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**CORTES VS. McLAUGHLIN Deposition of Dr. Elias G. Chalhub 6/18/93**

**Page 1 to Page 184**

**Affiliated Reporters**

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**CONDENSED TRANSCRIPT**

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## Page 1

[1] NO. 86-59625  
[2] CINDY CORTES, INDIVIDUALLY \* THE DISTRICT COURT  
[3] AND AS NEXT FRIEND OF \*  
[4] ROBERT WAYNE SANCHEZ, \*  
[5] A MINOR \*  
[6] VERSUS \*  
[7] RICHARD McLAUGHLIN, M.D.; \*  
[8] DAVILL ARMSTRONG, M.D.; \*  
[9] ARMSTRONG MEDICAL CLINIC; \*  
[10] DOCTORS HOSPITAL 1984, LTD.; \* HARRIS COUNTY, TEXAS  
[11] EBRAHIM ZIAFAT, M.D.; \*  
[12] MID-AMERICA HOSPITALS, \*  
[13] INC.; RONALD S. COLICCHIA; \*  
[14] JOHN H. STYLES; \*  
[15] JACK N. MCCARY; \*  
[16] J. DALE WOOTEN; \*  
[17] JOHN H. WILLIAMS, D.O.; \*  
[18] GERALD E. HOFFMAN, D.O.; \*  
[19] E. MURPHY WEBB, D.O.; \*  
[20] IN GON KIM, M.D.; \*  
[21] HARK-SHIM J. YOO, M.D. \* 61st JUDICIAL DISTRICT

VIDEOTAPED DEPOSITION  
OF  
ELIAS G. CHALHUB, MD.

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[1] ANSWERS AND DEPOSITION OF ELIAS G. CHALHUB, M.D.,  
[2] a witness produced on behalf of the Plaintiff, taken  
[3] in the above styled and numbered cause on the  
[4] day of June, 1993, before Kelly Cobb, a Certified  
[5] Shorthand Reporter in and for the State of Texas,  
[6] at the Southern Room of the Stauffer-Riverview  
[7] Hotel, 64 Water Street, City of Mobile, County of  
[8] Mobile, State of Alabama.

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## APPEARANCES

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## [1] PROCEEDINGS

[2] MR. WEISBROD: Taken pursuant to the [3] rules. We will agree to waive the 20-day signature [4] requirement. An unsigned copy can be used at time of [5] any hearing or trial if a signed copy is not [6] available. Otherwise pursuant to rules. Is that [7] agreeable?

[8] MR. SERPE: Fine.

[9] MR. CARRABBA: Are we going to have [10] anything on objections? One objection for all?

[11] MR. SERPE: Yes, one objection for all, [12] can we agree to that?

[13] MR. WEISBROD: Sure. No problem.

[14] (No omissions.)

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[1] ELIAS G. CHALHUB, M.D., [2] the witness hereinbefore named, being first duly [3] cautioned and sworn to testify the truth, the whole [4] truth and nothing but the truth, testified under [5] oath as follows:

[6] CROSS EXAMINATION [7] BY MR. WEISBROD

[8] Q. Would you state your name for the record, [9] please?

[10] A. Elias George Chalhub.

[11] Q. Dr. Chalhub, we could save a whole lot of [12] time here today if you would admit that you've [13] prostituted yourself to the St. Paul Insurance [14] Company as an expert witness in medical malpractice [15] cases. Will you do that for us?

[16] MR. SERPE: Hey, Les, I tell you what, [17] you are going to start right off being a jerk. [18] There's no reason to do that. You can come in here [19] and ask the the doctor questions. That question is [20] [m] argumentative and insulting and I resent it and I [21] object to it.

[22] MR. WEISBROD: Fine.

[23] Q. (By Mr. Weisbrod) Will you answer the [24] question, Doctor?

[25] A. I take great offense to that accusation,

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[1] Mr. Weisbrod. It is untrue and uncalled for and [2] unprofessional.

[3] Q. Dr. Chalhub, will you admit for us that [4] we can save a lot of time here today that you have [5] previously failed to tell the truth under oath?

[6] MR. SERPE: Same objection, [7] argumentative.

[8] THE WITNESS: No. Again, that is [9] insulting and it's slander, Mr. Weisbrod.

[10] Q. (By Mr. Weisbrod) Okay. Doctor, do you [11] remember having given your testimony before in case [12] styled Travis versus Hamby in which you were deposed [13] here in Mobile, Alabama, on the 17th of March, 1987?

[14] A. No, I don't remember.

[15] Q. Doctor, I want you if you will to read [16] the excerpts from this deposition on page - looks to [17] me like 88, and I'll read it and ask you and hand it [18] to you and ask you if I've read it correctly. The [19] question to you is: "Have you ever received any [20] payments from St. Paul?" The answer is: "Yes." The [21] question, "Can you give me an idea as to why, what [22] the purpose of the payment was?" The answer, "I've [23] had claims managers ask me to review cases." [24] Question, "From St. Paul?" Answer, "Yes." Question, [25] "What kind of cases?" Answer, "Medical malpractice

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[1] cases." Did I read that correctly?

## [2] A. Sure.

[3] Q. Continuing on page 89 in this deposition, [4] you were asked, "How many St. Paul cases have you [5] reviewed in the last year would you say?" [6] Your answer, "Again, they are very few. They [7] are usually through an attorney." [8] Question, "You don't have any idea as to how [9] many?" [10] Answer, "No, I don't." [11] Question, "You say very few, can you tell, put a [12] number on a very few and tell me what you mean by [13] that?" [14] Answer, "No. Of the seven, eight, or nine that [15] I might review each year, perhaps one will be." [16] Was that your testimony, sir?

[17] A. Of the ones that I was aware of and could [18] identify, yes.

[19] Q. Was that your testimony as I read it, [20] [m]?

[21] A. It's what I said, Mr. Weisbrod.

[22] Q. That testimony was not true at the time [23] it was given, was it, Doctor?

[24] A. I believe it was. You know, it is hard [25] to go back and to recall the entire exchange, but,

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[1] yes, it was true.

[2] Q. Doctor, have you ever seen a deposition [3] of Sharon Manning, employee of the St. Paul Insurance [4] Company, taken in same case, Travis versus Hamby, on [5] the 31st day of August, 1987?

[6] A. No.

[7] Q. You've never seen this testimony, Doctor?

[8] A. No.

[9] Q. You're familiar, though, with this [10] testimony, aren't you, Doctor?

[11] A. Well, I think a lot of people have [12] referred to it, but I've not read it in its entirety.

[13] Q. You've read parts of it?

[14] A. No, I've been told parts of it.

[15] Q. You're aware that Ms. Manning was [16] employed at that time by St. Paul Fire and Insurance [17] Company as an accounting manager, are you not, [18] Doctor?

[19] A. No, I'm not.

[20] Q. Doctor, I'm going to show you her [21] deposition and refer you to page that's been [22] highlighted here where her answer is, when asked who [23] are you employed by, "I'm employed by St. Paul Fire [24] and Marine Insurance Company and title is accounting [25] manager."

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[1] MR. SERPE: Objection, document speaks [2] for itself. The doctor can read it like you can and [3] can, Mr. Weisbrod. [4] THE WITNESS: Yes, yes.

[5] Q. (By Mr. Weisbrod) You're aware that in [6] that case a Judge Segell signed an order on August [7] 28, 1987, requiring St. Paul to produce a [8] representative

and have that representative produce [9] any and all 1099 tax forms for the years 1980 through [10] 1987 for you, Dr. Grossman, and Leslie Johnson of the [11] Leslie Johnson Company; are you familiar with that?

[12] **A. I'm familiar with it as it relates to me, [13] yes.**

[14] Q. You understood that there was such an [15] order in that case at that time?

[16] **A. Yes.**

[17] Q. You understand that in this deposition [re] that Ms. Manning gave in August of 1987 she produced [19] what was called the tax 1099 detailed activity list [20] of St. Paul Insurance Company that showed payments to [21] you?

[22] **A. Yes.**

[23] Q. And are you aware, Doctor, that those [24] documents showed that there were a total of 60 claims [25] that St. Paul Insurance Company gave you payment on

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[1] in the year of 1986?

[2] **A. I don't think that's true, Mr. Weisbrod.**

[3] Q. Why don't you read this question:

[4] Question, "So there is a total of 60 claims, 22 [5] and 381" [6] Answer, "Yes."

[7] Question, "So for the year 1986 Dr. Chalhub [8] received payments on 60 different cases; is that [9] correct, by the St. Paul Company?" [10] Answer, "Yes." [11] Is that what it says, Doctor?

[12] MR. SERPE: Objection, the document [13] speaks for itself.

[14] THE WITNESS: Sure, that's what it says. [15] If you look at the claims report, which there are [16] numbers, there are similar numbers. There are not 60 [17] cases, and I don't know what they are for, whether [18] they are for medical malpractice, worker's comp, [19] requirements of records or what. So the record of 60 [a] cases in claims is not true.

[21] Q. (By Mr. Weisbrod) Well, Doctor, what you [22] just testified to is not true, is it?

[23] **A. I believe it is true.**

[24] Q. You didn't get any payment for worker's [25] compensation cases from St. Paul Insurance Company

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[1] that's included in those payments, did you?

[2] **A. I don't know because I can't tell from [3] the numbers. But, yes, I do do worker's comp as a [4] neurologist for many insurance companies.**

[5] Q. You've given that line before and tried [6] to dance around this before, Doctor, and the truth of [7] the matter is that you cannot say under oath that any [E] of these payments that were referred to in

1986 were [9] for anything other than work on medical practice [10] claims, can you, Doctor?

[11] MR. SERPE: Wait a minute, Doctor. I'm [12] going to object to that question. There are sidebar [13] remarks in part of it. It is insulting, harassing, [14] and argumentative.

[15] THE WITNESS: Yes, I can say that, [16] Mr. Weisbrod.

[17] Q. (By Mr. Weisbrod) What proof do you [18] have, Doctor, that you could show to any judge or any [19] jury that would demonstrate that the payments that [20] you received that were testified to by Ms. Manning [21] from St. Paul were for something other than work on [22] medical malpractice cases?

[23] **A. Well, I know my practice pattern in 1986, [24] Mr. Weisbrod, what I did, and I also know what those [25] numbers were in relation to amounts, and they are not**

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[1] **what I would charge in a medical malpractice case, so [2] I think in terms of being absolute proof, I don't [3] know what the numbers relate to, so I can't tell you, [4] but I do know my practice pattern.**

[5] Q. Doctor, assuming that one doesn't want to [6] believe you, that you don't have any credibility, [7] just assume that for a moment, how would one go about [8] proving that the 60 payments that you received in [9] 1986 from St. Paul Insurance Company was for - that [10] any of that was for something other than a medical [11] malpractice case?

[12] MR. SERPE: Doctor, you don't need to [13] answer that question. It is insulting, it is [14] ridiculous, and argumentative. You are just being [15] harassed here, and you don't need to answer that [16] question. I just told him he didn't need to answer [17] it, Les.

[18] Q. (By Mr. Weisbrod) You understand what [19] credibility is, don't you, Doctor?

[20] **A. I understand that, Mr. Weisbrod, and I [21] have a lot of credibility, and I am absolutely [22] astonished at your insulting remarks.**

[23] Q. Doctor, you understand that in our system [24] that it is not necessary for anyone, a judge or a [25] jury, to believe what you say is true without any

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[1] additional proof or evidence; you understand that, [2] don't you?

[3] **A. Sure.**

[4] Q. Are you willing to give any additional [5] proof or evidence other than your word that would in [6] any way demonstrate, for instance, that 1986, all of [7] these payments that St. Paul Insurance

Company made [e] to you were for anything other than medical [9] malpractice work?

[10] **A. In the first place, St. Paul's did not [11] make that to me, they made them through lawyers, the [12] majority of them, and in the second place I have no [13] way to go back and do that. I would be happy to do [14] it if I could, but there is no way to do that. The [15] numbers are there. I don't know what they represent, [16] but I can tell you my practice pattern, and you will [17] have to accept that. I know of no other way to give [18] you that information.**

[19] Q. Now, Doctor, you've used this line many [a] times before about St. Paul not making payments to [21] you, but being made through lawyers. That's not [22] true, is it, Doctor? The fact of the matter is that [23] the checks you got are not off lawyers's accounts, [24] the checks are off accounts of St. Paul Insurance [25] Company; isn't that right?

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[1] **A. No -**

[2] MR. SERPE: Wait a minute, Doctor. I [3] object to the sidebar nature of that question and it [4] is argumentative.

[5] Q. (By Mr. Weisbrod) Is what you are [6] telling me, Doctor, that the register that St. Paul [7] Insurance Company has on a 1099 list saying that the [e] money was paid to you by St. Paul Insurance Company [9] is incorrect because the money was actually paid to a [10] lawyer and the lawyer paid it to you?

[11] MR. SERPE: Objection, that misrepresents [12] what the doctor just said.

[13] THE WITNESS: No, I didn't say that. [14] Q. (By Mr. Weisbrod) The fact of the matter [15] is that for all the money that's listed on and is [16] testified to by Ms. Manning in 1986 on St. Paul [17] forms, you received those funds drawn off accounts [18] from St. Paul Insurance Company; isn't that correct?

[19] **A. I don't know the answer to that.**

[20] Q. Why don't you know the answer to that, [21] Doctor?

[22] **A. Why should I know the answer to that, [23] Mr. Weisbrod?**

[24] Q. Well, do you look at the checks when you [25] deposit them?

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[1] **A. Sure, but I told you what I received.**

[2] Q. What you've told me is you don't know.

[3] MR. SERPE: Objection, misrepresents what [4] he said.

[5] THE WITNESS: No, I've told you what the [6] pattern is, okay, I've told you the way. I'm [7] reimbursed, and it is usually through attorneys, and [E] I don't know what they do for their internal [9] ac-

counting or any insurance company or how they [10] handle it.

[11] Q. (By Mr. Weisbrod) Doctor, the fact of [12] the matter is all the attorney does is send you a [13] letter in an envelope containing a check from the [14] St. Paul Insurance Company, and they simply act as [15] the conduit, the forwarding agent; isn't that [16] correct, Doctor?

[17] A. No. How do you know what other attorneys [1a] do, Mr. Weisbrod? That's not what they do, as I [19] understand it.

[20] Q. Can you demonstrate to us and show us any [21] checks that you received from law firms as opposed to [22] the St. Paul Insurance Company, Doctor, that were [23] St. Paul cases?

[24] A. A lot of the times I don't know who the [25] insurance company is, Mr. Weisbrod. Now, I can't

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[1] tell you, nor explain to you how they do business.

[2] Q. Isn't that, Doctor, because you don't [3] want to know who the insurance company is because you [4] don't want to have to go through testimony like this?

[5] A. No, Mr. Weisbrod. I'm here to tell you [6] and give you testimony or give this court testimony [7] about this case. I don't really care what questions [8] you ask. I'm happy to answer them truthfully and [9] with a great deal of credibility. Because you are [10] insulting, which you continue to be, doesn't make it [11] any easier.

[12] Q. Doctor, what you are telling me is that [13] you can't possibly conceive of yourself as being [14] biased because you receive in excess of \$80,000 a [15] year from St. Paul Insurance Company; is that [16] correct?

[17] A. I am not biased, Mr. Weisbrod. I have [18] never been biased, and the facts support that.

[19] Q. And, Doctor, wouldn't you agree that it [20] wouldn't matter whether the St. Paul Insurance [21] Company paid you \$100,000 a year or \$200,000 a year, [22] that you still wouldn't consider yourself to have any [23] bias or prejudice toward anyone in the case where you [24] testified for St. Paul?

[25] MR. SERPE: Objection, argumentative.

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[1] THE WITNESS: Well, you know, absolutely. [2] Why does money depend on the testimony? My testimony [3] isn't for sale. You know that. The facts support -

[4] MR. WEISBROD: I don't know that and [5] don't agree with that.

[6] MR. SERPE: Let him finish his answer.

[7] THE WITNESS: I don't really care

what [8] you think, Mr. Weisbrod. I'm telling you the way I [9] practice, my credibility and my ethics, and I think [10] they are the highest moral standards, and my record [11] speaks for that.

[12] Q. (By Mr. Weisbrod) Doctor, you have been [13] investigated before for witness tampering; is that [14] correct?

[15] A. No, that is incorrect.

[16] Q. You don't consider it witness tampering?

[17] A. No, absolutely not.

[18] Q. You were investigated and asked questions [19] by a judge in a case in which the allegation was that [m] you told a superior of a doctor that it could be [21] dangerous to his reputation and standing in the [22] community to testify for a plaintiff in a malpractice [23] case; isn't that correct?

[24] THE WITNESS: I had a conference with a [25] friend of mine who is a physician at University of

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[1] South Alabama. I never talked with the physician [2] that made that accusation, never put any undue [3] pressure or anything with that individual. Anybody [4] can make an accusation, and if you will reflect upon [5] the questions that were asked, were found to be [6] absolutely without foundation and without accusation.

[7] Q. (By Mr. Weisbrod) Did the district [8] attorney have an investigation into your conduct in [9] that matter, Doctor?

[10] A. No, he didn't. He didn't have an [11] investigation. He came up and asked questions during [12] a trial, which is not an investigation.

[13] Q. The district attorney questioned you [14] during a trial in front of a judge to determine [15] whether or not you were exerting influence in an [16] attempt to tamper with the witness for the plaintiff; [17] is that correct?

[18] A. The questions were directed, and if you [19] will read the entire thing, there was no fault found. [20] The accusations were false and misleading.

[21] MR. WEISBROD: I'm going to object to [22] unresponsiveness of the answer.

[23] THE WITNESS: I answered the question, [24] Mr. Weisbrod, and I don't really care whether you [25] object to it.

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[1] MR. WEISBROD: And I don't really care [2] what you lie about, Doctor, but I want to make sure [3] that we get everything on the record.

[4] MR. SERPE: I am going to object to that. [5] You are just insulting the witness and badgering him. [6] It is completely unprofessional and insulting.

[7] Q. (By Mr. Weisbrod) Now, Doctor, can you [8] understand that other people might consider you to [9] have some sort

of bias if you receive large amounts [10] of money like \$80,000, \$100,000, \$200,000 for doing [11] medical practice reviews and testifying in [12] depositions from one insurance carrier? Could you [13] conceive that someone else might think that might [14] be - play some role in your testimony?

[15] MR. SERPE: Objection, calls for [16] speculation.

[17] THE WITNESS: I can't -

[18] MR. SERPE: Improper question.

[19] THE WITNESS: Right. I can't begin to [20] interpret what anybody else would think about [21] anything, Mr. Weisbrod. I think what has to occur as [22] it does in medicine is it is based on what the facts [23] are and what the case is about.

[24] Q. (By Mr. Weisbrod) You don't -

[25] THE WITNESS: Let me finish my answer.

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[1] MR. SERPE: Go ahead, Doctor, finish your [2] answer.

[3] MR. WEISBROD: I'm sorry, Doctor. I [4] thought you were finished.

[5] THE WITNESS: You know, you are not only [6] rude but you are insulting and you continue to be, [7] but that is your nature so that's quite all right.

[8] MR. WEISBROD: So are you, Doctor.

[9] THE WITNESS: I don't believe so, [10] Mr. Weisbrod. I came in here in a very nice manner [11] and wanted to conduct this deposition in a [12] gentlemanly manner, and you refused to shake my hand, [13] which is fine, that's your prerogative. But, anyway, [14] the amount of money that one is paid certainly does [15] not affect my credibility nor my testimony and never [16] has, and the record speaks for itself.

[17] MR. WEISBROD: I object to the [18] unresponsive portions of that answer.

[19] Q. (By Mr. Weisbrod) Now, Doctor, you have [20] an expectation of future work in being a medical [21] malpractice expert witness in reviewing cases and [22] giving testimony and giving depositions that involve [23] the St. Paul Insurance Company; isn't that correct?

[24] A. I don't believe I understand that [25] question.

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[1] Q. You have an expectation of future work [2] along the same lines of what you are doing today, [3] don't you, Doctor?

[4] A. No. I mean, I don't have any expectation [5] of anything. I have a full-time job.

[6] Q. Are you planning not to give anymore [7] expert testimony, Doctor, after today?

[8] A. No. I don't know that. I mean, if I'm [9] asked and I have the time and

the case is interesting [10] and I can offer some assistance, I will do that for [11] you or for anybody.

[12] Q. Doctor, you have currently cases pending [13] that you're involved in that also involve the [14] St. Paul Insurance Company besides this one; isn't [15] that right?

[16] A. I'm sure there's some.

[17] Q. You have had a longstanding relationship [18] where the St. Paul Insurance Company has paid you [19] money for expert witness work for over 10 years; [20] isn't that correct, Doctor?

[21] A. I have no relationship with the St. Paul [22] Insurance Company. Let me finish my answer.

[23] MR. WEISBROD: It is not true.

[24] MR. SERPE: You are entitled to finish [25] your answer. I object to the sidebar comment and to

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[1] your continually cutting the doctor off. Finish your [2] answer, Doctor.

[3] MR. WEISBROD: I don't know how you can [4] testify like that with a straight face.

[5] MR. SERPE: We are not going to keep [6] going on this deposition if you keep interrupting the [7] doctor. He's entitled to give his answers and you [a] know it.

[9] THE WITNESS: I don't really care what [10] you think. I have no relationship with the St. Paul [11] Insurance Company. It is like any other carrier. It [12] happens to be the largest carrier in the United [13] States for malpractice, so they are going to have [14] more cases than anybody else. But it is no different [15] than any other insurance carrier.

[16] Q. (By Mr. Weisbrod) You have a [17] relationship, Doctor, to the extent that you receive [18] checks from them on a regular basis, don't you?

[19] A. I receive checks from several hundred [20] insurance companies for care of patients for a whole [21] lot of things. That doesn't mean I have a [22] relationship with that insurance company. My [23] relationship is with the attorney that hires me or [24] the patient that retains me.

[25] Q. To the extent that you receive money from

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[1] them, you have a relationship with them; isn't that [2] correct?

[3] A. Maybe I should ask you how you are [4] defining relationship.

[5] Q. I am defining relationship as you provide [6] service and they provide you with money. Isn't that [7] a relationship?

[8] A. Well, you know, I don't know I guess how [9] to interpret that. The insurance company doesn't [10] hire me.

The attorney hires me.

[11] Q. They paid you, don't they, Doctor?

[12] A. No, they usually pay the the lawyer who [13] pays me.

[14] Q. Doctor, that's not true - that's the [15] whole issue with these 1099s, isn't it, Doctor?

[16] A. I don't know what the issue is, [17] Mr. Weisbrod.

[18] Q. Well, 1099s are reports of income paid by [19] an entity to you, not income paid to an entity - [m] paid by an entity to someone else paid to you; isn't [21] that right, Doctor?

[22] A. You know, I really don't know. I don't [23] receive 1099s for a lot of things that I do. I don't [24] know what they are for.

[25] Q. Doctor, if you don't receive 1099s for

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[1] things that you do for other people that are paying [2] you for services, then they are acting illegally, [3] aren't they, Doctor?

[4] MR. SERPE: Objection, calls for [5] speculation.

[6] THE WITNESS: That's not for me to decide [7] and that's up to the individual.

[8] Q. (By Mr. Weisbrod) If you don't receive a [9] 1099 from them, Doctor, then that would allow you not [10] to report the income if you so chose, and the [11] government couldn't trace it; isn't that right, [12] Doctor?

[13] A. I would suppose so. I report all of my [14] income.

[15] Q. Who do you report it to?

[16] A. The IRS.

[17] Q. How do you report it to the IRS?

[18] A. With a tax form.

[19] Q. Do you fill out your tax form yourself, [20] sir?

[21] A. No.

[22] Q. Who fills out your tax form?

[23] A. My accountant.

[24] Q. Who is your accountant?

[25] A. It is none of your business.

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[1] Q. Why do you think it is none of my [2] business, Doctor? How am I going to tell whether or [3] not you are telling the truth?

[4] MR. SERPE: Doctor if you don't choose [5] to give that information to Mr. Weisbrod, you don't [6] need to. I object to the sidebar comment and [7] continuing argumentative, harassing nature of the [8] examination.

[9] Q. (By Mr. Weisbrod) Now, have you changed [10] your mind about giving out the name of your [11] accountant from previous years of testimony, Doctor?

[12] A. Well, I just don't think it is pertinent [13] to any malpractice suit. Mr. O'Dell asked me the [14] same question in a deposition, and I choose not to [15]

give that to him. I do not think it is your concern [16] who my accountant is, has no bearing on this case [17] whatsoever.

[18] Q. Doctor, did you testify in April of 1988 [19] that your accountants were Smith, Dukes & Buckalew?

[20] A. I probably did.

[21] Q. Are they still your accountants, Doctor?

[22] A. That is not any of your concern, [23] Mr. Weisbrod. I told you that my accountant is not [24] your concern.

[25] Q. You remember I asked you earlier in this

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[1] deposition if you had not told the truth under oath [2] before and you assured me that was not correct?

[3] A. That is right.

[4] Q. Did you in a deposition in this case [5] state that your accountant doesn't keep your 1099 [6] forms?

[7] A. He doesn't. I told you that.

[8] Q. Have you previously testified differently [9] under oath, Doctor?

[10] A. In the past they have been given to them [11] and he's given them back to me, sure, and I testified [12] in that deposition to that.

[13] Q. And, Doctor, did you testify in this case [14] in a deposition on written questions that when they [15] were given back to you they were destroyed?

[16] A. No, I didn't testify - I did not destroy [17] them. I don't retain them. Destroying means an act, [18] a specific act to dispose of things, and I did not do [19] that. I don't retain them.

[20] Q. Did you testify differently than that in [21] the past, Doctor?

[22] A. I don't know, you will have to ask me.

[23] Q. When did you start not retaining your [24] 1099 forms or whatever records you gave to your [25] accountant and your accountant gave back to you?

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[1] A. Well, most of them I always discard after [2] three years, so I don't really keep any records that [3] are not pertinent past any time, not anymore.

[4] Q. Well, are you telling us, Doctor, then, [5] that you have three years' worth of records?

[6] A. No, I don't keep those.

[7] Q. You don't keep records for three years, [8] Doctor?

[9] A. No, I don't keep 1099 forms. They are [10] not filled with my insurance - with my tax return. [11] My accountant says it is unnecessary to keep them. [12] So I don't keep them.

[13] Q. When did your accountant tell you it was [14] unnecessary to keep them?

[15] A. A number of years ago.

[16] Q. Which accountant told you that?  
 [17] A. Mr. Weisbrod, my accountant is not of [18] your concern.  
 [19] MR. SERPE: Doctor, that's your position. [m] You don't need to debate with him about it. Just [21] tell him you are not going to answer that question.  
 [22] THE WITNESS: I tried to. He doesn't [23] seem to understand it.  
 [24] MR. SERPE: I know he doesn't. He's slow [25] on the uptake.

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[1] Q. (By Mr. Weisbrod) Doctor, if there's a [2] court order in this case requiring you to reveal the [3] name of your accountant, will you comply with it?  
 [4] MR. SERPE: Hold on. There isn't a court [5] order now now, Mr. Weisbrod. We are not going to get [6] into what the doctor might do based on some court [7] order.  
 [8] MR. WEISBROD: I think he's already [9] violated a court order. I want to find out if it's [10] his custom.  
 [11] MR. SERPE: I object to that. That's a [12] complete distortion and misrepresentation of the [13] record in this case, and it's just - it is not [14] professional conduct by you.  
 [15] Q. (By Mr. Weisbrod) Doctor, you understand [16] that the court order required you to produce your [17] 1099 forms that were in your custody or in your [18] constructive control, correct?  
 [19] A. That's correct.  
 [20] Q. Now, isn't it true, Doctor, that all you [21] have to do to get your 1099 forms is call or write to [22] somebody at the St. Paul Insurance Company and ask [23] them for copies or a copy of the information?  
 [24] A. No.  
 [25] Q. Oh? Why not?

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[1] A. I don't know whether you can do that or [2] not.  
 [3] Q. You didn't make any attempt to do that, [4] did you, Doctor?  
 [5] A. I was asked to provide 1099 forms that I [6] had in my possession or that I was in control of. I [7] don't have those. I'm not in control of them.  
 [8] Q. Doctor, if St. Paul Insurance Company [9] says that you don't want the 1099 forms on you [10] released, is that true?  
 [11] A. I've testified to that in the past, yes, [12] when asked I did not want them released.  
 [13] Q. So you would instruct St. Paul Insurance [14] Company not to release your 1099 forms, correct?  
 [15] A. Now?  
 [16] Q. Yes, sir.  
 [17] A. I don't know. I'll have to see whether [18] I'm asked that.  
 [19] Q. I'm asking you right now. Will you

allow [20] St. Paul Insurance Company to release your 1099 forms [21] to us in this case for the last years since 1987?  
 [22] A. No.  
 [23] Q. Why not?  
 [24] A. Because it is none of your business.  
 [25] Q. Well, the fact of the matter is that you

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[1] could arrange for that if you wanted to, right, [2] Doctor?  
 [3] A. No, I'm not aware that I can arrange for [4] that, Mr. Weisbrod. The order I received from the [5] judge, and I respect our system and complied with it, [6] was to have any 1099 forms that I had in my [7] possession or control of, and I did not have any at [8] that time, and I did not give any.  
 [9] Q. You can certainly get control of your [10] 1099 forms from the St. Paul Insurance Company if you [11] want to, can't you, Doctor?  
 [12] MR. SERPE: I'm going to object to that. [13] You are talking to the doctor. That was not the [14] intent or language of the order that Dr. Chalhub [15] needed to go get 1099s from anybody except the ones [16] he had in his possession. You are harassing him.  
 [17] MR. WEISBROD: John, that's wrong. You [18] just misstated the court order. You need to be [19] careful, John,  
 [20] MR. SERPE: I didn't misstate any court [21] order, bes. You are harassing the doctor. The [22] judgment did not say that Dr. Chalhub had to go out [23] and get 1099s from anyone who has ever given him a [24] 1099.  
 [25] MR. WEISBROD: What do you think

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[1] constructive possession is?  
 [2] MR. SERPE: If we need to go down and [3] talk to the judge about what constructive possession [4] means, we will talk about that. Mr. Box specifically [5] at the hearings on this matter talked about in the [6] possession of Dr. Chalhub or his accountant. He [7] didn't talk about 1099s in the possession of St. Paul [8] Insurance Company, and, of course, you know or maybe [9] you don't know since you weren't at the last hearing, [10] the judge said he will take up these matters next [11] week to decide about the production of 1099s from the [12] St. Paul Insurance Company, and there was no [13] allegation or comment from Mr. BOX at the last [14] hearing we had with the court that the doctor had [15] failed to comply with the court's order. There [16] wasn't any reference to that. If you want to sit [17] here and debate and harass the witness today about [18] that, that's your prerogative, although, I think it's [19] completely unpro-

fessional and I think it's [20] sanctionable.  
 [21] MR. WEISBROD: I want to get the court [22] order out and review it.  
 [23] MR. SERPE: Great. Let's get the court [24] order out.  
 [25] MR. WEISBROD: Here it is. Here is what

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[1] it says on page 2 of the court order: "It is further [2] ordered that with regard to any of the [3] above-referenced documents including the 1099s the [4] defendant Doctor's Hospital shall have Dr. Chalhub [5] produce the requested 1099s in his possession or his [6] constructive possession." Did I read that correctly?  
 [7] MR. SERPE: Fine. We never argued about [8] that.  
 [9] THE WITNESS: I did not have them in my [10] possession or whatever my constructive possession is.  
 [11] Q. (By Mr. Weisbrod) You don't know what [12] constructive possession is, do you, Doctor?  
 [13] MR. SERPE: That's a legal question.  
 [14] Dr. Chalhub was told based on the representation [15] Mr. Box made to the court that he was interested in [16] whether it was in Dr. Chalhub's personal possession [17] or in the possession of his accountant.  
 [18] MR. WEISBROD: Look -  
 [19] MR. SERPE: I am entitled to finish.  
 [m] MR. WEISBROD: No, you are not.  
 [21] MR. SERPE: Yes, I am.  
 [22] MR. WEISBROD: No, you are not.  
 [23] MR. SERPE: Do you want to terminate this [24] deposition right now?  
 [25] MR. WEISBROD: If you do.

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[1] MR. SERPE: I am allowed to say whatever [2] I want for the record and you can do whatever you [3] want because obviously you've been doing that the [4] entire time you are here. You took that position [5] with the court that the constructive possession in [6] this case had to do with whether they were in [7] Dr. Chalhub's personal possession or those of his [8] accountant, and now you want to start talking about [9] possession of some other party. I think that's a [10] complete misrepresentation of what you-all said to [11] the court.  
 [12] MR. WEISBROD: John, you are a lawyer, [13] and you know the order doesn't say constructive [14] possession of his accountant. It says constructive [15] possession.  
 [16] MR. SERPE: Mr. Weisbrod, you can take [17] this up with the court. We are already going to take [18] it up with the court next week, and we will go back [19] and talk to the court about it at that point.  
 [20] Q. (By Mr. Weisbrod) Doctor, you don't know [21] what constructive posses-

sion is, do you?

[22] **A. I assumed I understood by order that it [23] was for me or my accountant, Mr. Weisbrod, and that's [24] what I complied with.**

[25] **Q.** How did you get that understanding? Did

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[1] Mr. Serpe tell you that?

[2] **A. I read it.**

[3] **Q.** It doesn't say anything about your [4] accountant, does it, Doctor?

[5] **A. It says constructive possession, which is [6] what I assume. I have no other way of getting them [7] to give to you, Mr. Weisbrod.**

[8] **Q.** Doctor, that's just exactly what I want [9] to know. Why would you assume that constructive [10] possession means any more your accountant than it [11] does St. Paul Insurance Company?

[12] **MR. SERPE:** Because at the hearing that [13] you held or your law firm held on this, Mr. Weisbrod, [14] Mr. Box referenced the possession of **Mr. Chalhub** or [15] his accountant. That's what Mr. Box represented to [16] the court, and that's what we told Dr. Chalhub your [17] attorneys had represented to the court. So that's [18] why I told Dr. Chalhub and my officetold Dr. Chalhub [19] the court order references his possession or the [20] possession of his accountant. If you want to take a [21] different position now than you did before the court, [22] that's your prerogative, but **let's not sit here and [23] debate today about it. We'll go talk about it with [24] the judge next week.**

[25] **Q.** (By Mr. Weisbrod) Is it correct,

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[1] Dr. Chalhub, that you were instructed by Mr. Serpe or [2] his law firm that constructive possession only meant [3] what you had or what your accountants had?

[4] **A. No -**

[5] **MR. SERPE:** Time out, I'm going to [6] object to that. Again, it misrepresents the entire [7] record that you presented before the court in this [8] case, Mr. Weisbrod, you and your law firm. Those [9] were the things referenced at the hearing. Those [10] were the things that were communicated to [11] Dr. Chalhub, and we've never - we told Dr. Chalhub [12] to comply with the court order given the intent and [13] issues raised by your law firm at the hearing, and, [14] again, I think you should move on to a different [15] area. We can take it up with the judge.

[16] **MR. WEISBROD:** I want to hear his [17] testimony, not yours, John.

[18] **Q.** (By Mr. Weisbrod) I want to know, [19] Dr. Chalhub, were you told by Mr. Serpe or his law [20] firm that you only had to comply with this order to [21] the extent you had the documents or your account-

**ant [22] had them?**

[23] **A. Yes.**

[24] **Q.** So you were told by Mr. Serpe or his [25] someone in his law firm that constructive possession

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[1] was limited to what your accountant night have; is [2] that correct?

[3] **MR. SERPE:** I'm going to object to that [4] since it misstates the facts in this case. The facts [5] in this case are what your lawyer represented before [6] the judge.

[7] **MR. WEISBROD:** I'm asking a question -

[8] **MR. SERPE:** I'm entitled to make my [9] objection. It misrepresents the facts in the case, [10] misrepresents the issues raised before the court by [11] the attorney in your office.

[12] **MR. WEISBROD:** That's fine. That's not [13] what I asked.

[14] **Q.** (By Mr. Weisbrod) What I asked was, were [15] you instructed that constructive possession by [16] Mr. Serpe's office only meant what you had or what [17] your accountants had?

[18] **A. No.**

[19] **Q.** Then you assumed that on your own?

[20] **A. No.**

[21] **Q.** Then how did you come to the [22] understanding that the language in that order of [23] constructive possession only meant what you had or [24] what your accountants had?

[25] **A. Well, after discussing with Mr. Serpe**

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[1] **that was what I was told to produce.**

[2] **Q.** So you didn't make any attempt on [3] Mr. Serpe's instructions to attempt to get the 1099 [4] forms pertaining to you from St. Paul from any source [5] other than your own records or your accountant's?

[6] **A. That's all I had access to, Mr. Weisbrod. [7] it doesn't even say it is just St. Paul's. Did you [8] want me to write every insurance company I've ever [9] dealt with in the past to get 1099 forms? How am I [10] supposed to do that?**

[11] **MR. WEISBROD:** Object to the unresponsive [12] portion.

[13] **THE WITNESS:** It was very responsive, [14] Mr. Weisbrod. Because you don't like it doesn't mean [15] it is responsive.

[16] **MR. WEISBROD:** The statement you just [17] made is not responsive.

[18] **THE WITNESS:** It is responsive.

[19] **MR. SERPE:** Doctor, Doctor. I'm going to [20] object to the sidebar comments by Mr. Weisbrod. [21] Doctor, all these issues will be taken up with the [22] court

again at a hearing next week, **so** you don't need [23] to debate with Mr. Weisbrod. It is our clear [24] understanding of the judge's ruling that the intent [25] of the judge's order was not to have you go out and

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[1] attempt to get 1099s from everyone who possibly could [2] have ever sent you one, and that was clear from [3] Mr. Weisbrod's own presentation. I think he's just [4] misrepresenting the facts in the case.

[5] **Q.** (By Mr. Weisbrod) Doctor, I realize [6] you've been at more depositions than Mr. Serpe has [7] and maybe more than me. Are you at the point now [8] where you are also practicing law?

[9] **MR. SERPE:** Objection, argumentative, [10] insulting, you are just badgering the witness, [11] sidebar remark.

[12] **Q.** (By Mr. Weisbrod) Do you have a law [13] license?

[14] **A. I have no response. I'm not a lawyer, [15] Mr. Weisbrod.**

[16] **Q.** It is true, Doctor, that you've given [17] over two hundred depositions in medical malpractice [18] cases; isn't that correct?

[19] **A. I don't know how many depositions. Over [20] a period of 13, 14 years, I don't know.**

[21] **Q.** You don't have any reason to say you [22] haven't given over two hundred depositions in that [23] time period in medical malpractice cases, do you, [24] Doctor?

[25] **A. I don't know the numbers. It is usually**

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[1] **five to 15 a year. Over 10 years or 13 years it may [2] be close to two hundred.**

[3] **Q.** The number of five to 15 a year is wrong, [4] isn't it, Doctor?

[5] **A. I don't believe so, Mr. Weisbrod.**

[6] **Q.** Well, what makes you say five to 15 a [7] year, Doctor? Did you just pick that out of thin air [8] because the number sounds good to you, or do you have [9] any basis for that?

[10] **MR. SERPE:** Objection, argumentative.

[11] **THE WITNESS:** That's my recollection and [12] my best estimate, Mr. Weisbrod. That's what I was [13] asked to do.

[14] **Q.** (By Mr. Weisbrod) How many depositions [15] have you given so far this year, Doctor?

[16] **A. I don't know.**

[17] **Q.** What's your best estimate?

[18] **A. Seven or eight.**

[19] **Q.** Do you think you've given seven or eight [20] so far this year?

[21] **A. Yes.**

[22] **Q.** I've got more than that in my pos-



session, [23] Doctor. You wouldn't dispute that, would you?

[24] MR. SERPE: I'm going to object. No one [25] knows what you've got in your possession.

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[1] THE WITNESS: That's fine. I don't know [2] the number.

[3] Q. (By Mr. Weisbrod) Doctor, do you keep a [4] calendar in your office?

[5] A. Yes.

[6] Q. Does the calendar in your office reflect [7] the dates that you've set aside for depositions?

[8] A. No, not usually.

[9] Q. Who sets up your deposition dates?

[10] A. Me.

[11] Q. Do you have a secretary?

[12] A. Yes.

[13] Q. Do you inform the secretary when you have [14] a deposition?

[15] A. No.

[16] Q. So, in other words, you're telling me [17] that the way you run your business is that nobody [18] knows where you are to plan anything else for your [19] business when you are out giving depositions?

[20] MR. SERPE: Objection, misrepresents what [21] the doctor said, argumentative.

[22] Q. (By Mr. Weisbrod) Is that right, Doctor?

[23] A. No.

[24] Q. How does anybody know where you are. [25] Doctor, if you are -

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[1] A. Because I tell my secretary where I go.

[2] Q. When do you tell her?

[3] A. When I go.

[4] Q. In other words, today just before you [5] went you said I'm going to give a deposition?

[6] A. Yes, I did.

[7] Q. And prior to that you don't tell your [8] secretary anything about where you are going to be [9] and what you are going to do with regard to [10] depositions; is that right?

[11] A. That's correct.

[12] Q. So do you make all your other [13] appointments for yourself too?

[14] A. No, not all the other ones.

[15] Q. So your secretary is allowed to make [16] other appointments for you?

[17] A. No, she asks me when she can make [18] appointments.

[19] Q. So you tell her, when she asks you when [20] she can make appointments, days she can't make [21] appointments, but you don't tell her you have [22] depositions on those days; is that right?

[23] A. Yes.

[24] Q. Are you trying to keep secret from

your [25] secretary when you are giving depositions?

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[1] A. No.

[2] Q. Are you trying to keep that matter secret [3] from your employers?

[4] A. No.

[5] Q. Do you tell your employers how much time [6] you're spending giving depositions?

[7] A. Sure.

[8] Q. Do you tell them how much money you make [9] giving depositions?

[10] A. Sure.

[11] Q. Do you give them the money you make [12] giving depositions?

[13] A. No.

[14] Q. You've given more than one deposition a [15] week this year, haven't you, Doctor?

[16] A. I don't believe so, Mr. Weisbrod.

[17] Q. In some weeks you've given more than one [18] deposition a week, haven't you?

[19] A. Oh, perhaps an occasional week, but I [20] don't give a deposition a week.

[21] Q. Well, every week you either give a [22] deposition or you are scheduled for trial testimony, [23] aren't you, Doctor?

[24] A. No, Mr. Weisbrod that's not true.

[25] Q. Every week this year?

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[1] A. Yes.

[2] Q. Every week this year you're scheduled [3] for - you've been scheduled for a deposition or to [4] give trial testimony; isn't that correct, Doctor?

[5] A. No, that's not correct.

[6] Q. How many weeks this year have you not [7] been scheduled to give trial testimony or a [8] deposition, Doctor?

[9] A. Well, a number of weeks, Mr. Weisbrod, [10] but I can't tell you that by memory.

[11] Q. Well, Doctor, let's deal with next week. [12] You are scheduled to give trial testimony next week, [13] aren't you, Doctor?

[14] A. No.

[15] Q. You are not?

[16] A. No, I'm not.

[17] Q. The week after?

[18] A. Perhaps.

[19] Q. In Cleveland, Ohio?

[20] A. Yes.

[21] Q. You don't know whether or not you are [22] going to be giving testimony next week or the week [23] after; is that right?

[24] A. No, I don't even know whether I'll be [25] giving testimony, whether I will be called or whether

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[1] the case will go on, Mr. Weisbrod.

[2] Q. You are aware there's a case that's going [3] to start trial Monday in Cleveland, Ohio, that you [4] are expected to be an expert witness on for the [5] defense, correct?

[6] A. I may or may not be there.

[7] Q. This past Monday you were supposed to be [8] an expert witness in a case that was going to go to [9] trial in Tampa, Florida; isn't that correct, Doctor?

[10] A. Yes. That's a case that's about eight or [11] nine years old. That's correct. It is going around [12] for the second time, but it was continued.

[13] Q. Do you know who the attorneys are in that [14] case, Doctor?

[15] A. Which? The plaintiff's attorneys?

[16] Q. Yes, sir.

[17] A. I can't remember his name. Mr. Hahn is [18] the defense attorney.

[19] Q. Didn't you tell someone in Mr. Hahn's [20] office the plaintiff's attorney was a major asshole?

[21] A. No, I don't believe so.

[22] Q. Sure you did, Doctor.

[23] A. Oh, I did?

[24] Q. Gary Fox. Didn't you tell someone in [25] Mr. Hahn's office that Mr. Fox was an asshole?

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[1] A. No.

[2] Q. You have no recollection of that, Doctor; [3] is that correct?

[4] A. No, I don't.

[5] Q. You wouldn't disagree with that idea, [6] though, would you, Doctor?

[7] MR. SERPE: Objection. You don't need to [8] answer that, Doctor. The only person who is an [9] asshole in this room is Mr. Weisbrod.

[10] Q. (By Mr. Weisbrod) Are you scheduled to [11] give a deposition next week, Doctor?

[12] A. I don't recall.

[13] Q. Well, Doctor, if you're the only one that [14] schedules these depositions and you don't tell your [15] secretary and you don't recall, how are you going to [16] find out where you need to be when you need to be [17] there?

[18] A. Well, lawyers usually call me, [19] Mr. Weisbrod.

[20] Q. They call you day before and remind you?

[21] A. Uh-huh, they do.

[22] Q. Otherwise you would forget because you [23] don't have it written down anywhere?

[24] A. No, that's not true, Mr. Weisbrod.

[25] Q. Where do you write it down, Doctor?

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[1] A. Usually I keep it in my mind

about what I [2] have to do, and I can't tell you the exact date.

[3] Q. Wait a minute. You keep it in your mind, [4] you don't write it down anywhere, but you don't know [5] even though the only place it would be in your mind [6] is in your mind whether you have a deposition or not [7] next week?

[e] A. That's right.

[9] Q. You expect people to believe this [10] nonsense?

[11] MR. SERPE: Objection, argumentative, [12] insulting, badgering the witness.

[13] Q. (By Mr. Weisbrod) Really, Doctor, come [14] on. You keep a record somewhere of where you've got [15] to be, a calendar, don't you?

[16] A. Mr. Weisbrod, I keep a monthly calendar [17] of my activities and what I do on a daily basis.

[18] Q. Where do you keep that calendar?

[19] A. On my desk.

[20] Q. Who has access to write on the calendar [21] besides you?

[22] A. My secretary.

[23] Q. What is your secretary's name?

[24] A. Ann Wilson.

[25] Q. Where is Ann Wilson working?

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[1] A. For Mobile Infirmary Medical Center.

[2] Q. And there are entries that are made on [3] that calendar concerning dates you are going to [4] either do a deposition or do court testimony; isn't [5] that right, Doctor?

[6] A. No, that's not right.

[7] Q. You never write on that calendar when you [8] are going to do a deposition or do court testimony; [9] is that right?

[10] A. That's correct.

[11] Q. Do you block out days on that calendar [12] for those activities?

[13] A. Sometimes.

[14] Q. You just put an X through the day on the [15] calendar?

[16] A. No, there's no X.

[17] Q. How do you block it out?

[18] A. I tell my secretary I'm not going to be [19] available that day or a portion of that day.

[20] Q. So it is just blank that day?

[21] A. Yes.

[22] Q. And you do do that at least on day a [23] week, don't you, Doctor?

[24] A. No.

[25] Q. This year you've done it one day a week.

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[1] A. No, I haven't, Mr. Weisbrod. How do you [2] know what I do?

[3] Q. Well, Doctor, because I spent a lot of [4] time investigating you.

[5] A. Oh, well, good.

[6] Q. I know how many depositions you've given [7] this year, and it is more

than what you've told me so [8] far. Now do you want to tell me the truth?

[9] A. I've told you the truth, Mr. Weisbrod. [10] If you recall I told you I didn't know how many.

[11] Q. And you do not want to find out how many [12] either, do you, Doctor?

[13] A. Why is that important?

[14] Q. Well, Doctor, the reason why it is [15] important is because if all you do is spend your time [16] giving deposition testimony and making hundreds of [17] thousands of dollars for insurance companies, you [18] don't have any credibility.

[19] MR. SERPE: Objection. Complete [20] misrepresentation of the record and the facts, [21] argumentative, sidebar remark. You are not letting [a] the witness answer the question.

[23] THE WITNESS: Mr. Weisbrod, I am the [24] president of the largest hospital in Alabama and have [25] 3,500 employees, and I spend a great deal of time and

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[1] the majority of my time doing that, and I do it very [2] well.

[3] Q. (By Mr. Weisbrod) The fact of the matter [4] is, Doctor, you don't practice medicine; you are a [5] hospital administrator and a testifier; isn't that [6] right?

[7] A. No.

[8] MR. SERPE: Objection, compound question, [9] argumentative. Let me finish my objection.

[10] THE WITNESS: Excuse me.

[11] MR. SERPE: I made my objection.

[12] MR. WEISBROD: Then it's his turn.

[13] MR. SERPE: I think he answered it when I [14] was making the objection.

[15] THE WITNESS: What I am I supposed to [16] answer to, Mr. Weisbrod?

[17] Q. (By Mr. Weisbrod) The question was: You [18] are a hospital administrator and testifier; you don't [19] practice medicine, do you, Doctor?

[20] A. Yes, I do, Mr. Weisbrod.

[21] Q. Doctor, when was the last time you [22] prescribed medication for a patient?

[23] A. Monday.

[24] Q. What did you prescribe?

[25] A. Ritalin.

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[1] Q. Where did you see the patient, or are you [2] prescribing over the telephone?

[3] A. Sometimes I do. Ritalin you can't [4] prescribe over the telephone. You write the [5] prescription.

[6] Q. Did you see a patient Monday?

[7] A. I saw 12 yesterday.

[e] Q. Where?

[9] A. At the Albert Brewer Center.

[10] Q. The Albert Brewer Center is a volunteer, [11] a place where you volunteer; is that correct?

[12] A. Yes, it is taking care of retarded [13] patients.

[14] Q. You go to Albert Brewer Center a half day [15] a month?

[16] A. A week. It is not a half day, it is [17] several hours.

[1e] Q. Not even a half day?

[19] A. No.

[a] Q. So you go two or three hours a week to [21] Albert Brewer Center, which is a public facility?

[22] A. Correct.

[23] Q. For mentally retarded patients?

[24] A. Correct.

[25] Q. You don't provide any ongoing care to any

Page 52

[1] of those patients: do you?

[2] A. By phone at times, yes.

[3] Q. Well, if somebody at the center needs [4] something, they can call you on occasion?

[5] A. Sure.

[6] Q. You are not considered the primary [7] physician for any of the patients at that facility, [e] are you, Doctor?

[9] A. There is no primary physician.

[10] Q. Many times when you go there for two or [11] three hours a week you don't even see any patients, [12] do you?

[13] A. No, I don't go if there's no patients.

[14] Q. Sometimes when you go there can only be [15] one patient?

[16] A. Rarely.

[17] Q. What do you do with the patients when you [18] go?

[19] A. Well, I examine them, evaluate them, and [20] practice neurology.

[21] Q. What are you examining them for?

[22] A. How they are doing and their diagnoses.

[23] Q. Do you do this two or three hours a week [24] just so you can continue being able to testify in [25] cases, Doctor?

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[1] A. No, Mr. Weisbrod.

[2] MR. SERPE: Objection, argumentative.

[3] THE WITNESS: That is insulting first of [4] all. I've been associated with Albert Brewer Center [5] since 1978 since I came to Mobile. They have a [6] difficult time getting anyone to take care of these [7] severely retarded patients, so I continue to do that.

[e] Q. (By Mr. Weisbrod) So outside of your [9] volunteer work, Doctor, you are not engaged in the [10] private practice of medicine with any private [11] patients, are you, Doctor?

[12] A. No, that's not true, Mr. Weisbrod. It is [13] not true.

[14] Q. Okay. When and where are you engaged in [15] the private practice of medicine seeing patients?

[16] A. I have an office at 1720 Springhill [17] avenue and practice medicine on Monday afternoon and [18] see anywhere from one to five patients that day.

[19] Q. Who else is in this office on Springhill [20] Avenue?

[21] A. Two psychometrists, a clinical [22] coordinator, secretary, and psychologist.

[23] Q. Wait a minute. I thought you said two [24] psychologists?

[25] A. Psvchometrists.

#### Page 54

[1] Q. Psychometrist, what's a psychometrist, [2] Doctor?

[3] A. It is an individual at usually the [4] master's level that does testing.

[5] Q. A psychologist?

[6] A. Correct.

[7] Q. Who else?

[8] A. Clinical coordinator and secretary.

[9] Q. What's the name of the clinical [10] coordinator?

[11] A. Jean Huddleston.

[12] Q. What's the name of the secretary?

[13] A. I can't remember her name.

[14] Q. What's the name of the two [15] psychometrists?

[16] A. Wanda Manning and I'm having - I can't [17] recall other - first name is Tootsie.

[18] Q. What's the name of the psychologist?

[19] A. Dr. Shanker.

[20] Q. First name?

[21] A. I don't know.

[22] Q. Shanker spelled how?

[23] A. I don't know.

[24] Q. What's the entity that employs all these [25] people?

#### Page 55

[1] A. The Infirmary Health System,

[2] Q. What's your position in the Infirmary [3] Health System?

[4] A. Executive vice-president.

[5] Q. Is there a name that this office on [6] Springhill goes under?

[7] A. Yes, IMC Child Neurology.

[8] Q. Is there any other neurologist associated [9] with it?

[10] A. No.

[11] Q. The one to five patients that you see on [12] Monday afternoons at this facility, isn't it [13] primarily for evaluation for testing, Doctor?

[14] A. No.

[15] Q. You do physical examinations -

[16] A. Sure.

[17] Q. - on one to five patients every Monday?

[18] A. Sure.

[19] Q. A n you taking new patients?

[20] A. Sure.

[21] Q. You don't see any patients in hos-

pital, [22] correct?

[23] A. Correct.

[24] Q. Where do you refer patients to if they [25] need to be seen in a hospital, Doctor?

#### Page 56

[1] A. To a physician that's appropriate.

[2] Q. Well, what if it's a neurological [3] problem?

[4] A. To another neurologist.

[5] Q. Which other neurologist do you refer to [6] in Mobile?

[7] A. Dr. Silverboard.

[8] Q. Anybody else?

[9] A. Oh, he's generally the only one, but [10] Dr. fleet, Dr. Perrien, Dr. Yager.

[11] Q. Are these all neurologists?

[12] A. Yes.

[13] Q. Did you have any association with any of [14] them before?

[15] A. Yes.

[16] Q. Which ones?

[17] A. Dr. Perrien, Dr. Silverboard, and [18] Dr. Yager.

[19] Q. What was your association with them?

[20] A. I was a partner with them in their firm.

[21] Q. When did that cease?

[22] A. About four years ago.

[23] Q. Why did it cease?

[24] A. Because I became a medical director of [25] the Mobile Infirmary Medical Center.

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[1] Q. In other words, you became a hospital [2] administrator; is that correct?

[3] A. No.

[4] Q. What's the difference?

[5] A. It's self-explanatory, Mr. Weisbrod.

[6] Q. No, it's not.

[7] A. Yes, it is.

[8] Q. Well, you explain it.

[9] A. What do you want me to explain?

[10] Q. What's the difference between medical [11] director and hospital administrator?

[12] A. The job descriptions are considerably [13] different. One is a medical director and one is an [14] administrator.

[15] Q. What does a medical director do different [16] than a hospital -

[17] A. Directs medicine.

[18] Q. How do you go about directing medicine?

[19] A. Depends on the problem. You answer [20] physician problems, liaison, nursing problems.

[21] Q. It's administrative work, isn't it?

[22] A. No, sometimes it is related to clinical [23] work.

[24] Q. Well, as a medical director it's not

part [25] of that job duty for you to actually provide direct

#### Page 58

[1] patient care, is it?

[2] A. That is a different question. You didn't [3] ask whether it invoked patient care, but it does [4] involve patient care. It involves the quality of [5] patient care, the surveillance of patient care, and [6] the clinical privileges.

[7] MR. WEISBROD: I object to the [8] unresponsiveness of the answer.

[9] Q. (By Mr. Weisbrod) As medical director [10] did you provide direct patient care?

[11] A. At times, yes.

[12] Q. As part of the job of medical director?

[13] A. Yes.

[14] Q. What patient, direct patient care did you [15] provide as medical director?

[16] A. When there was a conflict, there was no [17] physician available to assume care of that patient, [18] or a physician that was suspended.

[19] Q. Did you provide care for the patient?

[20] A. Sure, until they had a physician.

[21] Q. So if you had a patient that came in, for [22] instance, with a heart attack and they didn't have a [23] physician, you went down and took care of them?

[24] A. No, that's not my area of expertise, but [25] if I was able to do that, had to do that on an

#### Page 59

[1] emergency basis, then I would do it.

[2] Q. The only direct patient care you would [3] provide as medical director would have been if [4] somebody had an unassigned neurologist?

[5] A. No, or there was a clinical problem which [6] had to be taken care of at that time, Mr. Weisbrod.

[7] Q. And the way you would take care of the [8] clinical problem is find another physician to take [9] Care of it, correct?

[10] A. Yes, but in the meantime you had to take [11] care of the patient.

[12] Q. So you would write orders on the patient?

[13] A. If I had to, sure.

[14] Q. Can you give me an example as medical [15] director of where you wrote orders on a patient that [16] wasn't a neurology patient of yours?

[17] MR. SERPE: That wasn't a neurology [18] patient?

[19] MR. WEISBROD: That was not.

[20] MR. SERPE: You don't need to give out [21] Information on specific patients, Doctor. There are [22] privileges that protect that.

[23] Q. (By Mr. Weisbrod) You don't have to tell [24] me the name of the patient, I'm asking for your area [25] of medical exper-

tise now, whether you delivered a

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[1] baby, treated a heart attack, did neuro-surgery.

[2] A. It is interim care, Mr. Weisbrod. It [3] doesn't occur very often, but it does occur.

[4] Q. Give me an example.

[5] A. A child, okay, that is in the hospital [6] with a respiratory problem or an infection or a [7] newborn.

[8] Q. So we've at least limited this to [9] pediatric care?

[10] A. Well, you know, I can't remember over [11] four years what the other instances are, so I can't [12] tell you that.

[13] Q. So according to you the job of the [14] medical director includes providing direct patient [15] care, correct?

[16] MR. SERPE: Objection, asked and [17] answered.

[18] THE WITNESS: I can't answer that any [19] other way.

[20] Q. (By Mr. Weisbrod) Okay. Did you at some [21] point in time become the hospital administrator?

[22] A. And the president of the hospital, yes.

[23] Q. When did that happen?

[24] A. Two and a half years ago.

[25] Q. So about four years ago you became a

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[1] medical director?

[2] A. Correct.

[3] Q. And then you went from medical director [4] to administrator?

[5] A. Correct.

[6] Q. And when you became administrator did you [7] still give direct patient care as part of being the [8] administrator of the hospital?

[9] A. No.

[10] Q. So two and a half years ago you quit [11] giving any direct patient care in a hospital, [12] correct?

[13] A. Yes.

[14] Q. And the only direct patient care that you [15] give and have given for the last two and a half years [16] is that you see one to five patients on Monday [17] afternoons and you see patients on a volunteer basis [18] two to three hours a week at the public mental [19] retardation facility; correct?

[20] A. Correct.

[21] Q. And you prescribe medications for those [22] few patients that you see?

[23] A. Sure.

[24] Q. You prescribe medications for the ones [25] that are in the mental retardation center?

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[1] A. Yes.

[2] Q. You don't run CT scans or MRIs

on those [3] few patients that you see, do you, Doctor?

[4] A. I do.

[5] Q. Yourself personally?

[6] A. No, I've never done that, I'm not a [7] radiologist, but I order them, sure. I assume that's [8] what you meant by run.

[9] Q. You are ordering them -

[10] A. I don't assume anything, Mr. Weisbrod.

[11] Q. You should never assume anything, Doctor. [12] You assume a lot.

[13] MR. SERPE: Objection to the sidebar.

[14] Q. (By Mr. Weisbrod) You order MRIs and CT [15] scans for the patients that you see, few patients [16] that you see on an outpatient basis; is that correct?

[17] A. Correct.

[18] Q. And you do that as a continuous part of [19] seeing these few patients?

[20] A. Sure, that's part of practicing medicine.

[21] Q. Are there any of these patients that you [22] see, Doctor, that don't have a primary care physician [23] other than you?

[24] A. Rarely.

[25] Q. Do you see them for anything more than a

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[1] onetime evaluation, Doctor?

[2] A. Yes.

[3] Q. How many or what percentage of the - [4] well, it may be 10 patients a week at most that you [5] see do you provide more than a one-time evaluation [6] type of medical service for?

[7] A. Actually the majority of them are on a [8] continuing basis. Certainly the ones at the Albert [9] Brewer Center and the ones that I see in the IMC [10] clinic, a good many of those are repeat follow-up [11] patients.

[12] Q. So the ones in the Albert Brewer Center [13] you may see again because they are still there in the [14] center; is that right, they haven't been released?

[15] A. Sure.

[16] Q. There are other physician that will see [17] them, though, is that correct?

[18] A. Depending on their problem, yes.

[19] Q. And you don't go every week for two to [20] three hours a week, do you, there are some weeks that [21] you miss?

[22] A. Sure.

[23] Q. Like sometimes when you need to be out of [24] town testifying in court someone has to take your [25] place; is that right, Doctor?

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[1] A. No, Mr. Weisbrod, that's not true.

[2] Q. What part of that is not true, Doctor?

[3] A. Your whole statement is not true.

[4] Q. You don't go out of town to testify in [5] court?

[6] A. Oh, yeah, I do, but that's not the reason [7] usually that I'm not at the Brewer Center.

[8] Q. Sometimes you could be out of town [9] testifying in court and have to miss your day at the [10] the Brewer Center, right?

[11] A. Yes, but it is usually put at another [12] day, and sometimes I am on vacation, and sometimes I [13] can't go.

[14] Q. Do you include in the one to five [15] patients that you see on Monday afternoons the ones [16] that you're doing evaluations on for your medical [17] malpractice testifying?

[18] A. I don't understand what you mean.

[19] Q. You have in the past, Doctor, examined [20] patients or examined parties to lawsuits in order to [21] render opinions, correct?

[22] A. Correct.

[23] Q. You've had those patients or parties to [24] lawsuits brought hereto Mobile for you to examine, [25] correct?

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[1] A. Correct.

[2] Q. Are those types of examinations included [3] in the one to five patients you see on Monday [4] afternoons?

[5] A. Oh, yeah, that just happens very [6] infrequently.

[7] Q. So in some weeks, Doctor, where you are [8] only seeing one patient instead of five patients, the [9] one patient that you've seen on the Monday afternoon [10] could be someone whose come in for you to evaluate [11] for purposes of giving testimony in a medical [12] malpractice case, right?

[13] A. Could be. I can only recall one patient [14] in the last year that I've examined in my office for [15] that purpose.

[16] Q. Sorry, go on, Doctor.

[17] A. That's it. That's all I can recall.

[18] Q. So in some weeks, Doctor, you don't see [19] any private practice patients except for purposes of [20] a valuation for medical malpractice testimony, [21] correct?

[22] MR. SERPE: Objection, asked and [23] answered.

[24] THE WITNESS: No.

[25] Q. (By Mr. Weisbrod) You are not telling me

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[1] that doesn't happen, are you?

[2] A. No, I'm telling you the answer to the [3] question is no.

[4] Q. That doesn't ever happen?

[5] A. No, I didn't say that.

[6] MR. SERPE: What was the question?

[7] Q. (By Mr. Weisbrod) It happens on [8] occasion, Doctor, that the only private practice [9] patient you'll see during a week is somebody you are [10] evaluating for testimony for a medical malpractice [11] case; is that correct?

[12] A. No.

[13] MR. SERPE: Objection, answered two or [14] three times.

[15] Q. (By Mr. Weisbrod) No, it's not correct?

[16] A. No, that is not correct.

[17] Q. There are some weeks that you don't even [18] see one to five patients on a Monday afternoon; isn't [19] that right, Doctor?

[20] A. Yes.

[21] Q. Some weeks you don't see any private [22] patients at all, correct?

[23] A. Correct.

[24] Q. You don't know how many weeks it is that [25] you don't see any private patients at all, do you,

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[1] Doctor?

[2] A. No.

[3] Q. Do you even know whether the majority of [4] weeks you don't see any private patients at all as [5] opposed to one to five?

[6] A. No, the majority of the weeks I do. [7] That's a regular schedule.

[8] Q. So it is your belief that the majority of [9] the weeks you see one to five patients on Monday [10] afternoons in private practice?

[11] MR. SERPE: Objection, asked and [12] answered.

[13] THE WITNESS: Yes.

[14] Q. (By Mr. Weisbrod) Now, the majority of [15] those weeks where you see one to five patients, the [16] majority of the time are you seeing one patient or [17] are you seeing five patients?

[18] A. I don't recall, Mr. Weisbrod. I don't [19] keep track of that in my mind.

[20] Q. Isn't it true, Doctor, that frequently [21] you see one private patient a week or less?

[22] MR. SERPE: Objection as to what you mean [23] by frequently. The doctor has answered the best way [24] he can all these questions you asked.

[25] THE WITNESS: That's about all I can tell

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[1] you, Mr. Weisbrod.

[2] Q. (By Mr. Weisbrod) Doctor, does it happen [3] that over half the weeks in the year you see one [4] private patient or less?

[5] A. I don't believe so. I mean, I don't keep [6] track of the numbers.

[7] Q. So it could be?

[8] A. No, I mean, I think that -

[9] Q. You don't know.

[10] MR. SERPE: Finish your answer, Doctor.

[11] THE WITNESS: I don't have the exact [12] number, Mr. Weisbrod. My usual schedule is to see [13] patients on Monday afternoon and I'm usually there. [14] Now, sometimes they are canceled or sometimes they [15] are moved or sometimes I have another obligation.

[16] Q. (By Mr. Weisbrod) Do you feel you have [17] about as good a handle on that as how many [18] depositions you give?

[19] MR. SERPE: Objection, argumentative.

[20] Q. (By Mr. Weisbrod) It is the same kind of [21] thing, isn't it, Doctor, you don't have any better [22] recollection or recall of how many patients you see a [23] week than you do of how many depositions you give; is [24] that fair?

[25] MR. SERPE: Objection, argumentative.

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[1] The doctor has answered all your questions about [2] that.

[3] THE WITNESS: That's all I can tell you [4] is what I've told you, Mr. Weisbrod.

[5] Q. (By Mr. Weisbrod) Tell me now, Doctor, [6] do you have a better memory with regard to how many [7] patients you see a week or how many depositions you [8] give a year?

[9] MR. SERPE: Objection, argumentative.

[10] THE WITNESS: I've told you to the best [11] of my recollection what I do, Mr. Weisbrod.

[12] Q. (By Mr. Weisbrod) You haven't answered [13] the question, Doctor.

[14] A. Yes, I have.

[15] Q. No, you haven't. This is about your [16] memory. This is a memory test because you are [17] telling me you've got a great memory, you don't keep [18] a calendar, nobody knows how to schedule you but you.

[19] MR. SERPE: Objection, argumentative, [20] sidebar comments.

[21] Q. (By Mr. Weisbrod) I'm testing your [22] memory now, Doctor. I want to know in your opinion [23] do you think your memory is better for the number of [24] private patients you see a week or the number of [25] depositions you give a year or that you have an equal

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[1] memory for those. Tell me, Doctor,

[2] MR. SERPE: Objection, argumentative. He [3] has answered all your questions about that. You are [4] just harassing the witness.

[5] THE WITNESS: I don't have any additional [6] answers, Mr. Weisbrod.

[7] Q. (By Mr. Weisbrod) Doctor, are you

[8] refusing to tell me about your memory?

[9] A. I've answered your questions.

[10] Q. No, you haven't.

[11] MR. SERPE: Yes, he has. Move on to [12] something else. You are insulting the witness, and I [13] think it is unprofessional, and I think you should [14] stop harassing and insulting the witness.

[15] MR. WEISBROD: You've put your memory [16] into issue here, Doctor.

[17] MR. SERPE: You put his memory into issue [18] and he's answered the best way he can under oath [19] today your questions and you're just harassing him.

[20] Q. (By Mr. Weisbrod) Because you told us [21] you don't keep anything in writing and you are [22] dependent upon your memory with regard to [23] appointments, you've told us that, right?

[24] A. I didn't tell you that.

[25] Q. Is that wrong?

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[1] MR. SERPE: He's already answered all [2] these questions, it is your memory that is wrong.

[3] MR. WEISBROD: It is changing.

[4] MR. SERPE: Nothing is changing.

[5] Q. (By Mr. Weisbrod) You keep your [6] deposition appointments now in writing?

[7] A. You didn't say deposition appointments, [8] you said appointments, Mr. Weisbrod.

[9] Q. You keep all your appointments in writing [10] except your deposition or testifying appointments; is [11] that correct?

[12] MR. SERPE: Objection, asked and [13] answered.

[14] THE WITNESS: Yes.

[15] Q. (By Mr. Weisbrod) You rely on your [16] memory for your deposition appointments and your [17] trial testimony appointments, correct?

[18] MR. SERPE: Objection, asked and [19] answered.

[20] THE WITNESS: I don't have anything else [21] to add to it.

[22] Q. (By Mr. Weisbrod) Do you rely on your [23] memory for those?

[24] A. Yes.

[25] Q. Is your memory for those things as good

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(1) or better than your memory for how many patients in [2] private practice you see a week?

[3] MR. SERPE: Objection, argumentative, [4] harassment.

[5] THE WITNESS: I can't answer it any [6] differently, Mr. Weisbrod.

[7] Q. (By Mr. Weisbrod) You never answered it.

[8] A. Yes, I did.

[9] Q. No, you didn't.

[10] A. Yes, I did, and that's all I'm going to [11] say.

[12] Q. I want you to tell me about your memory.

[13] A. What do you want me to tell you about my [14] memory?

[15] Q. I want you to tell me if your memory is [16] better for your deposition and testimony appointments [17] or for your private patient numbers.

[1e] A. My memory is what I have given you, and I [19] really have nothing further to say.

[20] Q. I want you to compare your memory for me.

[21] A. I don't want to compare my memory, [22] Mr. Weisbrod, I can't.

[23] O That's all you had to say, you can't do [24] it.

[25] MR. SERPE: Objection to the sidebar

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[1] remark.

[2] THE WITNESS: I want to take a break.

[3] MR. SERPE: Why don't we take a break.

[4] (Recess.)

[5] Q. (By Mr. Weisbrod) When was the last [6] deposition you gave before today, Doctor?

[7] A. Several weeks ago, I guess.

[8] Q. What was the the case?

[9] A. I don't remember the case.

[10] Q. Who were lawyers in the case?

[11] A. I don't know.

[12] Q. Where was the case located?

[13] A. Well, the last deposition I gave was in [14] this case, which is the answer to the questions. [15] That's about all I recall.

[16] Q. You are talking about the deposition on [17] written questions -

[18] A. Correct.

[19] Q. - where there weren't any lawyers [20] present. What I'm asking you is the last deposition [21] you gave where lawyers were present, both sides were [22] there.

[23] A. It's been several weeks, but I cannot the [24] recall name of which that was.

[25] Q. How many weeks has it been, Doctor? Has

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[1] it been within the last month?

[2] A. I don't know, either the end - either [3] the end of May or first part of June.

[4] Q. How many deposition did you give in May, [5] Doctor?

[6] A. Several.

[7] Q. How many is several?

[8] A. I don't know the number, Mr. Weisbrod. I [9] can't tell you exactly.

[10] Q. Is several one, two, three, or more than [11] three?

[12] A. I don't know.

[13] Q. You don't know?

[14] A. It was more than one, but whether it was [15] three or four I don't know.

[1s] Q. Do you remember the states that the cases [17] were involved in that you gave deposition testimony [18] in in May?

[19] A. No, not by memory.

[20] Q. You don't remember what state the last [21] case was invoked in that you gave a deposition on?

[22] A. No.

[23] Q. A few weeks ago?

[24] A. No.

[25] Q. You don't remember how many you gave in

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[1] May?

[2] A. No.

[3] Q. You don't remember how many you gave in [4] April, do you?

[5] A. No.

[6] Q. More than one?

[7] A. Probably.

[8] Q. How many did you give in March?

[9] A. I don't know.

[10] Q. More than one?

[11] A. I don't know.

[12] Q. Did you give any in March?

[13] A. I don't recall, Mr. Weisbrod.

[14] O How about February?

[15] A. I don't know.

[16] Q. You don't know whether you gave any [17] depositions in February?

[18] A. No.

[1s] Q. How about January?

[2] A. I don't recall six months ago.

[21] O Well, if somebody wanted to know how many [22] depositions you have given in the last six months, [23] how would they find that out, Doctor?

[24] A. I don't know.

[25] Q. Did you destroy and throw away all the

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[1] records on the depositions - on the cases you've [2] given in the last six months?

[3] MR. SERPE: Objection, argumentative.

[4] THE WITNESS: No, I usually after the [5] deposition we either return records - I don't retain [6] the depositions.

[7] Q. (By Mr. Weisbrod) You keep the records [8] in case you have to go to trial, don't you, Doctor?

[9] A. They will usually send them back to me, [10] Mr. Weisbmd.

[11] Q. You keep something, don't you, Doctor?

[12] A. Not very much.

[13] Q. What's not very much consist of?

[14] A. Usually I don't have the records.

[15] Q. Look, you've got a whole box here. What [16] are you going to do with this when the day is over?

[17] A. I'm going to take it back and probably [18] send it back to Mr. Serpe.

[19] Q. How long is it going to take you to send [20] it back to Mr. Serpe?

[21] A. I don't know, Mr. Weisbrod.

[22] Q. Are you going to send everything in the [23] box back to Mr. Serpe?

[24] A. Yes.

[25] Q. Every single piece of paper?

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[1] A. Sure.

[2] Q. Including all the correspondence he sent [3] you to start with?

[4] A. There's only five or six pages.

[5] Q. You are not going to keep those five or [6] six pages?

[7] A. I may or may not.

[8] Q. Have you kept five or six pages on these [9] other cases?

[10] A. No.

[11] Q. You haven't kept a shred of paper on any [12] case you've given a deposition on in the last six [13] months?

[14] A. I didn't say that, Mr. Weisbrod. I don't [15] know what I have in my position concerning those.

[16] Q. Dr. Chalhub, you know whatever you had in [17] your possession concerning those you are under court [18] order to bring it here today. Where is it?

[19] MR. SERPE: Objection once again [20] misstating what the court's order is. The court's [21] order doesn't say that. The court's order concerned [22] cases concerning St. Paul.

[23] Q. (By Mr. Weisbrod) Are you telling me [24] that none of the cases that you gave depositions in [25] in the last six months of this year involved

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[1] St. Paul, Doctor?

[2] A. I've told you at the beginning that I do [3] not know the insurance company in the majority of the [4] situations, so I can't tell you that.

[5] Q. You don't know whether then you violated [6] the court's order or you didn't violate the court's [7] order; is that right?

[8] MR. SERPE: Objection. He did not [9] violate the court's order. He gave truthful [10] testimony on the deposition of written questions. [11] He's complied with the court order, and he's sitting [12] here answering your insulting questions today.

[13] Q. (By Mr. Weisbrod) You were supposed to [14] bring here today any record you had on - you were [15] supposed to bring here today any record you had on [16] any case that involved St. Paul Insurance Company, [17] correct?

[18] A. Correct.

[19] Q. Okay. And as you sit here today you [20] don't know whether in the last six months you had any [21] cases that involved St. Paul Insurance Company, [22] correct?

[23] A. If I don't know the insurance company, I [24] can't tell you that.  
[25] Q. Then you don't know whether you violated

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[1] the court's order then, do you?  
[2] A. No, I did comply with the court's order. [3] It was to my knowledge and what I had in my [4] possession.  
[5] Q. Well, in other words, what you did when [6] you saw that court order was you made sure not to [7] inquire what insurance companies were involved in any [8] of those cases, right?  
[9] A. That wasn't my charge to inquire.  
[10] Q. I see. Your understanding of the court [11] order is that you have no responsibility to determine [1a] in the files that are sitting in your office which [13] one of them involves St. Paul Insurance Company and [14] which one doesn't.  
[15] MR. SERPE: You don't need to answer [16] that. The court order speaks for itself. The doctor [17] has already testified in his deposition on written [18] questions about the records he has in his office. He [19] is here to talk to you about those today. We are not [20] going to sit here and engage in interpretation of the [21] court order. The order speaks for itself.  
[22] Q. (By Mr. Weisbrod) I want to know what [23] you did to attempt to comply with the court order to [24] attempt to determine whether there were any files in [25] your possession that related to any case that

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[1] St. Paul Insurance Company was involved in. What did (2) you do?  
[3] A. If I had knowledge of any case of [4] St. Paul's, then I would have brought that with me, [5] but I do not have " the the majority of cases I have [6] right now I don't know the insurance company.  
[7] Q. Doctor, you can't sit here and swear [8] under oath that you don't have in your office a piece [9] of paper that says on it St. Paul Insurance Company [10] is involved in a particular case, can you?  
[11] A. Oh, yeah, St. Paul's does not send me the [12] case, Mr. Weisbrod, an attorney does, and in the [13] majority of those there's no records relating to the [14] insurance company, so I can't tell you who the [15] insurance company is.  
[16] Q. Look, Doctor, many times a lawyer will [17] send you a case with an re on it, and underneath the [18] re case name it may very well say St. Paul Insurance [19] number and have a St. Paul Insurance number on it; [20] isn't that right, Doctor?  
[21] MR. SERPE: I'm going to object to

that.

[22] THE WITNESS: Not the letters I get, [23] Mr. Weisbrod.  
[24] Q. (By Mr. Weisbrod) You are sitting here [25] swearing under oath, Doctor, that there is not a

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[1] shred of paper in your office that in any way would [2] identify St. Paul Insurance Company being involved in [3] any of the many cases you've given depositions on in [4] the last six months; is that correct?  
[5] A. Correct.  
[6] Q. And you're prepared, are you not, Doctor, [7] to sit here and swear under oath that St. Paul [8] Insurance Company is not involved in any of the cases [9] you've given deposition on in the last six months?  
[10] A. No, I told you I don't know that.  
[11] Q. What have you done to inquire, Doctor?  
[12] A. I wasn't asked to inquire. I was asked [13] to determine what I had in my possession, [14] Mr. Weisbrod. I don't have time to call people and [15] ask them what insurance company is involved. They [16] may not want to tell me. That's not my chore.  
[17] Q. Did you go through and read all the [18] correspondence in each one of your files to see if it [19] mentioned whether or not St. Paul Insurance Company [20] was involved in the case?  
[21] A. Of the ones that I had in front of me, [22] yes.  
[23] Q. How many did you have in front of you?  
[24] A. I don't recall.  
[25] Q. What do you mean by had in front of you?

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[1] A. That I had in my office.  
[2] Q. How many do you have in your office?  
[3] A. I guess five or 10.  
[4] Q. Oh, you've got more than that, Doctor.  
[5] A. No, I don't, Mr. Weisbrod.  
[6] Q. Sure you do.  
[7] MR. SERPE: Objection, argumentative, [8] sidebar remark. Ask a question.  
[9] Q. (By Mr. Weisbrod) You are scheduled for [10] more than five or 10 depositions or trial testimonies [11] to be given in cases in the next two months, aren't [12] you, Doctor?  
[13] A. I don't believe so. I am going to Italy [14] in July.  
[15] Q. Well, the next three months?  
[16] A. I don't know. I don't have much [17] scheduled in August.  
[18] Q. The fact of the matter is you either [19] don't know at all how many you have, it could be a [20] lot more than five or 10, or you do know and you [21] don't want to

tell us.

[22] MR. SERPE: Objection, argumentative and [23] asked and answered.  
[24] THE WITNESS: I've told you that.  
[25] Q. (By Mr. Weisbrod) How do you know?

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[1] A. I know I'm going to Italy in July.  
[2] I have a board meeting in August with the board and [3] going to do some traveling, and right now I do not [4] have much scheduled.  
[5] Q. Did you give a deposition on May 21, [6] 1993, Doctor?  
[7] A. If I did I did. I don't recall the day.  
[8] Q. If I tell you you gave a deposition on [9] May 21, 1993, you don't have any reason to deny that [10] under oath, do you, Doctor?  
[11] A. No, not at all.  
[12] Q. Does the name Venham versus Medical [13] Center of Baton Rouge ring a bell to you?  
[14] A. Yes.  
[15] Q. That's the next to the last case you gave [16] a deposition in, isn't it?  
[17] A. I don't know, Mr. Weisbrod. I've told [18] you that.  
[19] Q. There's been one between that and this [20] time, at least one, maybe two or three?  
[21] A. No, I told you that it was the latter [22] part of May, first part of June.  
[23] Q. But there's been another case between [24] that case and this case; isn't that right, Doctor?  
[25] A. I don't know.

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[1] Q. Did you give a deposition on May 11th, [2] 1993?  
[3] A. If I did and it is recorded, I did.  
[4] Q. You don't have any reason to deny you [5] gave a deposition on May 11, 1993?  
[6] A. No.  
[7] Q. Does the name Hammond versus Merrimont [8] Hospital mean anything to you?  
[9] A. Yes, that's the case that's Bend-ing in [10] Cleveland.  
[11] Q. That is the one you are supposed to go [12] give trial testimony in?  
[13] A. Maybe, Mr. Weisbrod.  
[14] Q. It is also the one you gave a deposition [15] on on May 11, 1993, isn't it, Doctor?  
[16] A. If that's the date, then yes.  
[17] Q. You gave a deposition on May 5, 1993, [18] less than a week before that, Doctor?  
[19] A. If it is, it is, you know.  
[20] Q. We could go on like this forever and you [21] will say if it is, it is, to where we get to you [22] giving 50 depositions a year, right?



[ a ] **A. I don't believe so.**

[24] MR. SERPE: Objection, argumentative, [25] sidebar remark.

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[1] Q. (By Mr. Weisbrod) It could be because if [2] it is, it is, right, Doctor?

[3] **A. Correct.**

[4] Q. You can't tell me here under oath, swear [5] to me that I couldn't keep going like this and come [6] up with 50 depositions a year, could you, Doctor?

[7] MR. SERPE: Objection, complete [8] speculation. If you have depositions you want to ask [9] him about, ask away.

[10] THE WITNESS: That's right, just go ahead [11] and ask them.

[12] Q. (By Mr. Weisbrod) Can you swear under [13] oath you haven't given 50 deposition in the last [14] year?

[15] **A. Since January, yes.**

[16] Q. In the last year, a 12-month time period, [17] Doctor.

[18] **A. I think that would be unusual.**

[19] Q. Can you swear under oath that you haven't [20] given 50 depositions in medical malpractice cases, [21] Doctor, in the last year?

[22] MR. SERPE: Objection, asked and [23] answered?

[24] THE WITNESS: I don't know the number, [25] Mr. Weisbrod. I've given you the estimate of five to

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[1] 15 as an average since 1980, which is what I've done, [2] and how many occurred over the last year, I can't [3] tell you that, I don't know.

[4] Q. (By Mr. Weisbrod) The answer is you [5] cannot swear under oath that you gave less than 50 [6] deposition in the last year, correct?

[7] MR. SERPE: Objection, argumentative, [a] He's already answered that three times.

[9] THE WITNESS: I have nothing further to [10] say.

[11] Q. (By Mr. Weisbrod) I want to make sure [12] I've got your answer because it is really a yes or no [13] answer, Doctor. Either you can swear that you had [14] less than 50 depositions in the last year or you [15] can't swear to that. Which one is it?

[16] MR. SERPE: Object to that as [17] argumentative, sidebar remark.

[18] THE WITNESS: I don't know the number. [19] I've told you the average so I can't you. I don't [20] know.

[21] Q. (By Mr. Weisbrod) In other words, you [22] cannot swear that you didn't give 50 deposition in [23] the last year?

[24] MR. SERPE: Same objection. Go ahead.

[25] THE WITNESS: I can tell you that would

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[1] be unlikely.

[2] Q. (By Mr. Weisbrod) But you can't swear [3] that it's not a fact?

[4] **A. I am telling you it is unlikely.**

[5] Q. It is more likely you gave 40 in the last [6] year, correct?

[7] **A. No.**

[8] Q. It is not more likely you gave 40 rather [9] than 50?

[10] **A. I don't know the number, Mr. Weisbrod. I [11] cannot tell you the number. I told you average in my [12] pattern.**

[13] Q. You are going to swear it is unlikely you [14] gave 40 depositions in the last year?

[15] **A. Yes.**

[16] Q. Are you going to swear it is unlikely you [17] gave 30 deposition in the last year?

[18] **A. I don't know the number, Mr. Weisbrod, so [19] I can't swear to anything right as you ask that [20] question. If I don't know the number, I'm telling [21] you I don't know. I have nothing further to say.**

[22] Q. That means you cannot deny that you gave [23] at least 30 depositions in the last year, correct?

[24] MR. SERPE: Objection. You've asked this [25] 10 different ways. He's given you his estimate.

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[1] He's told you to the best of his memory about these [2] matters. You are just harassing the witness and [3] asking him to swear to something where he tells you [4] he doesn't have the answer to it. It is an improper [5] question. You are just badgering the witness.

[6] Q. (By Mr. Weisbrod) Have we covered all [7] depositions you gave in May?

[8] **A. I don't know, you've got the list.**

[9] Q. How many did you give in April?

[10] **A. I don't know.**

[11] MR. SERPE: Objection, asked and [12] answered.

[13] Q. (By Mr. Weisbrod) Did you give a [14] deposition on April 2nd, 1993?

[15] **A. I mean, you know, if you have the [16] deposition, I have no problem with it. I told you I [17] don't recall the dates.**

[18] Q. Isn't it true, Doctor, that basically [19] your tactic in answering these questions is to be as [20] evasive as possible?

[21] **A. I don't have any tactic, Mr. Weisbrod. [22] I'm here to answer your questions the best way I can [23] the best of my recollection. If I can, I can. If [24] I cannot recall it, I can't. I have no tactic.**

[25] Q. The only way anybody could find out how

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[1] many depositions you've given or what you have given [2] depositions in is to get

the depositions, right, [3] Doctor, because you can't remember anything?

[4] MR. SERPE: Objection, completely [5] misstates his testimony. You are just harassing the [6] witness.

[7] Q. (By Mr. Weisbrod) You can't remember the [8] names of any of the depositions you've given, any of [9] the cases; is that right?

[10] **A. I mean certainly in the past, you sent me [11] a list of them, after I see them I can remember them.**

[12] Q. Without me sending you a list of them you [13] couldn't remember them?

[14] **A. No, that's not a part of what my [15] responsibility is is to remember depositions.**

[16] Q. Did you give two depositions on February [17] 19th, 1993?

[18] **A. Two depositions?**

[19] Q. Yes, sir.

[20] **A. Not that I'm aware of.**

[21] Q. Did you give a deposition on February 3, [22] 1993?

[23] **A. If I did, I did.**

[24] Q. Did you give a deposition on February [25] 2nd, 1993?

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[1] **A. I don't recall.**

[2] Q. Did you give a deposition on January [3] 22nd, 1993?

[4] **A. You know, again, if I did, you know, I [5] did. I don't recall.**

[6] Q. Did you give a deposition on January 7, [7] 1993?

[8] **A. I can't recall, Mr. Weisbrod.**

[9] Q. Now, what you've testified to several [10] times is that you have averaged five to 15 [11] depositions a year, right?

[12] **A. Correct.**

[13] Q. But you've already given over 10 [14] depositions in the half year since January 1; isn't [15] that right, Doctor?

[16] **A. There is still the remaining part of [17] year, Mr. Weisbrod, and it is an average over years.**

[18] Q. Are you telling me that you expect to [19] give five or less depositions during the remainder of [20] the year, Doctor?

[21] **A. I don't know.**

[22] Q. Well, you are scheduled right now for [23] more than that, aren't you?

[24] **A. No.**

[25] Q. You're not?

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[1] **A. No.**

[2] Q. How will we verify that?

[3] **A. I don't know. Some of the cases I've [4] been disclosed in, some I have not, and some I will [5] not testify in, so I can't tell you that.**

[6] Q. You have how many files in your office [7] right now, active cases?

[8] MR. SERPE: Objection, asked and [9] answered.

[10] THE WITNESS: I've told you that.



[11] Q. (By Mr. Weisbrod) You don't know that [12] either, right?

[13] MR. SERPE: Objection, asked and [14] answered.

[15] THE WITNESS: Not the exact number, no.

[16] Q. (By Mr. Weisbrod) So how we would find [17] out, Doctor, how many active files you have in your [18] office right now?

[19] A. **You've asked me, I've told you to the [20] best of my recollection.**

[21] Q. What if we want to know exactly?

[22] A. **You asked me. I'm the person to tell [23] you.**

[24] Q. They are in your office, right?

[25] A. **Yes.**

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[1] Q. You wouldn't refuse, if the court ordered [2] you, to reveal the names of each of those files, [3] would you?

[4] MR. SERPE: Doctor, you don't need to get [5] into answering questions about things the court may [6] or may not do. You don't need to answer that. It is [7] an improper question.

[a] Q. (By Mr. Weisbrod) is there any reason [9] you know of, Doctor, why you or your secretary can't [10] make an inventory of every file in your office?

[11] A. **Yes, there is a lot of reasons, I mean, [12] some of which are privileged information between the [13] the attorney and myself, have not been revealed in, [14] and it is not appropriate.**

[15] Q. You can make a list, Doctor, of the files [16] that are in your office with the ones where you have [17] been revealed and you can make a list with the ones [18] where you haven't been revealed in, can't you? There [19] is nothing to stop you from doing that.

[20] MR. SERPE: Les, we are not going to [21] continue on this road. If the judge orders [22] something, Dr. Chahub will have an opportunity to [23] decide what he is going to do. There is no order for [24] this. We are not going to get into what will happen [25] if the judge orders things.

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[1] MR. WEISBROD: The judge needs to know in [2] framing an order what is physically possible and not [3] possible and that's all I am asking.

[4] Q. (By Mr. Weisbrod) Is it physically [5] possible for someone, you or one of your employees, [6] to make an inventory of what cases there are in your [7] office by which ones you've been revealed in and [a] which ones you haven't been revealed in?

[9] A. **I think anything is possible. All the [10] attorneys would have to be contacted. They would [11] have to be asked and it would have to be recorded. I [12] don't have the time to**

**do that, Mr. Weisbrod.**

[13] Q. You are not going to refuse to do it if [14] the court orders you to do it --

[15] MR. SERPE: Don't answer that. We are [16] not going to get into what you need to do if the [17] court does some thing. It is totally improper, [18] hypothetical.

[19] Q. (By Mr. Weisbrod) Did you give a [20] deposition on December 28, 1992?

[21] A. **I don't recall.**

[22] Q. Did you give a deposition on December 7, [23] 1992?

[24] A. **Same answer, Mr. Weisbrod.**

[25] Q. Did you give a deposition every week

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[1] between October 8 and December 28, 1992?

[2] A. **I would doubt that.**

[3] Q. Every other week?

[4] A. **I don't know.**

[5] Q. Did you give a deposition every week [6] during the the month of June, 1992?

[7] A. **You know, that's a year ago, [8] Mr. Weisbrod, I can't tell you that.**

[9] Q. Doctor, you can't deny under oath that [10] you've given five hundred depositions in medical [11] malpractice cases, can you?

[12] MR. SERPE: Object to this, improper --

[13] THE WITNESS: I think I can, [14] Mr. Weisbrod. I think that would be unlikely.

[15] Q. (By Mr. Weisbrod) Can you only say it is [16] unlikely, or can you say you didn't do it?

[17] A. **I would think that would be an amount [18] that -- yes, I can say that that did not occur.**

[19] Q. Can you deny under oath that you gave [20] four hundred depositions in medical malpractice [21] cases?

[22] MR. SERPE: Same objections.

[23] THE WITNESS: I've given you to the best [24] of my recollection in averages. I can't tell you [25] anymore. I don't recall since 1980 what the number

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[1] is.

[2] Q. (By Mr. Weisbrod) Doctor, I know the [3] average you are testifying to is wrong because I've [4] got more depositions than the average you've [5] testified to. Okay?

[6] MR. SERPE: Objection, sidebar comment.

[7] Q. (By Mr. Weisbrod) So assuming the [8] average you've been giving for years is wrong, [9] Doctor, and I'm trying to figure out now that we know [10] that what the right number is, I want to know how far [11] you will go in denying because that's all I have to [12] work with.

[13] MR. SERPE: Objection, completely

[14] improper question. You haven't established anything [15] today. All you are doing is harassing the witness. [16] The witness has given the best estimates he can. If [17] you have other evidence obviously you can present it [1a] or do whatever you want to with it.

[19] Q. (By Mr. Weisbrod) Let's double your [20] number -- we know in one year there is evidence from [21] St. Paul Insurance Company that you were involved in [22] 60 claims.

[23] MR. SERPE: Objection, we don't know [24] that. It misstates evidence in the case.

[25] THE WITNESS: That's not true.

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[1] Q. (By Mr. Weisbrod) You deny that?

[2] A. **It speaks for itself.**

[3] Q. You read yourself the deposition [4] testimony.

[5] A. **Why don't you look at the list, [6] Mr. Weisbrod.**

[7] Q. I've got the list. You show me on the [8] list where it is that it's not a medical malpractice [9] case.

[10] A. **I told you there's no way to know that, [11] but my practice pattern in 1986 is to see patients [12] related to a number of issues. Now, if their [13] insurance carrier is St. Paul's, they are going to [14] have a claim number. So I have no way to tell you [15] what that is related to.**

[16] Q. Doctor, you can't swear to me under oath [17] and in fact you know darn well none of those payments [1e] have to do with patient care, don't you?

[19] MR. SERPE: Objection, asked and [20] answered. Sidebar remark.

[21] Q. (By Mr. Weisbrod) There's not one of [22] these that has to do with patient care, does it, [23] Doctor? I'm going to show it to you. You show me [24] which one has to do with patient care.

[25] THE WITNESS: How am I supposed to know

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[1] that? There are no names, nothing associated with [2] it, Mr. Weisbrod.

[3] Q. Exactly, Doctor, except for the testimony [4] from the St. Paul witness saying that this [5] misrepresents payment for you on claims, and the [6] other thing is, Doctor, that this came from and [7] through the malpractice department of St. Paul, [8] didn't it?

[9] A. **I don't know where it came from. I [10] didn't get it.**

[11] MR. SERPE: Object to the sidebar.

[12] Q. (By Mr. Weisbrod) How can you sit there [13] and testify that it has to do with direct patient [14] care when you don't even know where it came from?

[15] A. **Why don't you get your testimony correct. [16] I never said direct**

patient care. I said what the [17] the type of patients were. \$250 is not - may be [18] related to a patient visit. \$30 is a fee for either [19] an office visit, for records, or something. That is [20] direct patient care.

[21] Q. Oh, Doctor, \$30 could be a phone call you [22] had with somebody on a case.

[23] A. I don't bill for phone calls, [24] Mr. Weisbrod, only attorneys do.

[25] Q. You don't bill for anything, do you? You

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[1] don't have any billing records in this case, do you?

[2] A. I'm sure I do. Mr. Serpe can give it to [3] you.

[4] Q. Why can't you give it to me?

[5] A. I don't have it. He's certainly welcome [6] to give it to you. I'll be glad to get it from him [7] and give it to you.

[8] Q. Are you telling us now you bill as the [9] case goes along?

[10] A. Sometimes.

[11] Q. Your previous testimony under oath has [12] been that you don't bill as the case goes along.

[13] A. In the past I have - I mean, recently I [14] don't. In the past I have as I went along.

[15] Q. When did it change, Doctor?

[16] A. The -

[17] Q. You say in the past you haven't. You [18] testified years ago you didn't bill into the end of [19] the case.

[20] MR. SERPE: Objection, improper [21] testimony. If you have something specific you want [22] to show the doctor, show the doctor.

[23] THE WITNESS: What's your question, [24] Mr. Weisbrod?

[25] Q. (By Mr. Weisbrod) My questions is:

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[1] What's your billing practice?

[2] A. Sometimes I will bill at the conclusion [3] of the case and sometimes during the case.

[4] Q. How do you decide except during the [5] middle of the deposition which one of those you are [6] going to do?

[7] MR. SERPE: Objection, sidebar remark, [8] argumentative.

[9] THE WITNESS: I don't think I need to [10] answer that question.

[11] Q. (By Mr. Weisbrod) How do you decide [12] which case you are going to treat which way?

[13] A. Well, when they go on for a number of [14] years, Mr. Weisbrod, I will send the bill. If it is [15] a reasonable time to conclude it, then I will. It is [16] usually at the conclusion of the case.

[17] Q. So sometimes you bill as the case

goes [18] along and sometimes you bill at the conclusion of the [19] case; is that correct?

[20] A. Correct.

[21] Q. Now, Doctor, show me where the payment [22] was that you were pointing to that was the \$30 [23] payment because all the ones that I've seen on your [24] name where total expense paid on your name was [25] \$59,411.72, none of them are that low. They are all

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[1] in the hundreds of dollars.

[2] MR. SERPE: Objection, the document [3] speaks for itself. I object to Mr. Weisbrod's [4] characterization.

[5] Q. (By Mr. Weisbrod) Show me on '86.

[6] A. I don't even know what the years are. [7] Here are the \$30 payments right here.

[8] Q. What you are showing me is two \$30 [9] payments to the Neurology Center, P.C., on Dauphin [10] Street in December, and this is dated as of December [11] of 1985; is that correct, Doctor?

[12] MR. SERPE: objection, the document [13] speaks for itself.

[14] Q. (By Mr. Weisbrod) Is that correct, [15] Doctor?

[16] A. That's what they are. I didn't read the [17] other dates.

[18] Q. There is two \$30 entries there.

[19] A. Right.

[20] Q. It is under the Neurology Center on [21] Dauphin Street, and it is as of December 1985, [22] correct?

[23] A. Correct.

[24] Q. Now, let's go over to the portion under [25] your name where it says Elias Chalhub, and it says at

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[1] the top of the page as of December 1986, and I want [2] you to go down into this column here where it adds up [3] to a total of \$59,411.72 and see, Doctor, if you can [4] find any anything in that column that's less than [5] several hundred dollars.

[6] MR. SERPE: Objection, the document [7] speaks for itself.

[8] THE WITNESS: So what? What do you want [9] me to do it for? It is not going to tell you the [10] type of the cases or what it is for, Mr. Weisbrod.

[11] Q. (By Mr. Weisbrod) Well, Doctor, you're [12] playing games here, aren't you?

[13] MR. SERPE: Objection -

[14] THE WITNESS: I'm not playing any games.

[15] MR. WEISBROD: Sure you are, Doctor.

[16] MR. SERPE: If you have a question to ask [17] about the thing, ask it. The document speaks for [18] itself. Dr. Chal-

hub didn't prepare the document. If [19] you have something specific to ask him, ask him. [20] Stop insulting him.

[21] Q. (By Mr. Weisbrod) I want you to deny [22] under oath, Doctor, that on this list that totals up [23] to where you were paid \$59,411.70 some-odd cents in [24] 1986 by the St. Paul Insurance Company, I want you to [25] deny under oath if you can that all of that money was

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[1] for payment related to medical malpractice work. Can [2] you do that?

[3] MR. SERPE: Same objection.

[4] Q. (By Mr. Weisbrod) Can you deny that [5] under oath?

[6] A. I have no way to know that. I don't know [7] what the numbers represent. I told you the practice [8] pattern I have. St. Paul is a large insurance [9] company, makes payments for a lot of things.

[10] Q. You want to dance around it, but you [11] can't deny it under oath; isn't that right?

[12] A. I'm not dancing around anything.

[13] MR. SERPE: Objection, you are insulting [14] the doctor. You don't need to answer if he wants to [15] insult you.

[16] Q. (By Mr. Weisbrod) You testified in the [17] past that in fact you were paid \$84,000 by the [18] St. Paul Insurance Company for medical malpractice [19] work in 1986; isn't that right, Doctor?

[20] A. Through lawyers or directly by the [21] St. Paul's Insurance Company, yes, I have.

[22] Q. Thank you. And every year since 1986 you [23] made as much or more, haven't you, Doctor?

[24] A. No.

[25] Q. How do you know?

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[1] A. I mean, I know what I've done. I know [2] the volume.

[3] Q. Can you remember a specific dollar figure [4] for each year?

[5] A. No, I don't think anybody can do that, [6] Mr. Weisbrod.

[7] Q. Well, then, how can you tell me you [8] didn't make as much or more than \$84,000?

[9] A. I know what my income is. I know what [10] the percentage is.

[11] Q. Well, how would anybody know whether you [12] are telling us the truth now or not, Doctor?

[13] MR. SERPE: Objection, argumentative. [14] Ask a question.

[15] THE WITNESS: I've taken an oath to tell [16] you the truth, Mr. Weisbrod, and believe me I tell [17] the truth.

[18] MR. WEISBROD: I think we've demonstrated [19] that's not true on a number of instances.

[20] MR. SERPE: That is absurd. You haven't [21] demonstrated anything today except you have a [22] tremendous capacity to harass and badger the witness. [23] Q. (By Mr. Weisbrod) Let's go through a few [24] more of your previous depositions, Doctor. We [25] started out Travis versus Hamby, and you testified in

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[1] March of '87 that you had reviewed very few case for [2] St. Paul in the last year, which was '86, and then we [3] saw with St. Paul's deposition of Sharon Manning that [4] in fact you had been paid on 60 separate claims in [5] 1986, correct?

[6] MR. SERPE: Objection, completely [7] misstates his testimony, mischaracterizes what he [8] said to you. You already answered this question [9] several times.

[10] THE WITNESS: I can't answer it any [11] different.

[12] Q. (By Mr. Weisbrod) Doctor, based on what [13] we've just gone through and the fact that you can't [14] tell me that any of those payments of \$59,000 weren't [15] malpractice cases, isn't it true, Doctor, that when [16] you testified on March 17, 1987, that you had [17] reviewed very few St. Paul cases in the last year [18] that you weren't telling the truth?

[19] MR. SERPE: Objection, asked and [20] answered.

[21] THE WITNESS: To my recollection, [22] Mr. Weisbrod. I told you, I have not told you who [23] the insurance company is. I don't know the carrier [24] the majority of the time.

[25] Q. (By Mr. Weisbrod) Do you recall the case

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[1] of Royball versus Fleetwood in which you gave a [2] deposition on March 15th, 1991?

[3] A. No.

[4] Q. Let me show you this one, Doctor: You [5] were deposed and gave testimony under oath on 15th [6] day of March, 1991. The question was, "At sometime [7] in the past did you receive as many as 60 different [8] checks from St. Paul Fire and Marine Insurance [9] Company in a single year?" And your answer was, "I [10] don't believe so." Is that correct?

[11] A. Yes.

[12] Q. That's not true, is it?

[13] A. Yes, it is true.

[14] Q. Doctor, we just went through where there [15] was a list from St. Paul where they paid you. Now, [16] is the reason why you are saying this isn't true is [17] because what you've done is you've made a [18] differentiation in your testimony when the question [19] is received from St. Paul that in your mind if the [20] check was from St. Paul, in other words, drawn on [21] their account, but you re-

ceived it in an envelope [=] from an attorney, then you didn't in your mind [23] receive it from St. Paul?

[24] MR. SERPE: I need to object to that, to [25] all the sidebar remarks in that question. It is an

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[1] improper question.

[2] THE WITNESS: What's your question?

[3] Q. (By Mr. Weisbrod) My question is: When [4] you were asked this question in this deposition about [5] receiving 60 different checks from St. Paul in a [6] single year, did you interpret the term received to [7] mean that if a check was drawn on St. Paul's account [8] but you got it in an envelope from an attorney as [9] opposed from St. Paul that you didn't receive a check [10] from St. Paul?

[11] A. You know, I can't recall that many years [12] ago what I interpreted or what I didn't interpret. [13] It speaks for itself. I have explained to you the [14] system. I've explained to you what occurs and a lot [15] of those are duplicates, so -

[16] Q. Explain to me, Doctor, how we can have a [17] list from St. Paul showing they gave you - they had [18] 60 different checks made out in your name and you [19] could testify that you didn't receive 60 different [20] checks from St. Paul?

[21] A. Well, I don't know that that represents [22] 60 different checks, Mr. Weisbrod. Does that say [23] that in that deposition?

[24] Q. Yes, sir.

[25] A. Show me where that says that. Show me

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[1] where it says 60 different checks were issued.

[2] Q. Well, it is 60 different - well, I think [3] it adds up to that, doesn't it, Doctor?

[4] A. No, show me where the checks, where it [5] says that, Mr. Weisbrod. Show me in the deposition [6] of Ms. Manning where it says that.

[7] Q. It says 60 -

[8] A. No, it doesn't. Tell me where it says 60 [9] checks, Mr. Weisbrod.

[10] Q. Doctor -

[11] A. You don't want to do that, do you?

[12] Q. Doctor, you want to make a distinction [13] between checks and claims, right?

[14] A. I think there is a lot of difference [15] between checks and claims.

[16] Q. The fact is you could very well have [17] received 60 different checks, you don't know?

[18] A. Yes, I do, Mr. Weisbrod.

[19] Q. How do you know?

[20] A. I would not have received that

many.

[21] Q. Doctor, if -

[22] A. But my corporation could have or [a] certainly for patient care, yes, that's possible.

[24] Q. Oh, I see, now you are saying that you [25] don't interpret the term you to include your

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[1] corporation, right?

[2] A. I didn't say anything. That's what you [3] are saying.

[4] Q. No, sir, you just said you might not have [5] but your corporation might have. Between you and [6] your corporation you got 60 different checks, right?

[7] A. I don't know what your point is.

[8] Q. Doctor, if I get the actual checks from [9] St. Paul and there is 60 of them made out with your [10] name on it, would you admit then you received 60 [11] different checks from St. Paul?

[12] MR. SERPE: Objection, completely [13] hypothetical and assumes facts not in evidence.

[14] Q. (By Mr. Weisbrod) In fact, that's the [15] the only way you would admit it, isn't it, Doctor?

[16] A. Mr. Weisbrod, I told you to the best of [17] my recollection what the reimbursement pattern was. [18] We looked at those numbers. There's nothing more [19] that I can add.

[20] Q. Did you give a deposition in a case [21] styled Hurt versus The Mt. Sinai Medical Center in [22] September of 1992?

[a] A. You have the deposition. Obviously [24] that's the case.

[25] Q. September 25th, 1992. Question, "I think

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[1] in one year you earned as much as approximately [2] \$80,000 from St. Paul in reviewing cases." Answer, [3] "No, I don't think that's true." [4] You didn't tell the truth there, did you, [5] Doctor?

[6] A. Yes, I did, Mr. Weisbrod.

[7] MR. SERPE: Objection, improper [8] impeachment, document speaks for itself.

[9] Q. (By Mr. Weisbrod) We've just gone [10] through the checks -

[11] A. No, are haven't gone through the checks.

[12] Q. I'm sorry, you're right, we haven't gone [13] through the checks.

[14] A. Correct.

[15] Q. We've gone through the report from [16] St. Paul Insurance Company, the computerized list, [17] right?

[18] A. They are claims numbers, Mr. Weisbrod.

[19] Q. It shows that you received more than [20] \$80,000 from St. Paul, right?

[21] A. I don't have any problem with that.

[22] MR. SERPE: Objection, the document [23] speaks for itself.  
[24] Q. (By Mr. Weisbrod) Why did you deny under [25] oath that you didn't think it was true in one year

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[1] you earn as much as approximately \$80,000 from [2] St. Paul in reviewing cases?  
[3] A. Reviewing cases is the key. They are for [4] reimbursement. I don't know what it is for, I told [5] you that. Records, other types of cases, I don't [6] know what it is for. Do you?  
[7] Q. Yeah.  
[8] A. You do?  
[9] Q. Yeah.  
[10] A. Show it to me then.  
[11] Q. It is for your testimony, Doctor.  
[12] A. Show me where that says that.  
[13] Q. And, by the way, you've drawn a [14] distinction between monies you are paid for reviewing [15] cases, monies you are paid for testifying in court, [16] and monies you are paid for giving depositions, [17] right?  
[18] MR. SERPE: And money he's paid for [19] treating patients.  
[20] THE WITNESS: I didn't draw a distinction [21] between the other three, you did.  
[22] Q. (By Mr. Weisbrod) One time you were [23] ordered to calculate what percentage of your income [24] was related to testifying, and you calculated 10.1 [25] percent in 1986 is related to testifying, and that

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[1] number that you calculated at that time was strictly [2] related to testifying in a courtroom. It wasn't [3] related to the amount you received for reviewing [4] malpractice claims or giving deposition testimony; is [5] that correct?  
[6] A. I can't recall back then, Mr. Weisbrod. [7] I don't think that's correct, though.  
[8] Q. Now, you've given deposition testimony to [9] that effect, haven't you, Doctor?  
[10] MR. SERPE: Objection, improper [11] impeachment. If you have testimony you want to show [12] him, go ahead and show it to him.  
[13] THE WITNESS: Let's take a break. It has [14] been another hour.  
[15] MR. WEISBROD: If you won't take a break, [16] we will get through this a lot faster.  
[17] THE WITNESS: How much longer do you [18] have?  
[19] MR. WEISBROD: Hopefully an hour we will [20] be finished.  
[21] THE WITNESS: I still need to take a [22] break then.  
[23] (Recess.)

[24] Q. (By Mr. Weisbrod) Doctor, do you [25] remember giving your testimony in case styled Hicks

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[1] versus Smith on the 2nd day of August 1991?  
[2] A. No.  
[3] Q. But you did, right?  
[4] A. Well, you have the deposition. Why are [5] you playing games? Just show it to me.  
[6] Q. I'm testing your memory, Doctor.  
[7] MR. SERPE: Objection to sidebar.  
[8] Q. (By Mr. Weisbrod) In that deposition you [9] were asked, "Is it true that for 1986 you estimated [10] at the direction of Judge Byrd that 10.1 percent of [11] your income came from either testifying in of [12] reviewing medical malpractice cases?" Your answer, [13] and this was read to you from another case, your [14] answer was, "No, testifying." Question, "Just from [15] testifying?" Answer, "That's correct."  
[16] A. Well, if that's what I said, that's [17] correct.  
[18] Q. So that when you calculated that 10.1 [19] percent of your income came, that was just from [20] testifying, that didn't include depositions and it [21] didn't include review of medical malpractice cases; [22] isn't that right?  
[23] A. Testifying is depositions.  
[24] Q. But you've drawn a distinction between [25] that in other place where you've testified in

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[1] depositions.  
[2] MR. SERPE: Wait. Hold it. Object to [3] that. If you have a specific thing you want to show [4] the doctor, show it to the doctor.  
[5] Q. (By Mr. Weisbrod) Haven't you drawn a [6] distinction in past testimony, Doctor, between [7] testifying in a courtroom and depositions?  
[8] MR. SERPE: Same objection. It is [9] improper impeachment. If you have a deposition to [10] show the doctor, show it to him.  
[11] Q. (By Mr. Weisbrod) That's okay. I'm [12] asking you if you remember.  
[13] A. I can't remember. You will have to go [14] back and look at the question and see what it says.  
[15] Q. Let's assume you've drawn that [16] distinction.  
[17] A. Let's not assume anything, Mr. Weisbrod. [18] If you have something, let's do it.  
[19] Q. You've drawn that distinction in the [20] past.  
[21] A. Show—  
[22] MR. SERPE: Asked and answered.  
[23] Q. (By Mr. Weisbrod) Can you deny it?

[24] A. Show it to me.

[25] Q. Can you deny it?

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[1] A. Show it to me.  
[2] Q. I don't have to.  
[3] A. Then I don't have any answer.  
[4] MR. SERPE: He's already answered the [5] question.  
[6] THE WITNESS: You've got to show it to [7] me.  
[8] Q. (By Mr. Weisbrod) Do you remember the [9] the deposition, Doctor, of Chaney versus [10] St. Margaret's Hospital that you gave on April 4, [11] 1988?  
[12] A. I don't believe so, Mr. Weisbrod.  
[13] Q. You were asked, "And do you continue to [14] review cases for St. Paul in 1988?" And your answer [15] was, "I don't review cases for St. Paul, okay, I [16] don't work for St. Paul."  
[17] A. That was true in 1988, it is true in [18] 1986, and it is true now.  
[19] Q. And the reason why you say that is true [20] is because since St. Paul pays you, you don't [21] consider that you work for them when they pay you?  
[22] MR. SERPE: Wait. That completely [23] misrepresents the doctor's testimony. Improper [24] impeachment.  
[25] Q. (By Mr. Weisbrod) Doctor, I'm trying to,

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[1] like, explain this for the jury and the common guy. [2] The common guy, when they get paid by somebody, they [3] generally admit that they work for the person they [4] are getting paid by, the person whose name is on the [5] paycheck, and the fact of the matter is, Doctor, that [6] the name on the paycheck for you on all of these [7] cases that you've reviewed and testified in is [8] St. Paul insurance Company; isn't that right?  
[9] MR. SERPE: Objection to the sidebar [10] remark and comments by Mr. Weisbrod and misrepresents [11] the doctor's testimony.  
[12] THE WITNESS: No.  
[13] Q. (By Mr. Weisbrod) You are going to tell [14] me that the name on the paycheck is not St. Paul [15] Insurance Company?  
[16] MR. SERPE: Objection, name on what [17] paycheck?  
[18] THE WITNESS: In which case?  
[19] MR. SERPE: It's not a paycheck. I don't [20] know what you're talking about.  
[21] Q. (By Mr. Weisbrod) Doctor, in multiple [22] cases you have received paychecks from St. Paul [23] Insurance Company for medical malpractice review and [24] testimony that you've given, correct?  
[25] A. Mr. Weisbrod, no, that's not correct.

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[1] Second of all, you understand the reimbursement [2] system, or maybe you don't, okay, and I'm not sure I [3] entirely do. Attorneys hire me. Who makes that [4] payment, how their arrangement - they have been [5] retained by, is entirely up to them, but the [6] insurance company does not employ me.

[7] Q. Doctor, you know what perjury is? [8] A. I understand that.

[9] Q. Now, let's try this again because I think [10] you told me something just can't be true and that is [11] that your name, the name on paychecks that you [12] receive in multiple cases in which you get paid for [13] giving expert testimony in reviews is not St. Paul [14] Insurance Company, that name doesn't appear on the [15] paycheck, it is not the account on which the check is [16] drawn.

[17] MR. SERPE: I'm going to object to the [1e] sidebar comments. The question is vague, it is [19] confusing, refers to paychecks, there is no evidence [m] about paychecks. It makes no sense.

[21] THE WITNESS: Okay. There are a number [22] of things. First of all, you changed the question [23] from before. Obviously the name does occur on same [24] paychecks, not multiple, many. You keep changing [25] what you want to ask and say it is the same question.

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[1] It is not. Second of all, just because that occurs [2] still does not mean the insurance company retains me. [3] You know the system. Why do you want to twist it [4] around?

[5] MR. WEISBROD: I object to the [6] responsiveness of the answer.

[7] THE WITNESS: I thought it was very [8] responsive.

[9] MR. WEISBROD: You are twisting it [10] around.

[11] MR. SERPE: I object to the sidebar.

[12] Q. (By Mr. Weisbrod) The insurance company [13] does pay you on multiple occasions and you know that [14] and you are not telling the truth.

[15] A. I'm telling the truth.

[16] Q. Doctor -

[17] MR. SERPE: I've got an objection to [18] make. The question is argumentative. You are just [19] sitting here harassing and badgering the witness. He [20] has answered your questions.

[21] Q. (By Mr. Weisbrod) One paycheck you [22] received from St. Paul Insurance Company was \$2,000 [23] for making a videotape for them?

[24] A. Yes, that is not a medical malpractice [25] case.

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[1] Q. That was for making a videotape to be [2] used to train attorneys and adjust-

tors in dealing with [3] medical malpractice cases; isn't that correct, [4] Doctor?

[5] A. No, that is not correct.

[6] Q. You shouldn't have said that.

[7] A. Why shouldn't I?

[8] Q. Because it is not true,

[9] A. It is true.

[10] MR. SERPE: Objection. If you are going [11] to continue this any more, Mr. Weisbrod, I think we [12] should call the judge and recess the deposition and [13] take it before the judge. You are harassing the [14] witness and badgering the witness. You are acting [15] extremely unprofessional.

[16] Q. (By Mr. Weisbrod) You were read before [17] in one of your depositions what St. Paul wrote about [18] the videotape that you did in which they stated that [19] it was for purposes of training lawyers and adjusters [20] to defend malpractice cases, isn't that right?

[21] MR. SERPE: Objection, improper [22] impeachment.

[23] THE WITNESS: Say that again.

[24] Q. (By Mr. Weisbrod) You were read in one [25] of the depositions you have given before what

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[1] St. Paul Insurance Company wrote about the videotape [2] you did; isn't that right?

[3] A. No, I don't know what St. Paul wrote. If [4] you could show it to me, I will be glad to look at [5] it.

[6] Q. All right. I will.

[7] A. Good. Let's see it. I'm waiting [8] Mr. Weisbrod.

[9] Q. There are just so many of these when you [10] are dealing with hundreds it takes a while to get [11] them out.

[12] MR. SERPE: Object to the sidebar. If [13] you've got something to show the doctor, show it to [14] him.

[15] MR. WEISBROD: I will.

[16] Q. (By Mr. Weisbrod) In deposition you gave [17] in February 19, 1993, in the case of Whittinger [18] versus Northwest Physicians for Women, do you [19] remember that case?

[20] A. No.

[21] Q. You are not going to deny you gave your [2] disposition on February 19, 1993, are you?

[23] MR. SERPE: Objection, asked and answered [24] already. Show him what you've got if you want to ask [25] him a question about it.

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[1] Q. (By Mr. Weisbrod) Are you going to deny [2] you gave testimony in that case -

[3] MR. SERPE: Objection, asked and answered. He already told you he doesn't remember [5] the dates he gave a deposition.

[6] Q. (By Mr. Weisbrod) Are you going to deny [7] you gave your testimony that day?

[8] MR. SERPE: Objection, improper question.

[9] THE WITNESS: No, just show it to me, [10] Mr. Weisbrod.

[11] Q. (By Mr. Weisbrod) You were asked the [12] following question on page 38 of the deposition, [13] 'Doctor, do you agree with this statement: St. Paul [14] Fire and Insurance Company, its select attorneys, and [15] Elias Chahub, M.D., who participated in these [16] seminars have a proprietary and protected interest in [17] maintaining these materials and videotape under their [1e] exclusive control and assuring that they are used for [19] their intended purpose, i.e., to assist selected [20] defense attorneys and senior claims representatives [21] in understanding the birth injury and cerebral palsy [22] claims.' Is that correct, Doctor? [23] MR. SERPE: Totally different than the [24] questions you asked before.

[25] THE WITNESS: I don't think so.

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[1] MR. SERPE: Totally improper impeachment, [2] You are asking if it is true, show him the [3] information.

[4] THE WITNESS: Can I read what context it [5] was in?

[6] Q. (By Mr. Weisbrod) Doctor, all I have is [7] the summary.

[8] MR. SERPE: The summary of the [9] deposition? This is completely improper impeachment.

[10] THE WITNESS: That's what we have doing [11] for two hours, John.

[12] Q. (By Mr. Weisbrod) Doctor, your answer [13] when you were asked that question is -

[14] MR. SERPE: This is the summary you have? [15] You don't have the deposition to show the doctor?

[16] MR. WEISBROD: This is his actual answer.

[17] MR. SERPE: Then show the doctor the [1e] testimony.

[19] Q. (By Mr. Weisbrod) I want you to know -

[20] MR. SERPE: Do you have the deposition, [21] the transcript?

[22] MR. WEISBROD: Excuse me. Are you going [23] to allow me to finish?

[24] MR. SERPE: Go ahead and finish and then [25] identify where it comes from.

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[1] Q. (By Mr. Weisbrod) "I want you to know [2] why I was asked. It was to educate individuals. How [3] they wish to use that, if they want to use it to help [4] their attorneys for defense, so be it." [5] Are you going to deny you said that?

[6] A. Why don't you show me what context it was [7] in, Mr. Weisbrod. You

have a great propensity for [8] misrepresenting the truth, so could I see it?

[9] Q. No, Doctor. I object to your statements [10] on the record. I don't want a propensity for [11] misrepresenting the truth, you do, and all I want to [12] know is whether you are going to deny whether you [13] said that or not.

[14] MR. SERPE: I am going to object. It is [15] completely improper impeachment. If you want to ask [16] the doctor a specific question, ask him a specific [17] question. The summary you read was different from [18] the question you asked before and was a [19] misrepresentation by you, and I object to your [m] sidebar comments and your continuing insults to the [21] witness.

[22] Q. (By Mr. Weisbrod) Let's just back it up [23] this way, Doctor. Are you going to deny that you [24] made a videotape for St. Paul Insurance Company's use [25] in educating its attorneys and adjusters in how to

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[1] defend malpractice claims?

[2] A. That was not the intent of the lecture, [3] Mr. Weisbrod. I am going to deny that, yes.

[4] Q. You are not going to deny that's what [5] St. Paul did with the material?

[6] MR. SERPE: Objection, calls for [7] speculation.

[8] THE WITNESS: I don't know what [9] St. Paul's did with the material. I assume they [10] educated their claims representatives and attorneys [11] about medicine with that, which is what the intent [12] was. [13] Q. (By Mr. Weisbrod) Educated them about [14] medicine in order for them to be able to utilize it [15] in the defense of malpractice claims?

[16] MR. SERPE: Objection, speculation. [17] Dr. Chalhub isn't here to tell you what St. Paul [18] intended about anything.

[19] THE WITNESS: Common sense would tell [m] you -

[21] MR. SERPE: You've got to let me finish [22] my objections.

[23] Q. (By Mr. Weisbrod) We are talking about [24] paychecks from St. Paul. You admitted you got a [25] paycheck from St. Paul for two thousand bucks to do

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[1] the videotape, right?

[2] MR. SERPE: I need to object to your use [3] of the term paychecks since that connotes paychecks [4] you receive from an employer. Dr. Chalhub has [5] testified he is not an employee of St. Paul Insurance [6] Company.

[7] Q. (By Mr. Weisbrod) You got a check which [8] paid you, so, therefore, it was a paycheck from [9] St. Paul Insurance Company for \$2,000 for doing a [10] video, right?

[11] MR. SERPE: Same objection.

[12] THE WITNESS: I usually get paid for my [13] services just like you do, Mr. Weisbrod, and it was [14] for performing and doing an educational video. I do [15] that for a number of people on different topics.

[16] Q. (By Mr. Weisbrod) Isn't it also true, [17] Doctor, that you got checks which I pay you, and, [18] therefore, were paychecks from St. Paul Insurance [19] Company in 1986 for as much as \$84,000?

[20] MR. SERPE: I need to object to that [21] again to the way you are misrepresenting the term [22] paycheck as far as four questions to Dr. Chalhub. It [23] is misleading and it is confusing.

[24] THE WITNESS: I can't answer that.

[25] You've asked that several - I mean, a number of ways

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[1] and different ways and I have no different answer, [2] Mr. Weisbrod. It is the same answer, nothing to add.

[3] Q. (By Mr. Weisbrod) What got us on to this [4] is you denied that you worked for St. Paul Insurance [5] Company?

[6] A. I don't work for St. Paul Insurance [7] Company. I've never had a contractual relationship. [8] I don't have any relationship with the insurance [9] company.

[10] Q. In the sense that you have gotten paid by [11] them for work that you have done in cases that they [12] were insurance company on you have gotten checks [13] which paid you for work on behalf of the St. Paul [14] Insurance Company; isn't that correct, Doctor?

[15] A. That does not imply a contractual [16] relationship or any relationship. As I've already [17] told you and you well know, attorneys represent the [18] insurance company. They retain you and they usually [19] pay you.

[20] MR. WEISBROD: I object to the [21] unresponsiveness.

[22] THE WITNESS: That was very responsive.

[23] Q. (By Mr. Weisbrod) No, sir, I'm not [24] asking you about a contractual relationship.

[25] MR. SERPE: You are asking whether he

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[1] works for the company. You said that several times.

[2] Q. (By Mr. Weisbrod) I'm not asking you [3] about a contractual relationship; do you understand [4] that?

[5] MR. SERPE: Great. Go ahead. Ask a [6] question.

[7] THE WITNESS: Ask the question.

[8] Q. (By Mr. Weisbrod) I'm not asking you [9] about a relationship, I'm asking you, Doctor, [10] whether you received a check, more than one check, [11] which

paid you for work that you did for St. Paul [12] Insurance Company at least to the tune of \$84,000, in [13] 1986; isn't that correct?

[14] A. No, it is not correct.

[15] Q. What is wrong about it?

[16] A. Because the attorney retained me. If he [17] has somebody else who makes the payment, that's up to [18] him, but I worked for the attorney, not for [19] St. Paul's. That's what the difference is and you [20] know that's what the difference is, and we've been [21] talking about that for two hours.

[22] Q. So in your mind you got paid by [23] St. Paul's for work you did for the attorney, right?

[24] A. It is not only in my mind, that's the [25] facts.

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[1] Q. You understand that the attorney also got [2] paid by St. Paul?

[3] A. I assume he did. I'm sure he doesn't [4] work for nothing.

[5] Q. So St. Paul is just the one that foots [6] the bill for all this, but in your mind you don't do [7] any work for them?

[8] MR. SERPE: Objection.

[9] THE WITNESS: That's correct, St. Paul's [10] did not retain me.

[11] Q. (By Mr. Weisbrod) St. Paul is the [12] ultimate benefactor of the work you do, isn't it, [13] Doctor?

[14] A. No, I would think the physician, carrier, [15] or plaintiff is the ultimate benefactor.

[16] Q. Well, the carrier is St. Paul Insurance [17] Company where they are the ones that are paying you, [18] right?

[19] A. There are a number of people who benefit.

[m] Q. They are the ultimate benefactor? [21] A. I don't know that. You'll have to ask [22] St. Paul.

[23] MR. SERPE: You don't need to answer [24] that, that's improper.

[25] Q. (By Mr. Weisbrod) Well, look, Doctor,

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[1] you know that what you are doing is you are giving [2] testimony in case where St. Paul is the insurance [3] company because St. Paul Insurance Company is hoping [4] based on your testimony they won't have to pay more [5] money out on that claim, right?

[6] MR. SERPE: Mr. Weisbrod, if you are [7] going to keep this up, and you told me you were going [8] to stop at 3:00 o'clock, but I don't want this to go [9] on for another 45 minutes with you insulting the [10] doctor, playing word games, badgering him, I just [11] don't want it to go on.

[12] MR. WEISBROD: You mean you don't want me [13] to do what he does?

[14] MR. SERPE: No, I want you to tell the



[15] the truth and ask a straight question, and [16] Dr. Chalhub will give you a straight answer. I don't [17] want you to keep badgering and harassing him. If [18] that's what you want to keep doing, if you want to [19] keep playing these games, I suggest we call the [20] judge, and I'm going to ask the judge that we do this [21] in front of the judge because I don't think it is [22] right or fair what you are doing to Dr. Chalhub [23] today, and I don't think it is professional.

[24] MR. WEISBROD: Let's read the question [25] back.

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[1] (Previous question read by [2] the reporter as follows:)

[3] Q. "Well, look, Doctor, you know that [4] what you are doing is you are giving testimony [5] in case where St. Paul is the insurance company [6] because St. Paul Insurance Company is hoping [7] based on your testimony they won't have to pay [8] more money out on that claim, right?"

[9] MR. SERPE: The question is objectionable [10] as to what St. Paul's benefit or thought process or [11] hopes are, [12] THE WITNESS: I can't answer for [13] St. Paul.

[14] Q. (By Mr. Weisbrod) The question is what [15] you know.

[16] A. I don't know anything about St. Paul's [17] except that it is an insurance company that insures [18] many people in many situations.

[19] Q. Are you going to say that you don't know [20] in these cases where you are giving testimony and [21] St. Paul is paying for your testimony that St. Paul [22] has an intent to try to pay less money on the claim; [23] you don't know that?

[24] A. No, I would think that they are an [25] honorable company. If they indeed are going to make

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[1] payment in the case, I would assume they would do [2] that. If they do not feel like there is any [3] negligence, then I would assume they would defend it.

[4] Q. The whole purpose of your testimony in [5] these cases is to help provide a defense where [6] St. Paul is paying you for your testimony; isn't that [7] right?

[8] MR. SERPE: I need to object to that as [9] far as implying St. Paul is paying for his testimony.

[10] THE WITNESS: The purpose is to provide [11] information, which is to be judged by juries as to [12] what is correct and what is incorrect. That's my [13] only purpose, you know, so what they use it for is [14] entirely up to them.

[15] Q. (By Mr. Weisbrod) You know, Doctor, when [16] you get involved in these cases that you are not [17] getting

involved in the cases for the purpose of [18] trying to help the plaintiff in the case when you are [19] hired by St. Paul Insurance Company or paid for by [20] them; isn't that right?

[21] A. Sure. Those case are settled and there [22] is a lot of negligence. Those don't come to trial. [23] There is not any testimony. Those are settled [24] beforehand. You know that as well as I do.

[25] Q. Are you telling me, Doctor, in all of the

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[1] case you've given deposition testimony in that in all [2] of those cases that none of them were settled because [3] they were all ones where your information that you [4] were testifying in was correct?

[5] MR. SERPE: Objection, completely absurd [6] question.

[7] THE WITNESS: There's no way I can answer [8] that. I can tell you my testimony would be based on [9] the facts, it is truthful and to best of my ability [10] and knowledge. Now, the rest of the part of that [11] question, I can't answer that.

[12] Q. (By Mr. Weisbrod) Do you give testimony [13] in many depositions where you also recommend that [14] St. Paul Insurance Company settle the case?

[15] A. No, they wouldn't ask that. If you were [16] given a deposition it would have been done [17] beforehand.

[18] Q. Do you recommend to the attorneys they [19] settle the case when you give a deposition in a case [20] afterward?

[21] A. That's not my decision. I tell them what [22] the facts are, whether it is related, what the [23] causation, and I would assume based on that they make [24] that recommendation, so that's who employs them.

[25] Q. Do you have any idea how many cases

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[1] you've testified in and given depositions in which [2] they've settled after your deposition was given?

[3] A. They usually settle them before the [4] deposition, Mr. Weisbrod, not after the deposition.

[5] MR. SERPE: He's asking you if you know [6] how many they settle after your deposition.

[7] THE WITNESS: No, I don't.

[8] Q. (By Mr. Weisbrod) Every one that you [9] testified in that I was involved in it settled after [10] you testified.

[11] A. I have no knowledge of that, That is not [12] up to me.

[13] THE WITNESS: I'm going to step outside.

[14] MR. SERPE: Off the record.

[15] (Recess.)

[16] Q. (By Mr. Weisbrod) Okay, Doctor.

You [17] don't know how much time you spent on this case, do [18] you?

[19] A. No, not totally.

[20] Q. All right. Do you know whether or not [21] you even read everything that was in this box that [22] Mr. Serpe sent to you?

[23] A. I believe at one time or another I did.

[24] Q. How long - but you don't know how long [25] it took you to do it?

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[1] A. Mr. Serpe can provide you with a bill. I [2] have given him my permission and I would hope he [3] would do it, give you the bill.

[4] Q. He hasn't done it yet.

[5] A. Then ask him. He's a nice man.

[6] MR. WEISBROD: How come you haven't given [7] us the bill?

[8] MR. SERPE: I will give you the bill.

[9] Who cares.

[10] MR. WEISBROD: I want to see it.

[11] MR. SERPE: I don't have it right now.

[12] Give me the bill all your experts have generated on [13] the case.

[14] MR. WEISBROD: I have.

[15] MR. SERPE: We will go back and search [16] for that because I can tell you we haven't seen all [17] the bills from your experts.

[18] MR. WEISBROD: I don't think that's true.

[19] MR. SERPE: Oh, you don't? I'll take [20] your deposition some day.

[21] Q. (By Mr. Weisbrod) You don't have any [22] opinions on standard of care in this case, do you, [23] Doctor?

[24] A. No.

[25] Q. You are not going to form any opinions on

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[1] standard of care in this case, are you, Doctor?

[2] A. I don't know about that. I haven't been [3] asked.

[4] Q. As we sit here today do you have an [5] intent to form any opinions on standard of care?

[6] A. No.

[7] Q. And I take it that if you get asked to [8] form an opinion on standard of care and you form one [9] that Mr. Serpe will agree to inform of us that so we [10] can have an opportunity to ask us about it, right?

[11] MR. SERPE: I tell you what, [12] Mr. Weisbrod, I'm going to go back and look when I [13] asked your experts these same questions and you [14] danced around making any commitments about that. [15] I'll go back and find the answer you gave and I'll [16] make the same agreement you gave us about that.

[17] MR. WEISBROD: Okay. That's almost fair.

[18] Q. (By Mr. Weisbrod) Do you have

any [19] substantive medical opinions on this case, Doctor?

[20] MR. SERPE: Let the record reflect it is [21] almost 2:25, and we finally have asked a pertinent [22] question about this lawsuit.

[23] THE WITNESS: Why don't you have your [24] assistant give me my records back and maybe we can [25] talk about the case.

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[1] Q. (By Mr. Weisbrod) What do you need?

[2] A. **I need my records.**

[3] Q. All of them?

[4] A. **Sure.**

[5] Q. These are the the records that as soon as [6] the deposition is over you are going to ship back to [7] Mr. Serpe, right? [a] A. **He may take them back with him for all I [9] care.**

[10] MR. SERPE: I'm not strong enough to [11] carry all these records back.

[12] THE WITNESS: Why don't you put them in [13] the box like you got them and give them back to me [14] the way I gave them to you.

[15] MR. SERPE: We will put them on a chair [16] next to you, Doctor, so you can refer to them. I'm [17] moving the chair. Do you want to keep your report [18] out on top of the pile? There you go.

[19] THE WITNESS: Restate your question.

[20] Q. (By Mr. Weisbrod) My question was: Do [21] you have any substantive medical opinions about this [22] case, Doctor?

[23] A. **What do you mean by substantive?**

[24] Q. Do you have any medical opinions about [25] this case?

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[1] A. **Sure, I have a lot of them. What do you [2] want to know?**

[3] Q. I want you to give them to me. Tell me [4] each and every opinion you have about this case.

[5] A. **About what, in terms of the causation?**

[6] Q. Anything you intend to testify to that [7] you have an opinion about.

[8] MR. SERPE: Objection, the question is [9] broad, but, Doctor, why don't you start discussing [10] your opinions.

[11] THE WITNESS: The child in question is a [12] male child who has normal intelligence that has an [13] attention deficit disorder that is hyperactive, that [14] has had difficulty at school, and is related to most [15] probably an intrauterine prepartum process.

[16] Why don't you show the camera what you are doing [17] so the judge can see your expression, Mr. Weisbrod. [18] It is distracting, it is rude, and it is improper.

[19] Q. All I am doing is looking at you. Is [20] that improper?

[21] MR. SERPE: You are making faces.

[22] MA. WEISBROD: I am not making any faces [23] any different than what you make at me, Doctor, all [24] through the course of this deposition.

[25] MR. SERPE: That's absurd.

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[1] MR. WEISBROD: Just row, same thing.

[2] THE WITNESS: You are not - well, never [3] mind. As I told you in my report, the etiology of [4] that is nonrelated to any problems surrounding the [5] birth or delivery.

[6] Q. (By Mr. Weisbrod) What is the etiology [7] of this intrapartum event?

[a] A. **I don't think anybody can tell you [9] exactly. Most likely it was related to the [10] organizational process of brain.**

[11] **Why don't you show him on the camera. He is [12] making rude, inappropriate gestures.**

[13] MR. SERPE: He is.

[14] MR. WEISBROD: I am not making any [15] gesture. I am not doing anything wrong.

[16] THE WITNESS: You are.

[17] MR. WEISBROD: I am simply looking at [18] you. I can't believe that bothers you, a man of your [19] intellect and intelligence and experience of having [20] done more depositions than I've taken.

[21] MR. SERPE: Doctor, do your best, I [22] object to the sidebar, to ignore the the [23] nonprofessional way that Mr. Weisbrod is acting.

[24] THE WITNESS: Why don't we call the judge [25] and ask him if I have to look at Mr. Weisbrod.

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[1] MR. WEISBROD: You don't have to look at [2] me. I tell you what, I'll stand over here with my [3] back to you and you can testify. That way you won't [4] have to look at my face.

[5] MR. SERPE: That's the best news we've [6] had all day.

[7] THE WITNESS: Ask your question again.

[8] Q. (By Mr. Weisbrod) My question was what [9] you think the etiology of this intrapartum event was [10] that caused the brain damage?

[11] A. **I've told you that.**

[12] Q. You think there was some brain damage, [13] right?

[14] A. **No, I didn't say that.**

[15] Q. Well, what do you think happened [16] intrapartum?

[17] A. **There is an all probability an [18] abnormality in the development of the brain at or [19] about the third trimester, which is the [20] organizational process**

**of the brain.**

[21] Q. What evidence is there to support that in [22] the chart?

[23] A. **The clinical picture of the child.**

[24] Q. NOW?

[25] A. **Would you let me finish my answer,**

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[1] **Mr. Weisbrod?**

[2] MR. SERPE: Go ahead and finish your [3] answer.

[4] THE WITNESS: It is inappropriate for you [5] to interrupt me.

[6] MR. WEISBROD: It is hard for me to tell [7] when you are finished when I am not facing you, [a] Doctor. You asked me not to face you.

[9] THE WITNESS: If you won't make any [10] faces, you can turn around, and we will give you a [11] star.

[12] MR. WEISBROD: I wasn't making any faces. [13] You just don't like my face.

[14] THE WITNESS: That's true, but you were [15] making faces. Mr. Serpe doesn't like your face [16] either.

[17] MR. SERPE: I'll second that. I want to [1a] make Mr. Weisbrod's place to be done at 3:00. So [19] what you are asking, Mr. Weisbrod? What is your [20] question?

[21] MR. WEISBROD: You were finishing your [22] answer and you berated me for interrupting you.

[23] MR. WEISBROD: How can I continue if you [24] interrupt me?

[25] MR. SERPE: Go ahead and read the

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[1] question back, please.

[2] (Previous question **read by** [3] the reporter **as follows:**)

[4] Q. "What evidence is there to support [5] that in the chart?"

[6] THE WITNESS: The evidence is the factors [7] surrounding birth and delivery, the subsequent study, [E] and current clinical picture and assessment, the [9] reports of the treating physicians. I think that's [10] about it.

[11] Q. (By Mr. Weisbrod) What factors [12] surrounding the birth and delivery are in the records [13] that support your analysis on this there was some [14] organizational defect that occurred in first [15] trimester of pregnancy?

[16] A. **Well, if the child has some difficulty -**

[17] MR. SERPE: Did you say first trimester?

[18] THE WITNESS: Oh, I'm sorry. It's the [19] third trimester. Repeat your question.

[20] Q. (By Mr. Weisbrod) I think you got it. [21] What evidence is there in the chart in the events [22] surrounding his birth that supports your analysis [23] there was an organizational problem in the third [24]



trimester of pregnancy?

[25] A. Well, the child had difficulty in the

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[1] post-natal period, had some seizures, had some [2] respiratory difficulty, and had a number of other [3] problems that were a result of the respiratory [4] problem, and oftentimes children with organizational [5] problems will have difficulty in the post-natal [6] period.

[7] Q. I see. Well, you don't think that the [8] respiratory problems could have had anything to do [9] with the child being born with immature lungs, do [10] you?

[11] A. The child was said to have an infection [12] or hyaline membrane disease, but that's not my area [13] of expertise.

[14] Q. You don't know whether that caused the [15] same respiratory problems or not; is that right?

[16] MR. SERPE: What could?

[17] Q. (By Mr. Weisbrod) Immature lungs?

[18] MR. SERPE: Whether immature lungs will [19] cause respiratory problems? I'm sorry. Your question [20] is just piecemeal. Did you get that whole question?

[21] THE WITNESS: No.

[22] MR. SERPE: Maybe Mr. Weisbrod will ask [23] another one.

[24] MR. WEISBROD: He doesn't need you. He [25] can understand the question, ask if he doesn't

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[1] understand the question. He has done this more than [2] you have. He knows how to make the objections better [3] than you do. Why don't you let him do it.

[4] MR. SERPE: Mr. Weisbrod, I object to [5] your sidebar remarks. I object to your constant [6] badgering not only Dr. Chalhub but I'll add me to [7] that as well. Go ahead and ask your questions. If [8] your questions continue to be as poorly phrased and [9] worded as they've been for the last two and a half [10] hour, I'll continue to object.

[11] Q. (By Mr. Weisbrod) You said you don't [12] have any expertise on immature lungs and hyaline [13] membrane disease; is that correct?

[14] A. No, I didn't say that.

[15] Q. What is it you think is outside of your [16] expertise with regard to hyaline membrane disease?

[17] A. I'm not a neonatologist. I don't treat [18] hyaline membrane disease.

[19] Q. So you don't know whether or not the [20] hyaline membrane disease could be what was [21] responsible for the respiratory problems that you [22] said were related to this brain organizational [23] prob-

lem in the third trimester of pregnancy, correct?

[24] A. You missed the whole point, Mr. Weisbrod. [25] You are not listening and maybe that's because you

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[1] have got other things on your mind. But, no, I [2] didn't say that.

[3] Q. Could respiratory problems at birth have [4] been related to immature lungs and hyaline membrane [5] disease?

[6] A. Could have, sure.

[7] Q. Is there any more evidence that they were [8] related to a disorganizational process in the [9] brain -

[10] A. I didn't say that.

[11] Q. - than that they were related to [12] immaturity of the lungs?

[13] A. Excuse me, I didn't think you were [14] finished. No, I didn't say that.

[15] Q. Did the child suffer from cardiac arrest?

[16] A. I don't believe so.

[17] Q. You don't believe so?

[18] A. No.

[19] Q. You haven't read the records well enough [20] to know there's a cardiac arrest reported in there?

[21] A. Where? Show it to me.

[22] Q. Okay. Have you got the nurse's notes, [23] 4:00 o'clock in the the afternoon, Doctor's Hospital, [24] birth admission?

[25] A. Okay. Show me where it says cardiac

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[1] arrest.

[2] MR. CARRABBA: What time period?

[3] MR. WEISBROD: 4:00 o'clock.

[4] THE WITNESS: I've got it but I don't see [5] anything about a cardiac arrest.

[6] MR. WEISBROD: Cardiac CPR initiated.

[7] THE WITNESS: That's not a cardiac [8] arrest.

[9] Q. (By Mr. Weisbrod) Baby intubated per [10] Dr. Kim, no pulse present, CPR in progress. What is [11] no pulse present?

[12] A. Well, it means that whoever did that [13] couldn't get a pulse, but that's -

[14] Q. That's not a cardiac arrest?

[15] A. No, that's not a cardiac arrest.

[16] Q. Come on, Doctor.

[17] A. Mr. Weisbrod -

[18] MR. SERPE: Hold on, Doctor. He's not [19] asking you a question. He's just trying to insult [20] you like he's been doing all day long. Ask a [21] question, Mr. Weisbrod.

[22] Q. (By Mr. Weisbrod) Are you going to [23] testify with a straight face that when you don't have [24] a pulse and there is a cardiac CPR in progress that [25] there's no cardiac arrest?

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[1] MR. SERPE: Objection, sidebar remark, [2] improper question, just badgering the witness. The [3] doctor just explained his answer to you,

[4] Q. (By Mr. Weisbrod) Is that your [5] testimony, Doctor?

[6] A. Mr. Weisbrod, I don't have to sit here [7] and take your insults about straight face or not. If [8] you want to ask a question, ask it in an appropriate [9] and courteous manner. I would assume you know better [10] than that. Tell me where it says cardiac arrest and [11] I'll show it to you.

[12] Q. Doctor -

[13] MR. SERPE: Let him ask a question.

[14] THE WITNESS: That was his question.

[15] MR. SERPE: It was? It's not in the [16] record. Go ahead.

[17] Q. (By Mr. Weisbrod) Doctor, how do you [18] distinguish between no pulse present and a cardiac [19] CPR in progress and a cardiac arrest?

[20] A. It doesn't make any sense, the question.

[21] Q. What's the distinction you make between a [22] cardiac arrest in a situation where there is no pulse [23] present and a cardiac CPR in progress?

[24] A. Again, I don't know what you - the [25] question is -

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[1] Q. What's your definition of a cardiac [2] arrest, Doctor?

[3] A. There is no cardiac activity.

[4] Q. Is it your testimony that you can have [5] cardiac activity and not have pulse present?

[6] A. Sure, Mr. Weisbrod. I'm surprised at [7] your knowledge of medicine.

[8] MR. SERPE: So am I. Just let him ask [9] his questions.

[10] Q. (By Mr. Weisbrod) Doctor, how long can a [11] patient go with no pulse present?

[12] A. I don't know, tell me what kind of [13] patient it is.

[14] Q. Any patient, Doctor. Let's just start [15] out in general.

[16] A. I can't answer that question.

[17] MR. SERPE: Objection, question is too [18] broad, general, vague.

[19] Q. (By Mr. Weisbrod) How long can a person [20] survive, Doctor, with an intact brain with no pulse [21] present?

[22] A. Tell me the patient and the circumstance. [23] I don't know in general. I can't answer it in [24] general. It has too many variables. Why don't you [25] ask your doctor next to you.

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[1] MR. WEISBROD: I object to the [2] unresponsiveness of the answer, the sidebar comment [3] that you're making be-

cause you think you are a [4] lawyer, and the rudeness, Doctor.

[5] MR. SERPE: Wait, Doctor. I'm going to [6] object to yours, Mr. Weisbrod. You've shown us all [7] how to do it so well today. Ask another question.

[8] Q. (By Mr. Weisbrod) Describe for me, [9] Doctor, a situation, any situation in medicine that [10] you know of where someone can go with no pulse [11] present for more than five minutes and not suffer any [12] degree of brain damage.

[13] A. Which patient, what set of [14] circumstances -

[15] Q. Give me any one you want to choose.

[16] A. There are a number.

[17] Q. Give me one.

[1a] A. Say the question again and let me make [19] sure I understand it.

[20] MR. WEISBROD: Read the question back.

[21] (Previous question read by [22] the reporter as follows:)

[23] Q. "Describe for me, Doctor, a [24] situation, any situation in medicine that you [25] know of where someone can go with no pulse

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[1] present for more than five minutes and not [2] suffer any degree of brain damage.'

[3] THE WITNESS: There are a number of [4] situations which there is inadequate perfusion to the [5] extremities in which there may be no pulse present [6] but the brain is being perfused: Sepsis, certain [7] bradyarrhythmias, certain episodes of shock, [8] diabetes.

[9] Q. (By Mr. Weisbrod) For how many minutes [10] can a person be in respiratory arrest, have no pulse [11] present, and not have any degree of permanent brain [12] damage?

[13] A. I don't know. That's a variable [14] question. You have to tell me which person, which [15] situation, what's the metabolic state, and what are [16] the laboratory studies, what are the blood gases.

[17] Q. Does the person who doesn't have any [18] pulse present have bradycardia, Doctor?

[19] A. The pulse - it depends. You can [20] certainly have cardiac activity and it's just not [21] perfusing.

[22] Q. In reasonable medical probability, [23] Doctor, does a person in respiratory arrest with no [24] pulse present have bradycardia.

[25] MR. SERPE: I need to object to that

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[1] question. It is too broad and vague.

[2] THE WITNESS: You have to have more [3] information.

[4] Q. (By Mr. Weisbrod) In reasonable

medical [5] probability, Doctor, in this case with this child at [6] this time that we are looking at in the chart right [7] now when they are in respiratory arrest and there is [8] no pulse present, did the child have bradycardia?

[9] A. I don't know. Certainly the studies, the [10] laboratory studies, wouldn't support it.

[11] Q. In reasonable medical probability, [12] Doctor, did the child have bradycardia?

[13] A. I don't know.

[14] Q. You don't know?

[15] A. No.

[16] Q. You don't have an opinion?

[17] A. No.

[1a] Q. Is pulse one way of determining what the [19] heart rate is?

[20] A. Yes.

[21] Q. What's a normal pulse rate in a newborn [22] infant, Doctor?

[23] A. What kind of newborn infant?

[24] Q. A normal healthy newborn infant.

[25] A. It varies. It depends on whether they

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[1] are crying, asleep, what kind of metabolic situation.

[2] Q. What's the the average normal pulse rate [3] for a normal newborn infant that's awake?

[4] A. Could be 80 to 180.

[5] Q. 80 to 180. Anything lower than 80 would [6] be bradycardia, correct?

[7] A. Could also be normal too.

[8] Q. Anything lower than 40 would be severe [9] bradycardia, correct?

[10] A. It depends on the situation, [11] Mr. Weisbrod.

[12] Q. A zero pulse would be lower than a 40 [13] pulse; we could agree on that, right?

[14] A. In general I agree with you for the first [15] time today.

[16] Q. And if a 40 pulse rate is bradycardia or [17] severe bradycardia, then a zero pulse rate is [18] certainly severe bradycardia, isn't it?

[19] A. Well, the zero pulse rate means that [20] there's no pulse, which is not good in general and [21] hypothetically.

[22] Q. When there is no blood going to the [23] heart, Doctor, is it likely that that situation can [24] exist for very long without - let me finish.

[25] A. I thought you were finished. You paused,

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[1] Mr. Weisbrod.

[2] Q. Is it likely that situation can exist [3] very long without having an interruption of the [4] oxygenation of the blood to the brain?

[5] A. In general hypothetically, no.

[6] Q. Okay. And, Doctor, I know you've

[7] testified a lot in the the past and you probably [8] don't remember everything that you've testified to, [9] so I want you to be real careful when you answer [10] these questions. All right?

[11] MR. SERPE: I'll object up front to the [12] sidebar remark and instructions to the witness.

[13] Q. (By Mr. Weisbrod) Haven't you testified [14] in the the past, Doctor, that when blood does not go [15] to the brain for one, two, or three minutes, then the [16] brain suffers irreparable damage?

[17] A. In general hypothetically I don't have [18] any problem with that. But it depends on the set of [19] circumstances that the laboratory studies and [20] observations are consistent and all the facts [21] substantiate that, sure.

[22] Q. Question was, and I object to the [23] unresponsive portion of the answer, haven't you [24] testified in the past without qualification that you [25] just gave that when blood does not go to the brain

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[1] for one, two, or three minutes, then the brain [2] suffers irreparable damage.

[3] MR. SERPE: Objection. Doctor just [4] answered that question.

[5] THE WITNESS: Again, you cannot remember [6] all the questions in the past. If those questions [7] were asked and they were asked in the appropriate [8] context and I've responded to that, I have no problem [9] with it.

[10] Q. (By Mr. Weisbrod) Have you testified in [11] the past - I have to object to the [12] unresponsiveness. I don't think you ever answered [13] the question. The question -

[14] MR. SERPE: I'll object to the sidebar.

[15] Q. (By Mr. Weisbrod) The question can be [16] answered yes, no, or I don't remember.

[17] A. Don't instruct me how to answer the [18] question.

[19] MR. SERPE: Don't do that. Answer the [20] question the best way you can, Doctor.

[21] Q. (By Mr. Weisbrod) Did you testify in the [22] past that when blood does not go to brain for one, [23] two, or three minutes that the brain suffers [24] irreparable damage?

[25] MR. SERPE: Objection, asked and

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[1] answered.

[2] THE WITNESS: Why don't you show it to [3] me. I cannot tell you that I can recall that.

[4] MR. WEISBROD: That's all you have to say [5] is you can't recall.

[6] THE WITNESS: Okay.

[7] Q. (By Mr. Weisbrod) Did you testify in the [8] past, Doctor, that bradycardia is a decrease in heart [9] rate below 80?

[10] **A. I cannot recall in response - show me [11] the deposition and questions, and I'll be glad to [12] answer it.**  
 [13] **Q.** All you have to do is say you don't [14] recall.

[15] **A. I don't recall.**

[16] **Q.** Do you recall whether you testified in [17] the past that anything longer than 30 seconds is [18] severe prolonged bradycardia?

[19] **MR. SERPE:** Objection, improper [20] impeachment.

[21] **THE WITNESS:** I don't recall.

[22] **Q.** (By Mr. Weisbrod) Is it true, Doctor, [23] that anything longer than 30 seconds is severe [24] prolonged bradycardia?

[25] **A. It depends on the situation and the host**

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[1] **and what problem it is.**

[2] **Q.** Did you testify in the past that severe [3] prolonged bradycardia would be below 40?

[4] **A. I don't recall.**

[5] **MR. SERPE:** Same objection, improper [6] impeachment.

[7] **Q.** (By Mr. Weisbrod) Is that true that [8] severe prolonged bradycardia would be below 40?

[9] **A. What situation and what host and what are [10] you talking about, Mr. Weisbrod?**

[11] **Q.** I'm referring to your testimony, Doctor. [12] You can't remember?

[13] **A. Why don't you show it to me and let's [14] take it in context.**

[15] **MR. SERPE:** He doesn't want to do that.

[16] **THE WITNESS:** I know he doesn't want to [17] do it.

[18] **Q.** (By Mr. Weisbrod) I am going to show it [19] to you when you are on the witness stand.

[20] **A. I can't wait.**

[21] **Q.** Neither can I. Now, Doctor, have you [22] testified in the past that in two to eight minutes [23] without a heart beat brain damage will occur?

[24] **MR. SERPE:** Objection, improper [25] impeachment. You can answer.

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[1] **THE WITNESS:** I can't recall. But if you [2] will show it to me, Mr. Weisbrod. You have a great [3] propensity for misrepresenting the words.

[4] **MR. WEISBROD:** I object to the [5] unresponsiveness.

[6] **Q.** (By Mr. Weisbrod) Is it true, Doctor, [7] that in two to eight minutes without a heart beat [8] brain damage will occur?

[9] **MR. SERPE:** Objection, the question is [10] vague, not enough specifics given.

[11] **THE WITNESS:** I just don't recall.

[12] **Q.** (By Mr. Weisbrod) You don't recall [13] whether that is true or not?

[14] **A. I thought you asked me if I testified -**

[15] **Q.** No, I asked you if it is true that in two [16] to eight minutes without a heart beat brain damage [17] will occur.

[18] **A. Sure, it can if the appropriate situation [19] is there, the appropriate laboratory studies to [20] document that, and appropriate amount of damage as a [21] result of that is the case, sure.**

[22] **Q.** In fact, it can occur in two and a half [23] to four to five minutes; is that right? And let me [24] make that clear. In two and a half to four or five [25] minutes without a heart beat brain damage can occur.

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[1] **MR. SERPE:** Objection, the question is [2] vague and overbroad. It is not specific to a [3] specific set of circumstances or patient, improper [4] hypothetical.

[5] **THE WITNESS:** Are you asking me if I [6] testified to that or is that true?

[7] **MR. SERPE:** He's asking you if that is [8] true. He is not asking you about testimony.

[9] **THE WITNESS:** It is possible if the [10] appropriate situation, given the appropriate facts, [11] and in the appropriate clinical situation.

[12] **Q.** (By Mr. Weisbrod) Do you know how long [13] the child in this case went without a heart beat at [14] Doctor's Hospital?

[15] **MR. SERPE:** Objection, assumes facts not [16] in evidence, assumes there was never a heart beat.

[17] **THE WITNESS:** No, I don't know. It is [18] not documented. Certainly the blood gases would not [19] support the fact that there was any absent pulse.

[20] **Q.** (By Mr. Weisbrod) If there's no pulse - [21] are you drawing a distinction between a pulse and a [22] heart beat?

[23] **A. I'm trying to answer your question.**

[24] **Q.** I'm asking you, can you draw a [25] distinction between a pulse and a heart beat?

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[1] **MR. SERPE:** I object it has already been [2] asked and answered.

[3] **Q.** (By Mr. Weisbrod) Are you saying when [4] there is a zero pulse that you still think there is a [5] heart beat?

[6] **A. Why don't put the camera on him. We are [7] having a tag team match here with the attorneys. Go [8] ahead.**

[9] **Q.** You don't like the fact that I'm being [10] helped by my associate?

[11] **A. I don't think that's the way you conduct [12] depositions. Aren't you supposed to do the [13] deposition? Are you not able to, Mr. Weisbrod?**

[14] **Q.** I'm surprised in the many depositions [15] you've done, more than I have, you've never seen [16] anybody else in those depositions have anybody help [17] them?

[18] **A. Why don't you testify to how many [19] depositions you've been in since you say it is more [20] than I have.**

[21] **Q.** I say you've been in more than I have.

[22] **A. How do you know that? How many have you [23] been in?**

[24] **Q.** I don't think I've been in five hundred [25] like you have.

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[1] **A. Where do you get five hundred?**

[2] **Q.** I think I've only been in 400 probably.

[3] **MR. SERPE:** Ask another question, [4] Mr. Weisbrod.

[5] **Q.** (By Mr. Weisbrod) What is an apical [6] pulse, Doctor?

[7] **A. I guess it is a pulse at the apex of the [8] heart.**

[9] **Q.** Is there a difference between that and a [10] heart beat?

[11] **A. Probably not.**

[12] **Q.** If there is no apical pulse, there is no [13] heart beat?

[14] **A. It depends on the person and the whole [15] set of situations. In a small baby feeling pulses [16] and listening can sometimes be difficult. Here it [17] says no pulse present. It doesn't say apical pulse, [18] does it?**

[19] **Q.** You can read.

[20] **A. I know. I read. You are talking about [21] apical pulse.**

[22] **Q.** Actually it does say apical pulse.

[23] **A. Not at 4:00 o'clock it doesn't.**

[24] **MR. SERPE:** There's two sets of records.

[25] **Q.** (By Mr. Weisbrod) At 4:15 what does it

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[1] give for the apical pulse?

[2] **A. I don't have a 4:15 on here. I have [3] 4:20.**

[4] **Q.** At 4:15 it says apical pulse 100.

[5] **A. My record says 4:20, Mr. Weisbrod. Do [6] you want to show me what you're reading?**

[7] **DR. O'DELL:** There are two sets of [8] nurses' notes that cover the same time period.

[9] **THE WITNESS:** Which set are you looking [10] at?

[11] **MR. WEISBROD:** This isn't going to get us [12] anywhere. Forget about that. Let's ask something [13] else.

[14] **Q.** (By Mr. Weisbrod) Let's go on to the [15] blood gas. Just tell me on the blood gases, Doctor, [16] whether or not you view those blood gases that were [17] in Doctor's Hospital as being consistent with [18] respiratory and metabolic acido-

sis?

[19] A. I do not. I'm sorry, maybe I should ask [20] you which one you are talking about.

[21] Q. First one.

[22] A. First one has a mild respiratory [a] component with the PCO2 is slightly elevated, but [24] there is certainly no metabolic component, and there [25] is certainly a normal pH.

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[1] MR. SERPE: First one you are talking [2] about, the one at the top of the page.

[3] THE WITNESS: No, I'm talking about -

[4] Q. (By Mr. Weisbrod) Let's make sure we've [5] got it right. 7.21 pH, PCO2 of 59, PO2 of 49?

[6] A. Correct.

[7] Q. Base excess of minus 5.5?

[e] A. Right.

[9] Q. You interpret that as a mild respiratory [10] acidosis?

[11] A. Correct.

[12] Q. With no metabolic acidosis?

[13] A. No.

[14] Q. And no hypoxemia?

[15] A. Well, it's very, very borderline.

[16] Usually below 50, so it is 49. Mild, very mild.

[17] Q. Fine, Doctor. How would you interpret [18] the next blood gas?

[19] A. Perfectly normal.

[20] Q. Let's make sure we've got the same one.

[21] MR. SERPE: 7.36, 35, 124, 20, that one.

[22] MR. WEISBROD: Right, with a minus 4.2.

[a] MR. SERPE: Right.

[24] Q. (By Mr. Weisbrod) What's the oxygen [25] saturation at that time?

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[1] A. 98 percent.

[2] Q. What's the oxygen saturation on the other [3] one?

[4] A. 76.

[5] Q. Was sodium bicarbonate given right before [6] that, right before the second blood gas, Doctor?

[7] A. What difference would it make anyway?

[8] Q. I'm going to ask you that.

[9] A. I can't - I would have to go back and [10] look at the order sheet, I don't know.

[11] Q. Let's assume sodium bicarbonate was given [12] right before that blood gas, Do you have an opinion [13] as to whether or not that makes any difference in how [14] you would interpret the blood gas, Doctor?

[15] A. Yes, it probably would make very little [16] difference.

[17] Q. Very little or no difference?

[18] A. Very little.

[19] Q. What little difference would it make?

[20] A. I don't know, it usually doesn't make any [21] difference immediately.

[22] Q. Doesn't make any difference immediately?

[n] A. Right.

[24] Q. Does it make a difference some point down [25] the road?

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[1] A. It may, depends on how much, what [2] situation, what's the cause of the problem.

[3] Q. When you talk about immediately, what [4] time frame are you talking about?

[5] A. I'm talking about within minutes.

[6] Q. Did you know that sodium bicarbonate was [7] given 30 minutes before the blood gas was drawn?

[e] A. Yes. I mean, I do now. I didn't realize [9] what time.

[10] Q. That's a long enough time period for it [11] to make a difference, isn't it, Doctor?

[12] A. Yes, but tell me what difference it [13] makes.

[14] Q. I'm asking you.

[15] A. I don't see much difference. You still [16] have normal pHs, you have normal -

[17] Q. All you've got to do is tell me the [18] sodium bicarbonate in your opinion doesn't make any [19] difference.

[m] A. It didn't make any difference.

[21] Q. Thank you.

[22] MR. SERPE: We are rolling now.

[23] THE WITNESS: He's only got five minutes, [24] that's why.

[25] Q. (By Mr. Weisbrod) Did the

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[1] cytomegalovirus play a role in this case, Doctor?

[2] A. I don't know.

[3] Q. Why don't you know?

[4] A. I don't know. I don't really have an [5] opinion.

[6] Q. You don't have an opinion one way or [7] another as to whether the child did or didn't have [8] cytomegalovirus?

[9] A. No, I don't.

[10] Q. Is there any evidence in the record that [11] would demonstrate the child had a cytomegalovirus?

[12] A. No.

[13] Q. Is there any evidence in the record that [14] demonstrates the child did not have a [15] cytomegalovirus?

[16] A. No.

[17] Q. How about the laboratory reports?

[18] A. How about them?

[19] Q. Don't they demonstrate the child didn't [20] have a cytomegalovirus?

[21] A. Which laboratory reports?

[22] Q. Ones that were done in the tertiary

care [23] center.

[24] A. Which one was that?

[25] Q. I thought you reviewed these records.

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[1] A. I did review them.

[2] Q. You reviewed them more than me.

[3] A. Oh, really? You'll have to tell me how [4] much you reviewed them.

[5] Q. You are giving testimony on them. You [6] are charging money for it. You did a thorough job [7] reviewing these records.

[8] MR. SERPE: Objection to the sidebar. [9] Ask a question.

[10] THE WITNESS: What's your question, [11] Mr. Weisbrod? Do you want to know how much time I [12] spent versus yours or what?

[13] Q. (By Mr. Weisbrod) Do you know what [14] hospital this child went to after the child was [15] transferred from Doctors Hospital to Spring Branch [16] Hospital?

[17] A. Texas Children's Hospital.

[18] Q. Okay. Doctor, at Texas Children's [19] Hospital were there laboratory results that would [m] rule out the cytomegalovirus virus?

[21] A. Which ones did you have in mind?

[22] Q. Doctor, I'm asking you were there any. [23] Do you even know what they were? Have you reviewed [24] those?

[25] A. Yes, I have, Mr. Weisbrod. There's a lot

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[1] of records in this case.

[2] Q. Wasn't there a CMV urine culture that was [3] negative?

[4] MR. SERPE: Objection, records speak for [5] themselves. Why don't you show it to him.

[6] THE WITNESS: That doesn't exclude a CMV [7] infection. You should know that.

[8] Q. (By Mr. Weisbrod) You don't think that [9] excludes a CMV infection?

[10] A. No, it doesn't.

[11] Q. Why?

[12] A. Why? Because CMV occurs with negative [13] urine cultures. You don't get it in the urine all [14] the time. [15] Q. Is there anything, Doctor, in the record [16] that would support a CMV being present?

[17] A. I've already told I really don't have an [18] opinion on that.

[19] Q. How about TORCH TITERS?

[m] A. What about TORCH TITERS?

[21] Q. Does that rule out a cytomegalovirus?

[22] A. No.

[23] Q. Why not?

[24] A. Because it doesn't clinically.

[25] Q. What about viral cultures?

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[1] **A. What about them?**

[2] Q. Does that rule out a cytomegalovirus?

[3] **A. No.**

[4] Q. What about negative TORCH TITERS, [5] negative viral cultures, and a negative urine culture [6] all taken together, doesn't that rule out a [7] cytomegalovirus?

[8] **A. No, it doesn't unfortunately, [9] Mr. Weisbrod.**

[10] Q. What evidence is there for a [11] cytomegalovirus?

[12] MR. SERPE: objection, asked and [13] answered,

[14] THE WITNESS: I can't answer it any [15] differently.

[16] Q. (By Mr. Weisbrod) You don't know of any, [17] do you?

[18] MR. SERPE: Objection, asked and [19] answered.

[20] THE WITNESS: I don't have an opinion.

[21] Q. (By Mr. Weisbrod) You don't have an [22] opinion as to whether there is any evidence for [23] cytomegalovirus?

[24] **A. No, I don't have any opinion --**

[25] Q. What is the most likely cause of this

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[1] child's damage, cytomegalovirus or some kind of [2] organizational defect that occurred in the brain in [3] the third trimester of pregnancy?

[4] **A. CMV can be a cause of that or at least [5] related to that as an infection, so whether that [6] occurred I have no idea.**

[7] Q. Is that what you think the cause of the [e] organizational problem in the brain in the third [9] trimester was?

[10] **A. No.**

[11] MR. SERPE: Objection, asked and [12] answered,

[13] THE WITNESS: I don't know what the cause [14] of it is.

[15] Q. (By Mr. Weisbrod) Do you have any [16] opinion as to what the cause of it was at all?

[17] **A. No, as usually in many cases like this we [18] don't.**

[19] Q. Do you have any evidence of any kind of [20] infection that you can think of that would have [21] caused it?

[22] **A. Most of those 90 percent plus are silent.**

[23] Q. So basically the only thing you have to [24] base your opinion on is the subsequent course of the [25] child?

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[1] MR. SERPE: Objection, misstates what he [2] said earlier. He stalked about at the Information [3] that's gone into his opinions.

[4] THE WITNESS: It's time to walk.

[5] Q. (By Mr. Weisbrod) I just want to get [6] this straight. The main reason why you think there's [7] an organizational defect that occurred in the third [8] trimester of the pregnancy is the subsequent course [9] of the child, right?

[10] **A. No.**

[11] Q. There's nothing that occurred in the [12] third trimester of pregnancy that you can point to [13] that supports your opinion, is there?

[14] **A. No. That's usually the case.**

[15] Q. Okay. So the only thing that supports [16] your opinion is the subsequent course of the child, [17] right?

[18] **A. The presentation, laboratory studies, [19] physical examination, testing, yes, all of those if [20] that's what you are including.**

[21] Q. Okay.

[22] **A. Fine, no problem.**

[23] Q. Do children that have organizational [24] problems in the third trimester as a result of that [25] have a diagnosis of hypoxic cardiomyopathy?

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[1] **A. Depends on what happened to them [2] postnatal period whether it was related to that or [3] not. Could be or couldn't be.**

[4] Q. Do organizational problems in the third [5] trimester in general cause hypoxic cardiomyopathy?

[6] **A. No.**

[7] Q. Do they cause hypoxic encephalopathies?

[8] **A. Does what?**

[9] Q. Organizational problems in the third [10] trimester of pregnancy.

[11] **A. No. There is no evidence this child has [12] a hypoxic and ischemic encephalopathy as was said by [13] the treating neurologist.**

[14] Q. Does the discharge summary attached by [15] Children's Hospital list as part of their diagnosis a [16] hypoxic cardiomyopathy?

[17] **A. I believe it does.**

[1a] Q. Does it list a hypoxic encephalopathy?

[19] **A. Sure, that can be presumed diagnosis at [20] any time. Many people do that.**

[21] Q. And it is your testimony those diagnoses [22] are wrong, correct?

[23] **A. It is my testimony that the evidence, the [24] clinical features, and the examination of the child [25] does not support that diagnosis, which is not**

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[1] **unusual, by the way.**

[2] Q. Is there any treating physician, Doctor, [3] anywhere at any time in these records that came to [4] the same conclusion you did and that was that the [5] etiology of this child's problems was some

kind of [6] third trimester organizational defect in the brain? [7] Did you find that anywhere in the records?

[8] **A. No, I don't think anybody -- there's not [9] many of them other than a few of them that's had the [10] opportunity to see all the records and subsequent [11] follow-ups. I don't know the answer to that.**

[12] Q. None of the other hospital administrators [13] came to that conclusion, did they?

[14] **A. No, nor the lawyers in this, [15] Mr. Weisbrod.**

[16] Q. Is your quote, 'Mobile Infirmary [17] employees do what they love, love what they do, and [18] ultimately deliver more than they promise'?

[19] **A. Sure.**

[20] (Deposition Exhibit No. 1 marked.)

[21] Q. (By Mr. Weisbrod) Would this also, this [22] slogan, also sum up what you do when you are engaged [23] as a defense expert in cases like this, you do what [24] you love, you love what you do, and you ultimately [25] deliver more than you promise? Would that be a good

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[1] motto for you to go by in your testifying, Doctor?

[2] MR. SERPE: Objection, argumentative.

[3] THE WITNESS: I don't think I need to [4] respond to that, Mr. Weisbrod.

[5] Q. (By Mr. Weisbrod) That is, what we've [6] marked as Exhibit 1, a piece of information from the [7] the hospital that you administer, is it not, Doctor?

[8] **A. That's absolutely right.**

[9] Q. And it does cite that quote as being your [10] quote as hospital administrator; is that correct?

[11] **A. Absolutely. That's what our employees [12] do.**

[13] Q. And is this the --

[14] (Deposition Exhibit 2 marked.)

[15] Q. (By Mr. Weisbrod) Is this the quarterly [16] magazine that your hospital puts out, Doctor?

[17] **A. I believe it is.**

[18] Q. Does it have a nice picture of you in [19] there?

[20] **A. I don't know whether it is or not.**

[21] DR. O'DELL: Refer to page 7.

[22] THE WITNESS: It is a quarterly, so we [23] have a number of these.

[24] THE WITNESS: Yes, I think that's a nice [25] picture. I like it.

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[1] MR. WEISBROD: I'm going to take a quick [2] break and go to restroom. I'm almost finished. I [3] may have five or 10 minutes after I go to the [4] restroom.

[5] (Recess.)

[6] Q. (By Mr. Weisbrod) Doctor, do you have [7] any additional opinions that you

haven't given us [8] with regard to the causation of the Cortes child's [9] problems? [10] **MR. SERPE:** I need to object to that as [11] overbroad. I think the doctor has given you [12] testimony about that, and the question is too broad.

[13] **MR. WEISBROD:** I want to make sure we've [14] got all his opinions.

[15] **THE WITNESS:** I can't anticipate what you [16] are going to ask, Mr. Weisbrod, and you know that. [17] I've given you the answers to the best of my ability.

[18] **Q.** (By Mr. Weisbrod) Have you given me [19] every opinion that you currently have formulated with [20] regard to the causation of the Cortes child's [21] problem? Have we discussed those?

[22] **MR. SERPE:** I've got to object to that as [23] being too broad.

[24] **Q.** (By Mr. Weisbrod) Go on.

[25] **A.** Go on what? *That's the same answer I*

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[1] **just gave you.**

[2] **Q.** Have you given me every opinion that you [3] can think of right now that relates to the causation [4] of the Cortes child's problems?

[5] **MR. SERPE:** Same objection.

[6] **THE WITNESS:** In general without any [7] specific questions I can't tell you what I would [a] respond to.

[9] **Q.** (By Mr. Weisbrod) Fine. If you [10] formulate additional opinions with regard to the [11] causation of the Cortes child's problem or any other [12] aspect that you intend to testify to as an expert [13] witness in this case, I trust that you will inform [14] Mr. Serpe. Will you do that, for us?

[15] **A.** Absolutely.

[16] **Q.** And that Mr. Serpe will in turn inform me [17] so that I will have a chance to ask you additional [18] deposition testimony.

[19] **MR. SERPE:** That's not a question to [20] Dr. Chalhub, it is a question to me, and as I told [21] you before, when I asked you for that same courtesy I [22] got some convoluted and vague answer, and I will find [23] that answer and mail it to you so we can all have the [24] same agreements.

[25] **Q.** (By Mr. Weisbrod) Is it correct you've

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[1] produced nothing here today in response to the duces [2] tecum with the deposition notice that you were served [3] with other than the medical records in this case, [4] depositions that you were supplied in this case, and [5] correspondence from Mr. Serpe?

[6] **A.** I supplied what I had in response to the [7] subpoena. I don't have the other things that you [a] asked for.

[9] **MR. SERPE:** Subject to the objec-

tions we [10] filed with the court.

[11] **Q.** (By Mr. Weisbrod) Can we just get this [12] straight, that you didn't produce anything other here [13] than records, depositions and correspondence, [14] records - medical records, depositions and [15] correspondence, nothing else has been produced?

[16] **THE WITNESS:** No, I complied with the [17] subpoena.

[18] **Q.** (By Mr. Weisbrod) Let me just make sure [19] we've got a clear record. Nothing has been produced [20] here today in response to the subpoena other than [21] medical records of this child, depositions in this [22] case, and correspondence between Mr. Serpe's office [23] and the doctor; is that correct?

[24] **MR. SERPE:** He's got a box of documents. [25] We can go through them one by one. I think there may

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[1] be more than in there that.

[2] **MR. WEISBROD:** You tell me if there is [3] anything more in there than that because I want to [4] know.

[5] **MR. SERPE:** What did you say -

[6] **MR. WEISBROD:** Medical records, [7] depositions, and correspondence.

[a] **THE WITNESS:** I have all of your [9] subpoenas and your slander if that's what you want.

[10] **MR. SERPE:** The correspondence you've [11] written in the case, copy of medical evaluations in [12] the file.

[13] **MR. WEISBROD:** That's a medical report.

[14] **THE WITNESS:** That's his job, John.

[15] **MR. SERPE:** There's a copy of your latest [16] petition.

[17] **Q.** (By Mr. Weisbrod) Other than pleadings, [1a] expert reports, medical records, depositions, and [19] correspondence, nothing else has been produced today; [20] is that correct?

[21] **A.** Correct.

[22] **Q.** If I give you a list I have of over a [23] hundred depositions that you've given, would you keep [24] it and maintain it and give it to other plaintiff's [25] attorneys, Doctor?

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[1] **MR. SERPE:** Objection. Doctor, you don't [2] need to answer that. It is absurd.

[3] **THE WITNESS:** I thought you said it was [4] five hundred.

[5] **MR. WEISBROD:** I said I only have a list [6] of a hundred, over a hundred.

[7] **THE WITNESS:** I see. So you were grossly [8] in error; is that correct?

[9] **MR. WEISBROD:** No, Doctor, you are [10] misrepresenting what the previous conversation was. [11] You have given five hundred.

[12] **THE WITNESS:** Really.

[13] **MR. SERPE:** Objection to sidebar.

Ask [14] another question.

[15] **Q.** (By Mr. Weisbrod) You can't tell me how [16] much money you've made giving medical malpractice [17] testimony and reviewing medical malpractice [18] depositions, and when I say testimony I mean both in [19] trial and in deposition, in year 1987, can you, [20] Doctor?

[21] **A.** No, I certainly can't recall that far [22] back.

[23] **Q.** And you can't tell me that with regard to [24] 1988, correct?

[25] **A.** Correct.

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[1] **Q.** You can't tell me that with regard to [2] 1989, correct?

[3] **A.** Correct.

[4] **Q.** You can't tell me that with regard to [5] 1990?

[6] **A.** Correct.

[7] **Q.** You can't tell me that with regard to [8] 1991, correct?

[9] **A.** Correct.

[10] **Q.** You can't tell me that with regard to [11] 1992, correct?

[12] **A.** Correct.

[13] **Q.** You can't tell me that so far this year, [14] correct?

[15] **A.** Perhaps in 1992 it was less than [16] \$100,000.

[17] **Q.** Can you give me a specific amount?

[18] **A.** No, there's no way for me to tell you [19] that.

[20] **Q.** Can you tell me how much money in each of [21] those years you received on checks that had St. Paul [22] Insurance Company's name on them, they were drawn on [23] St. Paul's accounts?

[24] **A.** No.

[25] **Q.** Could you tell me for any of those years

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[1] how much you received that was drawn off St. Paul's [2] accounts?

[3] **A.** No.

[4] **Q.** Now, did you testify previously that you [5] used to keep all of your records including your [6] 1099s [6] for three years after your accountants give them back [7] to you?

[a] **MR. SERPE:** Objection, that misstates his [9] earlier testimony.

[10] **Q.** (By Mr. Weisbrod) You testified to that [11] in previous depositions in previous years?

[12] **A.** If you could show it to me. I mean, I [13] can't remember.

[14] **MR. SERPE:** Objection, improper [15] impeachment.

[16] **THE WITNESS:** I don't recall.

[17] **Q.** (By Mr. Weisbrod) Assuming you've [18] testified to that, when did you change your habits?

[19] **A.** I don't know, Mr. Weisbrod.

[20] **Q.** Do you even know whether or not

you have [21] records that you've maintained for three years that [22] would indicate the same information as your 1099s [23] would have indicated?

[24] **A. No. I keep receipts and documentation of [25] charity things and things I'm supposed to. 1099s**

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[1] **are not required by anybody to keep, so I don't keep [2] them.**

[3] **Q.** Do you keep receipts and documentation of [4] the earnings you've had from sources for medical [5] malpractice testifying and review?

[6] **A. They are reported in my income tax [7] return.**

[8] **Q.** What if you have an audit by the IRS? [9] What back-up do you have to support what you [10] reported?

[11] **MR. SERPE:** Objection. Doctor, you don't [12] need to answer that question.

[13] **Q.** (By Mr. Weisbrod) Do you know?

[14] **A. That's really not of your concern, [15] Mr. Weisbrod, what I do with my personal finances.**

[16] **Q.** It is a question that I want an answer [17] to.

[18] **A. That's tough.**

[19] **Q.** You don't have any back-up receipts in [20] case you are audited by the IRS?

[21] **A. It is none of your business what I do.**

[22] **Q.** You refuse to answer the question?

[23] **A. Yes.**

[24] **Q.** So, in other words, it is possible you [25] have back-up receipts that would show, in your

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[1] possession, how much money you receive from insurers [2] such as St. Paul Insurance Company in each specific [3] year for the last three years, correct?

[4] **A. No, I do not have that.**

[5] **Q.** You would have receipts and information [6] in your possession that would show how much money [7] you've made on malpractice testimony and review for [8] each of the last three years, correct?

[9] **A. No, it is in my income tax return.**

[10] **Q.** So your accountant would have some [11] information as to how much of your income tax return [12] report is based on that kind of testimony or work, [13] correct?

[14] **A. No, I have my returns. They are my [15] property, not my accountant's property.**

[16] **Q.** Will your returns tell us how much you [17] made from medical malpractice testimony and review?

[18] **A. It would be included probably in a sum, [19] but I don't know whether it separates it out, I don't [20] believe so.**

[21] **Q.** You don't know?

[22] **A. No, I know. I don't think it does.**

[23] **Q.** Do you expect to receive payment from the [24] St. Paul Insurance Company on cases you are involved [25] in the rest of this year?

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[1] **A. No.**

[2] **Q.** No?

[3] **A. I've told you that for the last three [4] hours, Mr. Weisbrod.**

[5] **Q.** You don't expect in the course of this [6] year you are going to receive any more checks drawn [7] off St. Paul Insurance Company accounts?

[8] **A. The majority of those would be from [9] lawyers. How they do their reimbursement is up to [10] them.**

[11] **Q.** I'm not asking you whether you are going [12] to get it in the mail from a lawyer or whether you [13] are going to get it in the mail from St. Paul. I'm [14] asking you whether in the rest of this year you are [15] going to get checks drawn on St. Paul accounts made [16] out to you.

[17] **A. I don't know that. Why don't you ask [18] St. Paul's.**

[19] **Q.** Do you have any expectation?

[20] **A. If it is a St. Paul's case, in all [21] probability it will still come from the lawyer.**

[22] **Q.** It will be drawn on a check with St. Paul's.

[23] **A. No, it won't.**

[24] **MR. SERPE:** Calls for speculation, [25] argumentative.

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[1] **THE WITNESS:** Why do you keep asking that [2] question? Because you don't seem to understand.

[3] **Q.** (By Mr. Weisbrod) Have you instructed [4] defense attorneys to launder money from St. Paul [5] Insurance Company, run it through their account, and [6] write you a separate check from a law firm account?

[7] **MR. SERPE:** You don't need to answer [8] that. It is just badgering you.

[9] **Q.** (By Mr. Weisbrod) Have you done that?

[10] **A. No.**

[11] **Q.** Now, on the videotape that you did for [12] St. Paul Insurance Company, did you discuss the fact [13] that there is a correlation between the age of the [14] infant and the amount of depravation of oxygen that [15] is necessary to get brain damage?

[16] **A. No, that's - that tape is five years [17] ago, six years ago. I can't tell you that. A lot of [18] things have changed over that time too.**

[19] **MR. WEISBROD:** I'm finished.

[20] **MS. VASSALLO:** Reserve my questions.

[21] **MR. CARRABBA:** Reserve mine.

[22] **THE WITNESS:** Reserve mine [23] (Proceedings adjourned.)

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[2] **SIGNATURE OF THE WITNESS**  
[4] **STATE OF TEXAS )**

[5] Subscribed and sworn to before me by the said [6] witness, ELIAS G. CHALHUB, M.D., on this the [7] day of \_\_\_\_\_, 1993.

[9] Notary Public in and For the State of Texas.

[12] My commission expires:

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[1] **C E R T I F I C A T E** [2] **STATE OF TEXAS )**

[3] I, Kelly Cobb, a Certified Shorthand Reporter [4] of the State of Texas, do hereby certify that the [5] foregoing contains a true and correct transcription [6] of the deposition of ELIAS G. CHALHUB, M.D., the [7] witness, taken on the 18th day of June, 1993.

[8] **GIVEN UNDER MY HAND AND SEAL of Office on [9] this the \_\_\_\_\_ day of \_\_\_\_\_, 1993.**

[12] Kelly Cobb, Certified Shorthand Reporter No. 1636

[13] in and for the State of Texas  
9330 LBJ Freeway, Suite 270

[14] Dallas, Texas 75243  
(214) 669-4080

Current commission expires December 31, 1993.

