

CLEVELAND ACADEMY OF TRIAL ATTORNEYS Web

Last Name	Levitt
First Name	Nathan
Specialty	Medical oncologist
Party	Plaintiff <input checked="" type="checkbox"/>
Date (format =99/99/9999)	9/23/03
Type of Document	Articles <input checked="" type="checkbox"/> Deposition <input checked="" type="checkbox"/>
Type of Injury	Lung cancer
Type of Case	Immune
eDocument Name	(d/doi011501.pdf)

Hosted by The Nurenberg, Plevin Law Firm
Copyright © 1999-2001 CATA



<p style="text-align: right;">Page 106</p> <p>1 IN THE COURT OF COMMON PLEAS 2 OF CUYAHOGA COUNTY, OHIO 3 ----- 4 WILLIAM J. GILL, III, Executor 5 of the Estate of 6 DANIEL P. GILL, deceased, 7 Plaintiff, 8 vs. Case No. 457639 9 ROGER A. MANSNERUS, M.D., 10 et al., 11 Defendants. 12 ----- 13 DEPOSITION OF NATHAN LEVITAN, M.D. 14 TUESDAY, SEPTEMBER 23, 2003 15 VOLUME II 16 ----- 17 Deposition of NATHAN LEVITAN, M.D., 18 a Witness herein, called by the Plaintiff for 19 examination under the statute, taken before me, 20 Cynthia A. Sullivan, a Registered Professional 21 Reporter and Notary Public in and for the State 22 of Ohio, pursuant to notice and stipulations of 23 counsel, at the Beachwood Hilton, Dipolmat Room, 24 3663 Park East Drive, Beachwood, Ohio, on the 25 day and date set forth above, at 6:30 p.m.</p>	<p style="text-align: right;">Page 108</p> <p>1 NATHAN LEVITAN, M.D., of lawful age, 2 called for examination, as provided by the Ohio 3 Rules of Civil Procedure, being by me first duly 4 sworn, as hereinafter certified, deposed and 5 said as follows: 6 EXAMINATION OF NATHAN LEVITAN, M.D. 7 BY MR. MISHKIND: 8 Q. Good evening, Dr. Levitan. 9 A. Good evening. 10 Q. We met back on August 22nd, so a 11 little bit over -- what is today's date -- a 12 little bit over a month ago. Hopefully, I will 13 be able to complete the deposition this evening 14 that we weren't able to finish when we were 15 together the last time. 16 The same admonitions apply that I 17 think I gave to you at the beginning of the last 18 deposition. If you don't understand my 19 question, let me know. I will be happy to 20 rephrase the question; okay? 21 A. Yes. 22 Q. Also try as hard as you possibly can 23 to just answer the question that I ask, and 24 we'll hopefully move through this efficiently; 25 okay?</p>
<p style="text-align: right;">Page 107</p> <p>1 APPEARANCES: 2 On behalf of the Plaintiff: 3 Becker & Mishkind Co., LPA, by 4 HOWARD D. MISHKIND, ESQ. 5 Skylight Office Tower 6 1660 West Second Street 7 Suite 660 8 Cleveland, Ohio 44113 9 (216) 241-2600 10 11 On behalf of the Defendant: 12 Reminger & Reminger, by 13 ROBERT D. WARNER, ESQ. 14 1400 Midland Building 15 101 West Prospect Avenue 16 Cleveland, Ohio 44115 17 (216) 687-1311 18 19 ---- 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Yes, sir. 2 Q. First, let me ask you whether you 3 have read over your deposition from August 22nd 4 yet. 5 A. Yes, just briefly. 6 Q. When did you do that, sir? 7 A. Last night. 8 Q. Did you make any notes at all when 9 you read over the deposition? 10 A. No. 11 Q. Did you note when you read it over 12 that there were any substantive errors that 13 stood out in your mind? 14 A. No. 15 Q. Did you make any corrections at all 16 to the transcript? 17 A. No. 18 Q. Are there any corrections that need 19 to be made? 20 A. Not that I noticed. 21 Q. When I read over the deposition, I 22 noted that I had requested that you produce your 23 billing records that you have submitted on this 24 case and provide them at least to Mr. Warner. 25 Do you have them with you today?</p>

Page 110

1 A. Mr. Warner didn't instruct me to do
2 so, so I didn't follow through on anything on
3 that regard.
4 MR. WARNER: Counsel, I would say
5 that I thought you were going to write a letter
6 to me to summarize anything I might have
7 forgotten. I did give you a bill for the depo
8 today from the last time. I'll just reiterate,
9 as many cases as I have going on, I always tell
10 people to write a short letter. You don't have
11 to make a formal request. But if you want
12 copies of all the billings in this case, I will
13 provide them and get them to you. Please, even
14 at the end of this, a one-minute line saying,
15 Rob, get these.
16 Q. Suffice it to say, Doctor, you don't
17 have your billing records with you today;
18 correct?
19 A. Correct.
20 Q. All right.
21 MR. WARNER: My apologies.
22 Q. Doctor, just a couple housekeeping
23 matters. Since August 22nd, 2003, have you
24 given any additional depositions between then
25 and now over the last month?

Page 111

1 A. Yes. I think I've given one in the
2 last month.
3 Q. Have you testified at trial in the
4 last month?
5 A. Yes, on one occasion.
6 Q. Tell me, let's start with the trial
7 testimony first, when and where was that?
8 A. The trial testimony was in Columbus
9 working with an attorney, Mr. Enders, and the
10 deposition was with an Attorney Gray here in
11 Cleveland.
12 Q. What was the subject matter of the
13 trial in Columbus?
14 A. I believe that was a lung cancer
15 case.
16 Q. Was that a nonsmall cell?
17 A. Correct.
18 Q. Did you testify on standard of care
19 and proximate cause in that case or one or the
20 other?
21 A. As I recall, my testimony was
22 exclusively on standard of care -- I'm sorry, on
23 proximate cause.
24 Q. Who was the defendant? What
25 specialty?

Page 112

1 A. I think that he was a radiologist.
2 Q. The reason you didn't provide
3 standard of care testimony was that you don't
4 hold yourself out as an expert in the area of
5 radiology; true?
6 A. I was simply not asked to focus on
7 standard of care in that case.
8 Q. But you and I have had this
9 conversation before, that you don't hold
10 yourself out as an expert in the area of
11 radiology; is that correct?
12 MR. WARNER: Objection. Asked and
13 answered.
14 A. Correct.
15 MR. MISHKIND: No. It wasn't
16 answered, but I appreciate your comment, Rob.
17 Q. So had you been asked to provide
18 testimony on standard of care with regard to the
19 radiologist, you would have indicated that you
20 didn't feel that that was within your area of
21 expertise; correct?
22 A. Correct, for detailed radiology
23 interpretations. Certainly, as a medical
24 oncologist I deal with X-rays all the time, but
25 when it comes to a detailed reading, I would

Page 113

1 defer to the radiologist.
2 Q. Fair enough. What was the name of
3 the plaintiff or defendant or both in that case,
4 please?
5 A. I don't remember. I could probably
6 retrieve that for you, but I don't remember
7 offhand.
8 Q. Was it this month, September?
9 A. It was a couple of weeks ago.
10 Q. It was in Franklin County Common
11 Pleas Court?
12 A. If Columbus is Franklin County,
13 that's right.
14 Q. Do you know what the outcome of that
15 trial was?
16 A. I believe that there was a unanimous
17 verdict for the defense.
18 Q. But you don't remember the name of
19 the doctor?
20 A. I'm not sure of the name of the
21 doctor, no.
22 Q. You don't remember the name of the
23 patient?
24 A. No.
25 Q. The deposition for Mr. Gray was up

2 (Pages 110 to 113)

Page 114

1 here in Cleveland?
2 A. Correct.
3 Q. What firm is Mr. Gray with?
4 A. Sutter something, Sutter O'Connell,
5 I think.
6 Q. Is that a lung cancer case also?
7 A. That was a prostate cancer case.
8 Q. Who is the defendant that you are
9 serving as an expert on behalf of in that case?
10 A. I can tell you that the name of the
11 plaintiff in that case is Hunt, and I believe
12 that the defendant -- the defendants are a group
13 of physicians all of which are being represented
14 by Mr. Gray for multiple specialties.
15 Q. Was your deposition taken by
16 plaintiff's counsel in that case?
17 A. Correct.
18 Q. Who was plaintiff's counsel?
19 A. I'm not sure.
20 Q. Was that in August, or was that in
21 September?
22 A. That was also a couple weeks ago.
23 Q. So since August you've testified
24 once at trial, and you've had your deposition
25 taken one time?

Page 115

1 A. Correct.
2 Q. Have you taken on any new cases to
3 review in the past month?
4 A. No. I haven't taken on any new
5 cases in about the past six months.
6 Q. Again, I'm just talking about the
7 past month. I'm not asking you about five
8 months ago.
9 A. Uh-huh.
10 Q. So the answer in the past month is,
11 no, Mr. Mishkind, I haven't taken any new cases
12 on?
13 A. Same answer.
14 Q. All right. Now, when I took your
15 deposition in August, you indicated that you
16 were scheduled to testify in another trial for
17 Mr. Warner in a cancer case this fall. Are you
18 still scheduled to testify, to your knowledge,
19 coming up in the fall?
20 A. I don't know what the status of that
21 is. I'd have to defer to Mr. Warner in that
22 regard.
23 Q. As you sit here right now, you don't
24 have any knowledge as to whether or not you are
25 in fact scheduled to testify in that matter?

Page 116

1 A. If I recall, I think that case has
2 been put off.
3 Q. Is that a lung cancer case also?
4 A. You know, I'm not sure.
5 Q. Do you remember the name of the
6 doctor that you are testifying on behalf of?
7 A. No. I really focus most of my
8 attention on my medical care, and these details
9 I simply look at before the deposition. I don't
10 retain this information.
11 Q. Doctor, I'm not asking you for a
12 reason for it. I'm just asking you whether or
13 not you know or not. A simple yes or no would
14 be fine.
15 A. I don't recall the details.
16 Q. In the case that you are an expert
17 for Ed Kreiger down in Florida, remember we
18 talked briefly about that case at the time of
19 your last deposition? Do you remember that?
20 A. Yes.
21 Q. That's a nonsmall cell cancer case
22 as well, correct?
23 A. Correct.
24 Q. Do you recall how long of a delay
25 there was between the time that the diagnosis

Page 117

1 was missed to the date that the cancer was
2 discovered?
3 A. No.
4 Q. Are you able to tell me whether it
5 was months or years?
6 A. I don't recall.
7 Q. Is that case set for trial?
8 A. I think sometime in the next
9 calendar year.
10 Q. Are you currently scheduled in any
11 other cases that you're aware of, putting aside
12 the one that you believe with Mr. Warner was
13 postponed, for the balance of this calendar
14 year?
15 A. I think I have a trial at the end of
16 October, but I don't recall the details of that.
17 Q. Do you have any other depositions
18 scheduled within the next 30 to 60 days?
19 A. I think I can think of that I have
20 the second part of a deposition, to which I
21 alluded a few minutes ago, which is upcoming
22 sometime in the next few weeks, but I'm not sure
23 when.
24 Q. Who is that for?
25 A. That is the Attorney Gray

3 (Pages 114 to 117)

Page 118

1 deposition.
2 Q. So that deposition was not
3 completed?
4 A. Correct.
5 Q. When I talked with you back on
6 August 22nd, you indicated to me that you were
7 scheduled to have your deposition taken in a
8 case that you are serving as an expert at the
9 request of Defense Attorney Murray Lenson and
10 that that deposition was scheduled for the month
11 of September, either on the 8th or the 30th.
12 You weren't quite certain when you looked at
13 your pocket calendar.
14 Do you know what happened with that
15 deposition?
16 A. I think that case was settled.
17 Q. So your deposition at the request of
18 Mr. Lenson was not taken in September?
19 A. I'm trying to remember. Actually,
20 come to think of it, I had the deposition, and
21 then very shortly thereafter the case was
22 settled.
23 Q. Your deposition was taken on
24 September 8th, wasn't it?
25 A. I don't recall the date.

Page 120

1 an attorney at the Reminger firm in the case of
2 Coon. Remember, you told me that you were
3 serving as an expert for Attorney Mingus in a
4 matter by the name of Coon, C-O-O-N?
5 A. Okay.
6 Q. But you couldn't remember exactly
7 when the deposition was taken. Do you have any
8 better recollection as to the subject matter of
9 that case?
10 A. I do not.
11 Q. Or when your deposition was taken?
12 A. I do not.
13 Q. When I took your deposition on
14 August 22nd, I asked you whether you had ever
15 testified on behalf of a plaintiff in a nonsmall
16 cell lung cancer case other than the Montgomery
17 County, the Dayton, Ohio, case, and you
18 indicated that you were sure that one existed,
19 but you couldn't recall offhand the name of any
20 case.
21 Do you have any better recollection
22 today as to the name of any other cases
23 involving nonsmall cell lung cancer that you
24 have testified on behalf of a plaintiff at any
25 time during your career?

Page 119

1 Q. That was a lung cancer case also,
2 wasn't it?
3 A. I'm not sure. I don't remember.
4 Q. But you do remember working at the
5 request of Mr. Lenson; correct?
6 A. Yes.
7 Q. He was defending a doctor; correct?
8 A. Actually, he was defending a lawyer.
9 Q. This was a legal malpractice case?
10 A. Yes. It was a legal malpractice
11 case.
12 Q. Arising out of a medical malpractice
13 case?
14 A. Correct.
15 Q. The subject matter of the medical
16 malpractice had to do with a cancer matter;
17 correct?
18 A. Correct.
19 Q. That was a lung cancer; correct?
20 A. I'm not certain.
21 Q. Do you remember the name of the
22 doctor that was involved in that case?
23 A. I don't.
24 Q. When I took your deposition in
25 August, we talked about Attorney Mingus who is

Page 121

1 MR. WARNER: Note my objection.
2 Asked and answered. Go ahead and answer again.
3 A. Well, the Kreiger case is a nonsmall
4 cell lung cancer case that we have discussed
5 this evening that is on behalf of the plaintiff.
6 Q. You haven't testified at trial,
7 though, at this point?
8 A. Correct.
9 Q. Other than the Kreiger case and this
10 case in Montgomery County, have there been any
11 other cases that you've served as plaintiff's
12 expert and testified at trial in a nonsmall cell
13 lung cancer case?
14 A. I don't specifically recall.
15 Q. Are there any cases where you have
16 served as an expert for plaintiff in a nonsmall
17 cell lung cancer case other than for Mr. Kreiger
18 or in the Montgomery County matter where your
19 deposition was taken as a plaintiff's expert?
20 A. You know, I just don't retain that
21 information. I don't recall.
22 Q. Have you reviewed any literature
23 since our deposition that would be relevant to
24 this case?
25 A. That's a very broad question. I

4 (Pages 118 to 121)

Page 122

1 think, as I said last time, I read scores of
2 articles every week, and certainly some of those
3 have to do with lung cancer, but I can't
4 specifically cite you a particular reference.
5 Q. If you remember, I asked you whether
6 or not you were going to take the witness stand
7 and testify that a particular article or a
8 particular chapter in a book was authoritative
9 or generally reliable as it relates to the
10 subject matter in this case, and you told me at
11 the time of your deposition that you had no
12 intention of doing that. Do you remember that?
13 MR. WARNER: Note my objection.
14 Asked and answered.
15 A. I stand by the information that I
16 gave you last time.
17 MR. WARNER: Counsel, to make it
18 easier, all his answers stand as previously
19 indicated.
20 MR. MISHKIND: Rob --
21 MR. WARNER: If there are any
22 changes, I will let you know. But as far as I'm
23 concerned, everything stands that he previously
24 testified to.
25 MR. MISHKIND: Are you done? You

Page 124

1 the one that I had at the time of your
2 deposition, and I think you told me that in your
3 updated CV that you have articles that deal with
4 nonsmall cell cancer?
5 A. I don't recall whether any have been
6 published specifically since June of 2002, so I
7 can't tell you.
8 Q. Take a look at your CV. First, tell
9 me, do you have a more current CV than the June
10 2002 edition?
11 A. Yes. I think my secretary prepared
12 a new one in April.
13 Q. April of 2003?
14 A. Correct.
15 Q. Do you have any --
16 A. I'll be glad to provide you with
17 that.
18 Q. Do you have any explanation for why
19 when I asked for an updated CV I was provided
20 with one from June of 2002?
21 A. I'm afraid I don't.
22 Q. If you'll look at the June 2002 CV,
23 could you tell me whether or not any of the
24 articles pertain to nonsmall cell lung cancer?
25 A. You mean any of the articles that

Page 123

1 know, if you want to make a statement, go ahead.
2 MR. WARNER: So far we've been here
3 for 20 minutes, and you haven't asked a single
4 question about this case.
5 MR. MISHKIND: Rob, do me a favor,
6 make an objection if you want to, but don't make
7 speeches.
8 MR. WARNER: Objection.
9 Q. I want to make sure that between
10 August and now that there aren't any articles or
11 book chapters or journal articles or abstracts
12 that you intend to testify to at the time of
13 trial that you consider to be authoritative or
14 generally reliable on the topics that are
15 relevant to your opinions in this case.
16 MR. WARNER: Objection. Asked and
17 answered. Answer again.
18 A. As we sit here today, I have no
19 plans to cite any specific references during
20 trial testimony.
21 Q. As being authoritative; correct?
22 A. Or in any other fashion.
23 Q. Actually, Doctor, Mr. Warner
24 provided me with your updated CV. It's actually
25 dated June 10, 2002, which is more current than

Page 125

1 might have been published since that time; is
2 that your question?
3 Q. Well, the original question that I
4 asked you was to identify any articles that
5 specifically dealt with nonsmall cell lung
6 cancer in your CV from the previous deposition
7 which was an old CV, and you told me that your
8 more current CV had articles that you have
9 written on nonsmall cell lung cancer.
10 I want to find out whether or not
11 this CV which was provided to me, which isn't
12 the most current one, whether or not the June
13 2002 has any references that you have written on
14 the topic of nonsmall cell lung cancer?
15 A. So your question is, looking at all
16 of the publications here, which of these in the
17 June 2002 CV pertain to nonsmall cell lung
18 cancer? You'd like me to go through them and
19 identify those that pertain to nonsmall cell
20 lung cancer?
21 Q. Sure.
22 A. Some of the patients I believe in
23 reference No. 9, I'm not certain, but I think
24 some of those patients had nonsmall cell lung
25 cancer.

5 (Pages 122 to 125)

Page 126

1 Q. That's reference 9 on page --
2 A. Seven. I have to verify that, but I
3 think that's true. Reference 12 on page 7
4 pertains to nonsmall cell lung cancer.
5 Reference 13 on page 7 pertains to nonsmall cell
6 lung cancer. Reference 17 on page 8 pertains to
7 nonsmall cell lung cancer. Reference 20 on page
8 8, reference 7 on page 9, and reference 8 on
9 page 9. Reference 10 on page 10, reference 17
10 on page 10, reference 19 on page 11, many of the
11 patients in reference 20 on page 11, many of the
12 patients in reference 21 on page 11, and
13 reference 23 on page 11. I think that does it.
14 Q. Doctor, what I'd ask you to do, if
15 you would, please, is to provide the most
16 current CV that you have prepared and send a
17 copy of that or e-mail a copy of that to
18 Mr. Warner.
19 My understanding is that on the
20 record you represented that April of '03 is what
21 you believe to be the most current edition?
22 A. Correct.
23 Q. Thank you. Doctor, in June of 2000
24 when Mr. Gill presented to Dr. Mansnerus, was
25 there anything from your review of the records

Page 128

1 might have had fibromyalgia, that he might have
2 had asthmatic bronchitis. He doubted that the
3 patient had coronary artery disease. He planned
4 on that day to observe the patient, to consider
5 a chest X-ray, and to obtain further testing if
6 the patient was not better in two weeks.
7 Q. A chest X-ray wasn't ordered at that
8 time, was it?
9 A. Correct. He said consider chest
10 X-ray.
11 Q. Do you know what he meant when he
12 said consider chest X-ray?
13 A. No.
14 Q. When you read his deposition, were
15 you able to get a better sense as to what he
16 meant by consider chest X-ray?
17 A. I don't recall that aspect of his
18 deposition.
19 Q. Fair enough. Is there any
20 indication in June of 2000 that the defendant
21 doctor examined in the neck area or palpated in
22 the neck area the lymph nodes?
23 A. You mean was there a palpably
24 enlarged lymph node documented in the chart?
25 Q. Is there any indication that the

Page 127

1 of the doctor or his deposition testimony that
2 was concerning in terms of his presentation to
3 Dr. Mansnerus?
4 A. I'm not sure what you mean.
5 Q. Is there anything from a clinical
6 standpoint in June of 2000 that Dr. Mansnerus
7 noted in his records that was concerning from a
8 clinical standpoint or of significance from a
9 clinical standpoint?
10 A. Well, the notes that I have don't
11 really reference necessarily what was going on
12 in Dr. Mansnerus' head, so I can't answer that,
13 but I have summarized some of the clinical
14 details, and that's all I can refer to.
15 Q. What do you make of the June visit
16 to Dr. Mansnerus in terms of the clinical
17 findings that are noted in the record?
18 A. The patient complained of dyspnea on
19 exertion and pain in the left chest, he had a
20 slight cough, had a decrease in exercise
21 capacity, and on examination there was
22 tenderness in the left supraclavicular region,
23 the left neck area.
24 It was the impression, according to
25 my notes, of Dr. Mansnerus that the patient

Page 129

1 doctor palpated or looked for in his clinical
2 assessment whether or not there was any lymph
3 node involvement?
4 A. He did examine the base of the neck
5 area, so that is an area that can contain lymph
6 nodes. That's the best I can answer your
7 question.
8 Q. In his note, though, he doesn't
9 indicate that there was any nodal involvement
10 from a clinical standpoint during his physical
11 exam; true?
12 A. Just tenderness in the area where
13 there are nodes.
14 Q. I believe it's your opinion that he
15 had a metastatic tumor mass that was present in
16 the neck at the time of that June visit;
17 correct?
18 A. I believe that there was a tumor in
19 the nodes in the neck at that time, correct.
20 Q. Can we agree that there is no
21 indication in Dr. Mansnerus' record that he had
22 under consideration the possibility of any
23 metastatic or cancer in the neck area as a
24 possible explanation for the patient's symptoms?
25 MR. WARNER: Objection.

6 (Pages 126 to 129)

Page 130

1 A. All I can say is he didn't note that
2 in his June 22nd note.

3 Q. Fair enough. From the deposition,
4 is there any indication that as of June 22nd he
5 had an index of suspicion that the patient's
6 clinical findings and his subjective complaints
7 might be consistent with some tumor involvement?

8 A. I don't specifically recall that
9 portion of his deposition.

10 Q. If one were examining a patient
11 where there was an index of suspicion that there
12 might be a tumor mass present in the neck area
13 associated with tenderness by the patient's
14 subjective complaint, how would a clinician go
15 about examining for the existence of a tumor
16 mass?

17 MR. WARNER: Objection.

18 A. I'm sorry. I don't understand your
19 question.

20 Q. If a patient complains of tenderness
21 in the neck and there's an index of suspicion on
22 the clinician's part that the tenderness in the
23 neck is associated with a tumor mass, from the
24 standpoint of your clinical exam, what do you
25 feel for? What do you do to correlate the

Page 132

1 Q. It is a patient that has not had a
2 diagnosis of cancer yet but presents with
3 complaints of left neck pain, and tenderness in
4 the neck is present, and you at least in your
5 mind are questioning whether or not the
6 tenderness in the neck is associated with some
7 underlying tumor mass.

8 MR. WARNER: Note my objection.
9 He's an oncologist. Most of the patients he's
10 going to see have, in fact, cancer.

11 MR. MISHKIND: Object and don't make
12 speeches, please.

13 A. The problem with your hypothetical
14 question is that there would be no reason, given
15 the scenario that you've described, that I would
16 have an index of suspicion for malignancy.

17 Q. Why?

18 A. Because you haven't given me reason
19 to suspect malignancy based on the scenario that
20 you have presented.

21 Q. If you happen to examine a patient
22 that previously does not have a diagnosis of
23 malignancy but presents with complaints of neck
24 pain, and you palpate the area where the neck
25 pain is located and you discover that there's a

Page 131

1 patient's symptoms with your concern or
2 suspicion that there might be a tumor mass?

3 MR. WARNER: Note my objection.
4 We've already indicated that the doctor is here
5 on a proximate cause issue, and the prior
6 two-and-a-half hours he talked about not having
7 opinions on standard of care. That sounds like
8 a standard of care question to me as to what a
9 physician should or shouldn't do in a particular
10 circumstance.

11 Note my objection. I think it's
12 outside the scope.

13 MR. MISHKIND: That's fine.

14 Q. Go ahead, Doctor.

15 A. So your hypothetical situation is,
16 I'm examining a patient who I know has cancer,
17 and I think that he or she might have
18 involvement of lymph nodes in the neck, how
19 would I examine that patient?

20 Q. No. That's not my question. If you
21 have an index of suspicion that the patient may
22 have a tumor mass.

23 A. I don't know what you mean by index
24 of suspicion. Is it a patient with cancer or
25 without cancer?

Page 133

1 tumor mass in that area, how do you go about
2 from a physical standpoint detecting that tumor
3 mass?

4 Is that something that you'd
5 physically be able to feel potentially, or is
6 that something that would only be discoverable
7 on diagnostic studies?

8 A. Well, it all depends on how large
9 the tumor mass is and how superficial or deep it
10 is.

11 Q. Is there any indication in the
12 record that Dr. Mansnerus had any index of
13 concern that the patient might have a tumor mass
14 as of June of 2000?

15 MR. WARNER: Objection. Asked and
16 answered.

17 A. I think you already asked me that
18 question, but I'll answer it the same way I did
19 before which is to say that I don't know what
20 was in his head. I only know what was written
21 in the record, and I have made my own notes
22 about that. As we discussed a few minutes ago,
23 there's no indication based on my notes
24 concerning the June 22nd, 2000, interaction that
25 there was any explicit suspicion of malignancy.

7 (Pages 130 to 133)

Page 134

1 Q. When was Mr. Gill scheduled to be
2 seen again by Dr. Mansnerus?
3 A. I know that in his note he said that
4 if not better, additional testing in two weeks,
5 and I know that the patient was actually seen
6 next on July 19th. Now, what actually happened
7 with the scheduling details, I can't tell you.
8 Q. You don't know whether this was a
9 previously scheduled visit or whether the
10 patient came in because of some increase in
11 symptoms as opposed to having that as a
12 scheduled visit?
13 A. Again, in my focus in reviewing this
14 case, there was no reason to have made notice of
15 such details.
16 Q. Fair enough. Doctor, we can agree,
17 and I think we talked about this previously,
18 that when Mr. Gill was diagnosed, he was a
19 Stage IV nonsmall cell lung cancer; correct?
20 A. Correct.
21 Q. The diagnosis was not made until he
22 in fact was a Stage IV cancer, lung cancer;
23 correct?
24 A. Correct.
25 Q. If Mr. Gill's nonsmall cell lung

Page 136

1 nodal involvement in it as opposed to -- let me
2 just leave it at that.
3 If you have advanced lung cancer and
4 you're able to on physical exam palpate or touch
5 and appreciate the nodal involvement, what does
6 it feel like?
7 A. It's highly variable.
8 Q. In a nonsmall cell lung cancer, does
9 it have any particular characteristics?
10 A. It's, again, highly variable.
11 Q. In Mr. Gill's nonsmall cell lung
12 cancer where there was nodal involvement at the
13 advanced stage of his cancer, can you tell me
14 what that likely would have felt like?
15 A. I can't generalize.
16 Q. I'm just trying to understand. Let
17 me ask you, why can't you generalize?
18 A. I don't know how to answer your
19 question.
20 Q. What does advanced nodal involvement
21 in a metastatic lung cancer in the neck area,
22 what might it feel like?
23 MR. WARNER: Objection. Asked and
24 answered. Go ahead.
25 A. There can be tenderness without a

Page 135

1 cancer was less than 3 centimeters in the left
2 upper lobe when it was first diagnosed and there
3 was no evidence of nodal involvement, what stage
4 would you describe the patient to be in?
5 A. You're saying theoretically speaking
6 if a patient is diagnosed with a less than
7 3 centimeter tumor on CT with no evidence, no
8 radiographic evidence, of lymph nodes and no
9 radiographic evidence of distant metastases,
10 what stage is that?
11 Q. Yes.
12 A. That is a T1, M0, cancer.
13 Q. In an otherwise healthy patient, is
14 that the stage that you have a 60 to 80 percent
15 five-year survival likelihood?
16 A. Correct.
17 Q. Thank you. When one talks about
18 nodal involvement, are there occasions where you
19 as a clinician can palpate the area and
20 appreciate the nodal involvement?
21 A. When that occurs in the case of lung
22 cancer, it is usually extraordinarily advanced
23 nodal involvement.
24 Q. Is there a way that you describe
25 what you feel when you palpate an area that has

Page 137

1 discernible mass. There can be multiple
2 subcutaneous nodular areas. There can be
3 generalized thickening. There can be a discrete
4 palpable mass. A whole variety of presentations
5 can occur.
6 Q. In June, according to Dr. Mansnerus'
7 records, did he perform an exam of the lymph
8 nodes?
9 MR. WARNER: Objection. Asked and
10 answered. Go ahead and answer.
11 A. I don't know how complete an exam he
12 performed. All I know is he found tenderness in
13 the left neck area.
14 Q. His written record, which presumably
15 was prepared at the time of the events of that
16 examination and long before any lawsuits were
17 under consideration and attorneys were involved,
18 do you see anything in that written record that
19 describes examination of the lymph nodes?
20 A. Not that I recall.
21 Q. Is there a difference between
22 microscopic metastases and clinically
23 significant metastases?
24 A. I don't know what you mean by the
25 second term.

8 (Pages 134 to 137)

Page 138

1 Q. Can a patient have micrometastases
2 of cancer cells in the bloodstream and not
3 necessarily develop clinically significant
4 metastases?
5 A. I don't know what you mean. I'm
6 sorry.
7 Q. When a patient has a primary tumor,
8 how does the process of metastases from that
9 primary tumor originate?
10 A. Spread can occur in three ways; by
11 direct extension, through the lymphatic system,
12 or through the bloodstream.
13 Q. Do you have an opinion in this case,
14 first, whether or not the lung cancer was the
15 primary tumor?
16 A. I believe that the lung cancer was
17 the primary tumor.
18 Q. Do you have an opinion as to how the
19 patient developed metastases in this case?
20 A. I believe that the tumor spread both
21 through the lymphatics and through the
22 bloodstream.
23 Q. When tumor cells are shed or are
24 spread through the bloodstream, does one
25 automatically form some distant metastases of

Page 140

1 A. I'm not familiar with such
2 literature.
3 Q. Does the body have an ability to
4 fight cancer cells that are spread either
5 through the lymphatic system or spread through
6 the bloodstream?
7 A. Theoretically, that can occur.
8 Q. In fact, in healthy individuals
9 theoretically one's body has a better ability to
10 fight off cancer cells that are shed through the
11 lymphatic system or the bloodstream than someone
12 who has any type of autoimmune or other
13 compromised systemic health status, if you will?
14 A. Well, that discussion usually occurs
15 not regarding spread of cancer from a primary
16 site. That discussion of immune surveillance
17 really refers to the formation of the first
18 nascent tumor cell.
19 In other words, to apply that to a
20 discussion of spread from a primary site to
21 distant organs is really not the correct use of
22 that terminology. It's really about the
23 formation of a single neoplastic cell.
24 Q. Did Mr. Gill have metastases to the
25 hilar nodes?

Page 139

1 that cancer?
2 A. So you're saying can we determine if
3 patients have microscopic tumor cells in the
4 bloodstream and subsequently do not develop
5 growth of those metastases into clinically
6 detectable lesions; is that your question?
7 Q. Not exactly. Let me rephrase it so
8 that we're on the same page. Is it fair to say
9 that not every patient that has cancer cells in
10 their bloodstream will go on to develop a
11 metastasis from a primary site?
12 A. How would we ever know that? You
13 couldn't test that.
14 Q. What is the process? How many
15 cancer cells are required to form a distant
16 metastases?
17 A. Well, theoretically one, although in
18 general multiple tumor cells would spread at a
19 time. But frankly, we don't know that.
20 Q. Well, are you familiar with any
21 literature that talks about the number of cancer
22 cells or tumor cells that are actually shed
23 before one actually gets set up and succeeds, if
24 you will -- that's probably a poor choice of
25 terms -- but succeeds in forming a metastasis?

Page 141

1 A. Well, given the fact that he had
2 such massive involvement of supraclavicular and
3 mediastinal nodes, and given the fact that
4 lymphatic spread would generally occur to the
5 hilar nodes first, we can infer that he must
6 have had involvement of the hilar nodes; but to
7 my knowledge, discrete hilar nodes were not
8 seen.
9 But it's also important to clarify
10 that when the PET scan showed increased uptake
11 in the mediastinum, it can be very difficult to
12 differentiate mediastinal from hilar nodes on
13 PET scan. Hilar nodes are a little bit more
14 lateral, but the mediastinal involvement could
15 certainly have masked those. So I think it's
16 overwhelmingly likely that he had hilar node
17 involvement even though we didn't see it
18 discretely described on the PET scan.
19 Q. You mentioned at the very beginning
20 of that statement that he had massive
21 involvement, and I didn't catch it. Massive
22 involvement of what?
23 A. Well, we know he had a 10 by 12
24 centimeter palpable -- let me look at my notes
25 here -- actually, excuse me, the CT scan from

9 (Pages 138 to 141)

Page 142

1 7-25-2000 did describe enlarged hilar nodes, so
2 it was not only the 4.5 centimeter mass in the
3 left upper lobe, but this also described both
4 mediastinal and hilar nodes at that time.
5 Q. Doctor, I want to go back to my
6 question. You said massive involvement, and you
7 started to describe something, and I want to
8 find out what massive involvement you were
9 referring to.
10 A. Yes. He had a left cervical mass
11 that was described on July 25th as being 4 by 3
12 centimeters that was palpable. This was
13 basically above or into the external regions.
14 There's a lot more inside.
15 The otolaryngology note from
16 7-28-2000 described a 4 by 4 centimeter mass in
17 the region of the sternocleidomastoid muscle on
18 the left, and on 8-16-2000 the exam described a
19 10 by 12 -- 10 to 12 centimeter mass at the
20 junction of the left sternocleidomastoid muscle
21 with the clavicle.
22 This is all, given observer
23 variability and measurement, extraordinarily
24 massive lymph node involvement.
25 Q. This was something that was

Page 144

1 without question, there was massive disease
2 there at that time.
3 Q. When we talk about several days,
4 we're talking about the difference between
5 June 22nd and the end of July?
6 A. Correct, three-and-a-half weeks,
7 essentially.
8 Q. Approximately a month?
9 A. Correct. That's right.
10 Q. If I understand your testimony
11 correctly, other than with some inflammatory
12 involvement having taken place, you would expect
13 that the mass that's described at the end of
14 July would likely have been palpable in the left
15 neck region a month earlier; true?
16 MR. WARNER: Objection.
17 A. I didn't exactly say that. I said
18 that without question there was massive lymph
19 node involvement back in June, and I believe
20 that the tenderness in that region documented on
21 examination on that day was a manifestation of
22 that same involvement. I can't tell you whether
23 a full lymph node examination was done on that
24 day, and I can't tell you whether the nodes were
25 actually palpable on that day.

Page 143

1 palpable? In other words, the clinician was
2 able to touch and appreciate it without much
3 question; is that a fair statement?
4 A. Correct.
5 Q. This was in the area of the neck on
6 the left side?
7 A. Correct.
8 Q. Was this mass in your opinion likely
9 palpable back in June just a month or a
10 month-and-a-half earlier?
11 A. If one was specifically looking for
12 it, I find it hard to believe that a mass would
13 be palpable that's 3 centimeters on June 19th
14 and it would have been completely undetectable
15 on June 22nd, but I think that the tenderness on
16 June 22nd was the same process.
17 Q. So on June 22nd, do you believe
18 that, I just want to make sure, that he did have
19 a palpable mass in the left neck region?
20 MR. WARNER: Objection.
21 A. He certainly had bulky adenopathy in
22 the left neck region. Now, whether some
23 inflammation occurred that caused this to
24 balloon up and be somewhat more prominent over
25 the next several days, I can't answer that. But

Page 145

1 Q. Can you tell me when Mr. Gill had
2 metastasis to the femur?
3 A. Well, we know that this was
4 radiographically documented in August, and in
5 order for it to be radiographically visible,
6 there has to be a significant size lesion there.
7 It certainly -- we don't have a measurement, so
8 it certainly was growing over a period of many
9 months, but I can't give you a distinct date.
10 Q. Other than saying many months?
11 A. Correct.
12 Q. So that I don't have to belabor
13 this, are you going to be able to quantify that
14 with any greater specificity at the time of
15 trial other than just saying many months?
16 A. I think it's much easier to say that
17 this extensive lymph node involvement was
18 counted in years, not months. But as far as the
19 lesion on bone scan in the femur, I can't tell
20 you exactly how old it was.
21 Q. Fair enough.
22 A. Recalling of course that these
23 cancers grow extraordinarily slowly and nothing
24 happens in a month in terms of cancer natural
25 history.

10 (Pages 142 to 145)

Page 146

1 Q. Can you diagnose lung cancer through
2 an X-ray?
3 A. Well, you can only diagnose any
4 cancer with a tissue biopsy.
5 Q. Can you have a suspicion that a
6 patient has lung cancer by looking at a chest
7 X-ray?
8 A. On occasion.
9 Q. You would agree then that it can
10 make you suspicious that a patient has lung
11 cancer by seeing certain shadows or certain
12 appearances on a chest X-ray?
13 A. I would say that some lung cancers
14 are radiographically visible on a chest X-ray;
15 others are not.
16 Q. Is a nonsmall cell lung cancer
17 radiographically detectable on a chest X-ray?
18 A. Sometimes.
19 Q. Do you know whether or not in this
20 case Mr. Gill's nonsmall cell lung cancer was
21 radiologically detectable on chest X-ray?
22 MR. WARNER: Objection. That's an
23 unfair question since your expert lost the
24 X-rays.
25 Q. Go ahead.

Page 148

1 question.
2 Q. Which is it can, nonsmall cell lung
3 cancer can have an appearance on chest X-ray
4 that would make one suspicious that the patient
5 may have lung cancer; correct?
6 MR. WARNER: Same objection.
7 A. It can, but it doesn't have to.
8 Q. I understand. But certainly you
9 can't rule out the possibility that a nonsmall
10 cell lung cancer on X-ray gives -- strike that.
11 If you have a suspicion that the
12 patient has nonsmall cell lung cancer based upon
13 an appearance on chest X-ray, typically that
14 would launch you off to do other studies to
15 reach a definitive diagnosis; correct?
16 A. It depends on the appearance. Very
17 often we'll give the patient a trial of therapy
18 for benign conditions and then see the patient
19 in follow-up a couple of months later.
20 Q. But ultimately, if you have a
21 suspicion that the patient does have lung
22 cancer, the normal process is that you would
23 launch off to do other studies to rule out or
24 confirm the existence of cancer; correct?
25 A. So you're saying if we don't feel

Page 147

1 A. Well, in retrospect, we don't know
2 that. We know that there was an impression of a
3 left upper lobe pneumonia on the 12-30-99 chest
4 X-ray. We don't know whether that represented
5 cancer itself or whether it was a pneumonia in
6 association with a cancer. We don't know that.
7 Q. What about the presence of pneumonia
8 without evidence of cancer as of December of
9 1999?
10 MR. WARNER: Same objection.
11 A. What do you mean, what about it? I
12 don't follow your question.
13 Q. Do you have any reason to believe
14 that Mr. Gill did not have pneumonia in December
15 of 1999?
16 MR. WARNER: Objection.
17 A. I believe he did have pneumonia in
18 December of 1999.
19 Q. Let me ask you this, Doctor, when an
20 X-ray is taken, I think you said on occasion one
21 can become suspicious by looking at the chest
22 X-ray based upon the appearance of the film as
23 to whether or not that patient may have lung
24 cancer; correct?
25 A. I stand by my prior response to your

Page 149

1 that there's a potential of a benign process
2 that would resolve with conservative therapy, if
3 we had no thought in our mind that that might be
4 going on, would we then proceed with additional
5 tests immediately? The answer is yes. But
6 otherwise, we would try to treat a possible
7 infection or congestive heart failure or
8 whatever else might be going on before doing
9 additional testing.
10 Q. Mr. Gill didn't have any evidence of
11 congestive heart failure, did he?
12 A. Not that I'm aware of.
13 Q. If a follow-up chest X-ray had been
14 ordered and performed at the end of January or
15 early part of February, do you have an opinion
16 as to what that X-ray in this case likely would
17 have shown?
18 MR. WARNER: Note my objection. It
19 goes back again to the same root, that we don't
20 have that original X-ray.
21 MR. MISHKIND: That's fine.
22 A. That's an awfully vague question. I
23 don't know what the original X-ray showed. I
24 don't know why a repeat would have been done.
25 What about antibiotics? There are so many

11 (Pages 146 to 149)

Page 150

1 variables there.
2 Q. So you can't answer my question as
3 stated?
4 A. Ask me once more.
5 Q. If a follow-up X-ray had been
6 ordered and performed at the end of January or
7 early part of February, in light of what we know
8 was diagnosed in this case in July, do you have
9 an opinion as to what that X-ray likely would
10 have shown?
11 A. Well, if we hypothesize that the
12 infiltrate seen on the December 30th, 1999,
13 X-ray was not a pneumonia but actually the
14 cancer, we don't know that, but let's
15 theoretically hypothesize that that was the
16 case, then that probably would not have improved
17 with antibiotics, and it probably would have
18 been again visible on a subsequent X-ray. But,
19 you know, there's so many hypotheticals in that
20 answer that one can't rely on it.
21 Q. If you have an X-ray where there is
22 a suspicion of pneumonia, have you in your
23 practice seen in follow-up X-rays where there's
24 resolution of the pneumonia, but yet there is
25 evidence of some persistent infiltrate or

Page 152

1 Q. What does your time line show for
2 December?
3 A. My note says December 30th, 1999,
4 four-day history of cough, yellow-green sputum,
5 nonpleuritic substernal chest soreness, sore
6 throat, fatigue, malaise, lungs clear, fever
7 101.4. Impression, viral bronchitis or
8 bronchitis/upper respiratory infection. Rule
9 out pneumonic. Plan chest X-rays.
10 Q. In the interpretation of the chest
11 X-ray, is the patchy infiltrate in the left
12 upper lobe suggestive of pneumonia?
13 A. That's my understanding.
14 Q. The radiologist indicated, suggest
15 follow-up radiographs to document clearing;
16 correct?
17 A. I don't have that in my notes. I
18 believe you, but I don't have it in my notes.
19 Q. All right. In your notes is there
20 any indication that Dr. Mansnerus listened for a
21 heart murmur?
22 A. Well, again, I wasn't asked to focus
23 on standard of care, so I didn't pay attention
24 to those details.
25 Q. If a CAT scan, CT scan, had been

Page 151

1 something that causes you to raise a suspicion
2 that the patient may have a neoplasm?
3 A. So you're saying your theoretical
4 situation is a patient presents with an
5 infiltrate and clinical signs of pneumonia and
6 we treat with antibiotics, and then we wait the
7 requisite two months to repeat an X-ray, that
8 interval being what's generally required for a
9 pneumonic infiltrate to resolve, and then
10 there's residual abnormality, can that raise
11 concern for something noninfectious being
12 present in the lung? The answer is yes.
13 MR. WARNER: Can we take a break?
14 MR. MISHKIND: Sure.
15 (Brief recess.)
16 Q. I want to ask a couple questions
17 about the December 30th examination by
18 Dr. Mansnerus and the significance of that.
19 From your review of the record, is there any
20 indication that Dr. Mansnerus examined the lymph
21 nodes in the neck in December?
22 MR. WARNER: Objection.
23 A. You know, I didn't pay attention to
24 that. If you want to pull out the records, I'd
25 be glad to look at it.

Page 153

1 ordered or if there was reason to order a CT
2 scan during the interval between January and
3 prior to July of 2000, would the diagnosis of
4 Mr. Gill's lung cancer likely have been made
5 earlier than it was?
6 A. I think that that is probably the
7 case.
8 Q. If a chest X-ray has an appearance
9 that causes one to suspect or at least have an
10 index of concern that there may be a neoplasm
11 and you want to then go on to the next
12 diagnostic study to rule out or confirm the
13 presence of lung cancer, is the CT scan the next
14 diagnostic tool in the line of the tools that
15 you use?
16 A. You mean after you've treated with
17 antibiotics for suspected pneumonia and waited a
18 couple of months and repeated a chest X-ray in
19 your hypothetical and then there's still an
20 abnormality that persists, what's the next test?
21 Q. I'm going to state it this way. If
22 you have an X-ray and you have a patient with
23 pneumonia on X-ray and you treat for whatever
24 period of time, you've used several months, but
25 I'm going to say whatever the standard of care

12 (Pages 150 to 153)

Page 154

1 dictates that a repeat chest X-ray should be
2 done, and that repeat chest X-ray then has some
3 suspicious findings on it, is the next tool that
4 is used to rule out or confirm lung cancer a CT
5 scan?
6 A. Well, the interval is actually
7 important because I wouldn't jump to a CT scan
8 in a patient recovering from pneumonia until
9 that two-month period and a repeat chest X-ray
10 had occurred because premature expectation of
11 resolution of a pneumonia is not an appropriate
12 reason to go ahead and get a CAT scan.
13 Q. Well, Doctor, I want to concentrate
14 on just my question because you've made it very
15 clear that you've not been asked and don't
16 intend to testify on standard of care issues, so
17 I don't want to put you in a position where I
18 have to start asking you standard of care
19 questions.
20 A. But you are asking me standard of
21 care questions.
22 Q. No, I am not.
23 MR. WARNER: I noted my objections
24 earlier, but Counsel persists.
25 Q. No. No. No. Doctor, you volunteer

Page 156

1 use, couldn't you?
2 MR. WARNER: Objection. Asked and
3 answered.
4 A. I'm doing my very best to answer
5 your questions fully.
6 Q. Doctor, you're doing the very best
7 to answer them the way you want to answer them.
8 MR. WARNER: I think you're being
9 argumentative.
10 MR. MISHKIND: That's fine. I'll
11 move on.
12 MR. WARNER: I don't think we need
13 to get into that.
14 MR. MISHKIND: That's fine. I'll
15 save it for trial.
16 Q. Do you have an opinion as to when
17 Mr. Gill first developed the lung cancer?
18 MR. WARNER: Objection. Asked and
19 answered. Go ahead and answer again.
20 A. Well, we know that lung cancers
21 develop over a period of many years.
22 Q. In this case, Doctor, do you have an
23 opinion as to when Mr. Gill's lung cancer
24 developed? I want you to just deal with
25 Mr. Gill and answer my question. You either do

Page 155

1 things when you feel that it's appropriate to do
2 it, but you don't when you don't feel it's
3 appropriate.
4 All I'm asking is, after a repeat
5 chest X-ray is done, if one has a suspicion that
6 there is cancer, lung cancer, is a CT scan the
7 next test that is normally used?
8 A. I stand by my prior answer.
9 Q. No. I'm not going to have you stand
10 by it.
11 Is a CT scan the next test after a
12 chest X-ray, or are there other tests that can
13 be used? Do you go directly to a biopsy, or is
14 a CT scan the normal algorithm, if you will,
15 after a chest X-ray?
16 A. If you have waited the proper period
17 of time for that abnormality on the chest X-ray
18 to resolve, which is generally a couple of
19 months, and then you do a repeat chest X-ray and
20 it shows a persistent abnormality that could be
21 consistent with cancer, then the next
22 appropriate test is a CT scan.
23 Q. Without going into all those
24 explanations, you could have just said, yes, the
25 CT scan would be the appropriate next test to

Page 157

1 or you don't.
2 A. I think we have to go back at least
3 five or six years from the point of diagnosis to
4 the formation of the first cancer cell.
5 Q. So that it's your opinion that
6 Mr. Gill's cancer was five or six years old at
7 the time?
8 A. At least.
9 Q. Five or six years old at least at
10 the time that the diagnosis was made?
11 A. Correct.
12 Q. Just a couple more minutes, Doctor,
13 and then we will be done. Do you practice
14 primary care medicine?
15 A. For my cancer patients, yes.
16 Q. Do you act as a primary care doctor
17 when you refer a patient with a questionable
18 lump or abnormality?
19 A. I'm sorry. I don't follow your
20 question.
21 Q. Do you act as the primary care
22 doctor when a patient is referred to you with a
23 questionable growth or a questionable
24 abnormality?
25 A. Well, once I become involved in the

13 (Pages 154 to 157)

Page 158

1 care of that patient, I also generally function
2 as the primary care doctor; which is to say, I'm
3 involved in the treatment of their day-to-day
4 kinds of medical problems. Then when I'm
5 following these patients for evidence of
6 recurrence over time, I also, again, will become
7 involved in many of their primary care needs.
8 Q. Doctor, the report that you wrote in
9 October of 2002, which we talked about briefly
10 when we met the first time, has four areas that
11 summarize the opinions that you hold in this
12 case; is that correct?
13 A. Correct.
14 Q. You intend to confine your testimony
15 at the time of trial to those four opinions that
16 are expressed in your report; is that also
17 correct?
18 A. We haven't -- that is to say,
19 Mr. Warner and I have not discussed anything
20 about trial, but these four points and certainly
21 everything else that has been elucidated during
22 this deposition represent all of the opinions
23 that I can think of.
24 Q. Well, Doctor, you still as you sit
25 here now do not intend to provide standard of

Page 160

1 matter?
2 A. Yes.
3 MR. WARNER: Note my objection.
4 He's answered the question twice. This is the
5 third time. He said everything in the
6 deposition that he's --
7 MR. MISHKIND: Rob, don't go on and
8 say what he said.
9 MR. WARNER: That's what he said.
10 MR. MISHKIND: Don't testify for
11 him.
12 MR. WARNER: Don't yell.
13 MR. MISHKIND: Because you are so
14 inappropriate. You know you can object, but
15 don't start summarizing what he said. I get
16 aggravated with you because you do it over and
17 over again.
18 MR. WARNER: You asked the question
19 three times.
20 MR. MISHKIND: Be quiet. I'll ask
21 it five times if I want to.
22 MR. WARNER: He stands by the same
23 answers. You don't have to change your answers.
24 MR. MISHKIND: No, he doesn't have
25 to. You are not entitled under Local Rules to

Page 159

1 care testimony; correct?
2 A. Correct.
3 Q. You intend to provide testimony as
4 to proximate cause in this case; correct?
5 A. Correct.
6 Q. Do the opinions that are contained
7 in the four numbered paragraphs on pages 2 and 3
8 of your report contain the opinions that you
9 hold and all of the opinions that you hold as it
10 relates to proximate cause in this case?
11 MR. WARNER: Objection. Asked and
12 answered. Go ahead.
13 A. That's a somewhat vague question.
14 You drew me out during this deposition on many
15 details that were not explicitly mentioned here,
16 and I certainly stand by those as well.
17 Q. Let me put it to you this way. In
18 addition to the opinions on proximate cause
19 which you intend to provide at trial which we
20 have talked about during this deposition or the
21 previous deposition as well as the four opinions
22 on proximate cause that you've outlined in your
23 report, does that cover all of the opinions that
24 you as you are sitting here right now anticipate
25 providing at the time of the trial of this

Page 161

1 state an objection and try to summarize his
2 testimony, and you know you're not supposed to
3 be doing that.
4 MR. WARNER: Objection. Asked and
5 answered three times.
6 MR. MISHKIND: For some reason you
7 just insist upon going on with these long
8 speeches, and I'm tired of them.
9 Q. Doctor, in addition to what we've
10 talked about in the deposition and the four
11 opinions that you've expressed here, I want to
12 find out once and for all whether or not we have
13 covered all of the opinions that you have in
14 connection with this case.
15 MR. WARNER: Same objection.
16 A. Same answer, yes.
17 MR. MISHKIND: I have nothing
18 further.
19 THE WITNESS: I will read.
20 -----
21 (Deposition concluded at 7:40 p.m.)
22 (Signature not waived.)
23 -----
24
25

14 (Pages 158 to 161)

Page 162

1 AFFIDAVIT
2 I have read the foregoing transcript from
3 page 106 through 161 and note the following
4 corrections:
5 PAGE LINE REQUESTED CHANGE
6
7
8
9
10
11
12
13
14
15
16
17
18 NATHAN LEVITAN, M.D.
19
20 Subscribed and sworn to before me this
21 _____ day of _____, 2003.
22
23
24 Notary Public
25 My commission expires _____.

Page 163

1 CERTIFICATE
2
3 State of Ohio,)
4) SS:
5 County of Cuyahoga.)
6
7
8
9 I, Cynthia A. Sullivan, a Notary Public
within and for the State of Ohio, duly
10 commissioned and qualified, do hereby certify
that the within named NATHAN LEVITAN, M.D. was
11 by me first duly sworn to testify to the truth,
the whole truth and nothing but the truth in the
12 cause aforesaid; that the testimony as above set
forth was by me reduced to stenotypy, afterwards
13 transcribed, and that the foregoing is a true
and correct transcription of the testimony.
14
I do further certify that this deposition
15 was taken at the time and place specified and
was completed without adjournment; that I am not
16 a relative or attorney for either party or
otherwise interested in the event of this
17 action. I am not, nor is the court reporting
firm with which I am affiliated, under a
18 contract as defined in Civil Rule 28(D).
19 IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
20 Ohio, on this 29th day of September 2003.
21
22 *Cynthia A. Sullivan*
23 Cynthia A. Sullivan, Notary Public
24 Within and for the State of Ohio
25 My commission expires October 6, 2006.

15 (Pages 162 to 163)

<p>A</p> <p>ability 140:3,9</p> <p>able 108:13,14 117:4 128:15 133:5 136:4 143:2 145:13</p> <p>abnormality 151:10 153:20 155:17,20 157:18 157:24</p> <p>about 115:5,6,7 116:18 119:25 123:4 130:15 131:6 133:1,22 134:17 135:17 139:21 140:22 144:3,4 147:7,11 149:25 151:17 158:9,20 159:20 161:10</p> <p>above 106:25 142:13 163:12</p> <p>abstracts 123:11</p> <p>according 127:24 137:6</p> <p>act 157:16,21</p> <p>action 163:17</p> <p>actually 118:19 119:8 123:23,24 134:5,6 139:22,23 141:25 144:25 150:13 154:6</p> <p>addition 159:18 161:9</p> <p>additional 110:24 134:4 149:4,9</p> <p>adenopathy 143:21</p> <p>adjournment 163:15</p> <p>admonitions 108:16</p> <p>advanced 135:22 136:3,13,20</p> <p>AFFIDAVIT 162:1</p> <p>affiliated 163:17</p> <p>affixed 163:19</p> <p>aforesaid 163:12</p> <p>afraid 124:21</p> <p>after 153:16 155:4 155:11,15</p> <p>afterwards 163:12</p> <p>again 115:6 121:2 123:17 134:2,13</p>	<p>136:10 149:19 150:18 152:22 156:19 158:6 160:17</p> <p>age 108:1</p> <p>aggravated 160:16</p> <p>ago 108:12 113:9 114:22 115:8 117:21 133:22</p> <p>agree 129:20 134:16 146:9</p> <p>ahead 121:2 123:1 131:14 136:24 137:10 146:25 154:12 156:19 159:12</p> <p>al 106:10</p> <p>algorithm 155:14</p> <p>alluded 117:21</p> <p>already 131:4 133:17</p> <p>although 139:17</p> <p>always 110:9</p> <p>another 115:16</p> <p>answer 108:23 115:10,13 121:2 123:17 127:12 129:6 133:18 136:18 137:10 143:25 149:5 150:2,20 151:12 155:8 156:4,7,7 156:19,25 161:16</p> <p>answered 112:13 112:16 121:2 122:14 123:17 133:16 136:24 137:10 156:3,19 159:12 160:4 161:5</p> <p>answers 122:18 160:23,23</p> <p>antibiotics 149:25 150:17 151:6 153:17</p> <p>anticipate 159:24</p> <p>anything 110:2,6 126:25 127:5 137:18 158:19</p> <p>apologies 110:21</p> <p>appearance 147:22 148:3,13,16 153:8</p> <p>appearances 107:1 146:12</p>	<p>apply 108:16 140:19</p> <p>appreciate 112:16 135:20 136:5 143:2</p> <p>appropriate 154:11 155:1,3,22,25</p> <p>Approximately 144:8</p> <p>April 124:12,13 126:20</p> <p>area 112:4,10,20 127:23 128:21,22 129:5,5,12,23 130:12 132:24 133:1 135:19,25 136:21 137:13 143:5</p> <p>areas 137:2 158:10</p> <p>argumentative 156:9</p> <p>Arising 119:12</p> <p>artery 128:3</p> <p>article 122:7</p> <p>articles 122:2 123:10,11 124:3 124:24,25 125:4,8</p> <p>aside 117:11</p> <p>asked 112:6,12,17 120:14 121:2 122:5,14 123:3,16 124:19 125:4 133:15,17 136:23 137:9 152:22 154:15 156:2,18 159:11 160:18 161:4</p> <p>asking 115:7 116:11,12 154:18 154:20 155:4</p> <p>aspect 128:17</p> <p>assessment 129:2</p> <p>associated 130:13 130:23 132:6</p> <p>association 147:6</p> <p>asthmatic 128:2</p> <p>attention 116:8 151:23 152:23</p> <p>attorney 111:9,10 117:25 118:9 119:25 120:1,3 163:16</p> <p>attorneys 137:17</p>	<p>August 108:10 109:3 110:23 114:20,23 115:15 118:6 119:25 120:14 123:10 145:4</p> <p>authoritative 122:8 123:13,21</p> <p>autoimmune 140:12</p> <p>automatically 138:25</p> <p>Avenue 107:15</p> <p>aware 117:11 149:12</p> <p>awfully 149:22</p>	<p>143:17 144:19 147:13,17 152:18</p> <p>benign 148:18 149:1</p> <p>best 129:6 156:4,6</p> <p>better 120:8,21 128:6,15 134:4 140:9</p> <p>between 110:24 116:25 123:9 137:21 144:4 153:2</p> <p>bill 110:7</p> <p>billing 109:23 110:17</p> <p>billings 110:12</p> <p>biopsy 146:4 155:13</p> <p>bit 108:11,12 141:13</p> <p>bloodstream 138:2 138:12,22,24 139:4,10 140:6,11</p> <p>body 140:3,9</p> <p>bone 145:19</p> <p>book 122:8 123:11</p> <p>both 113:3 138:20 142:3</p> <p>break 151:13</p> <p>Brief 151:15</p> <p>briefly 109:5 116:18 158:9</p> <p>broad 121:25</p> <p>bronchitis 128:2 152:7</p> <p>bronchitis/upper 152:8</p> <p>Building 107:14</p> <p>bulky 143:21</p>
			<p>B</p> <p>back 108:10 118:5 142:5 143:9 144:19 149:19 157:2</p> <p>balance 117:13</p> <p>balloon 143:24</p> <p>base 129:4</p> <p>based 132:19 133:23 147:22 148:12</p> <p>basically 142:13</p> <p>Beachwood 106:23 106:24</p> <p>Becker 107:3</p> <p>become 147:21 157:25 158:6</p> <p>before 106:19 112:9 116:9 133:19 137:16 139:23 149:8 162:20</p> <p>beginning 108:17 141:19</p> <p>behalf 107:2,11 114:9 116:6 120:15,24 121:5</p> <p>being 108:3 114:13 123:21 142:11 151:8,11 156:8</p> <p>belabor 145:12</p> <p>believe 111:14 113:16 114:11 117:12 125:22 126:21 129:14,18 138:16,20 143:12</p>	<p>C</p> <p>calendar 117:9,13 118:13</p> <p>called 106:18 108:2</p> <p>came 134:10</p> <p>cancer 111:14 114:6,7 115:17 116:3,21 117:1 119:1,16,19 120:16,23 121:4 121:13,17 122:3 124:4,24 125:6,9 125:14,18,20,25</p>

<p>126:4,6,7 129:23 131:16,24,25 132:2,10 134:19 134:22,22 135:1 135:12,22 136:3,8 136:12,13,21 138:2,14,16 139:1 139:9,15,21 140:4 140:10,15 145:24 146:1,4,6,11,16 146:20 147:5,6,8 147:24 148:3,5,10 148:12,22,24 150:14 153:4,13 154:4 155:6,6,21 156:17,23 157:4,6 157:15 cancers 145:23 146:13 156:20 capacity 127:21 care 111:18,22 112:3,7,18 116:8 131:7,8 152:23 153:25 154:16,18 154:21 157:14,16 157:21 158:1,2,7 159:1 career 120:25 case 106:8 109:24 110:12 111:15,19 112:7 113:3 114:6 114:7,9,11,16 115:17 116:1,3,16 116:18,21 117:7 118:8,16,21 119:1 119:9,11,13,22 120:1,9,16,17,20 121:3,4,9,10,13 121:17,24 122:10 123:4,15 134:14 135:21 138:13,19 146:20 149:16 150:8,16 153:7 156:22 158:12 159:4,10 161:14 cases 110:9 115:2,5 115:11 117:11 120:22 121:11,15 CAT 152:25 154:12 catch 141:21 cause 111:19,23 131:5 159:4,10,18 159:22 163:12</p>	<p>caused 143:23 causes 151:1 153:9 cell 111:16 116:21 120:16,23 121:4 121:12,17 124:4 124:24 125:5,9,14 125:17,19,24 126:4,5,7 134:19 134:25 136:8,11 140:18,23 146:16 146:20 148:2,10 148:12 157:4 cells 138:2,23 139:3 139:9,15,18,22,22 140:4,10 centimeter 135:7 141:24 142:2,16 142:19 centimeters 135:1 142:12 143:13 certain 118:12 119:20 125:23 146:11,11 certainly 112:23 122:2 141:15 143:21 145:7,8 148:8 158:20 159:16 CERTIFICATE 163:1 certified 108:4 certify 163:10,14 cervical 142:10 change 160:23 162:5 changes 122:22 chapter 122:8 chapters 123:11 characteristics 136:9 chart 128:24 chest 127:19 128:5 128:7,9,12,16 146:6,12,14,17,21 147:3,21 148:3,13 149:13 152:5,9,10 153:8,18 154:1,2 154:9 155:5,12,15 155:17,19 choice 139:24 circumstance 131:10 cite 122:4 123:19</p>	<p>Civil 108:3 163:18 clarify 141:9 clavicle 142:21 clear 152:6 154:15 clearing 152:15 Cleveland 107:8,16 111:11 114:1 163:19 clinical 127:5,8,9 127:13,16 129:1 129:10 130:6,24 151:5 clinically 137:22 138:3 139:5 clinician 130:14 135:19 143:1 clinician's 130:22 Co 107:3 Columbus 111:8,13 113:12 come 118:20 comes 112:25 coming 115:19 comment 112:16 commission 162:25 163:25 commissioned 163:10 Common 106:1 113:10 complained 127:18 complains 130:20 complaint 130:14 complaints 130:6 132:3,23 complete 108:13 137:11 completed 118:3 163:15 completely 143:14 compromised 140:13 concentrate 154:13 concern 131:1 133:13 151:11 153:10 concerned 122:23 concerning 127:2,7 133:24 concluded 161:21 conditions 148:18 confine 158:14 confirm 148:24 153:12 154:4</p>	<p>congestive 149:7,11 connection 161:14 conservative 149:2 consider 123:13 128:4,9,12,16 consideration 129:22 137:17 consistent 130:7 155:21 contain 129:5 159:8 contained 159:6 contract 163:18 conversation 112:9 Coon 120:2,4 copies 110:12 copy 126:17,17 coronary 128:3 correct 110:18,19 111:17 112:11,14 112:21,22 114:2 114:17 115:1 116:22,23 118:4 119:5,7,14,17,18 119:19 121:8 123:21 124:14 126:22 128:9 129:17,19 134:19 134:20,23,24 135:16 140:21 143:4,7 144:6,9 145:11 147:24 148:5,15,24 152:16 157:11 158:12,13,17 159:1,2,4,5 163:13 corrections 109:15 109:18 162:4 correctly 144:11 correlate 130:25 cough 127:20 152:4 counsel 106:23 110:4 114:16,18 122:17 154:24 counted 145:18 County 106:2 113:10,12 120:17 121:10,18 163:5 couple 110:22 113:9 114:22 148:19 151:16 153:18 155:18 157:12</p>	<p>course 145:22 court 106:1 113:11 163:17 cover 159:23 covered 161:13 CT 135:7 141:25 152:25 153:1,13 154:4,7 155:6,11 155:14,22,25 current 123:25 124:9 125:8,12 126:16,21 currently 117:10 Cuyahoga 106:2 163:5 CV 123:24 124:3,8 124:9,19,22 125:6 125:7,8,11,17 126:16 Cynthia 106:20 163:9,23 C-O-O-N 120:4</p> <hr/> <p>D D 107:4,13 DANIEL 106:6 date 106:25 108:11 117:1 118:25 145:9 dated 123:25 day 106:25 128:4 144:21,24,25 162:21 163:20 days 117:18 143:25 144:3 Dayton 120:17 day-to-day 158:3 deal 112:24 124:3 156:24 dealt 125:5 deceased 106:6 December 147:8,14 147:18 150:12 151:17,21 152:2,3 decrease 127:20 deep 133:9 defendant 107:11 111:24 113:3 114:8,12 128:20 defendants 106:11 114:12 defending 119:7,8 defense 113:17</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

118:9 defer 113:1 115:21 defined 163:18 definitive 148:15 delay 116:24 depends 133:8 148:16 depo 110:7 deposed 108:4 deposition 106:13 106:17 108:13,18 109:3,9,21 111:10 113:25 114:15,24 115:15 116:9,19 117:20 118:1,2,7 118:10,15,17,20 118:23 119:24 120:7,11,13 121:19,23 122:11 124:2 125:6 127:1 128:14,18 130:3,9 158:22 159:14,20 159:21 160:6 161:10,21 163:14 depositions 110:24 117:17 describe 135:4,24 142:1,7 described 132:15 141:18 142:3,11 142:16,18 144:13 describes 137:19 detailed 112:22,25 details 116:8,15 117:16 127:14 134:7,15 152:24 159:15 detectable 139:6 146:17,21 detecting 133:2 determine 139:2 develop 138:3 139:4,10 156:21 developed 138:19 156:17,24 diagnose 146:1,3 diagnosed 134:18 135:2,6 150:8 diagnosis 116:25 132:2,22 134:21 148:15 153:3 157:3,10 diagnostic 133:7 153:12,14	dictates 154:1 difference 137:21 144:4 differentiate 141:12 difficult 141:11 Dipolmat 106:23 direct 138:11 directly 155:13 discernible 137:1 discover 132:25 discoverable 133:6 discovered 117:2 discrete 137:3 141:7 discretely 141:18 discussed 121:4 133:22 158:19 discussion 140:14 140:16,20 disease 128:3 144:1 distant 135:9 138:25 139:15 140:21 distinct 145:9 doctor 110:16,22 113:19,21 116:6 116:11 119:7,22 123:23 126:14,23 127:1 128:21 129:1 131:4,14 134:16 142:5 147:19 154:13,25 156:6,22 157:12 157:16,22 158:2,8 158:24 161:9 document 152:15 documented 128:24 144:20 145:4 doing 122:12 149:8 156:4,6 161:3 done 122:25 144:23 149:24 154:2 155:5 157:13 doubted 128:2 down 116:17 Dr 108:8 126:24 127:3,6,12,16,25 129:21 133:12 134:2 137:6 151:18,20 152:20 drew 159:14 Drive 106:24	duly 108:3 163:9,11 during 120:25 123:19 129:10 153:2 158:21 159:14,20 dyspnea 127:18 <hr/> E earlier 143:10 144:15 153:5 154:24 early 149:15 150:7 easier 122:18 145:16 East 106:24 Ed 116:17 edition 124:10 126:21 efficiently 108:24 either 118:11 140:4 156:25 163:16 elucidated 158:21 end 110:14 117:15 144:5,13 149:14 150:6 Enders 111:9 enlarged 128:24 142:1 enough 113:2 128:19 130:3 134:16 145:21 entitled 160:25 errors 109:12 ESQ 107:4,13 essentially 144:7 Estate 106:5 et 106:10 even 110:13 141:17 evening 108:8,9,13 121:5 event 163:16 events 137:15 ever 120:14 139:12 every 122:2 139:9 everything 122:23 158:21 160:5 evidence 135:3,7,8 135:9 147:8 149:10 150:25 158:5 exactly 120:6 139:7 144:17 145:20 exam 129:11	130:24 136:4 137:7,11 142:18 examination 106:19 108:2,6 127:21 137:16,19 144:21,23 151:17 examine 129:4 131:19 132:21 examined 128:21 151:20 examining 130:10 130:15 131:16 exclusively 111:22 excuse 141:25 Executor 106:4 exercise 127:20 exertion 127:19 existed 120:18 existence 130:15 148:24 expect 144:12 expectation 154:10 expert 112:4,10 114:9 116:16 118:8 120:3 121:12,16,19 146:23 expertise 112:21 expires 162:25 163:25 explanation 124:18 129:24 explanations 155:24 explicit 133:25 explicitly 159:15 expressed 158:16 161:11 extension 138:11 extensive 145:17 external 142:13 extraordinarily 135:22 142:23 145:23 e-mail 126:17 <hr/> F fact 115:25 132:10 134:22 140:8 141:1,3 failure 149:7,11 fair 113:2 128:19 130:3 134:16	139:8 143:3 145:21 fall 115:17,19 familiar 139:20 140:1 far 122:22 123:2 145:18 fashion 123:22 fatigue 152:6 favor 123:5 February 149:15 150:7 feel 112:20 130:25 133:5 135:25 136:6,22 148:25 155:1,2 felt 136:14 femur 145:2,19 fever 152:6 few 117:21,22 133:22 fibromyalgia 128:1 fight 140:4,10 film 147:22 find 125:10 142:8 143:12 161:12 findings 127:17 130:6 154:3 fine 116:14 131:13 149:21 156:10,14 finish 108:14 firm 114:3 120:1 163:17 first 108:3 109:2 111:7 124:8 135:2 138:14 140:17 141:5 156:17 157:4 158:10 163:11 five 115:7 157:3,6,9 160:21 five-year 135:15 Florida 116:17 focus 112:6 116:7 134:13 152:22 follow 110:2 147:12 157:19 following 158:5 162:3 follows 108:5 follow-up 148:19 149:13 150:5,23 152:15
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>foregoing 162:2 163:13 forgotten 110:7 form 138:25 139:15 formal 110:11 formation 140:17 140:23 157:4 forming 139:25 forth 106:25 163:12 found 137:12 four 158:10,15,20 159:7,21 161:10 four-day 152:4 Franklin 113:10,12 frankly 139:19 from 109:3 110:8 124:20 125:6 126:25 127:5,7,8 129:10 130:3,23 133:2 138:8 139:11 140:15,20 141:12,25 142:15 151:19 154:8 157:3 162:2 full 144:23 fully 156:5 function 158:1 further 128:5 161:18 163:14</p>	<p>142:22 gives 148:10 glad 124:16 151:25 go 121:2 123:1 125:18 130:14 131:14 133:1 136:24 137:10 139:10 142:5 146:25 153:11 154:12 155:13 156:19 157:2 159:12 160:7 goes 149:19 going 110:5,9 122:6 127:11 132:10 145:13 149:4,8 153:21,25 155:9 155:23 161:7 Good 108:8,9 Gray 111:10 113:25 114:3,14 117:25 greater 145:14 group 114:12 grow 145:23 growing 145:8 growth 139:5 157:23</p>	<p>history 145:25 152:4 hold 112:4,9 158:11 159:9,9 hopefully 108:12 108:24 hours 131:6 housekeeping 110:22 HOWARD 107:4 Hunt 114:11 hypothesize 150:11 150:15 hypothetical 131:15 132:13 153:19 hypotheticals 150:19</p>	<p>143:23 inflammatory 144:11 information 116:10 121:21 122:15 inside 142:14 insist 161:7 instruct 110:1 intend 123:12 154:16 158:14,25 159:3,19 intention 122:12 interaction 133:24 interested 163:16 interpretation 152:10 interpretations 112:23 interval 151:8 153:2 154:6 involved 119:22 137:17 157:25 158:3,7 involvement 129:3 129:9 130:7 131:18 135:3,18 135:20,23 136:1,5 136:12,20 141:2,6 141:14,17,21,22 142:6,8,24 144:12 144:19,22 145:17 involving 120:23 issue 131:5 issues 154:16 IV 134:19,22</p>	<p>144:5,19 just 108:23 109:5 110:8,22 115:6 116:12 121:20 129:12 136:2,16 143:9,18 145:15 154:14 155:24 156:24 157:12 161:7</p>
<p>G</p> <p>gave 108:17 122:16 general 139:18 generalize 136:15 136:17 generalized 137:3 generally 122:9 123:14 141:4 151:8 155:18 158:1 gets 139:23 Gill 106:4,6 126:24 134:1,18 140:24 145:1 147:14 149:10 156:17,25 Gill's 134:25 136:11 146:20 153:4 156:23 157:6 give 110:7 145:9 148:17 given 110:24 111:1 132:14,18 141:1,3</p>	<p>H</p> <p>hand 163:19 happen 132:21 happened 118:14 134:6 happens 145:24 happy 108:19 hard 108:22 143:12 having 131:6 134:11 144:12 head 127:12 133:20 health 140:13 healthy 135:13 140:8 heart 149:7,11 152:21 hereinafter 108:4 hereunto 163:19 highly 136:7,10 hilar 140:25 141:5 141:6,7,12,13,16 142:1,4 Hilton 106:23 him 160:11</p>	<p>I</p> <p>identify 125:4,19 II 106:15 III 106:4 immediately 149:5 immune 140:16 important 141:9 154:7 impression 127:24 147:2 152:7 improved 150:16 inappropriate 160:14 increase 134:10 indexed 141:10 index 130:5,11,21 131:21,23 132:16 133:12 153:10 indicate 129:9 indicated 112:19 115:15 118:6 120:18 122:19 131:4 152:14 indication 128:20 128:25 129:21 130:4 133:11,23 151:20 152:20 individuals 140:8 infection 149:7 152:8 infer 141:5 infiltrate 150:12,25 151:5,9 152:11 inflammation</p>	<p>J</p> <p>J 106:4 January 149:14 150:6 153:2 journal 123:11 July 134:6 142:11 144:5,14 150:8 153:3 jump 154:7 junction 142:20 June 123:25 124:6 124:9,20,22 125:12,17 126:23 127:6,15 128:20 129:16 130:2,4 133:14,24 137:6 143:9,13,15,16,17</p>	<p>K</p> <p>kinds 158:4 know 108:19 113:14 115:20 116:4,13 118:14 121:20 122:22 123:1 128:11 131:16,23 133:19 133:20 134:3,5,8 136:18 137:11,12 137:24 138:5 139:12,19 141:23 145:3 146:19 147:1,2,4,6 149:23,24 150:7 150:14,19 151:23 156:20 160:14 161:2 knowledge 115:18 115:24 141:7 Kreiger 116:17 121:3,9,17</p>
				<p>L</p> <p>large 133:8 last 108:15,17 109:7 110:8,25 111:2,4 116:19 122:1,16 later 148:19 lateral 141:14 launch 148:14,23 lawful 108:1 lawsuits 137:16 lawyer 119:8 least 109:24 132:4 153:9 157:2,8,9 leave 136:2 left 127:19,22,23 132:3 135:1 137:13 142:3,10 142:18,20 143:6 143:19,22 144:14</p>

147:3 152:11 legal 119:9,10 Lenson 118:9,18 119:5 lesion 145:6,19 lesions 139:6 less 135:1,6 let 108:19 109:2 122:22 136:1,16 139:7 141:24 147:19 159:17 letter 110:5,10 let's 111:6 150:14 Levitan 106:13,17 108:1,6,8 162:18 163:10 light 150:7 like 125:18 131:7 136:6,14,22 likelihood 135:15 likely 136:14 141:16 143:8 144:14 149:16 150:9 153:4 line 110:14 152:1 153:14 162:5 listened 152:20 literature 121:22 139:21 140:2 little 108:11,12 141:13 lobe 135:2 142:3 147:3 152:12 Local 160:25 located 132:25 long 116:24 137:16 161:7 look 116:9 124:8,22 141:24 151:25 looked 118:12 129:1 looking 125:15 143:11 146:6 147:21 lost 146:23 lot 142:14 LPA 107:3 lump 157:18 lung 111:14 114:6 116:3 119:1,19 120:16,23 121:4 121:13,17 122:3 124:24 125:5,9,14 125:17,20,24	126:4,6,7 134:19 134:22,25 135:21 136:3,8,11,21 138:14,16 146:1,6 146:10,13,16,20 147:23 148:2,5,10 148:12,21 151:12 153:4,13 154:4 155:6 156:17,20 156:23 lungs 152:6 lymph 128:22,24 129:2,5 131:18 135:8 137:7,19 142:24 144:18,23 145:17 151:20 lymphatic 138:11 140:5,11 141:4 lymphatics 138:21 M made 109:19 133:21 134:14,21 153:4 154:14 157:10 make 109:8,15 110:11 122:17 123:1,6,6,9 127:15 132:11 143:18 146:10 148:4 malaise 152:6 malignancy 132:16 132:19,23 133:25 malpractice 119:9 119:10,12,16 manifestation 144:21 Mansnerus 106:9 126:24 127:3,6,12 127:16,25 129:21 133:12 134:2 137:6 151:18,20 152:20 many 110:9 126:10 126:11 139:14 145:8,10,15 149:25 150:19 156:21 158:7 159:14 masked 141:15 mass 129:15 130:12 130:16,23 131:2	131:22 132:7 133:1,3,9,13 137:1,4 142:2,10 142:16,19 143:8 143:12,19 144:13 massive 141:2,20 141:21 142:6,8,24 144:1,18 matter 111:12 115:25 119:15,16 120:4,8 121:18 122:10 160:1 matters 110:23 may 131:21 147:23 148:5 151:2 153:10 mean 124:25 127:4 128:23 131:23 137:24 138:5 147:11 153:16 meant 128:11,16 measurement 142:23 145:7 mediastinal 141:3 141:12,14 142:4 mediastinum 141:11 medical 112:23 116:8 119:12,15 158:4 medicine 157:14 mentioned 141:19 159:15 met 108:10 158:10 metastases 135:9 137:22,23 138:4,8 138:19,25 139:5 139:16 140:24 metastasis 139:11 139:25 145:2 metastatic 129:15 129:23 136:21 micrometastases 138:1 microscopic 137:22 139:3 Midland 107:14 might 110:6 125:1 128:1,1 130:7,12 131:2,17 133:13 136:22 149:3,8 mind 109:13 132:5 149:3	Mingus 119:25 120:3 minutes 117:21 123:3 133:22 157:12 Mishkind 107:3,4 108:7 112:15 115:11 122:20,25 123:5 131:13 132:11 149:21 151:14 156:10,14 160:7,10,13,20,24 161:6,17 missed 117:1 Montgomery 120:16 121:10,18 month 108:12 110:25 111:2,4 113:8 115:3,7,10 118:10 143:9 144:8,15 145:24 months 115:5,8 117:5 145:9,10,15 145:18 148:19 151:7 153:18,24 155:19 month-and-a-half 143:10 more 123:25 124:9 125:8 141:13 142:14 143:24 150:4 157:12 most 116:7 125:12 126:15,21 132:9 move 108:24 156:11 much 143:2 145:16 multiple 114:14 137:1 139:18 murmur 152:21 Murray 118:9 muscle 142:17,20 must 141:5 M.D 106:9,13,17 108:1,6 162:18 163:10 M0 135:12 N name 113:2,18,20 113:22 114:10 116:5 119:21 120:4,19,22	named 163:10 nascent 140:18 NATHAN 106:13 106:17 108:1,6 162:18 163:10 natural 145:24 necessarily 127:11 138:3 neck 127:23 128:21 128:22 129:4,16 129:19,23 130:12 130:21,23 131:18 132:3,4,6,23,24 136:21 137:13 143:5,19,22 144:15 151:21 need 109:15 156:12 needs 158:7 neoplasm 151:2 153:10 neoplastic 140:23 new 115:2,4,11 124:12 next 117:8,18,22 134:6 143:25 153:11,13,20 154:3 155:7,11,21 155:25 night 109:7 nodal 129:9 135:3 135:18,20,23 136:1,5,12,20 node 128:24 129:3 141:16 142:24 144:19,23 145:17 nodes 128:22 129:6 129:13,19 131:18 135:8 137:8,19 140:25 141:3,5,6 141:7,12,13 142:1 142:4 144:24 151:21 nodular 137:2 noninfectious 151:11 nonpleuritic 152:5 nonsmall 111:16 116:21 120:15,23 121:3,12,16 124:4 124:24 125:5,9,14 125:17,19,24 126:4,5,7 134:19 134:25 136:8,11 146:16,20 148:2,9
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

148:12 normal 148:22 155:14 normally 155:7 Notary 106:21 162:24 163:9,23 note 109:11 121:1 122:13 129:8 130:1,2 131:3,11 132:8 134:3 142:15 149:18 152:3 160:3 162:3 noted 109:22 127:7 127:17 154:23 notes 109:8 127:10 127:25 133:21,23 141:24 152:17,18 152:19 nothing 145:23 161:17 163:11 notice 106:22 134:14 noticed 109:20 number 139:21 numbered 159:7 O object 132:11 160:14 objection 112:12 121:1 122:13 123:6,8,16 129:25 130:17 131:3,11 132:8 133:15 136:23 137:9 143:20 144:16 146:22 147:10,16 148:6 149:18 151:22 156:2,18 159:11 160:3 161:1,4,15 objections 154:23 observe 128:4 observer 142:22 obtain 128:5 occasion 111:5 146:8 147:20 occasions 135:18 occur 137:5 138:10 140:7 141:4 occurred 143:23 154:10 occurs 135:21	140:14 October 117:16 158:9 163:25 off 116:2 140:10 148:14,23 offhand 113:7 120:19 office 107:5 163:19 often 148:17 Ohio 106:2,22,24 107:8,16 108:2 120:17 163:3,9,20 163:24 okay 108:20,25 120:5 old 125:7 145:20 157:6,9 once 114:24 150:4 157:25 161:12 oncologist 112:24 132:9 one 111:1,5,19 114:25 117:12 120:18 124:1,12 124:20 125:12 130:10 135:17 138:24 139:17,23 143:11 147:20 148:4 150:20 153:9 155:5 one's 140:9 one-minute 110:14 only 133:6,20 142:2 146:3 opinion 129:14 138:13,18 143:8 149:15 150:9 156:16,23 157:5 opinions 123:15 131:7 158:11,15 158:22 159:6,8,9 159:18,21,23 161:11,13 opposed 134:11 136:1 order 145:5 153:1 ordered 128:7 149:14 150:6 153:1 organs 140:21 original 125:3 149:20,23 originate 138:9	other 111:20 117:11,17 120:16 120:22 121:9,11 121:17 123:22 140:12,19 143:1 144:11 145:10,15 148:14,23 155:12 others 146:15 otherwise 135:13 149:6 163:16 otolaryngology 142:15 out 109:13 112:4,10 119:12 125:10 142:8 148:9,23 151:24 152:9 153:12 154:4 159:14 161:12 outcome 113:14 outlined 159:22 outside 131:12 over 108:11,12 109:3,9,11,21 110:25 143:24 145:8 156:21 158:6 160:16,17 overwhelmingly 141:16 own 133:21 O'Connell 114:4 P P 106:6 page 126:1,3,5,6,7 126:8,9,9,10,10 126:11,12,13 139:8 162:3,5 pages 159:7 pain 127:19 132:3 132:24,25 palpable 137:4 141:24 142:12 143:1,9,13,19 144:14,25 palpably 128:23 palpate 132:24 135:19,25 136:4 palpated 128:21 129:1 paragraphs 159:7 Park 106:24 part 117:20 130:22 149:15 150:7	particular 122:4,7 122:8 131:9 136:9 party 163:16 past 115:3,5,7,10 patchy 152:11 patient 113:23 127:18,25 128:3,4 128:6 130:10,20 131:16,19,21,24 132:1,21 133:13 134:5,10 135:4,6 135:13 138:1,7,19 139:9 146:6,10 147:23 148:4,12 148:17,18,21 151:2,4 153:22 154:8 157:17,22 158:1 patients 125:22,24 126:11,12 132:9 139:3 157:15 158:5 patient's 129:24 130:5,13 131:1 pay 151:23 152:23 people 110:10 percent 135:14 perform 137:7 performed 137:12 149:14 150:6 period 145:8 153:24 154:9 155:16 156:21 persistent 150:25 155:20 persists 153:20 154:24 pertain 124:24 125:17,19 pertains 126:4,5,6 PET 141:10,13,18 physical 129:10 133:2 136:4 physically 133:5 physician 131:9 physicians 114:13 place 144:12 163:15 plaintiff 106:7,18 107:2 113:3 114:11 120:15,24 121:5,16 plaintiff's 114:16 114:18 121:11,19	Plan 152:9 planned 128:3 plans 123:19 Pleas 106:1 113:11 please 110:13 113:4 126:15 132:12 pneumonia 147:3,5 147:7,14,17 150:13,22,24 151:5 152:12 153:17,23 154:8 154:11 pneumonic 151:9 152:9 pocket 118:13 point 121:7 157:3 points 158:20 poor 139:24 portion 130:9 position 154:17 possibility 129:22 148:9 possible 129:24 149:6 possibly 108:22 postponed 117:13 potential 149:1 potentially 133:5 practice 150:23 157:13 premature 154:10 prepared 124:11 126:16 137:15 presence 147:7 153:13 present 129:15 130:12 132:4 151:12 presentation 127:2 presentations 137:4 presented 126:24 132:20 presents 132:2,23 151:4 presumably 137:14 previous 125:6 159:21 previously 122:18 122:23 132:22 134:9,17 primary 138:7,9,15 138:17 139:11 140:15,20 157:14 157:16,21 158:2,7
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>prior 131:5 147:25 153:3 155:8 probably 113:5 139:24 150:16,17 153:6 problem 132:13 problems 158:4 Procedure 108:3 proceed 149:4 process 138:8 139:14 143:16 148:22 149:1 produce 109:22 Professional 106:20 prominent 143:24 proper 155:16 Prospect 107:15 prostate 114:7 provide 109:24 110:13 112:2,17 124:16 126:15 158:25 159:3,19 provided 108:2 123:24 124:19 125:11 providing 159:25 proximate 111:19 111:23 131:5 159:4,10,18,22 Public 106:21 162:24 163:9,23 publications 125:16 published 124:6 125:1 pull 151:24 pursuant 106:22 put 116:2 154:17 159:17 putting 117:11 p.m 106:25 161:21</p> <hr/> <p>Q</p> <p>qualified 163:10 quantify 145:13 question 108:19,20 108:23 121:25 123:4 125:2,3,15 129:7 130:19 131:8,20 132:14 133:18 136:19 139:6 142:6 143:3 144:1,18 146:23 147:12 148:1</p>	<p>149:22 150:2 154:14 156:25 157:20 159:13 160:4,18 questionable 157:17,23,23 questioning 132:5 questions 151:16 154:19,21 156:5 quiet 160:20 quite 118:12</p> <hr/> <p>R</p> <p>radiographic 135:8 135:9 radiographically 145:4,5 146:14,17 radiographs 152:15 radiologically 146:21 radiologist 112:1 112:19 113:1 152:14 radiology 112:5,11 112:22 raise 151:1,10 reach 148:15 read 109:3,9,11,21 122:1 128:14 161:19 162:2 reading 112:25 really 116:7 127:11 140:17,21,22 reason 112:2 116:12 132:14,18 134:14 147:13 153:1 154:12 161:6 recall 111:21 116:1 116:15,24 117:6 117:16 118:25 120:19 121:14,21 124:5 128:17 130:8 137:20 Recalling 145:22 recess 151:15 recollection 120:8 120:21 record 126:20 127:17 129:21 133:12,21 137:14 137:18 151:19 records 109:23</p>	<p>110:17 126:25 127:7 137:7 151:24 recovering 154:8 recurrence 158:6 reduced 163:12 refer 127:14 157:17 reference 122:4 125:23 126:1,3,5 126:6,7,8,9,9,10 126:11,12,13 127:11 references 123:19 125:13 referred 157:22 referring 142:9 refers 140:17 regard 110:3 112:18 115:22 regarding 140:15 region 127:22 142:17 143:19,22 144:15,20 regions 142:13 Registered 106:20 reiterate 110:8 relates 122:9 159:10 relative 163:16 relevant 121:23 123:15 reliable 122:9 123:14 rely 150:20 remember 113:5,6 113:18,22 116:5 116:17,19 118:19 119:3,4,21 120:2 120:6 122:5,12 Reminger 107:12 107:12 120:1 repeat 149:24 151:7 154:1,2,9 155:4,19 repeated 153:18 rephrase 108:20 139:7 report 158:8,16 159:8,23 Reporter 106:21 reporting 163:17 represent 158:22 represented 114:13 126:20 147:4</p>	<p>request 110:11 118:9,17 119:5 requested 109:22 162:5 required 139:15 151:8 requisite 151:7 residual 151:10 resolution 150:24 154:11 resolve 149:2 151:9 155:18 respiratory 152:8 response 147:25 retain 116:10 121:20 retrieve 113:6 retrospect 147:1 review 115:3 126:25 151:19 reviewed 121:22 reviewing 134:13 right 110:20 113:13 115:14,23 144:9 152:19 159:24 Rob 110:15 112:16 122:20 123:5 160:7 ROBERT 107:13 ROGER 106:9 Room 106:23 root 149:19 rule 148:9,23 152:8 153:12 154:4 163:18 Rules 108:3 160:25</p> <hr/> <p>S</p> <p>same 108:16 115:13 133:18 139:8 143:16 144:22 147:10 148:6 149:19 160:22 161:15,16 save 156:15 saying 110:14 135:5 139:2 145:10,15 148:25 151:3 says 152:3 scan 141:10,13,18 141:25 145:19 152:25,25 153:2</p>	<p>153:13 154:5,7,12 155:6,11,14,22,25 scenario 132:15,19 scheduled 115:16 115:18,25 117:10 117:18 118:7,10 134:1,9,12 scheduling 134:7 scope 131:12 scores 122:1 seal 163:19 second 107:6 117:20 137:25 secretary 124:11 see 132:10 137:18 141:17 148:18 seeing 146:11 seen 134:2,5 141:8 150:12,23 send 126:16 sense 128:15 September 106:14 113:8 114:21 118:11,18,24 163:20 served 121:11,16 serving 114:9 118:8 120:3 set 106:25 117:7 139:23 163:12,19 settled 118:16,22 Seven 126:2 several 143:25 144:3 153:24 shadows 146:11 shed 138:23 139:22 140:10 short 110:10 shortly 118:21 show 152:1 showed 141:10 149:23 shown 149:17 150:10 shows 155:20 side 143:6 Signature 161:22 significance 127:8 151:18 significant 137:23 138:3 145:6 signs 151:5 simple 116:13</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>simply 112:6 116:9 since 110:23 114:23 121:23 124:6 125:1 146:23 single 123:3 140:23 sir 109:1,6 sit 115:23 123:18 158:24 site 139:11 140:16 140:20 sitting 159:24 situation 131:15 151:4 six 115:5 157:3,6,9 size 145:6 Skylight 107:5 slight 127:20 slowly 145:23 some 122:2 125:22 125:24 127:13 130:7 132:6 134:10 138:25 143:22 144:11 146:13 150:25 154:2 161:6 someone 140:11 something 114:4 133:4,6 142:7,25 151:1,11 sometime 117:8,22 Sometimes 146:18 somewhat 143:24 159:13 sore 152:5 soreness 152:5 sorry 111:22 130:18 138:6 157:19 sounds 131:7 speaking 135:5 specialties 114:14 specialty 111:25 specific 123:19 specifically 121:14 122:4 124:6 125:5 130:8 143:11 specificity 145:14 specified 163:15 speeches 123:7 132:12 161:8 spread 138:10,20 138:24 139:18 140:4,5,15,20 141:4</p>	<p>sputum 152:4 SS 163:4 stage 134:19,22 135:3,10,14 136:13 stand 122:6,15,18 147:25 155:8,9 159:16 standard 111:18,22 112:3,7,18 131:7 131:8 152:23 153:25 154:16,18 154:20 158:25 standpoint 127:6,8 127:9 129:10 130:24 133:2 stands 122:23 160:22 start 111:6 154:18 160:15 started 142:7 state 106:21 153:21 161:1 163:3,9,24 stated 150:3 statement 123:1 141:20 143:3 status 115:20 140:13 statute 106:19 stenotypy 163:12 sternocleidomast... 142:17,20 still 115:18 153:19 158:24 stipulations 106:22 stood 109:13 Street 107:6 strike 148:10 studies 133:7 148:14,23 study 153:12 subcutaneous 137:2 subject 111:12 119:15 120:8 122:10 subjective 130:6,14 submitted 109:23 Subscribed 162:20 subsequent 150:18 subsequently 139:4 substantive 109:12 substernal 152:5</p>	<p>succeeds 139:23,25 Suffice 110:16 suggest 152:14 suggestive 152:12 Suite 107:7 Sullivan 106:20 163:9,23 summarize 110:6 158:11 161:1 summarized 127:13 summarizing 160:15 superficial 133:9 supposed 161:2 supraclavicular 127:22 141:2 sure 113:20 114:19 116:4 117:22 119:3 120:18 123:9 125:21 127:4 143:18 151:14 surveillance 140:16 survival 135:15 suspect 132:19 153:9 suspected 153:17 suspicion 130:5,11 130:21 131:2,21 131:24 132:16 133:25 146:5 148:11,21 150:22 151:1 155:5 suspicious 146:10 147:21 148:4 154:3 Sutter 114:4,4 sworn 108:4 162:20 163:11 symptoms 129:24 131:1 134:11 system 138:11 140:5,11 systemic 140:13</p>	<p>121:19 144:12 147:20 163:15 talk 144:3 talked 116:18 118:5 119:25 131:6 134:17 158:9 159:20 161:10 talking 115:6 144:4 talks 135:17 139:21 tell 110:9 111:6 114:10 117:4 124:7,8,23 134:7 136:13 144:22,24 145:1,19 tenderness 127:22 129:12 130:13,20 130:22 132:3,6 136:25 137:12 143:15 144:20 term 137:25 terminology 140:22 terms 127:2,16 139:25 145:24 test 139:13 153:20 155:7,11,22,25 testified 111:3 114:23 120:15,24 121:6,12 122:24 testify 111:18 115:16,18,25 122:7 123:12 154:16 160:10 163:11 testifying 116:6 testimony 111:7,8 111:21 112:3,18 123:20 127:1 144:10 158:14 159:1,3 161:2 163:12,13 testing 128:5 134:4 149:9 tests 149:5 155:12 Thank 126:23 135:17 their 139:10 158:3 158:7 theoretical 151:3 theoretically 135:5 139:17 140:7,9 150:15 therapy 148:17 149:2</p>	<p>thickening 137:3 things 155:1 think 108:17 111:1 112:1 114:5 116:1 117:8,15,19,19 118:16,20 122:1 124:2,11 125:23 126:3,13 131:11 131:17 133:17 134:17 141:15 143:15 145:16 147:20 153:6 156:8,12 157:2 158:23 third 160:5 though 121:7 129:8 141:17 thought 110:5 149:3 three 138:10 160:19 161:5 three-and-a-half 144:6 throat 152:6 through 108:24 110:2 125:18 138:11,12,21,21 138:24 140:5,5,10 146:1 162:3 time 108:15 110:8 112:24 114:25 116:18,25 120:25 122:1,11,16 123:12 124:1 125:1 128:8 129:16,19 137:15 139:19 142:4 144:2 145:14 152:1 153:24 155:17 157:7,10 158:6,10,15 159:25 160:5 163:15 times 160:19,21 161:5 tired 161:8 tissue 146:4 today 109:25 110:8 110:17 120:22 123:18 today's 108:11 together 108:15 told 120:2 122:10 124:2 125:7</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>tool 153:14 154:3 tools 153:14 topic 125:14 topics 123:14 touch 136:4 143:2 Tower 107:5 transcribed 163:13 transcript 109:16 162:2 transcription 163:13 treat 149:6 151:6 153:23 treated 153:16 treatment 158:3 trial 111:3,6,8,13 113:15 114:24 115:16 117:7,15 121:6,12 123:13 123:20 145:15 148:17 156:15 158:15,20 159:19 159:25 true 112:5 126:3 129:11 144:15 163:13 truth 163:11,11,11 try 108:22 149:6 161:1 trying 118:19 136:16 TUESDAY 106:14 tumor 129:15,18 130:7,12,15,23 131:2,22 132:7 133:1,2,9,13 135:7 138:7,9,15 138:17,20,23 139:3,18,22 140:18 twice 160:4 two 128:6 134:4 151:7 two-and-a-half 131:6 two-month 154:9 type 140:12 typically 148:13 Ti 135:12</p> <hr/> <p>U</p> <p>Uh-huh 115:9 ultimately 148:20</p>	<p>unanimous 113:16 under 106:19 129:22 137:17 160:25 163:17 underlying 132:7 understand 108:18 130:18 136:16 144:10 148:8 understanding 126:19 152:13 undetectable 143:14 unfair 146:23 until 134:21 154:8 upcoming 117:21 updated 123:24 124:3,19 upper 135:2 142:3 147:3 152:12 uptake 141:10 use 140:21 153:15 156:1 used 153:24 154:4 155:7,13 usually 135:22 140:14</p> <hr/> <p>V</p> <p>vague 149:22 159:13 variability 142:23 variable 136:7,10 variables 150:1 variety 137:4 verdict 113:17 verify 126:2 very 118:21 121:25 141:11,19 148:16 154:14 156:4,6 viral 152:7 visible 145:5 146:14 150:18 visit 127:15 129:16 134:9,12 VOLUME 106:15 volunteer 154:25 vs 106:8</p> <hr/> <p>W</p> <p>wait 151:6 waited 153:17 155:16 waived 161:22</p>	<p>want 110:11 123:1 123:6,9 125:10 142:5,7 143:18 151:16,24 153:11 154:13,17 156:7 156:24 160:21 161:11 Warner 107:13 109:24 110:1,4,21 112:12 115:17,21 117:12 121:1 122:13,17,21 123:2,8,16,23 126:18 129:25 130:17 131:3 132:8 133:15 136:23 137:9 143:20 144:16 146:22 147:10,16 148:6 149:18 151:13,22 154:23 156:2,8,12,18 158:19 159:11 160:3,9,12,18,22 161:4,15 wasn't 112:15 118:24 119:2 128:7 152:22 way 133:18 135:24 153:21 156:7 159:17 ways 138:10 week 122:2 weeks 113:9 114:22 117:22 128:6 134:4 144:6 well 116:22 121:3 125:3 127:10 133:8 139:17,20 140:14 141:1,23 145:3 146:3 147:1 150:11 152:22 154:6,13 156:20 157:25 158:24 159:16,21 were 108:14 109:12 110:5 115:16 118:6 120:2,18 122:6 128:14 130:10 137:16,17 141:7 142:8 144:24 159:15 weren't 108:14 118:12</p>	<p>West 107:6,15 we'll 108:24 148:17 we're 139:8 144:4 we've 123:2 131:4 161:9 WHEREOF 163:19 whole 137:4 163:11 WILLIAM 106:4 witness 106:18 122:6 161:19 163:19 words 140:19 143:1 working 111:9 119:4 wouldn't 154:7 write 110:5,10 written 125:9,13 133:20 137:14,18 wrote 158:8</p> <hr/> <p>X</p> <p>X-ray 128:5,7,10 128:12,16 146:2,7 146:12,14,17,21 147:4,20,22 148:3 148:10,13 149:13 149:16,20,23 150:5,9,13,18,21 151:7 152:11 153:8,18,22,23 154:1,2,9 155:5 155:12,15,17,19 X-rays 112:24 146:24 150:23 152:9</p> <hr/> <p>Y</p> <p>year 117:9,14 years 117:5 145:18 156:21 157:3,6,9 yell 160:12 yellow-green 152:4</p> <hr/> <p>0</p> <p>03 126:20</p> <hr/> <p>1</p> <p>10 123:25 126:9,9 126:10 141:23 142:19,19 101 107:15 101.4 152:7 106 162:3</p>	<p>11 126:10,11,12,13 12 126:3 141:23 142:19,19 12-30-99 147:3 13 126:5 1400 107:14 161 162:3 1660 107:6 17 126:6,9 19 126:10 19th 134:6 143:13 1999 147:9,15,18 150:12 152:3</p> <hr/> <p>2</p> <p>2 159:7 20 123:3 126:7,11 2000 126:23 127:6 128:20 133:14,24 153:3 2002 123:25 124:6 124:10,20,22 125:13,17 158:9 2003 106:14 110:23 124:13 162:21 163:20 2006 163:25 21 126:12 216 107:9,17 22nd 108:10 109:3 110:23 118:6 120:14 130:2,4 133:24 143:15,16 143:17 144:5 23 106:14 126:13 241-2600 107:9 25th 142:11 28(D) 163:18 29th 163:20</p> <hr/> <p>3</p> <p>3 135:1,7 142:11 143:13 159:7 30 117:18 30th 118:11 150:12 151:17 152:3 3663 106:24</p> <hr/> <p>4</p> <p>4 142:11,16,16 4.5 142:2 44113 107:8 44115 107:16</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

457639 106:8				
<hr/> 6				
6 163:25				
6:30 106:25				
60 117:18 135:14				
660 107:7				
687-1311 107:17				
<hr/> 7				
7 126:3,5,8				
7-25-2000 142:1				
7-28-2000 142:16				
7:40 161:21				
<hr/> 8				
8 126:6,8,8				
8th 118:11,24				
8-16-2000 142:18				
80 135:14				
<hr/> 9				
9 125:23 126:1,8,9				