Second Amended Complaint that
11 he was seeking support for his disability claims.

12 A. Yeah. He was. He didn't want to go back to work, for
13 sure. He has some policy that if physician write
14 something, he doesn't have to go back to work. I said,
15 I'm not writing it.

16 Q. Why not?

17 A. Because he was fine. There's no reason he cannot go
18 back to work. You know, he has a very -- he had a very
19 bad job. Okay? When you put a chest tube for lung
20 collapse, it hurts. Okay? It's not a big incision.
21 It's about, I don't know, quarter of an inch. Okay?
22 But to get a chest tube in, you make an incision and it
23 hurts. Okay? So somebody who is heavy, heavy lifting
24 and he was involved in a bad job, okay, bad as far as
25 pain is concerned, I said do not go there. Okay? But

1 then he comes in, pressing, nothing. Okay? It looks
2 good. He wants to play golf. Once he said I want to
3 go golf, I said you can play golf, you can work.

4 Q. So did you think that he was lying about his pain?

5 A. No. I mean, he wanted me to write him drug
6 prescriptions. Okay, by then, he consume so much that
7 he run out of them. Okay? It's not like -- when we
8 put the chest tube, okay, we do give pain
9 prescriptions. That's just how it is. It hurts.
10 Okay? It doesn't hurt maybe a week, maybe 10 days.
11 People are different. But we write a prescription. He
12 consumed them all, all of it, like in few days. I
13 said, I ain't writing you. Okay, I wrote you
14 prescription. Where is it?

15 Q. So why did you---

16 A. He had finished them all.

17 Q. What did you tell Dr. Mironer about this guy?

18 A. He knew him. It was his patient. I said -- didn't
19 tell him anything. I said -- I told Casey, okay, you
20 seen Mironer before? You know, that's where you go.

21 Q. So did you send him to Dr. Mironer because you weren't
22 going to write him pain prescriptions, or you didn't
23 think that he was in pain, or is it a combination of
24 those?

25 A. I'm talking about 2004, but I also went through four

1 years of deposition and trial. Okay?

2 Q. okay, let's talk about 2004, what you were doing at
3 that time.

4 A. I understand that, but, to my memory, my memory is
5 skewed by four years of being in -- in this lawsuit.
6 So what I'm saying today and was in 2004, you
7 understand how much is there. Right? But here what it
8 was, having known all of that, we do not as a
9 pulmonologist write pain prescriptions. Okay? when
10 somebody consumed an entire one month's supply in a few
11 days, that's a red flag. Okay? So I sent him to the
12 pain management to deal with his pain, and that's all -
13 - that's all his complaint was. Okay? Pain. There
14 was no other complaint. All right? So I said, you
15 know what? You seen Mironer before. He told me he
16 did. That's where you're going. I ain't write you any
17 pain medicine. So for me, I was very uncomfortable
18 writing prescription pain for somebody who consumed in
19 four days one month's supply.

20 Q. And did he ask you about disability?

21 A. Yeah. He asked me to write him a note out of work. I
22 said, I'm not writing you a note either.

23 Q. And that's because why?

24 A. Because he didn't want to go back to work.

25 Q. But your refusal was why?

1 A. There's no medical reason for him not to go back to
2 work. He had pain. He's much better, and he wants to
3 play golf. Okay? If you want to swing the golf, you
4 know, I'm not a golfer, I'm a hockey player, but if you
5 can swing the golf club, you can go back to work. It's
6 very, very, very hard to do with pain, you know.

7 Q. So in 56 when you state---

8 A. What 56?

9 Q. The Second Amended Complaint, paragraph 56.

10 A. I was born in 1956.

11 Q. When you write or when the second sentence of that
12 paragraph states, "These requests from Mr. Casey were
13 not medically supported and therefore were denied,"
14 that was his request for pain medication and for
15 disability?

16 A. Yeah, he asked me to send him for temporary disability.
17 Okay? He has some policy that will allow him to stay
18 home. I said no. If you can play golf, you can go
19 back to work. And I'm definitely not writing you any
20 pain medicine.

21 Q. Let's stop there for an hour, and we will pick back up.
22 (Off the Record; 12:41 -- 1:44 p.m.)

23 EXAMINATION RESUMED BY MS. CHEEK:

24 Q. Dr. Feldman, before the break we were looking at your
25 Second Amended Complaint and the allegations you had

1 made in it with respect to Casey seeking pain
2 medications and disability from you. Correct?

3 A. From me? He was seeking drug prescriptions, and he was
4 seeking temporary disability to sign him out of work.
5 Yes, he did. He was seeking disability. He was
6 seeking permission to stay home and play golf.

7 Q. And your pleading alleges -- we're in the Second
8 Amended Complaint again, this document.

9 A. And what number are we talking about?

10 Q. We're going to look at paragraph 18 of this document.

11 A. 18?

12 Q. Yes.

13 A. I see it.

14 Q. This paragraph 18 alleges that Mr. Casey came under Dr.
15 Fogarty's care after you and Dr. Boscia would not
16 support his disability claims. Correct?

17 A. That's correct, yeah.

18 Q. And we can look at the records if we need to, but you
19 had mentioned before that you had received a records
20 request from Lung and Chest. Correct?

21 A. Sure. Let's look at the record.

22 Q. I'm just trying to get a general time frame. That
23 appears to have happened on or about November 1, 2004.
24 And what I'm trying to figure out is your contention is
25 that Casey came under Dr. Fogarty's care sometime in

1 2004. Is that correct?

2 A. Yes. Not care. Under his patronage, not medical care.
3 He came under his legal patronage.

4 Q. What is legal patronage?

5 A. To move forward to the case.

6 Q. So Mr. Casey started seeing Dr. Wilson Smith first at
7 Lung and Chest. Is that correct?

8 A. No, I have no knowledge of that. I know that Dr. Smith
9 saw him on November 14. Whether Fogarty was involved
10 or not in July, I don't know that.

11 Q. What was the first step that Dr. Fogarty took in, as
12 you say, exercising legal patronage over Casey?

13 A. He had meetings with Carole, with Casey, with Thompson,
14 with attempt to manufacture lung injury, doing tests to
15 prove that he has lung injury. When his own partner
16 wrote that is not possible, they backed away from that,
17 then started manufacturing what else can we -- can we
18 concoct, and they concoct a brain injury. That was all
19 happening in 2004, that's correct, but precise dates
20 are in the record that we know and probably many, many
21 other that we don't.

22 Q. Now, you don't have any correspondence or documents
23 that state between and among Dr. Fogarty, Thompson, and
24 Casey --

25 A. I do have that, yeah.

1 Q. -- that state, guys, let's figure out some basis to
2 file a lawsuit.

3 A. Yeah, we do.

4 Q. You do?

5 A. Yeah. We have Mr. Thompson alluding in his letters how
6 he met with Dr. Fogarty, how he's going to put in the
7 chart lung injury, that how he is behaving his lungs
8 are of 60-years-old man. He was 40. We do. Then we
9 have Maria Kimbrell writing that absolutely we
10 absolutely got to have in the chart, Dr. Fogarty,
11 please put in chart months, months later in February of
12 2005. We do.

13 Q. What was the last correspondence you were telling me
14 about?

15 A. Talking about Mrs. Kimbrell writing, unnamed, undated,
16 but months later, it's already in 2005, demanding Dr.
17 Fogarty we really need the lung damage proof on the
18 chart, Lung and Chest charts -- chart like now. The
19 reason I say 2005, because in 2005, Thompson writing
20 other people, lawyers and others so that he has iron-
21 clad Dr. Fogarty has this lung injury case, and then
22 they moved on to the brain injury. So they
23 manufactured. Yeah, we have a lot of it. Okay? As I
24 said, I'm going to bring it all to you tomorrow. Okay?
25 You asked me for evidence. That's fair. Okay? I said

1 I do have it, and you're asking what do you have. I'll
2 bring it to you. That's all fair. If I said I will,
3 tomorrow you'll have it, and I will tell you what I
4 consider to be evidence.

5 Q. And your contention is that Thompson, Casey, and
6 Fogarty first attempted to allege a lung injury. Is
7 that correct?

8 A. Let me correct you. I don't think Casey attempt to do
9 anything but obtain disability and drugs. Okay? He
10 left it to the professionals. Okay? That's who he
11 left it to. And the professionals, okay, moved from
12 lung injury when it was debunk in the mind, eh, maybe
13 not, from PTSD to lung injury to brain injury to
14 permanent brain injury to without a doubt brain injury.
15 That is the progression of the scheme. Okay? That is
16 indeed started in 2004. The evidence is overwhelming
17 that it was in November. Whether it was before it, it
18 likely was, but you're right, some documents destroyed,
19 some documents are not kept. Okay, so I cannot really
20 tell you beyond before November what fully his
21 involvement was, but clearly it was in my mind. But
22 now you ask me what evidence I have, I'm going to bring
23 you evidence that it was November.

24 Q. Now, Mr. Casey was the plaintiff in the medical
25 malpractice action. Correct?

1 A. Well, Dr. Fogarty was, but he acted in a surrogate
2 name, Casey.

3 Q. So Casey, surrogate or not, was --

4 A. Surrogate.

5 Q. -- seeking money from your insurer. Right?

6 A. I don't think he was seeking anything. He was asked a
7 question, Mr. Casey, what -- do you have brain damage?
8 who told you that? He said nobody.

9 Q. Well, that was not the exact question that was asked
10 Mr. Casey, was it?

11 A. Well, I don't want to argue with you. I mean, that's a
12 question was asked to Mr. Casey. Mr. Casey, who told
13 you you have a brain damage? He said no one. You have
14 all day tomorrow. I'll bring it to you, too.

15 Q. I'm supposed to have it in my file over here.

16 A. I do have it. I told you I'll bring tomorrow.

17 MR. MANN:

18 She asks a question, you answer. She asks a
19 question, you answer.

20 WITNESS:

21 Thank you, Mr. Mann.

22 MR. MANN:

23 It will go faster.

24 EXAMINATION RESUMED BY MS. CHEEK:

25 Q. Now, Dr. Fogarty and you had practiced medicine

1 together and had an acrimonious split is what's alleged
2 in your Second Amended Complaint. Correct?

3 A. Since '92 until the year 2000.

4 Q. And in September of 2004, you started a research
5 company as alleged in your Second Amended Complaint.
6 Correct?

7 A. Yes.

8 Q. And that company was S. Carolina Pharmaceutical
9 Research. Correct?

10 A. In 2004, there was S. Carolina Pharmaceutical Research.

11 Q. What was the last thing you said?

12 A. I said in year 2004, the company name was S. Carolina
13 Pharmaceutical Research.

14 Q. And you owned that company along with Dr. Boscia and
15 Anna Buice. Correct?

16 A. Yes, correct.

17 Q. Now, you recently sold a portion of S. Carolina. Is
18 that right?

19 A. We did.

20 Q. So Great Point Partners was the purchaser. Correct?

21 A. Yes.

22 Q. And that's a venture capitalist or venture capital
23 organization, more or less?

24 A. Health fund.

25 Q. What was that?

1 A. A health fund, fund. Health fund. A fund specializing
2 in healthcare.

3 Q. Healthcare fund. Health fund. Now, Great Point
4 Partners purchased 51 percent of -- correct me if I'm
5 wrong, but a conglomerate, Alliance Biomedical, or did
6 it purchase 51 percent of S. Carolina Pharmaceutical
7 Research and other companies? Do you know?

8 A. Yes, of course, I do. It wasn't S. Carolina. It was a
9 platform that they bought. In addition to this
10 platform, we had 10 sites. So they got 10 sites plus,
11 plus a unique platform.

12 Q. So is S. Carolina Pharmaceutical Research still an
13 entity in itself?

14 A. No.

15 Q. It is part of an -- is it an umbrella organization? Is
16 it a conglomerate?

17 A. The name of the company Alliance Biomedical Research
18 Holding.

19 Q. And so Alliance Biomedical Research Holding?

20 A. Yeah, that's the name of the company.

21 Q. Is it with an S?

22 MR. MANN:

23 LLC.

24 EXAMINATION RESUMED BY MS. CHEEK:

25 Q. Holding, LLC. S. Carolina is one of the research sites

1 held by Alliance Biomedical Research Holding, LLC?

2 A. It's not LLC. It's Alliance Biomedical Research
3 Holding, LLC that was bought by Alliance Biomedical
4 Research Holding Corporation. We had united our
5 companies into the LLC, 10 of them, and then the
6 company was bought.

7 Q. That's what I'm trying to get to. So united into a
8 single company --

9 A. Yes.

10 Q. -- were S. Carolina and nine other sites?

11 A. It's very complex, but the nutshell, yes.

12 Q. And do Dr. Boscia and Ms. Buice and you continue to own
13 49 percent of S. Carolina?

14 A. There is no S. Carolina.

15 Q. There's no S. Carolina anymore. When was S. Carolina
16 combined or united under Alliance Biomedical Research
17 Holding, LLC?

18 A. Recently.

19 Q. Within the last several months?

20 A. Mm-hmm. Yes.

21 Q. And you told me that the LLC was then -- what happened
22 to the corporation? There was an LLC formed with 10
23 sites?

24 A. I told you it's very complex, but briefly what I
25 understand, okay -- and remember I am a doctor -- it's

1 called recapitalization, recapitalization meaning that
2 the company injected funds in return for shares and --
3 and formed the new company. Okay? So S. Carolina and
4 so forth doesn't exist anymore now as independent site.
5 It exists as accomplished site, but not as independent
6 site. Let me sort of kind of explain it to you.

7 FedEx, they can all -- FedEx Express, FedEx this, FedEx
8 this. Right? So that unit operate by themselves, but
9 they have a parent company. So that's how it was.

10 Q. You've alleged in your Second Amended Complaint, this
11 page 3, paragraph 22, we talked about in September of
12 2004, you and Dr. Boscia formed a pharmaceutical
13 research company which was S. Carolina which Dr.
14 Fogarty viewed as a threat to his own medical practice
15 and research company. What are the facts that you have
16 that support your claim that Dr. Fogarty viewed your S.
17 Carolina Research Company as a threat to his own
18 medical practice and research company?

19 A. Started writing numerous letters, start talking to
20 numerous people how we are being illegitimate and how
21 we are stolen his database and all kind of nonsense.
22 Just tried to -- tried to make it difficult for us to
23 survive.

24 Q. If you'll flip the page and look at paragraph 23, it
25 says, "Prior"---

1 A. Page 4?

2 Q. Yes.

3 A. Okay.

4 Q. It says, "Prior to the medical malpractice action, Dr.
5 Fogarty actively sought to interfere with Dr. Feldman's
6 and Boscia's research company and their patient care."
7 My question to you, and you may have already answered
8 it, was what acts did he do in attempting to interfere?

9 A. Well, say if you're the referring physician, you refer
10 patient to Feldman, that they're not going to deal with
11 them ever again, we'll just write on the chart that --
12 some nasty stuff about me on the patient's chart, some
13 stuff like that. And as far as research is concerned,
14 just writing numerous letters to the sponsors, untrue
15 letters, but, nevertheless, written to them and talking
16 to a lot of people.

17 Q. Did Dr. Fogarty ever threaten to interfere with your
18 research business? Did he ever tell you, Dr. Feldman,
19 I'm going to make sure you go down, or make any of
20 those type threats?

21 A. Not to me, but to the referring physician he did.

22 Q. So he didn't make any of those threats to you?

23 A. I didn't speak to him. We were not on speaking terms.

24 Q. When was the last time you spoke to Dr. Fogarty
25 substantively?

1 A. I haven't.

2 Q. would it be more than 10 years?

3 A. I can't -- can't really tell you. There was a
4 substantive discussion about research during the phone
5 conferences with sponsors and so forth. It wasn't my
6 conversation with Dr. Fogarty. It was a conversation
7 with other people, with other people on the research
8 site, several sites. It wasn't my conversation with
9 Dr. Fogarty, though. So I cannot really tell you. My
10 memory doesn't go as far as 10 months. I haven't
11 talked to him substantively since I left in year 2000.

12 Q. And, likewise, Dr. Fogarty didn't ever threaten you to
13 interfere with your patient care. Is that correct?

14 A. Explain to me what threat is.

15 Q. Tell you, Greg, or Dr. Feldman -- and I don't know how
16 y'all---

17 A. What do you mean you don't know? We haven't -- we
18 haven't talked.

19 Q. well, okay. Then the answer to my question first was
20 Dr. Fogarty never threatened you to interfere with your
21 research business. You said that's correct, we haven't
22 spoken. Likewise, Dr. Fogarty never threatened you to
23 interfere with your patient care. Correct?

24 A. He did not talk to me since 2000 on any subject.

25 Q. On page 7, paragraph 45 of the Second Amended

1 Complaint.

2 A. Okay.

3 Q. The paragraph says, "A more perfect case of individuals
4 could not have been available for Dr. Fogarty's use in
5 his efforts of destruction aimed primarily at Drs.
6 Feldman and Boscia." And I'm focusing on the last
7 clause of that paragraph, Dr. Fogarty's efforts of
8 destruction and primarily at you and Dr. Boscia. Did
9 those include the letters and statements and chart
10 notations that you just described to me?

11 A. There was no individual, to my knowledge, that he
12 hasn't talked to about me. He's obsessed. So my
13 understanding is from Anna, Hailey, Steve, and those
14 are people who work with him, there has been not a
15 single individual that he hasn't talked about it.
16 Every day he was obsessed about Feldman. That -- it
17 was a true obsession, just unrelenting obsession, not
18 even a week, day, every day. There was not a day. But
19 to me, I never talked to him since -- for 10 years, or,
20 rather, he hasn't talked to me.

21 Q. And when it says efforts of destruction aimed primarily
22 at Dr. Boscia and you, was there somebody else other
23 than Dr. Boscia and you that these efforts of
24 destruction were---

25 A. Dr. Shantha had a very, very, very rough time, and what

1 we think that he was just an innocent bystander,
2 dragged in in a hateful scheme directed against me and
3 Boscia.

4 Q. Now, at this time, so we're in the 2004 time frame
5 where you've started S. Carolina and you said that Dr.
6 Fogarty is engaged in these efforts of destruction,
7 what is he trying to destroy?

8 A. Destroying what I start to create, which is a new
9 platform, new entity, a magnificent contribution to the
10 research industry, a magnificent piece in the
11 community. He's trying to destroy everything. He
12 couldn't stand it.

13 Q. And how would -- and I want your words, but Dr. Fogarty
14 was trying to destroy you by disparaging you?

15 A. Well, by filing the lawsuit in a case against me and
16 Boscia.

17 Q. Was that a piece of his efforts of destruction?

18 A. A major piece of his efforts of destruction, yes.

19 Q. So in addition to disparaging you, as you have told me--
20 --

21 A. The word is yours, disparaging. I here did not use
22 that word. I used a fabrication of a lawsuit. I used
23 embroiled us in his scheme of being trapped in a
24 lawsuit. That's what words I used, but disparaging was
25 entirely come out of you.

1 Q. When you told me that Dr. Fogarty was writing notes and
2 charts that were---

3 A. I want to separate two things. They are not related.
4 S. Carolina lawsuit is, okay, is unrelated to the
5 lawsuit that we're talking about right now. The
6 lawsuit is based on a malpractice scheme. Okay? Not
7 on S. -- anything that he done in S. Carolina is
8 background, nothing more than background. It's pure
9 and simple, apples and oranges.

10 Q. But you've described to me things that you said Dr.
11 Fogarty was doing in the 2004 or 2005 time frame that
12 were an attempt---

13 A. To S. Carolina?

14 Q. To you.

15 A. Separate S. Carolina, malpractice lawsuit that he has
16 originated and filed in the case against me. Separate
17 those two. It's very difficult for me to talk about
18 the issue without separating them. One is simple
19 background.

20 Q. Why is the background relevant?

21 A. Frame of mind.

22 Q. And the frame of mind was that Dr. Fogarty was trying
23 to destroy you?

24 A. Yes.

25 Q. Now, on page 4 of your Second Amended Complaint,

1 paragraphs 25 and 26. In 25 you allege that you --
2 actually, let me go back to 24. You say, as a result
3 of Dr. Fogarty's efforts to hamper your and Dr.
4 Boscia's business efforts, you and Dr. Boscia were
5 forced to sue Dr. Fogarty to clear your names in an
6 effort to prevent further damage to their reputation
7 and business. Is that correct?

8 A. It is correct, but S. Carolina filed the lawsuit, but
9 we were forced to agree on it. That would be correct.

10 Q. So S. Carolina is you, Dr. Boscia, and Ms. Buice.
11 Correct?

12 A. That would be correct.

13 Q. I'm sorry. Yes?

14 A. Yes.

15 Q. And S. Carolina, you, and your partners, filed it to
16 clear your names in an effort to prevent further damage
17 to your reputation and business. Correct?

18 A. That's true.

19 Q. And when it says in 24 clear "their" names, that's
20 talking about you, Dr. Feldman. Correct?

21 A. And S. Carolina. He was writing letters about S.
22 Carolina including our names in those letters, and
23 mostly me. Okay? I don't think he mentioned Boscia,
24 but mostly me, but because those letters mostly were
25 written on S. Carolina, then my name was included into

1 those letters as well as Anna Buice' name as well as
2 Hailey Williams' name, although Hailey was not an owner
3 of S. Carolina.

4 Q. In paragraph 25, it says you filed an S. Carolina
5 Complaint, and that was in 2005. Correct?

6 A. Yes.

7 Q. And Attorney Mann represented you in that lawsuit.
8 Correct?

9 A. Yes.

10 Q. And Dr. Fogarty was represented by Holcombe Bomar and
11 this law firm. Correct?

12 A. Is the name of the firm Holcombe Bomar that you're in?

13 Q. Wilkes Law Firm.

14 A. It was Wilkes Law Firm, as far as I know.

15 Q. Do you know whether Koger Bradford and Holcombe Bomar
16 represented Dr. Fogarty, too?

17 A. Don't remember.

18 (Defendant's Exhibit Number 24 marked)

19 EXAMINATION RESUMED BY MS. CHEEK:

20 Q. This is 24. Dr. Feldman, that Exhibit 24, do you agree
21 with me that's the Summons and Complaint that your
22 entity S. Carolina Pharmaceutical Research filed
23 against Dr. Fogarty?

24 A. Yes, it is our entity, S. Carolina Pharmaceutical
25 Research, versus Charles Fogarty, M.D., Summons from

1 2005.

2 Q. And in this lawsuit, you asserted, S. Carolina asserted
3 two different accounts. One was for intentional
4 interference with respect to contractual relations.
5 Then if you flip a couple pages back, then you have
6 another count for defamation, slander, and libel. Do
7 you see that?

8 A. I do.

9 Q. And your allegations were that Dr. Fogarty was
10 intentionally interfering with your contracts and was
11 defaming you, libeling you. Correct?

12 A. Yes.

13 Q. You were deposed in S. Carolina on October 30, 2006.
14 Do you recall that?

15 A. I do.

16 Q. And you testified in that lawsuit that Dr. Boscia and
17 you made the decision to sue Dr. Fogarty. Is that
18 correct?

19 A. The board -- well, LLC doesn't have a board. It wasn't
20 LLC. Yeah, Anna Buice, myself, and Dr. Boscia made the
21 decision on behalf of the corporation.

22 Q. And you testified during that deposition that you
23 believed that Dr. Fogarty was concentrating on you in
24 the spring of 2005. That sounds consistent with what
25 you've told me today. Is that correct?

1 A. Yes.

2 Q. And this is because, what you had testified then, that
3 people were coming to you saying that Dr. Fogarty was
4 accusing you of unethical conduct. Is that correct?

5 A. He wasn't accusing me of unethical conduct. He was
6 stating that if they're going to refer patients to me,
7 he would stop referring to them. It was nothing about
8 unethical conduct of my contract. It was his conduct.

9 Q. So Dr. Fogarty wasn't accusing you of unethical
10 conduct?

11 A. He was accusing corporation of stealing his database.
12 He was accusing corporation of using his database. He
13 was accusing corporation of appropriating his secrets.
14 It was just corporate -- accusation of corporate
15 misbehavior. As far as personally me, I never work
16 with him. It was mostly Anna, Hailey, and others.
17 That's who he was accusing of that. I was -- I left in
18 year 2000.

19 Q. But your belief at that time in your deposition was
20 that Dr. Fogarty was trying to damage S. Carolina by
21 getting people to question your reputation and ethics?

22 A. Not at all. I think that he was trying to crush S.
23 Carolina by any means, mostly questioning Anna Buice
24 and Hailey Williams primarily.

25 Q. You've described to me Dr. Fogarty's animosity towards

1 you. Correct?

2 A. He has personal animosity toward me before I left.

3 That's the reason I left.

4 Q. So when it came to the S. Carolina lawsuit, these
5 efforts of destruction you said were aimed primarily at
6 you and Dr. Boscia. Correct?

7 A. Primarily at S. Carolina, mostly Anna and Hailey.

8 Q. And you said that most of the letters and things of
9 that sort referenced you?

10 A. Mostly Anna and Hailey. Me was just in passing. I
11 left in year 2000. Okay? I haven't been in that
12 practice from 2000 until 2005, for five years already.
13 Okay? So Anna and Hailey, that's who he was primarily
14 referencing. Me was just in passing.

15 Q. Okay. But you---

16 A. Boscia he never mentioned.

17 Q. But you testified in that case that you believed that
18 Dr. Fogarty was concentrating on you.

19 A. On S. Carolina. He was trying to destroy S. Carolina.

20 Q. And S. Carolina is your company. Correct?

21 A. Thirty-three percent owner back then.

22 Q. In paragraph 26 of your Amended Complaint on page 4---

23 A. I'm confusing the documents. Is that the document
24 we're looking at?

25 Q. No, sir. Let's go back to your Second Amended

1 Complaint in this case.

2 A. Okay. And what we're looking at?

3 Q. Page 4, paragraph 26.

4 A. Okay.

5 Q. The allegation is, "During the S. Carolina lawsuit, Dr.
6 Fogarty, in a couple of ways, saw his involvement with
7 Mr. Casey as a golden opportunity to retaliate against
8 Dr. Feldman and Boscia for his perceived wrongs of them
9 starting a research company and filing suit against
10 them." So the allegation is that while S. Carolina is
11 going on, which we know was filed in 2005, that Dr.
12 Fogarty saw his involvement with Mr. Casey as an
13 opportunity to retaliate against you. Correct?

14 A. I'm going to direct your attention to the lawsuit they
15 filed in 2010. That's when we knew, in 2010. In 2006,
16 okay, he knew that he is trying to destroy S. Carolina.
17 The reason for destruction of S. Carolina was his being
18 totally irate against Hailey and Anna leaving and
19 starting a new company. In 2010, we knew whole lot
20 more. We already, mind you, had the deposition of Dr.
21 Fogarty taken in 2008. We had a MRI. We had a
22 fabrication of the lawsuit as it is. That is
23 connecting the dots. This is -- it's very difficult to
24 separate 2004, 2005, 2006, 2007 in the progression of
25 our knowledge.

1 Q. okay. well, let's look at what you've actually
2 alleged, though.

3 A. From in 2010. In 2010, that's what we have alleged.

4 Q. And the allegation is that during the S. Carolina
5 lawsuit, Dr. Fogarty saw his involvement with Casey as
6 a golden opportunity to retaliate against you and---

7 A. But this is not in that lawsuit that we filed in 2005.
8 we knew nothing about it.

9 Q. But you agree that's what you've alleged in paragraph
10 26.

11 A. Totally, in 2010.

12 Q. And then you've enumerated them. These are the ways
13 that you allege that he saw to retaliate against you
14 and Dr. Boscia. It says, "First" -- and I'm reading
15 paragraph 27 -- "Dr. Fogarty continued masterminding
16 the generation of the unfounded 'permanent brain
17 injury' claims to injure his business competitors by
18 damage to their reputation and through bogging them
19 down for years in protracted litigation defending
20 against the scheme." Do you see that?

21 A. Absolutely. I do.

22 Q. Now, you've told me that Dr. Fogarty and you haven't
23 spoken since probably 2002 or whenever you left.
24 Correct?

25 A. Substantively.

1 Q. Substantively?

2 A. Yes.

3 Q. And the allegation here is that Dr. Fogarty believed
4 that he could use his involvement with Casey as a way
5 to damage your reputation by getting a medical
6 malpractice lawsuit filed against you?

7 A. It's much deeper than that.

8 Q. Is that a basic tenet of it, though?

9 A. Mastermind malpractice lawsuit to damage my reputation
10 and others is absolutely the basis for this lawsuit.
11 It's a fair basis. Okay? It's -- this is it. This is
12 what this lawsuit is all about. Everything else is
13 background.

14 Q. So the filing of that medical malpractice lawsuit was
15 Dr. Fogarty's -- one of the ways that he was going to
16 damage you?

17 A. I don't know how to rephrase it. I just said this is
18 the centerpiece of this lawsuit. Is there something
19 else I can add to that? You ask me a question.

20 Q. Is the answer yes?

21 A. Yeah.

22 Q. Okay. And then it says, "Second, Dr. Fogarty directly
23 benefited himself by derailing his business
24 competitors' efforts in the S. Carolina litigation due
25 to the tremendous pressure created in their lives by

1 the publicizing of the baseless allegations of a
2 'permanent brain injury' within the destructive
3 scheme." Do you see that in paragraph 29?

4 A. Yes, I do. Yes.

5 Q. Now, the publicizing of the permanent brain injury
6 within the destructive scheme, is that where Dr.
7 Fogarty wrote the July 21 note that we have been
8 talking about earlier today?

9 A. He did much more than that. Remember, this is 2010
10 Complaint. What we know today, we know a lot more
11 after production of Thompson file, which you probably
12 have.

13 Q. What do you know today? What do you know after the
14 production of the Thompson file --

15 A. Which I did not know back then?

16 Q. -- that you didn't know then?

17 A. Oh, my God. How much time we have? Briefly, he has
18 sat down I suspect with expert witness Dr. Jantz, okay,
19 in a room with Mr. Thompson and brainwashed him. He
20 has then -- Thompson; that is -- concealed that fact
21 that the expert witness was brainwashed by Fogarty.
22 Okay? He has lied to the judge many, many times. Now
23 I'm talking about Thompson, okay, about that very, very
24 essential case, that they conspired to brainwash their
25 only expert witness that they have on causation and air

1 embolism, that they blatantly brainwashed him, the two
2 of them, okay, in the same room. They lied to the
3 judge, circuit court judge about that and the jury.
4 For me, that would do it. It would be more than
5 enough. But second, when they have discovered the
6 manipulation of the medical records being out there,
7 they have removed the records from Dr. Waid, the
8 Fogarty records from Dr. Waid's office. That's why you
9 and I spent so much time trying to figure out where
10 they came from. The record from Dr. Waid had
11 disappeared. The lawyers delivered it to him and took
12 it out. But most importantly, they produced to the
13 jury fabricated medical records, knowingly to all of
14 them being fabricated except for Casey. I don't know.
15 I haven't found evidence that he knew that the records
16 were fabricated. He knew that his disability was
17 fabricated, but he did not know whether the records
18 were fabricated. So I cannot accuse Casey in that.
19 Okay? I don't know. Okay? But all, Turner, Fogarty,
20 and Thompson knew all of that, lied to the court, to
21 the jury. When you play with the process, that's what
22 we know today. And when you play with the key expert
23 witnesses and concealed all that, concealed all of
24 that, Mrs. Cheek.

25 Q. Now, you believe that the medical malpractice action

1 was directly related to S. Carolina, that S. Carolina
2 was the reason that Dr. Fogarty was attempting to use
3 Casey to destroy you. Correct?

4 A. I don't describe beliefs. That belongs to the faith-
5 based system. Mine are fact-based system. What I know
6 today and what I knew now, okay, it's far more than S.
7 Carolina. S. Carolina probably is child's play in
8 comparison. He set out to destroy everything,
9 everything about me, about the direction I was driving
10 the business, of creating new sites, of creating a new
11 company, everything he set out to destroy. So we
12 talked about drop of water. S. Carolina is little,
13 nothing in comparison to the grand scheme.

14 Q. But your allegation is that during that lawsuit, Dr.
15 Fogarty comes up with the idea that I can -- I, Dr.
16 Fogarty, can use Mr. Casey as a way to destroy you.
17 Correct?

18 A. Yeah, of course, talking about destruction of
19 everything that my life was about. Now, you're, again,
20 trying to get S. Carolina in 2005. It was a lawsuit in
21 2010. The lawsuit in 2010 is based on malpractice case
22 and fabrication of the lawsuit. S. Carolina that is
23 enumerated here is background, is background that we
24 know now sitting today in 2016 and what we partially
25 knew in 2010. In 2010, we did not even realize what we

1 have today in 2016.

2 (Defendant's Exhibit Number 25 marked)

3 EXAMINATION RESUMED BY MS. CHEEK:

4 Q. I hand you what's been marked as Exhibit 25. This is a
5 February 25 e-mail that you sent to Attorney Mann.

6 Correct?

7 A. I see it. It's addressed to Attorney Mann.

8 Q. Under number two, and you've got a number one,
9 Evidence, and then you have a number two, Evidence of
10 Misconduct. Do you see that in the middle of the page?

11 A. Just go ahead. Ask me your question.

12 Q. Okay. You state under Evidence of Misconduct, "Dr.
13 Fogarty is withholding records." And that's something
14 you've talked to me today about, right, among these
15 notes, that you believe that you didn't have all three
16 of these notes?

17 A. Not at all. This is about prescription drugs. They
18 were not produced in 2007. We started discovering his
19 prescription drugs in 2008. Okay? We had nothing.
20 All of a sudden, we have a pharmacy in 2008 with
21 Fogarty writing Lortab almost every other week. That
22 is what it's all about. This is about drug records
23 that Fogarty create and did not produce in underlying
24 litigation. In neither case he produced them. We have
25 been not produced drug records. They were produced in

1 2008. Those were revelations on drug abuse.

2 Q. And then the second sentence, "Fogarty happens to be a
3 major accuser and inventor of air embolus theory
4 against competitors." Do you see that?

5 A. I do.

6 Q. And that's what you've sued on in this lawsuit. Right?
7 He's a major accuser and inventor of the air embolus
8 theory against you and competitors?

9 A. Absolutely not. You're reading the private e-mail.
10 Absolutely not.

11 Q. You don't---

12 A. My -- no. You mischaracterize it. I have to use much,
13 much stronger words. It's not accuse. It's not --
14 it's a fabrication of entire case. Okay? It's
15 conspiracy and collaboration with a law firm and Mr.
16 Thompson to destroy people lives. I mean, you're using
17 very, very mild terminology. Accuse, this is not
18 accuse. This is not accusation. This is a scheme.

19 Q. Okay, Dr. Feldman, I'm using your language, though,
20 right from your e-mail. Do you see that's what you
21 wrote?

22 A. I'm going to point out to you that is written February
23 25, year 2008. Okay? We know far more. Dr. Fogarty's
24 deposition was taken in December. MRI came in in 2009,
25 but the notion came in in August of -- this is way

1 before what we knew. This is the -- this is just the
2 beginning of what our knowledge has become.

3 Q. And then the third sentence under Evidence of
4 Misconduct, "Air embolus theory appears shortly after
5 defamation lawsuit against him filed." Do you see
6 that?

7 A. Where is it? Show it to me. Air embolus theory appear
8 shortly after defamation lawsuit against him filed.
9 That is 2008.

10 Q. And this is consistent with your understanding that
11 during the S. Carolina case Dr. Fogarty starts, in your
12 opinion, trying to find a way to damage you through a
13 medical malpractice lawsuit. Is that right?

14 A. Great question. In 2008, Mr. Thompson had requested S.
15 Carolina documents. He requested for us to produce
16 everything there was in S. Carolina in 2008. Okay? So
17 before the production I looked at entire record of S.
18 Carolina we were producing. Okay? So S. Carolina in
19 2008 was initiated by Mr. Thompson who requested
20 Attorney Mann to give him everything he has on S.
21 Carolina. That was Mr. Thompson. So we -- so a lot of
22 different e-mails in 2008 is because production of S.
23 Carolina has been requested by Thompson even though it
24 has nothing to do with Casey case, S. Carolina,
25 whatsoever. He has requested S. Carolina records.

1 Q. But you figure it out, Dr. Feldman, don't you? You in
2 2008 realize that something is going on and that this
3 air embolus theory appears shortly after S. Carolina
4 was filed, and you allege in your Complaint here that
5 Dr. Fogarty had the brainchild then I'm going to damage
6 these people, these people who've just sued me, well,
7 how about an air embolus theory. That's what you
8 believe. Right?

9 A. Who is testifying today?

10 Q. You are, and I just asked a question.

11 A. And I just told you that 2006 and 2007, we were waiting
12 for this lawsuit to be thrown out. Okay? Because the
13 founder of the law firm, Mr. Turner, was a great
14 patient of mine who wrote me a letter saying I have
15 nothing to do with this, Greg, don't worry. Okay? In
16 2008, at Dr. Paladugu's office we have discovered a
17 very, very troubling thing. Yes, we started to worry.
18 Then Mr. Turner has requested research records. What
19 did research record have to do with Mr. Casey? Of
20 course, you're not testifying today. It's a rhetorical
21 question. Nothing. Okay? And my e-mails to Mr. Mann
22 is basically about, hey, why he requesting S. Carolina
23 record. It's got nothing to do with this.

24 Q. You have alleged in your Second Amended Complaint that
25 it was during the S. Carolina lawsuit that Dr. Fogarty

1 came up with the idea that he could use Casey to damage
2 you. Correct?

3 A. I'm going to let you, Mrs. Cheek, to testify if you'd
4 like, but my answer -- you're repeatedly making a
5 statement. I'm just going to continue to explain it to
6 you, that the lawsuit is based on malpractice lawsuit
7 to destroy our lives. S. Carolina is a background, and
8 it became pretty obvious to you that it's a part of his
9 destruction. Okay? But it absolutely has nothing to
10 do with malpractice lawsuit that was filed against us,
11 against me, Boscia, and Shantha. Okay? S. Carolina
12 business is background. Yes, we dropped that lawsuit,
13 absolutely we did, because we could not take any more
14 of that abuse. We needed to concentrate to defend
15 ourselves.

16 (Defendant's Exhibit Number 26 marked)

17 EXAMINATION RESUMED BY MS. CHEEK:

18 A. But you can make any statement you want.

19 Q. I'm going to hand you that and we'll take a look at
20 some statements you made. This is 26. This is an e-
21 mail chain, but the top one is an August 26 e-mail from
22 you to Attorney Mann. Do you see it? And in it --
23 well, I'll ask you to read your e-mail out loud.

24 A. Sure. From the top?

25 Q. Just your e-mail. Just that top one.

1 A. Okay. "He started all of this" -- well, let me read it.
2 From Gregory Feldman. That's my e-mail. Wednesday,
3 August 26, 2009 8:09 a.m. To Attorney Mann. Subject,
4 C'mon. "He started all of this in 2004 because of
5 pathological hate and all his people starting research
6 with me. He never thought that it would come to this.
7 No one ever read Grace obscure sessions." I will
8 continue to explain it to you. What Grace knows, has
9 indicated that he was appointed mastermind of Casey in
10 2004 where he represented in his deposition he never
11 saw Casey until 2005. That is referring to the shock
12 that Dr. Grace records has revealed. I was shocked
13 that somebody can lie so blatantly. So this is a --
14 this is me, my soul crying in outrage how that can
15 happen, that somebody can be allowed to lie to that
16 degree. We were in trial preparation. Trial was
17 supposed to be in 2009. It was moved by Judge Hayes to
18 2010. Original trial was supposed to be September
19 2009.

20 MR. MANN:

21 wait for a question.

22 WITNESS:

23 That's easy for you to say. It's a long wait for
24 the question.

25 MR. MANN:

1 wait for the question.

2 WITNESS:

3 It's traumatic.

4 MR. MANN:

5 wait for the question.

6 WITNESS:

7 Thank you.

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. So I've got other exhibits here, Dr. Feldman, where you
10 state to your counsel that it was clear to you that Dr.
11 Fogarty was trying to kill your fledgling business, and
12 that is S. Carolina?

13 A. What year you talking about?

14 Q. Let's take a look. That's going to be 27.

15 (Defendant's Exhibit Number 27 marked)

16 EXAMINATION RESUMED BY MS. CHEEK:

17 A. 2010? Possibility in 2010 it was fledgling, but he was
18 trying to destroy everything I stand for.

19 Q. And let me direct you down. Let's see. The first full
20 e-mail that's contained on this document is a April 23,
21 2010 e-mail from you to Spencer King. Do you see that
22 one? "Fogarty and prior litigation"?

23 A. That's after litigation. I think that lawsuit was over
24 April 20, my understanding. It was just before that or
25 something, but the trial has happened already. wait.

1 Trial was in May. Yeah, it's preparation for trial.
2 That's right. This note's in preparation for the
3 trial.

4 Q. So your e-mail to Spencer King is a list of matters
5 relating to S. Carolina. Correct?

6 A. No. Preparation related to Fogarty background. This
7 is a preparation for impeachment of the expert witness.

8 Q. But you see item four, "May 2005 we have filed business
9 interference plus defamation lawsuits." Correct?

10 A. Mrs. Cheek, I don't know how to answer your question.

11 Q. Just answer to the---

12 A. I have answered your question. This is a preparation
13 for the trial about Fogarty background. If I provide
14 you incomplete answer, tell me what's incomplete about
15 it.

16 Q. Listen to my question now. Number five, "Fogarty has
17 also produced Casey newspaper article among other thing
18 send to pharmaceutical industry."

19 A. Absolutely. We have been requested by Thompson the
20 records of S. Carolina. I look at every single record
21 in 2008. I was astonished to find newspaper article in
22 those records in 2008 or close to 2009 or somewhere.
23 Thompson had requested -- that's shocking. S. Carolina
24 and Casey. What Casey has to do with S. Carolina? He
25 has never been in S. Carolina. He was never on the

1 insurance trial. Okay? This is -- this is mind-
2 boggling. S. Carolina? Thompson requested record of
3 S. Carolina? Why would he do that? This is a
4 background to impeach Fogarty on the stand. S.
5 Carolina came to place only because Thompson had
6 requested it.

7 Q. So back to the Second Amended Complaint. In paragraph-
8 --

9 A. Whoa, whoa, whoa, whoa, whoa. Just a second. Just a
10 second. Let me get it.

11 Q. Page 4, paragraph 29.

12 A. Just a second. What page we looking at?

13 Q. Page 4, paragraph 29.

14 A. Twenty-nine, got it.

15 Q. This reads or you allege, "Dr. Fogarty directly
16 benefited himself by derailing his business
17 competitors' efforts in the S. Carolina litigation due
18 to the tremendous pressure created in their lives by
19 publicizing the baseless allegations of a 'permanent
20 brain injury' within the destructive scheme." Now,
21 you've alleged that Dr. Fogarty derailed your efforts
22 in S. Carolina. Correct?

23 A. I alleging that the background that Dr. Fogarty has
24 created circumstances where they became far less
25 important or not important. Our lives were turned

1 upside-down. That's what we're alleging, and he
2 directly benefited from that.

3 Q. Now, you say that he's benefited himself by the
4 publicizing of the baseless allegations of a permanent
5 brain injury within the destructive scheme. What
6 publicizing are you talking about?

7 A. Newspaper.

8 Q. And what is the connection between Dr. Fogarty and the
9 newspaper?

10 A. Direct. We're going to have a jury to decide that. It
11 was direct connection. It was part of his plan.

12 MR. MANN:

13 Ellen, off the record.

14 (Off the Record; 2:42 -- 2:55 p.m.)

15 (Defendant's Exhibit Number 28 marked)

16 EXAMINATION RESUMED BY MS. CHEEK:

17 Q. Dr. Feldman, before we went off the record we were
18 talking in generalities about a newspaper, and I've
19 marked as Exhibit 28---

20 A. Much more generalities to me than to you, I guess.

21 Q. Well, we're getting into the specifics now. I've
22 handed you what's been marked as Exhibit 28, and it's a
23 May 31, 2006 page or portion of a page from Spartanburg
24 Herald-Journal. Correct?

25 A. Yes.

1 Q. There's an article, "Man Sues Lung Specialists; Claims
2 Surgery was Botched." Is this the newspaper article
3 that we were discussing earlier?

4 A. Well, I personally saw it on Internet. So I guess it
5 was in newspaper, but I saw it on Internet.

6 Q. And your contention is that Dr. Fogarty published this
7 article or had some hand in its publication?

8 A. Not at all. My contention he mastermind everything,
9 absolutely everything. This is just small part of it.
10 So my contention is that Dr. Fogarty has mastermind
11 every single allegation with one intent, to destroy us.
12 This is just a small part of his plan.

13 Q. The newspaper article is a small part?

14 A. Well, the leakage to the -- to the press through the
15 legal channel is part of his plan, yes.

16 Q. And the plan was to have the medical malpractice action
17 filed against you based on his brain injury---

18 A. Whose brain injury?

19 Q. Casey's brain injury.

20 A. Casey never had a brain injury.

21 Q. Dr. Fogarty's plan, you said this article was a small
22 part of the plan?

23 A. Right.

24 Q. The overall plan --

25 A. Right.

1 Q. -- was to have a medical malpractice action lawsuit
2 filed against you?

3 A. Right.

4 Q. In which you were alleged to have malpracticed and
5 brain-injured Casey. That was the allegation?

6 A. It's far more than that. This is firing lasers.
7 There's a lot of that. The -- his plan was to insert
8 into the lawsuit the most damaging allegations that can
9 practically destroy somebody, but yes, that's my
10 contention.

11 Q. So these allegations are destructive.

12 A. Yes.

13 Q. Is that correct?

14 A. Yes. They're designed to be destructive.

15 Q. And the publishing of this was damaging to you?

16 A. That will be for the jury to determine, but yes, my
17 contention it was extraordinarily damaging to me and
18 others.

19 Q. And the theory of recovery asserted in Casey's lawsuit,
20 in the medical malpractice action was stated in this
21 article. Correct?

22 A. No.

23 Q. Well, look with me in the second column. Let's begin
24 at the very end of the first column. "According to the
25 lawsuit, a procedure in June 2004 caused Casey to

1 suffer a perforated bronchial wall, allowing air
2 bubbles to escape from his lung into blood vessels and
3 into his brain."

4 A. Okay, what's the question?

5 Q. And that's Dr. Fogarty's diagnosis as we've been
6 referring to it during this deposition. Correct?

7 A. I'm sorry. What's the diagnosis?

8 Q. That Casey had suffered an air embolism or the
9 perforation of the wall allowing air bubbles to escape
10 and damage his brain. That's Dr. Fogarty's diagnosis.
11 Correct?

12 A. He never made a diagnosis. He fabricated medical
13 records. This is based on fabricated medical records.

14 Q. And it's based on the records -- it's based on that
15 July 21 note that we saw earlier. Correct?

16 A. It is not July 21. It's written at unknown date far
17 later.

18 Q. So to make the afternoon go a little bit smoother,
19 let's just make sure we are back on the same page.
20 When I say Dr. Fogarty's diagnosis, I mean his written-
21 down statement that Mr. Casey suffered an air embolism
22 that may have caused brain damage. Okay? I understand
23 that you believe that that's fabricated and false, but
24 when I say Dr. Fogarty's diagnosis, that's what I'm
25 referring to.

1 A. Okay.

2 Q. So Dr. Fogarty's diagnosis was what the medical
3 malpractice action was filed and based on. Correct?

4 A. No, that's incorrect. It was -- the scheme was based
5 upon careful discussion between lawyer and mastermind.
6 Okay? It was -- the medical record was created after
7 that discussion. You know, you're putting the wheel
8 before the horse. The medical record was written as
9 planned.

10 Q. And then based on that medical record, the medical
11 malpractice action was filed. Correct?

12 A. Yeah, based on fabricated medical record the lawsuit
13 was filed.

14 Q. And then based on what was in the medical malpractice
15 action Complaint, this article was written. Right?

16 A. It was leaked to the -- the lawsuit was leaked to the
17 newspaper, yes, that's correct.

18 Q. And in the S. Carolina case, Dr. Fogarty produced a
19 copy of this article in his document production.
20 Correct?

21 A. I have discovered it in 2008, yes, 2009, 2008 that
22 somehow it was in your file, Mrs. Cheek's file, that
23 piece of paper.

24 (Defendant's Exhibit Number 29 marked)

25 EXAMINATION RESUMED BY MS. CHEEK:

1 Q. I'm going to hand you what's been marked as Exhibit 29.
2 This is from the S. Carolina case. You'll see that
3 this is titled Defendant's First Supplemental Answers
4 to Plaintiff's Interrogatories. This is Dr. Fogarty's
5 answers to S. Carolina's interrogatories. And in
6 interrogatory number two, it references a document
7 list.

8 A. Right.

9 Q. There's a number of Bates labeled documents.

10 A. Yes.

11 Q. You understand the very last page of that exhibit, page
12 4, there's an F409 that corresponds with the F409
13 that's on---

14 A. Point it out to me.

15 Q. F409. You see this? It says SHJ newspaper article.

16 A. What this SHJ stands for?

17 Q. Spartanburg Herald-Journal. And that this Bates number
18 F409 corresponds to what was produced then.

19 A. Okay.

20 Q. Do you see that?

21 A. Yes, I do.

22 Q. And you'll see that that was produced, if you'll look
23 on the second page of the document, that was June 26,
24 2006 discovery responses that you got --

25 A. Okay.

1 Q. -- in the S. Carolina case.

2 A. Right.

3 Q. And you'll agree with me that what this indicates was
4 on 6/26/2006, Dr. Fogarty in the S. Carolina case
5 produced, among other things, this document. Correct?

6 A. I already -- I already considered that.

7 Q. Okay. Now, in your Second Amended Complaint, back to
8 paragraph 29, page 4.

9 A. Okay.

10 Q. You have talked about S. Carolina and the publicizing
11 of the allegations in the newspaper.

12 A. Right.

13 Q. Did you and your partners dismiss S. Carolina because
14 of the newspaper article?

15 A. I had no idea that Dr. Fogarty was connected to Casey
16 case in any way other than his progress note. S.
17 Carolina was simply dismissed because we had to move on
18 with our lives. Okay? This is -- it was a very
19 expensive lawsuit. Okay? Anna Buice, others have
20 decided that we're moving on with our business. S.
21 Carolina lawsuit was dropped. Corporate lawsuit was
22 dropped because the principals no longer had any heart
23 in it.

24 Q. So it wasn't because of the tremendous pressure created
25 in your life from this article?

1 A. And we had no heart in this. Before this article has
2 committed upheaval. We just had no idea where it's
3 coming from. Looking for neurologist, looking for MRI,
4 thinking maybe he overdose himself, maybe he was hit by
5 the car. Looking for something. Okay? There was no
6 absolutely idea what's going on with Casey life. This
7 is a young man who was absolutely fine. Something
8 happened. What has happened? Who knows? Okay?
9 Haven't seen him since 2004. Okay? Who knows? So
10 let's find out the facts. Let's decide what's going
11 on. Okay? But this was no way that the principals had
12 any heart in it. The business was booming, the S.
13 Carolina business. Okay? Time to move on.

14 (Defendant's Exhibit Number 30 marked)

15 EXAMINATION RESUMED BY MS. CHEEK:

16 Q. So let's just take a look at Exhibit 30. This is the
17 stipulation of Dismissal with Prejudice of the S.
18 Carolina action. It was filed February 15, 2007.

19 A. Right.

20 Q. And you have just explained to me that this dismissal
21 did not have anything to do with the publishing of the
22 article that's Exhibit 28 or the medical malpractice
23 lawsuit. Correct?

24 A. It has nothing to do with that other than we were --
25 had no heart anymore in this lawsuit. Okay? We could

1 have proceeded, but everybody decided this is too much
2 in our life. This is a minutia now. S. Carolina is --
3 lawsuit needs to be closed. It's draining money. It's
4 draining resources. It's draining energy. Let's move
5 on.

6 Q. This may be my misunderstanding, but before --

7 A. Probably was.

8 Q. -- before we move on off of this, the reasons you've
9 just listed for S. Carolina deciding to drop this
10 lawsuit did not include that article or the medical
11 malpractice actions being filed, yes or no?

12 A. Well, I can't answer you yes or no. I'm trying to
13 explain it to you.

14 Q. Okay.

15 A. There is not one single issue or second single issue.
16 There's many issues. Okay? Let's concentrate on
17 business. It cost a lot of money. Our heart is not in
18 this. We have practice revealed. We have many things
19 revealed. We have to deal with community and so forth.
20 This is a distraction. Okay? Let's dismiss it. All
21 right? So yes, S. Carolina was filed for many reasons.
22 One of the reasons, as you rightly pointed out, is to
23 put a sock in Dr. Fogarty mouth and stop badmouthing
24 us. Okay? I'm talking about us, S. Carolina. All
25 right? This is a issue has nothing to do with Anna

1 Buice, has nothing to do with S. Carolina. Okay? This
2 is lawsuit filed personally against us and
3 anesthesiologist. We'll deal with that. No reason for
4 Anna to be involved.

5 Q. With all of that said and there being many reasons for
6 your dropping S. Carolina, was the medical malpractice
7 action one of them?

8 A. It was one of them, and certainly don't want to
9 minimize the significance of it as far as emotional
10 state for decision-makers, but you make a decision what
11 best for the corporation. After all, you're officer of
12 corporation. You make a decision what best for the
13 corporation, not what best for you.

14 Q. Once again if you will turn back to your Second Amended
15 Complaint.

16 A. What page?

17 Q. Now I'm on page 7, paragraph 48. You've alleged that
18 in 2004, Dr. Fogarty got wind of Casey's procedure and
19 convinced Casey's sister to allow him to review some of
20 the medical records. Do you see that?

21 A. I see it.

22 Q. What evidence do you have of that interaction between
23 Dr. Fogarty and Casey's sister, Carole Hyslop?

24 A. Hyslop trial testimony. Mr. Hyslop knows that we have
25 discovered back in 2010, however, that we had trial

1 testimony of Hyslop. Okay? We also had Dr. Grace
2 records which we uncovered in 2008 during his
3 deposition. I believe it was August 2008. And those
4 notes eventually we have uncovered, and Dr. Fogarty
5 running multiple tests and seeing him in 2004 and
6 masterminding a lung injury case as well as a brain
7 injury case. So all of that was coupled on blatant
8 lies in his deposition by opening eyes, eye-opening,
9 with Mr. Thompson being there sitting like you and me,
10 just like you and me. Okay?

11 Q. Now, you allege, Dr. Feldman, in paragraph 50 on the
12 same page that the defendants were well acquainted with
13 each other for years prior to their schemes against Dr.
14 Feldman and Boscia. What was Dr. Fogarty's prior
15 relationship with Chuck Thompson?

16 A. What month we talking about?

17 Q. Your pleading alleges that in 2004 Dr. Fogarty started
18 developing what you've described as the scheme. So
19 your allegation that the defendants were well
20 acquainted with each other for years prior to their
21 schemes, we're talking prior to 2004.

22 A. Got it. In 2008, total shock and disbelief, we found
23 out that Kimbrell is wife and girlfriend of Thompson
24 that working in Fogarty's office. That we have
25 discovered purely incidentally, and that is a

1 relationship that started clearly in 2004. In some
2 fashion, I don't know, but she was his girlfriend.

3 And, of course, Fogarty knew Carole for over 25 years.

4 Q. What was Dr. Fogarty's prior relationship with Casey?

5 A. With which one Casey? Carole Casey?

6 Q. No. Mr. Casey.

7 A. I have no idea what his prior relationship with Mr.
8 Casey is. He has a very strong relation with Carole
9 Casey who's basically running Mr. Casey's life and used
10 to run it for many, many years, apparently. He know
11 Casey. Carole Casey know Fogarty for over 30 years
12 now.

13 Q. And you allege in paragraph 45, "A more perfect cast of
14 individuals could not have been available for Dr.
15 Fogarty's use in his efforts of destruction aimed
16 primarily at Drs. Feldman and Boscia." We've talked at
17 length about the efforts of destruction, the goal
18 being---

19 A. We can't even scratch the surface, never mind talking
20 at length.

21 Q. Pardon?

22 A. I said we can't even scratch the surface, never mind
23 talking at length about it.

24 Q. Now, the medical malpractice action, the destructive
25 effect or potential of that lay in the publication of

1 the brain injury allegations. Correct?

2 A. I'm not following you.

3 Q. Hmm?

4 A. I'm not following you at all.

5 Q. Okay. How would the medical malpractice action destroy
6 you?

7 A. Change me forever. What if somebody accuse you of
8 rape? How would you feel? Change you forever. You're
9 never -- never the same person. You're accused of
10 causing a brain damage to the young man. Just try to
11 put yourself in our shoes. Maybe you come up with an
12 answer.

13 Q. You allege in paragraph 46 that Mr. Thompson's fiancée,
14 Maria Kimbrell, worked with Dr. Fogarty and that gave
15 Dr. Fogarty and Mr. Thompson unfettered access to each
16 other off the record and behind the scene which they
17 used to full advantage in their formation and pursuit
18 of the scheme. And you allege that they worked
19 together before filing the lawsuit in order to get
20 their theory of recovery and theory of damage lined up.
21 Is that correct?

22 A. Not on the same page. You're using different language
23 than I do. It is not a theory of recovery. Everything
24 was planned and mastermind. This is not a theory of
25 recovery. This is a scheme. I mean, you talk about

1 extortion plan. That's criminal. Okay? This has
2 nothing to do with what you and I talking about here.

3 Q. So I understand, you allege that Dr. Fogarty's
4 diagnosis wasn't his honest assessment of Casey's
5 condition?

6 A. It's honest to kidnap somebody and ask somebody for
7 ransom. He knew what he was doing. There's nothing
8 was left to chance. The notes were changed for a
9 reason. It has to be permanent and it has to be
10 without a doubt. Otherwise, no go. Okay? That is --
11 that is -- had to be done. Okay? Otherwise, there's
12 no lawsuit. There's no lung damage. There's no brain
13 damage. There's no expert witness. You have to find
14 and brainwash expert witness. Okay? Dr. Fogarty. You
15 have to state without a doubt. Okay? That's Dr.
16 Fogarty. You have to do that. Otherwise, you don't
17 have a lawsuit. It will be dismissed in summary
18 judgment. He had to get through that. That was his
19 role.

20 Q. And you contend that Mr. Thompson knew the brain injury
21 diagnosis or Dr. Fogarty's diagnosis wasn't Dr.
22 Fogarty's honest assessment?

23 A. I can go even farther than that. You keep minimizing
24 it. It's much, much more sinister. He knew that the
25 notes are fabricated and changed. He knew that, and he

1 removed those notes from Dr. Waid's office to conceal
2 it, and he removed it from every medical record to
3 conceal it. It's much more sinister than you try to
4 portray.

5 Q. And your---

6 A. He also knew that his client is on drugs.

7 Q. And your allegation is that Mr. Casey also knew he
8 didn't have a brain injury?

9 A. Yes, he knew that he didn't have a brain injury, yeah.

10 Q. Now, you had said earlier that Casey had testified that
11 nobody told him he had a brain injury.

12 A. I testified to that, but you're again putting words in
13 my mouth. Casey testified to that I said. Mr. Casey,
14 not Feldman. Mr. Casey has testified that nobody told
15 him he has a brain damage. That's Mr. Casey. That's
16 verbatim. It's totally different from Feldman said it.
17 Casey said it.

18 (Defendant's Exhibit Number 31 marked)

19 EXAMINATION RESUMED BY MS. CHEEK:

20 Q. This is 31. Our Exhibit 31 is another e-mail chain
21 here, and I'll just tell you what the Bates range is.
22 It's Bates range 19541 through 19543. The very last e-
23 mail in the chain is an August 7, 2008 e-mail from you
24 to Attorney Mann. I'm going to direct you to page 2.

25 A. 542?

1 Q. Yes.

2 A. Okay.

3 Q. And I'm going to indicate up here. There's a, it looks
4 like a header. It says, "On Wednesday, August 6, 2008
5 at 8:13 p.m., Greg Feldman wrote." And then you have
6 it looks like excerpted some testimony from Casey's
7 deposition. Would you agree with that?

8 A. Totally. Totally agree with it.

9 Q. And what this questioning indicates is the first
10 question at line 16 -- do you see the question?

11 A. Mm-hmm.

12 Q. "Has anybody told you that you have any brain damage
13 that resulted from Dr. Boscia and Feldman's care?"
14 Answer. "I've been told that it's possible."

15 A. Okay.

16 Q. Now, later if you jump down, there's some larger
17 numbers. There's another question.

18 A. Okay.

19 Q. 18, it says, "I asked you about if anybody had told you
20 you had brain damage." And then the answer at line 20
21 is, "No." "Nobody has? Is that correct?" "No."

22 A. Okay.

23 Q. Now, I believe earlier you were talking about this
24 later question here when he was asked has anybody told
25 you you had brain damage and he said no. Is that what

1 you were referring to earlier when you said Casey
2 testified he didn't have brain damage?

3 A. I don't have a full deposition, but that's good enough
4 for me.

5 Q. Okay. And then at the very beginning of the quote or
6 the excerpted material, he also testifies that he's
7 been told that it's possible. Correct?

8 A. That's what his question was. Remember, he was under
9 oath like I am today. So that's what his answer were,
10 that nobody told him he had brain damage.

11 Q. But what Casey had said, I believe, is that somebody's
12 told him it's possible.

13 A. Right. This is -- I'm going to direct your attention
14 and logically the court attention, it's August 7, 2008.
15 Court know more now, much more. Okay? This is way
16 before MRI. This is way before Fogarty deposition.
17 This is way before discovery of Thompson documents
18 containing I believe 400 Fogarty documents that never
19 been produced. Are you aware of that? Four hundred.
20 Okay? This is documents we never seen that before,
21 shocking documents.

22 Q. But Mr. Casey's testimony in the medical malpractice
23 action was that somebody had told him it was possible
24 he had brain injury. Correct?

25 A. I'm going to have to reread it, because it looks like

1 either you're testifying or me. If it's me, I'm going
2 to testify. I'm reading you page 2 of the document
3 labeled Attorney Mann 019542. "I asked you about if
4 anybody has told you you had brain damage." "No."
5 "Nobody has? Is that correct?" "No." Anything -- if
6 I did not answer, then ask me another question, because
7 I -- otherwise, I don't know what to do. Nobody told
8 him he has brain damage. That's his testimony.

9 Q. His testimony is that he'd been told it was possible.
10 Now, having brain damage for sure, being told you have
11 brain damage for sure is different than being told you
12 possibly have brain damage. Would you agree?

13 A. You're the lawyer. You ask the question five, six,
14 seven different times until you get to the answer you
15 want to hear. Okay? This is not how it works, Mrs.
16 Cheek. Somebody can say possible that apocalypse is
17 coming and earth is going to be shattered, that a comet
18 is going to come and hit the earth and we will all be
19 not caring about this lawsuit. Is it possible? 18, "I
20 asked you about if anybody had told you you had brain
21 damage." "No." "Nobody has? Is that correct?" "No."

22 Q. And you also agree that there's the testimony that we
23 saw earlier in that quote where he said --

24 A. You're beginning---

25 Q. -- it is possible?

1 A. You're beginning to barrage me.

2 MR. MANN:

3 Dr. Feldman, please answer her question.

4 EXAMINATION RESUMED BY MS. CHEEK:

5 A. I answered your question to the best of my ability.
6 You rephrase the question.

7 Q. Well, I'm going to ask you one more question. In
8 addition to the question and answer that you quoted
9 below, you'll also agree that Mr. Casey testified it
10 was possible he had brain damage?

11 A. That's your take on it, and my take on it is that, it
12 was part of discussion until Mr. King or it was Gunn,
13 I'm not sure, got to the answer, and the answer is
14 nobody told him he has brain damage. That is also, to
15 put it to rest, in Mr. Thompson production 2016 where
16 he states the same. Casey testified that nobody told
17 him he has brain damage. Mr. Thompson take on it is
18 identical to mine.

19 Q. And what document are you referring to?

20 A. I'm referring to the 100,000 pages that Mr. Thompson
21 has produced. It's one of those where Mr. Thompson
22 states, his production states that that's what Casey
23 testified to, that nobody told him he has brain damage.

24 Q. You had referenced earlier, Dr. Feldman, that Dr.
25 Fogarty's involvement with Mr. Casey began in 2004.

1 Correct?

2 A. Yes.

3 Q. And I believe you made the distinction that he didn't
4 start treating Casey in 2004. Do I have that correct?

5 A. You've got it correct. He never really treated him,
6 ever. The only thing he did, he prescribe drugs to
7 him. But in 2004, he was -- he did not generate any
8 records. The record that he did generate he destroyed.

9 Q. What evidence do you have of Dr. Fogarty destroying
10 records? What records are you talking about?

11 A. I'm talking about exercise stress test, pulmonary
12 exercise stress test that he has performed.

13 Q. And your contention is that Dr. Fogarty purposely
14 destroyed exercise stress test records?

15 A. Oh, absolutely it's my contention, yes.

16 Q. On what do you base that?

17 A. Multiple records of its existence and -- well, let me
18 talk about exercise stress test as a pulmonologist.
19 It's a complex highly regulated procedure. It require
20 vital signs taken. It require registration. It
21 require general medical history by law. This is not a
22 benign test. Okay? All gone. None of it. Never was
23 able to find it. This is not -- this is not like a x-
24 ray. This is very involved.

25 Q. And who was never able to find it?

1 A. No one. It's gone. It's not in any file. It's not in
2 Lung and Chest file. It's not in Thompson files. It's
3 gone. There's a reference to it, multiple references
4 to it, over five references to it.

5 Q. And what do you know about its destruction besides that
6 it's just gone?

7 A. Just gone.

8 Q. So you don't know what happened to it?

9 A. Well, I know it's destroyed, but in what fashion it's
10 destroyed. It's like looking at the e-mails. Either
11 they're there or not. There is no record of a test
12 that is clearly done and interpreted.

13 Q. So if something that existed, like an e-mail, no longer
14 exists, does that mean it's been purposely destroyed?

15 A. Every medical record which is destroyed is purposeful.
16 There is no medical record that can be destroyed by
17 accident. Okay? It's a law of the land. You must
18 protect medical record, no matter what. Okay? So to -
19 - for you to suggest that medical record could have
20 been destroyed by accident as a lawyer is not
21 acceptable to me.

22 Q. I'm asking you whether the destruction of a --
23 actually, new question. If medical records are no
24 longer in existence, then the only answer to their
25 absence is purposeful destruction?

1 A. Yeah. If the test is done, that's the only answer.

2 There is no other. You must keep it for no less than
3 seven years, and then you must keep it forever.

4 Q. Now, Dr. Fogarty's Lung and Chest medical records have
5 in it a record dated July 21, 2005. Correct?

6 A. What are we referring? Are we referencing the exhibit

7 --

8 Q. Exhibit Number 5, I believe.

9 A. -- with the Bates stamp on it?

10 Q. Yes. There was an Exhibit sticker 20 from Dr.
11 Fogarty's deposition. I believe it was Exhibit 5 here.

12 A. That was recovered from his medical record, that's
13 correct.

14 Q. Now, your contention is that Dr. Fogarty did not see
15 Mr. Casey on July 21, 2005?

16 A. I didn't say that.

17 Q. Okay. You did tell me that the date on that record was
18 incorrect.

19 A. No. Either you're playing game, or I don't know what
20 it is. I have told you that the record was generated,
21 was rewritten many, many times. Okay? All right, the
22 meaning has been changed on much, much later date.
23 Okay? And many version has been produced on different
24 days serving different purpose of his. Okay? That's
25 what I told you. All right? I didn't tell you that he

1 didn't go see the patient on that day.

2 Q. And what do you contend Dr. Fogarty's different
3 purposes were for these notes that we've looked at,
4 Exhibits 5 --

5 A. To obtain---

6 Q. -- 6, and 7?

7 A. Yes. To obtain disability. He wrote a note to
8 jumpstart disability. Then he needed the very same
9 note to brainwash the witnesses, neuropsychologist,
10 waide, Jantz, which is a pulmonologist. He needed that
11 -- Grace, psychologist. He needed that record for one
12 purpose. Then he realized that he needs to have
13 without a doubt somewhere in 2006. So he changed the
14 that note, okay, the meaning of it. Okay? That is
15 just progression of what he needed for his own purpose.

16 Q. Let's get out these notes. There's 5. Okay. So what
17 is the order in which you contend these notes were
18 prepared?

19 A. 9/5/05 [ph]. You know what F means?

20 Q. No.

21 A. That's Dr. Gonda, Frank Gonda. It's meaning for Frank.
22 Okay? So that note written somewhere in August. I
23 tell you this. Here's my contention. The very first
24 note may or may not exist. The second note was written
25 in August. The third note was written in two thousand

1 -- likely 2006, and that is a note that was altered in
2 2006.

3 Q. You believe Exhibit 5 was written in 2006?

4 A. Yes.

5 Q. And the basis of that belief is what?

6 A. 100,000 pages of production are pretty clear. Okay?

7 Now, we keep saying that I'm going to produce you
8 evidence. I'm going to make a qualifier. We may need
9 another day of deposition, because I'm very busy today.
10 I have several important things to do. Okay? I may
11 not be able like I said to bring it, but I will promise
12 you to appear with every evidence that I have said I'm
13 going to produce. Okay? I have overwhelming evidence
14 of Fogarty writing the notes in August and last note
15 way after, overwhelming evidence. It's all in the
16 Thompson production.

17 Q. So you believe Number 5 is the last note. Correct?
18 The one that said---

19 A. Very last note.

20 Q. Okay. And you believe---

21 A. Very last version of the note.

22 Q. Okay. You believe that Number 5 is the last version.
23 And how do you order these other two?

24 A. Okay. You see the double line?

25 Q. Mm-hmm.

1 A. Do you know that is? That has been written and faxed
2 to Dr. Grace in August. Okay? So that's either August
3 23 or something like that and immediately sent to Frank
4 Gonda. Okay? The note from Dr. Waid's office has been
5 removed. Okay? So we will never know whether that
6 note has been destroyed or exists and so forth, but the
7 note that was written for Dr. Waid was written on two
8 days before, like August 5. Okay? August 25.

9 Q. You don't think any of these three documents are the
10 ones that were sent to Dr. Waid?

11 A. I know it wasn't. Here how I know. Dr. Waid quote one
12 of the notes, but not this one. This one was
13 substituted much, much later. Dr. Waid never had that
14 note. Dr. Waid have never seen that note until it was
15 substituted by Thompson and Turner, planted. They
16 switch note for Waid. They remove one and planted
17 another years later.

18 Q. Who's they?

19 A. Thompson, Turner, and Fogarty.

20 Q. Your contention is that Dr. Waid, got one version of a
21 note once and then another later?

22 A. It's no contention. It's a fact. It's all in Thompson
23 production, Mrs. Cheek. It's all right there.

24 Q. So you don't disagree that Dr. Fogarty saw Mr. Casey in
25 2005---

1 A. I have no idea. I have no idea whether he did or he
2 didn't. There's no nursing notes that we can see.
3 There's nothing. There's no -- there's absolutely
4 nothing in this note to indicate that, but perhaps he
5 did. Let me show you why I say that. You see that
6 signature?

7 Q. I do.

8 A. Do you see this?

9 Q. I do.

10 A. Do you see any signature?

11 Q. No.

12 A. Thank you.

13 Q. What's your point about signatures, Dr. Feldman?

14 A. Well, there's no signature. Okay? There's numbers,
15 the numbers, CMF, cc Dr. Gonda. This note has never
16 been in Gonda's office. This is what has been in Dr.
17 Gonda's office. F, Frank. Not this.

18 Q. Let's take a break for a minute.

19 (Off the Record; 3:41 -- 3:58 p.m.)

20 EXAMINATION RESUMED BY MS. CHEEK:

21 Q. Dr. Feldman, in the medical malpractice action we had
22 marked the Complaint as an exhibit, and that Complaint
23 was filed against you on May 24, 2006. And I have seen
24 records where you received a copy of that Complaint, I
25 believe, the following day. Do you have any

1 recollection of that, or does that sound approximately
2 correct?

3 A. I don't have a recollection, but it's approximately
4 correct.

5 Q. When you were served with that Complaint, you read it.
6 Correct?

7 A. Don't really recall. I may have been busy. May have
8 read it later. Don't have independent recollection
9 when did I read it, but I did read it at some point.

10 Q. And you saw the allegations that had been made against
11 you?

12 A. Allegations made against me? I have read the Complaint
13 containing allegations.

14 Q. Correct. So you saw what Mr. Casey had alleged against
15 you in his lawsuit. Correct?

16 A. I have seen that, yes.

17 Q. Now, this is the same Casey. I mean, you recognized
18 Mark Casey's name. You knew who was suing you.
19 Correct?

20 A. Yes.

21 Q. And this is the same person that you had last seen June
22 2004, approximately, from our review of your file when
23 he was at your office seeking drugs and support for his
24 disability?

25 A. I believe it was June 27 when I see him last time.

1 Q. Okay. So almost two years prior. It had been almost
2 two years since you'd seen Mr. Casey. Correct?

3 A. Something like that.

4 Q. And at the last time you had seen Mr. Casey, you've
5 explained to me that Casey was seeking refills on
6 prescriptions and seeking assistance with his
7 disability, both of which you thought were medically
8 unwarranted. Correct?

9 A. He was asking for pain prescriptions, and he was asking
10 to put him out of work, and he was asking whether he
11 can play golf. Okay? So I told him yes, you can play
12 golf. If you can play, you can go back to work. As
13 far as the pain medicine, I ain't writing any.

14 Q. When you read the allegations in the Complaint that he
15 was brain-damaged and that he was accusing you of
16 malpractice --

17 A. Right.

18 Q. -- based on your having seen him after the rigid
19 bronchoscopy, you thought that's inaccurate?

20 A. Yes. It was crazy.

21 Q. You also saw the theory of -- well, you also saw that
22 alleged in the Complaint was how he thought the injury
23 had happened, and it was the air embolism that he had
24 suffered?

25 A. Yes.

1 Q. And you thought not only is Casey not damaged, but that
2 theory is not accurate?

3 A. Outlandish, yeah, crazy.

4 Q. Now, after you were sued you reported the lawsuit to
5 your insurer. Correct?

6 A. Yes.

7 Q. You were then assigned counsel?

8 A. Yes.

9 Q. Your counsel was Spencer King. Correct?

10 A. Correct.

11 Q. Now, you had said -- I believe this is true. I believe
12 Mr. King also represented Dr. Boscia, and Dr. Shantha
13 was represented by Billy Gunn. Correct?

14 A. Mr. King represented myself, Dr. Boscia, and Upstate
15 Lung, but Dr. Gunn -- Billy Gunn represented Dr.
16 Shantha.

17 Q. And you spoke to Mr. King about the allegations that
18 were asserted against you and your opinion regarding
19 them. Correct?

20 A. Yes. At some point, he came to my office and talked to
21 us.

22 Q. Mr. King ultimately filed an Answer on your behalf.
23 Correct?

24 A. I think so. I'm sure he did, yes.

25 (Defendant's Exhibit Number 32 marked)

1 EXAMINATION RESUMED BY MS. CHEEK:

2 Q. This is 32. Would you agree with me that this is a
3 cover letter serving a copy of the Answer that Mr. King
4 filed on your behalf in that medical malpractice
5 action?

6 A. I agree.

7 Q. And you see the date on the filing is July 12, 2006.
8 Correct?

9 A. Yes.

10 (Defendant's Exhibit Number 33 marked)

11 EXAMINATION RESUMED BY MS. CHEEK:

12 Q. Now, you've been handed Exhibit 33, which is a June 20,
13 2006 letter to Billy Gunn from Chuck Thompson, and this
14 letter to Billy indicates that Mr. Thompson is sending
15 to Billy on that date, June 20, complete copies of the
16 following medical record for Mark Casey as delivered
17 from his medical providers. Do you see that in the
18 first sentence?

19 A. I see that he's saying enclosed please find a complete
20 copy of the following medical records of Mr. Mark Casey
21 as delivered from his medical providers.

22 Q. And included in that list is number six. It says Lung
23 and Chest Medical, Dr. Charles Fogarty. Correct?

24 A. Yes.

25 (Defendant's Exhibit Number 34 marked)

1 EXAMINATION RESUMED BY MS. CHEEK:

2 Q. We've marked as 34 a June 30, 2006 letter from Billy
3 back to Chuck thanking him for providing copies of the
4 medical records.

5 A. Are you talking about 34?

6 Q. Yes.

7 A. It says, "Thanks for the extension."

8 Q. "Thanks for the extension." And then in this next
9 sentence, "Thanks also for providing us with copies of
10 the medical you have." Do you see that?

11 A. Okay.

12 Q. So based on this correspondence, it appears, would you
13 agree, that Mr. Thompson before your Answer was filed
14 in the medical malpractice case has produced medical
15 records of Mark Casey that include the Lung and Chest
16 file?

17 A. I agree with that.

18 Q. Let's see if we can dig out from your stack here what
19 was marked previously as Exhibit 23.

20 A. You want me to do something with it?

21 Q. I just want you to have it in front of you, please. We
22 had talked about these earlier, Dr. Feldman, and these
23 are the Bates labeled copies of the Lung and Chest file
24 that were produced in the medical malpractice action
25 from Mr. Thompson's file. Would you agree with me?

1 A. I agree with you.

2 Q. And we had looked earlier at the back where your
3 Upstate Lung records were contained. I'd like you now
4 to look at Thompson 32163.

5 A. Just a second. What you want me to do?

6 Q. If you'll look in here at Thompson---

7 A. What page number?

8 Q. 32163.

9 A. 163? I am looking.

10 Q. Okay. And will you agree that that document appearing
11 at 32163 through 32165 is the unsigned document office
12 note that's dated July 21, 2005 that we've been
13 discussing earlier?

14 A. Yes. It also appears to be a faking printed medical
15 record. So when we're saying signed, we don't sign
16 them anymore. But it's a fake. Okay? So it's
17 electronic signature, but it's not electronic medical
18 record. But that's how I would sign today. I would
19 sign Gregory J. Feldman, but it would not be my written
20 signature.

21 Q. When your counsel received Casey's medical records
22 after you were sued about the time or right before you
23 were filing your Answer, you reviewed the medical
24 records. Correct?

25 A. No.

1 Q. You did not?

2 A. No.

3 Q. Your lawyers reviewed the medical records, didn't they?

4 A. I'm sure they did.

5 Q. And in the medical records that they received and
6 reviewed included the July 21 note that we're looking
7 at right now. Correct?

8 A. I'm certain.

9 Q. And this note pairs up with the allegations that are
10 asserted against you in the medical malpractice action
11 complaint. Correct?

12 A. Not even close.

13 Q. Not even close, okay. You've explained to me today
14 that Dr. Fogarty, in your opinion, prepared this note
15 and---

16 A. You're talking about which one?

17 Q. This one.

18 A. The one that is labeled 7/21/06?

19 Q. Right.

20 A. But which one? There are three of them.

21 Q. 7/21/05. Okay, I thought we---

22 A. Are you talking about the one that was in this file or
23 the others that were produced today? Which one?

24 Q. So what we're talking about is the one -- let's pair
25 this up. I'd like you to do what you need to do to

1 confirm that that Bates labeled note --

2 A. Corresponding to this. Right?

3 Q. -- contained in the Lung and Chest file corresponds to
4 Exhibit 5.

5 A. Okay, here's how I know. It's saying 000440, 000440.
6 That is a Bates stamp number from malpractice
7 litigation. Now, this note, as you can see, has no
8 numbers on it. Okay? So there was no way possible for
9 me to see them.

10 Q. But you will agree that the note that we're looking at
11 in this Exhibit 23 that's dated July 21 is the same one
12 that we've been talking about and marked as Exhibit 5?

13 A. Yes. Yes.

14 Q. And that note, the Exhibit 5 and the one that's
15 contained in this Exhibit 23, you've explained to me
16 that that's the one that you contend that Dr. Fogarty
17 wrote that Casey undoubtedly had air emboli given his
18 lengthy duration of anesthesia, and that Dr. Fogarty
19 wrote that in order to have the medical malpractice
20 action filed against you. Correct?

21 A. Correct.

22 Q. And in the medical malpractice action Complaint, there
23 are allegations consistent with this note. Correct?

24 A. There is no allegation inconsistent with that note, but
25 there's many other allegations that are not in the

1 note.

2 Q. Do you want to try to find your Exhibit 1? All right,
3 let's take a look at Exhibit 1, please.

4 A. Okay.

5 Q. And I am looking on page 2. I would like you to read
6 to yourself that paragraph, please.

7 A. Which one?

8 Q. Paragraph seven on page 2.

9 A. The one that is in yellow?

10 Q. Yes.

11 A. Okay.

12 Q. Do you agree that that paragraph seven recites that Mr.
13 Casey suffered an air embolism during the rigid
14 bronchoscopy or the pneumothorax and suffered brain
15 damage and resulting in other consequences?

16 A. Yeah. Memory loss, depression, other problems
17 associated with brain damage, sure.

18 Q. And do you agree that that is not verbatim, but that
19 those allegations are the same that are contained in
20 Dr. Fogarty's July 21 office note?

21 A. Again, I answered your question. I said it's not
22 inconsistent with anything that Dr. Fogarty wrote in
23 the note, but it's more than that. And that's the best
24 I can answer.

25 Q. Okay. So the---

1 A. So my answer to your question, it's not inconsistent
2 with his note.

3 Q. If something's not inconsistent, Dr. Feldman, if I read
4 air embolism in Dr. Fogarty's records and I read air
5 embolism in the medical malpractice Complaint, I'm
6 hooking up air embolism. If somebody said that this
7 person suffered an air embolism --

8 A. Right.

9 Q. -- who was it? It was Dr. Fogarty, wasn't it?

10 A. I don't know. There was discovery to be had. Okay?
11 what he base his opinion on? Okay? I was personally
12 looking for his previous notes, because, you know, it's
13 just out of the blue, without a doubt, air emboli,
14 which is impossible. So what the man has based his
15 opinion on? Okay, let's find out. We have discussed
16 it's outlandish and crazy. I agree with you, but it
17 has to be based on something. So we were waiting for
18 that something to come up. So maybe he had talked to
19 the neurologist on the phone. Maybe there's MRI
20 somewhere is done. I don't know. Okay? Let's find
21 out. I mean, what your reaction would be?

22 Q. Okay. Dr. Feldman, you're sued by a patient who the
23 last time you saw him was fine.

24 A. Yeah.

25 Q. He two years later is suing you for a brain injury

1 caused by an air embolism.

2 A. Pretty crazy.

3 Q. Before you answer, you get medical records from a known
4 nemesis that says this guy has an air embolism.
5 Correct?

6 A. Yeah, but it doesn't say what it's based on. So what
7 Mr. King has told me, let's find out. I said, okay
8 let's find out.

9 Q. But you do see that the lawsuit -- the opinion itself
10 may warrant discovery, but the lawsuit is based on Dr.
11 Fogarty's---

12 A. I'm not following your question. If you ask me the
13 question, maybe this will help me, yes or no. What was
14 the question one more time?

15 Q. When you received the lawsuit and you received Dr.
16 Fogarty's medical records --

17 A. Right.

18 Q. -- you were able to see that the air embolism alleged
19 in the lawsuit came from Dr. Fogarty. That medical
20 diagnosis on which the suit was filed was right here in
21 Dr. Fogarty's medical records.

22 A. Yeah, pretty crazy note, I agree, and that's how we
23 characterized it, pretty crazy. Let's find out what
24 it's based on.

25 Q. And, as you have said -- and, for the record, I don't

1 think you and I agree on it, but I understand that your
2 opinion is that it was a crazy theory and---

3 A. What do you mean you and I agree on it? Are you a
4 doctor? You have a lawyer opinion about a medical
5 issue? Everybody think it's crazy, not just me. You
6 want to state medical opinion, fine.

7 (Defendant's Exhibit Number 35 marked)

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. That's 35. Also in the medical malpractice action,
10 your lawyers served discovery on plaintiffs seeking
11 information in discovery about their allegations.
12 Correct?

13 A. Yes.

14 Q. What I've handed you is a document entitled Plaintiff's
15 Supplemental Responses to Written Interrogatories of
16 Defendants Feldman and Boscia, M.D. and Upstate Lung
17 and Critical Care Specialists, P.C., and Defendant
18 Devendra Shantha, M.D. If you will please turn to page
19 2 of that. Actually, I'm sorry, Dr. Feldman, keep on
20 page 1 for just a minute.

21 A. Okay.

22 Q. I'm going to read right below the "To" line. It says,
23 "In compliance with scheduling order of Judge Roger L.
24 Couch filed 8/16/07, and plaintiff supplements his
25 interrogatory responses to identify the following

1 additional potential expert witnesses which may be
2 called on behalf of plaintiff William Mark Casey in the
3 trial of this case." Do you see that?

4 A. I do.

5 Q. If you'll flip to the second page.

6 A. It says Randolph Waid, Ph.D. and Joseph Grace, Ph.D.,
7 and the date is August 2007, August 16, 2007, and it
8 says supplemental interrogatory response.

9 Q. And in terms of the date of the actual document that it
10 was served and signed by Mr. Thompson, I'm looking on
11 page 5, it says August 31, 2007. Do you see that?

12 A. Yeah, August 31.

13 Q. Okay. So if you will flip to the second page of that
14 exhibit, you'll see that Dr. Fogarty is listed by
15 plaintiffs. Do you see that?

16 A. Yeah, I do.

17 Q. Could you read the paragraph below Dr. Fogarty's name
18 and address into the record, please?

19 A. Sure. "Dr. Fogarty is a board certified pulmonologist
20 and will be asked to render expert testimony based on
21 his review of Mr. Casey's medical and other records
22 documenting his medical care and treatment and based on
23 Dr. Fogarty's independent evaluation and treatment of
24 Mr. Casey. Dr. Fogarty will be asked to address the
25 standard of care required of the defendant physicians,

1 breaches thereof, proximate cause, and damages suffered
2 by Mr. Casey. Defense counsel has a copy of record of
3 Lung and Chest Medical Associates."

4 Q. Thank you. So you agree with me that in this document,
5 plaintiff Casey is formally identifying Dr. Fogarty as
6 an expert witness, and it also states what we've seen
7 before, that defense counsel also has a copy of the
8 Lung and Chest records. Correct?

9 A. Yes. It doesn't say expert witness. It says expert
10 testimony. Expert witness is not the same.

11 (Defendant's Exhibit Number 36 marked)

12 EXAMINATION RESUMED BY MS. CHEEK:

13 Q. I'm going to go back to something you and I were
14 discussing earlier, and it was Mark Casey's deposition.
15 I know we spent actually a long time---

16 A. We haven't even beginning to spend time on it, but if
17 you want to say long time, fine.

18 Q. Then we discussed his deposition testimony that he had
19 given or at least a small portion of it in the medical
20 malpractice case. Now, to conserve paper -- although
21 if your counsel has an objection to it, we'll put the
22 entire transcript into evidence -- I just wanted to put
23 in---

24 A. I want entire transcript in as evidence.

25 MR. MANN:

1 Hold on. That's not your job.

2 EXAMINATION RESUMED BY MS. CHEEK:

3 Q. I'm going to hand you Exhibit 36. Milton and I can
4 talk about that shortly.

5 MR. MANN:

6 Let's go off the record for one second.

7 (Off the Record; 4:24 -- 4:25 p.m.)

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. Dr. Feldman, you've been handed a single sheet marked
10 as Exhibit 36. It is, I'll represent to you, the first
11 several pages of a minuscrit copy of the deposition of
12 Mark Casey taken in the medical malpractice action. I
13 understand that you do not have the full transcript
14 before you, but I wanted to pair this up with what we
15 were talking about earlier. Mr. Casey was deposed in
16 the medical malpractice action. Correct?

17 A. Yes.

18 Q. And I'm having a hard time picking out the date. It
19 looks like August 29, 2007 and attended by Mr.
20 Thompson, Mr. King, and Mr. Gunn. Also attending looks
21 like you, Dr. Boscia, and Mary Etta Howard. Do you see
22 that?

23 A. Yes.

24 Q. Do you recall that event?

25 A. I do, very much so.

1 Q. Let's switch gears a little bit. What does MRI stand
2 for?

3 A. Magnetic resonance imaging.

4 Q. MRIs can be performed on the brain. Correct?

5 A. It can be.

6 Q. What are the different problems with a brain that an
7 MRI can show?

8 A. I'm not a neurologist, but from general medical
9 knowledge, it can show from cerebral infarctions to
10 tumors to enlargement of the ventricles to the atrophy
11 of cerebral matter to the lesions consistent with
12 multiple sclerosis and to any abnormality which is not
13 corresponds to normal.

14 Q. Any abnormality that what?

15 A. That is other abnormalities that are deviated from what
16 would be considered by board certified radiologist and
17 neurologist as being normal. I do not claim to be an
18 expert on MRI, but I do claim to be a physician with
19 sufficient background to comment.

20 Q. For a neurological injury, infarction, lesion, or other
21 condition to be shown on an MRI, a condition has to be
22 anatomically visible. Is that correct?

23 A. Of course.

24 Q. Is it possible for a neurological condition or injury
25 not to be anatomically visible?

1 A. A permanent injury would be considered to be
2 impossible. A transitory injury is possible.

3 Q. I understand your testimony is that if a brain is
4 permanently injured in some manner or fashion, that
5 injury or condition is visible or would be visible on
6 an MRI?

7 A. Talking about organic injury, organic, to the matter of
8 the brain.

9 Q. What's an inorganic brain injury?

10 A. Inorganic brain injury would be somebody got drunk,
11 okay, and can sustain inorganic brain injury without
12 stroke, without anything. That would be inorganic
13 brain injury. But if injury from anoxia, for example,
14 because people didn't get enough oxygen by being drunk,
15 that would be visible.

16 Q. So an MRI would be a definitive test as to whether
17 someone has a permanent neurological impairment?

18 A. We do not have definitive tests. We have physical
19 examination. We have CAT scan. We have an MRI. We
20 have an EG, which electroencephalogram. We have a
21 variety of different tests. Okay? If one part is
22 inconsistent with another, then -- then you have to
23 synthesize it together. Usually that require a
24 significant amount of expertise. I will give you an
25 example. If you have a seizure, it's pretty obvious

1 even to you. Okay? People shake. But if you have a
2 minor seizure, it's not obvious. It's called absentee
3 seizure. Okay? And absentee seizures, somebody can
4 crash into the tree and have a normal MRI, okay, or
5 abnormal MRI. All right? So some things are obvious;
6 some things are not obvious. But the stroke, MRI is
7 the gold standard. If MRI is normal, there's no
8 permanent injury.

9 Q. So depending on the injury, an MRI could be definitive.
10 You say that---

11 A. In a stroke it is.

12 Q. In a stroke it is definitive?

13 A. It is definitive.

14 Q. Is there a gradation of strokes from minor to severe?

15 A. They're all visible.

16 Q. All of them are visible? What was the other example
17 you gave me? Was it a seizure?

18 A. I gave you absentee seizure.

19 Q. Did you say absentee seizure?

20 A. Absentee meaning that you're startled but not
21 necessarily observed of having movements.

22 Q. And for that you've explained to me that a person could
23 have an absentee seizure and still have a normal MRI.
24 Correct?

25 A. It's conceivable. Again, I'm not a neurologist, but in

1 seizure disorder, it's conceivable to have a MRI -- I
2 mean seizure disorder is conceivable not necessarily
3 secondary to a stroke. But if a seizure is secondary
4 to a stroke, it would be visible on MRI. So some
5 people with seizures have normal MRI. But if seizure
6 is secondary to stroke, it would be visible.

7 Q. I understand. So for some neurological impairments a
8 person can suffer an impairment and still have a normal
9 MRI. That is not the case with a stroke.

10 A. No.

11 Q. Did I get it right? Did I say that correctly?

12 A. Yes. You stated it correctly.

13 Q. Now, in this case for Mr. Casey, Mr. Casey had a normal
14 MRI. Is that correct?

15 A. Yes. We have uncovered normal MRI. Absolutely we did.

16 Q. And your position is that because the MRI was negative,
17 that proves that Mr. Casey did not have a neurological
18 condition or defect?

19 A. There was no indication for MRI, and my contention is
20 entirely different from what you just stated. It's not
21 a medical case. It's a fraud case. It wasn't that MRI
22 was negative. MRI done under assumed name outside
23 hospital and concealed. That what matters to me, not
24 result, because there was no indication for MRI to
25 begin with.

1 Q. If the result had been that Casey had a neurological
2 impairment, that would have mattered for the case.

3 A. Not at all. He could have -- he could have overdosed
4 himself. He could have crashed himself. Cerebral
5 embolism is not possible in any of that. Okay? So not
6 at all. Significant MRI for me is not result of it.
7 There was no indication for it. It's how it was done.

8 Q. So if Casey's MRI had returned abnormal, your position
9 would be that it wasn't because of an air embolism, it
10 would have had to have been something else?

11 A. Right. If you have injury, of course.

12 Q. Pardon?

13 A. If the injury is permanent, of course, permanent
14 meaning not transitory. There is transitory events
15 that do not result in damage, but they're gone.
16 Talking about permanent injury. Once you said
17 permanent, it would be seen on MRI. I can give an
18 example. TIA, mini stroke, before stroke, transitory
19 ischemic attack. Okay? That's what separates from a
20 stroke. MRI is negative. No neurological injury. But
21 symptoms like blindness in the eye for a second. Gone
22 away. Okay? But once you have permanent blindness or
23 some abnormal vision, it would be seen on MRI.

24 (Defendant's Exhibit Number 37 marked)

25 EXAMINATION RESUMED BY MS. CHEEK:

1 Q. I hand you what's been marked as Defendant's Exhibit
2 37. Have you had an opportunity to review that?

3 A. I did.

4 Q. This is a February 11, 2009 e-mail you sent to Attorney
5 Mann. In the first sentence you say, "We do not care
6 if patient had air embolus." Down below, you also say,
7 "Medical facts are not really important, intent is."

8 A. Yeah, it wasn't medical case. It was a fraud case.
9 So, I mean, you can waste all your time, but it is a
10 fraud. It's a basic fraud. Okay? So you can scream
11 all over the place that there's no MRI, there's no
12 medical facts, there is no medical testimony. You are
13 dealing with a fraud case. So that is what is most
14 important. This is basically what it is, because at
15 the time -- at the time, we were convinced that fraud
16 upon the court has been perpetrated. This is the e-
17 mails in preparation for the motion for fraud upon the
18 court. Okay? which is we still can assert, but that's
19 definition. But this is what -- this is preparation
20 for filing a motion for fraud upon the court. So when
21 you have a fraud upon the court, it's not about
22 medicine, because it has nothing to do with the medical
23 facts. It has to do with perpetrated fraud on the
24 court.

25 Q. If Mr. Casey had an air embolus, then Dr. Fogarty's

1 diagnosis of his having an air embolism would have been
2 accurate. Correct?

3 A. Not at all. This is February 11, 2009. This is
4 already we know about normal MRI, Aetna neurologist
5 testimony, which was concealed. It's all uncovered
6 here. Okay? So this is a motion for fraud upon the
7 court with multiple, multiple deposition taken,
8 psychiatrist deposition, clear-cut depression, MRI
9 totally normal, uncovered Aetna neurologist testimony,
10 all uncovered. So this is preparation for fraud upon
11 the court which was clear-cut fraud. Okay? So this is
12 not a medical discussion. Okay? This is a discussion
13 about motion for fraud upon the court. So that's -- we
14 do not care about anything about medicine in the fraud
15 upon the court, because it's not about medicine.

16 Q. The medical malpractice action was based on a claim of
17 medical malpractice, though. Correct?

18 A. Medical malpractice action was a fraud. It was based
19 on fraudulent assumption, fraudulent medical records,
20 and fraudulent testimony. Okay? So discussing medical
21 facts does you no good when you have a fraudulent
22 medical record. It's almost exercise in futility.

23 Q. Well, can you make a fraudulent medical record that
24 contains an accurate fact-based diagnosis?

25 A. You're the lawyer. Fraudulent by definition is false.

1 Q. Can you make---

2 A. Nothing fraudulent can be accurate. It by definition
3 is false. That's the definition of being fraudulent.
4 It's false no matter what. Even if some other patient
5 could have something, okay, that is irrelevant in the
6 particular case of the fraud. Fraud is always false.
7 I'll find you the quote from Supreme Court.

8 Q. If fraud is always false---

9 A. Always false.

10 Q. If the diagnosis in this case was accurate, if Casey
11 had suffered an air embolism, then Dr. Fogarty's
12 diagnosis would have been true.

13 A. I'm shocked we're discussing legalities and legal
14 issue, because it's not a medical issue. Fraud, even
15 if it's rise to the accurate conclusion, is always
16 false. Okay? The clock is right occasionally. Okay?
17 Twice a day. You cannot arrive to the accurate
18 conclusion by fraud. Okay? To respond to your medical
19 question, unrelated to Casey, because Casey never had
20 the terrible emboli, could not possibly have it. But
21 unrelated to the case, if Dr. Feldman accidentally make
22 a conclusion that is correct for somebody, some other
23 patient and so forth, that's not medical evidence.
24 It's just a correct guess.

25 Q. Okay. I think I understand what you're trying to tell

1 me is that you believe, your position is that Dr.
2 Fogarty didn't believe that Casey had an air embolism
3 and, therefore, if he perchance came up with a
4 diagnosis that said he had and Casey actually had an
5 air embolism, it would still be a fraudulent diagnosis?
6 A. It is not medical case; therefore, I cannot discuss
7 with you medical diagnosis. It's a fraudulent case of
8 framing people and causing brain damage. The terrible
9 embolism is a genius diagnosis because you can't detect
10 it. Once you assert that it is a diagnosis with
11 medical certainty, that's all the lawyer needs. So the
12 lawyer request of Fogarty only one thing, medical
13 certainty. Then you bamboozle the expert, you
14 bamboozle jury, you bamboozle everything and get
15 disability where there's none and so forth. Okay? So
16 the case from the very beginning was staged that no
17 test can disprove your theory to the court, not to the
18 medical professionals, to the court, because court
19 doesn't deal with fraud, except in our particular case
20 it would. It deals with legitimate testimony. And if
21 the doctor with a medical license say something without
22 a doubt, that's all the court require. That is the way
23 you get to the summary judgment. To deal with the
24 fraud, court is not equipped. Who would imagine that a
25 physician will frame his colleague, no matter how much

1 you hate him? who would imagine that? This legal
2 system not designed for that, but that's what we've
3 got.

4 Q. I thought that you had told me earlier that an air
5 embolism would have resulted in a positive --

6 A. For any physician, but not---

7 Q. -- MRI.

8 MR. MANN:

9 wait, wait, wait.

10 EXAMINATION RESUMED BY MS. CHEEK:

11 A. I'm sorry. For any physician, yes, but not for the
12 court. The court require opinion with medical
13 certainty. It does not require an opinion that is
14 accurate. Okay? That is not prerogative of the court.
15 The court's only concerned, okay, medical certainty,
16 without a doubt. That's what Thompson needed from
17 Fogarty. That's all he needed from him.

18 Q. Didn't we discuss earlier that an MRI would show
19 whether a patient had suffered an air embolism?

20 A. A stroke or air embolism?

21 Q. Air embolism.

22 A. You're confusing things now medically. Let me try to
23 explain it to you. Air embolism during heart surgery,
24 for example, happens in the neighborhood of 20,000 in
25 every case. Okay? It's insignificant. If it's

1 permanent damage like a stroke, it becomes a stroke.
2 So air embolism and stroke is not synonymous. However,
3 if you block something and you have permanent damage,
4 it will be hundred percent visible on MRI. Okay? But
5 not to the court. Court are not doctors. For the
6 court it was visible, it's without a doubt, that's all
7 they care.

8 Q. Dr. Fogarty's diagnosis was that Mr. Casey had suffered
9 an air embolism---

10 A. I disagree. He never made a diagnosis.

11 Q. What Dr. Fogarty wrote in his July 21 note was that Mr.
12 Casey had suffered an air embolism. Correct?

13 A. Which note? Because in some cases there's only one
14 note without a doubt. Which note you referring to?

15 Q. Referring to Exhibit 5.

16 A. But that wasn't -- that note was written in 2006 for
17 the law, malpractice lawsuit, not for patient care. I
18 cannot accept -- you keep discussing the note that it
19 says July 21, but written years and years later.

20 Q. Okay. You told me just a few minutes ago that an air
21 embolism was an ingenious diagnosis because you cannot
22 detect it.

23 A. No, I didn't. I didn't say it was ingenious diagnosis.
24 I said it was a diagnosis that is impossible to
25 disprove to the judge. Any doctor will tell you it's

1 impossible, any doctor that -- any neurologist, anybody
2 will tell you that to have a stroke -- I'm going to use
3 the word stroke. Okay? Because cerebral embolism,
4 maculocerebral embolism is not a stroke. Okay? To
5 have a stroke, okay, any physician, but not the court.
6 They don't have education. You're making preposterous
7 medical comments, as well, but you're not a medical
8 doctor. I can't hold you to that -- to that level.
9 I'm arguing with a lawyer about medicine. That's
10 ridiculous in itself, but it's not what the court
11 concerned. The court's concerned you have a license,
12 you have M.D., is it without -- with medical certainty.
13 That's it. In a gentlemen club where physicians are
14 sitting, they will laugh you out of the room if you
15 suggest the stroke is not visible on MRI. They will
16 say get out of here in a physician environment, not in
17 legal arena, not so, because legal arena, adversarial
18 relations are not -- not designed for fraud. I mean,
19 how -- if it would be designed for fraud, our entire
20 system will go out the window. Okay? You have to
21 assume that people presented opinion not trying to
22 manipulate the system, which what has happened here.

23 Q. So back to Exhibit 37.

24 A. Which one?

25 Q. Exhibit 37.

1 A. 37?

2 Q. Yes, sir.

3 A. Got it.

4 Q. So when you say, "We do not care if patient had air
5 embolus," you're talking about Mr. Casey. Correct?

6 A. I'm talking about fraud upon the court motion.

7 Q. But in the first sentence when it says, "We do not care
8 if patient had air embolus," patient refers to Casey.
9 Correct?

10 A. Cannot really go back that many years and have a
11 memory. I can only tell you that the fraud upon the
12 court motion is what we assemble here. Let me for the
13 record -- this is for the record. The last sentence of
14 37, Defendant Exhibit Feldman, say, "Ethics Complaint
15 will be up for the judge to report." This is clearly
16 talking about ethics Complaint here, not about---

17 MR. MANN:

18 Dr. Feldman, hold on. There's not a question on
19 board. Hold on.

20 MR. HENRIKSON:

21 Move to strike the last statement.

22 MR. MANN:

23 stipulated.

24 MS. CHEEK:

25 Let's do this. Let's break for the day. we

1 agreed we would be out of here by 5 o'clock.

2 (The deposition was suspended at 4:50 p.m. October 17, 2016
3 and resumed at 9:09 a.m. October 18, 2016.)

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. Dr. Feldman, we're back on the record after an
6 overnight break. You have brought with you to the
7 deposition today a number of documents that we are
8 going to review and have compiled into a single exhibit
9 that we'll enter into the record at some point later
10 today. Yesterday we were discussing a 483 letter. Do
11 you recall that?

12 A. I do.

13 Q. Is there any document in the production you brought
14 today that relates to the 483 letter?

15 A. Yes.

16 Q. Is that something that you can pull out of your
17 production?

18 A. I can. This is basically Dr. Fogarty writing on 483 in
19 Mr. Thompson file. I will appreciate it if you don't
20 detach it.

21 Q. You have handed me a number of documents here. It
22 doesn't look like they are consecutively Bates
23 numbered.

24 A. They are not consecutive.

25 Q. But you consider this a single document?

1 A. Single.

2 Q. And how would you describe the document as a whole?
3 why are these papers together?

4 A. Can I have it back?

5 Q. You may.

6 A. This is part of about 500 pages of Dr. Fogarty writings
7 that I have discovered in -- that we have discovered in
8 Mr. Thompson file. It is not possible to bring all of
9 them and to discuss them. They're all equally
10 shocking. So faced with a choice, I brought only
11 several. They're all on a disk in Mr. Thompson
12 production. They have never been produced neither by
13 Dr. Fogarty, Mr. Thompson, Ellen Cheek, or Matt
14 Henrikson, ever. I'm talking about 12 years. Now, to
15 the point, do you recognize Dr. Fogarty writing here?
16 All of it is Dr. Fogarty writings. How do I know? I
17 was his partner for many, many years. All of it is Dr.
18 Fogarty writings. Can I finish? I will direct your
19 attention.

20 MR. MANN:

21 wait, wait, wait, wait. Let me interrupt for a
22 second. I've made a sticky note, and it just says Dr.
23 Fogarty notes within Thompson's file.

24 WITNESS:

25 Yes.

1 MR. MANN:

2 We're going to stick this on top. We are just
3 trying to identify the document right now, group of
4 documents right now.

5 WITNESS:

6 Okay, that's fine.

7 MR. MANN:

8 So is that a fair description, Dr. Fogarty's notes
9 within Thompson's file? I think that's what you said.
10 I'm just trying to make it simple.

11 WITNESS:

12 Okay.

13 MR. MANN:

14 So you've got a group of documents right here.
15 We're going to set that aside for the moment, and I'm
16 going to let Ellen resume.

17 WITNESS:

18 But I didn't finish my answer.

19 MR. MANN:

20 Well, you don't have an answer. You were asked to
21 identify a document, not explain the relevance.

22 WITNESS:

23 Okay.

24 MR. MANN:

25 And, you know, we can kind of make things quicker

1 if we just focus on the question. Okay?

2 EXAMINATION RESUMED BY MS. CHEEK:

3 Q. Now, yesterday during your testimony, we were
4 discussing a 483 letter that you received. Correct?

5 A. Mm-hmm.

6 Q. And you told me that you had received from the FDA a
7 retraction, I believe?

8 A. Just request it. We'll send it to you. Just request
9 it.

10 Q. But that is not within the documents that you brought
11 here today?

12 A. I answered your question. Your question was do I have
13 anything today related to that document. I said I do,
14 and that's what I showed you.

15 Q. Okay. And my question now is, in terms of a retraction
16 letter to the 483 letter we were discussing yesterday -
17 -

18 A. Right.

19 Q. -- you do not have that within this production.
20 Correct?

21 A. I have only Thompson production.

22 MR. MANN:

23 Ellen, I'm making a list.

24 WITNESS:

25 If you're interested, send it. But my answer to

1 the question was I brought it.

2 MR. MANN:

3 Shh. We're not doing this again today.

4 WITNESS:

5 Sorry about that.

6 MR. MANN:

7 We're going to listen to the questions. We're
8 going to answer the questions. Okay? Because I'm not
9 going to hopefully be here till midnight.

10 (Defendant's Exhibit Number 38 marked)

11 EXAMINATION RESUMED BY MS. CHEEK:

12 Q. The court reporter has marked Exhibit 38, and I'm going
13 to direct you, this is an e-mail string out of the Mann
14 production 11097, 11098. There is at the bottom of
15 this first page an e-mail from Tamera Norton Smith to
16 Anna Buice dated December 1, 2009. Do you see that?

17 A. Okay.

18 Q. And she is summarizing her review of a Form FDA 483
19 from the FDA that you received. Is that correct?

20 A. Okay, yes.

21 Q. And in item number one, she points out in the second
22 sentence that you received a 483 that was issued for
23 furtherance of a sponsor investigation. I believe
24 that's what you were telling me yesterday, that the 483
25 you received concerned a sponsor investigation.

1 Correct?

2 A. Correct.

3 Q. There is a bullet point on the second page, Dr.
4 Feldman, up at the top that said, "The FDA classified
5 his inspection as follows. His status to the August
6 2004 FDA inspection has been closed with a memo to
7 file." So there was an August 2004 FDA inspection as
8 to a 483 letter to you. Correct?

9 A. Not sure.

10 Q. You don't recall a FDA inspection as to a 483 letter
11 that was issued to you?

12 A. Don't recall.

13 Q. Do you recall a FDA inspection being closed with a memo
14 to file?

15 A. I only recall that I'd been told it's concerned
16 sponsor, not me, that all the records from FDA have
17 been expunged, I have a good grading, and this is not
18 an issue. That's all I recall.

19 Q. And item number three, if you can turn back to the
20 second page of that.

21 A. Okay.

22 Q. She says, "In the database, it does indicate a 'for
23 cause' inspection was performed in 2004 and a 'data
24 audit' was performed in 2008." You said you don't
25 recall the for-cause inspection. Correct?

1 A. No.

2 Q. Do you recall the data audit performed four years
3 later?

4 A. No.

5 Q. Ms. Smith in item number four directs you---

6 A. Who directed me?

7 Q. Ms. Tamera Norton Smith directs Anna Buice in this e-
8 mail, she says, number four, "If asked about the for
9 cause, I would explain that the FDA was investigating
10 the sponsor's role in a registry study."

11 A. Yeah, they did.

12 Q. "I do not think you'll be asked this very often." And
13 that was your response to me yesterday. Correct?

14 A. I never seen this letter. I never talked to Tamera
15 Norton Smith about it. We want to ask Anna Buice. All
16 I know that I have received notification that it has
17 nothing to do with me.

18 Q. And if I direct you down to number eight, that item
19 reads, "Dr. Feldman should keep in mind that he should
20 inform consent any patient or subject in all types of
21 studies regardless of what a sponsor instructs. In
22 this case, he was really, really lucky. The FDA was
23 able to determine that the sponsor had misinformed him.
24 Currently, the FDA would now maintain that he still
25 needed to follow all regulations involving human

1 subjects." Do you see that?

2 A. That's standard. It's almost like saying milk is milk.
3 It's a standard -- it's standard language. Tamera
4 Norton Smith will tell it to every client. It's almost
5 like a lawyer instructing his client to tell the truth.
6 of course. This is standard operating procedure to
7 always do that.

8 Q. Is every 483 letter concerning informed consent?

9 A. It has nothing to do with informed consent.

10 Q. But the one you received did.

11 A. Mine had nothing to do with informed consent
12 whatsoever. It was an error.

13 Q. Why would Ms. Smith be telling Ms. Buice to tell you to
14 keep informed consent in mind if the FDA letter didn't
15 --

16 A. I have no idea.

17 Q. -- concern informed consent?

18 A. You can ask Tamera.

19 MR. MANN:

20 One speak at a time. One speak at a time.

21 EXAMINATION RESUMED BY MS. CHEEK:

22 A. You can ask Tamera, but Tamera will tell it to every
23 client.

24 Q. And up at the top of this e-mail on the first page,
25 this is an e-mail from Attorney Mann to you December 2,

1 2009 that says this is great news. Do you see this?

2 A. It is great news. The error had been rectified. Why
3 it isn't?

4 Q. And attached to that is the e-mail that we just
5 discussed that you said you didn't see. Is that right?

6 A. We didn't discuss e-mail. We have discussed that I've
7 done nothing wrong, that it was issued in error, that
8 it was retracted. Okay? And -- and that's all I
9 remember. That's what we discussed. We didn't discuss
10 e-mail. It's not to me.

11 (Defendant's Exhibit Number 39 marked)

12 EXAMINATION RESUMED BY MS. CHEEK:

13 Q. That's 39. What's been marked as Exhibit 39 is Bates
14 stamped Mann 11099. Up at the top there's an Anna
15 Buice e-mail to you dated December 2, 2009. Anna
16 writes in response to Ms. Smith's correspondence we
17 just reviewed, "This is truly" -- well, she said,
18 "Truly a gift."

19 A. Mm-hmm.

20 Q. The FDA 483 investigation and audit was concluded with
21 a memo to file after a four-year --

22 A. What you---

23 Q. -- open span. Correct?

24 A. Sorry. I need to clarify your question. What you
25 referring to? 483 to what?

1 MR. MANN:

2 Hang on one second, please. I want one person
3 talking at a time. Okay? So please let Ms. Cheek
4 finish making her statements, and then if you have a
5 question, verbalize your question, and then she can
6 either clarify the question or she can say please
7 answer the question. Okay? We're going to make it a
8 lot easier for the court reporter and we're going to
9 get through the day a little bit quicker doing that,
10 please. Okay?

11 WITNESS:

12 Okay.

13 MR. MANN:

14 Thank you.

15 EXAMINATION RESUMED BY MS. CHEEK:

16 Q. The 483 letter is the one that we were discussing with
17 respect to this last Exhibit 38 that you received in
18 2004, that you said you received.

19 A. In reference to what?

20 Q. You received a 483 letter.

21 A. But in error. So I'm asking you do you know in
22 reference to what.

23 Q. Okay. Well, let me ask you if you believe that I am
24 not defining this correctly.

25 A. Okay.

1 Q. what did the 483 letter that you received in 2004
2 concern?

3 A. I have received a letter in error. I haven't conducted
4 no research study whatsoever. Okay? None. The
5 sponsor misrepresented that it was research. It
6 wasn't. Okay? So nothing was applied to me doing
7 research, because I didn't. Okay? It was not research
8 project. It was approved drug. Okay? The company
9 misrepresented to the FDA that it was a registry, and
10 to everybody else. Okay? It was approved drug. We
11 just prescribe it. Okay? It's not anything. Okay?
12 So that's what the issue was about. It wasn't about
13 consent. It was about was it research, whether the
14 company told the doctors it was research. They didn't.
15 So they determined there was no research. Lucky,
16 unlucky, you know, has nothing to do with that. I
17 didn't do any research at all back then.

18 Q. Regardless of what the result was in 2008, regardless
19 of what the FDA did to conclude the 483 letter, there
20 was in fact a 483 letter sent to you. Correct?

21 A. Yes.

22 Q. In 2004?

23 A. Yes. It was sent in error.

24 Q. And until 2008, there was a pending 483 matter.
25 Correct?

1 A. I really did not have a clue that it was, because I
2 didn't do any research. I didn't take it seriously.
3 And then somebody, I believe it was Dr. Fogarty start
4 sending it out, okay, and then I said okay, we're going
5 to put it to rest. I think it came from Fogarty.

6 Q. Does the FDA issue 483 letters?

7 A. Yeah. When Fogarty brought to attention it was an
8 issue, he started writing, sending letters out.
9 Apparently put it to Mr. Thompson. Maybe Thompson sent
10 letter. I don't know who did, in 2008. And we just
11 contacted FDA and they rectified it, because I didn't
12 do any research.

13 Q. And how the matter of the 483 letter that you received
14 was concluded was a memo to file. Correct?

15 A. It was concluded. It was old. Okay? Because it was
16 quickly established by FDA that I didn't do any
17 research. Okay? Whether it has to do with S.
18 Carolina, nothing. Okay? So, but Fogarty start
19 sending letters. That's how it came about.

20 Q. Between the time the matter was opened in 2004 and the
21 matter was closed with a memo to file in 2008, it was
22 an open matter. Correct?

23 A. For me it was not a matter whatsoever. Okay? And to
24 anybody it wasn't. Okay? But Fogarty start sending
25 letters, and we decided to put it to rest.

1 Q. The FDA is the only entity that can put a 483 letter to
2 rest. Correct?

3 A. Yes.

4 Q. So between the time the FDA sent you the 483 letter in
5 2004 and when the FDA issued the memo to file in 2008,
6 there was an open 483 matter. Correct?

7 A. I didn't know it was open. Okay? To me it was closed.
8 FDA inspector came, was very friendly. Okay? Told me
9 that we investigated the sponsor. I have to write you
10 a note, but don't worry about it. Okay? It's about
11 sponsor. And that was it. I wasn't doing any research
12 at all of any kind.

13 Q. Now, after that investigator came, regardless of what
14 your conversation with him was, you did not receive --

15 A. It was her.

16 Q. -- from the FDA a letter saying this matter is closed,
17 did you?

18 A. I didn't -- I didn't actually paying attention, because
19 she said it was against sponsor, it was a non-issue,
20 but when Fogarty started writing letters, okay, we just
21 said, okay, that's enough. All right? So we contacted
22 FDA and they retracted it not just verbally but
23 officially.

24 Q. Do you have letters that Dr. Fogarty purportedly wrote
25 to the FDA?

1 A. Well, I just put it. That was in the Thompson file.

2 Q. There's a letter in there from Dr. Fogarty to the FDA?

3 A. This is his writing on it.

4 Q. Is there a letter in the production from Dr. Fogarty to
5 the FDA concerning---

6 A. Oh, there's multiple letters to different sponsors,
7 yes.

8 Q. Is there a letter from Dr. Fogarty to the FDA?

9 A. No, not that I know of. But it's the sponsor that
10 contacted me.

11 MR. MANN:

12 Shh. Hold on.

13 EXAMINATION RESUMED BY MS. CHEEK:

14 Q. Dr. Feldman, I'm going to put back in front of you the
15 July 21 notes that we were discussing yesterday as
16 Exhibits 5, 6, and 7. When we discussed yesterday that
17 Exhibit 5, I've been referring to it as the Bates
18 stamped note. That's the one that was produced by
19 Chuck Thompson in Casey's medical records in the
20 medical malpractice case. Dr. Fogarty was deposed on
21 it. I believe that---

22 A. Can I make a correction?

23 MR. MANN:

24 Hold on. No.

25 EXAMINATION RESUMED BY MS. CHEEK:

1 A. I think it was produced by Fogarty, not by---

2 MR. MANN:

3 wait one more second. Hold on. Excuse me.

4 Motion to strike. Hold on one second. Please let her
5 finish her question, and then you can ask for
6 clarification or anything else you need to do. Okay?

7 Thank you, Dr. Feldman. Sorry, Ellen.

8 MS. CHEEK:

9 Thank you, Milton.

10 EXAMINATION RESUMED BY MS. CHEEK:

11 Q. This was a Bates stamped document produced by Chuck
12 Thompson in the medical malpractice case, and we
13 discussed this note yesterday. This is the one -- and
14 I'm going to direct your attention to page 3 of it, if
15 you could flip to page 3 of that Exhibit 5. Under the
16 Comment section in the third paragraph, this is the
17 note, "With reference to the patient's difficulty
18 concentrating, he undoubtedly had air emboli." This is
19 the, Dr. Feldman, undoubtedly had air emboli note. The
20 Exhibit 6, if you'll flip to the third page, under
21 Comment, the third paragraph, "With reference to the
22 patient's difficulty concentrating, air emboli have
23 been reported as a common complication when there is
24 laser perforation of the endotracheal tree." And I'll
25 point out what the operative language is that I'm

1 looking and we're going to be looking in the third note
2 which is Exhibit 7, page 3, Comment, paragraph three.
3 "With reference to the patient's difficulty
4 concentrating, air emboli have been reported as a
5 complication of laser bronchoscopy even without
6 perforation of the endotracheal tree." The reason I
7 went through that little exercise, I consider the
8 Exhibit 5 to be the undoubtedly air emboli. I consider
9 this Exhibit 6 to be common complication with
10 perforation, and this is just a complication without
11 perforation. I know there's not a question there, but
12 I'm trying to make sure that you and I are conversant
13 with these note differences as we move through this
14 next set of questions. So I appreciate your
15 consideration there. Now, you had testified yesterday
16 that you believe that this note 5 with the undoubtedly
17 had air emboli was the latest in time, was the last of
18 these notes prepared. Is that correct?

19 A. Yes.

20 Q. And you believe that because, you told me yesterday,
21 the language in it is stronger and actually says
22 undoubtedly. Is that correct?

23 A. There are many reasons, but it's all in my file if
24 you're interested.

25 Q. Now, as to these two exhibits, 6 and 7, you don't know

1 which of these came first, in your opinion?

2 A. I think I do, but there's a fourth note is missing.

3 That's what's confusing from Dr. Waid which was removed
4 by Turner, Thompson, and Fogarty. So that is what
5 confusing. Waid's notes were removed from his file.
6 So there's a potentially fourth note. But I think I
7 do.

8 Q. Now, when you filed this lawsuit in 2010, you alleged
9 in paragraph 38---

10 A. Can I see it?

11 Q. You may. This is our Exhibit 2.

12 A. What are we looking at?

13 Q. We're looking at page 6, paragraph 38.

14 A. Okay.

15 Q. In this paragraph, you allege, "Furthermore, leading up
16 to and during the litigation, Dr. Fogarty intended for
17 his baseless permanent injury fabrication within Mr.
18 Casey's medical records to be the cornerstone of
19 orchestrated expert testimony that was designed to be
20 used in ensuring the survivability of the medical
21 malpractice case for as long as possible."

22 A. Mm-hmm.

23 MR. MANN:

24 You have to give yes or nos, please.

25 EXAMINATION RESUMED BY MS. CHEEK:

1 A. Yes.

2 Q. If you'll turn to page 11, paragraph 78.

3 A. Okay.

4 Q. You also state there, "Mr. Thompson's initial efforts
5 centered around the purposeful redaction of Mr. Casey's
6 medical records that were provided to both treating
7 physicians and retained expert witnesses with willful
8 intent to make it appear that Mr. Casey suffered from a
9 permanent brain injury." Do you see that?

10 A. Yes.

11 Q. And do I understand correctly that these different note
12 versions and the testimony you stated yesterday about
13 to whom they were given, that's what these two
14 paragraphs that we just read concern, at least in part?

15 A. Has nothing to do with it. Didn't know anything about
16 it, but multiple medical records were redacted.

17 Q. Now, yesterday you testified that until 2016, this
18 Exhibit 5 is the only copy of the actual note that you
19 possessed. Is that correct?

20 A. That's the only thing I possessed.

21 Q. But that's not true, is it?

22 A. It's absolutely true. It's the only thing that I have
23 possessed.

24 Q. So we've established that you received the Bates
25 stamped note that's Exhibit 5 in 2006.

1 A. We certainly did.

2 Q. Now, in 2007, Dr. Waid was deposed.

3 (Defendant's Exhibit Number 40 marked)

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. I'm going to hand you what we've marked as Exhibit 40.

6 This is the cover page to a deposition of L. Randolph
7 Waid in the medical malpractice case reflecting a date
8 of May 15, 2009. Would you agree?

9 A. I do.

10 Q. Now, Dr. Waid's report -- and you attended that
11 deposition, didn't you?

12 A. I did not.

13 Q. Did not, okay. Your lawyers did, though. Correct?

14 A. I'm certain.

15 Q. Now, in Dr. Waid's deposition, he was questioned
16 regarding a report that he issued or prepared as to Mr.
17 Casey, and your attorney, Spencer King, sent your
18 insurer, Judy Wilbanks, a letter that reported on Mr.
19 Waid's deposition and attached a copy of his report.

20 A. Can I see that letter?

21 Q. Does that sound familiar?

22 A. Can I see it?

23 Q. Yes, you may, but does that sound familiar?

24 A. No.

25 (Defendant's Exhibit Number 41 marked)

1 EXAMINATION RESUMED BY MS. CHEEK:

2 A. It sound very unfamiliar.

3 MR. MANN:

4 wait a minute.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. we talked yesterday about Mark Casey being deposed in
7 the medical malpractice case.

8 A. we did.

9 Q. Did you attend Mr. Casey's deposition?

10 A. Yes, I did.

11 Q. And we had seen in Exhibit 36 that deposition was taken
12 August 29, 2007. would you agree with that?

13 A. I do.

14 Q. I'm going to hand you what's been marked as Exhibit 41.
15 This is a September 5, 2007 letter from Billy Gunn to
16 Judy Wilbanks.

17 A. Billy Gunn is Dr. Shantha attorney. Right?

18 Q. I understand.

19 A. Thank you.

20 Q. And he's reporting on the Casey deposition. I'm going
21 to refer you to page 7.

22 A. How is it marked? King what?

23 Q. It's going to be King 239 at the bottom.

24 A. 239?

25 Q. Page 7 at the top of the letter.

1 A. Okay.

2 Q. The third paragraph. It says, "Enclosed is a copy of a
3 report from L. Randolph Waid, a licensed clinical
4 psychologist in Mount Pleasant." Do you see that?

5 A. I do.

6 Q. And then if you will flip to the back of Mr. Gunn's
7 letter, do you see a copy of Dr. Waid's report?

8 A. I do.

9 Q. Flip to page 2 of Dr. Waid's. It's King 242.

10 A. 242. Got it.

11 Q. In the fourth paragraph, the last two sentences Dr.
12 Waid reports, "Dr. Fogarty stated that with regard to
13 Mr. Casey's difficulty concentrating, quote, air emboli
14 had been reported as a complication of laser
15 bronchoscopy, even without perforation of the
16 endotracheal tree." Do you see that?

17 A. I do.

18 Q. Would you agree that Dr. Waid is quoting from Exhibit 7
19 which says, quote, with reference to the patient's
20 difficulty concentrating, air emboli have been reported
21 as a complication of laser bronchoscopy, even without
22 perforation of the endotracheal tree?

23 A. I disagree. Dr. Waid -- Dr. Waid never produced any
24 reports from Dr. Fogarty.

25 Q. Do you agree that he has quoted in here in his report

1 from a Dr. Fogarty record?

2 A. I disagree that he quoted from Dr. Fogarty record. He
3 never produced Dr. Fogarty record.

4 (Defendant's Exhibit Number 42 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. You've been handed Exhibit 42, which is Mann 23 Bates
7 stamped document. It's an e-mail from you to Attorney
8 Mann dated July 9, 2008. Do you see that?

9 A. I do.

10 Q. I'm going to refer you down to number four. Can you
11 read the first and second lines there?

12 A. "Dr. Fogarty 2005 'definite air embolus' note also
13 removed and did not provide to Social Security. It is
14 also not in Dr. Gonda record."

15 Q. So when you're talking about definite air embolus,
16 we're talking about this Exhibit 5. Correct?

17 A. That's the only exhibit I ever had back then.

18 Q. Then you also say it is not in Dr. Gonda's record. So
19 I infer from this you've reviewed Dr. Gonda's record
20 and you did not find this Exhibit 5, this Bates stamped
21 note.

22 A. The Dr. Gonda record that was provided to me contained
23 no records from Fogarty at all. Those were pretty
24 shocking when we discovered in Thompson production.

25 Q. Can I go off the record here for a second?

1 MR. MANN:

2 Absolutely.

3 (Off the Record; 9:43 -- 9:45 a.m.)

4 (Defendant's Exhibit Numbers 43 and 44 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. Dr. Feldman, I'm handing you what's been marked as
7 Exhibits 43 and 44.

8 A. Okay.

9 Q. 43 is a minuscrypt of a deposition of Dr. Gonda dated
10 August 14, 2008. Do you see that on the first page of
11 your Exhibit 43 down there?

12 A. What you want me to look at?

13 Q. Look at the first page of Exhibit 43. You'll agree
14 that this is a transcript of the deposition of Dr.
15 Gonda dated August 14, 2008?

16 A. Yes, it is.

17 Q. What's been marked as one Exhibit 44 are all of the
18 exhibits from Gonda's deposition?

19 A. Yes.

20 MR. MANN:

21 Ellen, I assume that each exhibit is consecutively
22 numbered. Would that be correct?

23 MS. CHEEK:

24 My understanding, Milton, is that Dr. Gonda's
25 medical file was marked as an Exhibit 1, and so it is

1 the entire medical record file, one exhibit.

2 MR. MANN:

3 But I'm asking about the Thompson numbering for
4 this case. So may I assume that Thompson 347 to 554 is
5 going to be Exhibit 44?

6 MS. CHEEK:

7 Yes, that is correct. Exhibit 44 is Bates
8 numbered in this case Thompson 36347 through 36554.

9 MR. MANN:

10 And this way if we get our wires crossed, I can
11 just look at my scanned documents. And then the other
12 Exhibit 43 would be 186 through 230?

13 MS. CHEEK:

14 Correct. 36186 through Thompson 36230.

15 MR. MANN:

16 Gotcha. Okay, thank you so much, and I apologize.

17 MS. CHEEK:

18 In that production, there was a gap between the
19 minuscrypt and the exhibits.

20 EXAMINATION RESUMED BY MS. CHEEK:

21 Q. If you could please turn to page -- it's going to be
22 page 84 of the minuscrypt. It's Thompson 36207.

23 A. 36207?

24 Q. Correct.

25 A. On it.

1 Q. If you would please read to yourself, I want you to
2 scan --

3 A. Read what?

4 Q. -- 84, pages 84 and 85 and 86 of this minuscrypt, and
5 then I'll have some questions for you.

6 A. Okay, I see it, 84. And 85 you want me to read?

7 Q. And 86, please.

8 A. 85, 86?

9 Q. Correct.

10 A. I have it.

11 Q. Do you see there that Dr. Gonda is being deposed
12 regarding a Dr. Fogarty July 21 note?

13 A. I do.

14 Q. And do you see on page 86 that the witness is reading--
15 -

16 A. You talking about Dr. Gonda?

17 Q. Yes. Dr. Gonda is reading --

18 A. Yes.

19 Q. -- from a Dr. Fogarty note, and he reads, "Air emboli
20 have been reported as complication of laser
21 bronchoscopy, even without a perforation of
22 endotracheal tree."

23 A. Mm-hmm.

24 MR. MANN:

25 Yes and nos.

1 WITNESS:

2 Yes.

3 MR. MANN:

4 Thank you.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. I'm going to have you look in Exhibit 44, the big one
7 that's right here.

8 A. Oh, okay.

9 Q. Turn to page Thompson 36483.

10 A. I'm on it.

11 Q. I would like you to look at those -- that is a July 21
12 office note from Dr. Fogarty. Correct?

13 A. Let me clarify the question. The note in 36483 which
14 is not Bates stamped but says 9/6/03 [ph] with F, which
15 was Frank Gonda, that's the note you're referring to?

16 Q. Yes, sir.

17 A. Thank you. But it's not Bates stamped. I'm correct?

18 Q. Correct.

19 A. This is Bates stamped and this isn't.

20 Q. Correct.

21 A. We're on it.

22 Q. But what you see in the record right there, in Dr.
23 Gonda's records that were attached to his deposition
24 dated August 14, 2008 is what you have before you as
25 Exhibit 7.

1 A. Correct, but not Bates stamped.

2 Q. Correct, but you---

3 MR. MANN:

4 Dr. Feldman---

5 WITNESS:

6 Let me -- let me clarify my answer.

7 EXAMINATION RESUMED BY MS. CHEEK:

8 A. Yesterday I have explained to you that me, Greg
9 Feldman, had access only to the Bates stamp. So for
10 any future question, if it's Bates stamped, I've seen
11 it. If it's not Bates stamped, I did not.

12 Q. But you, Dr. Feldman, did have access to this Exhibit 7
13 --

14 A. I did not --

15 Q. -- from at least August 2008 on in the medical
16 malpractice case.

17 A. I did not.

18 Q. Your lawyers had it. Correct?

19 A. Lawyers?

20 Q. Yes.

21 A. Of course they did, but I did not.

22 Q. And then you had access to what your lawyers had.

23 A. In our system of justice, Mrs. cheek, it is not ability
24 of the victim to discover wrong. In our system of
25 justice, it's voluntary production that matters for the

1 victim. If I have 200 years to review all of this 120
2 pages or read them, I probably could have discovered it
3 back then, but who has that time?

4 Q. Dr. Feldman---

5 A. We in our system of justice, Mrs. Cheek --

6 MR. MANN:

7 Dr. Feldman---

8 EXAMINATION RESUMED BY MS. CHEEK:

9 A. -- largely depend on production.

10 MR. MANN:

11 Hold on. Dr. Feldman, stop. Thank you.

12 EXAMINATION RESUMED BY MS. CHEEK:

13 Q. In Exhibit 42, you e-mailed Attorney Mann---

14 A. What I'm looking at?

15 Q. Exhibit 42.

16 A. Can I see it?

17 Q. Yes. Take a look back at Exhibit 42 right there. You
18 reference in this e-mail Dr. Gonda's record. Correct?

19 A. I did, yes.

20 Q. So you had access to Dr. Gonda's record, and you have
21 reviewed it, have you not, to determine that the
22 definite air embolus note that you did have isn't in
23 that record. Correct?

24 A. You're incorrect. Mr. Thompson has provided Mr.
25 Spencer King with the Gonda records in 2006. That's

1 what he has provided. There was no notes of any kind
2 then. Okay? That's what I reviewed. I never came
3 back to the Dr. Gonda records since 2006. Mr. Thompson
4 yesterday you pointed out provided Upstate Lung and
5 Chest records, Dr. Gonda records, all that in 2006.
6 This note was removed by Mr. Thompson from Dr. Gonda
7 records. Dr. Gonda records was provided to me bare of
8 any Dr. Fogarty notes.

9 Q. Dr. Gonda's records are attached to his deposition, Dr.
10 Feldman, would you agree, and in it there is a Dr.
11 Fogarty July 21 note. Correct?

12 A. You're incorrect. None of this was in 2006.

13 Q. I understand that that note is the only one that's
14 Bates labeled, but it's not the only one that you had
15 during the medical malpractice action. We've now
16 established you had Exhibit 5, and we've now
17 established that you had Exhibit 6.

18 MR. MANN:

19 Objection.

20 EXAMINATION RESUMED BY MS. CHEEK:

21 Q. I mean Exhibit 7.

22 MR. MANN:

23 Objection.

24 EXAMINATION RESUMED BY MS. CHEEK:

25 A. You have established nothing, because I had none of it.

1 what you have established that among 120,000 pages, the
2 lawyers had them. That's all you have established.
3 You have established nothing that I had them, because I
4 didn't. Any other assertion to the contrary is a
5 mistake of the facts.

6 (Defendant's Exhibit Number 45 marked)

7 EXAMINATION RESUMED BY MS. CHEEK:

8 Q. The document marked as Exhibit 45 is Bates labeled Mann
9 5153. It's a May 1, 2010 e-mail from you to Spencer
10 King and Milton Mann. Do you see that?

11 A. I do.

12 Q. In the first sentence after the ellipsis, you write,
13 "And in another note that Noel brought to Fogarty
14 deposition, he writes, quote, common complication.
15 Spencer, do you have Fogarty attachments to deposition?
16 I need to go over all of his attachments." Do you see
17 that?

18 A. I do.

19 Q. And you are referring to Noel Turner when it says Noel
20 there. Correct?

21 A. I do.

22 Q. And you were telling Attorney Mann that Noel brought
23 another note to the Fogarty deposition in which it is
24 written common complication. Do you see that?

25 A. Exhibit 17 of Fogarty deposition. If you have Fogarty

1 deposition, it's Exhibit 17 that Noel Turner brought.

2 Q. And we have looked yesterday and we looked earlier
3 today that among Exhibits 5, 6, and 7 that the notable
4 language in Exhibit 6 is that Dr. Fogarty writes air
5 emboli have been reported as a common complication.
6 Correct?

7 A. Exhibit 17 to the -- to the Fogarty deposition. Noel
8 brought two-page Exhibit 17. Okay? That was a two-
9 page. He didn't bring 500 pages of Fogarty note, but
10 he brought two. Maybe by sheer accident. That's what
11 was written. We were curious why it wasn't produced,
12 but we didn't know. He didn't bring us 500 pages.
13 Okay? So out of 500 pages he brought two pages of a
14 handwritten note which Fogarty said he wrote that
15 wasn't signed. Okay? It's referring to Exhibit 17,
16 not to any of those notes. I never had those notes.
17 Okay? It's referring to Exhibit 17 that Noel Turner
18 brought. At the risk of repeating myself, he brought
19 two pages out of 500 pages. 498 pages or more he
20 didn't bring to the deposition.

21 Q. And one of those two pages is written Dr. Fogarty's
22 diagnosis stated in Exhibit 6, which is that --

23 A. No, no, no, no, no.

24 Q. -- air emboli have been reported as a common
25 complication. Correct?

1 A. Can I show you Exhibit 17?

2 MR. MANN:

3 No. Hang on. Off the record for one minute,
4 please. Please?

5 MS. CHEEK:

6 Yeah.

7 (Off the Record; 9:58 -- 9:59 a.m.)

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. Looking back at Exhibit 45---

10 A. What am I looking at?

11 Q. Exhibit 45.

12 A. Exhibit 45. 45. This is it, okay.

13 Q. Yes, sir. I want you to take a minute to scan the rest
14 of that e-mail.

15 A. I did. I scanned it.

16 Q. And what you're comparing in this e-mail is the Exhibit
17 5, in this litigation the note where Dr. Fogarty writes
18 he undoubtedly had air emboli. Correct?

19 A. Mm-hmm.

20 Q. And you're comparing it to the note that you call the
21 waid note, our Exhibit Number 7 where Dr. Fogarty
22 rights air emboli have been reported as a complication
23 of laser bronchoscopy, even without perforation of the
24 endotracheal tree. Correct?

25 A. It's incorrect.

1 Q. would you agree that the language that you quote at the
2 top of the e-mail under Fogarty July 21, '05 progress
3 note is the language that we see in Exhibit 5 right
4 here?

5 A. It's an assumption, but Dr. Waid has never produced any
6 notes.

7 Q. Okay, here's my question. would you agree that the
8 language that you quote under the Fogarty July 21, '05
9 progress note right here in your e-mail --

10 A. Mm-hmm.

11 MR. MANN:

12 Yes/no.

13 EXAMINATION RESUMED BY MS. CHEEK:

14 Q. -- is the language from Exhibit 5?

15 A. I do agree, yes.

16 Q. And do you agree that the language down here that you
17 quote under the sentence saying Dr. Fogarty stated that
18 with regard to Mr. Casey's difficulty concentrating and
19 Waid puts it in quote/unquote that the language quoted
20 under there, air emboli have been reported as a
21 complication of laser bronchoscopy, even without
22 perforation of the endotracheal tree is the language
23 that we see in Exhibit 7?

24 A. I do.

25 Q. You testified yesterday that you believed that Dr.

1 Fogarty and Mr. Thompson were manipulating medical
2 records. Correct?

3 A. I didn't say believe it. I said I have evidence of
4 that.

5 Q. And your Second Amended Complaint, when it references
6 purposeful redaction of medical records and
7 orchestrating expert testimony refers to exactly this,
8 correct, these notes?

9 A. No.

10 Q. Those allegations in your Second Amended Complaint
11 don't have anything to do with these notes?

12 A. Nothing to do with these notes.

13 Q. So by the time Gonda was deposed in August 2008, you
14 have a copy of what in this case has been marked as
15 Exhibit 5 and Exhibit 7. Correct?

16 A. I did not. They were buried in the file, 120,000
17 pages, but I did not have them.

18 Q. They're in the file. Correct?

19 A. They were buried in the file.

20 Q. And you had been pointing out as we've seen in e-mails
21 today, including Exhibit 42, you'd been discussing
22 these note differences with your counsel. Correct?

23 A. I did not.

24 Q. You e-mailed your counsel in the medical malpractice
25 action your discovery of differences in Fogarty's air

1 embolism writing, didn't you?

2 A. That's correct.

3 MR. MANN:

4 Objection. Hold on. I need to get an objection
5 on the record. Objection. That's a
6 mischaracterization of Dr. Feldman's testimony. Thank
7 you.

8 EXAMINATION RESUMED BY MS. CHEEK:

9 A. That's correct, I have discovered that the notes are
10 missing. Okay? But I could not -- here what I thought
11 back then. I thought he wrote the note in 2004, that
12 he submitted to Social Security, they brought Social
13 Security back to Spartanburg, and they removed it.
14 Okay? That theory after discovery of Thompson records
15 was wrong, but my theory was that they wrote the note
16 in 2004, that they pulled it out at Social Security,
17 okay, pulled it out physically. All right? But they
18 didn't. Okay? That was the wrong theory. Okay? In
19 2016, now have a very big much better picture of what
20 they did, but it was entirely different theory than I
21 had. They didn't pull out from Social Security. It
22 made far more sense, but they did not do that.

23 Q. I'm going to let you look back briefly at Exhibit 8.

24 A. I am looking at it.

25 Q. If I might, I apologize for leaning over.

1 A. No problem.

2 Q. Down at the bottom, Dr. Feldman, we looked at it
3 yesterday.

4 A. Mm-hmm.

5 Q. That's an e-mail that you sent --

6 MR. MANN:

7 Yes and no.

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. -- from yourself on September 30, 2007, and do you
10 agree that you have a quote there from what you deem a
11 Fogarty record?

12 A. No, I do not. This is a quote from Dr. Waid.
13 Everything related to Strattera came from Dr. Waid. I
14 could not find Fogarty note. I was asking for my
15 lawyers to send it to me. I couldn't find it.

16 Q. Do you agree that what you quoted there is language
17 that purports to come from a Fogarty record?

18 A. No, I do not.

19 Q. Do you think the language stated there doesn't come
20 from a Dr. Fogarty record?

21 A. No, it doesn't. It's all came from Waid. It could
22 have been in Fogarty file. I had a Fogarty file. I
23 had anesthesiologist file. I had all kind of files.
24 Okay? But this come from Waid record. That's what
25 perplexed me for years, Mrs. Cheek. I was totally

1 perplexed for years until this production where that
2 came from. I was convinced that Fogarty wrote the note
3 in 2004, okay, when he saw Casey. I was convinced of
4 that. So I was looking for it in 2004 and was not able
5 to find it, but I was convinced that note existed. All
6 right? So I figured, okay, they send it to Social
7 Security. Well, why my lawyers don't have it. Okay?
8 I was barraging them with please find the note. Okay?
9 That's what I was barraging them. And they say there's
10 no note in Lung and Chest record, there's no note in
11 Gonda record. Okay? That's all I had. I had what
12 Thompson produced in 2006, but Thompson has removed
13 Fogarty notes from every record. He removed it from
14 Waid record. He removed it from Gonda record and gave
15 me bare documents without any of that. Okay? None of
16 it. So we receiving Waid file. It's not there. We
17 receiving Gonda file. It's not there. Okay? So I
18 start writing e-mails. Where does that come from?
19 Then Turner brought Exhibit 17 to deposition. So I
20 thought that's where it came from. Maybe Turner talked
21 to Waid, okay, and show him some record that he did not
22 produce until 2008. My mind was racing. Where is the
23 note? That's mine. Right?

24 Q. Yes, but I'm going to look at it for just a minute,
25 please.

1 A. Please do. I have many e-mails asking to find that
2 note.

3 MR. MANN:

4 Dr. Feldman, wait for a question, please.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. And Exhibit 9 that we looked at yesterday is an e-mail
7 from you to Spencer King and Milton Mann dated February
8 16, 2008.

9 A. Mm-hmm. Right.

10 Q. Now, again, you are quoting --

11 A. Right.

12 Q. -- language that begins, "Air emboli have been reported
13 as a common complication of laser bronchoscopy."

14 A. Let me clarify my answer. Can I clarify my answer?

15 Q. Answer to what?

16 A. To what -- to your question where did it come from.

17 Q. Well, I actually didn't ask you where it came from.

18 So---

19 A. What question did you ask me?

20 Q. I asked if you saw that this was an e-mail from you to
21 Spencer King quoting language that begins, "Air emboli
22 have been reported as a common complication of laser
23 bronchoscopy."

24 A. Can I clarify that answer? Because I tried to explain
25 for very long time that that comes from Dr. Waid note,

1 not from Fogarty, Dr. Waid note where it troubled me
2 for many years where he got it. Okay? Because I
3 thought they removed 2004 record. I was convinced it's
4 coming from 2004. Okay? Because I had a very, very,
5 very good understanding that you do not write without a
6 doubt air emboli without seeing the patient before. So
7 I knew he did see the patient, but I couldn't find that
8 note. Okay? So my focus, entire focus of all of this
9 e-mail chain is where that note is, where it come from,
10 Fogarty note. I couldn't find it, because it was not
11 in the Gonda record, it was not in the Waid record.
12 Thompson removed it. Okay? So I couldn't find it.

13 Q. So, for today, we're just looking at the quoted
14 language here.

15 A. From Waid's record?

16 Q. In your e-mail, okay, regardless of where you got it.

17 A. Okay.

18 Q. I'm looking at your e-mail, not Waid's record.

19 A. Okay.

20 Q. And I want you to tell me whether -- do you agree that
21 in your e-mail that this quoted language here begins,
22 "Air emboli have been reported as a complication of
23 laser bronchoscopy, even without perforation of the
24 endotracheal tree" --

25 A. Mm-hmm.

1 Q. -- whether that is the same language picking up here in
2 this Exhibit 7 here.

3 A. Yes. I agree.

4 Q. Okay. And do you agree that with respect to this
5 Exhibit 9, your February 16, 2008 e-mail, that the
6 quoted language in this e-mail that begins, "Air emboli
7 have been reported as a common complication of laser
8 bronchoscopy, even without perforation of the
9 endotracheal tree," is the same language that we see in
10 Exhibit 6?

11 A. I do.

12 Q. Okay. Now, you've explained to me that you have
13 recognized that -- let me state it this way. Before
14 December 2008, you were quoting from various of these
15 notes and e-mails that you sent your counsel. Correct?

16 A. False.

17 Q. Dr. Feldman, we just established that in e-mails marked
18 as 8 and 9, you were quoting from the notes here that
19 we've marked as Exhibit 6 and 7.

20 MR. MANN:

21 Objection.

22 EXAMINATION RESUMED BY MS. CHEEK:

23 Q. Correct?

24 MR. MANN:

25 Hold on. Let me get my objection. That's a

1 mischaracterization of his testimony. Objection.

2 MS. CHEEK:

3 Can we please keep objections to the statement of
4 objection and not speaking, please? Thank you.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 A. It's false.

7 Q. In the medical malpractice action, you believed or
8 determined that records had not been provided or had
9 been taken from records provided to Waid and Social
10 Security. Is that correct?

11 A. Not in medical malpractice. In the Casey case against
12 Fogarty, Thompson, and Casey I have determined that.
13 Back then I did not determine it. I could not connect
14 the dots, because the medical record that I had, none
15 of that, none of those notes were there. The only note
16 that I have was the Bates stamped note.

17 Q. So in the medical malpractice action, you were seeing
18 experts quote Fogarty language different than what the
19 note was you had?

20 A. I thought that Turner drove down to him after he showed
21 me Exhibit 17, and that's maybe what he is quoting. I
22 thought that Turner came to -- and Thompson. Thompson
23 and Turner came to Waid and had a conversation with him
24 and showed him concealed note which they did not
25 produce. That's what I thought after he produced it.

1 Okay? So -- so I had an explanation in my mind, okay,
2 they drove it down to Charleston and talked to him.
3 Okay? That's where the language come from, because I
4 could not possibly believe that a physician, a licensed
5 physician, an M.D. would fabricate the record. So that
6 -- that did not enter my mind. Okay? I was looking
7 for the notes that perhaps were removed. I was
8 looking, okay, Social Security doesn't have it. It was
9 removed. I was looking where is that -- where is that
10 language come from. I got explanation at the
11 deposition that Turner produced and I saw that that's
12 where Waid got it. That what he drove to him and
13 showed it to him. But this fabrication, that came to
14 light in production of Thompson.

15 Q. So in the medical malpractice case, you saw experts
16 quoting from Fogarty records that had language
17 different than the note that you had as Exhibit 5?

18 A. Just Waid, Dr. Waid. Everything that I quote came from
19 one source. Okay? Waid note. That's it. There's a
20 quote from Waid, okay, that led me to believe there was
21 a note in 2004. Okay? I was looking for 2004 note.
22 All right? Then it came to light that he seen the
23 patient repeatedly in 2004, was doing tests. So I was
24 looking for the 2004 records.

25 Q. So in the medical malpractice case, you were aware that

1 experts were quoting Fogarty records --

2 A. I wasn't.

3 Q. -- and the language was different than --

4 MR. MANN:

5 wait.

6 EXAMINATION RESUMED BY MS. CHEEK:

7 Q. -- what you had in Exhibit 5 here.

8 MR. MANN:

9 objection.

10 EXAMINATION RESUMED BY MS. CHEEK:

11 A. This is partially false and partially correct.

12 Q. What's the correct part?

13 A. The correct part is that I saw Waid note that was not
14 supported by medical records. The false part is that
15 somehow what you're insinuating that I knew about those
16 notes in existence. I did not.

17 Q. Dr. Feldman, how could you quote language from notes
18 that we have marked here as Exhibit 6 and 7 if you did
19 not have the records from which to quote them?

20 A. I asked you for permission to clarify my answer, and
21 you denied it. Can I clarify my answer now?

22 Q. I want you to answer that question.

23 A. Because it was in a Waid -- Waid assessment.

24 Unsupported with any other note. So there was a Waid
25 assessment. In my mind, it was a Turner or Thompson

1 and boss went down and talked to him, or he talked on
2 the phone with Fogarty. I could not connect the lack
3 of record to support that. Okay? So that quote -- you
4 see that quote? Is a direct quote---

5 Q. Exhibit 45?

6 A. Yes, Exhibit 45. That is directly from Waid record,
7 from Waid, not Fogarty.

8 Q. Okay. Are you talking about---

9 A. In bold. In bold.

10 Q. You're talking about there's two quotes here, and
11 they're both different. Correct?

12 A. This is their records in bold. Okay? In bold. Comes
13 directly from the Waid record. That's all I had. So
14 every quote that I have is coming from Waid record, not
15 from Fogarty record.

16 Q. So you had a different quote about air emboli and
17 perforation of endotracheal tubes in the Waid note than
18 you do in this---

19 A. In Stratton---

20 MR. MANN:

21 Wait, wait, wait, wait, wait. Let her finish her
22 question.

23 EXAMINATION RESUMED BY MS. CHEEK:

24 Q. Is that correct?

25 A. That's correct, and that is the only note that trouble

1 me for a long, long time until I discovered the
2 production. Okay? I did not know where it come from.

3 Q. And you're questioning where it came from back in July
4 2008. Correct?

5 A. Show me the date and I'll tell you whether is correct
6 or not.

7 Q. I'm asking you to look at Exhibit 42. You're
8 questioning where that language came from --

9 A. Not at all.

10 Q. -- in the waid record in 2004.

11 A. That's false. I am trying to determine where the 2004
12 Fogarty notes are. That is my train of thought. This
13 has to come from 2004 note that -- because by then, by
14 then in my mind he doctored his record. Doctoring
15 record and fabricating record is not the same. I don't
16 suspect he fabricated the record. I was sure he
17 doctored it, but I did not suspect that he fabricated
18 it.

19 Q. Now, in July 2008, you believed Dr. Fogarty and
20 Thompson have doctored the records. Right?

21 A. Yes.

22 Q. When Dr. Fogarty was deposed in the medical malpractice
23 case in 2008, he was not questioned about doctoring
24 records, was he?

25 A. In 2008, the question is was he asked about doctoring

1 records. Yes, he was. He was asked about doctoring
2 records. Can I have my -- my records I brought to you
3 today? Yes, he was. He sure was, most certainly.

4 MR. MANN:

5 Can we go off the record for a minute while he
6 looks for that?

7 MS. CHEEK:

8 We can take a break.

9 (Off the Record; 10:21 -- 10:38 a.m.)

10 EXAMINATION RESUMED BY MS. CHEEK:

11 Q. When we left off, Dr. Feldman, the question was whether
12 Dr. Fogarty had been questioned during his deposition
13 in December 2008 regarding differences in his July 21
14 note or his records provided to the expert---

15 A. That wasn't question.

16 Q. Pardon?

17 A. That wasn't the question. The question was whether any
18 question was asked about his doctoring the record.
19 That was your question. Can we go back and rephrase
20 it, get the question?

21 Q. Then answer the question about whether Dr. Fogarty was
22 asked during his deposition in December 2008 whether he
23 had doctored any medical records.

24 A. Okay. I direct your attention to the Exhibit 33.

25 Q. This is Exhibit 33 in this case. This is a June 25,

1 2006 letter from Chuck Thompson to Billy Gunn.

2 A. I direct your attention to the Thompson 00514.

3 MS. CHEEK:

4 Milton, this is from among his notebook.

5 MR. MANN:

6 Yes. However you want to handle it. I defer to
7 you.

8 MS. CHEEK:

9 I'm going to go ahead and mark it as a separate
10 exhibit since he's using it demonstratively here.

11 (Defendant's Exhibit Number 46 marked)

12 EXAMINATION RESUMED BY MS. CHEEK:

13 Q. We've marked as Exhibit 46---

14 MR. MANN:

15 Exhibit 46, and what was the Bate number?

16 MS. CHEEK:

17 This is Bates number Thompson 514.

18 MR. MANN:

19 514 is the last three?

20 MS. CHEEK:

21 Yeah. Just 514 is the number, Thompson 514. And
22 it is another copy of the same June 20, 2006 letter
23 from Thompson to Gunn. This one has a handwritten Paid
24 7/28/06 and a "Posted" stamp on it.

25 EXAMINATION RESUMED BY MS. CHEEK:

1 A. Pursuant to my answer, "Dear Billy: Enclosed please
2 find a complete copy -- complete copy of the following
3 medical records." Number 4, Upstate Lung and Critical
4 Care. Number 6, Lung and Chest Medical, Dr. Charles
5 Fogarty. Pursuant to the same complete -- Mr. Gunn
6 twice has said to Dr. Fogarty to bring to his
7 deposition a complete record in existence. Dr. Fogarty
8 has complied, and the only thing he has brought is
9 this. Dr. Feldman is in possession of information that
10 I have complete records pursuant to Mr. Thompson
11 certification that he provided complete records from
12 Dr. Thompson certification to Billy, and that's all I
13 have. He writes that. Foot [ph] Family Medicine, Dr.
14 Frank Gonda, complete copy. None of those notes were
15 there. There is no Dr. Waid here whatsoever. Okay?
16 It says complete copy Lung and Chest Medical, Dr.
17 Charles Fogarty. I was represented by Charles Fogarty
18 that he brought a complete record to his deposition.
19 The only thing that he has brought, okay, was two
20 notes. One of them was marked as Number 20 at Fogarty
21 deposition. None of those were brought. Why? And
22 Thompson suborned his perjury. Pursuant to the
23 subpoena from the court, from the court, Mrs. Cheek,
24 let's get back to his deposition. Would you like to
25 read it?

1 Q. what you have handed me is some pages from Dr. -- well,
2 these appear to be pages 63 to 66 of a deposition of
3 Dr. Fogarty. The Bates label is Thompson 17750 and
4 17752. Dr. Feldman, within these pages you believe are
5 the questions asked of Dr. Fogarty during his December
6 2008 deposition in the medical malpractice case that
7 concern doctored medical records?

8 A. His entire involvement in the case. It's all lie.
9 It's perjury.

10 MR. MANN:

11 Uh-uh-uh-uh-uh. Move to strike.

12 (Defendant's Exhibit Number 47 marked)

13 EXAMINATION RESUMED BY MS. CHEEK:

14 Q. I have marked these pages as Exhibit 47. These, again,
15 are Thompson 17750 to 17753. They are excerpted from
16 Dr. Fogarty's deposition, pages 63 to 66. Dr. Feldman,
17 we will make copies, but you and I will have to use the
18 same copy for questioning right now. So, if you would,
19 would you agree with me that the first question to Dr.
20 Fogarty posed in this excerpt is, "When did you do this
21 research in procuring these articles?" Do you see
22 that?

23 A. Mm-hmm. Yes.

24 Q. The next question is, "You said both texts, what are
25 both texts?" The next question is not one. It says---

1 A. Who is testifying here, Ellen?

2 MR. MANN:

3 Hold on a second.

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. I'm asking you questions about this document.

6 A. Okay.

7 Q. And my question for you was, do you agree that the
8 first question that is asked of Dr. Fogarty in these
9 excerpted pages that you've handed to me was the
10 question, "When did you do this research in procuring
11 these articles?"

12 A. It's one of the first questions.

13 Q. Is it the first question that appears on these pages
14 that you've handed me?

15 A. Yes. "When did you do the research in procuring these
16 articles" is the first question.

17 Q. And then you'll agree that the second question is, "You
18 said both texts, what are both texts?"

19 A. Mm-hmm. Yes.

20 Q. Will you agree in a deposition sometimes a question
21 isn't a question? Here's one that says, "I'm sorry."
22 And then the next one says, "Okay, interventional."

23 A. Okay.

24 Q. Do you agree with that?

25 A. I agree.

1 Q. The following question, "And that's pulmonary?" The
2 next question, "And the other one?" Question,
3 "Flexible Bronchoscopy?" Question following is,
4 "Doctor, what are the basic facts that occurred
5 involving Mr. Casey that are going to bring him to your
6 care and treatment?"

7 A. Yes.

8 Q. Following that is a question, "Yes, sir." Next
9 question, "Let me interrupt." Next question, "I'm
10 sorry. Poor question. I'm sorry. This morning when
11 you arrived, you gave me a copy of some notes you
12 prepared?" Next question, "And this is dated December
13 20?" Question, "2008?" Do you agree with me that
14 those are the questions that are asked in these
15 excerpted pages from Dr. Fogarty's deposition?

16 A. Yeah. I also agree those are the question asked when
17 you were involved in the case.

18 Q. And among these pages there are no questions about
19 doctored medical records, are there?

20 A. Yes, it is. He was asking when he got involved in the
21 case. That's about doctoring medical records. He got
22 involved in the case in 2004, and he lied about it.

23 Q. So, just to be clear, your position is the question in
24 these pages about doctored medical records is the
25 question as follows. "Doctor, what are the basic facts

1 that occurred involving Mr. Casey that are going to
2 bring him to your care and treatment?"

3 A. It's one of those.

4 Q. And can you direct me to the other question in these
5 excerpted pages that has to do with --

6 A. I'd like to---

7 Q. -- doctored records?

8 A. I'd like you to direct to the answer.

9 MR. MANN:

10 One at a time.

11 EXAMINATION RESUMED BY MS. CHEEK:

12 Q. No, I'm asking about questions.

13 A. I will direct you to the question and to the answer, if
14 I might.

15 Q. You may.

16 MR. MANN:

17 Dr. Feldman, answer the question, please.

18 EXAMINATION RESUMED BY MS. CHEEK:

19 A. "This has been an ongoing. I initially did some
20 preliminary research when I saw Mr. Casey. And I had
21 just seen the wife of a physician who had had open
22 heart surgery. And she was thinking about -- she had a
23 separate career. And she was thinking about giving up
24 her career..." "So having been through that experience
25 with that patient, when I saw Mr. Casey and was aware

1 from our chart review that he had a lot of air, not to
2 mention tissue trauma, that something similar might
3 have gone on with his complaints of no energy,
4 shortness of breath but normal breathing tests, and his
5 lack of response to medicines. And at that point I did
6 a quick search. And while he was still there, based on
7 -- I actually had one of those texts in the office -- I
8 think I actually had access to both of them in the
9 office at that time. But based on a quick search, I
10 said, you know, you may -- I kind of said this is in
11 your head, but it's not in your head. This is not --
12 because this whole issue are you just being lazy? If
13 you push yourself and work out more and take more
14 notes..." And, "Doctor, what are the basic facts that
15 occurred involving Mr. Casey that are going to bring
16 him to your care and treatment?" "That brought him to
17 my care initially?" "Yes, sir." Well, "Yes, sir.
18 Realizing that I might have neurocognitive impairment,
19 I went through -- I briefly reviewed Mr. Casey chart.
20 That's this thing. Over the weekend." Thank you.

21 Q. I'm going to ask you some more questions about Exhibit
22 41.

23 A. Okay.

24 Q. If you can find it on your side.

25 A. 41 I don't see in my view.

1 Q. I'm just going to lift this up. Exhibit 41 was the
2 September 5, 2007 Holcombe Bomar --

3 A. I don't see it.

4 Q. -- letter.

5 (Off the Record; 10:53 -- 10:55 a.m.)

6 EXAMINATION RESUMED BY MS. CHEEK:

7 Q. We've located again Exhibit 41. I'm going to refer you
8 back, please, to the Dr. Waid report that was attached
9 as an exhibit to this September 5, 2007 letter.

10 A. What number?

11 Q. This is King 241.

12 A. 241, okay. Got it.

13 Q. This is the Waid report we were discussing earlier that
14 was dates of evaluation August 30 and September 10,
15 2005 of Mark Casey. Do you see that?

16 A. I do.

17 Q. At the bottom of the first page of the report, Dr. Waid
18 states, "My understanding of Mr. Casey's case was
19 assisted by review of the following medical records."
20 And do you see a list of records right there?

21 A. I do.

22 Q. Among them is number four, "Treatment records from Lung
23 and Chest Medical Associates." Correct?

24 A. I do see that, yes.

25 Q. Do you agree that Dr. Waid is stating that he's

1 reviewed actual medical records from Lung and Chest?

2 A. I do, treatment records.

3 Q. If you could flip to the second page of the report,
4 which is King 242. Could you, please, the fourth
5 paragraph down beginning, "In interview," the second
6 sentence of that paragraph starts, "Medical records
7 reveal." Do you see that sentence?

8 A. No, I don't.

9 Q. If you count down, fourth paragraph.

10 A. One, two, three, four. I see that. "In interview."

11 Q. And then the second sentence of that paragraph begins,
12 "Medical records reveal."

13 A. Yes, I do see that.

14 Q. Could you read the paragraph beginning with "Medical
15 records reveal"?

16 A. "Medical records reveal that Mr. Casey underwent
17 further evaluation at the Lung and Chest Medical
18 Associates in July of 2005."

19 Q. Go ahead and read the rest of the paragraph.

20 A. "On initial evaluation, he was experiencing dry heaves
21 and nausea as well as chest pain and squeezing
22 sensation present without exertion. A cardiogram was
23 normal and Dr. Fogarty impression was chest pain,
24 probably chest wall, nausea and vomiting improved,
25 persistent difficulty concentrating and staying

1 focused, status post laser bronchoscopy complicated by
2 pneumomediastinum and pneumothorax. Dr. Fogarty
3 further stated that Mr. Casey nausea and vomiting
4 symptoms have appeared to have improve since
5 discontinuing Strattera. Dr. Fogarty stated that with
6 regard to Mr. Casey difficulty concentrating, air
7 emboli have been reported as complication of laser
8 bronchoscopy, even without perforation of the
9 endotracheal tree with resulting leakage of air into
10 extrapleural, vascular, and mediastinal spaces.
11 Although he is fortunate not to have any gross motor
12 deficit, he, Mr. Casey, may well have a permanent
13 neurological deficit in which case the indication of
14 taking medication such as Strattera may be mute [sic]."

15 Q. You agree that Dr. Waid is quoting from Dr. Fogarty
16 medical records here in that paragraph?

17 A. I don't. He didn't---

18 Q. He states that he's quoting---

19 A. Right, but he's not quoting from medical record that
20 I've seen.

21 Q. And the medical record that you possessed was the Bates
22 stamped note, our Defendant Exhibit 5, that had the
23 language undoubtedly had air emboli?

24 A. Exactly.

25 Q. The undoubtedly language is not included in Dr. Waid's

1 report.

2 A. Exactly. Exactly.

3 Q. The diagnosis that he may well have a permanent
4 neurological deficit is included, but the undoubtedly
5 air emboli is not. Correct?

6 A. It is unclear where he got it. Okay? There is no
7 medical record that I've seen. So it's assumption.

8 Q. So the language in Dr. Waid's report that Mr. Casey may
9 well have a permanent neurological deficit is included
10 in the note that you have, correct, where Dr. Fogarty
11 writes he may well have a permanent neurological
12 deficit?

13 A. You're confusing me. The question---

14 MR. MANN:

15 Wait. Wait. Wait.

16 WITNESS:

17 Rephrase it.

18 MR. MANN:

19 Dr. Feldman, hold on one second.

20 MS. CHEEK:

21 Let me try again.

22 MR. MANN:

23 Thank you.

24 EXAMINATION RESUMED BY MS. CHEEK:

25 Q. So we've just established that the language from our

1 Exhibit 5---

2 MR. MANN:

3 Objection.

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. In Dr. Waid's report, the language that he quotes or
6 states he's quoting from Dr. Fogarty's record does not
7 contain the undoubtedly had air emboli language that we
8 see in our Exhibit 5.

9 A. Not in this report, no.

10 Q. The language Dr. Waid purports to quote from the
11 Fogarty record does contain the language Mr. Casey may
12 well have a permanent neurological deficit, which is
13 contained in Exhibit 5.

14 A. Let me compare those. Okay. Waid. Air emboli have
15 been reported as a complication of laser bronchoscopy.
16 Fogarty. With reference to the patient's difficulty
17 concentrating, he undoubtedly had air emboli. This is
18 different.

19 Q. Correct, and we've talked about that, and the question
20 I have for you is here, about he may well have a
21 permanent neurological deficit. Can you compare
22 between the two---

23 A. It's drastically different. One's saying although he's
24 fortunate not to have any gross motor deficit, which
25 exclude air emboli. In the other one he's saying he

1 may very well have permanent neurological deficit.

2 This is a -- this is a different note. Those two notes
3 are drastically different.

4 Q. Okay. The differences between those two notes are what
5 prompted you to ask your lawyers --

6 A. Where they come from.

7 Q. -- where they came from. Correct?

8 A. Right.

9 Q. And you had asked your lawyers where they came from
10 once you saw and noted the differences. Correct?

11 A. Yes.

12 Q. And you'd seen and noted those differences and asked
13 your lawyers about where they came from before Dr.
14 Fogarty was deposed in December 2008. Correct?

15 A. Either before or after. I'm not sure. I think I asked
16 them after, but I may have asked them before. I don't
17 remember that. I asked them before, for sure, because
18 -- for sure I asked them definitely before. I asked
19 them -- I asked them as soon as we receive Waid note,
20 okay, which was in summer in 2008. I asked them he has
21 a Waid note, where did that come from.

22 Q. Now, your lawyers in the medical malpractice action
23 were the ones that were receiving medical records and
24 discovery responses. Correct?

25 A. From who?

1 Q. From the other side, from subpoena responses, et
2 cetera. You didn't receive them personally. Correct?

3 A. Let me think about it. Did I receive them personally?
4 Yes, I have received notes from Spencer when Mr.
5 Thompson represented to him that's all he got. He
6 said, I am providing you with complete records of Lung
7 and Chest, with complete records from Dr. Gonda. There
8 was no waid there initially. Later on, later on I was
9 provided with waid record. When I was provided with
10 waid record in preparation to one of the depositions, I
11 saw that it's nowhere to be found. Okay? I asked them
12 the question where it came from, and they did not know.
13 They did tell me, though, that they were provided
14 complete records by Fogarty. They did tell me that.

15 Q. When Dr. Fogarty was deposed in December 2008, you
16 believe he was questioned about these note differences
17 on the pages that we just reviewed from his deposition.
18 Correct?

19 A. No. He was questioned about his entire involvement
20 with Casey, which he said has occurred on July 21,
21 2005.

22 Q. And he wasn't deposed specifically on the issue of
23 differences between notes that were provided to waid
24 and that were produced in the medical malpractice
25 action.

1 A. Sure, he was. He was given a subpoena to provide the
2 complete records. He was given an interrogatory prior
3 to that about exercise bike stress test. Okay? So of
4 course, okay, he was asked about all of that, which he
5 lied about all of that.

6 Q. Now, Dr. Fogarty isn't in charge of Dr. Waid's medical
7 record, to your knowledge.

8 A. He was in charge of entire case. The case was filed at
9 his behest, on his behalf, and he run it. There was
10 not a single paper that Dr. Fogarty, he did not have to
11 approve. He was in -- he was in charge of the case.
12 Casey was a pawn, basically. Fogarty was in charge of
13 everything. There was not a document that he did not
14 read or did not have.

15 Q. What is your evidence of that?

16 A. Okay. You want to go back to what I have?

17 Q. Do you have some sort of document that says Dr. Fogarty
18 is in charge of this case, he must read every piece of
19 paper?

20 A. Yeah, I do. I have multiple requests from Fogarty for
21 the records sent to him. He was sent entire file.
22 Okay? Was Number 51. He made corrections at will. He
23 demanded to make corrections. Yes.

24 Q. Now---

25 A. I'm allowed?

1 Q. I want you to answer the question. Do you have a piece
2 of paper from Mr. Thompson or Mr. Casey or Dr. Fogarty
3 that states Dr. Fogarty is in charge of this
4 litigation, he must review every piece of paper?

5 A. I have 120,000 pages. All of them have inference that
6 he is in charge. I cannot -- I cannot produce them.

7 Q. When you take out the documents that simply contain
8 inference, you don't have an actual document that
9 states that, do you?

10 A. You're talking about the inference, are you talking do
11 I have a paper where Dr. Fogarty write to Mr. Thompson
12 or Mr. Thompson write to Dr. Fogarty --

13 Q. Right.

14 A. -- that Dr. Fogarty, you're in charge? Yes, I do. Of
15 course. Every single issue go through Fogarty. Every
16 single one in this litigation. Not a single issue is
17 not. Of course I do. This man is in charge of
18 litigation. This litigation is prosecuted on his
19 behalf.

20 Q. When you take out the documents that you have that
21 imply that or from which you infer that --

22 A. Right.

23 Q. -- is there an actual document that states Dr. Fogarty
24 is in charge of this litigation, he must review every
25 document?

1 A. Yes. There is in charge -- there is multiple saying I
2 must be at -- I will ride you to deposition. I must be
3 there. wait for me. I will come and do this. Yeah,
4 it's -- it's pretty clear-cut this is who is in charge.

5 Q. If you take out documents where it's pretty clear-cut,
6 is there a document --

7 MR. MANN:

8 Objection.

9 EXAMINATION RESUMED BY MS. CHEEK:

10 Q. -- that states Dr. Fogarty is in charge of this
11 litigation, he must review every piece of paper?

12 A. I'm going to state---

13 MR. MANN

14 Hold on. Objection.

15 EXAMINATION RESUMED BY MS. CHEEK:

16 Q. You can answer the question.

17 A. Yes. There's multiple pages that state it, yes.

18 Q. And you contend that's within the Thompson document
19 production?

20 A. Yes.

21 Q. Now, Dr. Waid -- well, let's go with Jantz first. Dr.
22 Jantz was a plaintiff's expert in the medical
23 malpractice case. Correct?

24 A. Yes.

25 Q. He was deposed in January 2009. Is that correct?

1 A. Yes.

2 Q. Do you recall?

3 A. I do. I was at deposition.

4 (Defendant's Exhibit Number 48 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. We're just going to mark the first page of that
7 deposition transcript, Dr. Feldman, to put in the
8 record the date of the deposition. And, as you told
9 me, you recalled that, as reflected in Exhibit 48, as
10 being January 7, 2008. Correct?

11 A. Yes.

12 Q. During Dr. Jantz's deposition, was he questioned on the
13 topic of whether he had received different medical
14 records from Dr. Fogarty than those that had been
15 provided other people?

16 A. He was not.

17 Q. And when Dr. Waid was deposed in May 2009, was he
18 questioned about whether he had been provided medical
19 records from Dr. Fogarty that differed from Fogarty
20 records that had been provided---

21 A. I was not at the deposition, so I'm not sure.

22 Q. Would you defer to his deposition transcript to answer
23 that question?

24 A. Sure.

25 Q. You didn't file a complaint with the medical board

1 about Dr. Fogarty in relation to his July 21 note
2 during the medical malpractice action, did you?

3 A. No.

4 Q. You have in 2016 filed a medical board complaint
5 against Dr. Fogarty based on these July 21 notes in
6 part, haven't you?

7 MR. MANN:

8 Objection.

9 EXAMINATION RESUMED BY MS. CHEEK:

10 A. I did not. Lawyer did, my understanding.

11 MR. MANN:

12 Objection withdrawn.

13 EXAMINATION RESUMED BY MS. CHEEK:

14 Q. Let's go back to your Second Amended Complaint.

15 A. Where is it?

16 Q. I feel certain it's in this pile. Number 2.

17 A. Thank you.

18 Q. Could you turn to page 6 of that document and look at
19 paragraph 42?

20 A. I'm on it. Page 5, 32.

21 Q. 42, please.

22 A. 42. Yeah, I see it.

23 Q. In this paragraph it states, "Dr. Fogarty and Mr.
24 Thompson went to great lengths to ensure that Dr.
25 Fogarty's role as an expert witness was concealed until

1 the eleventh hour from the doctors and their
2 attorneys." Do you see that?

3 A. I do.

4 Q. Do you agree with that statement?

5 A. Totally.

6 Q. And we've seen yesterday in our exhibits that in 2007,
7 plaintiff in the medical malpractice case, Casey,
8 identified Dr. Fogarty as an expert witness. Did you
9 see that?

10 A. No, I did not. Well, it's possible I did, but it
11 totally contradict his record. It says right here he
12 said we did not provide any medical records designated
13 until 2008. That's in Thompson production. Okay? He
14 said we have not designated any medical expert. You
15 want me to find it?

16 Q. Can you just explain what you're talking about? My
17 question to you -- I want to make sure that I ask the
18 question properly. Yesterday we saw that in
19 interrogatory responses in the medical malpractice
20 action in Exhibit 35 that Dr. Fogarty --

21 A. Right.

22 Q. -- was identified as an expert witness.

23 A. He was withdrawn.

24 Q. He was withdrawn --

25 A. Right, yes.

1 Q. -- as an expert?

2 A. And then re-nominated. The record's pretty clear, Mrs.
3 Cheek. If you want me, I pull it for you, that no
4 medical expert was provided until 2008, not just Dr.
5 Fogarty, none, none designated.

6 Q. Your contention is that although Dr. Fogarty was
7 designated as an expert, he was withdrawn --

8 A. Yes.

9 Q. -- in the case?

10 A. Yes.

11 Q. Once something is revealed, once somebody is revealed
12 as an expert, they're revealed. Correct?

13 A. Of course.

14 Q. So once Dr. Fogarty was listed as an expert on August
15 31, 2007, you knew he was involved as an expert.
16 Correct?

17 A. Yes.

18 Q. And we also looked at yesterday and we've marked as
19 another exhibit today that on June 20, 2006, Lung and
20 Chest Medical records of Dr. Fogarty were provided by
21 Casey's counsel to your counsel, defense counsel in the
22 medical malpractice action. Correct?

23 A. Yes.

24 Q. And within that production, we've discussed at length
25 what we've marked as Exhibit 5 to this case. Correct?

1 A. Well, I disagree with at length, but yes. You cut me
2 off many times, but yes.

3 Q. This record, among others at Lung and Chest demonstrate
4 that Dr. Fogarty is preparing medical records on Mr.
5 Casey. Correct?

6 A. On his own behalf.

7 Q. These medical records that Dr. Fogarty is preparing
8 regard Mr. Casey. Correct?

9 A. Regarding Dr. Fogarty.

10 Q. And the medical records that were produced in the
11 medical malpractice case by Mr. Thompson include a July
12 21 note that we've marked as Exhibit 5 that contain a
13 diagnosis of undoubtable air emboli and possible
14 permanent neurological deficit. Correct?

15 A. It's incorrect. We have discussed it at length what
16 you have a diagnosis, I call a fabrication.

17 Q. Let's go back to our definition yesterday or actually
18 my definition yesterday. When I refer to Dr. Fogarty's
19 diagnosis, we established yesterday and we'll use it
20 today, that means Dr. Fogarty's written opinion that
21 Mr. Casey suffered air embolism during or as a result
22 of a pneumothorax and resulting complications and he
23 possibly could have cognitive impairment as a result of
24 it.

25 A. That's your characterization.

1 MR. MANN:

2 Objection.

3 EXAMINATION RESUMED BY MS. CHEEK:

4 A. My answer to this, yes, he fabricated that statement
5 and inserted medical record. Okay, your
6 characterization, you're entitled to your
7 characterization.

8 Q. When I refer to Dr. Fogarty's diagnosis, it refers to,
9 as it has this entire deposition, Dr. Fogarty's opinion
10 --

11 A. That's your characterization.

12 MR. MANN:

13 Wait.

14 EXAMINATION RESUMED BY MS. CHEEK:

15 Q. -- that Mr. Casey suffered an air embolism and may
16 possibly have permanent neurological deficit.

17 A. My testimony today---

18 MR. MANN:

19 Wait. Wait.

20 EXAMINATION RESUMED BY MS. CHEEK:

21 Q. And I understand that you disagree with that and that
22 you believe that it's fabricated, but, again, for your
23 and my purposes -- for my purpose in this deposition, I
24 have to have a definition. I understand that you
25 disagree with the bases, the merit, et cetera of that

1 diagnosis. But when I say Dr. Fogarty's diagnosis,
2 this is what I'm referencing, what he wrote in his July
3 21 note. Okay?

4 A. Let's agree---

5 MR. MANN:

6 whoa, whoa, whoa.

7 EXAMINATION RESUMED BY MS. CHEEK:

8 A. We'll call it---

9 MR. MANN:

10 Hush. Excuse me. Objection. Now go ahead.

11 EXAMINATION RESUMED BY MS. CHEEK:

12 A. Let's call it a writing. Okay? A writing. Let's
13 agree on the wording writing. I agree that it's his
14 writing.

15 MR. MANN:

16 Ellen, may I interject something? The only
17 problem I'm having is you've got three notes there.
18 Please reference which one you're trying to use.
19 That's my problem I'm having. And, I'm sorry, I don't
20 want you to think I'm nit-picking, because he can do
21 that himself.

22 MS. CHEEK:

23 No. I appreciate whatever help we can have
24 through this.

25 MR. MANN:

1 Yeah. So if you could just say Exhibit 1, 2, 3,
2 4, 5, 6, 7, 8, 9, 10, whatever or however you want to
3 put it, but if you say a note dated June 21, '05, we've
4 got three of those.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. Now, when the medical malpractice action was filed in
7 2006 and you received, your lawyers received a copy of
8 the Lung and Chest records --

9 A. Yes.

10 Q. -- you realized that Dr. Fogarty's July 21 note formed
11 the basis of allegations asserted against you in the
12 lawsuit.

13 A. This is false.

14 MR. MANN:

15 Hold on one second. Greg, you've got to wait.
16 Objection.

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. You understood very early in the litigation, the
19 medical malpractice action, that Dr. Fogarty was Mr.
20 Casey's treating physician?

21 A. No.

22 Q. You understood early in the medical malpractice action
23 that Dr. Fogarty was involved with Mr. Casey?

24 A. Yes.

25 Q. You understood early in the medical malpractice action

1 that Dr. Fogarty's air embolism, cognitive deficit
2 writing or opinion formed the basis of Casey's
3 complaints against you.

4 A. I did not.

5 Q. You saw the Complaint filed against you in the medical
6 malpractice action. Correct?

7 A. Yes.

8 Q. You saw that Mr. Casey had alleged permanent brain
9 injury as a result of an air embolism. Correct?

10 A. Yes.

11 Q. And Dr. Fogarty in his July 21 note that we've
12 referenced as Exhibit 5 stated that Casey had suffered
13 an air embolism --

14 A. Yes, he did.

15 Q. -- and possible neurological injury. Correct?

16 A. Yes, he did.

17 Q. Yesterday you stated to me that you understand that a
18 medical malpractice case in the legal system requires
19 an expert opinion to support the plaintiff's position.
20 Correct?

21 A. Correct.

22 Q. And early in the medical malpractice case action, you
23 understood that Dr. Fogarty was providing that service
24 to Casey. Correct?

25 A. Did not.

1 Q. You in the medical malpractice action quickly
2 determined that Dr. Fogarty was providing some
3 assistance to Casey.

4 A. I did not.

5 Q. You told your attorneys early in the medical
6 malpractice action that you thought Dr. Fogarty was
7 involved in that case. Correct?

8 A. Yes, they knew that he was involved.

9 Q. And you told your attorneys that you thought that he
10 was orchestrating that litigation. Correct?

11 A. Yeah, I had a suspicion that he was.

12 Q. You also told your counsel in the medical malpractice
13 action early on that you believed Dr. Fogarty had
14 leaked news of the lawsuit to the Spartanburg Herald-
15 Journal. Correct?

16 A. I did not. Did not know that.

17 Q. You told your lawyers that you thought he had.
18 Correct?

19 A. Yeah, I was suspicious of that.

20 (Defendant's Exhibit Number 49 marked)

21 EXAMINATION RESUMED BY MS. CHEEK:

22 Q. Exhibit 49 is a September 4, 2007 letter from Spencer
23 King to Judy Wilbanks at the JUA. Do you see that?

24 A. Yes.

25 Q. Please turn to page 2 of that letter, JUA 390.

1 A. I am on it.

2 Q. If you will count down to the fifth full paragraph.

3 A. Is that where he has, "He says he"? That's the one?

4 Q. It begins, "When he and his sister."

5 A. Ah, I got it.

6 Q. Could you read that paragraph into the record, please?

7 A. "When he and his sister did not get satisfactory answer
8 from the insureds, they visited the competitive
9 pulmonary group Lung and Chest. Dr. Fogarty of Lung
10 and Chest, and your insured, Dr. Feldman, are bitter
11 rivals and have been involved in litigation.

12 Apparently, both believe that every problem in their
13 lives stem from some action of the other. Dr. Feldman,
14 in this case, believes Dr. Fogarty is supporting Casey
15 in this litigation."

16 Q. That last sentence, "Dr. Feldman, in this case,
17 believes Dr. Fogarty is supporting Casey in this
18 litigation," is true statement.

19 A. I was suspicious of that.

20 (Defendant's Exhibit Number 50 marked)

21 EXAMINATION RESUMED BY MS. CHEEK:

22 Q. Exhibit 50 is an October 10, 2007 letter from Spencer
23 King to Judy Wilbanks.

24 A. Yes.

25 Q. Do you agree?

1 A. Yes.

2 Q. Spencer writes, "Dear Judy: Just for your information,
3 I am copying you on some, but not all of the e-mails
4 that Dr. Feldman has sent to me attempting to direct
5 this litigation, most of which deal with ancillary
6 issues, minutia such as the article in the Herald-
7 Journal, all suits against competitors, et cetera, et
8 cetera." Do you see that?

9 A. Yes.

10 Q. He writes, "I have directed him to seek legal advice of
11 others, parens, he has his own attorney, closed parens,
12 if he feels he has redress. My sole job is to defend
13 this lawsuit. That does not include filing suit
14 against anyone." Do you see that?

15 A. Yes.

16 Q. In the first paragraph or sentence, he references an
17 article in the Herald-Journal. I infer that's the
18 Herald-Journal article about the Casey litigation.
19 Would that be correct?

20 A. That's incorrect. This is something that troubled me
21 greatly after the article came out. I was very
22 tormented. He perceived that I'm interfering with his
23 litigation, but this was a major issue in my life. So
24 he said that if I have any extraneous issues other than
25 that, leave him alone. That's basically what it says.

1 And he said, Greg, I'm here to defend malpractice case.
2 Okay? All other issues that trouble you, I understand,
3 but that's not my problem.

4 Q. And the other issues were questions of possible legal
5 redress in relation to the medical malpractice action.
6 Correct?

7 A. It then came to the point of legal redress. Back then
8 didn't have legal case. Okay? I really start to worry
9 about legal redress after MRI came out. That when I
10 start thinking this is bad.

11 Q. After what came out?

12 A. MRI of the brain.

13 Q. The MRI came out.

14 A. That is where -- that when I start mostly focusing on
15 this.

16 Q. When you received the medical malpractice action, you
17 told me yesterday that you knew from your treatment of
18 Mr. Casey that this man was not injured.

19 A. When he left my practice. When he left my practice. I
20 didn't know what happened to him. Overdose, hit his
21 tree with head. I thought it was something, okay, that
22 happened. It's a crazy note. From a physician
23 perspective, it's insane note. I give you that. Okay?
24 But I thought something happened to him, okay, after he
25 left. Maybe he overdose himself. And that's what I

1 thought. Okay? And, basically, what it was, we were
2 thinking that the man has overdosed himself.

3 Q. You did not believe for a day that the medical
4 malpractice action was a legitimate malpractice lawsuit
5 where Casey was seeking legal redress from injury you
6 had given him. Correct?

7 A. Let me correct you. Not for a day, but for a second.

8 Q. And early on in the medical malpractice action after
9 you received this lawsuit, you began exploring possible
10 redress for being, in your opinion, falsely sued.
11 Correct?

12 A. Well, you're talking about frivolous lawsuit.
13 Frivolous lawsuit is not a crime. I have been sued
14 before frivolously. Other people have. So this is not
15 an actionable thing in United States, frivolous
16 lawsuit. Fraud is different, of course, but no,
17 frivolous lawsuit is -- there's nothing really we can
18 do about it, about frivolous lawsuit. This is just how
19 it is.

20 Q. You assessed early in the medical malpractice action
21 this wasn't simply a frivolous lawsuit. Correct?

22 A. Yeah. I assessed it was a frivolous lawsuit initially,
23 yes.

24 Q. You assessed early in the medical malpractice action
25 that you had possible claims against the people that

1 had brought the lawsuit against you. Correct?

2 A. Did not. Did not. Did not. Totally did not. The
3 first thing that have occurred in my mind is when they
4 arrange for the fake x-ray. That is the first thing
5 that I start getting really concerned. Okay? After
6 the fake x-ray that was arranged by Thompson at
7 Fogarty's office.

8 Q. Now, we had looked yesterday at when Mr. Casey was
9 deposed and he testified --

10 A. Right.

11 Q. -- in your opinion, that nobody told him he was brain-
12 injured. Do you recall that?

13 A. Yes.

14 Q. At that time, you also thought that the suit was not
15 justified. Correct?

16 A. No. No, not at all. I thought the suit was going to
17 be just dropped. I thought that's it. Okay? When I
18 walked out of the deposition, I was expecting the
19 lawsuit to just go away.

20 Q. But listening to that testimony --

21 A. Yes.

22 Q. -- you in your mind heard that here's a plaintiff that
23 has sued me for a brain injury who says he's not brain-
24 injured. Correct?

25 A. Yeah. It was pretty clear that Attorney Thompson was

1 just going to drop it. So when we walked out of
2 deposition, we were convinced this is it, that nobody
3 told him he had brain damage, there's no case, that's
4 it. So we were pretty -- pretty certain after Casey's
5 deposition that the lawsuit was going to be withdrawn.

6 Q. But when you heard that testimony from Casey, it
7 supported what you thought from the first second.
8 Right?

9 A. Just you're asking for my mental impression. My mental
10 impression was then this is over, the case is going to
11 be withdrawn, that's it, move on.

12 Q. Because he had testified in accordance with your belief
13 that he wasn't brain-injured. Correct?

14 A. Yeah. He said that nobody told him he had brain
15 damage. So I actually wrote to Mr. Spencer King that
16 Fogarty will testify he didn't tell him. This is
17 probably Carole, somebody else, this case is over.

18 Q. Now, when was the first time you began considering a
19 countersuit or a lawsuit based on the medical
20 malpractice action?

21 A. When they sent -- when Attorney Thompson sent Casey for
22 the x-ray and when I found out that he is married to
23 Maria, who is Fogarty's secretary, and that was
24 sometime in 2008. That is the first time where I
25 start, whoa, are you kidding me?

1 Q. During the medical malpractice action, you researched,
2 did you not, potential causes of action that you might
3 be able to assert against Dr. Fogarty, Mr. Thompson,
4 and Casey. Correct?

5 A. I think that I was very upset about them, and yes, I
6 wanted to sue them, but for me to sue them back then, I
7 had to get over Judge Hayes, and Judge Hayes was
8 increasingly more and more involved, postponed the
9 trial. Honorable Judge Hayes assemble us in one room
10 for a day, weekend to mediate the case. He has
11 basically put a -- put a damper on all of that and said
12 that he ain't going to rule until the case is over
13 where I can do any of that.

14 Q. Your understanding was that Judge Hayes was prohibiting
15 you from filing a countersuit --

16 A. Right.

17 Q. -- or a lawsuit until he ruled on the medical
18 malpractice action?

19 A. Yes. Yes, he prohibited me from doing that.

20 Q. Now, in terms of the causes of action that you explored
21 based on what you believed to be an abusive lawsuit,
22 those included conspiracy. Correct?

23 A. Correct.

24 Q. Slander, false publicity. would that be correct?

25 A. No. We moved on from that.

1 Q. But that was one that you had explored. Correct?

2 A. Well, I'm a layperson. I'm not a lawyer.

3 Q. I know.

4 A. So, but -- and we felt it was far bigger than petty
5 slander.

6 Q. Abuse of process is one that you explored?

7 A. Definitely.

8 Q. Malicious prosecution was one you explored?

9 A. Malicious prosecution, I did not -- I did not really
10 explore. I mostly was thinking about, if anything, the
11 anesthesiologist, okay, Shantha, because, remember, I
12 caused pneumothorax. I own it. Okay? There's just no
13 -- there is no discovery necessary. I said I caused
14 pneumothorax. It's a complication. It's a known
15 complication. I did that. Okay? We instructed my
16 lawyers they must retract the nonsense. Okay? And I'm
17 willing to settle on pneumothorax, because it's not
18 worth my life. This is big for me. That they must
19 retract that, that what they did is bogus. Okay? They
20 would not admit to that. Okay? It became impossible
21 to settle it. There was a condition for settlement.
22 They would withdraw the bogus accusation of brain
23 damage. Pneumothorax require no discovery, no expert
24 witnesses, nothing. I said I caused it. I understood
25 that I caused it. There was no long-term damage, of

1 course, but I caused it.

2 Q. Let's take a break.

3 (Off the Record; 11:40 -- 1:02 p.m.)

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. Following the break, you have handed me in relation to
6 Exhibit 47 which was excerpted pages from Dr. Fogarty's
7 medical malpractice deposition, an additional page 67
8 with Bates stamp 17754. That's Thompson 17754. And
9 you have handed it to me stating that it should have
10 been included with the pages that we discussed earlier.
11 Correct?

12 A. Correct.

13 Q. We were discussing earlier that these excerpted pages
14 contain what you believe are questions posed to Dr.
15 Fogarty with respect to doctored medical records.
16 Correct?

17 A. Correct.

18 Q. On this new or added page 67, there is an additional
19 question that you believe is on that point. Correct?

20 A. Correct.

21 Q. There's a highlighted question that says, "Have you
22 rendered any other written reports in this case?" Is
23 that the question that you believe is pertinent to that
24 earlier answer?

25 A. Yes.

1 Q. And Dr. Fogarty's answer was, "I did not render a
2 written report, but I did render a list of findings,
3 conclusions, questions. As I mentioned, that's a two-
4 page list that I failed to produce. I can produce it.
5 I think -- I don't know if it's two pages or three
6 pages, but." And that was his response. Correct?

7 A. Yeah. It also relevant to your previous question about
8 where I got the information. Turner produced those two
9 pages at that deposition that Dr. Fogarty himself
10 failed to produce. He failed to mention that he failed
11 to produce 500 pages, not two pages, 500 pages.

12 Q. Is Dr. Wan a physician at Upstate Lung?

13 A. Yes, she is.

14 Q. Am I pronouncing her name correctly?

15 A. Yes.

16 Q. When did she join that practice?

17 A. I'd have to look it up. Five years ago maybe. Five,
18 six years ago. 2011 maybe.

19 Q. Does Dr. Wan participate in any of your research
20 practices?

21 A. She does not.

22 MR. MANN:

23 Ellen, can we go be off the record for a second?

24 MS. CHEEK:

25 Yes.

1 (Off the Record; 1:06 -- 1:06 p.m.)

2 EXAMINATION RESUMED BY MS. CHEEK:

3 Q. Do you recall when Dr. Wan was preparing to come to
4 your Upstate Lung practice discussing research with
5 her?

6 A. I don't recall.

7 (Defendant's Exhibit Number 51 marked)

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. This is a document Bates labeled Mann 23062. At the
10 bottom of the page, it looks like there was a portion
11 of this e-mail chain cut off, but there's a full e-mail
12 from you to Dr. Wan and Attorney Mann dated February 4,
13 2008, Subject, Greetings from Malaysia. Do you see
14 that?

15 A. Yes.

16 Q. Were you in Malaysia, or is Dr. Wan from Malaysia?

17 A. She was born in Malaysia. Our platform was very
18 interested in international cooperation and research,
19 and perhaps one of -- Dr. Wan came to United States
20 very young. She was like 18 or something. She
21 finished medical school in Canada. She finished all
22 her training in United States. So her medical
23 education was in Calgary. But originally she is from
24 Malaysia.

25 Q. And you write to her. In the first line you say,

1 "Greetings to you as well and we are almost ready to
2 welcome you on board." That refers to her joining your
3 practice at Upstate Lung. Correct?

4 A. Right.

5 Q. If you will look down at the I want to say fourth and
6 last paragraph, you state, "Moonlighting for research
7 is encouraged, parentheses, takes little or no time,
8 closed parens." Do you see that?

9 A. Mm-hmm.

10 Q. What is moonlighting for research?

11 A. Well, I mean in her particular case, it would be
12 research opportunities in Malaysia, and I don't really
13 recall any of those discussions. It was too long ago.
14 Dr. Wan never really availed herself to the
15 opportunities in research. We provide opportunities
16 for everyone who wants it, so -- but it's still an
17 opportunity for whoever wants to do it. For Dr. Wan,
18 my particular interest was her international
19 background, as far as I recall.

20 Q. And you're stating to her that those research
21 activities take little or no time. Correct?

22 A. For her, probably not. It depends on individual. For
23 some people it takes a lot. For some people it take
24 less. It's not one formula fits all. It depends. It
25 depends on the individual.

1 Q. The e-mail directly above that, again dated February 4,
2 2008, from you to Dr. Wan and Attorney Mann, there's a
3 parentheses there that says, "Again, minimal effort
4 time would be necessary and does not involve weekends/
5 nights that can impact your productivity." Do you see
6 that?

7 A. I do.

8 Q. You're telling Dr. Wan here that research participation
9 would involve minimal effort and time. Correct?

10 A. Correct. But, again, she has not involved in anything
11 whatsoever. So her research involvement is zero. It's
12 not only taking minimal time; it takes zero time
13 because she's not -- she's not involved in any way.

14 (Defendant's Exhibit Number 52 marked)

15 EXAMINATION RESUMED BY MS. CHEEK:

16 Q. That is number 52. Exhibit 52 are Plaintiff Gregory J.
17 Feldman, M.D.'s Response to Charles M. Fogarty, M.D.'s
18 First Requests for Admission in this case. Do you see
19 that?

20 A. I do.

21 Q. Look down at the request number three, which reads,
22 "Admit that as a principal of S. Carolina in 2007, you
23 participated in the decision to dismiss with prejudice
24 S. Carolina's claims against Fogarty in the S. Carolina
25 action." Do you see that?

1 A. I do.

2 Q. The response stated there is "Deny."

3 A. Right.

4 Q. In your testimony yesterday, you had discussed your
5 participation in that decision to dismiss S. Carolina.
6 Correct?

7 A. Right.

8 Q. And this response is inaccurate then.

9 A. It's very accurate decision.

10 Q. It is?

11 A. It's saying you participated in decision to dismiss
12 with prejudice. I did not participate in decision. I
13 was simply outvoted.

14 Q. You did what?

15 A. I did not participate in the decision. I was simply
16 outvoted.

17 Q. Outvoted?

18 A. Outvoted, right. With prejudice, it was decision of
19 the three. It wasn't my decision.

20 MR. MANN:

21 Ellen, I got a problem. Can we go off the record?

22 (Off the Record; 1:12 -- 1:20 p.m.)

23 EXAMINATION RESUMED BY MS. CHEEK:

24 Q. Before the break we were discussing your denial of
25 request to admit number three which says, "Admit that

1 as a principal of S. Carolina in 2007, you participated
2 in the decision to dismiss with prejudice S. Carolina's
3 claims against Fogarty in the S. Carolina action."
4 Your denial I understand means you did not participate
5 in that decision. Correct?

6 A. Yes.

7 Q. And you refused to participate in that decision.
8 Correct?

9 A. Don't recall.

10 Q. Turn the page to page 2, please. Admission request
11 number five states, "Admit that the medical malpractice
12 action was among the reasons S. Carolina dismissed its
13 claims against Fogarty in the S. Carolina action." Do
14 you see that?

15 A. Yes.

16 Q. Now, yesterday you told me that the medical malpractice
17 action was among the reasons S. Carolina was dismissed.
18 Correct?

19 A. S. Carolina was dismissed for multiple reasons, and one
20 of the reasons it was dismissed, because Anna Buice has
21 nothing to do with medical malpractice lawsuit. So how
22 is Anna Buice to do with that? I don't know. Decision
23 was made to dismiss primarily not because of medical
24 malpractice action. The reason for dismissal -- but
25 you know what? Medical malpractice action played a

1 role, but not to dismiss. It played a role in the
2 corporate decision to move on, okay, by majority
3 members. Anna has nothing to do with malpractice
4 lawsuit. Joe has something to do with that. You're
5 getting into attorney-client privilege on this one.
6 okay? So to me, personally and the corporate questions
7 are different. Okay? My personal feeling, it for
8 Boscia probably has a lot to do with that. With the
9 corporate decision, corporate decision probably has
10 nothing to do with it at all. Corporate decision was
11 S. Carolina has a job to do. It doesn't need any
12 distraction. It is unlike other businesses that we
13 need to concentrate on, because medical malpractice is
14 unaffected. S. Carolina is leading and the best site
15 in the world at that point. It needs to move on.
16 That's probably what has happened and a probably
17 correct decision by majority of the corporate decision
18 for corporation. For me personally, I stand by my
19 answer. It has a lot to do with me personally being
20 distracted and not be able to basically impose my will
21 or my personal preference, things like that. In
22 retrospect, it was the best decision for S Carolina. I
23 think the officers of the corporation should always
24 take a corporate -- corporate interest above their own
25 personal interest.

1 Q. If you'll look down at request to admit number nine
2 which reads, "Admit that you never received a demand to
3 settle the medical malpractice action for anything
4 other than the payment of money to Casey."

5 A. One more time, repeat it? What---

6 Q. Request number nine --

7 A. Nine, okay.

8 Q. -- reads, "Admit that you never received a demand to
9 settle the medical malpractice action for anything
10 other than the payment of money to Casey." Do you see
11 that?

12 A. I never received anything else. They weren't welcome.
13 We wouldn't pay anything.

14 Q. So do I hear you correct; your denial of that is based
15 on your position you never received a settlement
16 demand?

17 A. It wasn't welcome. We were not about to settle
18 anything. The condition for settlement on pneumothorax
19 was dropping any brain allegation before we will
20 discuss any settlement. We went to court to prevent
21 this from happening. I never received any demands, nor
22 will I ever agree to them. That was the -- that was
23 the subject of the lawsuit that we have filed, to end
24 any discussion before Judge Hayes ruled that he
25 postpone his decision until after the -- after the

1 trial.

2 Q. what was Judge Hayes's ruling?

3 A. Judge Hayes's ruling was that our case against JUA
4 participating in any settlement talks or basically they
5 need to get -- get out of the lawsuit, we will be
6 responsible for any outcome. Judge Hayes took it under
7 advisement and ruled that that decision, the decision
8 whether we can assert our right to take control of the
9 case, would be postponed until the malpractice case is
10 tried.

11 MR. MANN:

12 Ellen, excuse me, I need another attorney
13 conference. I'm sorry. Please. It will be so quick.

14 MS. CHEEK:

15 Okay.

16 (Off the Record; 1:26 -- 1:30 p.m.)

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. We were talking about request to admit number nine in
19 which you deny that you never received a demand to
20 settle the medical malpractice action for anything
21 other than the payment of money to Casey.

22 A. I object to the payment of money to Casey. I refuse to
23 pay any money to Casey.

24 Q. Did Casey make a demand on you for payment of money in
25 the medical malpractice case?

1 A. I'm not sure. I told Spencer King that I don't want to
2 hear anything about it.

3 Q. So you do not know whether a demand for settlement was
4 made upon you in the medical malpractice action?

5 A. On JUA you mean? JUA?

6 Q. On you.

7 A. On me personally, I told Spencer I don't want to hear
8 about it, don't talk to me about that, it ain't
9 happening. whether he did to the JUA, you ask Spencer
10 or JUA.

11 Q. So Attorney King did not convey to you a settlement
12 demand from Casey in the medical malpractice action?

13 A. He may have tried. I told him I don't want to hear it.
14 It's not happening. I went to court to prevent it from
15 happening, not prevent it from happening, prevent even
16 the possibility of it happening. I told Spencer---

17 MR. MANN:

18 You've answered the question. wait for the next
19 one. It will go a lot quicker.

20 WITNESS:

21 Thank you.

22 (Defendant's Exhibit Number 53 marked)

23 EXAMINATION RESUMED BY MS. CHEEK:

24 Q. This is 53. 53 is an August 8, 2008 e-mail from you to
25 Attorney Mann, Subject shield. Have you read that?

1 A. No, but now I do.

2 Q. I believe this summarizes a lot of what you've told me
3 the last couple of days. It itemizes at least some of
4 your allegations against Dr. Fogarty. Is that correct?

5 A. That's totally false. It doesn't even begin to touch
6 it.

7 Q. Does it touch upon some of your allegations in this
8 lawsuit?

9 A. Feelings. This is about feelings. This e-mail is
10 about feelings, not about anything else. It's a --
11 it's a cry of torment, which I was.

12 Q. With respect to number one, you say, "Fogarty/Kimbrell
13 send Casey to Chuck. Smith did not cut it. "That's
14 Dr. Fogarty or Maria Kimbrell sends Mark Casey to Chuck
15 Thompson, in your opinion?

16 A. It wasn't my opinion. It was my feelings. I did not
17 know.

18 Q. If you would look down at number two, "Chuck talked to
19 Fogarty. I do not have enough to sue." Now, you told
20 me yesterday that you believed that this Exhibit 5,
21 that the language in this exhibit that states he
22 undoubtedly had air emboli was required for Casey to
23 file the medical malpractice. Correct?

24 A. It was required to get through summary judgment. You
25 may -- well, you're not a malpractice attorney, but the

1 law has changed. The law initially required expert
2 witness testimony only in 2005, and cases that
3 originated like in his case in 2004 were exempt. So
4 expert witness wasn't required. So they could have --
5 now it's different. You have to have expert witness,
6 but back then it wasn't required. So they couldn't
7 file any lawsuit without an expert witness and they
8 disclosed expert witness much later. Okay? So, but
9 law has changed, but Casey case was still falling where
10 no expert witness was required.

11 Q. But he did have his expert witness lined up before the
12 suit was filed. Correct?

13 A. No.

14 Q. You testified yesterday that Dr. Fogarty began his
15 association with Casey in 2004.

16 A. As a fact witness.

17 MR. MANN:

18 Objection.

19 EXAMINATION RESUMED BY MS. CHEEK:

20 A. As a fact witness.

21 Q. As a fact witness?

22 A. Mm-hmm.

23 Q. And you also told me that you believe Dr. Fogarty was
24 working on a brain injury theory during 2004, 2005.
25 Correct?

1 A. Yeah. We have discovered that much, much later. We
2 have discovered that from Grace reports. That was
3 discovered much, much later. I knew about that
4 personally in 2009, but it was discovered in 2008. But
5 I read them, I read them in 2009. That's when the
6 revelation was made that Dr. Fogarty was conducting
7 tests, that Dr. Fogarty was seeing Casey and Carole
8 regularly. Those revelations contained in Dr. Grace
9 production which I read in 2009 in preparation to the
10 trial. The trial was scheduled to be in September of
11 2009 until Honorable Judge Hayes has postponed it.

12 Q. And we talked yesterday about your belief that in 2006
13 Dr. Fogarty wrote this Exhibit Number 5 note, including
14 the undoubtedly had air emboli language. Correct?

15 A. Yeah, I -- out of three notes, this one is the latest.
16 The evidence that I have indicated that it was written
17 way after September and likely in 2006, but way, way
18 after September, in 2006. There is evidence.

19 Q. This Exhibit 5 we've already established in prior
20 Exhibit 33 was included among the medical records that
21 were produced by Chuck Thompson to defense counsel in
22 the medical malpractice case in June 2006.

23 A. Correct. So it was written sometime between October
24 2005 and the production would have been -- that would
25 have been done day before the production.

1 Q. And this is the note that was produced in the medical
2 malpractice case. Correct?

3 A. This is a note that was produced a medical malpractice
4 case in June of 2006.

5 Q. And your feeling is stated here in number three.
6 "Fogarty said bring him in, I give you the reason, he
7 was there as Chuck instructed, kaboom, laser/air emboli
8 and without a doubt, which Chuck had to have for
9 shield."

10 A. Yeah. He has to get to the summary judgment. Okay?
11 He had to have it.

12 Q. And when Dr. Fogarty wrote it in this exhibit, then
13 Chuck had it. Correct?

14 A. I don't know when Chuck had it. Chuck had it maybe day
15 before he produced it. I don't know. Okay? This note
16 is not written -- written on that date. This note is
17 written much, much later. This is a -- this is a
18 forgery, mistake and forgery.

19 Q. Do you have any evidence that states---

20 A. I get it.

21 Q. Let me stop you there. Do you have a document that
22 states the date on which this exhibit was prepared?

23 A. I have a document that state that this document did not
24 exist on that day. I have that document, yes, I do. I
25 totally do.

1 Q. Okay.

2 A. You ready for it?

3 Q. I'm ready.

4 A. Let me give it to you. You want to mark it first?

5 Q. No, I want to see it.

6 A. Or do you want me to explain it first?

7 Q. I want to see it first. Are there any other pages to
8 this document that you want me to look at?

9 A. A hundred twenty pages. This is enough. I did not
10 color it. Chuck Thompson did. This is not my
11 coloring. Chuck Thompson color it.

12 (Defendant's Exhibit Number 54 marked)

13 EXAMINATION RESUMED BY MS. CHEEK:

14 Q. We've marked as Exhibit 54 a document you've handed me
15 Bates labeled Thompson 44532, and you have produced
16 this to me or handed this to me in response to my
17 question do you have a document in your possession that
18 states the date on which Exhibit 5, this Bates stamped
19 note, was produced. Correct? Can you show me on this
20 Exhibit Number 54 the date on which this Exhibit 5 in
21 our case was prepared?

22 A. I sent you guys with the finding Exhibit 5 -- Exhibit 5
23 -- yeah, here it is. You want to compare the date?
24 9/6/05. I'm going to ask you to compare the printing
25 marks. You see the printing marks? You see they're

1 identical? It's the same document. Do you see that?

2 Q. I see the lines, yes.

3 A. Identical lines. They are present on no other -- you
4 do not see that here?

5 MR. MANN:

6 Greg, she already answered, but she's the one
7 asking the questions.

8 WITNESS:

9 I'm answering the question. Okay?

10 EXAMINATION RESUMED BY MS. CHEEK:

11 A. This is identical document. Would you agree with that?

12 MR. MANN:

13 No. Greg---

14 WITNESS:

15 I am stating---

16 MR. MANN:

17 Objection. Objection to my client.

18 EXAMINATION RESUMED BY MS. CHEEK:

19 Q. If you can explain to me where on this document there
20 is an indication of the date on which Exhibit 5 was
21 created.

22 A. I'd be delighted. Okay? This is a date 9/7/05. 9/7,
23 not July. 9/7. This is what was in his file.

24 Q. You're referencing a Feldman Exhibit 7.

25 A. I'm not done. I can produce more.

1 Q. Dr. Feldman, do you have a document in your file---

2 A. I do. I do. I'm producing them one by one. Here is a
3 document that we already know that it wasn't done on
4 July 21. I'm still not done. Just a second.

5 Q. I want to take a break for just a second. Actually,
6 stay on the record. We're going to take a break, but
7 what my question is to be answered when we come back is
8 what are all the documents in your possession that
9 state -- actually not all the documents in your
10 possession, that you can gather together that indicate
11 a date. I want to know whether there is a document in
12 your possession that states the date on which Exhibit 5
13 was prepared.

14 A. I am absolutely give you all of it. You want me to
15 gather all of them at the same time?

16 Q. I do not want a collection of documents that suggest it
17 or that you can infer the date. I want a document that
18 states the date on which this was prepared.

19 A. I'm going to produce to you an overwhelming evidence of
20 inferring the date that this particular document was
21 never in the Thompson file. I also going to attach an
22 entire Thompson file to prove that. Perjury.

23 Q. What I'm hearing is you do not have a document that
24 states that this Exhibit 5 was prepared on a certain
25 date.

1 A. I have a document that states on numerous occasions
2 that it was changed many times, okay, after July 21. I
3 have many documents that say it changed.

4 Q. But you don't---

5 A. It changed three times. I have all the documents that
6 say it changed.

7 Q. But you don't have a document that states the date on
8 which it was created?

9 A. I already told you I do not know when it was changed.
10 What I do know that it was changed between September
11 and June, September 2005 and June 2006. I have those
12 documents.

13 Q. I'm going to hand you those documents back, and I'm
14 going to consider my question answered.

15 A. I want to mark them, too.

16 Q. No, we're not going to mark those as exhibits to your
17 deposition.

18 MR. MANN:

19 No, that's not your choice.

20 WITNESS:

21 That's fine.

22 MR. MANN:

23 Ellen, are we still on for a break or not?

24 MS. CHEEK:

25 we can take a break.

1 (Off the Record; 1:48 -- 1:52 p.m.)

2 EXAMINATION RESUMED BY MS. CHEEK:

3 Q. Dr. Feldman, Attorney Henrikson is going to ask you
4 some questions. I may or may not have some additional
5 ones for you.

6 A. Absolutely.

7 MR. MANN:

8 Ellen, let me ask you, just so that we make sure
9 we're all on the same sheet. You're concluding your
10 line of questioning?

11 MS. CHEEK:

12 No. As I just stated, I may have some additional
13 questions after Attorney Henrikson. I don't believe I
14 will.

15 MR. MANN:

16 Well, I'm just going to throw an objection to that
17 out, and we'll go from there.

18 MS. CHEEK:

19 What is the objection?

20 MR. MANN:

21 That I think if you have questions, you should ask
22 them, and then if you are finished with your questions,
23 it can go to of course Mr. Henrikson and of course
24 other counsel, and then I would of course like a turn.
25 And then if you have follow-up on those areas that are

1 brought forward, I think it would be totally
2 appropriate. I just don't want to random---

3 MS. CHEEK:

4 Okay. No.

5 MR. MANN:

6 I don't want some kind of random access.

7 MS. CHEEK:

8 I agree with that.

9 MR. MANN:

10 If that's okay.

11 MS. CHEEK:

12 My questions would be in follow-up, but to the
13 extent that they can be conveyed through Attorney
14 Henrikson, that would be my intent.

15 MR. MANN:

16 I'm fine with that.

17 MS. CHEEK:

18 As this is really an attempt, believe it or not,
19 to shorten the deposition.

20 MR. MANN:

21 I have no doubt of that. So I am definitely on
22 board in theory, but I'm still just going to make my
23 objection. I'm sure it's a non-issue, because I, too,
24 want to move this down the road.

25 MS. CHEEK:

1 I understand.

2 MR. HENRIKSON:

3 I just need a second to set up.

4 MR. MANN:

5 We can be off the record for a minute.

6 (Off the Record; 1:54 -- 1:54 p.m.)

7 EXAMINATION BY MR. HENRIKSON:

8 Q. Dr. Feldman, I want to get clear in my mind how the
9 corporations that you were involved in in the 2008,
10 2009, and 2010 period were moving. There was your
11 practice, and what was that called, your medical
12 practice?

13 A. Upstate Lung and Critical Care Specialists, PC.

14 Q. And you and Dr. Boscia were the principals?

15 A. We were initially principals. Then other people
16 joined.

17 Q. During the time that this case was pending, who other
18 than you two were principals?

19 A. They're blurry, but I'll try to do my best. In 2002 or
20 2003, Dr. David Erb has joined us. The other partners,
21 I believe, came while the lawsuit was still dragging
22 on. I believe it was 2008, 2009, but I cannot be
23 certain. Okay? Could have been later Dr. De La Cruz
24 and Dr. Abboy has joined us, but I'm not -- but I'm not
25 certain when. I know they're partners, but I'm not

1 certain when.

2 Q. And what about your research entities? At the time
3 that this lawsuit was pending, what other corporations,
4 PCs, LLCs did you have an interest in?

5 A. Too numerous to count.

6 Q. The ones in South Carolina. Let's start with that.

7 A. Okay, in South Carolina, it will be Union
8 Pharmaceutical Research.

9 Q. I'm sorry?

10 A. Union. It would be S. Carolina Pharmaceutical
11 Research. It would be Greenville Pharmaceutical
12 Research. It would be Gaffney Pharmaceutical Research.

13 Q. What was the second one?

14 A. Gaffney. Gaffney.

15 Q. Gaffney?

16 A. Gaffney. I believe that was during the lawsuit those
17 were the -- that was it.

18 Q. Union, Gaffney, Greenville, and S. Carolina?

19 A. Which is in Spartanburg.

20 Q. And were they incorporated, LLCs? What were they?

21 A. Some of them were S Corps and some of them were I
22 believe LLCs.

23 Q. And what was your interest in those companies?

24 A. I had a minority interest in all of them.

25 Q. I'm sorry?

1 A. Minority interest in all of them.

2 Q. And when you say minority, 49 percent?

3 A. I had 33, 20 percent, something like that. I have not
4 had more than 33 percent in any corporation.

5 Q. What about Alliance Biomedical?

6 Q. Alliance Biomedical Research was formed as a platform
7 in 2007.

8 Q. And what do you mean by platform?

9 A. Platform? Platform is very, very significant piece.
10 It's hard to explain, but it's incorporated to
11 assisting others how to start the sites, training,
12 assisting others in conceptualizing this and moving
13 into the direction of creating a very, very significant
14 piece of landscape in research. That is called
15 platform. It is not known to happen before. This is
16 original platform, how to accomplish that.

17 Q. And so Alliance Biomedical, is that an LLC?

18 A. Back then it was a LLC.

19 Q. And who were the members of that LLC?

20 A. Greg Feldman, Joe Boscia, Steve Clemons, Anna Buice,
21 Hailey Williams.

22 Q. Hailey Willis?

23 A. Williams, spelled w-i-l-l-i-a-m-s.

24 Q. Did Alliance Biomedical at that time have any ownership
25 interest in any of the other research entities that

1 you've described already?

2 A. Did not.

3 Q. And what was the day-to-day business of Alliance?

4 A. Data what?

5 Q. What was the day-to-day business of Alliance?

6 A. Of developing a platform.

7 Q. As I -- I'm sorry.

8 A. Developing a platform and conceptualizing what
9 eventually became a concept.

10 Q. Was there any corporate relationship at all between
11 Alliance and any of the research entities that you have
12 described?

13 A. Yes, legal services.

14 Q. Was there any commonality of ownership between Alliance
15 and any of those research entities?

16 A. Yes. Different people own different corporations.

17 Q. So you described who owned Alliance. Who owned Gaffney
18 Research?

19 A. Gaffney was Hailey Williams, Anna Buice, David Erb,
20 Greg Feldman, Joe Boscia.

21 Q. And who owned Greenville Pharmaceutical Research?

22 A. Anna Buice, Greg Feldman, Steve Clemons, and Joe
23 Boscia.

24 Q. And who owned S. Carolina?

25 A. Greg Feldman, Anna Buice, and Joe Boscia.

1 Q. And who owned Union?

2 A. Hailey Williams, Greg Feldman, and Joe Boscia.

3 Q. So you and Dr. Boscia owned all of these corporations?

4 Y'all had ownership in all of these corporations?

5 A. Yes.

6 Q. And did any of these corporations, Alliance and the
7 other research corporations that you described, did any
8 of them act in concert for any purpose?

9 A. No.

10 Q. What were the legal services that Alliance offered
11 these research corporations?

12 A. Contract reviews primarily.

13 Q. I'm sorry?

14 A. Contract. Contract reviews. A lawsuit was filed on
15 behalf of S. Carolina against Charles Fogarty, M.D.
16 Lawsuit was defended. No, there was no lawsuit between
17 the entity you described. There was a lawsuit filed by
18 S. Carolina against Charles Fogarty, M.D. There was
19 legal service to S. Carolina.

20 Q. And what other legal services were provided by Alliance
21 to any of the research corporations that you've
22 described?

23 A. Contract reviews. Contract reviews, working the
24 problems with employee problem.

25 Q. How did those corporations pay for those legal

1 services?

2 A. By bills, invoices.

3 Q. And at what rate did Alliance charge for offering those
4 services?

5 A. Do not remember. Not area of my concern. I was not
6 involved in that.

7 Q. Other than employment law and contract reviews and
8 civil litigation, what other legal services did
9 Alliance provide to these other corporations?

10 A. I mentioned the bulk of it.

11 Q. The what?

12 A. The bulk of what legal services were provided to other
13 corporations we mentioned.

14 Q. When you say the bulk of it, that suggests to me that
15 there's something else. Can you think of anything
16 else?

17 A. If I can think, I will let you know, but now I'm
18 blanking.

19 Q. Okay. Did Alliance Biomedical offer legal services to
20 any corporations other than Gaffney, Union, Greenville,
21 and S. Carolina?

22 A. It did later on when more corporations had been
23 established.

24 Q. And what were those corporations later?

25 A. Well, later on have been established Rock Hill, which

1 became subsidiary to Union. Anderson Pharmaceutical
2 Research. Then it was Alliance Biomedical opened a
3 site by itself which was initially Gwinnett
4 Pharmaceutical Research.

5 Q. What was it?

6 A. Gwinnett.

7 Q. Gwinnett, Georgia?

8 A. Georgia. Then Duluth, Georgia.

9 Q. I'm sorry. Can you say that again?

10 A. Duluth, D-u-l-u-t-h.

11 Q. Duluth, okay.

12 A. That's in Duluth, Georgia. Hendersonville
13 Pharmaceutical Research.

14 Q. North Carolina?

15 A. North Carolina. And Gastonia Pharmaceutical Research,
16 which is also in North Carolina. And also legal
17 services were provided to Alliance Biomedical
18 Pharmaceutical Research in developing their platform in
19 conjunction with partnering with -- with what was
20 eventually became GPP, but there was many, many other
21 since that you just asked me the question about how it
22 was culminated, but it was a very, very expensive
23 process that lasted a few years. It's just
24 culmination, but that was a very, very expensive
25 process.

1 Q. When was the Union facility opened?

2 A. 2005, I believe. 2005.

3 Q. And I think you testified yesterday S. Carolina was
4 established in 2004?

5 A. Yes.

6 Q. And how about Greenville Pharmaceutical Research?

7 A. Two thousand -- either 2005 or 2006 somewhere.
8 Somewhere in one of the two. Maybe 2006.

9 Q. How about Gaffney?

10 A. 2005.

11 Q. How about Rock Hill?

12 A. 2011.

13 Q. Anderson?

14 A. 2012.

15 Q. Gwinnett?

16 A. Gwinnett and Duluth somewhere between '10 and '11.

17 Q. Hendersonville?

18 A. I believe it's '12, but it could have been '13.

19 Q. Gastonia?

20 A. Gastonia I believe is '14.

21 Q. No matter where they are in the world, were any other
22 entities in which you had an ownership interest for the
23 purposes of practicing medicine or research or studies
24 or anything like that---

25 A. Yeah, I had---

1 Q. Let me finish my question. It makes it easier for the
2 court reporter. Where and when were any of those
3 entities opened from 2005 to the present?

4 A. Alliance Biomedical Group International opened in 2010.

5 Q. And where is that located?

6 A. It located in Spartanburg.

7 Q. And continue, please.

8 A. That's it.

9 Q. That's it? The only one in the world from 2005---

10 A. Well, Alliance Biomedical Group International has
11 interests in Russia, Hungary, and Spain.

12 Q. So that there were sites opened up in Russia and
13 Hungary and the United States?

14 A. Spain.

15 Q. Spain?

16 A. Alliance Biomedical Group International has nothing to
17 do with United States.

18 Q. Okay. Because I thought you mentioned Spartanburg in
19 association with that.

20 A. Well, Alliance Biomedical Group International is an
21 American corporation.

22 Q. Right.

23 A. It does not do business in United States.

24 Q. It has something to do with the United States; it was
25 formed here. Correct?

1 A. It does not -- right. Correct, but it does not have
2 any research business.

3 Q. But you have them where in Russia?

4 A. We don't have them in Russia, but we assisted sites in
5 St. Petersburg, and we assisted site in Izhevsk.

6 Q. How about Hungary?

7 A. In Hungary was Budapest.

8 Q. And how about Spain?

9 A. Barcelona.

10 Q. And those sites are all operated by Alliance Biomedical
11 International?

12 A. Those sites are not operated by Alliance Biomedical
13 Group International. Alliance Biomedical Group
14 International was providing a platform and training.
15 They were operated by local operators. Okay? Alliance
16 Biomedical Group International is no longer present.
17 Its mission was accomplished. There is also another
18 corporation called Select Biomedical Group
19 International. Select Biomedical Group International
20 does own sight in North Carolina. That site is
21 Alliance Biomedical Research located in Monroe, North
22 Carolina.

23 Q. And when was that facility opened?

24 A. Just recently.

25 Q. 2016?

1 A. Yeah, 2015 or '16, something like that.

2 Q. You mentioned Alliance Biomedical International which--

3 -

4 A. Alliance Biomedical Group International.

5 Q. Group International. Is that LLC or Inc.?

6 A. It is an LLC.

7 Q. And who are the members of that LLC?

8 A. It would be myself, Carolyn Feldman, and Steve Clemons.

9 Q. And you say that's no longer in business?

10 A. No. It's no longer -- it doesn't have any longer any
11 business.

12 Q. And the purpose of that LLC was to create a platform
13 and training for research sites in Russia, Hungary, and
14 Spain?

15 A. It was present in those countries, but platform was far
16 larger. Platform envision entire world.

17 Q. And why is that LLC no longer in business?

18 A. It has accomplished its role, and it is -- has been
19 decided that I, as a driving force, would concentrate
20 on United States, because at that point, it was a very,
21 very significant movement in creating a United States
22 platform first. Okay? And then try to accomplish a
23 bigger role with a bigger partner.

24 Q. who owns the sites that Alliance Biomedical Group
25 International helped create a platform for and train in

1 Russia, Hungary, and Spain?

2 A. Yeah, in St. Petersburg Alliance is closed. In
3 Budapest Alliance is closed. In Izhevsk Alliance is
4 closed. There's other groups that operate them. Have
5 no relation to me or Alliance Biomedical Group
6 International.

7 Q. You have no interest in any of those?

8 A. None.

9 Q. Do you have an interest in any LLC, corporation,
10 partnership, PA, any corporate entity that has an
11 ownership interest in a research facility outside of
12 the United States?

13 A. I don't.

14 Q. And other than what you're already told me in North
15 Carolina, Georgia, and South Carolina, in what other
16 states do you have any corporate entity in which you
17 have an ownership interest?

18 A. I mentioned them all. None more than I mentioned.

19 Q. So when you said they were too numerous to mention and
20 you mentioned like maybe 10 of them---

21 A. Eleven.

22 Q. Eleven. So is that it?

23 A. Yes. I also have ownership in Alliance -- in Alliance
24 -- it's called by Alliance Biomedical Research Holding.
25 That's new. I have a small percentage.

1 Q. And what percentage do you have?

2 A. I am not sure. Seven, eight percent, something like
3 that.

4 Q. So there was a sale, I think you said, a sale of
5 Alliance Biomedical Research, LLC to a new company?

6 A. Yes.

7 Q. And what then became of Alliance Biomedical?

8 A. Alliance Biomedical Group?

9 Q. Yes.

10 A. I mean Alliance Biomedical Research?

11 Q. Alliance Biomedical Research.

12 A. It's a total subsidiary of the new company. It's owned
13 completely by new ownership group.

14 Q. And what is Alliance Biomedical Research, LLC?

15 A. That's what we were just talking about, Alliance
16 Biomedical -- I may have -- I may have confused
17 Alliance Pharmaceutical Research with Alliance
18 Biomedical Research. Okay? If I did, please forgive
19 me. It may be ABR, Alliance Biomedical Research. Yes.
20 Yeah, that -- that company is -- no longer exists as
21 independent at all. It belongs to Alliance Biomedical,
22 Alliance Biomedical Research Holding, ABRH, Inc. It's
23 not LLC. It's Inc. It's a C Corp.

24 Q. Okay. So Alliance Biomedical Research, LLC shows as a
25 South Carolina corporation for profit in good standing

1 today that was created May 21, 2007. Is that
2 corporation still operating?

3 A. No. If it's still operating, it may be operating for
4 another month or two, but it's different ownership and
5 then will disappear. I believe it will disappear
6 January 1.

7 Q. And you mentioned that Alliance Biomedical Group
8 International, LLC no longer exists?

9 A. It still exists, but it will be resolved by the end of
10 the year.

11 Q. It looks like it was changed to Biomedical Research of
12 Europe, LLC?

13 A. Opposite.

14 Q. Sorry?

15 A. Opposite. Biomedical Research of Europe was changed
16 into Alliance Biomedical Group International.

17 Q. Okay. And so what was Biomedical Research of Europe,
18 LLC?

19 A. Same thing as Alliance Biomedical Group International.
20 It changed its name.

21 Q. And it shows that that was created in 2010? I think
22 you mentioned February of 2010?

23 A. Correct.

24 Q. And it changed from Biomedical Research of Europe in
25 2011. Is that right?

- 1 A. That's correct.
- 2 Q. What was the purpose of doing that?
- 3 A. Doing what?
- 4 Q. Changing the name.
- 5 A. Just to expand focus.
- 6 Q. To do what?
- 7 A. To expand the focus, not necessarily just Europe.
- 8 Q. And what you told me about your interest in Alliance
- 9 Biomedical Group International, LLC, you had in the
- 10 Biomedical Research of Europe?
- 11 A. That was different ownership. I don't remember exact
- 12 percentage, but it was different ownership.
- 13 Q. But the names of the members were correct?
- 14 A. Yes. The name -- well, the name of owners have changed
- 15 over time. What hasn't changed, I was owner and Steve
- 16 Clemons was a owner. Those two people -- nobody else
- 17 was a owner other than me and Steve Clemons in that.
- 18 Q. And this is showing it as a South Carolina for-profit
- 19 corporation in good standing today. Are you saying
- 20 that that company no longer does business?
- 21 A. It does not do business. It will be dissolved by the
- 22 end of the year.
- 23 Q. And ABRH, LLC, did that used to be Alliance Biomedical
- 24 Research Holdings, LLC?
- 25 A. Yes, correct.

1 Q. And then you just changed it to ABRH, LLC, which would
2 be the initials of---

3 A. Matt, it's very complex. I'm not an expert, but I'll
4 do my best to answer your question.

5 Q. That's all I can ask.

6 A. It was combined for very short period of time, okay,
7 just recently, and by recently, maybe June, July,
8 something like that, maybe August. Then for sale,
9 okay, it had to unite all the companies in one. Never
10 conducted any business. It was a transition for the
11 bringing partners into it. Okay? So what it is right
12 now, it's not LLC, but LLC may not have been dissolved
13 and may continue to do business independently and may
14 change its name. Okay? So---

15 Q. So right now it's -- go ahead. Sorry.

16 A. LLC, however, is not going to do any research. Okay?
17 It will provide legal services, but will not do any
18 research.

19 Q. So right now, as you sit here today, ABRH, LLC, do you
20 have any ownership interest or are you a member of that
21 LLC?

22 A. I don't think it's LLC. I think it's a C Corp.

23 Q. I'm sitting here looking at it. It's ABRH, LLC.

24 A. Well, I'm confused then. Okay? I promise provide you
25 straight answer, but I ain't no expert on that.

1 Q. whether it's a C Corp or an LLC, whatever it is, ABRH,
2 do you have an ownership interest in that?

3 A. Yes. Yes.

4 Q. what is your ownership in it?

5 A. I don't even know now, but it's probably like 33
6 percent, something like that.

7 Q. Is ABRH the entity that existed after it was sold to
8 the venture capital company?

9 A. No. It's existed since we mentioned in -- since 2007.

10 Q. Then what is Alliance Biomedical Research Holdings,
11 Inc.?

12 A. It's a new company controlled by GPP group, which Gray
13 Point Partners.

14 Q. And who are the principals of that group that you have
15 dealt with in that transaction?

16 A. It was GPP group.

17 Q. We got that before. Now I'm asking about individual
18 names of people that you dealt with in that
19 transaction.

20 A. Adam Dolder, D-o-d-l-e-r [ph], and Stephen weaver, W-e-
21 a-v-e-r.

22 Q. Where are they located?

23 A. In New York.

24 Q. And prior to that sale who owned the older company?
25 who owned what was sold? Strike that. That was

1 horrible. Let me ask you again. What was sold to
2 become Alliance Biomedical Research Holdings, Inc.?

3 A. All of those companies other than Monroe in North
4 Carolina.

5 Q. So right now---

6 A. And, of course, Select Group International not part of
7 it. Alliance Biomedical Group International is no part
8 of it, and Monroe, North Carolina is not part of it.

9 Q. So Union, S. Carolina, Gaffney, Greenville, Rock Hill,
10 Anderson, Gwinnett, Duluth---

11 A. Gwinnett has been -- we've went out of Gwinnett a long
12 time ago.

13 Q. And Duluth?

14 A. No.

15 Q. Just Gwinnett?

16 A. Duluth is functioning.

17 Q. Okay. Gastonia?

18 A. Yes.

19 Q. All of those---

20 A. Anderson, Gastonia. There's another company which I'm
21 not an owner, which is Easley, but I'm not an owner.
22 I'm not an owner there.

23 Q. Who owns Easley?

24 A. Well, Easley right now doesn't exist, but back then it
25 was Steve Clemons, Gary Clemons, and Andras Koser.

1 Q. What the third name?

2 A. Koser, K-o-s-e-r.

3 Q. And that's Doctor?

4 A. Dr. Koser.

5 Q. And when was Easley opened?

6 A. 2007 or eight, I believe, but I'm not -- I don't know.

7 I'm not a part of it.

8 Q. Were you ever a part of it?

9 A. Never.

10 Q. But the people who were a part of it, you had
11 commonality of ownership in these other corporations
12 with?

13 A. No. Just Steve Clemons. One person in Easley has a
14 commonality of ownership.

15 Q. And when did Easley close?

16 A. It was sold.

17 Q. When was it sold?

18 A. September sometime.

19 Q. This year?

20 A. Yeah.

21 Q. And to whom was it sold?

22 A. To GPP group. Easley -- Easley became part of the
23 unification of the network.

24 Q. So all of those facilities, all those sites were
25 independent corporate entities. Correct?

1 A. Correct.

2 Q. And they were all sold to GPT---

3 A. GPP.

4 Q. GPP, thank you. They were all sold to GPP except for
5 Monroe, North Carolina and Hendersonville, North
6 Carolina?

7 A. It's partially accurate. It's not a sale. It's a
8 capitalization where they have a majority ownership.
9 Okay? But the entities been combined in one. So all
10 kind of people receive percentage on very complex,
11 which I don't understand, I'm sorry, complex formula.
12 Okay? I don't really understand it. Right? But all
13 of that was combined into the one company.

14 Q. And that, you think, is Alliance Biomedical Research
15 Holdings, Inc.?

16 A. Right.

17 Q. And who are the stockholders of that company?

18 A. GPP and Steve Clemons, Anna Buice, Hailey Williams, Joe
19 Boscia, Greg Feldman. That's I think who they are.

20 Q. And what---

21 A. Oh, wait, wait, wait. Gary Clemons. And there's many
22 minorities which I -- if I miss something, then it's
23 okay, but I'm going to do my best from my memory.
24 Okay? Dr. Eziri, E-z-i-r-i, Dr. Charles Thompson, Dr.
25 Rachel Nisbet, Nisbet, N-i-s-b-e-t-t [ph], Dr. Bill

1 Alleyne, Dr. -- not Dr. -- Niki Tyson, Emily Feldman,
2 not a doctor. If I miss one or two, please forgive me,
3 but I think that's it.

4 Q. what is your percentage of ownership in the new
5 company?

6 A. Matt, I believe it's like seven percent.

7 Q. what ownership does GPP have?

8 A. They have 59 or 60 percent. Sixty percent. I believe
9 60 percent. There's some dilution stuff, but between
10 59 and 60 percent.

11 Q. And approximately what are the shares of the rest of
12 the minorities, the rest of the other owners that you--
13 -

14 A. Yeah, I can only speak for myself and Boscia. We have
15 the same. The rest I'm not sure, but me and Boscia
16 have identical number of shares.

17 Q. Now, the names of the minority owners that you
18 mentioned to me, Niki Tyson, Emily Feldman, when did
19 they first become involved with any corporate entity
20 that you had any involvement with?

21 A. Sometime in 2015. That was Emily. And Niki was
22 involved sometime in 2014.

23 Q. How about Rachel Nisbet?

24 A. Rachel was involved, I think, about the same time, '12
25 or '13.

1 Q. How about Charles Thompson?

2 A. 2013, 2012.

3 Q. Dr. Eziri?

4 A. I believe 2014.

5 Q. And how about Dr. Alleyne?

6 A. 2011.

7 Q. And Dr. Alleyne was one of your experts in the
8 underlying medical malpractice case?

9 A. That's how I located him, exactly. I located him after
10 the trial. The trial was in 2010. I located him about
11 12 months later. It would be 2011.

12 Q. And what's his specialty?

13 A. He's a pulmonologist.

14 Q. How about Dr. Eziri?

15 A. A pulmonologist.

16 Q. Are these all pulmonologists, the ones who are M.D.s?
17 Are there any non-pulmonologists?

18 A. Just a second. I'm thinking. All pulmonologists.

19 Q. What is Alliance Biomedical Group USA, Inc.?

20 A. That is a company that is exclusively owned by me, and
21 it provides PI -- provided PI services to S. Carolina.

22 Q. When you say PI, what do you mean?

23 A. It's an independent contract for being a primary
24 investigator.

25 Q. And that's for research purposes?

1 A. Yes.

2 Q. So did you incorporate yourself -- you were sole owner
3 of that corporation?

4 A. Yes, I was.

5 Q. And then you contracted yourself to whom?

6 A. Well, I contracted myself to S. Carolina.

7 Q. To what?

8 A. S. Carolina.

9 Q. To S. Carolina?

10 A. Yeah.

11 Q. What was the purpose of doing it that way?

12 A. Not sure. I got some advice somewhere.

13 Q. All right. When all of these entities were sold to the
14 new corporation, what was the price of that? What was
15 the money that changed hands?

16 A. Well, the combined volume of the company that included
17 a platform, which was the biggest one, was about \$50
18 million.

19 Q. Fifty?

20 A. Fifty.

21 Q. So in looking at all of the research facilities that
22 you described, the corporations that we described that
23 became part of the new group, which is Alliance
24 Biomedical Research Holdings, Inc. Right? The Inc. is
25 the new group?

1 A. It's a capitalization. It's not like we received \$50
2 million. The new company was -- became \$50 million.
3 Of course, they own 60 percent.

4 Q. Well, GPP acquired 60 percent of the conglomerate.
5 okay?

6 A. Sixty percent of 50 million-dollar conglomerate.

7 Q. So GPP paid to the, I guess, new owners 60 percent of
8 \$50 million?

9 A. Forty percent.

10 Q. Forty percent?

11 A. Right.

12 Q. They acquired 60 percent of it. Right?

13 A. Well, it's capitalization. You appraise the entity.
14 Okay? Forty percent minority owners, 60 percent
15 majority owners of that conglomerate. Okay? So it's
16 out of \$50 million, they own 60 percent of it.

17 Q. Okay, that's what I thought I asked, but maybe I
18 didn't.

19 A. I don't know. I'm just -- remember, I'm not an
20 accountant. So if I didn't answer the question
21 correctly, not for lack of trying.

22 Q. I appreciate the effort. So what you're saying, as I
23 understand it then, is that the conglomerate was
24 appraised at \$50 million.

25 A. Correct.

1 Q. And then GPP acquired 60 percent of that?

2 A. Yes.

3 Q. And in order to have acquired 60 percent of that, GPP
4 had to put some funds into the corporation.

5 A. Yes.

6 Q. So that would have been 60 percent of 50 million, which
7 I'm not an accountant either, but I think that's \$30
8 million. Is that right?

9 A. You're confusing me, because I only concentrate on my
10 portion. Okay? So the \$50 million -- let's just use
11 \$50 million. Okay?

12 Q. Okay.

13 A. All the funds come in. Okay? But only 40 percent are
14 paid out.

15 Q. Right.

16 A. Make sense?

17 Q. Yeah, it does in the sense that you had ownership
18 interest in all of these other entities and you were
19 trading some of your value in those companies for a
20 value in the amalgamated company.

21 A. Right.

22 Q. And I think you said you had seven percent?

23 A. I think so. Okay? It's seven percent, something like
24 that.

25 Q. So your ownership or the value of your ownership now

1 would be -- or at the time of the sale would be seven
2 percent of \$50 million?

3 A. Yes.

4 Q. Whatever that might be?

5 A. Yeah, that makes sense.

6 Q. So with the North Carolina facilities, who then owns
7 those facilities?

8 A. Well, it's wholly owned by Select Biomedical Group
9 International. Select Biomedical Group International
10 had three owners, which is Greg Feldman, Benjamin
11 Karsai, spelled K-a-r-s-a-i, and Suvi Gross, spells G-
12 r-o-s-s, first name spells S-u-v-I.

13 Q. And what is the value of that company?

14 A. Nobody knows. It's never been appraised.

15 Q. When was it established?

16 A. In 2016.

17 Q. And was that created for the purpose of being a holding
18 company for the two North Carolina sites?

19 A. There is no two North Carolina site. There's one.

20 Q. I thought you said Monroe and Hendersonville.

21 A. Hendersonville belongs to the Alliance group.

22 Q. So Hendersonville was part of that group that went to
23 the new corporation?

24 A. That's correct.

25 Q. Okay. What was Research Count, Inc.?

1 A. I don't know. It's -- it never conduct any business.

2 Q. Because it appeared to have been incorporated on
3 November 22, 2013.

4 A. Yeah. It is -- it never conducted any business.

5 Q. And it appears to have been the predecessor to Select
6 Biomedical Group International, LLC.

7 A. And that conducted business, but Research, Inc. has
8 never conducted any business. It was just a name.

9 Q. Fair enough. So, as I understand it, as you sit here
10 today, you've got ownership in the new company, the
11 International, Inc., and then you've got ownership in
12 Select Biomedical Group International, LLC, and that is
13 the owner of the Monroe, North Carolina facility?

14 A. Yes.

15 Q. Is that Monroe Pharmaceutical Research?

16 A. Monroe Pharmaceutical Research.

17 Q. And who are the owners of that?

18 A. Suvi Gross, Greg Feldman, and Ben Karsai.

19 Q. All right. Do you have any interest in any other
20 corporations, LLCs, corporate entities in the United
21 States, whether or not they do medical work or research
22 work?

23 A. Well, we discussed Alliance Biomedical Group Holding,
24 which provide legal services, and it's still in
25 existence.

1 Q. And to whom does that provide legal services to now?

2 The same entities as before?

3 A. No. That's to be determined.

4 Q. So right now it doesn't do anything?

5 A. Well, it does do a lot. It has -- well, it doesn't do
6 any contract work, that's true, but it does have a
7 litigation on behalf of Alliance Biomedical Group
8 Holding.

9 Q. And what litigation is ongoing with any of these
10 entities that you're involved with right now?

11 A. Alliance Biomedical Group Holding is in litigation with
12 Parham Smith law firm, and the -- that's it, Alliance
13 Biomedical Group. Alliance Biomedical Research Holding
14 is also in litigation with -- not litigation, providing
15 legal services for Greenville Pharmaceutical Research
16 for the lawsuit against Parham, Parham Smith, and a
17 fellow named Gerald Sokol, S-o-k-o-l, M.D.

18 Q. So when we're talking about other non-research, non-
19 medical corporations, you mentioned Alliance Biomedical
20 which provides legal services that you've described.
21 What other corporate entities do you have an ownership
22 interest in in the United States?

23 A. I have a real estate partnership.

24 Q. And what is that?

25 A. That's a partnership that holds buildings.

1 Q. Holds real estate?

2 A. Real estate.

3 Q. What is the name of that company?

4 A. You're putting me on the spot. I'm going to do my
5 best. If I -- you know, if I forget something, please
6 forgive me. I'll give you complete list, but I'll do
7 my best. Okay?

8 Q. All right.

9 A. I don't remember the names. I'm just going to give you
10 the partnerships, what they hold. There's a
11 partnership that hold property at North Grove Medical
12 Center, North Grove Medical Center, Spartanburg, South
13 Carolina. There's a partnership that hold the real
14 estate for S. Carolina Pharmaceutical Research
15 building, for Upstate Lung Critical Care Specialists
16 building, for 1091 Boiling Springs Road building, for
17 Gaffney building, for Rock Hill building, for Duluth
18 building, for -- there's a property named Clinchfield,
19 Clinchfield. That's street Clinchfield that is in
20 Spartanburg. There's a partnership for that. There is
21 a partnership -- I'm thinking. There's land that where
22 Symposium Café was, but I'm not involved with it. I
23 believe there's my name on it, but there's a
24 partnership for land. And that's it, I think, but I'm
25 not sure. The name of the partnerships for -- do not

1 remember any of it. Not dealing with that. Don't
2 remember any name of that. If you want to be provided
3 with that, we'll provide you with that. I may have
4 omitted a few more, but I don't hold anything outside
5 of Spartanburg, Greenville, Union, or Gaffney, and
6 Duluth. That's it.

7 Q. So there is a corporation that holds property and owns
8 that property?

9 A. Yeah, there's some corporation.

10 Q. You mentioned S. Carolina, a couple of the research
11 facilities. Did the ownership of those properties not
12 go with the creation of the new corporation?

13 A. They're different real estate partnerships. They're
14 not related to the research or corporate business.
15 They're just holding either land or building.

16 Q. So the new corporation pays rent on those facilities?

17 A. Yeah, they're paying rent. They're not involved with
18 any of that.

19 Q. And whatever it is that that corporation may be named,
20 is there just one corporation that holds that property,
21 or is there more than one?

22 A. There's many. Every time when I mentioned, I mentioned
23 a corporation that own the land corresponding to the
24 buildings. They have nothing to do with research.
25 They are real estate.

1 Q. I'm just trying to figure out how many corporations
2 there are.

3 A. Well, it's a good question. It would be easier if you
4 just ask me to provide you a complete list. I'll go to
5 the accountant and he can send it to you in one minute,
6 but I don't have it.

7 Q. Okay. Can you get that to Mr. Mann so he can get it to
8 me?

9 A. Easy.

10 Q. What is your ownership interest in those corporations?

11 A. He'll send it to you. It's not a majority. I don't
12 own anything by myself.

13 Q. Who are the other owners?

14 A. It usually corresponds to the -- to the owners of the
15 corporation for research.

16 Q. So there's commonality of ownership in the new
17 corporation and in the holding companies that own the
18 property whereon the new companies' facilities operate?

19 A. I would phrase it differently, Matt. If S. Carolina
20 was owned by Joe Boscia, Greg Feldman, and Anna Buice,
21 that would be the composition of the owners of that
22 particular location. If Greg Feldman, Joe Boscia, and
23 Hailey Williams were holding property in Union, that
24 would be the composition of that real estate and so on.
25 But I'll give y'all a complete rundown.

1 Q. All right, I appreciate that. And I'll leave this,
2 because I've got to move on, but just to make sure I
3 understand, each of the facilities, the real estate
4 with regard to those facilities are owned by a
5 partnership that corresponds to the owners of the
6 facility?

7 A. Correct.

8 Q. And then there is one or more holding corporations that
9 then owns the partnerships?

10 A. Largely it's true, but not -- again, I'm not an expert
11 on that. I can -- can give you expert's complete
12 rundown of percentages, who own where in a minute.
13 Okay? The accountants have it all.

14 Q. Okay. So we know about the two Parham cases that you
15 mentioned. What other current litigation is currently
16 pending that involves any corporation or entity or
17 individual that you are associated with?

18 A. That's it except -- except for Upstate Lung and
19 critical care is involved in litigation with your
20 client.

21 Q. And previously how many times have you individually
22 been sued for medical malpractice?

23 A. Been sued twice.

24 Q. Just briefly tell me about those two cases.

25 A. Well, the one that our lawsuit arising from you know

1 very well, and the other one was I believe in 2000-
2 something, and it was a case of allegedly missed lung
3 cancer on x-ray.

4 Q. That was Bruce?

5 A. Yes. No, no, no, no, no. Bruce have nothing to do
6 with that. Bruce is Greenville.

7 Q. Right. Well, Bruce, they sued Allied, they sued
8 Greenville---

9 A. Not me personally. You asked me about me personally.

10 Q. Well, I did more than that. I asked about you or any
11 corporate entity that you have an ownership in.

12 A. Yes. Greenville was sued by a fellow named Bruce.

13 Q. Right. And then how about---

14 A. And Alliance Biomedical Research was sued by the fellow
15 named Mike Parham.

16 Q. He was the attorney. Is that correct?

17 A. No. We believe that he was the one who was driving it
18 with Bruce being unaware of the lawsuit.

19 Q. Okay, I'll get to that in some detail in a little
20 while.

21 A. Sure.

22 Q. I just want to make sure that I understand all of the
23 cases where Gregory Feldman, M.D. has been sued as a
24 physician for malpractice, and you've told me all of
25 those?

1 A. Yeah, I believe, unless I forgot something.

2 Q. Have you been sued for any other reason other than
3 malpractice?

4 A. I wasn't.

5 Q. I'm sorry?

6 A. Never.

7 Q. Okay. How many times has Greg Feldman been a plaintiff
8 in a civil lawsuit?

9 A. Greg Feldman never been a plaintiff in a lawsuit until
10 this event.

11 Q. How many times has a corporate entity in which Greg
12 Feldman has an ownership interest been a plaintiff in a
13 lawsuit?

14 A. Twice, the one that I mentioned.

15 Q. No others?

16 A. No others.

17 (Defendant's Exhibit Number 55 marked)

18 EXAMINATION RESUMED BY MR. HENRIKSON:

19 Q. I'm going to show you what's been marked as Exhibit 55.

20 A. At least to the best of my recollection.

21 Q. I will represent to you that this is the verified
22 Complaint in Greenville Pharmaceutical Research, Inc.
23 where you sued Parham and Smith, LLC and Gerald Sokol,
24 who was the expert in Tampa, Florida in the Bruce case.
25 Is that right?

1 A. Correct.

2 Q. What entity or individuals sued Dr. Jantz? Do you
3 remember?

4 A. Jantz?

5 Q. Yeah, Jantz. He was the guy that got sued in Florida
6 in this case.

7 A. I don't remember.

8 Q. You don't remember? You remember Dr. Jantz. Right?

9 A. Yes, but I don't remember him being sued.

10 Q. You don't remember him being sued at all?

11 A. No.

12 Q. That's a complete surprise to you?

13 A. Oh, yeah, yeah, yeah, yeah, yeah, yeah. That lawsuit
14 was filed and immediately was dropped because we had
15 realized that he made a mistake. Initially we thought
16 that it was a purposeful lie, and this lawsuit never
17 went through. It was immediately dropped like within
18 days.

19 Q. That's because JUA told you you had to withdraw it.
20 Right?

21 A. No.

22 Q. JUA never told you---

23 A. Me personally?

24 Q. Well, your lawyers, you, any entity that you were
25 involved in.

1 A. I never had discussion with JUA about that.

2 Q. Would you deny that JUA expressed displeasure at the
3 fact that Dr. Jantz was being sued?

4 A. I'm not going to deny anything. I had no discussion
5 with JUA whatsoever. Never came up in any discussion
6 of mine.

7 Q. So did you have any involvement in the decision of
8 Greenville Pharmaceutical Research, Inc. to sue Parham
9 and Smith?

10 A. Yes, I was.

11 Q. And I don't know if I went through this. At that time,
12 who were the shareholders of Greenville Pharmaceutical
13 Research, Inc.?

14 A. It was Steve Clemons, Anna Buice, Joe Boscia, and
15 myself.

16 Q. And what is the basis for the lawsuit that you've got
17 in front of you?

18 A. Well, here is the basis. In the Bruce litigation, John
19 Bruce and Marilyn Bruce, through their attorney,
20 Parham, alleged that Greenville Pharmaceutical Research
21 and Alliance Biomedical Research failed to possess the
22 degree of care, competence and skill ordinarily and
23 customarily possessed by similar healthcare providers
24 in similar circumstances or failing to exercise that
25 degree of care, competence and ordinary skill. The

1 first cause of action, which is fraud against Sokol,
2 Sokol is a licensed physician who has testified in
3 several hundred medical negligence cases, several
4 hundred. There was a very high probability Sokol will
5 continue selling his testimony. He has produced an
6 affidavit that Greenville Pharmaceutical Research have
7 done something wrong against Bruce. Well, it turned
8 out that he has retracted and has said that this
9 affidavit, in essence, was sold, in essence, was a
10 perjury, because he was not provided any records, he
11 was not expressing any opinion whatsoever. So he
12 basically submitted a false affidavit saying that
13 Alliance -- Greenville had done nothing. He had no
14 records whatsoever and admitted under the -- on the
15 stand at his deposition that he had never received any
16 records. He doesn't know at all what Greenville
17 Pharmaceutical did in this case and doesn't even know
18 what Greenville Pharmaceutical Research does. So he
19 essentially initiated a lawsuit against a company that
20 doesn't do any medical care whatsoever, with no
21 physicians, no medical providers involved. He just
22 basically made it up.

23 Q. well, what does Greenville Pharmaceutical Research do?

24 A. Research.

25 Q. And they research on human beings. Right?

1 A. In part on human beings. In this particular case that
2 was alleged, there was no research done whatsoever.
3 This patient, this particular subject did not
4 participate in any research.

5 Q. Did that particular subject ever show up at Greenville
6 Pharmaceutical Research?

7 A. Yeah. There is a record that he showed up. He did not
8 qualify for the study and never was in any study.

9 Q. Do you know why he was sent to North Hills Medical for
10 a chest x-ray?

11 A. He wasn't.

12 Q. So he just went on his own?

13 A. He was told that we may need an x-ray, and he went
14 there.

15 Q. Well, how did he know where to go?

16 A. He was told that in this particular case that x-ray may
17 be necessary. Okay? That x-ray was done by a
18 radiologist without any physician note. There was no
19 physician writing anything. It was just done. Okay?
20 He done x-ray. He didn't tell anybody about it. But
21 the case was malpractice. It was a secretary. Who did
22 malpractice? Secretary? You understand secretary
23 cannot commit malpractice.

24 Q. I know you asked Mr. Bogden that question and he didn't
25 have an answer either, but I'm asking you with respect

1 to Greenville Pharmaceutical Research, what person
2 would have told him that he may need an x-ray?

3 A. Nobody told him.

4 Q. He came up with that on his own?

5 A. No. He was told he would be -- he would be -- if he
6 was to participate in the study, that's where x-ray is
7 done, and he went there.

8 Q. That's right. So---

9 A. We didn't know that he went there at all.

10 Q. How did he know where to go?

11 A. I'm not a good person to answer that question. I
12 wasn't involved in that decision whatsoever. I don't
13 work for Greenville Pharmaceutical Research. I'm just
14 an owner. Okay? I'm an owner.

15 Q. If you don't know, you can say I don't know.

16 A. Well, I'm just explaining to you what I done. That
17 nobody ordered this x-ray.

18 Q. Okay. So I just want to---

19 A. He was told that he may need this x-ray, maybe by
20 secretary. Okay? Maybe secretary told him that, you
21 know what, go and do that. The secretary cannot order
22 the x-ray. She's not a physician.

23 Q. I get that.

24 A. All right? Now, medical providers at Greenville
25 Pharmaceutical Research has never been sued for

1 anything, because they've done nothing wrong. Okay?
2 So who then committed malpractice? A brick? A
3 painting? A secretary? So we don't know. Okay? We
4 haven't deposed Sokol. It's complex, but there was
5 nobody that was accused of committing malpractice, not
6 a single medical provider. They've done nothing wrong,
7 any of them. On top of it, he received no records. He
8 said that he received no records. He said I never
9 received any records, I'm not expressing any opinion.

10 Q. You know what, I mean, you seem to know a lot about it
11 on one hand, and then you don't know a lot about it on
12 the other hand. So I'm asking you, with respect to
13 getting the x-ray, at the time, did Greenville
14 Pharmaceutical Research have any arrangements or
15 contracts with anyone to provide x-rays for its
16 research subjects?

17 A. Yes.

18 Q. And was one of those contracts with North Hills Medical
19 Center?

20 A. Yes, but to answer your question I seem a lot to know
21 about it, absolutely. I was involved in decision of
22 filing the lawsuit for the reasons that the man has
23 submitted false affidavit and said he lied,
24 essentially.

25 Q. well, I mean, as part of that decision in going after

1 an expert witness and a lawyer who brought a suit
2 against your company, did you do any internal
3 investigation to find out whether a secretary or a
4 brick or a tree had sent this guy to North Hills
5 Medical?

6 A. We had never alleged that Dr. Sokol received any
7 records. Our allegation he received none.

8 Q. That wasn't my question. My question was, did you ever
9 do any internal investigation to find out how this guy
10 managed to get from your business over to North Hills
11 Medical Center and say I want an x-ray?

12 A. Have to defer that question, because we were sued for
13 medical malpractice. The form of my investigation was
14 who did medical malpractice. My investigation
15 revealed, again, no medical provider was sued and
16 Greenville Pharmaceutical Research is not engaged---

17 Q. I understand that. You've said that a couple times
18 already, and I appreciate the answer. My question---

19 A. I answered your question. I said that what my role
20 was, my role was in this lawsuit to find out what was
21 done medically wrong, okay, by members of Greenville
22 Pharmaceutical Research that have a medical license.

23 Q. All right, let me try again.

24 A. That's it. I wasn't investigating secretaries.
25 Secretary cannot commit medical malpractice.

1 Q. I'm just trying to figure out did it ever -- out of a
2 sense of curiosity, did it ever occur to you, I wonder
3 why this guy just on his own happened to go to one of
4 the contractors that we have for x-rays and got an x-
5 ray there and then never told anybody about it?

6 A. Nobody explained that. He just went there.

7 Q. And you didn't look. You didn't try to find out why.

8 A. Why you saying that? I just explained to you that I
9 have tried to find out what medical provider---

10 Q. I understand. I appreciate that. I don't want to cut
11 you off, but I understand all that.

12 A. Don't know. I don't know why he went there. Okay? He
13 never was in the study. He was disqualified from the
14 study on his heart. Okay? He never came back. Never
15 been in any research study. Never received any medical
16 care. To sue somebody for medical malpractice require
17 to do medical practice.

18 Q. Are you aware that North Hills Medical Center, that
19 their defense was that Mr. Bruce came to us and said
20 that he was getting into a study or he had to be
21 screened for a study at Greenville Research and that he
22 was told he had to have an x-ray and that he had a
23 document in order to entitle him to get an x-ray,
24 because you can't just walk in off the street and go
25 get an x-ray whenever you want to, can you?

1 A. well, it's a great question, because that is indeed --
2 I understand why you're filing a medical malpractice
3 against somebody who's a physician. I got it. Okay?
4 That is -- I got that.

5 Q. I understand that. I understand what you're saying.

6 A. wait a second. I understand that. Okay? Now, it be
7 just or unjust, but that is medical practice. Okay?
8 Greenville Pharmaceutical Research is not engaged in
9 medical practice at all.

10 Q. I understand that, and that's the fourth time you've
11 said it, and I appreciate it, and I promise you it's in
12 the record and none of us in this room is going to
13 forget it, but let me just get back to the question.
14 Do you understand that North Hills Medical Center's
15 defense was Mr. Bruce came here with a document from
16 Greenville Research saying we need a chest x-ray and
17 that he got a chest x-ray and that he came from
18 Greenville Pharmaceutical for that purpose? Do you
19 understand that was their defense?

20 A. I understand that, but I wasn't able to locate what
21 you're talking about.

22 Q. I'm not asking you to approve it or say it's great or
23 not. I'm asking you---

24 A. I understand that. Yes, I understand that. Yes.

25 Q. Okay. And in the course of your plowing forward and

1 suing the lawyer and the expert witness, did you ever
2 at any time stop to try to figure out why Mr. Bruce
3 went to North Hills Medical and said that?

4 A. And why is that important?

5 Q. Well, it doesn't matter why it's important.

6 A. No, I did not.

7 Q. It doesn't matter if it's important. The only---

8 A. No, I did not. The answer to your question, I did not.

9 Q. Okay, thank you. What is the status of that case right
10 now?

11 A. It's on appeal.

12 Q. Inaccurate?

13 A. Appeal.

14 Q. Appeal it, all right.

15 A. To the South Carolina Appellate Court.

16 Q. And from what status is it being appealed from?

17 A. It's appealed from summary judgment.

18 Q. So summary judgment was granted to the defendants in
19 that case?

20 A. It was granted to two different defendants. One was
21 Sokol, and the other one was Parham and Parham and
22 Smith.

23 Q. And you were deposed in that case. Is that correct?

24 A. I was.

25 Q. Were you deposed as an individual or as a

1 representative from Greenville Pharmaceutical Research,
2 Inc.?

3 A. I was deposed as a representative of Greenville
4 Pharmaceutical Research, Inc.

5 Q. Did you verify the Complaint with your signature?

6 A. I believe I did, but remind -- you know, show it to me.
7 I've got so many documents.

8 Q. And in this lawsuit, Greenville Pharmaceutical Research
9 claims that they were damaged in their reputation, in
10 money, and in emotional tranquility and privacy. Is
11 that correct?

12 A. That's correct.

13 Q. And how was Greenville Pharmaceutical Research, Inc.
14 damaged in reputation by the Bruce lawsuit?

15 A. Greenville Pharmaceutical Research does not conduct any
16 medical care.

17 Q. That's completely nonresponsive to the question. How
18 was Greenville Pharmaceutical Research, Inc. damaged in
19 its reputation by the filing and prosecution of the
20 Bruce lawsuit as alleged in your Complaint?

21 A. I just answered the question.

22 Q. No, you didn't.

23 A. Yes, I did.

24 Q. You told me they didn't have any medical care, they
25 didn't give medical care.

1 A. Yeah, and this suit, this lawsuit was leaked to the
2 IRB, which is Internal Revenue Board. It was basically
3 leaked by Parham through the extrajudicial means, just
4 basically sent it. Okay? Sent letters, okay, making
5 absolutely astonishing allegations against Greenville
6 Pharmaceutical Research within -- not within the
7 lawsuit, outside the lawsuit.

8 Q. So, again, how was GPR damaged in reputation?

9 A. I just explained it to you. It was preposterous
10 allegations sent to the IRB.

11 Q. And how do you quantify they're being damaged in
12 reputation?

13 A. It's a jury quantification. It's not an expert
14 witness, not Greg Feldman. I'm not an expert at
15 quantifying damages.

16 Q. So you can't tell me how Greenville Pharmaceutical was
17 damaged?

18 A. Expert certainly can.

19 Q. I didn't ask about an expert. I asked about you.

20 A. I'm not putting the money on it because I'm not an
21 expert on those issues.

22 Q. Then you can say I don't know.

23 A. Yes, I don't know.

24 Q. Very good. And how was Greenville Pharmaceutical
25 Research damaged in money?

1 A. Greenville Pharmaceutical Research has engaged in talks
2 of expanding. All our operations do that way. Okay?
3 Many of them. For example, Union own Rock Hill.
4 Greenville own Anderson. Okay? Greenville was
5 postponed any discussion for a year and a half. That's
6 a lot of money for the expert to calculate. It
7 basically stopped in our tracks, stopped our lives on a
8 preposterous lawsuit.

9 Q. So you're saying that because of the Bruce lawsuit that
10 your companies stopped making money?

11 A. I didn't say companies. Greenville put on hold
12 execution of its plan.

13 Q. What was its plan?

14 A. To expand.

15 Q. Did they stop? And where were they going to expand to?

16 A. Anderson, South Carolina.

17 Q. And that happened, I think you said -- when was the
18 Bruce suit filed?

19 A. On us? Against Greenville?

20 Q. Yes, sir.

21 A. 2011.

22 Q. And Anderson was opened in 2012?

23 A. Anderson was opened in 2012.

24 Q. Okay. How was Greenville Pharmaceutical Research, Inc.
25 damaged in emotional tranquility?

1 A. It require the corporation to concentrate on -- not on
2 the business plan, but on defending preposterous
3 lawsuit.

4 Q. Any other explanation as to how Greenville
5 Pharmaceutical Research was damaged in emotional
6 tranquility?

7 A. I just explained it, to detract the corporation from
8 its normal course of business and to force it to defend
9 a preposterous lawsuit.

10 Q. Did you start turning away research subjects because of
11 this?

12 A. Massive. Anderson is a, what, 2 million-dollar
13 corporation.

14 Q. And it opened the year after the lawsuit was filed.

15 A. Yeah. Had to postpone it for entire year.

16 Q. Did Greenville Pharmaceutical after the filing of the
17 Bruce suit tell people, no, we don't want to do studies
18 with you, go away?

19 A. Yeah. Said that we're not going to go to Anderson.

20 Q. Not Anderson. Greenville. I'm not talking about---

21 A. Greenville. Greenville Pharmaceutical Research
22 business continued as usual.

23 Q. Okay. There was no difference or change there?

24 A. No.

25 Q. You're claiming that the only difference is that

1 Anderson was postponed for a year. Is that right?

2 A. We discussed about reputation. We discussed things,
3 but the major damage to the business is postponing the
4 corporation for a lengthy period of time. When I say
5 lengthy period of time, maturing of the corporation
6 takes two and a half to three years. Okay? To grow
7 the business from 2013 to 2016 is not the same as
8 growing the business from 2010 or 2011 to 2016. It's a
9 massive difference. Do you know -- do you know why?

10 Q. Yes.

11 A. You want to know?

12 Q. Yes, I do know. I already know.

13 A. Okay. All right.

14 Q. Who is Elizabeth Brandon?

15 A. That's a cancer case.

16 Q. That's the one you were talking about before?

17 A. Yes.

18 Q. And that was filed in 2003?

19 A. I think so. I'm not sure.

20 Q. What happened in that case?

21 A. Well, in the year 2000, she came in with abnormality on
22 chest x-ray. But I left the group, and apparently she
23 wasn't for a while. When she came back to see me, I
24 was originally in a different group, and the repeat x-
25 ray showed a mass, which by then it wasn't really

1 operable. And the lawsuit was filed saying that I
2 should have -- even though I left, I should have
3 followed up, and that's the case of missed lung cancer.

4 Q. And what was the result of that case?

5 A. We settled it.

6 Q. For how much?

7 A. I don't remember, don't really remember.

8 Q. Who was your insurance carrier at that time?

9 A. JUA.

10 Q. And Mr. King was your attorney?

11 A. Yes.

12 Q. Who is Elnora Williams?

13 A. Ah, yeah, yeah, yeah, yeah, yeah. I forgot one more
14 case. You're right. Elnora Williams. That was a case
15 of -- this is a patient that was intubated. During
16 intubation, part of a denture ended up in his lung, and
17 it was not discovered by radiologist. It was just not
18 seen. Then I have -- though they sued radiologist and
19 me, I pulled it out. Did the rigid bronch and pulled
20 out the denture, and patient did fine. No, I was
21 dismissed from that case. Okay? That case was settled
22 by radiologist. And that was in early 2000, I believe.

23 Q. Who is Care Improvement Plus Practitioners, LLC?

24 A. I'm not personally involved. This is Care Plus
25 insurance company that did not pay Upstate Lung

1 \$300,000, and Upstate Lung is trying to collect from
2 them nonpayment.

3 Q. Well, I mean, you were the plaintiff. Right?

4 A. I wasn't plaintiff. It was error. It was---

5 Q. You were not the plaintiff?

6 A. No.

7 Q. Who was really the plaintiff?

8 A. Upstate Lung. My name is there by mistake. I'm not
9 suing Care Plus. I have nothing to do with Care Plus.
10 It's Upstate Lung issue.

11 Q. But you are an owner of Upstate Lung.

12 A. One of six owners, yes.

13 Q. But you're still an owner of Upstate Lung. Right?

14 A. Yeah, minority owner.

15 Q. Did you refrain from voting to sue Care Improvement?

16 A. No. I was like everybody else, they need to pay.

17 Q. And then there was the declaratory judgment action with
18 JUA. Is that right?

19 A. Yeah, that was a lawsuit within a lawsuit.

20 Q. Who is Milford Hinson?

21 A. Don't know.

22 Q. No idea?

23 A. No.

24 Q. Do you remember being sued in 1995 for any reason?

25 A. No.

1 (Defendant's Exhibit Number 56 marked)

2 EXAMINATION RESUMED BY MR. HENRIKSON:

3 Q. Let me show you what's marked as Defense Exhibit 56.

4 MR. MANN:

5 Matt, in a few minutes when you get to a point
6 let's take a break.

7 MR. HENRIKSON:

8 why don't we do it now, because I'm getting ready
9 to start something new.

10 (Off the Record; 3:09 -- 3:14 p.m.)

11 (Defendant's Exhibit Number 57 marked)

12 EXAMINATION RESUMED BY MR. HENRIKSON:

13 Q. I got one exhibit ahead of myself. Let me give you 57.

14 So Exhibit 57 is the Amended Complaint in Alliance
15 Biomedical Research, LLC versus Mr. Parham's estate
16 and Dr. Sokol. This is the one I think you said is
17 currently on appeal from -- no, this is different.
18 What's the status---

19 A. Talking about Greenville?

20 Q. That was Greenville.

21 A. Right.

22 Q. This is the new one. Right?

23 A. This a different one.

24 Q. Right, this is a new one, different one.

25 A. I don't know it's old or new.

1 Q. It's a separate lawsuit. Whether it's old or new, it's
2 a separate lawsuit.

3 A. Separate, yeah.

4 Q. Filed in a separate county.

5 A. Right.

6 Q. But also against Dr. Sokol and also against at this
7 point Mr. Parham's estate because he passed away prior
8 to your filing the suit. Is that right?

9 A. I'm going to make a small correction here. Look at the
10 date, because Sokol is dismissed from this lawsuit and
11 Parham and Smith was inserted into lawsuit by the
12 judge.

13 Q. So let me make sure I understand then. Alliance
14 Biomedical Research, the Pickens County case, Dr. Sokol
15 was dismissed?

16 A. Yes.

17 Q. And why was he dismissed?

18 A. He was dismissed because his affidavit did not mention
19 Alliance Biomedical Research. It was only against
20 Greenville. And Parham and Smith, LLC was inserted by
21 order of the judge. There was motion filed by Parham
22 estate to include them, and it was granted.

23 Q. Did you verify this Complaint, as well?

24 A. Yes.

25 Q. And who participated in the decision-making for filing

1 this lawsuit?

2 A. Greg Feldman, Joe Boscia, Steve Clemons, Anna Buice,
3 Hailey Williams.

4 Q. And that list did include you. Right?

5 A. And myself, right. I said Greg Feldman, Joe Boscia.

6 Q. I'm sorry. So what then was the basis for this
7 lawsuit?

8 A. Against who?

9 Q. Well, against whoever it is you filed the lawsuit
10 against. We're looking at Exhibit 57.

11 A. Yeah. Parham threatened to sue our client, GSK. Okay?
12 And he also filed a lawsuit without Bruce knowing
13 nothing about Alliance on his own. Mr. Bruce has
14 testified that he has no idea what Alliance was, never
15 saw anybody at Alliance, never met anybody with
16 Alliance, never heard about Alliance. And Dr. Sokol
17 was sued because he provided affidavit, but judge has
18 determined that affidavit doesn't mention Alliance, it
19 only mentioned Greenville, and because Alliance and
20 Greenville are separate businesses, then he has
21 dismissed the case, and we agreed with that.

22 Q. But initially you sued Dr. Sokol. Right?

23 A. Right.

24 Q. And you read his affidavit?

25 A. Right. We thought that he took a part in dragging

1 Alliance just like Greenville into the litigation, but
2 judge has determined that we did not stand the ground
3 because he did not mention it in his affidavit, and,
4 upon further consideration, we have decided not to
5 appeal that.

6 Q. And what was the evidence you had that Dr. Sokol had
7 somehow participated in the dragging of Alliance
8 Biomedical Research into this lawsuit?

9 A. He has filed a false affidavit, and he had a
10 conversation with Parham about creating false affidavit
11 against both companies. So his discussion about this
12 affidavit with Parham what precipitated the lawsuit,
13 but he did not put Alliance into his affidavit, and
14 judge said that's insufficient.

15 Q. So the affidavit you're talking about, is that Exhibit
16 A to your Amended Complaint?

17 A. Show it to me. Where is it?

18 Q. It's right in front of you.

19 A. What page?

20 Q. It looks like these pages aren't numbered. If you go
21 to the end of the lawsuit---

22 A. Very end?

23 Q. At the end of the lawsuit begins some exhibits.

24 A. Exhibits.

25 Q. And the first exhibit is Affidavit of Gerald H. Sokol,

1 M.D.

2 A. Let me see it. I see the letter that was written by
3 Parham. Yeah, that letter also played a role in this
4 decision. That's why it's here. And I see Parham,
5 Parham, Sokol. Found it. Yes, this is affidavit,
6 Exhibit B, page 10.

7 Q. Well, it says Exhibit A down at the bottom. It may be
8 Exhibit B to something else.

9 A. Well, let me show it to you what I'm looking at.
10 Affidavit of Sokol Exhibit B.

11 Q. Let me show you what I'm looking at. Right there.

12 A. Exhibit B.

13 Q. Exhibit A. See the bottom? It's Exhibit A to the
14 Complaint. It may be Exhibit B to something else, but
15 it's Plaintiff's Amended Complaint, Exhibit A. You see
16 that?

17 A. Got it.

18 Q. All right. Now we're on the same page.

19 A. Yes.

20 Q. Is this the affidavit you say was false?

21 A. Yeah.

22 Q. Why was it false?

23 A. "In this case, based upon my review of medical record
24 as stated, specifically the radiology report of Desai."
25 Okay? "There is at least one negligent deviation from

1 the standard of care on behalf of Desai, North Hills
2 Medical Center," which is his employer, "and Greenville
3 Pharmaceutical Research." Greenville Pharmaceutical
4 Research doesn't practice medicine. It has no
5 deviation. It has bricks, phones, secretaries. It
6 does not practice medicine. It doesn't write
7 prescriptions. It doesn't write orders for x-rays. It
8 doesn't do anything. Greenville Pharmaceutical
9 Research is a building.

10 Q. And it employs people. Right?

11 A. Yes.

12 Q. And it employs people who handle research subjects who
13 come in and submit to research. Correct?

14 A. It does.

15 Q. And they provide for things like x-rays and other
16 things that take place as part of the---

17 A. No.

18 Q. They don't?

19 A. They don't do x-rays.

20 Q. I know the---

21 A. Physician does.

22 Q. I didn't tell you that. I didn't say that. I said
23 they provide for x-rays. They send them somewhere to
24 get x-rays. Right?

25 A. who are they?

1 Q. The employees of Greenville Pharmaceutical Research.

2 A. No, they don't.

3 Q. So these people just go on their own---

4 A. What, x-ray?

5 Q. Yeah.

6 A. It require physician order.

7 Q. I understand that. So who signs that?

8 A. Physician.

9 Q. Which physician?

10 A. In this particular case, it would be principal
11 investigator, Dr. Walker at the time.

12 Q. So the principal investigator is somebody who is
13 associated with the research facility. Correct?

14 A. Not at all. Independent contractor. Has nothing to do
15 with research facility.

16 Q. Well, he may not be employed there, but if he is
17 writing prescriptions for test subjects, wouldn't you
18 think that he's got some association with it?

19 A. No, he doesn't. He would practice medicine under his
20 own license.

21 Q. All right. So---

22 A. Greenville Pharmaceutical Research doesn't have a
23 license to practice medicine.

24 Q. I understand, and that I will never forget as long as I
25 live. But let me ask you this. Some physician

1 somewhere has to get the test subjects somewhere else
2 to get an x-ray. Correct?

3 A. What physician?

4 Q. Principal investigator is always a physician.

5 A. He's not employed by Greenville Pharmaceutical
6 Research.

7 Q. I understand that. Didn't ask you that. But a
8 principal investigator, some M.D. somewhere has to sign
9 a piece of paper that authorizes your test subjects, if
10 they need x-rays, to get x-rays someplace. Right?

11 A. Yes.

12 Q. Okay. So the principal investigator is doing that for
13 research subjects who come to Greenville Pharmaceutical
14 Research and say I'm willing to be in your study.
15 Right?

16 A. Yes.

17 Q. Okay. So then that M.D. is signing a piece of paper
18 for that person to go to North Hills Medical Center or
19 some other place to get an x-ray.

20 A. Well, that person needs to be sued.

21 Q. Well, I didn't ask you that.

22 A. Not Greenville.

23 Q. Didn't ask you that. I just asked you the process is
24 somebody shows up at Greenville Pharmaceutical and says
25 I'll be in your study for whatever money you give them,

1 and then somebody makes a decision you need an x-ray or
2 you don't have an x-ray, and, if you do need one, we
3 want you to go to North Hill Medical Center and get
4 one.

5 A. We were doing great, but now we have a total
6 disconnect. Greenville Pharmaceutical Research, which
7 is a defendant, doesn't do any of that, none of it.

8 Q. They don't do anything. They---

9 A. Nothing. People do. People. Okay?

10 Q. Yes. And---

11 A. With M.D. license. Medical care is strictly regulated
12 by license.

13 Q. I get it, that the bricks and the phones don't do
14 anything to anybody.

15 A. All right. So -- so we were doing great, and I'm going
16 to try to put myself on track. If I didn't answer your
17 question, I tried to do my best. Your question was why
18 Sokol was sued. Sokol was sued because he alleged an
19 entity that doesn't practice medicine, okay, in an
20 affidavit that it does have a deviation of standard of
21 care. What is a standard of care of Greenville
22 Pharmaceutical Research? None.

23 Q. You might recall that the plaintiff in this suit is
24 Allied Biomedical and not Greenville Pharmaceutical.

25 A. Ah.

1 Q. We had this discussion about 20 minutes ago regarding
2 Greenville Pharmaceutical. Now we're talking about
3 Allied -- Alliance Biomedical.

4 A. All right.

5 Q. So the affidavit, as the judge pointed out, does not
6 talk about Alliance Biomedical. Right?

7 A. Correct.

8 Q. So there's no false affidavit against Alliance
9 Biomedical in this case.

10 A. Correct.

11 Q. Do you agree with that?

12 A. I agree with that.

13 Q. All right. So then what did poor Dr. Sokol do to get
14 sued in this case if he did not swear out a false
15 affidavit against Alliance Biomedical?

16 A. He has discussion with Dr. Parham about Greenville and
17 Alliance.

18 Q. Dr. Parham?

19 A. No. Mr. Parham. Mr. Parham has discussion how we can
20 entrap those entities. Okay, we need affidavit, Dr.
21 Sokol. That's how we're going to entrap them. And he
22 provided an affidavit for Mr. Parham to file the
23 lawsuit. Without the affidavit lawsuit against
24 Alliance could not have been filed.

25 Q. But Alliance is not mentioned in the affidavit.

1 A. It is mentioned in the lawsuit, and our initial
2 impression was that Parham and Sokol has combined their
3 effort in dragging both entities in.

4 Q. That was your initial impression?

5 A. But judge disagreed.

6 Q. Wait. That was your initial impression?

7 A. That was our -- yeah, that was our case, that Parham
8 and Sokol, both of them have decided to pull in the
9 entities that have nothing to do with the care for Mr.
10 Bruce at all.

11 Q. And what would that evidence be?

12 A. The evidence being that Dr. Sokol has testified that he
13 has never received anything, but he has multiple
14 discussions, several discussions with Mr. Parham.
15 Okay? He was sent the caption against Alliance and so
16 forth. He did not disassociate himself with, played
17 along, continued to allege the case. When he was
18 deposed, he said, oh, oh, oh, never received any
19 records, don't know what Greenville is, don't know what
20 Alliance is, sorry, not me. Okay? Well, we always
21 thought it was him. Okay? We thought that was him all
22 along. All right? But in affidavit he didn't mention
23 Alliance, and that's what judge ruled, that without him
24 mentioning Alliance, the conversations between Parham
25 and Sokol is insufficient.

1 Q. And the affidavit had to be filed along with the
2 initial Bruce suit. Is that right?

3 A. It's a prerequisite nowadays, unlike case with
4 Thompson, it's required for filing a lawsuit in the
5 state of South Carolina.

6 Q. And if Sokol was in on this scheme to get Alliance
7 Biomedical Research in as a defendant, why do you
8 suppose he did not mention Alliance Biomedical Research
9 in his affidavit --

10 A. We didn't take---

11 Q. -- when he easily could have?

12 A. We didn't take the deposition of Dr. Sokol to find out
13 what was the discussion between him and Parham. We
14 didn't get to that -- we didn't get to that stage of
15 discovery. Okay? We believed the two worked very much
16 closely together, but we didn't get to the discovery
17 yet.

18 Q. I understand that. That really wasn't the question.
19 The question was---

20 A. Yes, it was.

21 Q. No, sir, it was not. Just answer the question, please.
22 The question was, if Dr. Sokol was bent as you believe
23 on working with Mr. Parham to -- what was your
24 language? To wrangle Alliance Biomedical Research into
25 this suit? Why would he not simply have just put it in

1 his affidavit instead of specifically leaving them out?

2 A. Never got to ask him that question.

3 Q. So you don't know?

4 A. I do. He had discussions with Parham. Well, let me
5 tell you this. Greenville Pharmaceutical Research has
6 received not a single piece of the record either at
7 all, none, zero. He allege deviation against
8 Greenville. So, of course, we were led to believe that
9 he's in on it. How you can possibly get physician to
10 allege standard of care against somebody without ever
11 having records?

12 Q. What would happen if somebody came to Greenville
13 Pharmaceutical Research and they said, I would like to
14 be in your study, whatever study it may be, and he's
15 accepted into the study?

16 A. Right.

17 Q. And it's to test some kind of pulmonary medicine.

18 A. Okay.

19 Q. And then they say, you know what, in order to get a
20 baseline for you, we need you to go get an x-ray, and
21 he goes and gets an x-ray.

22 A. Okay.

23 Q. And who reads those x-rays on behalf of Greenville
24 Pharmaceutical when they come back?

25 A. Back then it was Dr. Desai.

1 Q. who at Greenville Pharmaceutical Research looks at the
2 x-rays or the x-ray reports when they come in?

3 A. PI.

4 Q. So the principal investigator is responsible for
5 looking at the x-ray reports and/or the x-rays or the
6 subject matter.

7 A. Never x-rays.

8 Q. Just the reports?

9 A. Yes.

10 Q. Okay. And so what would happen -- let me ask you this.
11 If a person did that, goes to North Hills, Dr. Desai
12 takes an x-ray, looks at it and says there is a very
13 suspicious spot that I think might be cancerous.

14 A. Right.

15 Q. And then sends that report to Greenville Pharmaceutical
16 Research.

17 A. Right.

18 Q. And Greenville Pharmaceutical Research, either a
19 secretary or a brick or a phone or somebody takes it
20 and accidentally drops it in the trash can and nobody
21 ever sees it.

22 A. Right.

23 Q. Do you think that that would be negligence or a
24 deviation from the standard of care or some sort of
25 malfeasance on the part of Greenville Pharmaceutical

1 Research?

2 A. All right, you're asking a question that I'm competent
3 to answer. I am required by law, and so is
4 radiologist, to call a physician and verify that he has
5 received it. I cannot just send a report. I must
6 communicate to the physician in person, okay, that I
7 read the report, it's abnormal, Dr. Feldman, I am
8 sending you report. It's insufficient to send a report
9 to the secretary. Insufficient, not a defense. Okay?
10 So if somebody say, okay, I wrote the report, I don't
11 know what happened to it, it's the secretary's fault,
12 that's not a defense or acceptable standard of care.
13 You must notify a referring physician about your
14 findings. I have to as a pulmonologist. If I do x-
15 ray, I found a mass, okay, I have to notify. That's
16 why I was sued in the previous case, not because I
17 missed it, okay, but because I did not tell anybody
18 that the patient needs to be followed up, that I did
19 not call family physician, I did not explain my
20 findings, I'm not sure, it doesn't look like cancer,
21 but it needs to be followed up. I have to do it.
22 Okay? So for Dr. Desai or somebody in North Hill just
23 to declare that I sent it to secretary is not standard
24 of care. The standard of care is to notify a
25 physician. That's what standard of care require you.

1 okay? We do not read x-rays for the sake of our
2 reading or billing. We read it for the sake of patient
3 care. Patient care require notification of M.D., not
4 secretary. So you're exactly right. The secretary can
5 drop it incidentally. Anything can happen. That is
6 not negligence. The negligence -- the negligence is
7 not to send the report to the physician, not to notify
8 the physician, but hoping that some secretary maybe
9 doesn't do wrong something.

10 Q. So as long as you get a report in your office that says
11 this patient has something suspicious, that unless you
12 get a phone call from the radiologist, you're not
13 responsible for doing anything for that patient
14 regarding that x-ray report. Is that right?

15 A. That's correct unless I order it. If I order it, I am
16 responsible for calling radiologist and telling them
17 where my report is. But building cannot order it. No
18 secretary---

19 Q. But a PI can. Right?

20 A. Guy said he never ordered it.

21 Q. No, I'm not asking about that specific case.

22 A. Ah.

23 Q. I'm talking about right here, if a PI orders an x-ray--
24 -

25 A. He is responsible for it.

1 Q. -- then he's responsible for it, and if he doesn't get
2 a report, if he doesn't get a phone call, then it's up
3 to him to follow up?

4 A. Well, if you order it, yes, but if he didn't order it,
5 then no.

6 Q. I get it. If he didn't order it and he has no idea and
7 this guy just mysteriously goes to --

8 A. Right.

9 Q. -- North Hills for no reason --

10 A. Right.

11 Q. -- and gets an x-ray---

12 A. For whatever reason.

13 Q. And did Dr. Sokol say in his deposition that he
14 discussed with Mr. Parham that Mr. Parham should sue
15 Alliance Biomedical Research?

16 A. We believe he did, because he was sent multiple
17 questions and records from Alliance, not from
18 Greenville. Okay? He responded to Alliance way before
19 the lawsuit. So yes, he was very much involved in the
20 lawsuit against Alliance. Okay? Because Alliance
21 asked him questions. Alliance sent him documents,
22 asked him to confirm that, which he did. He never
23 disassociated himself from the lawsuit.

24 Q. I'm just going to give you one more opportunity at
25 this. In his deposition, did Dr. Sokol admit that he