

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE CIRCUIT COURT OF
RALEIGH COUNTY, WEST VIRGINIA

* * * * *

BRINDA MANNING, individually
and as parent and natural
guardian of CASSIE NICOLE
MANNING, an infant,

Plaintiffs,

VS .

CEE ANN DAVIS, M.D., RALEIGH
GENERAL HOSPITAL, a West
Virginia corporation, and RURAL
ACRES CLINIC, INC., a West
Virginia corporation,

Defendants.

* * * * *

CIVIL ACTION NUMBER
89-C-386-C

The testimony of ELIAS G. CHALHUB, M.D., taken at
Mobile Infirmary Medical Center, 5 Mobile Infirmary
Circle, Mobile, Alabama, on the 31st day of July, 1991,
commencing at approximately 4:10 o'clock, p.m.

1
2
3
4
5
6
7
a
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A P P E A R A N C E S

FOR THE PLAINTIFFS: FREEMAN & CHIARTAS
 ATTORNEYS AT LAW
 405 CAPITOL STREET
 SUITE 701
 CHARLESTON, WEST VIRGINIA 25322

 BY: GREGORY CHIARTAS, ESQ.
 (Present **by** telephone)

FOR THE DEFENDANTS - STEPTOE & JOHNSON
CEE ANN DAVIS, M.D., ATTORNEYS AT LAW
and RURAL ACRES CLINIC, P. O. BOX 1588
INC.: CHARLESTON, WEST VIRGINIA 25326

 BY: SPRAGUE W. HAZARD, ESQ.

LISA ELMORE PETERS
COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

I N D E X

Examination:
By **Mr.** Chiartas

Page:
06

Exhibits:
Plaintiff's Exhibit 1

Page:
83

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

S T I P U L A T I O N

It is stipulated by and between the parties hereto and their respective attorneys at law that the deposition on oral examination of the witness, ELIAS G. CHALHUB, M.D., may be taken before Lisa Elmore Peters, Commissioner, Notary Public for the State at Large, and that the said deposition shall be taken in accordance with the provisions of the applicable sections of the West Virginia Rules of Civil Procedure.

It is further stipulated that all notices provided for by said applicable sections of the West Virginia Rules of Civil Procedure are waived, as is the signing and certification of said Lisa Elmore Peters and all other requirements and technicalities of every sort regarding the taking and filing of the deposition, except as hereinafter set out:

All objections save as to the form of questions asked are reserved until the time of trial in accordance with the applicable provisions of the said West Virginia Rules of Civil Procedure.

1
2
3
4
5
6
7
a
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Further, that the original of this transcript
will be delivered to Gregory Chiartas, Esq.

It is further stipulated and agreed that the
witness hereto reserves the right to read and sign said
deposition as provided for by said West Virginia Rules of
Civil Procedure.

* * * * *

I, Lisa Elmore Peters, Commissioner and Court
Reporter, certify that on this date, there came before me at
Mobile Infirmary Medical Center, 5 Mobile Infirmary Circle,
Mobile, Alabama, on the 31st day of July, 1991, commencing
at 4:10 o'clock, p.m., **ELIAS G. CHALHUB, M.D.**, witness in
the above cause, for oral examination, whereupon the
following proceedings were had:

1

2

ELIAS G. CHALHUB, M.D.

3

4

5

6

The witness, after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

7

BY MR. CHIARTAS:

8

Q Doctor, please state your full name, your business and your home address?

9

10

11

12

13

A It's Elias George Chalhub. Business address, Post Office Box 2144, 5 Mobile Infirmary Circle, Mobile, Alabama, and my home address is 3970 Pine Brook Drive South, Mobile, Alabama.

14

Q Doctor, what is your social security number?

15

A 267-70-6868.

16

17

Q Doctor, you've been in practice since 1970; is that correct?

18

A That's correct.

19

20

Q Okay. And in what speciality did you receive or did you do your residency or any fellowships?

21

22

23

A I'm Board certified in pediatrics and also in neurology and psychiatry with special competence in child neurology.

1 Q Do they have a Board certification exam for
2 pediatric neurology?
3 A Yes, they do.
4 Q I'm sorry, sir?
5 A Yes, they do.
6 Q Have you taken that?
7 A Yes, I'm Board certified. I told you that.
8 Q Okay. Are you currently employed?
9 A I hope so.
10 Q Okay. And that's by who?
11 A By the Mobile Infirmary Medical Center.
12 Q Besides, Doctor, your involvement in
13 medical-legal consultation work and the Infirmary position,
14 would you tell me your other sources of earned income?
15 A Well, I don't think that's -- you mean earned
16 income?
17 Q Yes, sir.
18 A There is a clinic, Mental Retardation Clinic that
19 I attend.
20 Q Is that it?
21 A That's it.
22 Q Okay. Are you connected with any referral
23 service for medical-legal work, sir?

1 A No.

2 Q **Is** your name listed with any expert groups?

3 A Not with my permission, no.

4 Q Okay. How many years have you been providing
5 medical-legal consultation work?

6 A Well, I'm a physician who practices medicine and
7 have for a long time and, you know, it's part **of** medical
8 practice to review records and I guess ten years, twelve
9 years.

10 Q Okay. How many years have you been earning money
11 doing that?

12 A Ten or twelve years, I don't think anybody works
13 for nothing.

14 Q I understand. When you first started ten or
15 twelve years ago, have the number of your opinions since
16 that time increased or decreased?

17 A I've always had a lot of opinions.

18 Q I'm talking about specific cases that you're
19 asked to review, sir.

20 A **Oh,** they've increased over in the mid eighties
21 and now they've decreased again.

22 Q Okay. **Do** you know how people obtain your name
23 for consultation purposes?

1 A No, I don't.

2 Q Do you know how Mr. Hazard obtained your name?

3 A No. I mean, I assume that I'm a Board certified

4 neurologist who's well respected throughout the United

5 States and I assume they obtained it that way.

6 Q Have you worked with Mr. Hazard previously?

7 A **No.**

8 Q Have you worked with the firm of Steptoe and

9 Johnson previously?

10 A Not to my knowledge.

11 Q Can you tell me, sir, through your ten or twelve

12 years in medical-legal consultation work what percentage of

13 consultations you've done for the defense and for the

14 plaintiffs?

15 A Well, the percentage of charts that I'm asked to

16 review for the plaintiff is about seventy percent for the

17 defense -- I mean, seventy-five percent for the defense,

18 excuse me, and twenty-five percent for the plaintiff.

19 Q How many cases do you actually give opinions in

20 which you're asked to stay involved in?

21 A How many cases?

22 Q Percentage wise, sir.

23 A For what? For both?

1 Q Yes, sir.

2 A Oh, it's predominantly for the defense. I'd say
3 ninety percent.

4 Q Okay. And over your ten to twelve years, can you
5 give me some idea as to how many depositions you've given?

6 A Over the ten to twelve years they probably have
7 averaged anywhere from two to fifteen per year.

8 Q Can you tell me how many depositions you gave in
9 the year **1990**?

10 A Five to ten.

11 Q Can you tell me over the same period, that being
12 ten to twelve years, how many times you've testified in
13 trial?

14 A I can't tell you exactly. That has averaged **from**
15 none to three to four times.

16 Q Can you tell me how many times in the year **1990**
17 you testified at trial?

18 A I believe twice, but I'm not certain.

19 Q Were both of those times on behalf of the
20 defense?

21 A I believe so.

22 Q Now, sir, I see on your **CV** that your licensure is
23 in Arkansas, Florida, Missouri, Florida and Alabama; is that

1 correct?

2 A Correct.

3 Q And are those current licenses?

4 A No, I don't believe all of those are current.

5 Q Which states are you currently licensed to

6 practice in?

7 A Alabama and Florida.

8 Q Can you tell me, sir, have you given opinions or

9 -- let me ask this: Have you testified in each of those

10 states; Arkansas, Missouri, Alabama, Florida and Georgia?

11 A **Hold** on just a second. Let me see. Yes, I have.

12 Q Okay. Have you ever testified in West Virginia

13 before?

14 A I believe I have on an occasion.

15 Q Tell me what firm you were associated with at

16 that time.

17 A Gosh, it's been awhile. I really don't recall.

18 Q Was it in Charleston, West Virginia, sir?

19 A **No.**

20 Q Can you tell me what your normal hourly charges

21 for your medical-legal consultation work?

22 A Sure. A hundred and fifty dollars an hour.

23 Q Is that what I'm being charged for this

1 deposition?

2 A No, the deposition is two hundred and fifty
3 dollars an hour.

4 Q Now you maintain a private practice; is that
5 correct?

6 A Yes.

7 Q All right. What percentage of your time is spent
8 in that private practice?

9 A About five percent.

10 Q In the field of pediatric neurology, in the
11 speciality, can you tell me if you have any special interest
12 within that?

13 A Yes, infectious diseases.

14 Q Tell me what hospitals you have full admitting
15 privileges to.

16 A Mobile Infirmary, Providence Hospital, University
17 of South Alabama, Springhill Memorial.

18 Q Okay. Now do you have a copy of your **CV**, sir,
19 that I have in front of me which is dated -- actually I
20 think it was sent to **Ms.** Hazard on July 25th of '91. Is
21 that your current **CV**?

22 A If it was sent on July the 25th, yes. I don't
23 think it's been updated since then.

1 Q Okay. Is there anything that you would like to
2 add as far as any additional articles, memberships,
3 abstracts, anything of that nature that you would like to
4 add that's not currently on this CV?

5 A I don't believe so.

6 Q Have you ever participated in any formal clinical
7 studies of the cause of neurologically impaired infants or
8 children as it relates to difficult labor or delivery?

9 A Well, I don't know what do you mean by formal
10 clinical studies.

11 Q Well, I see that you've been given a number of
12 different grants.

13 A Uh-huh.

14 Q Have you ever participated in any manner in any
15 studies, either by grant or by your own personal clinical
16 studies, in order to write an article or research for an
17 article?

18 A I still am not sure I understand. I mean,
19 virtually every area of child neurology you deal with will
20 deal with problems surrounding labor and delivery as a
21 factor. **So.** I don't really -- I'm not sure I know how to
22 answer that.

23 Q I think that answers my question.

1 Do you currently have any teaching appointments?

2 A Yes.

3 Q Tell me where they are.

4 A Associate Professor of Neurology and Pediatrics

5 at the University of South Alabama Medical Center.

6 Q How many days a week do you participate there?

7 A It's not on a daily basis. I mean -- or a weekly

8 basis. I will give grand rounds there several times a year.

9 Q What percentage of your time is spent doing

10 medical-legal consultation work?

11 A Less than ten percent.

12 Q Have you ever been reprimanded for -- in any form

13 by any medical society or hospital?

14 A For what?

15 Q I'm sorry?

16 A For what? I mean, reprimanded for what?

17 Q Have you ever been reprimanded professionally?

18 A For what?

19 Q For anything.

20 A No.

21 Q Okay. Have you ever been sued for malpractice?

22 A No, I haven't.

23 Q Any formal training in neonatology?

1 A Sure.

2 Q All right. Is there a difference between
3 neonatology and pediatric neurology?

4 A You mean in terms of what?

5 Q In terms of what you do.

6 A Well, you know, I don't think so. You take care
7 of neonates in both and it depends on your background and
8 training as to how far you go in either one.

9 Q With regard to this particular case, that being
10 the case of Brinda Manning and Cassie Manning versus Dr.
11 Davis, would you tell me what materials or other sources of
12 information you've reviewed for the deposition today and --

13 A Sure.

14 Q -- I'd like for you to include any articles or
15 books or outside information.

16 A Okay. I don't have any articles or books. I'm
17 just going to go through these. They're in a stack, if
18 that's okay.

19 Q That's fine.

20 A Medical records from West Virginia Hospital, Dr.
21 John Bodensteiner; medical records from Carlos Lucero,
22 L-U-C-E-R-O, and they're just various dates: deposition of
23 Dr. Mortimer Rosen; Dr. Bodensteiner; medical records from

1 Raleigh General Hospital, Cassie Manning, outpatient records
2 2/3/88, 12/7/88; same 1/12/88, 1/20/88; deposition of Dr.
3 Molofsky; deposition of Dr. Dy, D-Y; Raleigh General
4 Hospital records of Cassie Manning, outpatient, 2/3/88,
5 12/7/88; medical records from West Virginia University
6 Hospital, outpatient records; medical records from -- well,
7 I guess we had Dr. Lucero.
8 Okay. Medical records of Dr. Roberto Concepcion,
9 C-O-N-C-E-P-C-I-O-N; medical records from -- well, that's
10 the same ones. I think we have copies, two copies *of* that.

11 Medical records of Brinda Manning, Raleigh General Hospital,
12 1/9/87, 1/9/88; medical records of Raleigh General Hospital,
13 Brinda Manning 1/11/88 to 1/15/88, and I have CT scans of --
14 MR. HAZARD: On the outside there.
15 A Oh, yeah, here are the dates. 1/18/88 and
16 2/3/88.
17 BY MR. CHIARTAS:
18 Q Is that all?
19 A I believe that is it.
20 Q Have you reviewed -- let me ask you these
21 questions to make sure.
22 You have not reviewed the depositions of Dr.
23 Lucero or Dr. Concepcion; is that correct?

1 A That is correct.

2 Q Have you reviewed any of the social security file
3 with regard to Cassie Manning?

4 A I don't believe so.

5 Q Have you reviewed any of the FMRS Mental Health
6 Council records concerning Cassie Manning?

7 A No.

8 Q I think you've stated previously you haven't
9 looked towards any articles or textbooks for your deposition
10 today: is that correct?

11 A Specifically to deal with the topics, no,

12 Q Will you be giving opinions as to the neonatal or
13 pediatric or obstetrical care given to Cassie Manning in
14 this case?

15 A No, I will not.

16 Q Tell me briefly, sir, what you understand your
17 assignment is to be in this particular case.

18 A Well, I wasn't assigned anything. I was asked as
19 a professional and a physician to look at these records and
20 give **Mr.** Hazard an opinion as to what I thought caused
21 Cassie Nicole Manning's difficulty.

22 Q Were you given limitation as to the areas that
23 your opinions should be **in**?

1 A Well, Mr. Hazard didn't give me any limitations.
2 I don't give opinions in areas which I'm not experienced and
3 Boarded in.
4 Q Okay. Now, you've had at least one meeting prior
5 to your deposition today with Mr. Hazard. Have you had any
6 others?
7 A No, I haven't.
8 Q Did you discuss this case prior to today with him
9 over the telephone?
10 A I believe we did.
11 Q Can you tell me today during your meeting of
12 about an hour ago what you all discussed and what materials
13 you reviewed?
14 A We discussed the case and the materials I
15 reviewed I've already told you.
16 Q Okay. Were there any new materials that you just
17 were brought today that you hadn't seen before?
18 A The x-rays.
19 Q The CT scans?
20 A Correct.
21 Q Okay. And did those change your opinions in
22 anyway?
23 A No.

1 Q You had an opportunity, I assume, prior to today
2 to at least read the CT report?

3 A That is correct.

4 Q All right. Did you have any conversations with
5 anyone else regarding this other than Mr. Hazard?

6 A Concerning the case?

7 Q Yes, sir.

8 A No, I did not -- no, I'm sorry. I take that
9 back. You know, this case was originally sent to me by Mr.
10 File and I believe I had a conversation with him, although
11 that was several years ago, but I, you know, to be honest
12 with you, I can't remember who I talked with.

13 Q All right. And you were originally retained by
14 Raleigh General Hospital for the purpose of testifying in
15 this case?

16 A No.

17 Q I'm sorry?

18 A No.

19 Q Okay. Can you tell me then what was your
20 connection with Mr. File?

21 A He retained me.

22 Q Okay. He's counsel for Raleigh General Hospital.
23 Did you understand that?

1 A Right, but Raleigh General Hospital didn't retain
2 me.

3 Q Okay. I think we're a little confused here.
4 Bill File retained you for the purposes of
5 testifying in this case; is that correct?

6 A That is --

7 Q Reviewing and testifying in this case?

8 A That is correct.

9 Q Okay. And after Mr. File subsequently settled
10 out **of** this lawsuit, **Mr.** Hazard picked up your option?

11 A Well, I guess you and I have a difference in
12 terms. I don't think I'm out for options or for, **you** know
13 -- and I'm not sure what occurred. Mr. Hazard asked me if I
14 would review the case and give him an opinion and I did.

15 Q Had you given an opinion to Mr. File before your
16 conversations with Mr. Hazard?

17 A I believe I did.

18 Q And have your opinions remained the same?

19 A That's really -- it's hard for me to remember two
20 years back. **So**, I don't know the answer to that.

21 Q Would there be any reason that you know of that
22 your opinions would change in anyway regarding the causal
23 connection between the labor and delivery and what, if

1 anything, this child suffers from neurologically?

2 A I don't know how to answer that. I just can't --

3 you know, I'm just telling you I can't remember the

4 conversations.

5 Q At the time that you were originally retained by

6 Mr. File, did you give him a positive opinion for his client

7 and agree to testify on behalf of his client at the time?

8 A Well, I don't know what you mean by positive. I

9 mean, I gave him what I thought the facts and the chart

10 represented and what's the matter with the child. Whether

11 that's positive or negative is not for me to decide.

12 Q Can you tell me what your opinion was at that

13 time?

14 A I can't tell you that. I can't remember that far

15 back. I'll be glad to tell you what it is today.

16 Q But just in summary, Doctor, you were originally

17 retained by Mr. File and I assume that at some point you

18 gave him an opinion and he chose to continue to work with

19 you; is that correct?

20 A I believe so.

21 Q Okay. You just can't recall today what that

22 opinion was?

23 A I mean, no, that's -- I can't. Can you recall

1 conversations that you've had two years ago? I can't do
2 that.

3 Q Did you have any notes anywhere concerning the
4 opinions that you gave Mr. ile?

5 A No.

6 Q Do you remember what materials Mr. File sent you
7 that were different than the materials or if they were the
8 same materials that you reviewed for the purposes of
9 testifying for Dr. Davis?

10 A No, I really don't.

11 Q So you haven't rendered any reports or
12 memorandums regarding your opinions in this case?

13 A That's correct.

14 Q Now, when you were going through these records
15 and the deposition transcripts, did you take notes when you
16 were reviewing the case?

17 A No.

18 Q So you have nothing in front of you other than
19 the records that we discussed today?

20 A That's correct.

21 Q Did you make any annotations in any of the
22 margins of any of the medical records or in the depositions?

23 A No, I haven't.

1 Q Have you highlighted any portions of the records
2 or marked them in anyway or on the depositions?

3 A No, I haven't.

4 Q Are you familiar with any of what we call the
5 expert witnesses in this case, that being Dr. Molofsky or
6 Dr. Pinshaw, Dr. Ravitz, Dr. Rosen, or Dr. Boehm?

7 A Well, I know most of those names. I can't tell
8 you that I know those individuals personally. I think I've
9 met Dr. Pinshaw.

10 Q Have you ever worked with any of those fellows in
11 connection with any medical-legal matters?

12 A I believe I've worked on a case with Dr. Pinshaw.

13 Q Was that on behalf of the plaintiff or on behalf
14 of the defendant, if you can recall?

15 A I believe it was on behalf of the defendant, but
16 that was a number of years ago.

17 Q Now, sir, as far as you know, is there anything
18 else that you believe that you would need or you would like
19 to have to review before giving your opinions today?

20 A I've asked Mr. Hazard to examine Cassie Manning,
21 however, I do not think that will -- prohibit me from giving
22 you my opinions. Now should that, after that examination,
23 change, I'd be glad to answer any questions. However, I do

1 not -- since her examination is normal, I do not, you know,
2 I don't anticipate that to change.

3 Q Is there anything that you've asked for that you
4 haven't received? Any information?

5 A I don't believe so.

6 Q Did you make any assumptions when arriving at
7 your opinions in this case?

8 A What do you mean by assumptions?

9 Q I mean, did you assume any facts to be true that
10 aren't clearly set forth in the records somewhere?

11 A Well, I don't know what you have in mind. I
12 mean, all I have are the records to go by.

13 Q Did you assume that, for example, that Cassie has
14 not exhibited any objective evidence of a minor motor
15 seizure disorder or a right side hemiparesis when reviewing
16 these records and giving your opinion?

17 A Did I assume -- say that again now.

18 Q I asked if you assumed when arriving at your
19 opinion that Cassie Manning has not exhibited any objective
20 evidence of minor motor seizure disorder or a right side
21 weakness?

22 A I don't think that's an assumption. I think
23 that's fact. So, I didn't assume that.

1 Q And you don't recall reviewing in any of the
2 records any objective signs of right side weakness?

3 A Well, I think it was mentioned in several of the
4 records. I'm not sure there's any documented evidence that
5 that was the case.

6 Q All right. Would objective evidence of right
7 side weakness or of seizure activity alter your opinions in
8 anyway?

9 A **No.**

10 Q Would you tell me, sir, what you believe the
11 facts are surrounding or formulating the basis for your
12 opinion?

13 A What the facts are?

14 Q Yes, sir. The facts as you understand them to
15 formulate the basis of your opinions?

16 A Well, the facts are included in the record and I
17 don't think we have time to read all of those, And the --
18 you know, in terms of my understanding of Cassie Manning
19 today **is** that she may or may not have a seizure disorder, is
20 of normal intelligence and has normal development with a
21 normal brain scan and is on medication for seizures, but
22 otherwise is doing well.

23 Q Tell me the pertinent history as you recall it

1 with regard to Cassie Manning from the time that she was
2 born or actually during labor and delivery to the point of
3 labor and delivery until now that you use as the basis for
4 your opinion.

5 A Well, I used all of the information in the chart.

6 I'll be glad to read the chart for you.

7 Q Are you telling me, Doctor, that you can't or you
8 won't summarize for me --

9 A No, I'm just telling you it's difficult to
10 summarize all of the facts in terms of all the laboratory
11 data, you know, the history, the physical, the progress
12 notes, the radiological reports, but I'll be glad to read
13 them for you if you want.

14 Q Okay. Why don't you just go ahead --

15 A I'm not refusing to do that.

16 Q I'm sorry. Let's not -- let's try not to talk
17 over each other. I'm sorry. I didn't hear what you just
18 said.

19 A Okay. I'm not refusing to do that. I'm happy to
20 do that for you if you would like me to.

21 Q Well, tell me, as you understand, tell me the
22 history of Cassie Manning with regard to the way -- right
23 after birth, the way she appeared after birth?

1 A Well, I'll be glad to read to you from the chart.

2 I mean, that's what I have gone by and if you want me to do
3 that, I'll be glad to.

4 She was a term newborn female delivered to a
5 twenty-two year old gravida one, para zero, AB positive
6 blood type. **Her** estimated date of confinement was 1/10/88.

7 Had apparently unremarkable pregnancy and she went into --
8 the mother went into labor. Due to possibility of fetal
9 distress, a decision was made to extract the fetus with a
10 vacuum rotation and a Pow forceps. The infant Apgar at one
11 minute was one due to meconium stained amniotic fluid. The
12 infant was intubated endotrach --

13 Q Excuse me --

14 A Excuse me?

15 Q -- Doctor.

16 A Yes.

17 Q I didn't ask you to read for me the chart. I
18 asked for me to tell you (sic) what you understand the
19 history to be.

20 A Well, this is what I understand the history to
21 be. I can't reiterate it any better than what's in the
22 chart.

23 Q Okay. **So** let me understand -- let me see if I

1 understand this. Come to trial of this case, if I ask you
2 to tell me what the history of this child is, you'll need to
3 refer to the chart?

4 A Sure. That's the only place I can get it from.

5 Q Okay. You won't be able to tell us your
6 understanding of the history of this case based upon your
7 review?

8 MR. HAZARD: Let me just object, Greg. I
9 think he has explained to you that answer about three
10 or four times and I don't think that we're getting
11 anywhere's here, but you can certainly continue to
12 pursue it. I don't think you're going to box him into
13 a corner by saying that he can't summarize it. You
14 asked him what's the basis of his understanding with
15 regard to the history of this child and he prefers to
16 rely solely on the medical records.

17 BY MR. CHIARTAS:

18 Q That's fine and I'm just -- I just want to be
19 sure that when it comes time to trial, that you will need to
20 rely on the medical records in order to give us your
21 understanding of the history of this child and the history
22 as it's significant to your opinion?

23 A The whole thing is significant to my opinion.

1 So, you know, I don't know how to tell you that differently.

2 I mean, if you want to -- if you want to ask me a specific
3 question about what's in the chart, I'll be happy to answer
4 that.

5 Q All right. Doctor, why don't you just list for
6 me then your opinions regarding Cassie Manning's problems or
7 your opinions in the case?

8 A Okay. Cassie Manning was born with -- was
9 depressed at birth and had seizures shortly after birth,
10 which was treated. She had some respiratory distress and
11 was intubated and received some medication. She improved
12 considerably and went home after eight days. In particular,
13 she had terminal meconium, fetal heart tones were not
14 significantly described as abnormal, she had a normal
15 ultrasound, a normal CT scan. She has a normal examination
16 now and has no evidence of cerebral palsy.

17 Q Okay. Are those all your opinions?

18 A Correct.

19 Q Okay. So basically to summarize, while Cassie
20 Manning was born depressed at birth, she's a normal child
21 now?

22 A No --

23 Q Is that correct?

1 A That's not correct. You did not paraphrase me
2 correctly.

3 Q Okay. I'm sorry.

4 You said that she has a normal -- she had a
5 normal examination. Does she have any current problems as
6 far as you know neurologically?

7 A Well, I think there's some differences according
8 to her treating doctors. She's being treated for a seizure,
9 whether, in fact, some or all are those seizures are
10 difficult to be -- you know, I can't discern from the
11 records.

12 Q You find no history or causal connection between
13 any seizure disorder and any birth problem?

14 A That's correct. I do not think that any problem
15 occurring during the intrapartum period is related to any
16 possible seizure disorder she has at the present time.

17 Q Doctor, did you review the prenatal records of
18 Brinda Manning?

19 A Yes.

20 Q Was there anything significant in the prenatal
21 course that lead to your opinion?

22 A What **do** you mean by significant?

23 Q In other **words**, is there anything in there that

1 caused you to formulate your opinion that nothing that
2 occurred during labor and delivery caused Cassie's problem?
3 A Well, that's not the prenatal period. Are you
4 talking about the intrapartum period?
5 Q No, I'm talking about prenataally. Is there
6 anything in there that lead you to believe that perhaps this
7 happened prenataally?
8 A I'm confused. You said labor and delivery and
9 then prenataally and I don't think I understand.
10 Q I'm asking you, Doctor, whether or not in the
11 prenatal records there was anything in the prenatal records
12 that are significant to the opinions that you've rendered
13 today?
14 A Yes, the entire records are significant.
15 Q Is there anything specifically that leads you to
16 believe that there was any problem which occurred with this
17 child while in its mother's womb prenataally?
18 A Well, certainly. The history, the physical, the
19 examination after birth, the subsequent development and the
20 current physical and radiographic findings.
21 Q No, sir, I'm asking -- not during labor and
22 delivery, not perinatally, but prenataally is there anything
23 there that's of significance to your opinion?

1 **A** Yes, all that's recorded. You can't practice
2 medicine by use being a single isolated piece of evidence.
3 You have to use it all.

4 **Q** **All** right. Doctor, let me break it down. You
5 don't believe that anything happened during labor and
6 delivery that caused any problems with Cassie Manning; is
7 that correct?

8 **A** **I** do not think the depression at birth and the
9 problems in the neonatal period are casually related to a
10 possible seizure disorder that the child has at the present
11 time, that is correct.

12 **Q** Are they casually related to the prenatal period
13 in time?

14 **A** Well, I don't think I can tell you for certain,
15 but in individuals that have seizure disorders that have no
16 readily discernible etiology, they get into a category of
17 idiopathic or familial seizures and we do not understand
18 exactly what goes into the developmental problem that causes
19 those. **So**, I would have to say that it occurred during
20 development. **I do** not know what the cause is.

21 **Q** Okay. **Now** you're not here -- once, again, you're
22 not here to give standard of care opinions; is that correct?

23 **A** That's correct.

1 Q Okay. Doctor, what neurological or pediatric
2 textbooks do you maintain in your office?

3 A Swayman and Wright, Practice of Pediatric
4 Neurology, Mankee's (Phonetic) textbook of Neurology,
5 Clinical Neurology by A. B. Baker, the -- Merit's (Phonetic)
6 Textbook of Neurology, Developmental Neuropathology and I
7 think that there's several others.

8 Q Okay. Doctor, tell me what journals that you
9 subscribe to in your field?

10 A Pediatrics, Journal of Pediatrics, Neurology,
11 Annals of Neurology, Archives of Neurology, Neurology
12 Clinics, Clinics of Neurology, the Pediatric Clinics of
13 North America, The Perinatal Clinics of North American, the
14 American Journal of Obstetrics and Gynecology, the New
15 England Journal of Medicine, The Annals of Internal
16 Medicine. I think there's several other periodicals.

17 Q Doctor, within your CV you have a number of
18 publications or abstracts. Are there any of those
19 publications or abstracts that you believe are related to
20 the issues that we're talking about today?

21 A Yes.

22 Q Okay. Would you tell me what they are?

23 A Number nine, ten, twelve, thirteen. Under

1 abstracts, three, four, five. I believe that's all,
2 although I, you know, honestly can't remember the content of
3 all of them.

4 Q Okay. Let's start with number nine under the
5 publications. Tell me what you believe is significant about
6 that publication that relates to the issues that we're
7 talking about today.

8 A You know, I haven't looked at that article, you
9 know, since I wrote it. So, it would be difficult for me to
10 tell you that.

11 Q Well, you told me that it relates in some way to
12 the issue we're talking about.

13 A Well, as I recall. I mean, it deals with
14 children that have seizures and that's about all I can tell
15 you. I can't give you any more specifics.

16 Q Tell me about ten.

17 A Same thing. You know, I haven't reviewed these
18 articles in a good period of time. Those are -- you gave --
19 I was giving you my impression of what I thought was
20 related.

21 Q Did this child suffer from cytomegalovirus,
22 Doctor?

23 A The child had an elevated titer of

1 cytomegalovirus as well as herpes.

2 Q Okay. Do you think that those had any
3 significance in the neurological outcome of this child?

4 A In the outcome or the causation?

5 Q Causation or outcome.

6 A Well, I think it's possible.

7 Q You think -- I'm sorry. It's possible?

8 A Yes.

9 Q Tell me what causal connection you believe is
10 related to the herpes titer or any of the other, the rubella
11 or the toxoplasmosis or anything.

12 A Well, you've got about five questions in there.
13 Why don't you select those out for me?

14 Q All right. Well, let's just start with the
15 herpes titer.

16 A What about it?

17 Q Herpes 11, tell me what you believe would have
18 caused -- the causal connection between the way the child is
19 today and the herpes titer?

20 A I don't think I can answer that question. That's
21 not -- I can't answer it the way you phrased it because I
22 don't understand it.

23 Q Is there any causal connection between an

1 elevated Herpes II titer and the child's current condition?

2 A Well, certainly intrauterine infections in

3 children can cause seizure disorders later in life. Now

4 whether that, in fact, occurred, I don't know.

5 Q Herpes II seizure -- do you believe that the

6 child suffers from a herpes encephalopathy?

7 A I don't know that. It certainly had an elevated

8 titer at birth.

9 Q You saw the **CAT** scans, right?

10 A Yeah, **So** what?

11 Q Did you see anything in there that indicated a

12 herpes encephalopathy?

13 A That does not necessarily diagnose it by **CAT**

14 scan.

15 Q How would you diagnose it?

16 A Well, you diagnose it by the history, the

17 physical, the laboratory studies, the clinical course and

18 the clinical finding.

19 Q Let's talk about causal connection with regard to

20 the rubella IgG index of three point five.

21 A I didn't mention that. If that's important to

22 you, I -- you know --

23 Q **Is** there? **Is** there any causal connection?

1 A I don't know. You know, not as far as I'm
2 concerned.

3 Q How about with the Herpes B-1 virus?

4 A Well, it's certainly the same category as the
5 Herpes Type 11. It can cause intrauterine infection and can
6 be related to later seizure disorders.

7 Q Has there been anything that you read in any of
8 the records where any of Cassie's pediatric neurologists or
9 any of her neonatologists or pediatricians have diagnosed
10 that as the cause of Cassie's seizure disorders?

11 A I don't -- you know, I don't know. The titers
12 were elevated. I'm not telling you that's the cause. You
13 asked me whether it could be related. Yes, it could be
14 related.

15 Q No, what I'm asking you is whether or not anyone
16 has related that, any of her treating physicians have
17 related that to her past or current condition?

18 A I don't know. You'll have to ask them. I'm not
19 sure they were asked.

20 Q Okay. Have you seen that in the materials that
21 you've reviewed?

22 A I've seen it in the baby's chart with the
23 elevated titer.

1 Q I'm asking you, Doctor, whether or not you have
2 seen under anyone's impressions or diagnoses in the
3 materials that you reviewed that they related the herpes,
4 either one of the herpes titers to the child's condition?
5 A It was never commented on. It was ordered. **So,**
6 obviously somebody thought about it.
7 Q Okay. Now there is anything significant or is
8 there any causal connection with regard to the toxoplasma
9 ratio?
10 A I didn't mention that.
11 Q I'm asking you.
12 A Not as far as I'm concerned.
13 Q Now, is your answer going to be the same with
14 regard to each of these articles?
15 Can you tell me with regard to any of these
16 articles how it relates to the issue that we're discussing
17 today?
18 A No, I didn't review all *of* these articles in
19 detail. **So,** really I can't tell you that.
20 Q Did you see any signs of calcification in
21 Cassie's CAT scan?
22 A No, I didn't.
23 Q Does it tell you anything about the herpes idea

1 of the causal relationship?

2 A Does it tell me anything about it, no.

3 Q Do you believe that Cassie suffered from a nuchal

4 cord encirclement?

5 A You mean nuchal cord encirclement? No, I don't

6 believe so.

7 Q When you reviewed the CAT scan, you just reviewed

8 them today; is that correct?

9 A That's correct.

10 Q Did you have any radiologist or other colleagues

11 look at the CT scans with you?

12 A No.

13 Q Are you aware of the current health of the child?

14 A Well, as I understand it from Dr. Bodensteiner's

15 deposition, that the child is neurologically normal, has

16 episodes which may or may not be seizures, and is on

17 medication. Is otherwise developmentally and intellectually

18 normal.

19 Q And that was as of the last time that Dr.

20 Bodensteiner saw Cassie; is that correct?

21 A Excuse me one second.

22 That's my understanding, yes.

23 Q Do you recall when the last time Dr. Bodensteiner

1 saw Cassie was prior to his deposition?

2 A I don't recall the date.

3 Q Do you recall what medications Cassie is

4 currently on?

5 A I believe she's on Tegretol and Depakene.

6 Q Can you tell me what the indications are for

7 Depakene?

8 A It's the predominant indication of seizures, but

9 certainly can be used in pain, Tourette's syndrome, for

10 involuntary movements. I believe there's several other

11 uses. Headaches.

12 Q Well, how about Tegretol?

13 A How about it?

14 Q Tell me the indications for Tegretol in this

15 particular case, Doctor.

16 A In this particular case is for seizures, but

17 Tegretol, as you well know, is used for many things.

18 Q Do you recall the other anti-seizure medications

19 that Cassie took previously to the Tegretol and the

20 Depakene?

21 A I believe she had been on Zarontin, Dilantin and

22 Phenobarbital all -- at some time in her life.

23 Q **And** do you recall why the medications were

1 switched around?

2 A Because they felt that her spells, her staring
3 spells were not responding to medication.

4 Q Was it simply limited to the staring spells or
5 did it have anything to do with the seizures? Not the focal
6 seizures, but the other seizure?

7 A What other seizures?

8 Q You did not review, Doctor, any of the records
9 which said that they were concerned that Cassie exhibited
10 two separate kinds of seizure disorders?

11 A Well, I thought you were talking about one were
12 staring spells and the other were focal seizures. Which one
13 did you have in mind?

14 Q Can you differentiate between focal seizures,
15 Doctor, and just absente spells?

16 A Do I differentiate between them?

17 Q Yes, sir.

18 A Yes.

19 Q I'm talking about Dr. Bodensteiner. Do you have
20 the West Virginia records from WVU Hospital in front of you
21 that Greg just copied the other day?

22 A Yes.

23 Q Do you want to refer to Morgan Town Seizure

1 Clinic dated 10/23/90.

2 A Just a second. I'm trying to find it.

3 Mr. Hazard, do you have that? I don't seem to be

4 able to --

5 MR. HAZARD: It's tab number three.

6 THE WITNESS: That says 7/25/89.

7 MR. HAZARD: Yeah, but I think it's deeper in

8 there.

9 BY MR. CHIARTAS:

10 Q Going towards tab four.

11 A Okay. Wait one second.

12 I have it, I'm sorry.

13 Q Okay. Let's go -- well, actually into -- the

14 very first paragraph. It says, second sentence, her mother

15 relates she's had seizures since birth and since then has

16 had two types of seizures, one of those involved drawing up

17 of the right side of the face along with turning of her head

18 to the right and drawing up of the right arm, and then the

19 second one is the staring spells?

20 A Okay.

21 Q Okay. Now, do you believe that Cassie had two

22 different types of seizure disorders?

23 A Well, I believe they're describing the head

1 turning to the right and drawing of the -- up of the right
2 arm is one type of seizure and I believe that they're
3 referring to a staring spell as a possible another type of
4 seizure,

5 Q Would you agree with Dr. Bodensteiner's
6 impression of those being possibly two separate seizure
7 disorders?

8 A I don't disagree with that impression, that's
9 correct.

10 MR. HAZARD: Just so there's no confusion,
11 Greg, and I don't think you're misleading anybody, it
12 doesn't say two different type of seizure disorders.
13 It says just two different seizure types. I don't know
14 if that's a distinction that you are making or not.

15 BY MR. CHIARTAS:

16 Q Okay. Does that make a difference, Doctor? I --

17 A No, it doesn't make -- I mean, you know, we were
18 talking about, you know, a seizure disorder is one entity.
19 The types would be, you know, somebody that had perhaps
20 mixed seizures, but I think you're talking semantics.

21 Q Okay.

22 A Can we pause for just a moment?

23 Q Sure.

1 A I'm going to put you on hold.

2 (PAUSE)

3 **THE WITNESS:** Hello?

4 **BY MR. CHIARTAS:**

5 Q Hello.

6 A Okay.

7 Q **All** right. Doctor, if you have a patient with an
8 active seizure disorder, is there a practice or procedure
9 you use to attempt to observe the disorder?

10 A See if you can clarify that question for me.

11 Q Okay. **If** you have a patient that has an active
12 seizure disorder, is there some sort of procedure that you
13 go through in order to observe the disorder?

14 **Is** that important to you as a clinician?

15 A I don't think I understand what you mean.

16 Q Okay. Let me ask you this: Is it important **for**
17 you to observe the seizure disorder to appropriately treat
18 the patient?

19 A Well, it certainly would help, but that's often
20 not the case.

21 Q Okay. And that is, that many times you don't
22 actually witness the seizure disorder; is that correct, or
23 the seizure?

1 A **No**, that's not correct.

2 Q Well, what do you do to observe the seizure, to
3 attempt to observe it?

4 A Well, you mean in 1991?

5 Q No, **1988** through **1991**, that's fine.

6 A Well, it depends on where you were in **1988**. You
7 know, currently now we use telefactory EEG, which is a video
8 monitor on continuous EEG, which, if there's some question
9 particularly about staring spells, it's often good to do
10 that because then one can associate paroxysmal abnormal
11 discharges with clinical activity and often it helps when
12 people are questioning whether staring spells are seizures.

13 Q That wasn't done in this case, was it?

14 A **No**, I don't think it's been done to my knowledge.

15 Q What about a twenty-four hour EEG?

16 A Well, I think that's what we're talking about.
17 You can **do** it --

18 Q And that's with use of video monitors; is that
19 right?

20 A Right. I mean, you can **do** it for four hours, you
21 can **do** it for eight hours, you can do it for twenty-four,
22 thirty-six, seventy-two hours. You can do it for as long as
23 you want .

1 Q What's the purpose of the observation?

2 A What's the purpose of what observation?

3 Q To observe the seizure episode.

4 A You know, by what means?

5 Q How does it help you as a clinician to observe it

6 by any means? To observe the actual seizure disorder by

7 video or in person?

8 A Well, I mean, it helps you in trying to determine

9 whether, in fact, it is real seizure activity or is it

10 another behavioral mannerism.

11 Q All right. Now, Doctor, do you not believe that

12 this child has exhibited any signs of a mild right side

13 hemiparesis?

14 A Not by the examination of 10/23/90, there's no

15 evidence of any hemiparesis.

16 Q I'd like for you to refer to the WVU Hospital

17 records again and let's go to September the 26th of 1989.

18 They are going to be in the progress and clinic records.

19 A So that's 9/89?

20 Q 9/26/89, Dr. Chung's (Phonetic) note.

21 A Okay. Hold on one second,

22 9/26/89, okay.

23 Q Okay. Do you see on the second indented

1 paragraph it says she also has decreased usage of right
2 upper extremity and when she runs there is a mild
3 hemiparesis noted?

4 That's an objective sign, isn't it?

5 A Well, that's observed by Dr. Chung.

6 Q Right. Do you have any reason to doubt that Dr.
7 Chung is a competent neurologist?

8 A I don't know anything about Dr. Chung. So, I
9 can't tell you that.

10 Q All right. Do you have any reason to doubt that
11 that medical record is not correct?

12 A Well, it's certainly inconsistent with subsequent
13 examinations. So, you know, all I can say is that that was
14 observed at that time. It's certainly not present now. So,
15 that's all I can tell you.

16 Q Let's go to the pediatric WVU records of January
17 the 30th, '90.

18 A Okay.

19 Q All right. Are there any objective signs there
20 under the "O" where it says gate normal, very minimal
21 problem on right, doesn't swing right arm quite the same?
22 Is that an objective sign of a right side
23 hemiparesis?

1 A No. I mean, it just says that the right arm
2 doesn't swing like the left arm, but I think if you watch a
3 lot of people, that certainly is different.

4 Q Do you know -- do you have any reason why above
5 that we have a right hemiparesis noted?

6 A Oh, I think that was the complaint from the last
7 visit with Dr. Chung.

8 Q Did you note anywhere else, Doctor, where any
9 other physician, including the Beckley Seizure Clinic
10 record, noted that this child had some objective signs of a
11 right side hemiparesis?

12 A What do you mean by objective signs?

13 Q Where they witnessed what they believe to be a
14 right side weakness?

15 A Well, why don't we just go through them all
16 because I don't know what -- you know, what you --

17 Q Let me refer you to the one I'm talking about.

18 A Okay. That would be fine.

19 Q The Beckley Seizure Clinic record of July the
20 18th of '90.

21 MR. HAZARD: What's that in, Greg? We may
22 have -- we have to search --

23 MR. CHIARTAS: Seizure Clinic records.

1 THE WITNESS: Which clinic records?
2 MR. CHIARTAS: Beckley Seizure Clinic record,
3 examination by Dr. Dy.
4 THE WITNESS: Is that seven -- okay.
5 MR. HAZARD: Well, have to look for that.
6 Just a second.
7 MR. CHIARTAS: Okay.
8 MR. HAZARD: I may be able to find it.
9 THE WITNESS: Is that the University Hospital
10 outpatient clinic?
11 MR. HAZARD: No, sir.
12 What's the date again, please?
13 MR. CHIARTAS: July 18th, '90.
14 MR. HAZARD: Greg, the most recent one that I
15 have is **of** January 17th, '90.
16 MR. CHIARTAS: Remember when we took Dr.
17 Dee's deposition he gave us some additional ones?
18 MR. HAZARD: I do remember that.
19 MR. CHIARTAS: He gave us one of July the
20 18th, '90, and gave **us** one for October of '90.
21 MR. HAZARD: I don't know whether --
22 THE WITNESS: I don't think I have those.
23 MR. HAZARD: -- Dr. Chalhub has those or not.

1 **BY MR. CHIARTAS:**

2 Q Okay. Well, Doctor, let me read the part to you
3 that concerns me and see whether you believe that it's
4 significant.

5 He talks about on examination shows she weighed
6 twenty-three and a half pounds, she's alert and awake,
7 pupils are equal. She has a loud cry. There's no facial
8 asymmetry. She moves her extremities spontaneously. She
9 can walk fairly well, limping on her right leg. She uses
10 both hands spontaneously. Not cooperative during the
11 examination. No rigidity of her extremities on passive
12 movement.

13 Now, with regard to the limping on her right leg,
14 now we have three noted episodes between 9/26/89 and July
15 the 18th of '90 where different practitioners have noted
16 some sort of right side weakness.

17 **Do** you believe that there's a right side -- the
18 possibility of a right side hemiparesis?

19 **A** Well, in the first place, that, you know, may or
20 may not be right sided weakenss. You know, a limp can be
21 due to pain or it can be due to a number of things. What's
22 important is whether it's associated with abnormal reflexes,
23 increased tone, abnormal extensor/plantar responses and I

1 can't -- that's not really been documented. I'm not
2 doubting that it's there in terms of what's been observed.
3 You know, and if that's what they observed, I have no
4 difficulty with it.

5 Q Doctor, do you believe that the child suffers
6 from some sort of idiopathic epilepsy?

7 A I believe that is probable, yes.

8 Q And do you then agree completely with Dr.
9 Bodensteiner's deposition?

10 A Well, now that's a long deposition. What part
11 did you have in mind?

12 a Well, with his opinions that he believes that
13 Cassie suffers from benign rolandic epilepsy?

14 A Well, I'm not sure I would classify it entirely
15 in that area. I would think that the child has, you know,
16 the EEG findings that are -- certainly I would see that's
17 most consistent with that disorder. The clinical picture is
18 somewhat atypical. So, I'm not sure I can quite categorize
19 it into that.

20 I would agree with him that it's probably an
21 idiopathic or familial seizure disorder with an otherwise
22 normal exam and no evidence of motor deficit or intellectual
23 deficit.

1 Q Is there any familial history of a seizure
2 disorder that you're aware of through any of the records
3 that you've reviewed?

4 A **No**, but that's not uncommon. That occurs many
5 times.

6 Q I understand, but I'm just asking you if you saw
7 anything present?

8 A No.

9 Q Now, if you would, let's go back to Cassie
10 Manning's records from Raleigh General Hospital and I want
11 you to take a look again at that admission history and
12 physical that **Dr.** Lucero wrote that you started to read
13 before for us.

14 A Okay.

15 Q I want you to take a look at it and tell me if
16 there's anything or any reason that you have to disagree
17 with Dr. Lucero's findings in that admission or physical
18 examination.

19 A Well, you're going to have to tell me what you
20 have in mind specifically.

21 Q Well, do you disagree that the -- do you have any
22 reason to disagree that the child had Apgar's of one and
23 three?

1 A And seven, no.

2 Q Do you have any reason to disagree that the child
3 was hypotonic and had no spontaneous movement?

4 A No, I mean, that's what he observed.

5 Q And what I'm asking you is do you have any reason
6 to disagree with his history of the present illness?

7 A No. I mean, I don't have any reason to disagree
8 with what he's described. I mean, those were his
9 observations.

10 Q **Now** you haven't read his deposition, but I want
11 -- I'm going to tell you and I want to you assume that this
12 is correct and I'll form in it a hypothetical.

13 I want you to assume that Dr. Lucero, in his
14 deposition, believed that this child suffered from hypoxia
15 during the labor and delivery process and that that is
16 responsible for her minor -- and he terms it minor motor
17 seizure disorder.

18 Do you disagree with that opinion?

19 A Yes.

20 Q And if Dr. Concepcion held the same opinion,
21 would you disagree with him?

22 A Yes, because the data doesn't support that.

23 Q Okay. And if Dr. Dy, Johnny Dy held that same

1 opinion, would you disagree with him?

2 A Yes.

3 Q All right. And then, of course, you would

4 disagree with **Dr.** Molofsky as well?

5 A What part of what Dr. Molofsky said?

6 Q Well, that he believes that casually this is

7 related to the labor and delivery.

8 A Well, I believe that it is not casually related,

9 but I believe it for the facts and based on the facts.

10 Now, if you want to -- you know, and I'm not sure we -- you

11 know, again, it's a long deposition. If you have something

12 specifically, but if you're saying do I agree with that

13 conclusion, no, I do not.

14 Q Okay. I mean, you read Dr. Molofsky's

15 deposition, right?

16 A Well, but it's a long deposition.

17 Q I understand, but I'm just saying that his

18 primary opinion that he believes that Cassie Manning suffers

19 from a hypoxic insult **or** a hypoxic insult during labor and

20 delivery that lead to her being a depressed newborn and that

21 there were, in fact, an intracranial bleed on the **1/18/88** CT

22 scan and that that was further evidence of a hypoxic episode

23 and that this has caused a minor motor seizure disorder with

1 a right side hemiparesis, that you would disagree with?

2 A You said a lot, most of which doesn't make any
3 sense, but I disagree with that.

4 Q Okay Do you want to tell me what part of what I
5 just told you didn't make sense?

6 A Well, there was a good portion of it.

7 Q Well, tell me.

8 A Well, I mean -- she'll have to read it back or
9 you'll have to restate it.

10 Q All right. Do you disagree with the fact that in
11 Dr. Molofsky's deposition he believes that there is some
12 intracranial bleeding on the CT scan of January the 18th of
13 '88?

14 A Why don't we get the deposition out and you tell
15 me the page to **look** at it so I can read in it context - okay
16 - because I think you're taking some things out of context?

17 Q Let's assume that's what he said, Doctor. Okay?

18 A Well, I don't want to assume it. Let's just get
19 the deposition out and why don't you point out the page that
20 you're talking about?

21 Q This is my deposition. I'll conduct it the way I
22 want to.

23 A Well, I understand, but if I can't answer the

1 question the way you've asked it --

2 Q Just tell me you can't answer it.

3 A I'm just asking you as a courtesy to refer to

4 what you're talking about now. Now, if you don't want to do

5 that for me, then -- I mean, I can't make you.

6 Now I have the deposition. Do you have the page

7 that you're talking about?

8 Q Do you believe -- did Dr. Molofsky see any signs

9 in the January 18th, '90 CT scans of any intracranial

10 bleeding?

11 A You mean according to his deposition?

12 Q Yes, sir.

13 a Okay. Can you point out the page that you're

14 referring to because it's a long deposition?

15 Q No. I mean, he starts on page forty-three.

16 A Okay. Well, that's all you had to tell me. We

17 wouldn't have to argue.

18 Okay.

19 Q Do you disagree with that?

20 A Well, wait a minute now. Let me read it.

21 (PAUSE)

22 A Yeah, I would disagree with his statement that

23 it's a recent, within twenty-four hours or so.

1 BY MR. CHIARTAS:

2 Q Well, I think he says later on that he misspoke
3 if you read it.

4 A It would help if you just -- okay. So what --
5 you asked me if I disagreed --

6 Q What I asked you -- you said that my statement to
7 you was a bunch of rubbish. Okay?

8 A No, I didn't say that. You misparaphrased me
9 again incorrectly.

10 Q Well, it didn't make any sense; is that correct?

11 A No, that's not correct. I did not use that
12 terminology.

13 Q Does Dr. Molofsky believe that there is presence
14 of an intracranial or evidence of an intracranial bleed in
15 the CT scan of January the 18th, '90?

16 MR. HAZARD: Let me just object. What
17 difference does it make whether Dr. Molofsky believes
18 that? If that's what's in the deposition, then we'll
19 give that to you.

20 MR. CHIARTAS: Well, this whole thing
21 started, Sprague, when I asked the question and the
22 Doctor told me that most of what I said didn't make any
23 sense.

1 MR. HAZARD: Right.

2 MR. CHIARTAS: Okay. Now, one of the things

3 that I said that he told me didn't make any sense was

4 that Dr. Molofsky states in his deposition that there

5 was an intracranial bleed present in the CT scan or

6 evidence of an intracranial bleed having occurred in

7 the CT scan of January the 18th of '88. Now, I want to

8 know is that wrong?

9 A Well, I'm not sure that's what you said, but I do

10 not agree with that, that's correct.

11 BY MR. CHIARTAS:

12 Q Okay. Now we'll get to your interpretation in a

13 minute. I want to you tell me, Doctor, this child, as you

14 understand it, was a depressed birth, correct?

15 A It was depressed at the one minute and five

16 minutes, yes.

17 Q Well, okay. Depressed at seven too, it had a

18 five, right?

19 MR. HAZARD: No, that's --

20 A No, I think you've got it the other way around.

21 MR. HAZARD: I thought the third Apgar was at

22 ten minutes when it was a seven.

23 MR. CHIARTAS: Well, I think there was

1 another -- I think there was four taken.

2 MR. HAZARD: Well, I just read the history
3 and physical that you had asked him to **look** at by Dr.
4 Lucero and he cites three Apgar's in there.

5 MR. CHIARTAS: Yeah, you're right, but in one
6 **of** these notes there's four, Let's just use the three
7 Apgar's. That's fine.

8 A Well --

9 BY MR. CHIARTAS:

10 Q Do you agree that this child was depressed at
11 least up to five minute mark?

12 A Well, actually it wasn't even -- it's incorrect
13 there. It's at eight minutes instead of ten minutes that
14 it's a seven. So, I think the only -- I only see three
15 Apgar's there, if we're looking at the delivery record.
16 Now, if you want to point out to me where it says four, I'll
17 be glad to **look** at it.

18 Q Doctor, I'm asking you do you agree that the
19 child was depressed at least until the five minute mark?

20 A Yes.

21 Q And that after that time then at approximately
22 eight to ten minutes does the child get a low, but a low
23 normal Apgar?

1 A No, it's not low normal. It's seven, which is
2 normal.

3 Q Okay. Fine.
4 Child was hypotonic?

5 A At when?

6 Q I'm sorry?

7 A When?

8 Q At birth.

9 A When at birth? I mean, at one minute, yes.

10 Q Was the child acidotic?

11 A Well, the cord gas is seven point 0-three, yes,

12 Q Was it later determined that it was -- that the
13 acidosis was metabolic acidosis?

14 A Yes. I don't have any problem with that.

15 Q Is it true, Doctor, that there were no
16 spontaneous respirations or movement at birth?

17 A Correct.

18 Q Okay. Now, given the fact that you have seen no
19 familial history of an idiopathic seizure disorder, isn't
20 there a greater likelihood that the neurological disorder is
21 associated with hypoxia during labor and delivery?

22 A No, in the first place you're making some, you
23 know, assumptions that are not true.

1 Q Would you tell me what those are?

2 A Well, idiopathic and familial are not the same
3 thing, for one thing, and, you know, I'm not sure you
4 understand that, but the -- so, what you say is not true.

5 Q Okay. So, whether it's idiopathic or familial
6 and you're the Doctor, you tell me when I'm wrong. Okay?

7 A Well, I mean --

8 Q If I'm wrong, that's fine.
9 Now, familial, idiopathic, whichever, are you
10 telling me that there's a greater likelihood that it's one
11 of those than it is that this is a hypoxic injury?

12 A You know, you're jumping all over the place. You
13 know, I don't understand -- just rephrase it or I can't
14 answer that question.

15 Q Doctor, given the history of this child at birth,
16 isn't there a greater likelihood that this child suffers
17 from a hypoxic insult and the seizure disorder related to
18 that hypoxic insult than a familial seizure disorder or an
19 idiopathic seizure disorder or benign rolandic epilepsy?

20 A Well, you've got a lot of things in there again.
21 Which is it --

22 Q Isn't it more likely that that one out weighs any
23 of those three?

1 **A** **No**, it's not more likely because the data, the
2 facts, the development, the clinical findings don't support.

3 **Q** **Do** you have the CT scans with you?

4 **A** Yes, they're here, but I don't have a view **box**.

5 **Q** Okay. Can you hold them up and give me your
6 interpretation of them?

7 **A** Well, I really don't like to do that.

8 **Q** Well, you know, it's my deposition.

9 **A** Well, I know that, but if I can't do it the way I
10 do it, I can't do it.

11 **Q** -- the strengths of my pediatric neurologist, he
12 holds it up to a window, he holds it up to the light and
13 gave an interpretation. I'm going to ask you to do the best
14 you can and give me your interpretation of 1/8/88 CT scan.

15 **MR. HAZARD:** It's January 18th. Not the 8th.

16 **MR. CHIARTAS:** I'm sorry. You're right.

17 **A** Okay. I'm going to tell you that this is not
18 under good circumstances and I don't care what your
19 pediatric neurologist did. That's up to him, but it is not
20 under ideal circumstances. Okay? Let's make sure we
21 understand that.

22 **BY MR. CHIARTAS:**

23 **Q** Well, do you want me to continue the deposition

1 until we have a view box?

2 A You can do whatever you want. It's your
3 deposition.

4 MR. CHIARTAS: Sprague, it's up to you? If
5 I'm going to be prejudiced in not being able to have
6 this Doctor tell me what, you know, he interprets these
7 CAT scans are, they're obviously significant, and I
8 can't get his impression, we can't continue with the
9 deposition?

10 MR. HAZARD: You can get his impressions
11 under the same or similar circumstance than I received
12 Molofsky's impressions.

13 MR. CHIARTAS: That's fine.

14 MR. HAZARD: Yeah, and that's fine with me
15 too. I don't have any problem. He's just -- I believe
16 Dr. Chalhub is just giving you the caveat --

17 MR. CHIARTAS: Well, I'm, getting a big
18 disclaimer here so that when I come in trial he's got a
19 view box, there's going to be a totally different
20 interpretation here or some additions that I'm not
21 being afforded the opportunity now --

22 THE WITNESS: Nobody said that. Why do you
23 inject that?

1 BY MR. CHIARTAS:
2 Q Because I'm paranoid and I'm on a phone.
3 Now will you hold that up and -- do you have a
4 light or are you looking at it through a window?
5 A I'm just going to hold it up like you asked me to
6 do.
7 Q Is there a window there?
8 A We have curtains and I can't pull them right now.
9 I can see the films. What do you want to know?
10 Q Doctor, I want you to use the best light source
11 possible. Now let's not play --
12 A I'm not playing games with you. I told you this
13 is not the way physicians read CT scans. Now, if you don't
14 want --
15 Q I understand --
16 A -- to accept that, that's up to you.
17 Q Are you using the best light source available to
18 you in that room?
19 A Yes, I am.
20 Q Okay. Give me your interpretation of the 1/18/88
21 CT scan.
22 A I believe it's a normal scan.
23 Q That's it?

1 A That's it.

2 Q Okay. You don't see any hyperdense material?

3 A Sure, I do, but that's normal.

4 Q Okay. That's normal for birth?

5 A Sure.

6 Q That's normal, what: six days after birth?

7 A Yes, absolutely.

8 Q So then you disagree with Dr. Will's

9 interpretation that this is felt to be a small amount of

10 hemorrhage?

11 A I do.

12 Q Do you disagree with his impression that there

13 are multiple small intraparenchymal hemorrhages?

14 A Yes, I do.

15 Q And I assume then that you disagree with Dr.

16 Molofsky's interpretation of that CT scan as well that you

17 just read?

18 A Well, if he interprets it that way, I do.

19 Q Well, Doctor, you just read in his deposition

20 from page forty-three up to page forty-six where he tells

21 you what his interpretation is.

22 A Well, he didn't go through it. **Now,** you'll have

23 to ask him exactly what his interpretation is. He was asked

1 about the density. **So** he didn't volunteer going through the
2 scans. **So** -- I mean, I've read what he said and I disagree
3 with what he has to say.

4 **Q** Doctor, are you looking at scan five? **Look** at
5 scan five and scan six?

6 **A** Scan five and six of what date?

7 **Q** On **1/18/88**.

8 **A** You mean the box five and six?

9 **Q** Yes, sir.

10 **A** Okay. Do you see increased density posteriorly
11 in the cerebellum?

12 **A** Yeah. I mean, that's the vena galen and the
13 cisterna magna. I mean, yeah, sure. I mean, that's normal.

14 **Q** Is it also present in scan seven, scan eight and
15 scan nine?

16 **A** Exactly. That's where you would see it as you
17 scan the posterior fossa and come up through the back of the
18 brain.

19 **Q** Are there increased densities in the ventricles
20 in scan eleven?

21 **A** Scan eleven, Wait a minute. I'm just trying to
22 find scan eleven.

23 Yes. You mean the choroid plexus, yes.

1 Q How about scan twelve?

2 A Yes.

3 Q Do you see any soft tissue swelling throughout

4 the remainder of the scan?

5 A Yeah, there's a little bit up on the -- to very

6 vertex, yeah.

7 Q Do you know what that was probably attributable

8 to?

9 A I guess coming through the vaginal canal.

10 Q Nothing unusual about that, in your opinion?

11 A No. I mean, that's fairly common in the newborn.

12 Q Okay. Thank you.

13 How do the EEG studies affect your opinion,

14 Doctor?

15 A What do you mean how did they affect my opinions?

16 Which ones?

17 Q The ones done at WVU.

18 A Okay. Why don't you give me the dates of those

19 so I can refer to them?

20 Q Okay. Go to tab five under the West Virginia

21 Hospital records.

22 A Okay.

23 Q 9/26/89 and 8/28/90.

1 A Okay.

2 Q Have you read those reports?

3 A Yes, I have.

4 Q Okay. **How** did those affect your opinions in this
5 case?

6 A Well, one is normal, which would be inconsistent
7 with a mixed seizure disorder and particularly a minor motor
8 seizure disorder, and the other shows rolandic spikes which
9 would be consistent with sylviant seizures or rolandic
10 seizures.

11 Q Doctor, you didn't review the fetal monitoring
12 strips; is that correct?

13 A No, that is not an area of my expertise.

14 Q Okay. Is that not important to you from a
15 retrospective point of view to see what went on during the
16 labor and delivery?

17 A Well, sure, it's important to know, you **know**,
18 what was recorded and the fetal heart tones, but I don't
19 interpret those. Just like I don't interpret EKG's.
20 Obviously they're important to me.

21 Q Is that the purpose of your reading Dr. Rosen's
22 deposition; to obtain his interpretation?

23 A No. I mean, the purpose of reading Dr. Rosen's

1 deposition is to see what he said and what his impressions
2 were about the entire case.

3 Q How did that affect your opinion, his deposition?
4 A It hasn't changed my opinion from what I've given
5 you.

6 Q Can you tell me in neurological terms what you
7 would expect to find with an accumulative oxygen deficit in
8 a child?

9 A What do you mean by accumulative oxygen deficit
10 in a child and how old is the child?

11 Q The child -- a newborn.
12 Would you expect to find any evidence of that in
13 a CT scan?

14 A I think I've lost you.

15 Q Strike it.

16 A I don't see how you see accumulative oxygen
17 deficit on a CT scan. I just don't --

18 Q What I asked you is would you expect to find any
19 neurological signs exhibited in the CT scan from a child
20 that has undergone accumulative oxygen deficit?

21 A Okay. What do you mean by accumulative oxygen
22 deficit?

23 Q Period of time where the child had decreased

1 oxygenation.

2 A How much and for how long and what are the

3 symptoms with with it?

4 Q Those are questions you would need to have the

5 answers to before you could answer mine?

6 A Well, I think anybody would be to be able to give

7 you an answer.

8 Q On that scan of **1/18/88**, was there any increased

9 lucency over the left temporal parietal area?

10 A I don't believe so.

11 Q So then you would disagree with any clinician who

12 said that there is?

13 A Well, I'm just telling you what my impression is

14 in reading it. You know, I don't see -- there's nothing to

15 support it, any lucency such as, you know, atrophy shift, et

16 cetera. **So**, you know, I don't see that it's abnormal.

17 Q If that did exist would that explain or possibly

18 explain a right side weakness?

19 A If what exists? A lucency without any other

20 associated --

21 Q Over the left temporal parietal area?

22 A No. You know, it really depends on what the

23 other assocaited findings are.

1 Q Was there anything, Doctor, that you can recall
2 reading in Dr. Bodensteiner's deposition that you disagreed
3 with that sticks out in your mind today?
4 A I can't do that for you. We've already been
5 through that one time. If you have a page that you want me
6 to look at, I'll be glad to do it.
7 Q You read his deposition?
8 A Yeah. There's a lot of pages.
9 Q I understand that. Is there any -- and I'm just
10 asking you. If you say you don't remember, you don't
11 remember.
12 A Well, it's not that I don't --
13 Q -- in your mind as you sit there today that you
14 disagree with?
15 A I can't answer because that's a long deposition,
16 Q You can't answer whether or not there's anything
17 that sticks out in your mind as you sit there today that you
18 don't agree with?
19 A No, that's correct. I can't.
20 THE REPORTER: I need to change my paper.
21 THE WITNESS: I'm going to put you on hold
22 just a second.
23 (Off the record)

1 BY MR. CHIARTAS:

2 Q Okay. Doctor, we've already talked a little bit
3 about your opinions with regard to Dr. Bodensteiner's
4 diagnosis of benign rolandic epilepsy. You said that that
5 was a -- and correct me if I'm wrong. You said that's a
6 possibility?

7 A Yes.

8 Q You agree with that diagnosis?

9 A Yes.

10 Q It's a possibility, but I think you told me it
11 was a little bit inconsistent with the clinical picture; is
12 that correct?

13 A Well, it's atypical for it, yes.

14 Q Can you tell me, Doctor, from your knowledge,
15 what the criteria are for reading benign rolandic epifspey
16 or diagnosing benign rolandic epilepsy?

17 A Well, generally it's a benign seizure disorder
18 and it usually occurs under the age of ten and it's
19 characterized by -- they're usually -- they can be nocturnal
20 or during the day. They're usually characterized by facial
21 asymmetry, sometimes speech arrests and they're usually
22 short in duration and are controlled most of the time with
23 anti-convulsants and they usually are associated with mid

1 temporal spikes in the rolandic area.

2 Q Okay. And otherwise you would have a normal

3 neurological examination?

4 A Sure, just as in this child.

5 Q So let me see if I've got the criteria. You have

6 mid temporal central focus on the **EEG**?

7 A Yes. That's the usual set of circumstances.

8 Q Okay. You would have a seizure onset -- you

9 agree that you would have a seizure onset normally between

10 the ages **of** four and fourteen years?

11 A **No**, it's usually in the first decade.

12 Q Okay. Otherwise normal neurological examination,

13 correct?

14 A Generally speaking. I mean, you know, you can --

15 there are -- it depends on the child and the situation.

16 Q Okay. An absence of brain lesions; is that true?

17 A Well, you know, that's difficult to be certain

18 because a lot of the studies that were done initially were

19 done before they had CT imaging and also had **M.R.I.** scans.

20 **So**, I don't know the answer to that.

21 Q All right. Are you familiar with Lerman and

22 Kavitti (Phonetic)?

23 A Yes.

1 Q Okay. And they had CT scans in 1986, didn't
2 they?

3 A Yes, they did.

4 Q And in 1984 when Gregory and Long (Phonetic) did
5 their study; is that right?

6 A I don't recall, but, you know, I can't bring that
7 article to mind.

8 Q The seizures are normally or usually nocturnal,
9 correct?

10 A Correct.

11 Q Normally prominent oral facial involvement?

12 A It can be or cannot be.

13 Q Okay. Frequent speech arrests?

14 A Can be or cannot be.

15 Q Elevation?

16 A Can be or cannot be.

17 Q Isn't it true, Doctor, that benign rolandic
18 epilepsy assumes that there's no other possible neurological
19 or mental abnormality with the child?

20 A Well, there obviously has to be a neurological
21 abnormality or somebody wouldn't have the mid temporal
22 spikes and they wouldn't have the clinical manifestations.

23 Q Well, what I've asked is shouldn't -- doesn't --

1 isn't benign rolandic epilepsy, when you diagnose this
2 condition, there can't be another possible neurological
3 determination?

4 A No, it's just saying that you don't know what it
5 is.

6 Q **So** it's just a catch-all?

7 A No, I didn't say that.

8 Q **All** right. Well, if you don't know what it is,
9 why do you call it something?

10 A Well, we have a lot of things in medicine that we
11 don't know the cause or the pathophysiology and we describe
12 it as in this case.

13 Q **So** is benign rolandic epilepsy the same thing as
14 an idiopathic seizure disorder?

15 A Well, it's one of the idiopathic seizure
16 disorders, yes.

17 Q Did this child show in the records any evidence
18 of tonic-clonic seizures?

19 A No, not that I can find,

20 Q Did you ever see any positive assessments of
21 repetitive jaw movement, lip movement or tongue movement?

22 A It seems that there were some facial movements,
23 but I'll just have to go back and read those.

1 Q That was when the face drew up along with the
2 arm, correct?

3 A Correct.

4 Q Is benign rolandic epilepsy normally genetic?

5 A It can be.

6 Q Normal male predominance?

7 A It may **or** may not be.

8 Q Doctor, can you tell me what assistance, if any,
9 a neuropathologist would be in this case?

10 A A neuropathologist?

11 Q Yes, sir.

12 A I don't think he would be able to help **us** very
13 much. We don't have any neuropathology.

14 Q If, in fact, a neuropathologist found some
15 neuropathology, what would be the difference between your
16 field and the field of neuropathology --

17 A What do you mean by finding --

18 Q -- (Inaudible).

19 A What kind of neuropathology is he going to find?

20 Q I'm asking you, Doctor.

21 A Well, I'm asking you what it is so **I** can answer
22 your question. In terms of what?

23 Q In terms of looking at the CT scans in this case?

1 A Well, neuropathologists don't usually read CT
2 scans.

3 Q What do they normally look at; slices?

4 A Well, they usually look at tissue.

5 Q All right. Well, are you telling me that a neuro
6 -- is a neuropathologist better qualified?

7 A Better qualified for what?

8 Q To give us an opinion regarding the CT scans?

9 A I wouldn't think so.

10 Q So you're saying in this case if, in fact, a
11 neuropathologist found something positive that you don't
12 find because you believe that this CT scan is normal and I'm
13 talking about the one on the 18th --

14 A Are you talking about a neuroradiologist or
15 neuropathologist?

16 Q I'm talking about neuropathology.

17 A I mean, neuropathologists do pathology, not
18 radiology. Now, I mean, you know, if they're trained as a
19 neuroradiologist or have training in radiology, then -- I
20 mean, they're entitled obviously as a physician to their
21 opinion. I don't have a problem with that, but as a
22 neuropathologist that's not what they do.

23 Q Are there any other opinions that you have

1 regarding this case that we haven't discussed?

2 A I don't know. I mean, I -- that's what I'm here
3 to answer for you. So, I can't tell you.

4 Q Well, what are your opinions in this case? Have
5 we talked about them?

6 A I've told you what -- the answer to the questions
7 that you've given me, but I can't, you know, read your mind.

8 Q Doctor, when you testify in this case after -- on
9 or after September the 16th, what are your opinions? That
10 this simply -- this child --

11 A I've given you them in general. If you have some
12 specific questions, which I -- you know, I can't read your
13 mind about, I'll be glad to ask (Sic) them. I mean, I've
14 told you in all -- to the best of my ability, knowledge,
15 training, experience over the past twenty years what my
16 impression of the findings are, what the impression of the
17 scans are, and the records.

18 Q Okay. The scan of February the 3rd, is that
19 normal?

20 A Yes, it is just like the scan of the 18th.

21 Q So you agree with the radiologist on that
22 occasion?

23 A That's correct.

1 Q You're saying it's just like the one that was
2 taken on the 18th?

3 A That's correct.

4 Q Okay. It shows the same thing?

5 A That's right.

6 Q All right. Same density?

7 A That's right.

8 Q Same absence of lucency? **As** far as you're
9 concerned there's no lucency?

10 A Well, I think what you're seeing is the normal
11 white matter of a baby and it depends on the cut of the CT
12 scan and, you know, there are lucencies on the 3rd as well
13 as the 18th. Which ones do you want to look at? The right,
14 left, front, back?

15 Q Doctor, in order for your opinion to be correct
16 then, at least in part you disagree with Dr. Lucero's
17 opinion that this is related to the birth and that this is a
18 minor motor seizure disorder related to the birth, correct?

19 MR. HAZARD: Listen, I'm going to object to
20 that unless it's clear that that's your interpretation
21 of what **Dr.** Lucero says.

22 MR. CHIARTAS: All right, I'll read it.

23 MR. HAZARD: Okay, but not out of context

1 because Doctor --

2 MR. CHIARTAS: I'm going to read it to you.

3 MR. HAZARD: Fine.

4 (PAUSE)

5 MR. CHIARTAS: I can't find the deposition.

6 I'm going to put it in the form of a hypothetical.

7 BY MR. CHIARTAS:

8 Q I think you've already answered it once. You've

9 told me if that's what Dr. Lucero's opinion is, you disagree

10 with it; is that correct?

11 A Well, we talked --

12 MR. HAZARD: That ought to take care of it

13 then.

14 A No, no. I mean, we talked about a number of

15 people. I don't think I said Lucero now, but, I mean --

16 BY MR. CHIARTAS:

17 Q Lucero is -- yeah, we talked about Lucero from

18 the very beginning.

19 A No, we talked mostly about Molofsky and

20 Bodensteiner and so forth.

21 Q We talked about -- I'm talking specifically about

22 Dr. Lucero.

23 A Okay.

1 Q If Dr. Lucero's opinion is that this child
2 suffered from hypoxic episodes during labor and delivery and
3 that he diagnosed this child as having a minor motor seizure
4 disorder with right side hemiparesis related to the hypoxia
5 during birth, you would disagree with that?

6 A That's correct.

7 Q Okay. And if Dr. Concepcion did the same thing,
8 you would disagree with him?

9 A Yeah. If, hypothetically, he did the same thing,
10 that's correct.

11 Q All right. And if Dr. Dy did the same thing, you
12 would disagree with him?

13 A That's correct.

14 Q You already disagreed with Dr. Will's
15 interpretation of the CT scan of January the 18th, '88; is
16 that right?

17 A Well, I mean, I have to because the findings are
18 not there.

19 Q Thank you.

20 And Dr. Chung and Dr. Gutierrez who noted in
21 their notes, the pediatric clinic notes of West Virginia
22 University Hospital, of some sort of right side weakness, do
23 **you** disagree with those notes?

1 A No, no, I've told you I agree with the notes and
2 the observations and I'm not disagreeing with their
3 findings. I mean, all I can tell you now is the child,
4 according to Dr. Bodensteiner, does not have a hemiparesis.
5 Q And you disagree with Dr. Molofsky's opinion?
6 A Well, which one?
7 Q In regards to the fact that this child had an
8 hypoxic injury during labor and delivery and that that
9 caused a minor motor seizure disorder, a right side
10 hemiparesis and especially with regard to his findings on
11 the **CT** scan of January the 18th of '88?
12 A Well, I have to. I mean, the child doesn't have
13 a hemiparesis, doesn't have a minor motor seizure disorder,
14 and so, I mean, those are just -- those are facts. So, I
15 mean, yes, I do disagree with that.
16 Q Okay. So then you disagree with -- you disagree
17 with the individuals that I just just mentioned to you?
18 A Well, if they have phrased it as you have phrased
19 it in the context that you have based on these facts, I
20 disagree with that.
21 MR. CHIARTAS: That's it.
22 MR. HAZARD: He'll read and sign.
23 Do you want a copy?

1 MR. CHIARTAS: Obviously. I want to attach
2 his **CV** as Exhibit 1.
3 MR. HAZARD: Yeah, we're going to do that.
4 MR. CHIARTAS: No notes, right?
5 THE WITNESS: That's correct.
6 MR. CHIARTAS: Okay. Trusting you.
7 That's all. Thank you.
8 MR. HAZARD: All right. See you.
9 (Plaintiff's Exhibit 1 was received
10 and marked for identification.)
11 FURTHER, DEPONENT SAYETH NOT
12
13
14
15
16
17
18
19
20
21
22
23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CERTIFICATE OF WITNESS

I, ELIAS G. CHALHUB, M.D., do hereby certify that
on this the ____ day of _____, 1991, I have read the
foregoing transcript and, with corrections attached hereto,
if any, it constitutes a true and accurate transcript of my
testimony taken on oral examination on July 31st, 1991.

ELIAS G. CHALHUB, M.D.

Subscribed and sworn to before
me this the ____ day of _____, 1991.

Notary Public, State of _____
at Large

My Commission Expires: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

C E R T I F I C A T E

STATE OF ALABAMA)
COUNTY OF MOBILE)

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision, and that the foregoing represents a true and correct transcript of the proceedings given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

LISA ELMORE PETERS
COURT REPORTER

4-261> Estate of Ashley Carr

DEPOSITION OF ELIAS CHALUB, M.D.
[Estate of Cassie Nicole Manning]

TAKEN ON July 31, 1991
by GREGORY CHIARTAS, ESQ.

Pg/Ln

14/10

Grand rounds 4 or 5 times a year

24/23

Does give opinions on neonatology

32/15

Individuals that have seizure disorders that have no etiology, they get into a category of idiopathic or familial seizures

36/12

Herpes encephalopathy - not necessarily diagnosed by CT scan

ELIAS CHALHUB, M.D. - Deposition Index
Manning vs. Cee Ann Davis, M.D., et al.

West Virginia July, 31, 1991

- 8). Case reviews have decreased.
- 10). Gave 5-10 depositions in 1990 - two times in trial in 1990.
- 27). Vacuum & forceps: Apgar at one minute was one due to meconium. Can only get history of case from the chart.
- 29). Had terminal meconium - no evidence of CP.
- 30). Has seizures: No problem during intrapartum period is related to any possible seizure disorder.
- 32). Disagrees with Dr. Lucero, Dr. Concepcion, Dr. Dy and Dr. Molofsky, all of whom believed the child had hypoxia during labor and delivery.
- 60). Child acidotic 7.0.
- 64-65). Disagree's with CT abnormal interpretation - he says it's normal.