

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

* * * * *

MANUFACTURERS HANOVER TRUST CO.
OF FLORIDA, as guardian of the
property of RENE APARICIO, a
minor, and BLANCA APARICIO and
RENE APARICIO, parents of RENE
APARICIO,

Plaintiffs,

VS.

HIALEAH HOSPITAL, INC., d/b/a
HIALEAH HOSPITAL, et al.,

Defendants.

* * * * *

CIVIL ACTION NUMBER
89-27181 CA 09

The testimony of ELIAS GEORGE CHALHUB, M.D., taken at
The Hilton Hotel & Conference Center, 3101 Airport
Boulevard, Suite 301, Mobile, Alabama, on the 6th day
of November, 1990, commencing at approximately 1:25
o'clock, p.m.

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A P P E A R A N C E S

FOR THE PLAINTIFFS: STEWART, TILGHMAN, FOX & BIANCHI
ATTORNEYS AT LAW
SUITE 1900
44 W. FLAGLER STREET
MIAMI, FLORIDA 33130-1808

BY: LARRY S. STEWART, ESQ.

FOR THE DEFENDANT - WICKER, SMITH, BLOMQVIST, TUTAN,
DR. PALOMINO: O'HARA, McCOY, GRAHAM & LANE
ATTORNEYS AT LAW
5TH FLOOR, GROVE PLAZA BUILDING
2900 MIDDLE STREET
MIAMI, FLORIDA 33133

BY: JOHN C. HAMILTON, ESQ.

FOR THE DEFENDANT - BLACKWELL & WALKER
HIALEAH HOSPITAL, INC.: ATTORNEYS AT LAW
2400 AMERIFIRST BUILDING
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131

BY: WILLIAM E. WHITNEY, ESQ.

LISA ELMORE PETERS
COURT REPORTER

I N D E X

Examination:

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By Mr. Stewart

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Exhibits:

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Plaintiff's Exhibit 1

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Plaintiff's Exhibit 2

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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 GEORGE 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 Florida Rules of Civil Procedure.

It is further stipulated that all notices provided for by said applicable sections of the Florida 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 Florida Rules of Civil Procedure.

1 Further, that the original of this transcript
2 will be delivered to Larry S. Stewart, Esq.

3
4 It is further stipulated and agreed that the
5 witness hereto reserves the right to read and sign said
6 deposition as provided for by said Florida Rules of Civil
7 Procedure.

8
9 * * * * *

10
11 I, Lisa Elmore Peters, Commissioner and Court
12 Reporter, certify that on this date, as provided by the
13 Florida Rules of Civil Procedure and the foregoing
14 stipulation of counsel, there came before me at The Hilton
15 Hotel & Conference Center, 3101 Airport Boulevard, Suite
16 301, Mobile, Alabama, on the 6th day of November, 1990,
17 commencing at 1:25 o'clock, p.m., ELIAS GEORGE CHALHUB,
18 M.D., witness in the above cause, for oral examination,
19 whereupon the following proceedings were had:

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MR. HAMILTON: I'm John Hamilton. I

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represent Dr. Palomino.

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For the purposes of this deposition and for the purposes of testimony at trial, we are not offering Dr. Chalhub with respect to the standard of care of Dr. Palomino or anyone else. He was retained to review the records and depositions in this case for the purposes of rendering opinions, if possible, on the subject of the cause of the periventricular hemorrhage and whether or not any treatment, in his opinion, contributed to either causing or exacerbating the periventricular hemorrhage after it occurred. That is the scope for which we have retained and which he intends -- we intend to offer him at trial.

MR. STEWART: Let me just make sure I understand. So there will be no testimony from Dr. Chalhub as to the standard of care issues, and were such questions asked, objections -- by any party, objections to those questions will be interposed and there would be no testimony in that area?

MR. HAMILTON: He would not be instructed not to answer based on the recent Third District Court of

1 Appeals decision and Judge Swartz' opinion. However,
2 there would be objections to it because it would be
3 beyond the scope of what he has been retained for and
4 will be offered for, and we do not intend, and I
5 stipulate that we will not offer him for standard of
6 care questions concerning any of the defendants in this
7 case or anyone else.

8 MR. WHITNEY: On the behalf of the hospital,
9 we'll stipulate that we will also not ask Dr. Chalhub
10 standard of care questions,

11 MR. STEWART: Let's swear the witness.

12 THE WITNESS: (Inaudible.)

13 MR. STEWART: Excuse me. I didn't get that.

14 MR. HAMILTON: He said he doesn't have an
15 opinion.

16 THE WITNESS: I said I don't have an opinion.

17
18 ELIAS GEORGE CHALHUB, M.D.

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

22 EXAMINATION

23 BY MR. STEWART:

1 Q State your full name, please.

2 A Elias George Chalhub.

3 Q Would you tell me, sir, all materials that you
4 have reviewed in connection with this matter?

5 A Sure.

6 MR. HAMILTON: If you want it, Larry, those
7 are letters that I wrote to him that lists things that
8 I gave him. If you want to do it quickly, you can just
9 run down them and ask him leading questions.

10 MR. STEWART: I was going to ask him leading
11 questions anyway, but --

12 MR. HAMILTON: Well, I -- okay. I don't have
13 any objection to you seeing --

14 4 Well, all of them are not listed here, but I can
15 -- I'll just -- let me read it into the record.

16 The Hialeah Hospital records, Miami Children's
17 Hospital records --

18 BY MR. STEWART:

19 2 Slow down. I want to clarify as we go along if
20 there's any confusion as to what you've seen.

21 A Okay.

22 Q When you say the Hialeah Hospital records, are
23 you referring to the admission for the child?

1 A Yes.

2 Q Anything else from --

3 A For the mother.

4 Q -- Hialeah Hospital?

5 A Right.

6 Q Anything else from Hialeah Hospital?

7 A I don't believe so.

8 Q Go ahead.

9 A The Miami Children's Hospital, the transfer

10 records of 6/28.

11 Q That entire admission?

12 A Yes.

13 2 Go ahead.

14 4 The records of Dr. Stuart Brown, his evaluation.

15 Jhromosomal studies done by -- at Allegheny General

16 Hospital.

17 I reviewed x-rays from Hialeah Hospital on 6/28,

18 and also x-rays on -- or ultrasounds - excuse me - from

19 Miami Children's Hospital, an entire series of those

20 beginning 6/29.

21) Let me go back to the x-rays that you said. I

22 wasn't clear from the way you said it.

23 Were you changing the reference to the studies at

1 Hialeah to ultrasound, or are you saying it was x-rays at
2 Hialeah and ultrasound at Miami Children's?

3 A No, all of the ultrasounds. Ultrasound obviously
4 is not x-ray. So, that's what I was clarifying.

5 Q Did you see x-rays?

6 A No, I saw ultrasounds.

7 Q Okay. I understand your answer. Go ahead.

8 A Okay. And then also a CT brain scan, which is an
9 x-ray, and the follow-up study, I believe, in '87.

10 And then I have reviewed a series of depositions
11 of Dr. Sholl, Linda Samson, Dr. Palomino, Dr. Lavado, Dr.
12 Malofs y, Dr. Bowen, Dr. O'Leary, Dr. Hermansen, Dr. Graven,
13 there's a Dr. Graziani. I believe that's it,

14 Q Okay. May I see what you're referring to?

15 A Sure.

16 MR. HAMILTON: You may have also reviewed Dr.
17 Milunsky's deposition. I don't know.

18 A I'm sorry. That's on there too. It is.

19 BY MR. STEWART:

20 Q I thought you listed that.

21 A No, Malofsky I think I said.

22 MR. HAMILTON: There's a Malofsky and a
23 Milunsky.

1 BY MR. STEWART:

2 Q Do you have with you today all of the documents
3 and materials that were supplied to you that in anyway
4 relate to this case?

5 A Oh, I didn't bring the depositions because I jus
6 couldn't carry them all, but I've listed them for you, and
7 these (Indicating) are the -- these (Indicating) are the
8 entire records that I have that I listed. I don't have the
9 ultrasounds because I didn't think there was a view box to
10 bring them to look at.

11 Q Let me understand what you have brought in terms
12 of the documents that were supplied to you. You brought the
13 Hialeah records for the mother and the baby, correct?

14 4 Correct.

15 2 What else have you brought?

16 4 I brought Miami Children's Hospital records, Dr.
17 Brown, there are also records from Dr. Lavado's office which
18 I neglected to say. They're in here. Karyotype from
19 Alleghney General Hospital. I think that's it. That's all
20 the records I've been provided. That is everything I have.

21 The depositions I did not bring because they're
22 voluminous and I just didn't want to carry them all, but I
23 have listed those for you, the ones that I've reviewed.

1 Q Where are the depositions that you did not bring?
2 Where are they located physically right now?

3 A Probably at my home.

4 Q Have you brought with you all correspondence
5 either generated or received by you in connection with that
6 case?

7 A Of what I have, yes.

8 Q I don't understand your answer; what you have.
9 Have you thrown away some things that you received somewhere
10 along the way?

11 A There may have been another cover letter, but I
12 don't have it. So I can't give it to you. That's what I
13 have.

14 Q So you have essentially only two letters, one of
15 July 9 and the other of September 11, both 1990 from Wicker,
16 Smith to you?

17 A Correct.

18 Q Is that correct?

19 A That's the only ones that I have in my
20 possession, that's correct.

21 Q Did you receive other letters?

22 A I don't know, but I'm -- you know, Mr. Hamilton
23 can tell you if I did.

1 Q No, I'm asking you to tell me.

2 A I don't know.

3 Q Did you receive any letters that you gave back to
4 Mr. Hamilton?

5 A No.

6 Q Well, I ask you again: Are these the only two
7 letters you ever received?

8 A I don't know. That's what I'm trying to tell
9 you. Those are the only two that I have in my file. It
10 seems to me there was some additional records sent, either
11 some depositions, and there may be a cover letter with that,
12 but I don't have that. So I can't give it to you.

13 Q You have not generated any paper whatsoever in
14 connection with that case?

15 A What do you mean by paper?

16 Q Let me start with have you prepared any letters?

17 A No.

18 Q Have you prepared any reports?

19 A No.

20 Q Have you prepared any notes?

21 A No.

22 Q Have you prepared any written document whatsoever
23 in connection with this case?

1 A No.

2 MR. HAMILTON: So the record is clear, there
3 was one additional letter from my office to Dr. Chalhub
4 dated October 10, 1990. I have -- I can produce a
5 copy, however, I've written on my copy that I have
6 here, which only says, and I quote, enclosed please
7 find copies of the following information in the above
8 captioned matter; deposition of Aubrey Milunsky,
9 deposition of Leonard J. Graziani. When you have
10 completed your review of these depositions, please give
11 me a call so we can discuss your opinions. Very truly
12 yours, my name, which comprises all of the
13 correspondence from my office to Dr. Chalhub.

14 3Y MR. STEWART:

15 2 Would you tell me how much time cumulative you
16 have spent with Dr. Palomino's attorney or attorneys, if you
17 have met with more than one attorney on behalf of Dr.
18 Palomino, in connection with this case?

19 A Approximately two hours.

20 2 And was that all in one session, or were there
21 more than one session?

22 A No, it was in one session today.

23 2 Have you also met with the attorney or attorneys

1 representing the hospital in this case?

2 A No, I haven't.

3 Q When I arrived here today, the attorney for the
4 hospital was already in this room with you and the attorney
5 for Dr. Palomino. How long had he been here?

6 A Five minutes.

7 Q Do you agree that Rene Aparicio was born without
8 brain damage at the time of birth?

9 A No.

10 Q Do you believe or do you hold the opinion that
11 Rene Aparicio had brain damage at the time of birth?

12 A I think it is probable that she did.

13 Q Do you agree that the hemorrhage that occurred
14 after birth caused brain damage to Rene Aparicio?

15 A Yes.

16 Q Is there anyway that you can differentiate
17 between the brain damage which you say it is probable she --
18 he was born with and the brain damage that resulted from the
19 hemorrhage after birth?

20 A Say -- repeat your question one more time.

21 Q Yes. Can you divide up what portion of the brain
22 damage existed, according to your testimony, at birth, and
23 what portion of the brain damage occurred as a result of the

1 hemorrhage after birth?

2 A Well, it's difficult to do that. The -- my
3 statement based on the damage before birth is on a
4 developmental basis, When you have a child that has
5 duodenal web or atresia, that has an extra digit, that has a
6 two vessel cord, has an extra digit, it is highly probable
7 that that child has a malformation of brain or a
8 developmental problem of brain. So, you know, there's no
9 way for me to tell you to what extent that defect existed
10 and to what extent the damage occurred.

11 In terms of the damage after birth, with --
12 associated with the subependymal hemorrhage,
13 intraventricular hemorrhage, and either intracerebral or
14 posthemorrhagic infarct, I think that's clear from the
15 x-rays and then the subclinical examination.

16 (INTERRUPTION)

17 BY MR. STEWART:

18 Q Had **you** completed your answer?

19 A Yes.

20 Q Okay. Back to my question.

21 Can you divide up the degree of brain damage
22 which you say existed at birth from the degree of brain
23 damage which was caused by the brain hemorrhage which

1 occurred after birth? I think you said you couldn't, but I
2 would like a yes or no answer to that question.

3 A No, that's correct. There's no way for me to
4 give you a quantitative estimate.

5 Q Would you agree that hypoxia is one of the
6 leading causes of brain hemorrhage in premature babies?

7 A No.

8 Q Do you agree that it is a cause of hemorrhage in
9 brain-damaged babies?

10 A It can be.

11 Q Do you agree that a brain hemorrhage in a
12 premature baby can be a catastrophic event for that child?

13 A Yes, I do.

14 Q What is --

15 (INTERRUPTION)

16 BY MR. STEWART:

17 Q What is the normal range of respirations for a
18 newborn baby that is not under stress?

19 4 Full term, premature?

20 2 We'll start with full term.

21 A You know, again, it depends on, when you say not
22 under stress, I assume just a baby that is normal in a
23 well-baby nursery or what?

1 Q Yes.

2 A It could be twenty to sixty.

3 Q What about a premature baby that is not under
4 stress?

5 A Again, it can be anywhere from twenty to thirty,
6 up to sixty to eighty.

7 Q Your speciality is what?

8 A I'm a neurologist. So I don't, you know, deal
9 with neonatology in terms of taking care of respiratory
10 problems.

11 2 You're not a pediatric neurologist?

12 A Yes, I am.

13 2 As a pediatric neurologist, what is the normal
14 range that you would recognize from what is the low to what
15 is the high for a premature baby that is not under stress?

16 A I told you that; twenty to thirty, sixty to
17 eighty.

18 2 So from twenty to eighty you would recognize as a
19 normal range?

20 A Normal for that child being premature.

21 2 Can you give me any references to any authorities
22 that would support your statement?

23 No. I mean, in terms of -- what do you mean by

1 an authority, I guess?

2 Q Anything recognized in the field of medicine; a
3 treatise, or an article, or a writing, or a published
4 standard that would recognize what you just said would be
5 the appropriate normal range for a premature child not under
6 stress?

7 A Well, I don't think there is a published
8 standard. I mean, I think you have to take that child,
9 based on what the findings are, and then place that together
10 with that child at that time in that gestation, but that's a
11 range that would be acceptable under those circumstances as
12 far as I'm concerned.

13 2 Okay. My question is: Can you give me a
14 reference to anything that would support you, and I gather
15 that your answer is no, you cannot?

16 A Well, I don't know of any published reference to
17 give you that for a specific child.

18 Q Do you agree that when Rene Aparicio was -- when
19 they began to wean him off the ventilator, that his
20 respirations increased?

21 A I really didn't look at that in any great detail
22 because I'm not a neonatologist. So, I really have no
23 comment.

1 Q Do you agree that when Rene Aparicio was being
2 weaned off the respirator, that he was under additional
3 stress than when he was on the respirator or ventilator?

4 A I think that's probably best asked to the
5 neonatologist.

6 Q Would you agree that Rene Aparicio, during the
7 weaning process, according to the information contained in
8 the chart, was struggling to get oxygen?

9 A Again, I think you need to ask the neonatologist
10 that.

11 Q Would you agree that Rene Aparicio's condition as
12 reflected in the chart during the process of being weaned
13 off the res -- ventilator - I keep saying respirator.
14 Technically it's a ventilator - is consistent with the child
15 not being able to get enough oxygen?

16 A I don't think I understand that. Maybe you can
17 state that again.

18 Q Yes. Would you agree that Rene Aparicio's
19 condition as reflected in the chart during the process of
20 being weaned from the ventilator is consistent with a
21 picture of the baby not being able to get enough oxygen
22 during that process?

23 A Okay. Now which chart, at which time, and maybe

1 we could just look at it and I'll be glad to comment on
2 that.

3 Q I'm referring to the entire chart.

4 A I mean, Children's chart?

5 Q No. Do you know where the baby was weaned off
6 the ventilator?

7 A At Hialeah.

8 Q Yes, sir. Okay. I'm talking about the chart
9 during the process -- that was accumulated during the
10 process that the child was being, the baby was being weaned
11 from the ventilator.

12 A The child was also on a ventilator while it was
13 operated on at Miami Children's and had to be weaned off of
14 that too. I'm just -- if you want to just tell me where,
15 I'll be glad to look at it.

16 Q Hialeah Hospital.

17 A Okay. **And** which day?

18 Q During the process of being weaned off the
19 ventilator.

20 A Okay. Well, which day? The baby was there three
21 days.

22 Q Do you know which day the baby was weaned off the
23 ventilator?

1 A No, not absolutely.

2 Q Are you -- let me pass that for a minute and I'll
3 come back to it.

4 Are you aware that Rene Aparicio had a -- what
5 did your attorney just hand you or --

6 A He didn't hand me anything.

7 Q -- Dr. Palomino's attorney just hand you?

8 A It's a neonatal intensive care respiratory care
9 record.

10 2 May I see it, please, sir?

11 A Sure.

12 2 What else did he just hand you?

13 MR. HAMILTON: That was it.

14 A These are the records that I brought with me,
15 which is also what you have too.

16 BY MR. STEWART:

17 Q Are you aware that Rene Aparicio, for part of the
18 time at least at Hialeah Hospital, was on an endotracheal
19 tube?

20 A Yes.

21 Q Can you tell me from when to when in the course
22 of the Hialeah Hospital hospitalization the child was on --
23 the baby was on a respirator -- on an endotracheal tube?

1 A The 26th, 27th, and I believe part of the 28th.

2 Q Was there ever a time that the baby was not on a
3 tube while at Hialeah Hospital, as you understand the chart?

4 A I'll have to just look back and see.

5 Q Go ahead.

6 A Okay.

7 Q You can look at any of the chart.

8 A Okay.

9 MR. HAMILTON: Let me object to the form of
10 the question.

11 (PAUSE)

12 A It looks to me like the endotracheal tube was
13 still in place at 1:35 on the 28th.

14 BY MR. STEWART:

15 Q What are you referring to?

16 A The chart.

17 Q Page number, please, sir?

18 A Seventy-nine.

19 Q What are the dangers for a baby from the presence
20 of a tube, an endotracheal tube?

21 A Just in general?

22 Q Just in general.

23 A Well, you know, again, I'm not a neonatologist or

1 a pulmonologist. So I would have to speak as a pediatric
2 neurologist, but, you know, in general -- I mean, I suppose
3 it could perforate the trachea, it could cause tracheal
4 stenosis, can hemorrhage into the endotracheal tube, it
5 could get blocked off, it could cause a pneumothorax.

6 Q Could it get blocked off because of accumulation
7 of mucus?

8 A Certainly I think that's possible.

9 Q What is the standard of care for preventing that
10 particular situation from occurring?

11 A You know --

12 MR. HAMILTON: I object to the form based on
13 prior stipulation.

14 A I've told you, one, I'm not a neonatologist. I
15 don't take care of babies on ventilators. So, you know, I
16 think that's best asked of somebody else.

17 BY MR. STEWART:

18 3 Do you know what is normally done -- I'll phrase
19 it different.

20 Do you know what is normally done or the routine
21 practice to protect a baby against mucus blockage from an
22 endotracheal tube?

23 MR. HAMILTON: Same objection.

1 A Again, I don't know what you mean by normally,
2 but, again, that's an area that I don't deal with on a daily
3 basis. So I think you best ask someone else.

4 BY MR. STEWART:

5 Q Is the answer that you don't know, and I'll just
6 move on if that's something that you don't know what the
7 normal practice is to prevent that from happening?

8 A I think the answer is kind of as I stated it.

9 Q Which is?

10 I mean, if you know and you're not telling me,
11 that's one thing. If you don't know, that's another thing,
12 and that's what I'd like to know.

13 A No.

14 MR. HAMILTON: Doctor, you can respond to Mr.
15 Stewart's questions as to what your understanding is.
16 Obviously I have the right to object that it is
17 essentially a standard of care question. If you feel
18 that it is something that you do not have an opinion
19 on, you can also express that.

20 4 All right. I don't have an opinion.

21 BY MR. STEWART:

22 3 You said that you would defer to a neonatologist
23 as far as interpreting what the baby's condition was during

1 the weaning process as reflected by the chart.

2 Would you also defer to a neonatologist as to
3 whether that condition, as found by a neonatologist, was a
4 cause or contributing cause to the hemorrhage that this baby
5 suffered?

6 MR. HAMILTON: Object to the form and I wish
7 to state my objection for the record.

8 I don't believe that he testified that he
9 would defer to a neonatologist as to what the baby's
10 condition was, but only with respect to your specific
11 question as to whether it exhibited that the baby was
12 having difficulty with oxygenation.

13 BY MR. STEWART:

14 2 Answer --

15 MR. HAMILTON: Doctor, you can answer the
16 question.

17 A Okay. I can't remember it now. Why don't you
18 restate it?

19 MR. STEWART: Would you please read it back?

20 MR. HAMILTON: Read it back.

21 THE REPORTER: "You said that you would defer
22 to a neonatologist as far as interpreting what the
23 baby's condition was during the weaning process as

1 reflected by the chart."

2 "Would you also defer to a neonatologist as
3 to whether that condition, as found by a neonatologist,
4 was a cause or contributing cause to the hemorrhage
5 that this baby suffered?"

6 A No. I -- you know, in terms of the baby's
7 condition of -- and I assume you're talking about the
8 decrease in hematocrit, the apneic episode on the 27th, and
9 the seizures, and also having hyaline membrane disease, and
10 being on a ventilator, in terms of the condition of the
11 child, in terms of any relationship to the intraventricular
12 hemorrhage.

13 BY MR. STEWART:

14 Q That wasn't a complete statement, Doctor, or
15 complete sentence, Doctor.

16 What is your --

17 A I believe it was.

18 Q What is your answer?

19 A That's my answer.

20 3 Let me try again.

21 Would you defer to a neonatologist as to whether
22 the baby's condition during the weaning process was a cause
23 or a contributing cause to the hemorrhage that this baby

1 suffered?

2 A No.

3 Q Do you know whether this baby was under
4 oxygenated during the weaning process?

5 A Was under oxygenated? Is that what you said?

6 Q Yes, sir.

7 A I believe, as far as my review of the blood
8 gases, is that the child had adequate oxygenation.

9 Q Let me return to the endotracheal tube for a
10 noment. Does the endotracheal tube serve any functional
11 purpose once the ventilator has been turned off?

12 4 You mean hypothetically and unrelated to this
13 situation, or what?

14 Q In this situation does the endotracheal tube
15 serve any functional purpose once the ventilator has been
16 turned off?

17 4 Sure.

18 MR. HAMILTON: I object to the form.

19 BY MR. STEWART:

20 Q What function?

21 A Well, if the babies are having trouble swallowing
22 or trouble handling secretions and -- in a period of time
23 you may wish to have an endotracheal tube in place.

1 Q For how long a period of time?

2 A It depends on the situation.

3 2 Is there any time limit that you would leave an
4 endotracheal tube in place without a ventilator being hooked
5 up to it?

6 A No. I mean, it depends on that patient's
7 problem, what you anticipate the recovery would be, and then
8 whether you would anticipate doing a tracheostomy.

9 2 Well, of course, no tracheostomy was done while
10 at Hialeah Hospital as far as this baby was concerned,
11 correct?

12 A Correct.

13 Q Do you find anything in the record to indicate a
14 need for an endotracheal tube in this child after the
15 ventilator is shut off and before the hypoxic event on the
16 27th?

17 MR. HAMILTON: I object to the form.

18 A I think you have several questions in there, but,
19 first of all, I'm not certain there was a hypoxic event on
20 the 27th.

21 Second of all --

22 BY MR. STEWART:

23 a Well, let's clear that up so we don't -- let me

1 just restate the question so we don't quibble over the words
2 in the question.

3 Do you find any evidence in the chart of a need
4 for an endotracheal tube between the time the ventilator was
5 turned off and 7:30 a.m. on June 27th?

6 MR. HAMILTON: I object to the form of the
7 question. It assumes the ventilator was turned off.

8 A In the first place, I will not -- I have no
9 opinion about the ventilator settings or turning it off and
10 on, and so I will not -- you know, I have no opinion about
11 that. I'm not a neonatologist and I don't manage
12 ventilators.

13 BY MR. STEWART:

14 Q So you can't tell me, on the subject of the
15 ventilator, you can't tell me if the ventilator was turned
16 off when it was set to zero?

17 A No, no, that's not what you asked me. You asked
18 me a different question.

19 Q Well, can you tell me if you set a ventilator to
20 zero, does that turn it off?

21 MR. HAMILTON: I object to the form.

22 4 No, I mean, there may still be some flow. I
23 think you have to look at the ventilator and look at the

1 circumstances of that situation.

2 BY MR. STEWART:

3 Q Well, let me restate my question again so we
4 don't quibble over definitions.

5 Was there any evidence in this chart of a need
6 for an endotracheal tube to be in place in Rene Aparicio
7 from the time that the ventilator was turned to zero and
8 7:30 a.m. on the morning of June 27th?

9 MR. HAMILTON: I object to the form.

10 A Okay. Again, that is a judgment decision by the
11 neonatologist taking care of the patient. I have no opinion
12 about his decision, you know, to maintain an endotracheal
13 tube with or without the ventilator being on.

14 BY MR. STEWART:

15 Q I haven't asked you whether his judgment was good
16 or not. I'm asking you whether you see any evidence in this
17 record to demonstrate a need for an endotracheal tube to be
18 in place during that time frame; that is, from when the
19 ventilator was turned to zero until 7:30 a.m. on June 27th?

20 A Again, I have no opinion. That's a judgment
21 decision and that has to be done by the physician taking
22 care of the patient.

23 Q Respectively, Doctor, you're not answering my

1 question.

2 I'm asking you do you see any evidence in this
3 record, any documentation in this record which would call
4 for an endotracheal tube being in place during that period
5 of time?

6 MR. HAMILTON: Let me say for the record here
7 the Doctor has indicated that he is not either a
8 respiratory therapist, a neonatologist, nor does he
9 care for neonates and their respiratory management.
10 He's expressed that he has no opinion on that subject.
11 You are continuing to badger him to get an opinion from
12 him.

13 Doctor, you can respond in anyway that you
14 feel reveals the extent of your opinions if you have
15 them. But I object to the form because, again, it's
16 calling for this Doctor to render opinions which he's
17 already told you he doesn't have.

18 I don't think I can answer it any other way.

19 BY MR. STEWART:

20 Can you answer it yes or no, that you find or do
21 not find evidence in the record to support having an
22 endotracheal tube in place from the time the ventilator was
23 turned to zero until 7:30 a.m. on the morning of June 27th?

1 A I've told you that is a judgment decision by the
2 physician taking care of that. I have no opinion about
3 that.

4 Q Doctor, I'm not asking you for your opinion. I'm
5 asking you whether there is anything written in the chart
6 that says to you, as a doctor, that here is something that
7 was noted about this child which could support having an
8 endotracheal tube in place?

9 MR. HAMILTON: Let me object. It is
10 obviously an opinion question rephrased as Doctor, in
11 your opinion, upon review of the record, was there
12 anything in the record that supports the endotracheal
13 tube being in place. It's a word game.

14 A Well, I understand that, and I don't think I can
15 answer it any differently. It's a premature baby being
16 taken care of by a neonatologist that has hyaline membrane
17 disease. If, in his judgment, an endotracheal tube needs to
18 be placed, then it should be placed.

19 BY MR. STEWART:

20 Q But shouldn't judgment be exercised based upon
21 some condition of the patient?

22 A Absolutely.

23 Q Okay. Is there any condition of the patient here

1 which would call for the judgment to be exercised?

2 A Sure, hyaline membrane disease in a premature
3 infant.

4 Q Is there any evidence that anything is happening
5 to this child between the time the ventilator is turned to
6 zero and 7:30 a.m. on the morning of June 27th?

7 A What do you mean by anything happening to the
8 child? The fact that the child has hyaline membrane
9 disease, and is a premature infant, and in the judgment of
10 that physician needs to have an endotracheal tube to support
11 its respirations is indication enough.

12 Now, again, I am not an expert in that area.
13 You asked me as a pediatric neurologist and I'm telling you
14 how I would interpret it.

15 Q Would you defer to a neonatologist as to whether,
16 as a matter of proper medical care, an endotracheal tube
17 should have been left in place between the time the
18 ventilator was turned to zero and 7:30 a.m. on the morning
19 of June 27th?

20 A Yes.

21 Q Have you ever managed a premature infant that
22 required ventilation therapy?

23 4 When I was in my training, yes.

1 Q And how long ago was that? How many years?

2 A Eighteen years.

3 Q What is the longest period of time that you've
4 ever, even in your training, left an endotracheal tube in
5 place after a ventilator had been turned to zero on an
6 infant?

7 MR. HAMILTON: I object to the form.

8 A I have no idea.

9 BY MR. STEWART:

10 Q Can you tell me whether it's one hour, or two
11 hours, or five hours, or --

12 A That was eighteen years ago. I really have no
13 idea.

14 MR. HAMILTON: I object to the form.

15 BY MR. STEWART:

16 Q What hospitals are you presently practicing in?

17 A Predominantly at the Mobile Infirmary.

18 Q What level hospital is that?

19 A It's a tertiary care hospital.

20 Q Does it have a neonate unit?

21 A Yes.

22 Q What level is the unit, the neonatal unit?

23 A Level two.

1 Q Have you ever practiced at a level three hospital
2 unit that had a level three neonatology unit?

3 A Yes, and I still do.

4 Q Who is the director of the neonatology unit at
5 the Mobile Infirmary?

6 A Infirmary.

7 Q Yes, I'm sorry. Infirmary.

8 A Well, the unit is supervised by neonatologists
9 from the University of South Alabama and that's run in
10 conjunction with the private pediatricians.

11 Q Can you tell me who the director is?

12 A I don't know whether there is a director per se.
13 The neonatologists who supervise it are Dr. Wiseman, Dr.
14 Peavy and Dr. Simons.

15 Q Are they all Board certified?

16 A I know two of them are. I assume the other one
17 is. I don't know.

18 Q Which are the two that you know are Board
19 certified?

20 A Dr. Peavy and Dr. Wiseman.

21 Q Are you aware of how many times Dr. Palomino has
22 flunked his Board certifications?

23 MR. HAMILTON: I object to the form.

1 A I have no idea.

2 BY MR. STEWART:

3 Q Do you know that he's flunked his Board
4 certifications?

5 A No, I don't.

6 MR. HAMILTON: Same objection.

7 BY MR. STEWART:

8 Q Do you agree that the vast majority of premature
9 babies do not have brain hemorrhages?

10 MR. HAMILTON: I object to the form.

11 A No, I'm not aware of that.

12 BY MR. STEWART:

13 Q Would you agree that the majority of premature
14 babies do not have brain hemorrhages?

15 A By majority you mean greater than fifty percent?

16 Q That's correct.

17 A Yes.

18 Q Would you agree that the majority of babies that
19 have brain hemorrhage do not end up with brain damage?

20 A I think that depends on which series you read and
21 which infants you take care of. So, you know, I really --
22 it would be difficult to answer that question. You tell me
23 which population that you're dealing with.

1 Q I'm dealing with a population that consists of
2 babies that have brain hemorrhage.

3 A Of the ones that I see, the majority do end up
4 with brain damage.

5 Q Are you aware of any studies that would support
6 that statistic?

7 A Well, I can tell you about my personal
8 experience, and certainly there are studies that will
9 support that, depending on the type and extent of
10 hemorrhage, that the majority will have brain damage. At
11 least fifty percent of all babies that are just premature
12 have some neurological impairment with or without
13 hemorrhage.

14 Q Let me go back to my question. Are you aware of
15 any studies that will support the statement that you made a
16 moment ago that the majority of babies with brain hemorrhage
17 would end up with brain damage?

18 A If you will clarify the type, extent of the brain
19 hemorrhage, then I can, you know, more specifically answer
20 it for you,

21 2 What type, in your opinion, what type of brain
22 hemorrhage did Rene Aparicio have?

23 A Rene Aparicio had a subependymal,

1 intraventricular and either intracerebral or posthemorrhagic
2 infarct.

3 Q Well, Doctor, there are ways that the degree of
4 severity is described in medicine, is there not?

5 A Are you talking about just anything in medicine?
6 Sure; mild, moderate and severe.

7 Q I'm talking about brain hemorrhage.
8 Is there a recognized way, in pediatric
9 neurology, that the severity of the brain hemorrhage is
10 described?

11 4 You mean severity in terms of the amount in the
12 ultrasound description, or severity in terms of the clinical
13 symptoms and sequela?

14 2 Either way.

15 4 Well, which way do you want?

16 2 Either way.

17 A There are ultrasonography criteria and CT
18 criteria for some people grading hemorrhage. Not everybody
19 agrees with that. Then there are other ways in terms of
20 clinical evaluation and subsequent follow-up which one would
21 assess the type of damage.

22 2 Do you agree with grading hemorrhages?

23 A I have no problem with it.

1 Q Well, how would you grade Rene Aparicio's
2 hemorrhage?

3 A On which day?

4 Q On the day it occurred.

5 A Well, I'm not -- you know, on the 26th?

6 Q On the day it occurred.

7 A The 26th then?

8 Q That's what day you say it occurred?

9 A No, I think that's what day that the data
10 supports.

11 3 Okay. In your judgment, that's what the data
12 supports?

13 A Yes.

14 2 Okay. Well, what would you grade it on the 26th
15 then?

16 4 We have no way to know because there wasn't an
17 ultrasound done.

18 2 When is the first day that you can grade it?

19 A On the 28th.

20 2 And what do you grade it on the 28th?

21 A Probably a grade three.

22 2 Do you ever grade it at a higher grade at any
23 time thereafter?

1 A Well, it's difficult to be certain because of the
2 films on it. It could be a grade three to four on the 28th.
3 I think it's a grade three to four on the 29th, and then
4 subsequently, but that's predicated on the fact that that's
5 an intracerebral hemorrhage and not a posthemorrhagic
6 infarct.

7 Q Let me go back to the first time that you can
8 grade it, which you say would be a grade three to four. Can
9 you be any more specific and grade it as a three or a four?

10 A No.

11 Q Let's take that population, grade three to grade
12 four; do you know of any studies that would support a
13 conclusion that a majority of babies that have that grade
14 brain hemorrhage end up with brain damage?

15 A I think there are a number of studies by Wiggle s
16 Worth (Phonetic), et cetera, Pasternack (Phonetic), and I
17 can't remember the other authors, but -- that would support
18 that the majority, which would be greater than fifty
19 percent, would have some neurological impairment.

20 Q Now, you made a statement in the course of one of
21 your answers a little while ago that -- and I want to make
22 sure that I have this right first.

23 Did I understand you to say that, in your

1 experience, fifty percent or more of premature babies have
2 neurological impairment?

3 A Correct.

4 Q Do you know of any studies to support that?

5 A Yes, by Volpe, by Hill,,by a number of authors.

6 Q Now, you said that, in your opinion, the
7 hemorrhage occurred on the 26th and you cannot grade it
8 because no studies were done on -- no ultrasound studies
9 were done on that date. Did I get that correct so far?

10 A That's -- I mean, if there's a way to look at
11 it, there's no way to grade it.

12 Q Now, was there additional hemorrhage after the
13 26th?

14 A I don't know.

15 Q Do you know how many times this baby hemorrhaged,
16 if more than once?

17 A No.

18 3 Do we know over how long a period of time the
19 hemorrhage occurred?

20 A Well, the -- if you go by comparison with other
21 situation -- the answer to this case is no.

22 2 What was the initial cause of the bleed?

23 4 Well, again, the fact that the baby has hyaline

1 membrane disease, the fact that the baby is on a ventilator,
2 and the fact that the baby is premature with a vulnerable
3 germinal matrix is the most likely setting for a
4 subependymal and then intraventricular hemorrhage. The
5 exact cause I don't think anybody knows. At least I don't.

6 Q You probably answered my next question, but let
7 me just get it simply on the record.

8 You do not know what the cause, the precipitating
9 cause was of the hemorrhage; is that correct?

10 A Well, in terms of the -- the precipitating cause
11 would be premature infant with hyaline membrane disease on a
12 ventilator. That's enough to precipitate an
13 intraventricular, subependymal hemorrhage in the premature
14 population.

15 Whether this was an ischemic insult, whether this
16 was a decrease in periventricular connective tissue, whether
17 this was a platelet problem, fibrinolytic problem,
18 thromboplastin problem, alteration in cerebral blood flow, I
19 have no idea.

20 Q Well, for example, I think you told me at the
21 beginning of this deposition that lack of oxygen can be a
22 cause of hemorrhage in the brain of a premature infant,
23 correct?

1 A No, I don't believe I said that.

2 Q You didn't say that.

3 Do you not agree with that?

4 A No, not as you've phrased it.

5 Q Again, I don't want to play word games with you,
6 and I appreciate the fact that you find that funny, but do
7 you agree that hypoxia can be a cause of hemorrhage in the
8 brain in premature babies?

9 MR. HAMILTON: I object to the form.

10 A You know, again, as we understand it, it's
11 predominantly an ischemic lesion. Now, if you understand
12 that with ischemia there is hypoxia, then, yes, I suppose
13 you're correct.

14 BY MR. STEWART:

15 Q Okay. Well, then can you tell me whether, in
16 this particular case, one of the or the cause of this
17 hemorrhage was a hypoxic event that occurred to this child?

18 MR. HAMILTON: I object to the form.

19 A No, I don't see where there was a hypoxic event
20 that would cause the hemorrhage in this child. There was a
21 hematocrit, significant hematocrit drop on the 26th, there
22 is also a decrease in the blood pressure. You know, that
23 can be either the cause or the effect. Certainly the drop

1 in hemorrhage is a reflect -- drop in hematocrit is a
2 reflection of the hemorrhage. Whether a decrease in blood
3 pressure is a cause or the effect of the hemorrhage, it's
4 difficult to be certain.

5 BY MR. STEWART:

6 Q Did I understand you to just say that the drop in
7 the hematocrit on the 26th was **as** a result of the bleed in
8 this baby's brain?

9 A I would think that would be most likely the
10 cause.

11 Q Now, you say that's the most likely cause. Are
12 there any other causes that could be contributing causes as
13 far as this baby is concerned?

14 MR. HAMILTON: I object to the form. Do you
15 mean in the drop in the hematocrit, or the
16 intraventricular bleed?

17 BY MR. STEWART:

18 Q The bleed in the baby's brain.

19 A I'm sorry. State that again then. Maybe I
20 didn't understand it.

21 I Okay. You said the most likely cause of the
22 bleed in the brain was the drop in hematocrit?

23 4 No, I didn't say that.

1 Q You didn't say that. Well, let's get it
2 straight.

3 MR. HAMILTON: It's the other way around.

4 BY MR. STEWART:

5 Q What is the most likely cause of the bleed?

6 A The baby being thirty-three to thirty-four weeks
7 with hyaline membrane disease on a ventilator.

8 Q Okay. But how does the fact that we've got a
9 baby who is premature and on a ventilator, how does that
10 cause a bleed in the brain?

11 A Because it alters the cerebral blood flow with
12 variations and increasing, decreasing, the baby become --
13 have alterations in blood pressure just by being premature
14 and just being on a ventilator, and we know those factors
15 contribute to subependymal, intraventricular hemorrhages in
16 premature infants. The problem is that the germinal matrix
17 is very vulnerable, has decreased connective tissue, has
18 abnormal clotting problems, and it's, unfortunately, one of
19 the hazards of being premature.

20 Q When you say that it alters the cerebral blood
21 flow, are you referring to the amount of blood flow that's
22 circulating in the brain?

23 A The perfusion pressure is cerebral blood flow.

1 Q And the thing that's a danger there is the lack
2 of oxygen?

3 A No, lack of blood flow.

4 Q Well, how does a lack of blood flow then cause a
5 hemorrhage?

6 A Because it causes an infarct in the
7 periventricular area which then can either hemorrhage or it
8 can result in periventricular leukomalacia, or result in a
9 posthemorrhagic infarct.

10 Q And how does it cause an infarct?

11 A By lack of blood flow.

12 Q And what is it in the blood, what component of
13 the blood is it that then causes the infarct?

14 A It's not a component in the blood.

15 Q So it's your testimony that strictly -- simply
16 the lack of volume of blood flowing is what causes the
17 infarct?

18 A No, no.

19 Q Then what is it that causes the infarct?

20 A It is the -- when you're deprived of blood flow,
21 the endothelial cells of the capillaries swell, then you
22 can't re-perfuse those, And if you can't re-perfuse those
23 with blood which contains glucose, which contains substrate,

1 which contains oxygen, then the brain cells will die.

2 Q Will brain cells also die from lack of oxygen?

3 A If it continues for a long enough period of time,
4 sure.

5 Q And if brain cells -- if there is a decrease in
6 the oxygen to the brain, is that not something that can cause
7 hemorrhage in the brain?

8 A Not usually. Hypoxia generally causes laminar
9 necrosis and it causes different types of injury rather than
10 subependymal hemorrhage.

11 Q Doctor, the question wasn't does it usually cause
12 it. The question is can it cause it?

13 A I suppose anything is possible --

14 MR. HAMILTON: I object to the form.

15 A -- but not in this setting.

16 BY MR. STEWART:

17 Q And why do you say that?

18 A Well, I mean, I say that because that's what's
19 understood in medicine and that's what we understand about
20 premature babies, that's what we understand about
21 pathophysiology, and that's what we understand about the
22 germinal matrix or the mechanism of intraventricular,
23 subependymal hemorrhage.

1 Q So you're just simply saying that in this case, a
2 lack of oxygen, oxygenated blood in Rene Aparicio would not
3 cause a hemorrhage in the brain?

4 MR. HAMILTON: I object to the form.

5 A No, that's not what I said.

6 BY MR. STEWART:

7 Q Well, that's my question.

8 Will the lack of oxygenated blood to Rene
9 Aparicio's brain cause a hemorrhage?

10 MR. HAMILTON: I object to the form. For how
11 many days; three, four? Tell him. I object to the
12 form.

13 4 You know, my answer in this particular situation
14 is probably not based on what I understand the x-rays look
15 like and the facts in this case.

16 BY MR. STEWART:

17 2 Well, do you disagree that it could be a cause?

18 MR. HAMILTON: I object to the form.

19 A Do I disagree that what could be a cause?

20 BY MR. STEWART:

21 A A lack of oxygenated blood to Rene Aparicio's
22 brain?

23 A Hypoxia per se is not the usual mechanism. Okay.

1 It's an ischemic lesion. If you're implying that you can be
2 hypoxic because you're ischemic, then, yes, I suppose that
3 could occur, but babies tolerate hypoxia for an extended
4 period of time because their brain is resistant to it, their
5 heart is resistant to it.

6 Q But when the tolerance finely stops, if it does,
7 do you agree that lack of oxygenated blood can cause a
8 hemorrhage in the brain?

9 A No, it generally -- it can possibly and
10 hypothetically, but it generally causes a different type of
11 brain injury pattern.

12 2 Okay. But you keep asking gen -- you keep
13 answering generally, and usually, and stuff like that, and
14 that is not my question. My question is not what it
15 generally does and not what it usually does.

16 My question simply is: Do you agree or do you
17 disagree that a lack of oxygenated blood can cause brain
18 hemorrhage?

19 MR. HAMILTON: I object to the form.

20 A Hypothetically and unrelated to this situation,
21 given other circumstances, it could possibly.

22 BY MR. STEWART:

23 Q Now, I want to go back to something that you said

1 --

2 A Why don't we -- we've been going about an hour,
3 Why don't we just take a short break, if you don't mind?

4 Q Go ahead.

5 (Short break)

6 BY MR. STEWART:

7 Q Doctor, a while ago you said the drop in the
8 hematocrit reflects the bleed, or words to that effect. Did
9 I understand you correctly?

10 A Yes, that would be an indication. That's
11 certainly the most common symptom in an asymptomatic infant
12 with an intraventricular hemorrhage.

13 Q Is there anything in the record that you see to
14 indicate that Dr. Palomino thought that the drop in the
15 hematocrit was significant?

16 MR. HAMILTON: I object to the form.

17 A No, you'll have to ask Dr. Palomino.

18 BY MR. STEWART:

19 Q Is there anything in the record that you see to
20 indicate that any other doctor thought that the drop in the
21 hematocrit was significant?

22 A No. I mean, I think this is, you know, able to
23 be looking at it in retrospect now over the entire picture.

1 The baby was otherwise doing well, which is often the case
2 in premature infants.

3 Q Okay. But my question -- the answer to my
4 question is no, you don't see anything in the record,
5 correct?

6 A Correct.

7 Q Is there anything in the record to indicate that
8 Dr. Palomino diagnosed a bleed in the brain on June 26th,
9 the day you say it occurred?

10 A No, there is nothing.

Q Is there anything in the record to indicate that
12 any other doctor diagnosed a bleed in the brain on June
13 26th, the day you say it occurred?

14 A No, that's correct.

15 Q Are you aware about -- of what Dr. Palomino said
16 was the cause of the drop in the hematocrit?

17 A I read his deposition, but it's a good while ago.
18 So, no, I don't recall.

19 3 Would you agree that he's in a better position
20 than you to state what the reason was for the drop in the
21 hematocrit?

22 MR. HAMILTON: I object to the form.

23 A Well, he was certainly the treating physician. 1

1 think, you know, I'm in a situation now where I can look
2 over the whole chart and the pattern and say that that's an
3 indication. You know, I've told **you** whether that's
4 absolutely the reflection, you know, I can't tell you a
5 hundred percent because we don't have an objective
6 ultrasound, but given the pattern and given the sequence of
7 events in this child, it would be my opinion that that's
8 what occurred.

9 BY MR. STEWART:

10 Q My question though was, Doctor, do you agree that
11 Dr. Palomino is in a better position than you to state what
12 the cause was of the drop in the hematocrit?

13 MR. HAMILTON: I object to the form.

14 A Well, again, no. I mean, I think he's entitled
15 to his opinion and he took care of the child. But, again,
16 looking at these records and having, you know, twenty years
17 experience taking care of children like this, it's my
18 opinion that that's what occurred.

13 BY MR. STEWART:

20 3 Are you aware that no one contended or claimed
21 that the bleed occurred on June 26th until after this
22 lawsuit was filed?

23 4 I don't have a problem with that. I mean, nobody

1 goes and looks at the records in retrospect; you know, until
2 something happens.

3 There also occurs that many infants leave the
4 nursery without having an intraventricular hemorrhage
5 diagnosed because a good many of them are asymptomatic.

6 Q My question simply was: Are you aware that no
7 one claimed or contended that a bleed occurred on June 26th
8 until after the lawsuit was filed?

9 MR. HAMILTON: I object to the form.

10 A No, I'm not aware of that.

BY MR. STEWART:

12 Q Do you know why Dr. Palomino misdiagnosed the
13 bleed on June 26th and the day thereafter?

14 MR. HAMILTON: I object to the form.

15 A I, you know -- no, I don't, but I don't think
16 it's a misdiagnosis. I mean, it's often not determined
17 until the child has some symptoms.

18 BY MR. STEWART:

19 Q Well, you're claiming that a symptom was the drop
20 in the hematocrit on the 26th. That that shows you that a
21 bleed occurred on the 26th. Now there's a symptom. Do you
22 know why Dr. Palomino missed that?

23 A No, you'll have to ask him.

1 MR. HAMILTON: I object to the form.

2 A It's not a symptom though.

3 BY MR. STEWART:

4 Q What do you call it?

5 A It's a laboratory finding. That's how you
6 interpret it.

7 Q A laboratory finding. Okay.

8 MR. MILTON: I object to the form.

9 BY MR. STEWART:

10 Q Did the event on June 27th, when the baby was
11 noted to be cyanotic for a period of about an hour, play any
12 role in the bleed?

13 MR. HAMILTON: I object to the form.

14 A Let's turn to that event.

15 (PAUSE)

16 You're talking about the event on or about 8:00
17 o'clock in the morning on the 27th, 1987, at Hialeah
18 Hospital?

19 BY MR. STEWART:

20 3 Yes. Tell me what page you're looking at.

21 4 Seventy.

22 2 Did that play any role in the brain damage?

23 A I really have no way to know. It's difficult to

1 be certain. Many times babies that have episodes like this
2 that are in a controlled situation, it is reflection of the
3 hemorrhage. So, I would think my interpretation would be
4 that this was a reflection of the hemorrhage rather than
5 this contributing to the hemorrhage or posthemorrhagic
6 infarct. It's difficult to be certain.

7 Q Well, would you agree that it's also possible
8 that the cyanotic condition as found on June 27th could have
9 played some role in the bleed that occurred in this baby's
10 brain?

11 MR. HAMILTON: I object to the form.

12 A No, I think it's probably more likely that the
13 baby had the hemorrhage on the 26th and on the 27th either
14 had symptoms related to that initial hemorrhage or had a
15 posthemorrhagic infarct.

16 BY MR. STEWART:

17 Q Yes, but the very fact that you say it's probably
18 more likely seems to include the alternative proposition
19 that it's at least possible that it was the other way
20 around. That the cyanotic incident was a cause or a
21 contributing cause to the bleed, does it not?

22 MR. HAMILTON: I object to the form.

23 A Well, sure, I think anything is possible, but you

1 asked me what my opinion is within a reasonable degree of
2 probability, which is, I assume, what I'm supposed to be
3 telling you.

4 BY MR. STEWART:

5 Q Have you testified in the past that you would
6 expect to see seizure activity twelve to twenty-four hours
7 after an event if that event was the cause of brain damage?

8 MR. HAMILTON: I object to the form.

9 A Well, I'm -- I believe I have testified to that,
10 but in a different set of circumstances.

11 BY MR. STEWART:

12 Q Have you testified to that in the past in a
13 situation involving a premature infant who suffered a bleed
14 in the brain?

15 MR. HAMILTON: I object to the form.

16 A I'm sorry. Did you complete your sentence?

17 BY MR. STEWART:

18 Q Yes, I did.

19 A Okay. State it again. I missed it, your
20 question.

21 Q Have you testified in the past in a case
22 involving a premature infant that suffered a bleed in the
23 brain that you would expect to find seizure activity twelve

1 to twenty-four hours after the event if the event was the
2 cause of the brain damage?

3 A I don't know. I'd have to know where you're
4 reading from. If you want to show it to me, I'll be glad to
5 look at it.

6 I mean, if I did, then, you know, I have no
7 problem with that. I'd have to look at those factors
8 surrounding, you know, all of the things involved in that
9 particular situation.

10 Q What was the cause of the cyanotic event that
11 occurred on June 27th?

12 A I don't know exactly.

13 Q Was that the end of your answer?

14 A Uh-huh.

15 Q Do you have any opinions within a reasonable
16 degree of medical probability?

17 A Well, oftentimes when babies have subependymal or
18 intraventricular hemorrhages and they undergo either an
19 extension or a posthemorrhagic infarct with it, then they
20 can have pressure on the mid brain which can cause an apneic
21 episode and having difficulty with ventilation and I would
22 think that would be a logical situation in this case.

23 Q Are you saying that, if I understand you, that

1 you've got -- in your opinion, that a bleed occurred on the
2 26th, that there was an extension of the bleed on the 27th
3 which impacted an area of the brain that had something to do
4 with respiration and that **as** a result of that, the baby was
5 cyanotic --

6 A No --

7 Q -- in layman's terms?

8 A No, I think you kind of turned my words around.

9 3 Can you give to it me in layman's terms without
10 --

11 A Well, I tried to, but I'll be glad to do it
12 again. Sure.

13 2 Take another shot at it for me.

14 4 The -- you know, the situation is such that a
15 baby has, in a controlled situation, suddenly deteriorates
16 and deteriorates by having an apneic episode. Now, that
17 could be a seizure, that could be -- which is an apneic
18 seizure, and that could be a result of either the hemorrhage
19 on the 26th or just a problem with -- the sense -- this
20 child, we know, has congenital anomalies, and has an
21 abnormal cord. It could be based just on the fact that the
22 child has just an abnormal brain. It could also be due to
23 the child having the intraventricular hemorrhage,

1 subependymal hemorrhage, and having at that time a
2 posthemorrhagic infarct, which is not uncommon and was
3 probably seen in the later scans. It could also be possibly
4 an extension, which is certainly not unheard of in
5 intraventricular hemorrhage.

6 Q What caused the extension if there was an
7 extension?

8 A It's just the weak germinal matrix.

9 Q The same thing that caused the initial incident?

10 A Well, I don't know whether it's the same thing.

11 I mean, once you have a hemorrhage, the --

12 Q I thought you told me that the precipitating
13 cause was this weak matrix?

14 A Well, that's one of the factors. I mean, if you
15 want to include all of them, then we can have perhaps -- the
16 answer could be a little bit more correct.

17 Q Could the cyanotic incident on June 27th also be
18 a mechanical problem due to the -- being taken off the
19 ventilator too soon and/or tube blockage?

20 MR. HAMILTON: I object to the form.

21 A Well, as I recall, they checked the tube and even
22 reintubated the child and I don't think there was any tube
23 blockage. Now, whether it could be another mechanical

1 problem, again, that's an area out of my expertise.

2 BY MR. STEWART:

3 Q If it was due to tube blockage, what would you
4 expect the baby's reaction to be when the blockage was
5 removed?

6 A It could be the same, worse or better.

7 Q If it was due to blockage and you removed the
8 blockage, why would it be worse?

9 A Well, it depends on what caused the baby's
10 initial episode and how long it occurred and whether the
11 child's is going to immediately respond.

12 Q You're sliding off my question. My question --

13 A No.

14 Q -- was: If the event was due to blockage of the
15 tube and you removed the blockage, how would the baby get
16 worse?

17 MR. HAMILTON: I object to the form.

18 A It depends on how long the blockage was in, in
19 the hypothetical situation, and what caused it.

20 BY MR. STEWART:

21 Q Okay. Let's go to this case.

22 Let's assume that the blockage in this case was
23 due to -- that -- let's assume that the cyanosis in this

1 case was due to tube blockage. What would you expect the
2 baby's reaction to be when the blockage was removed?

3 MR. HAMILTON: I object to the form.

4 A Again, it could be the same, it could improve, it
5 could get worse.

6 BY MR. STEWART:

7 Q Yes, but I'm asking now for your opinion.

8 Within a reasonable degree of medical
9 probability, what would you expect in this case, if it was
10 due to blockage, what would you expect this baby's condition
11 to be after the blockage was removed?

12 A I have no way to predict that. It's my opinion
13 the baby probably did not have a blockage because they
14 changed the tube and reintubated the child. There wasn't
15 my blockage.

16 Q Do you know what happened, what happened to this
17 baby's condition after the tube was taken out and the baby
18 was reintubated with an open tube, unblocked tube?

19 MR. HAMILTON: I object to the form.

20 A Well, I think they did some other things too, but
21 I'll be glad to read to you what it says.

22 BY MR. STEWART:

23 Q Well, I don't want you to read. I'd just like

1 for you to summarize.

2 In your view as a pediatric neurologist, did this
3 baby's condition get better, stay the same, or worse after
4 the tube was taken out and a new unblocked tube was
5 inserted?

6 MR. HAMILTON: I object to the form.

7 A Well, I'll have to refer to the notes. Okay.
8 Because, I mean, that's where the records are and I'll be
9 glad to read it to you.

10 It says: In place -- I'm reading on page seventy
11 from the Hialeah Hospital records.

12 It says ET suction done, obtained moderate amount
13 of mucus, ET tube in place. Called doctor -- and I can't
14 pronounce his name. Cava --

15 MR. HAMILTON: Cavaosa (Phonetic).

16 A Cavaosa. Color poor, bagging with a hundred
17 percent, color poor, heart rate decreased to seventy-eight,
18 Dr. Cava -- well, anyway, extubated the infant, bagged the
19 infant with mask, heart rate's a hundred and twenty-eight,
20 blood pressure forty-four over thirty-one, mean thirty-six.
21 Intubated with a number three ET tube. In place, lungs
22 clear, placed on MV-50, pressure seventeen, slash, three,
23 i.e. one-to-one, FI tube twenty-five percent, essentially

1 pink, lungs clear, chest x-ray ordered.

2 BY MR. STEWART:

3 Q In your opinion, did this baby get worse, stay
4 the same, or get better after the tube was changed?

5 A Well, the baby got pink. Okay. Now, whether
6 that made the baby, you know, better or worse, I don't know.

7 Q Do you have an opinion as to whether this baby
8 got better, or worse, or stayed the same after the tube was
9 changed?

10 A I think the baby got pink. You know, whether the
11 baby was neurologically or systemically better, I don't
12 know.

13 Q So, your answer is you do not have an opinion; is
14 that correct?

15 A No, my answer is the way I stated it.

16 Q Well, does pink mean the baby got better, worse,
17 or stayed the same?

18 A The pink means that the baby is better
19 oxygenated. Now in terms of overall condition, again, there
20 are other factors.

21 What are the normal blood gas values for
22 newborns?

23 At what condition, at what time, and what

1 gestation?

2 Q Normal newborns.

3 A Well, I mean, there are lots of normal newborns.

4 Q I'd like to know what their blood gas values are.

5 A Well, what is the gestation, what is the

6 situation and --

7 Q Normal. Normal gestation, normal situation --

8 A I don't what normal means --

9 Q Normal newborn.

10 A Okay.

Q What would the blood gas values be?

12 Would they be the same as adults or different?

13 A No, they're different.

14 Q Okay. Tell me what they are,

15 A As I understand your question, you're asking me

16 in a term infant that is born without any problems, that

17 it's in a well-baby nursery, the -- and I assume you mean

18 right after birth. The blood gases -- pH can be anywhere

19 from seven point two to seven point six, PC02 anywhere from

20 thirty to fifty, and the P02 anywhere from seventy to a

21 hundred.

22 Q Okay. what would the normal values be for a baby

23 who was of the same prematurity as Rene Aparicio? Normal

1 values?

2 4 Again, normal values for Rene Aparicio were just
3 what they are; pH of seven point one eight with a PCO2
4 slightly elevated, and the PO2 where it is. It's a
5 respiratory acidosis is what you would see in a baby that is
6 premature at thirty-three to thirty-four weeks with hyaline
7 membrane disease, which is normal for that baby at that
8 gestation.

9 2 Okay. I'm asking one question and you're
10 answering a different question.

11 I'm not asking you what would be the values for a
12 baby that had some respiratory problem. I'm asking for a
13 premature baby that is otherwise normal with the same amount
14 of prematurity as Rene Aparicio. What would be the normal
15 blood gas values, the range?

16 1 Premature babies are not normal.

17 2 I didn't say that.

18 I said premature baby, what is the normal values
19 if the baby is not suffering from any abnormality?

20 A But that's not the case. Premature babies' lungs
21 are premature and they are often tachypnic and they also
22 often have a respiratory acidosis. So, that's what I would
23 consider the normal situation.

1 Q Okay. Then what is the range for that situation?

2 A Well, pH can be anywhere -- you know, again, it
3 depends on so many variables. I mean, you're asking general
4 questions for specifics, but, you know, seven point one, to,
5 you know, seven point four or five; PCO₂, fifty to sixty;
6 PO₂, fifty to seventy.

7 Q Can taking a baby off a ventilator too soon
8 produce cyanotic condition?

9 A You mean as a pediatric neurologist? I suppose
10 hypothetically, yes.

11 Q Is this another area that you would defer to a
12 neonatologist in?

13 A Yes. I don't take babies off respirators or
14 ventilators.

15 Q Do you put babies on ventilators or respirators
16 in your practice?

17 A Only under duress. No.

18 Q And when you say only under duress, you're
19 referring to an emergency situation where you cannot get a
20 neonatologist?

21 A Or anybody, right.

22 Q Do you consider yourself qualified to insert an
23 endotracheal tube in a baby?

1 A Yes.

2 Q Do you do that in your practice?

3 A No, I'm a consultant, So, I don't do primary
4 care.

5 Q Will a lack of oxygen cause acidosis?

6 A Hypothetically, yes.

7 Q Was this baby -- did this baby have acidosis on
8 the 27th?

9 A On the 27th?

10 2 Yes.

11 4 What time on the 27th?

12 2 Any time on the 27th?

13 A Well, I'll just have to go -- let me get the
14 respiratory sheet. As I recall, it didn't, but --

15 (PAUSE)

16 BY MR. STEWART:

17 Q Would I interrupt you if ask you a question while
18 you're looking for the chart entry?

19 A Yeah, you would.

20 Q Go ahead and find it and then I'll ask you a
21 question.

22 A What; do you want me to find it, or ask a
23 question?

1 Q No. I said go ahead and find it and then I'll
2 ask you a question.

3 A Okay.

4 (PAUSE)

5 I don't see any pH in the acidotic range on the
6 27th of the blood gases that I have.

7 BY MR. STEWART:

8 Q What would the value have to be for you to
9 consider this child to be acidotic?

10 A Less than seven point two.

11 Q Did this child have any abnormal base excess
12 values on the 27th?

13 MR. HAMILTON: I object to the form.

14 A No, not for a premature infant.

15 BY MR. STEWART:

16 Q Was there any reason, in your judgment, to treat
17 this baby for an acidotic condition on the 27th?

18 A You mean at the time of the episode?

19 Q At the time of the episode or any other time?

20 A Of cyanosis and apnea?

21 Q Yes.

22 A Yeah. I mean, I think that one could consider
23 if the baby appeared cyanotic and was having respiratory

1 distress that you could go ahead and treat that child
2 presuming that it may become acidotic as a result of that,
3 sure.

4 Q Was this child treated for acidosis?

5 A Well, I'll have to go back and look. I didn't
6 pay much attention to whether there was bicarb given or not.

7 Q Is that what you would be looking for?

8 A Well, I mean, that's how I would treat the
9 acidosis, you know, in addition to changing the tube and
10 ventilating the baby.

11 Q Maybe we can save some time.

12 If the child was given sodium bicarbonate, in
13 your opinion, would that be treatment for acidosis?

14 A That would be one of the treatments, sure.

15 2 You said that you reviewed the results of the
16 Allegheny General Hospital tests?

17 4 Yes.

18 2 What is your interpretation of those records?

19 4 It says that that is a normal karyotype.

20 2 Do you agree with that?

21 4 I mean, I have no reason to disagree with it. I
22 mean --

23 2 Is there any genetic or chromosomal abnormality

1 involved in this case?

2 A Well, there does not appear to be any chromosomal
3 abnormality by the mechanism by which we can do chromosomes.

4 Whether there's a genetic problem or a genetic
5 abnormality which resulted in this child's congenital
6 malformations and two vessel cord, I have no way to tell
7 you.

8 Q Is there any genetic cause for the brain damage
9 that this child suffers from?

10 4 Well, there certainly can be. Whether there is,
11 I know of no way to document it.

12 2 You said you read Dr. Brown's deposition?

13 A Yes.

14 2 Do you disagree with anything that he says in
15 that deposition, recognizing that he's a neonatologist and
16 you're a pediatric neurologist?

17 MR. HAMILTON: I object to the form.

18 A I think Dr. Brown is a pediatric neurologist.

19 BY MR. STEWART:

20 ! That's your understanding?

21 Stuart Brown?

22 Dr. Frank Brown.

23 Oh, I'm sorry. Excuse me.

1 MR. HAMILTON: No, you're talking about
2 Bowen.

3 BY MR. STEWART:

4 Q Bowen. I'm sorry. I said Brown. I meant Bowen.

5 A Oh, oka

6 Q Excuse me.

7 A Okay. So now what --

8 Q The question is: You read Dr. Frank Bowen's
9 deposition, You recognize that he's a neonatologist?

10 A Correct.

11 3 You have, several times in the course of the
12 deposition, said that that's an area that's within
13 neonatology and I'm not going to get involved in that, I
14 will defer to the neonatologist.

15 My question is: Is there, in reading over Dr.
16 Bowen's deposition, is there anything that he testified to
17 that you disagree with?

18 MR. HAMILTON: I object to the form.

19 A You know, that's a long deposition, Mr. Stewart.
20 You know, if you want to pick out some specific things to
21 ask me, I'll be glad to look at it and try to give you an
22 opinion as a pediatric neurologist, but there's no way for
23 me to do that by memory.

1 BY MR. STEWART:

2 Q As you sit here today, is there anything that you
3 recall from Dr. Bowen's deposition that you disagree with?

4 MR. HAMILTON: I object to the form.

5 A I can't tell you that unless I can look at it.

6 BY MR. STEWART:

7 Q Well, you're welcome to look at it -- well, you
8 didn't bring it with you, did you?

9 4 Well, you know, there were ten to twelve
10 depositions. Okay. That's -- and I really physically could
11 not carry them, but if you -- if you have a copy with you,
12 I'll be glad to look at it. I tell you that I can't do it
13 by memory.

14 2 You received a subpoena, did you not?

15 A Not for today, no.

16 Q You did not?

17 A No.

18 Q You received a subpoena in this case?

19 A For the 18th of September, but not for today.

20 Q And that subpoena called for you to bring
21 everything with you that you had in this case, correct?

22 A No, it called for me to do that on the 18th, but
23 not today, but I'm -- I told you that -- and I'm trying to

1 cooperate. I just physically could not carry them all.

2 Okay. So I brought you the records that I could. I

3 brought you the list of the depositions. I have nothing --

4 you know, if you want, I'll be glad to have them copied and

5 sent and -- attached to the deposition and sent to you at

6 your expense.

7 Q No. My question still remains: Is there, as you

8 sit here today, is there anything that you remember about

9 Dr. Frank Bowen's deposition that you disagree with?

10 A Not specifically. I can't tell you that.

MR. HAMILTON: I object to the form.

12 BY MR. STEWART:

13 Q Same question with Dr. Malofsky's deposition?

14 A Same answer.

15 Q As you sit here today, is there anything that you

16 remember about his deposition that you disagree with?

17 MR. HAMILTON: Same objection.

18 A Again, I can't do it my memory and I'll be happy

19 to answer your questions and look at the depositions.

20 BY MR. STEWART:

21 Q When were you retained in this case?

22 A Sometime between June and July.

23 Q Of 1990?

1 A Yes.

2 Q And when did you -- who were you retained by?

3 A Mr. Hamilton.

4 Q And who is paying your bills?

5 A Mr. Hamilton.

6 Q When did you form your opinions in this case?

7 A Sometime after I reviewed the records. Between
8 July and August.

9 Q How many cases have you had with the firm of
10 Wicker, Smith, et cetera, in Miami, Florida?

11 A I don't know exactly. Possibly five to ten.

12 Q How many cases have you had --

13 A I take that back. Not in Miami, I mean, but with
14 their firm between Fort Lauderdale and Miami.

15 Q How many cases have you had with -- where you
16 were testifying on behalf of an insured of The Physicians
17 Protective Trust Fund?

18 MR. HAMILTON: I object to the form.

19 4 I really don't know because that's not a company
20 that, you know, I recognize. And, you know, attorneys
21 retain me and not insurance companies. So I really don't
22 know the answer to that.

23 BY MR. STEWART:

1 Q Have you ever spoke or lectured at any meetings
2 of any defense lawyer groups?

3 A Yes.

4 Q On how many different occasions?

5 A One.

6 Q And what was the name of the group?

7 A The Florida Defense Lawyers.

8 Q And when was that meeting?

9 A Last month.

10 Q And where did it take place?

11 A Tarpon Springs, Florida.

12 Q And do you know the physical location in Tarpon
13 Springs where the meeting took place?

14 A Ends Brook Inn (Phonetic) or hotel.

15 Q The Ends Brook Resort that's actually a golf and
16 tennis resort that's located north of Tarpon Springs? Is
17 that what you're referring to?

18 MR. HAMILTON: I object to the form.

19 BY MR. STEWART:

20 Q Not in the city itself? It's out in the
21 countryside?

22 A I guess. You know, I got in there very late and
23 Left early the next day. So, I don't know the physical

1 location. But as far as I know, I got off the plane and
2 drove to Tarpon Springs to the Ends Brook Resort.

3 Q Have you spoke or lectured at any insurance
4 companies?

5 A If you're talking about for the St. Paul's
6 Insurance Company, yes.

7 Q Any other insurance company besides St. Paul's?

8 A No. Those are the only ones that have asked me.

9 Q How many occasions have you spoke or lectured on
10 behalf of St. Paul Insurance Company?

11 A Well, I didn't lecture on behalf of St. Paul's
12 Insurance Company. I was asked to give educational lectures
13 in pediatric neurology to their invited guests, and I have
14 done that on one occasion.

15 Q One occasion.

16 And the invited guests were defense attorneys?

17 A I think some of them.

18 Q How many cases --

19 (INTERRUPTION)

20 BY MR. STEWART:

21 Q **How** many cases have you been involved in for the
22 defense in your professional career?

23 A What do you mean by involved?

1 Q Where you have reviewed or testified, reviewed a
2 file or testified on behalf of the defense?

3 A Over the past three or four years, I probable
4 reviewed forty to fifty cases a year, testify in about three
5 to five or six cases a year.

6 Q How many would give depositions in?

7 A Between five and fifteen.

8 Q Have you ever testified for a plaintiff?

9 A Yes.

10 Q When was the last time you testified for a
11 plaintiff?

12 A This year.

13 2 What was the name of the case?

14 A Arrington versus Kaiser Permanente Hospitals.

15 2 And how many other occasions have you -- where
16 was that case pending?

17 4 San Francisco, California.

18 2 And who was the plaintiff's attorney?

19 4 I don't know his name. I'll think of in it a
20 minute and then I'll be glad -- I'll be glad to tell you
21 after -- if I can think about it.

22 2 Okay. We'll come back to that.

23 How many other occasions have you testified for a

1 plaintiff?

2 A You mean --

3 Q In the last three or four years?

4 A I have testified in one other case that went to
5 trial for Mr. McMath in Little Rock, Arkansas.

6 Q And what was the name of that case?

7 A I don't recall the name of it.

8 Q How many other cases have you reviewed for
9 plaintiffs in the last three or four years?

10 A Well, I'll review of those forty to fifty,
11 probably five to ten per year for plaintiffs.

12 3 Do you have a current curriculum vitae wit,, you

13 A Yes, I do

14 MR. HAMILTON: Do you want to mark it?

15 MR. STEWART: Yes. I'm going to mark this as
16 Exhibit 1. We'll mark these two letters as Exhibit 2.

17 (Plaintiff's Exhibits 1 and 2 were
18 received and marked for identification.)

19 BY MR. STEWART:

20 3 Have you brought with you any documents which
21 would reveal the amount of money that you have received from
22 The Physicians Protective Trust Fund either directly or
23 through attorneys representing The Physicians Protective

1 Trust Fund?

2 A No, I have no way to tell you that. I mean,
3 attorneys usually retain me and pay me. So, I have no way
4 to know what came from The Physicians Protective Trust.

5 Q Have you brought with you today all of your 1099
6 forms reflecting income for medical/legal consulting
7 services for the years 1986, '87, '88, '89 and '90?

8 A No.

9 Q Why not?

10 A Because I really wasn't asked to do that today.

11 Q You recognize that you were asked to do that in
12 the subpoena that you received?

13 A For the 18th, yes,

14 Q And the only reason you didn't bring them today
15 is because that subpoena called for you to appear on the
16 18th and this is a different day?

17 A No.

18 Q Would you have brought those forms to the
19 deposition on the 18th?

20 A No.

21 Q Why not?

22 A Because I don't think that that's appropriate.

23 Q So you would have refused to produce those forms

1 on the 18th or any other day?

2 MR. HAMILTON: No. Let me object to the form
3 of the question. He would have sought protection from
4 the Court as it being beyond the scope of reasonable
5 discovery for an expert both in the State of Florida in
6 federal courts and in the State of Alabama.

7 BY MR. STEWART:

8 3 So you would not have voluntarily produced those
9 forms? Let me restate the question.

10 4 That's correct.

11 2 On the 18th or any other day?

12 4 That is correct.

13 2 Absent a court order?

14 4 Correct.

15 2 Have you brought with you the invoices and bills
16 that you've submitted in connection with your services in
17 this case?

18 A I don't believe there have been any.

19 Q Have you brought with you transcripts of
20 depositions that you've given in other cases where you have
21 been retained as an expert witness?

22 A I don't retain those. So, I don't have those.

23 2 You do receive them from attorneys that you're

1 working with, do you not?

2 A Sure, and I discard them after I read them or the
3 case is over.

4 Q Which is it?

5 A Both.

6 Q And so you have in your possession today no
7 transcripts from any other case?

8 A No, I probably have several, but I didn't bring
9 them.

10 3 Is the reason that you didn't bring them because
11 the subpoena was dated the 18th and this is a different date
12 than the 18th, or is this another matter that you
13 voluntarily would not produce absent a court order?

14 MR. HAMILTON: I object to the form.

15 A No, I mean, those are public record. If I have
16 them, I'll be glad to produce them. If not, you can
17 certainly, you know, go get them.

18 BY MR. STEWART:

19 Q Has any court or judge ever required you to
20 produce income information as far as how much you've made in
21 the medical/legal consulting business?

22 A No.

23 Q According to information that has been produced

1 by the state -- by St. Paul Insurance Companies, I'm going
2 to ask you if you agree with this.

3 That in 1984 you were paid, you or your medical
4 firm were paid ten thousand three hundred dollars?

5 MR. HAMILTON: I object to the form.

6 A For what?

7 BY MR. STEWART:

8 Q For medical/legal consulting.

9 A No, I think that included records, also workman's
10 comp, and for other services, but I have no disagreement
11 with the amount.

12 Q In 1985 you were paid by state -- by St. Paul
13 Insurance Companies thirty-one thousand dollars?

14 MR. HAMILTON: I object to the form.

15 A Again, I have no disagreement with -- if -- I
16 can't recall what the figures are, but, I mean, if those are
17 appropriate and they're accurate as to what they reflected,
18 I have no problem.

19 BY MR. STEWART:

20 Q 1986 you were paid sixty thousand dollars?

21 A Again, I have no disagreement with that if those
22 are correct figures.

23 MR. HAMILTON: I object to the form.

1 BY MR. STEWART:

2 Q 1987 you were paid eighty-four thousand dollars
3 by St. Paul Insurance Companies?

4 A For multiple services, yes.

5 MR. HAMILTON: I object to the form.

6 BY MR. STEWART:

7 Q In 1984 you reviewed or worked on, in one fashion
8 or another, nine cases on behalf of St. Paul Insurance
9 Company?

10 MR. HAMILTON: I object to the form.

11 A I don't know the answer to that. I think the
12 documents that you're referring to, at least the ones that I
13 received copies of, don't tell you. There are some that are
14 repeated cases, some are the same files. So whether they
15 were individual files or the same file, I really have no way
16 to tell you.

17 BY MR. STEWART:

18 Q I'm relying on the sworn testimony of a
19 representative of St. Paul Insurance Company. Not
20 documents.

21 A Well, but those are what the documents reflect.

22 MR. HAMILTON: I object to the form.

23 BY MR. STEWART:

1 Q Well, do you disagree with that number of nine
2 cases in 19841

3 A I have no way to disagree or agree. I'm just
4 telling you what the documents that I reviewed reflect.

5 Q The documents that you reviewed -- did you review
6 the testimony of St. Paul Insurance Company where they
7 testified that there were nine cases in 19841

8 A Yes.

9 Q And did you review the testimony in that same
10 deposition where in 1985 there were twenty-five cases?

11 A Yes.

12 MR. HAMILTON: I object to the form.

13 BY MR. STEWART:

14 Q And in 1986 there were sixty cases?

15 A Well, that's sixty bills. Okay. Whether those
16 are the same case, whether that's for requisition of
17 records, workman's comp, personal injury, you know, I have
18 no way to tell you that. So that's sixty individual bills
19 sent to me -- I mean, paid to me or my corporation, and I
20 have no disagreement with that. It's just let's be
21 accurate.

22 Q How many other insurance companies have you done
23 medical/legal consulting work for?

1 A I don't really consult with insurance companies
2 and I don't consult with St. Paul's. I consult for
3 attorneys who represent insurance companies.

4 Q How many other insurance companies have you been
5 paid by for medical/legal consulting work other than St.
6 Paul?

7 A Again, I'm usually paid by attorneys. So, I
8 can't tell you.

9 Q That was not the question.

10 4 Okay. Well, I mean, I can't tell you. I mean,
11 I don't know exactly. St. Paul's is the major insurer in
12 the United States.

13 Q Is there anything else in the record to support
14 your statement that the bleed occurred on 2/26 other than a
15 drop in the hematocrit levels?

16 MR. HAMILTON: I object to the form.

17 A The only other reflection that I hadn't told you
18 was that there was some changes in the mean blood pressure,
19 which either may be a result or contributing cause to a
20 hemorrhage. Other than that, no, the child was asymptomatic
21 otherwise.

22 BY MR. STEWART:

23 And would you tell me where in the records you're

referring -- what you're referring to on the change in the
2 blood pressure?

3 MR. HAMILTON: 26th.

4 MR. STEWART: What page?

5 MR. HAMILTON: You're looking at this and not
6 looking -- do you want the numbered pages?

7 MR. STEWART: Yes, that's what I want.

8 THE WITNESS: Is that '87?

9 MR. HAMILTON: Here. Get the records with
10 the numbered pages.

11 MR. STEWART: Well, I can figure it out.
12 Just show me what you're referring to and I'll just see
13 if we can agree to --

14 MR. HAMILTON: It's on the 26th between 2:00
15 and 4:00. Take a look at the 26th. Between 2:00 and
16 4:00 where it starts out at, I think, fifty --
17 fifty-three and goes to twenty-eight.

18 MR. STEWART: It would appear we're looking
19 at page sixty-nine that has been clipped off on the
20 photocopy. Would you agree with that?

21 MR. HAMILTON: Let me see it. I don't --
22 where does it have the mean blood pressure? Where's
23 the mean blood pressure on that?

1 MR. STEWART: Right here (Indicating). This
2 column right here (Indicating).

3 MR. HAMILTON: All right. And if you find --

4 MR. STEWART: Mean right here (Indicating)?
5 Starts at thirty-seven --

6 MR. HAMILTON: No, I think that's the right
7 page -- no, I'm sorry.

8 MR. STEWART: That's the right page?

9 MR. HAMILTON: Yeah, because you see where it
10 --

11 MR. STEWART: Starts at thirty-seven and ends
12 at thirty-eight?

13 MR. HAMILTON: That's correct.

14 MR. STEWART: So page sixty-nine we're
15 referring to?

16 MR. WHITNEY: Page sixty-eight. These are
17 two pages combined.

18 MR. HAMILTON: Page sixty-eight.

19 MR. STEWART: So, for the record, it's page
20 sixty-eight. We all agree to that?

21 MR. HAMILTON: Yes.

22 MR. WHITNEY: Correct.

23 Y MR. STEWART:

1 Q Okay. I take it from your prior answers that
2 you've given me that you have not prepared any type of
3 demonstrative aids; is that correct?

4 A For what?

5 Q For your testimony?

6 A No.

7 Q Do you plan on preparing any?

8 A Well, Mr. Hamilton and I have not discussed, you
9 know, the testimony. I think if he finds it appropriate,
10 you know, to have any demonstrative aids, then, you know, we
11 will agree to that and I'm sure he will be able to provide
12 those to you prior to my testimony.

13 Q My question is: **As** you sit here today, do you
14 plan on preparing any?

15 A No.

16 Q Okay. For the record, I'm going to serve upon
17 you, Doctor, and also upon the other lawyers here, an
18 application for an order compelling compliance with
19 subpoena.

20 I am not going to terminate this deposition. I'm
21 going to adjourn this deposition. Judge Kittrell is the
22 presiding Judge for the Circuit Court of Mobile County at
23 the present time. He is in courtroom number one at the

1 Circuit Court building at Government and Royal, and I am
2 going to go from here to there and present this application
3 to enforce the subpoena that we have served upon the Doctor,
4 in addition to --

5 MR. HAMILTON: I want to say --

6 MR. STEWART: Let me just finish one other
7 thing.

8 MR. HAMILTON: Sure.

9 MR. STEWART: In addition, I also want to
10 hand deliver to Dr. Chalhub a letter dated November
11 6th, and I'll read the letter in the record. It refers
12 to the upcoming trial.

13 Dear Dr. Chalhub, on behalf of Rene Aparicio,
14 we request that when you come to Miami to testify in
15 this case on behalf of Dr. Palomino that you bring with
16 you complete copies of your income tax returns,
17 including all 1099 forms, for the past five years.
18 Under Florida law the jury is entitled to know to what
19 extent an expert witness earns a living testifying. We
20 want the jury in this case to have available to it
21 complete and accurate information as to how much money
22 you have earned from testifying on behalf of defendants
23 in medical malpractice cases.

1 And I'll hand that letter to you now, Doctor.
2 You wanted to say something before we left
3 this room?

4 MR. HAMILTON: Yes, on the record.

5 As I understand it, there was a call to Dr.
6 Chalhub earlier today from a law firm of, as I
7 understand it, Crowder or Cunningham and Brown, who
8 indicated that they were going to attend this
9 deposition today. And as I also understand it, that
10 law firm may be the law firm who is arguing before the
11 Court that Dr. Chalhub should produce the tax returns
12 and tax information that was requested in the original
13 subpoena which was attempted to be served on him for
14 the September the 18th deposition but was not served on
15 him requiring him to bring those documents here.

16 I want the record to reflect that that same
17 law firm was involved in a case here in Alabama called
18 Morris versus Craddick (Phonetic), case cite, I believe
19 it's 530 Southern Second 725 in Alabama where they, on
20 behalf of their own expert, took a petition for writ of
21 mandamus to the Supreme Court of Alabama requesting to
22 be protected from just such type of discovery of their
23 own expert. And the Supreme Court of Alabama, through

1 Justice Maddox, held that the information for the
2 purposes of showing bias on the part of the expert
3 witness was substantially outweighed by the prejudice
4 to the witness.

5 Therefore, there is a Supreme Court case in
6 the State of Alabama directly on point on the rule of
7 Civil Procedure which is our Rule one point two eight-0
8 under the Rules of Civil Procedure in the State of
9 Florida, which is adopted from the Federal Rules of
10 discovery concerning discovery from experts.

11 Therefore, it is the position of the
12 defendant, Dr. Palomino, that number one, there is no
13 present valid subpoena that was served on Dr. Chalhub
14 to produce any financial records.

15 Number two, there is an existing case in the
16 Supreme Court of Alabama which is directly opposite to
17 their position.

18 Number three, they terminate this deposition
19 at their peril. We stand ready to respond to any
20 questions concerning his income from sources for expert
21 testimony as he's testified here today. Certainly we
22 are not ready to produce the tax returns or any 1099's
23 or any other tax information of his private tax returns

1 submitted to the Federal government.

2 Lastly, but not least, it's totally
3 inappropriate to request the State of Alabama to rule
4 on what is required under Florida law for the
5 production of documents by experts under Rule one point
6 two eight-0. We are not prepared as -- Dr. Palomino is
7 not prepared at this time to retain attorneys to argue
8 in the courts of Alabama the Court's authority to rule
9 on what should be produced in an expert's deposition.

10 Under Rule one point two eight-0 the opinions
11 of the experts and the basis of the opinions of the
12 experts can be discovered by interrogatories,
13 furthermore by depositions if the Court so ordered, but
14 beyond that, the scope of the depositions has to be
15 determined by the court by order and there's presently
16 no order of a Florida court determining that this
17 information can be discovered, subpoenaed, or inquired
18 into.

19 We intend to take it up with the Florida
20 court. And if we incur expenses in trying to have to
21 reestablish the Supreme Court of Alabama's decision in
22 Morris versus Graddick, we intend to seek sanctions and
23 attorneys' fees.

1 MR. STEWART: Did I understand you to say
2 that you're prepared to respond as to what Dr.
3 Chalhub's earnings have been from medical/legal work?

4 MR. HAMILTON: He is prepared to answer
5 questions concerning the number of cases that he can
6 recall being retained on, as I understand it, Dr.
7 Chalhub, and I may be incorrect. He's prepared to
8 testify what his standard charges are. He's prepared
9 to testify to the best of his recollection what that
10 would be. He is not prepared to produce his tax
11 returns or any portion of those tax returns to you
12 whatsoever.

13 MR. STEWART: Well, let me just ask Dr.
14 Chalhub.

15 3Y MR. STEWART:

16 2 How much money did you make last year in
17 medical/legal consultation work?

18 1 I'll give you a percentage. If I tell you that,
19 then you know my entire income and it's -- you know, and I
20 don't think you're entitled to that,

21 2 Is that the end of your answer?

22 1 Correct.

23 2 Okay. I repeat. I'd like to know how much you

1 made in medical/legal consultation work last year? Just
2 that amount of money?

3 A I don't know the exact amount to be able to tell
4 you that.

5 Q Give me an approximate amount.

6 A Approximately ten to twenty percent of my income.

7 Q How much is the dollar amount?

8 A If I tell you that, then you'll know my entire
9 income and you're not entitled to that.

10 Q I didn't ask you for your entire income. I asked
11 you simply how much did you make last year?

12 A I don't know the exact amount.

13 Q Approximately how much did you make last year?

14 A Well, I've already told you the percentages.
15 Now, if I tell you that, you'll know my entire income.

16 Q But I didn't ask you to tell me percentage. You
17 volunteered that --

18 A Well, I know, but --

19 Q -- and I'm not going to be trapped into --

20 A Well, I wasn't trying to trap you, Mr. Stewart,
21 but I'm, you know, I'm not going -- I don't have the exact
22 amount. So, I'm not going to provide that.

23 Q Well, and I'm asking you for an approximate

1 amount, and are you refusing to provide me with an
2 approximate amount?

3 A Well, I don't know an approximate amount without
4 divulging, you know, things that I think are not pertinent
5 to this case.

6 Q How much did you make in 1989 from medical/legal
7 work?

8 A Again, it's the same percentage approximately,
9 the best I can give you.

10 Q Again, I didn't ask you for a percentage. I
11 asked you how much did you make?

12 A I don't know the exact amount in 1989.

13 Q Give me an approximate amount that you made in
14 1989.

15 A I can't give you that.

16 Q Well, you know what your income was in 1989 and
17 you know what the percentage is. So if you applied the
18 percentage to the income, you could give me the approximate
19 amount.

20 A Then you would know my entire income and that's
21 not appropriate.

22 Q How about 19887

23 A Same answer.

1 Q Same percentage, and you will not give me the
2 dollar amount that you made for medical/legal work in 1988?

3 A That's correct.

4 MR. STEWART: Okay. I'm going now to the
5 court. I invite all of you gentlemen to come to the
6 court. But when I get to the court, I'm going to ask
7 the judge to enforce the subpoena.

8 MR. HAMILTON: For the purposes of the
9 record, unfortunately I'm not authorized to practice
10 law in the State of Alabama. So I can't make any
11 representations to the Court. I think it would be in
12 violation of their rules concerning the unauthorized
13 practice of law. So, I have no authority to go make
14 any representations to the Court whatsoever.

15 My objections still for the deposition stand.
16 I think it's appropriate for the court in Florida to
17 rule on the subpoena. I think it's totally
18 inappropriate for the Doctor to be placed in a position
19 of having to hire his own attorney to represent his
20 interest at a hearing on such short notice and without
21 having the subpoena served upon him for today.

22 Anyway, I still invite for any non-financial
23 information concerning his opinions in this case, he

1 stands ready to finish that at this point. So that
2 there will not be any type of prejudice whatsoever to
3 the plaintiff concerning what his opinions are
4 concerning the medical issues in this case, he stands
5 ready. If you have any additional questions, I invite
6 you to ask them.

7 MR. STEWART: Simply for purposes of advising
0 the Court when I get there, do you intend to come?

9 MR. HAMILTON: I have no authority to come.
10 I can't argue before the Court.

11 MR. STEWART: Bill, do you intend to come?

12 MR. WHITNEY: I have no plans to attend.

13 MR. STEWART: Doctor, do you have any plans
14 to attend?

15 THE WITNESS: No, I don't. I mean, I don't
16 have anything -- I don't have an attorney. I can't go
17 without having an attorney represent me. I mean, I
10 can't argue.

19 MR. STEWART: Okay. Where did we leave the
20 question of waiver as to this portion of the
21 deposition? Did he waive at the beginning?

22 THE REPORTER: No, he requested to read and
23 sign.

1

MR. STEWART: Let's go off the record now.

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(Off the record discussion)

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(The deposition was adjourned at this time.)

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CERTIFICATE OF WITNESS

I, ELIAS GEORGE CHALHUB, M.D., do hereby certify
that on this the ____ day of _____, 1990, 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
November 6th, 1990.

ELIAS GEORGE CHALHUB, M.D.

subscribed and sworn to before
me this the ____ day of _____, 1990.

Notary Public, State of _____
at Large

My Commission Expires: _____


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

DEPOSITION OF ELIAS CHALUB, M.D.
[Manufacturers Hanover]
[Estate of Rene Aparicio]

TAKEN ON NOVEMBER 6, 1990
by LARRY S. STEWART, ESQ.

Pg/Ln

19/22 Would comment on struggle to get off vent because not a
 neonatologist

47/20 When you are deprived of blood flow, the endothelial cells
 of the capillaries swell, then you can't re-perfuse those.
 And if you can't re-perfuse those with blood which contains
 glucose, then the brain cells will die.

50/4 Babies tolerate hypoxia for an extended period of time
 because their brain is resistant to it; their heart is
 resistant to it

64/15 The baby got pink (it means that the oxygenation was better
 - doesn't mean **the baby got better**)

68/3 I'm a consultant - I don't do primary care

78/3 `86 - `90: 40% to 50% cases a year for the defense

CHALHUB DEPOSITION (APARICIO) 11-6-90

35/19. Mobile infirmary Hosp is a tertiary care hosp.

35/21. It has a neonate uni. (level two).