

1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO

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4 JANIE COUSINS,
5 Plaintiff,

6 vs Case No. 460155
 Judge Mary Boyle

7 JOHN T. JACOBUS,
8 Defendant.

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10 DEPOSITION OF SETH J. SILBERMAN, M.D.
11 MONDAY, DECEMBER 2, 2002

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13 Deposition of SETH J. SILBERMAN, M.D., a
14 Witness herein, called by counsel on behalf of
15 the Plaintiff for examination under the statute,
16 taken before me, Vivian L. Gordon, a Registered
17 Diplomate Reporter and Notary Public in and for
18 the State of Ohio, pursuant to agreement of
19 counsel, at the offices of Seth J. Silberman,
20 M.D., 34055 Solon Road, Solon, Ohio, commencing
21 at 5:00 o'clock p.m. on the day and date above
22 set forth.

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1 APPEARANCES:

2 On behalf of the Plaintiff

3 Becker & Mishkind Co., LPA

4 HOWARD D. MISHKIND, ESQ.

5 Skylight Office Tower Suite 660

6 Cleveland, Ohio 44113

7 216-241-2600

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10 On behalf of the Defendant

11 Rawlin, Gravens & Franey Co., LPA

12 RONALD V. RAWLIN, ESQ.

13 1240 Standard Building

14 Cleveland, Ohio 44113

15 216-579-1602

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1 SETH J. SILBERMAN, M.D., a witness herein,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:

6 EXAMINATION OF SETH J. SILBERMAN, M.D.

7 BY MR. MISHKIND:

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

10 A. Seth Silberman, M.D.

11 Q. Dr. Silberman, we met a few moments
12 ago. My name is Howard Mishkind, and as you
13 know, I represent Janie Cousins in relation to
14 the lawsuit going to trial next week.

15 I'm here to ask you questions
16 concerning the report that you have prepared on
17 behalf of the defense and try to find out the
18 opinions that you hold and the bases for those
19 opinions.

20 A. Sure.

21 Q. This afternoon I received a copy of
22 your CV. And I'm not going to mark it as an
23 exhibit, but let me just ask you whether you
24 have ever written anything that would relate to
25 the topic of causation of tinnitus?

1 A. No.

2 Q. Have you ever lectured on any topics
3 that relate to issues of causation or the cause
4 of tinnitus?

5 A. No.

6 Q. You have in your file some articles
7 that you've brought up from a Medline search; is
8 that true?

9 A. Correct.

10 Q. And before we finish the deposition,
11 what I'm going to want to do is probably have
12 you identify them and we'll mark them as
13 exhibits.

14 A. Sure.

15 Q. But for housekeeping purposes, Vivian
16 will remind me in case I forget.

17 A. Okay.

18 Q. In the information that you have
19 reviewed, I see that you have the deposition
20 transcript of Janie Cousins; is that true?

21 A. Yes.

22 Q. You have not received the deposition
23 transcript of John Jacobus; correct?

24 A. No.

25 Q. Have you ever met John Jacobus?

1 A. Never.

2 Q. Tell me a little bit about your
3 practice.

4 A. I practice general otolaryngology,
5 ear, nose and throat. I see a wide variety of
6 disease states in all of those, all the facets
7 of practicing ear, nose and throat.
8 Specifically, these relate to ear problems, such
9 as infection, hearing loss, dizziness, tinnitus,
10 or ringing in the ears, and related problems.

11 Also throat problems, commonly known
12 as tonsillitis, and also nasal problems, such as
13 stuffy noses and sinus disorders.

14 Q. You are not a primary care physician;
15 correct?

16 A. I am not.

17 Q. So you don't treat on a day-to-day
18 basis cervical or lumbar hyperextension or
19 hyperflexion injuries; true?

20 A. Correct.

21 Q. You would defer to either an
22 orthopedist or a primary care physician with
23 regard to the treatment of those type of
24 injuries; true?

25 A. Correct.

1 Q. Do you have any specialized training
2 in the area of tinnitus as it relates to the
3 issue of causation or treatment of tinnitus?

4 A. Well, as a board certified
5 otolaryngologist, I'm required to know the
6 causes of tinnitus, the treatments for tinnitus,
7 how to diagnose it.

8 Q. Aside from those aspects that are
9 part of your board certification, do you have
10 any subspecialty or additional training that
11 would relate to the understanding of tinnitus
12 and the treatment of tinnitus?

13 A. No.

14 Q. The file that you have in front of
15 you --

16 A. I would add one thing. I'm not sure
17 that that is offered as part of additional
18 training, but there is subspecialist training
19 known as otology. I'm not sure how much time is
20 actually devoted in otologist training towards
21 tinnitus.

22 Q. The file that I have had a chance to
23 look through, which has copies of Janie Cousins'
24 medical records, itemization of her medical
25 treatment, and reports from Dr. Fine and

1 Dr. Knapp, as well as the St. John records and
2 your literature, does that constitute the
3 entirety of the information that you have been
4 provided --

5 A. Yes.

6 Q. -- in connection with this case?

7 A. Yes.

8 Q. And if I am remembering correctly, it
9 appears that you were first consulted by
10 Mr. Christie; is that correct?

11 A. Correct.

12 Q. And don't rely on my memory, because
13 it was two or three minutes ago when I looked at
14 your file, but it looks like his cover letter
15 confirming that you and he spoke and you agree
16 to review the case, that would have been the
17 beginning of October of this year?

18 A. May I look at the record?

19 Q. Absolutely.

20 A. Okay. The letter is dated October
21 2nd, 2002, and it states, it was a pleasure
22 finally speaking with you the other afternoon,
23 so I'm assuming it was late September, early
24 October.

25 Q. So prior to that time period, late

1 September, early October, is it fair to say that
2 you had no knowledge of this case?

3 A. That would be correct.

4 Q. Let me ask you a little bit about
5 some of the physicians that are involved in this
6 case. Dr. Fine.

7 A. Yes.

8 Q. Do you know Dr. Fine?

9 A. Yes.

10 Q. And how do you know Dr. Fine?

11 A. I first met Dr. Fine briefly when I
12 was interviewing in 1994 for a position at
13 St. Luke's and we were both residents. And now
14 casually the last time I saw him was in Chagrin
15 Falls. I was bike riding one Sunday and I
16 stopped in to get some coffee and met him and we
17 had a few words and that's about it. We don't
18 generally talk about professional things when we
19 see each other.

20 Q. When you ran into him in Chagrin
21 Falls, I take it you didn't talk about Janie
22 Cousins?

23 A. I didn't know who she was at the
24 time.

25 Q. This would have been before the end

1 of September, the beginning of October?

2 A. I believe it was. The weather was
3 quite warm, so I think so.

4 Q. Dr. Fine is an otolaryngologist like
5 you?

6 A. Yes.

7 Q. And Dr. Fine is affiliated with The
8 Cleveland Clinic; correct?

9 A. Correct.

10 Q. And does Dr. Fine, in your opinion,
11 hold a strong reputation in the area of
12 otolaryngology?

13 A. Yes.

14 Q. You have seen information from
15 Dr. Newman --

16 A. Yes.

17 Q. -- the audiologist?

18 A. Yes.

19 Q. Dr. Newman has a national reputation
20 in the area of tinnitus, does he not?

21 A. I will go along with that.

22 Q. You recognize him as --

23 A. Yes.

24 Q. -- certainly a well-respected
25 audiologist?

1 A. Yes. People around here do know him
2 and speak highly of him.

3 Q. He has the tinnitus clinic or
4 co-directs it, I believe?

5 A. Yes.

6 Q. Have you had occasion to refer
7 patients to Dr. Newman for management of
8 tinnitus?

9 A. No.

10 Q. Do you have an audiologist that you
11 work with?

12 A. Yes.

13 Q. Who is that?

14 A. Karen Kline.

15 Q. She is in the office here?

16 A. Yes.

17 Q. Have you ever read any of the
18 articles that Dr. Newman has written on the area
19 of tinnitus management or the tinnitus clinic?

20 A. I may have read them when I was a
21 resident, but nothing recently.

22 Q. What about Dr. Knapp, a primary care
23 physician also at The Cleveland Clinic, do you
24 know him?

25 A. I do not know Dr. Knapp.

1 Q. Have you worked with Mr. Christie or
2 anyone from Mr. Rawlin's office in the past?

3 A. No.

4 Q. How is it that you were contacted in
5 this case?

6 A. I believe it was through a mutual
7 acquaintance, Lawrence Powers, who is an
8 attorney, who referred Mr. Christie to me.

9 Q. Have you done work for Mr. Powers?

10 A. Mr. Powers has done work for me.

11 Q. Fair enough. You have not consulted
12 as an expert for him in the past?

13 A. No.

14 Q. Have you ever served as an expert in
15 any, we will call it, medical/legal cases, sort
16 of in general?

17 A. As a resident, I had, but on the
18 periphery, not as the main expert.

19 Q. Your residency was finished when?

20 A. 1994.

21 Q. So since 1994, you have not served as
22 an expert?

23 A. To the best of my knowledge, no.

24 Q. Have you ever had your deposition
25 taken before?

1 A. Yes.

2 Q. On how many occasions?

3 A. Oh, at least six.

4 Q. Would those be prior to 1994 or
5 since?

6 A. Since.

7 Q. Are they on behalf of your patients
8 or are you serving in the same capacity that you
9 are serving in this case?

10 A. I can't comment on that.

11 Q. Well, why is that?

12 A. I can't comment on that. You can
13 speak with Mr. Powers.

14 Q. All right. Well --

15 A. You could ask me in a different way.
16 If you would like to know if I have been an
17 expert witness in this capacity before, my
18 answer again would be no. But commenting beyond
19 that about any other details, I am prohibited by
20 the court to comment on that.

21 Q. Is there some type of an order
22 that --

23 A. Yes.

24 Q. There is an order?

25 A. Yes.

1 Q. And Mr. Powers, I take it, is the
2 attorney that's involved?

3 A. Yes.

4 Q. All right, You have been asked to
5 review medical records at the request of the
6 defendant in this case and to provide opinions
7 which we are going to talk about in a moment.

8 Have you served in that capacity,
9 without going into any specifics, where you have
10 been provided with records on someone that
11 wasn't your patient and was asked to comment on
12 issues of causation?

13 A. Yes.

14 Q. And on how many occasions has that
15 been?

16 A. Six.

17 Q. Are you currently serving in that
18 capacity on any of those six cases?

19 A. Yes.

20 Q. And your deposition has been taken?

21 A. No.

22 Q. Your deposition --

23 A. Not for the one that I'm currently --
24 in that capacity, it has not been taken.

25 Q. Is that the one that you are refusing

Cousins v. Jacobus

Page 14

1 to talk about?

2 MR. RAWLIN: Prohibited from talking
3 about. Object to the form.

4 MR. MISHKIND: That's okay.

5 Q. Is that the case that you won't tell
6 me about; the one that you are currently serving
7 in?

8 A. Can we go off the record for a
9 moment?

10 Q. No, we have to be on the record.

11 A. I refuse to answer any further
12 questions along that line.

13 Q. Can you explain to me?

14 A. No.

15 Q. Doctor, you are refusing to explain
16 to me why you won't answer the question?

17 A. Yes.

18 Q. Okay,

19 A. You are getting me a little upset
20 now.

21 Q. Well, I am not intending to.

22 A. Well, do you want me to get
23 Mr. Powers on the phone for you? There is a
34 court order that I'm not to talk about any of
25 this.

1 Q. About the case that you are involved
2 in with Mr. Powers?

3 A. Yes, that's correct.

4 Q. Let's put that case aside for a
5 moment. Doctor, understand my intent is to take
6 a discovery deposition of you.

7 A. I understand, but we are not doing
8 that now.

9 Q. Well, we are. We are. And I get an
10 opportunity to ask you questions --

11 A. Fine.

12 Q. -- do you understand?

13 A. I understand.

14 Q. Well, let me finish the question.
15 I'm going to be asking you a series
16 of questions. Some of it has to do with your
17 prior experience and I'm entitled to --

18 A. Fine.

19 Q. -- I'm entitled to finish my question
20 before you answer it.

21 A. Go ahead.

22 Q. I'm also entitled --

23 A. Okay.

24 Q. Let's do each other a service. Let
25 me finish my question first and then I'll let

1 you answer, and then when you are talking, I
2 won't talk, okay?

3 A Uh-huh

4 Q I'm not going to ask you any further
5 questions about the situation with Mr. Powers.
6 The record is very clear that you are restrained
7 or otherwise not inclined to provide me with any
8 information on that. Let's put that matter
9 aside.

10 You have reviewed in the past records
11 where you were asked to provide opinions on
12 someone that was not your patient?

13 A Correct

14 Q And would that be the other five
15 situations?

16 THE WITNESS: Help me here.

17 Q Doctor, Mr. Rawlin is not your
18 attorney, so he really can't help you.

19 A I know he is not, but we are reaching
20 a stumbling block here.

21 Q Let me make it very clear. The
22 issues that I had with Mr. Powers and with the
23 other parties that were involved have nothing to
24 do with providing expert medical testimony or
25 opinions. That's not the capacity that I served

1 in. We will talk about that no further.

2 We can talk about the other issues,
3 but put Mr. Powers and that whole thing out of
4 all of this. It has nothing to do with anything
5 like that.

6 Q. Understand, doctor, I have never met
7 you before. I have no knowledge of this. My
8 obligation is to explore what is discoverable in
9 the course of the deposition and I have no basis
10 as I'm sitting here to understand why I wouldn't
11 be able to ask you those questions nor why you
12 wouldn't be obligated to answer them.

13 A. Maybe we should ask Judge Suster, I
14 don't know, but you are really starting to
15 bother me about it.

16 MR. RAWLIN: For the record, I think
17 he has indicated that those issues --

18 A. I won't go on with this if this is
19 how it's going to be.

20 Q. Doctor, if you are going to terminate
21 the deposition, you have every right to do that.
22 I'm here to ask you questions.

23 A. That may not be in your best
24 interest, though.

25 MR. RAWLIN: Let me, for the record,

1 Howard, indicate to you that I think you are
2 going far afield beyond the opinions he has
3 rendered in this case. If you want to ask him
4 about opinions he holds in this case or cases
5 that aren't covered under a court order, that's
6 one thing, but he has already told you he is
7 under court order on these various cases and you
8 know that you have no ability to question about
9 those, the aspects of those cases.

10 THE WITNESS: And you continue to do
11 that,

12 MR. RAWLIN: It's inappropriate for
13 you to push him into the corner.

14 A. I will not go in a corner about this
15 and you are pushing me to do that because you
16 are testing my inner strength, so let's go on to
17 something else.

18 Q. You can perceive what I'm doing and
19 whatever way I am doing it, but I'm not testing
20 your inner strength.

21 Are there any cases that you have
22 been involved in as an expert where someone has
23 asked you to provide opinions other than those
24 which are governed by a court order?

25 A. Yes.

Cousins v. Jacobus

Page 19

1 Q. How many?

2 A. Six -- five, six.

3 Q. Okay.

4 A I mean, we are going back a number of
5 years. I don't keep a number, a count of the
6 exact number.

7 Q Are you currently involved in any
8 other cases, other than for Mr. Rawlin's office,
9 that aren't otherwise protected by this court
10 order?

11 A. Yes.

12 Q How many currently?

13 A. One.

14 Q And who is the attorney that you are
15 working with in that case?

16 A He is in Colorado. I do not recall
17 his name.

18 Q Is that a tinnitus case?

19 A. No.

20 Q What's the nature of that injury?

21 A That is due to a spinal fluid fistula
22 secondary to endoscopic sinus surgery.

23 Q Sounds like you may be an expert in a
24 medical malpractice case in that matter?

25 A. Yes.

1 Q. Are you the expert for the plaintiff
2 or expert for the defendant in that case?

3 A. For the plaintiff.

4 Q. The other cases where you are serving
5 as an expert that aren't governed by the court
6 order, are those personal injury cases or are
7 those medical malpractice cases?

8 A. Medical malpractice.

9 Q. And just to try to simplify things
10 and move along, tell me what percentage of those
11 cases that you are serving as an expert right
12 now are that you are serving for the plaintiff
13 versus for the doctor, the defendant?

14 A. Well, the one that I'm doing right
15 now is for the plaintiff. That's why it's
16 stated. The ones in the recent past have all
17 been for the plaintiff.

18 Q. Have you worked on any cases in
19 Cleveland -- Mr. Powers' situation aside --
20 where you have given deposition testimony in a
21 matter that's not protected in some manner?

22 A. No.

23 Q. So this is the first time --

24 A. Yes.

25 Q. -- in a nonprotected situation --

1 A. Correct.

2 Q. -- in the City of Cleveland --

3 A. Yes.

4 Q. -- that you have testified?

5 A. Correct.

6 Q. Have you ever testified at trial in
7 any matters?

8 A. No.

9 Q. What do you charge for -- what have
10 you charged thus far for your review of the
11 information that was provided to you by
12 Mr. Christie?

13 A. Well, for a written report and for
14 review of the information, \$1,200.

15 Q. And how much do you charge for
16 deposition testimony?

17 A. For deposition testimony, \$500 per
18 hour.

19 Q. And for trial testimony, how much do
20 you charge?

21 A. I have not done trial testimony, so I
22 don't have a charge for that.

23 Q. Are you going to charge more or less
24 than \$500?

25 A. More.

1 Q. Thus far, you billed Mr. Rawlin's
2 office \$1,200 for the work?

3 A. We haven't sent them a bill yet. We
4 are still pending the bill.

5 Q. So the clock is still ticking, so to
6 speak?

7 A. Uh-huh.

8 Q. That's a yes?

9 A. Correct, yes.

10 Q. The \$1,200 was for the initial review
11 and the preparation of the report?

12 A. That's correct.

13 Q. I take it the time is in excess of
14 \$1,200 at this juncture?

15 A. That's correct.

16 Q. Do you have any ideas how many hours
17 you put in on this case?

18 A. Approximately eight.

19 Q. At \$1,200, is it billed based on
20 hourly rate?

21 A. No, it's based upon preparing the
22 report.

23 Q. How many hours did it take for you to
24 review the material and prepare the report?

25 A. Approximately four hours.

1 O. So there has been an additional four
2 hours on top of that?

3 A. Correct.

4 O. And you will be billing at what rate
5 per hour for those additional hours?

6 A. As I said, \$500 per hour.

7 Q. So \$500 for the additional time,
8 \$500?

9 A. For this.

10 Q. For the deposition?

11 A. Correct.

12 Q. And \$500 or more for trial?

13 A. Yes

14 O. You have written one report in this
15 case; true?

16 A. Correct.

17 O. It looks like you generated this
18 yourself on the computer?

19 A. Correct.

20 Q. It's a three-page report?

21 A. Almost. Two and a half pages.

22 Q. It covers three pieces of paper?

23 A. Correct.

24 C. It appears that the report was sent
25 to Mr. Christie on October 22nd at about 11:50

1 p.m.?

2 A. Correct.

3 O. Have you made any revisions to the
4 report since it was sent to Mr. Christie on
5 October 22nd, 2002?

6 A. No

7 Q You have never met Janie Cousins;
8 true?

9 A Correct.

10 Q You never examined Janie Cousins?

11 A Correct.

12 O And as far as I know, you have never
13 requested an opportunity to conduct an
14 examination of her; true?

15 A That's correct.

16 O You have not talked to Dr. Fine or
17 Dr. Knapp --

18 A. No

19 O - or Dr. Newman concerning Janie;
20 correct?

21 A. No

22 O So all of the information that you
23 have is based upon what's been provided to you?

24 A Correct.

25 Q Mr. Rawlin's office; Mr. Christie,

1 Mr. Rawlin --

2 A. Correct.

3 Q. -- or Mr. Franey?

4 A. Uh-huh, yes.

5 Q. And just so that I'm clear, the
6 purpose of your retention was to write a report
7 concerning your findings, and as necessary,
8 testify at the trial of this matter; is that
9 true?

10 A. Initially I was contacted to review
11 the case and write a report. That's as far as I
12 know.

13 Q. And you realize that we are going to
14 be meeting again next week when you are going to
15 be videotaped for trial?

16 A. Yes. But when I wrote the report, I
17 was providing just a written report.

18 Q. I understand that. You have learned
19 since preparing the report that there was more
20 involved potentially as a requirement of your
21 involvement to testify?

22 A. Yes.

23 Q. And the report that you have contains
24 all of the opinions, I take it, that you intend
25 to offer at the trial of this matter?

1 A. Not all of them, because there is
2 other information that I received from
3 Dr. Newman through a cover letter from
4 Mr. Christie.

5 Q. Concerning the tinnitus matching?

6 A. Correct.

7 Q. Have you received any additional
8 information other than the tinnitus matching
9 from Mr. Christie that would constitute a basis
10 for any additional opinions?

11 A. Yes. I received an inventory profile
12 of the patient's tinnitus symptoms, her rank of
13 her tinnitus symptoms.

14 Q. Anything else besides the ranking of
15 her tinnitus symptoms and the tinnitus matching
16 that you have received?

17 A. Not that I see.

18 Q. And those then constitute additional
19 facts that you have relied upon to arrive at
20 additional opinions; true?

21 A. Correct.

22 Q. You have never written any additional
23 reports to Mr. Christie or Mr. Franey or
24 Mr. Rawlin setting forth those additional
25 opinions; true?

1 A. Correct.

2 Q. Have you been requested by counsel to
3 provide a written report setting forth the
4 additional opinions?

5 A. No.

6 Q. Have you shared those additional
7 opinions with Mr. Christie, Mr. Rawlin -- rather
8 than repeating their names, defense counsel?

9 A. We met for about 15 minutes,
10 Mr. Rawlin and I met for about 15 minutes today.
11 We discussed things and then I gave him a little
12 demonstration of the test that Ms. Christie
13 underwent with Mr. Newman.

14 Q. You mean Ms. Cousins?

15 A. Ms. Cousins, excuse me.

16 Q. But in terms of providing a
17 supplemental report setting forth what those
18 opinions are --

19 A. I had one discussion with
20 Mr. Christie on the telephone after I sent him
21 this report and I cannot recall -- I know I
22 didn't have Mr. Newman's --

23 I do recall now. I did not have
24 Dr. Newman's report of the tinnitus matching
25 profile, but I had called Mr. Christie because I

1 received the tinnitus inventory questionnaire
2 and there was a letter dated October 3rd about
3 additional documentation, and then I went ahead
4 and called him about that.

5 Q. Okay.

6 A. And I had a brief discussion on the
7 telephone, but nothing in writing, as you
8 questioned me.

9 Q. Sure. In fairness, Mr. Christie or
10 defense counsel did not say to you, doctor, I
11 need a supplemental report from you setting
12 forth these additional opinions; true?

13 A. No. Correct, true.

14 Q. So as I'm sitting here about to
15 venture in your report, what I have is the
16 report that you prepared close to midnight on
17 October 22nd, 2002 is the only written report
18 expressing opinions?

19 A. That's correct.

20 Q. Fair enough.

21 MR. RAWLIN: Just so you know, he
22 indicated there are other opinions which he may
23 hold.

24 MR. MISHKIND: I understand that and
25 I'm also going to, as I feel appropriate, go

1 into it, but I'masking whether or not he has
2 provided any supplemental reports, which he
3 hasn't, and obviously there is the local rule
4 with regard to supplemental reports.

5 MR. RAWLIN: Well, I wouldn't go
6 there if I were you, Howard, since you are
7 beyond all your deadlines on local reports.

8 MR. MISHKIND: I don't think so.

9 Q. According to your review, doctor, how
10 many times did Janie Cousins go to the emergency
11 room in December after the collision of December
12 6th?

13 A. As best I can recall, she was there
14 once for her initial evaluation following the
15 accident.

16 Q. The tinnitus matching profile, I
17 think you indicated in your report, provides
18 objective information?

19 A. Uh-huh.

20 Q. And have you obtained that objective
21 information?

22 A. Yes.

23 Q. Based upon that objective
24 information, do you have an opinion as to
25 whether the tinnitus is causally related to the

1 motor vehicle collision?

2 A. No.

3 Q. No, you don't have an opinion?

4 A. No, I don't know if it's causally
5 related.

6 Q. So you don't have an opinion one way
7 or another?

8 A. It could be.

9 Q. Again, I just want to understand.
10 You can't rule out the tinnitus being caused by
11 the auto collision?

12 A. That's absolutely correct, cannot
13 rule out.

14 Q. But you don't have an opinion to a
15 probability whether it is or it isn't?

16 A. Correct.

17 Q. So you can't say?

18 A. It could be zero percent or it could
19 be 100 percent, that's what you could say.

20 Q. But can you state to a reasonable
21 degree of certainty, or at least to a degree of
22 probability, that the tinnitus is not causally
23 related to the auto collision?

24 A. Well, the patient states initially
25 that she did have tinnitus, and we know back in

1 1997 that there was a report that she had some
2 other complaints related to this realm of
3 symptoms and that she stated specifically at
4 that time that she did not have tinnitus, so
5 from a temporal standpoint, from a time line
6 standpoint, you could say that they are causally
7 related.

8 Q. That the auto collision --

9 A. The auto collision caused the
10 tinnitus, correct.

11 Q. And I just want to understand. There
12 is nothing that you have that you can take the
13 stand and say based upon the evidence before you
14 that the tinnitus that she has developed is not
15 causally related to the auto collision of
16 December 6th, 2000; true?

17 A. Correct.

18 Q. In fact, that incident back in 1997,
19 there was no history of tinnitus before January
20 of 1997; true?

21 A. Correct.

22 Q. In fact, there is no evidence at that
23 time that she had tinnitus in January of '97;
24 true?

25 A. Correct.

1 Q. And based upon a review of the
2 records in '97, '98, '99, and leading up to this
3 collision in 2000, there is no evidence
4 suggesting any history or predisposition to the
5 development of tinnitus; true?

6 A. Absolutely correct.

7 Q. Now, of what significance as it
8 relates to this auto collision is the tinnitus
9 matching profile that you have obtained from
10 Dr. Newman as it relates to the opinions that
11 you hold in this case?

12 A. It's our objective data that we can
13 look at to see what level of tinnitus this woman
14 has. And by level, I mean, how loud is it.

15 Q. Okay.

16 A. We can't tell from the outside. We
17 can't hold up our ear to her ear and say I can
18 hear this. This is a noise that's generated
19 from within the workings of the ear, the ear
20 anatomy itself. So it's the only objective way
21 that I know.

22 And I would assume Dr. Newman knows,
23 since he performed the test and he is the expert
24 also, that you can actually gain some objective
25 information about how loud the level the

1 tinnitus is to the patient.

2 Q. So can we agree that the tinnitus
3 matching profile in the information provided by
4 Dr. Newman lends objective support to the fact
5 that the patient has tinnitus?

6 A. Correct.

7 Q. And that the tinnitus -- or
8 tinnitus, depending on whose vernacular you are
9 following.

10 A. Where you are from.

11 Q. -- is a fairly severe form of
12 tinnitus?

13 A. Incorrect.

14 Q. Why do you say that?

15 A. Because the level is 21 decibels
16 above her threshold, and if you are familiar
17 with decibel levels, about 20 to 30 decibels is
18 the sound you would hear from a ticking watch.
19 30 decibels is a whisper. 50 decibels is
20 conversational speech.

21 Q. So your interpretation of what
22 Dr. Newman has to say concerning the level of
23 her tinnitus, how would you classify it?

24 A. Hardly audible.

25 Q. Now, there are a number of sounds

1 that are available on the Internet with regard
2 to tinnitus. I'm sure you probably have seen
3 some of the audio files that describe the
4 different --

5 A. No, I don't look at the Internet for
6 my information.

7 Q. Do you know what the tinnitus sounds
8 like to Janie Cousins?

9 A. No one knows except Janie Cousins.

10 Q. Do you know how disabling it is to
11 Janie Cousins?

12 A. Well, I can see from her report that
13 it is 100 percent disabling in all of its
14 aspects.

15 Q. Do you have any basis to dispute
16 that?

17 A. Yes.

18 Q. On what?

19 A. Because I went in our audiology booth
20 and I heard 21 decibels above the treshold of
21 600 Hz and I could barely hear it.

22 Q. Now, you referenced the use of
23 Flexeril and you stated Flexeril may also cause
24 tinnitus.

25 A. Uh-huh.

1 Q. Is it your intent to testify at trial
2 that her tinnitus was caused by the Flexeril?

3 A. Let me tell you my intent to testify
4 at trial and make all of this simple. She had a
5 car accident. She has tinnitus. I agree 100
6 percent.

7 Her symptoms are far, far more severe
8 subjectively stated on her questionnaire than
9 her objective findings are from your expert at
10 The Cleveland Clinic, Dr. Newman, whether it's
11 from the Flexeril, whether it's from a rock
12 concert when she was 15 years old or whether
13 it's from her car accident. You have got
14 objective evidence that states this woman has
15 normal hearing. Her hearing is better than
16 mine. She is normal hearing and she states that
17 she has tinnitus that is the worst that I have
18 seen in a long time based on her questionnaire
19 form that she filled out on September 24th,
20 2002.

21 Q. Okay.

22 A. And Dr. Newman, who you state has
23 written articles and is the expert, says that
24 her tinnitus is 21 decibels above her treshhold
25 at 600 Hz as of May. As of June 20th, 2002 at

1 600 Hz, her threshold is 15 decibels, which is
2 excellent hearing for a 49-year-old. So she can
3 hear her tinnitus at about -- 15 plus 21 is
4 about 35, 36 decibels. So that's about the
5 sound of a wristwatch.

6 Q Again, let me go back to my question.

7 A Go ahead.

8 Q Because I want to understand matters
9 that you have expressed in your report.

10 A Yes.

11 Q Because we deal in medicine and in
12 law, we deal with probabilities, I want to make
13 sure that I understand your opinion.

14 Are you able to state to a
15 probability that some rock concert years ago is
16 the cause of her tinnitus today?

17 A No.

18 Q Are you able to state to a
19 probability that the Flexeril that she took at
20 or around the time of the collision is the cause
21 of her tinnitus?

22 A Very unlikely.

23 Q Certainly less than a probability;
24 correct?

25 A. Correct.

1 Q. Do you have any evidence to suggest
2 that her tinnitus is secondary to hydrops?

3 A. No.

4 Q. you are not going to suggest that she
5 has Meniere's disease; true?

6 A. Correct.

7 Q. You would agree that lightheadedness
8 can be caused by a flexion/extension injury?

9 A. Correct.

10 Q. And her lightheadedness seemed to
11 start shortly after the motor vehicle collision;
12 true?

13 MR. RAWLIN: Objection.

14 A. Correct.

15 Q. And do you have any basis to dispute
16 that there is a causal relationship between the
17 lightheadedness and the flexion/extension injury
18 that occurred at the time of the auto collision?

19 A. I believe at some point this lady had
20 a prior history of lightheadedness related to
21 anxiety.

22 Q. We know we have this lightheadedness
23 back in January of '97; true?

24 A. Correct.

25 Q. But besides that -- I think it was

1 January 21, 1997 -- can you cite me to anything
2 else in all of her visits to all of her doctors
3 after January of '97 where she complained of any
4 lightheadedness or vertigo or dizziness prior to
5 the motor vehicle collision?

6 A. No.

7 Q. Do you know the circumstances that
8 led her to see a doctor on January 13 and
9 January 21, 1997 at The Cleveland Clinic for
10 this feeling of lightheadedness at that time?

11 A. Well, she was diagnosed with a
12 dizziness anxiety reaction. We do know that
13 some people in certain situations, either as a
14 result of their anxiety or as a cause of their
15 anxiety can have motion sickness problems, feel
16 like they are having motion and have dizziness,
17 so there is some information known about that
18 type of a situation.

19 Q. Do you know whether she had any type
20 of a flu-like syndrome going on at that time?

21 A. I don't recall from the record.

22 Q. And certainly a flu-like syndrome can
23 cause lightheadedness, vertigo and symptoms of
24 that nature?

25 A. Correct.

1 Q. And can resolve as the flu-like
2 phenomenon resolves; correct?

3 A. The patient gets a viral inflammation
4 in their vestibulocochlear nerve and it can take
5 up to six months to resolve, but typically
6 resolves spontaneously.

7 Q. And recognizing that Janie Cousins
8 had a history of some anxiety, and then as we
9 get closer to the time of the collision, she had
10 a divorce action that she was going through, but
11 going back in 1997, and continuing '97, '98,
12 '99, do you see any evidence that would permit
13 you to say that she was continuing to suffer
14 with any type of ongoing or chronic vestibular
15 type of symptoms?

16 A. No.

17 Q. So is it fair to say that while you
18 indicate that she may have a preexisting
19 condition, that preexisting condition is
20 supported in the medical records from a symptom
21 standpoint by the January 1997 description;
22 true?

23 A. Yes.

24 Q. And by nothing else; true?

25 A. Correct.

1 Q. Is a patient's description of
2 chirping, like crickets, is that a common way
3 that patients describe their tinnitus?

4 A. Yes.

5 Q. I know there are a number of other
6 ways, but that's one of a number; true?

7 A. Correct.

8 Q. And is habituation in an effort to
9 treat the tinnitus a recognized course of
10 treatment in the area of audiology and
11 otolaryngology?

12 A. Habituation or masking, yes.

13 Q. There is no cure for tinnitus; true?

14 A. Correct.

15 Q. If a patient has tinnitus, what you
16 try to do is to minimize the effects of the
17 symptoms on the patient's day-to-day activities?

18 A. Well, there are -- depending on the
19 disorder that's causing the tinnitus, if a
20 patient has N stage Meniere's disease, surgery
21 can be offered in that particular setting.

22 Q. But we don't have that in this case?

23 A. Correct.

24 Q. We have an injury to her neck at the
25 time of a motor vehicle collision and the

1 development of her tinnitus?

2 A. Correct.

3 Q. And then we have a patient who is
4 continuing two years afterwards to have symptoms
5 of tinnitus and is being treated at The
6 Cleveland Clinic for that now; true?

7 A. Correct.

8 Q. And do you feel that the treatment
9 that she is receiving by Dr. Newman and
10 initially by Dr. Fine, do you feel that that
11 treatment was reasonable and appropriate for the
12 patient's symptoms?

13 A. I don't recall Dr. Fine offered her
14 treatment; only to refer her on to the tinnitus
15 clinic at The Cleveland Clinic. As far as the
16 treatment that Dr. Newman has offered, I think
17 what he has offered for her is to purchase some
18 hearing aid type devices which are more like
19 tinnitus maskers that she can wear, but really
20 as far as offering her any further treatment, I
21 don't recall that that was an option for her.

22 Q. I'm sorry, I didn't mean to cut you
23 off. Were you done?

24 A. Yes.

25 Q. The ear pieces, the hearing aids, for

1 lack of better terminology, that he has
2 recommended, is that a reasonable modality to
3 use in an effort to aid a patient that has
4 tinnitus?

5 A. Well, according to my training, it's
6 not very successful.

7 Q. Do you then dispute Dr. Newman's
8 treatment or would you defer to him as it
9 relates to this particular patient?

10 A. I would, number one, tell you that my
11 opinion is based upon the people who trained me,
12 Dr. Buckingham and Dr. Leonetti at Loyola
13 University; that they both felt that these were
14 not viable options for patients with tinnitus.
15 And I would in doing so defer back to him since
16 I would not offer that to her.

17 Q. You would defer back to Dr. Newman?

18 A. Yes.

19 Q. And these other two doctors are not
20 going to be testifying at the trial of this
21 matter?

22 A. That's correct. I'm giving you my
23 experience and background.

24 Q. Not a problem. But you are not
25 disputing the appropriateness or the

Cousins v. Jacobus

Page 43

1 reasonableness of Dr. Newman's treatment, are
2 you?

3 A. This is what I don't understand; that
4 her tinnitus is at 21 decibels, the level of her
5 tinnitus. I'm not so certain why he is masking
6 her tinnitus if it's only at that level, if it's
7 barely audible, unless that's the last effort on
8 his behalf to try to see if that might work for
9 her.

10 Q. So as it relates to the
11 appropriateness of Dr. Newman's --

12 A. Well, here's --

13 Q. Let me finish and then perhaps -- as
14 it relates to the appropriateness of
15 Dr. Newman's treatment, you would need to have a
16 better understanding as to why Dr. Newman is
17 using the devices or recommending the devices?

18 A. I would enter into discussion about
19 behavior modification first before I recommended
20 the devices.

21 Q. Well, again, I want to understand
22 under oath, are you suggesting that what
23 Dr. Newman is doing is unnecessary for Janie
24 Cousins?

25 A. It's worth a try.

1 Q. So you are not going to say it's
2 unnecessary?

3 A. No, it's worth a try. If she is that
4 bothered, it's worth a try.

5 Q. Okay.

6 A. But once again, I'm not certain why
7 he didn't recommend behavior modification first.

8 Q. When I use the term vertigo, and I
9 then use in the same context dizziness, are they
10 interchangeable terms?

11 A. Yes. Vertigo would be a more
12 medically appropriate term.

13 Q. For dizziness?

14 A. Correct.

15 Q. And in looking at your report under
16 the current problem list, you acknowledge that
17 her vertigo is posttraumatic dizziness; true?

18 A. Correct.

19 Q. So you would agree then that the auto
20 collision is the cause of the patient's
21 dizziness?

22 A. Correct.

23 Q. And I think you went on further to
24 say it's due to abnormal sensory input from the
25 nerves in the neck to the cervical center --

1 A. Correct.

2 Q. -- as a result of a neck injury;
3 true?

4 A. Yes.

5 Q And this can happen even without the
6 classic hitting of the head against a fixed
7 object; correct?

8 A. Yes.

9 Q So the movement of the neck, whether
10 it be to the side, or the classic
11 hyperextension, hyperflexion type of injuries is
12 well recognized in the literature to cause
13 posttraumatic dizziness?

14 A Vertigo, yes.

15 Q And it's also recognized in the
16 literature to be a cause of tinnitus, as well;
17 true?

18 A What is recognized to be a cause of
19 tinnitus; a whiplash injury?

20 Q Yes.

21 A It can be --

22 Q. Okay.

23 A -- 50 percent of the time or so.

24 Q. Okay.

25 A. Yeah.

1 Q. And you recognize there are a number
2 of studies that indicate that certain clinical
3 symptoms associated with hyperextension,
4 hyperflexion injuries, or the vernacular of
5 whiplash, result in patients developing
6 tinnitus?

7 A. Yes.

8 Q. And again, I know I may be beating a
9 dead horse with a stick, and I will stop doing
10 it just so long as I make sure I'm clear. There
11 is no question in this case that the most likely
12 explanation for her tinnitus is the whiplash
13 injury, the hyperextension injury that she
14 obtained?

15 A. Most likely.

16 Q. You can't come up with any
17 explanation that would be of equal or greater
18 explanation than the auto collision?

19 A. As long as we are sure that the air
20 bag did not deploy, which would be another cause
21 for hearing loss or tinnitus, that would be
22 correct.

23 Q. Now, I'm going to try to wrap things
24 up in short order, but you have indicated to me
25 that you had arrived at additional opinions

1 based upon the tinnitus questionnaire and
2 Dr. Newman's information --

3 A. Yes.

4 Q. -- aside from what was in your
5 report?

6 A. Correct.

7 Q. Have we covered those additional
8 opinions that are not contained in your report?

9 A. Yes. Clearly stated, my opinion is
10 that the objective information provided by
11 Dr. Newman from the tinnitus matching profile
12 and the information that was provided by the
13 patient in her tinnitus questionnaire are out of
14 proportion to one another.

15 Q. But stated in another way, you are
16 not suggesting that she doesn't have tinnitus as
17 a result of the collision; true?

18 A. Correct.

19 Q. You are not suggesting that she
20 doesn't have symptoms associated with the
21 tinnitus two years after the collision?

22 A. That's a subjective finding. I can't
23 say that one way or another.

24 Q. Okay.

25 A. What type of symptoms are you talking

1 about specifically?

2 Q. Well, what you are saying to me is
3 that you just have a difficult time
4 understanding the description that the patient
5 is giving to the level of the tinnitus based
6 upon the objective evidence from Dr. Newman?

7 A. Correct.

8 Q. Dr. Newman has provided objective
9 evidence that she has tinnitus, just, in your
10 opinion, not to the extent that the patient
11 complains of?

12 A. Specifically, the level of a
13 wristwatch ticking.

14 Q. Okay.

15 A. And that's the facts.

16 Q. Her divorce and the anxiety and
17 depression that she was going through with the
18 divorce, that didn't cause the tinnitus, did it?

19 A. You can find various reports in the
20 literature that state that tinnitus can be
21 caused or exacerbated by stress or anxiety,
22 certainly.

23 Having tight neck muscles can cause
24 tinnitus. Having problems with your jaw muscle
25 can cause tinnitus. Maybe she was under stress

1 and had a tight neck which exacerbated things.

2 We don't know that.

3 Q. I want to understand. To the extent
4 that you testify in this case, I want to
5 understand whether or not you are going to
6 provide opinions to a reasonable degree of
7 probability that her tinnitus is caused by
8 divorce-related issues associated with the
9 depression at or around the time?

10 A. Her tinnitus clearly began after the
11 car accident. So there is a relationship
12 between the car accident and the tinnitus. I
13 wouldn't deny that nor would any other expert,
14 but the fact that she was under psychological
15 and emotional stress may significantly
16 exacerbate the tinnitus.

17 Tinnitus is a behavioral issue also.
18 Some people learn to ignore it and deal with it
19 and with other people it becomes much worse,
20 because what we hear is a perception sometimes.

21 If you are in your car driving
22 somewhere and you are listening to the radio,
23 you get to your destination and you drove for
24 three hours and somebody says, what did you do?
25 Well, I listened to the radio. What did you

1 hear? Well, it was music. I don't know what it
2 was.

3 But if there was an attack on the
4 World Trade Center that came over the radio, you
5 would perceive that as a much different noise or
6 sound and would darn sure remember what you
7 heard on that radio.

8 So that's a pretty good explanation
9 of how we perceive noise and we perceive the
10 same level of sounds. That radio is at the same
11 volume level for the music as it was for that
12 reporter that came through and said that the
13 World Trade Center collapsed. That's a pretty
14 far removed analogy, but that's the best I can
15 give you about the perception. That's how we
16 perceive noise.

17 9. And again, the perception is the
18 perception that Janie Cousins has; true?

19 A. Correct.

20 Q. The fact that she may have had a
21 history of depression or anxiety, if I
22 understand what you are telling me, she may be
23 more prone, because of her underlying emotional
24 state, she may be more prone to perceiving the
25 tinnitus as a greater disability than someone

1 that doesn't have underlying depression or
2 anxiety?

3 A. Yes. She may actually be fixated on
4 this symptom. And that's why I would say rather
5 than put tinnitus masking devices on her to mask
6 something that is the level of a wristwatch, why
7 not get her behavior modification so she can
8 deal with it better and cope with the other
9 stressors and anxiety that may be magnifying
10 this psychologically.

11 Q. And again, you have never interviewed
12 her, so you don't know?

13 A. I don't know the lady.

14 Q. And from the standpoint of how she is
15 handling the other anxieties in her life and how
16 she has dealt with those, you don't know how she
17 has put that component --

18 A. I would have no idea, correct.

19 Q. Certainly, the people that have seen
20 her over a period of time, Dr. Knapp, and
21 perhaps Dr. Fine, would have a better idea as to
22 how she is handling these emotional stressors as
23 it relates to the impact on her tinnitus; true?

24 A. Maybe a psychologist or a
25 psychiatrist would, because they deal with

1 emotional issues and psychological issues.
2 Dr. Fine is about as qualified as me to make
3 that statement, and Dr. Knapp is a primary care
4 physician. So maybe that's the type of
5 specialist that's required. Maybe not a person
6 at The Cleveland Clinic that's an audiologist.

7 Q. Based upon what you have reviewed --

8 A. Yes.

9 Q. -- are you able to state to a
10 probability more likely than not that Janie had
11 factors in her life such as noise levels, work
12 issues, or other common factors that can cause
13 tinnitus?

14 A. I see nothing in the record according
15 to what was given to me that she had other risk
16 factors for tinnitus.

17 Q. The MRI that was ordered early on to
18 rule out any type of pathology, that was a
19 reasonable and appropriate thing to do, was it
20 not?

21 A. The patient had a normal audiogram.
22 To look for intracranial pathology, yes, it was
23 an appropriate thing to do for completeness. To
24 shed light on why she has tinnitus, no.

25 Q. But again, to rule out perhaps a

1 life-threatening kind of situation or something
2 that might be a surgical issue?

3 A. Typically you see asymmetrical
4 hearing loss. In other words, one of the ears
5 is not hearing as well as the other ear. And
6 that's typically what you see in a pattern with
7 noise induced tinnitus or with acoustic neuroma
8 tumor, something that you are referring to.

9 Q. Again, going back to the bottom line,
10 the prescription of an MRI as a diagnostic
11 workup was an appropriate test to rule out
12 tumors or other pathology of that nature?

13 A. Yes. Multiple sclerosis, things like
14 this.

15 Q. I take it as to the issue of
16 permanency in terms of her cervical vertigo, and
17 her neck injuries, the spasms that she has in
18 her neck, that would be an area that you would
19 defer to the internist in terms of opinions on?

20 A. I would feel more comfortable with a
21 spine specialist, an orthopedic surgeon or
22 neurosurgeon.

23 Q. But is it fair to say that you're not
24 going to provide opinions to a reasonable degree
25 of probability as to whether these injuries are

1 or are not permanent; true?

2 A. Correct.

3 Q. Based upon the additional information
4 that you received from The Cleveland Clinic
5 after you wrote the report, in your original
6 letter you had recommended that she undergo
7 electrocochleography and electronystagmography.

8 A. ENG and ECoG.

9 Q. Are those tests, based upon the
10 totality of what you know now, in your opinion
11 necessary?

12 A. Electrocochleography is not necessary
13 because it's unlikely that we are dealing with
14 endolymphatic hydrops, as you stated before.
15 Electronystagmography, if she is continuing
16 change of symptoms, it may show us if she has
17 problems with, still has problems with her neck
18 and with vertigo.

19 Q. You haven't specifically recommended,
20 though, that that is a necessary test at this
21 particular point; true?

22 A. I haven't recommended anything
23 medically for the patient.

24 Q. Okay.

25 A. I'm not her treating physician, in

1 other words.

2 Q. I understand that. But in terms of
3 providing opinions that to a reasonable degree
4 of probability this is the test that she needs
5 to undergo, you are not going to take the stand
6 and say that, are you?

7 A. If I were asked to testify about the
8 patient's continuing cervical sprain and
9 cervical vertigo problems, I would recommend an
10 ENG.

11 Q. But again, that's something, in terms
12 of her continuing cervical symptoms, that's
13 something that is not an area that you commonly
14 treat?

15 A. Correct.

16 Q. And that's something that you
17 wouldn't provide expert opinion on?

18 A. We do treat vertigo. And just as
19 Dr. Fine did an MRI to rule out other pathology,
20 I think it would be interesting to see if there
21 is other pathology going on. If you look for a
22 lesion, why not do an ENG test to look for a
23 component of her vertigo. There is an overlap
24 between a neurologist, an audiologist, a spine
25 specialist, et cetera, and an otolaryngologist.

1 Q. How much does that cost?

2 A. I don't know. We don't do those.

3 Q. Where would you refer the patient?

4 A. An ENG could be done with Dr. Hamid,
5 H-A-M-I-D, M.D. He is in Solon.

6 Q. And that may or may not shed light on
7 why she is continuing to be symptomatic with
8 regard to the neck and the vertigo symptoms;
9 true?

10 A. Correct. There is something similar
11 that can be done for free. You can put her in a
12 chair like this and hold her head still and turn
13 her body and see if she gets dizzy and then you
14 know it's due to her neck.

15 Q. And since you have never examined
16 her, you are not able to tell us about that?

17 A. Correct.

18 Q. No one, to your knowledge, Dr. Fine,
19 Dr. Newman, Dr. Knapp, none of them have
20 recommended that she undergo the ENG?

21 A. Not to my recollection from reviewing
22 the record.

23 Q. Doctor, I have gone through what I
24 believe to be the areas concerning what you had
25 indicated in your report might be causative of

1 her condition, and I think I have clarified that
2 you have ruled out to a probability hydrops?

3 A. Correct.

4 Q. You have ruled out Flexeril to a
5 probability as being the cause?

6 A. Correct.

7 Q. You have acknowledged the auto
8 collision as being the most likely cause of the
9 tinnitus?

10 A. Correct.

11 Q. You have acknowledged that her spasms
12 and lightheadedness and vertigo to a probability
13 are related to the auto collision?

14 A. I recall in the record though that
15 she said that wasn't a problem anymore.

16 Q. I'mnot suggesting necessarily --

17 A. That it'snot ongoing.

18 Q. -- I'mnot suggesting in my question
19 that it is or isn't, but you have acknowledged
20 that --

21 A. Yes, correct.

22 Q. And you have also considered the
23 tinnitus matching profile in your opinion in
24 terms of what she perceives versus what 21
25 decibels would suggest exists are different

1 perception versus reality from an objective
2 standpoint; that her perception is greater than
3 the actual objective evidence of her injury?

4 A. Correct.

5 Q But yet, whether she is perceiving
6 more than what the evidence shows, there is no
7 question in your mind that she is still
8 demonstrating objective evidence of some degree
9 of ongoing tinnitus?

10 A Correct.

11 Q Are there any other opinions that you
12 intend to offer, either additional ones that
13 were not covered in the report or that we have
14 not covered based upon your two and a half page
15 letter to Mr. Christie?

16 A. No.

17 Q I thank you for your time.

1 (Recess had.)

1 MR. MISHKIND: Let's go back on the
20 record and reflect that we are leaving with the
21 court reporter what you believe to be the
22 pertinent articles that you had reviewed from a
23 list of a Medline search that you had done and
24 that the articles will be attached as an exhibit
25 to the deposition.

1 Vivian Gordon is being entrusted with
2 your copies to photocopy and return to your
3 office tomorrow. Is that fair?

4 THE WITNESS: That's fair.

5 MR. MISHKIND: You are going to be
6 deposed next Monday, videotaped. This
7 deposition is going to be written up for my use.
8 You have the right to read it over and sign it
9 or you can waive that requirement of reading and
10 signing.

11 THE WITNESS: I would like to read it
12 to make sure it's accurate.

13 MR. MISHKIND: Understand, because of
14 the short period of time, that when it comes to
15 you, you will need to read and sign it before
16 the videotaped deposition starts.

17 THE WITNESS: Yes, fine.

18 - - - - -

19 (Thereupon, Silberman Deposition
20 Exhibits 1 thru 3 were marked for
21 purposes of identification.)

22 - - - - -

23 (Deposition concluded at 6:15 p.m.)

24 (Signature not waived.)

25 - - - - -

1 AFFIDAVIT

2 I have read the foregoing transcript from
3 page 1 through 59 and note the following
4 corrections:

5 PAGE LINE REQUESTED CHANGE

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SETH J. SILBERMAN, M.D.

18

19

20 Subscribed and sworn to before me this

21 day of , 2002.

22

23 Notary Public

24

25 My commission expires

CERTIFICATE

State of Ohio,

SS :

County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named SETH J. SILBERMAN, M.D. was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 2nd day of December, 2002.



Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

1	INDEX	
2	DEPOSITION OF SETH J. SILBERMAN, M.D.	
3	BY MR. MISHKIPJD:	3:7
4		
5	Exhibits 1 thru 3 were marked.....	59:20
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

<p>A</p> <p>ability 18:8</p> <p>able 17:11 36:14,18 52:9 56:16</p> <p>abnormal 44:24</p> <p>about 5:2 8:4,17,18 8:21 10:22 12:19 13:7 14:1,3,6,24 15:1 16:5 17:1,2 17:15 18:4,8,14 23:25 27:9,10 28:2,4,14 32:25 33:17 36:3,4,4 38:17 43:18 48:1 50:15 52:2 55:7 56:16</p> <p>above 1:21 33:16 34:20 35:24 61:11</p> <p>absolutely 7:19 30:12 32:6</p> <p>accident 29:15 35:5 35:13 49:11,12</p> <p>according 29:9 42:5 52:14</p> <p>accurate 59:12</p> <p>acknowledge 44: 16</p> <p>acknowledged 57:7 57:11,19</p> <p>acoustic 53:7</p> <p>acquaintance 11:7</p> <p>action 39:10 61:16</p> <p>activities 40: 17</p> <p>actual 58:3</p> <p>actually 6:20 32:24 51:3</p> <p>add 6:16</p> <p>additional 6:10,17 23:1,5,7 26:7,10 26:18,20,22,24 27:4,6 28:3,12 46:25 47:7 54:3 58:12</p> <p>adjournment 61:14</p> <p>AFFIDAVIT 60:1</p> <p>affiliated 9:7 61:16</p> <p>affixed 61:18</p> <p>afield 18:2</p> <p>aforsaid 61:11</p> <p>after 27:20 29:11 37:11 38:3 47:21 49:10 54:5</p> <p>afternoon 3:21 7:22</p> <p>afterwards 4:1,4</p>	<p>61:11</p> <p>again 12:18 25:14 30:9 36:6 43:21 44:6 46:8 50:17 51:11 52:25 53:9 55:11</p> <p>against 45:6</p> <p>ago 3:12 7:13 36:15</p> <p>agree 7:15 33:2 35:5 37:7 44:19</p> <p>agreement 1:18</p> <p>ahead 15:21 28:3 36:7</p> <p>aid 41:18 42:3</p> <p>aids 4:1,25</p> <p>air 46: 19</p> <p>Almost 23:21</p> <p>along 9:21 14:12 20:10</p> <p>already 18:6</p> <p>analogy 50: 14</p> <p>anatomy 32:20</p> <p>another 30:7 46:20 47:14,15,23</p> <p>answer 12:18 14:11 14:16 15:20 16:1 17:12</p> <p>anxieties 5: 1,15</p> <p>anxiety 37:21 38:12 38:14,15 39:8 48:16,21 50:21 51:2,9</p> <p>anymore 57:15</p> <p>anyone 11:2</p> <p>anything 3:24 17:4 26: 14 38:1 54:22</p> <p>APPEARANCES 2: 1</p> <p>appears 7:9 23:24</p> <p>appropriate 28:25 41:11 44:12 52:19 52:23 53:11</p> <p>appropriateness 42:25 43:11,14</p> <p>Approximately 22:18,25</p> <p>area 6:2 9:11,20 10:18 40:10 53:18 55:13</p> <p>areas 56:24</p> <p>around 10:1 36:20 49:9</p> <p>arrive 26: 19</p>	<p>arrived 46:25</p> <p>articles 4:6 10:18 35:23 58:22,24</p> <p>aside 6:8 15:4 16:9 20:19 47:4</p> <p>asked 13:4,11 16:11 18:23 55:7</p> <p>asking 15:15 29:1</p> <p>aspects 6:8 18:9 34:14</p> <p>associated 46:3 47:20 49:8</p> <p>assume 32:22</p> <p>assuming 7:23</p> <p>asymmetrical 53:3</p> <p>attached 58:24</p> <p>attack 50:3</p> <p>attorney 11:8 13:2 16:18 19:14 61:15</p> <p>audible 33:24 43:7</p> <p>audio 34:3</p> <p>audiogram 52:21</p> <p>audiologist 9:17,25 10:10 52:6 55:24</p> <p>audiology 34: 19 40:10</p> <p>auto 30:11,23 31:8 31:9,15 32:8 37:18 44:19 46:18 57:7,13</p> <p>available 34: 1</p> <p>B</p> <p>back 19:4 30:25 31:18 36:6 37:23 39:11 42:15,17 53:9 58:19</p> <p>background 42:23</p> <p>itag 46:20</p> <p>barely 34:21 43:7</p> <p>based 22:19,21 24:23 29:23 31:13 32:1 35:18 42:11 47:1 48:5 52:7 54:3,9 58:14</p> <p>bases 3:18</p> <p>basis 5:18 17:9 26:9 34:15 37:15</p> <p>beating 46:8</p> <p>Becker 2:3</p> <p>becomes 49: 19</p> <p>before 1:16 4:10 8:25 11:25 12:17</p>	<p>15:20 17:7 31:13 31:19 43:19 54:14 59:15 60:20</p> <p>began 49: 10</p> <p>beginning 7:17 9:1</p> <p>behalf 1:14 2:2,10 3:17 12:7 43:8</p> <p>behavior 43: 19 44:7 51:7</p> <p>behavioral 49: 17</p> <p>being 3:3 30: 10 41:5 57:5,8 59:1 58:21</p> <p>believe 9:2 10:4 11:6 37:19 56:24</p> <p>besides 26: 14 37:25</p> <p>best 11:23 17:23 29:13 50:14</p> <p>better 35:15 42:1 43:16 51:8,21</p> <p>between 37:16 49:12 55:24</p> <p>beyond 12:18 18:2 29:7</p> <p>bike 8:15</p> <p>bill 22:3,4</p> <p>billed 22:1,19</p> <p>billing 23:4</p> <p>bit 5:2 8:4</p> <p>block 16:20</p> <p>board 6:4,9</p> <p>body 56:13</p> <p>booth 34: 19</p> <p>both 8:13 42:13</p> <p>bother 17:15</p> <p>bothered 44:4</p> <p>bottom 53:9</p> <p>Boyle 1:6</p> <p>brief 28:6</p> <p>briefly 8:11</p> <p>brought 4:7</p> <p>Buckingham 42: 12</p> <p>Building 2: 13</p> <p>C</p> <p>call 11:15</p> <p>called 1:14 3:2 27:25 28:4</p> <p>came 50:4,12</p> <p>capacity 12:8,17 13:8,18,24 16:25</p> <p>car 35:5,13 49:11 49:12,21</p>	<p>care 5:14,22 10:22 52:3</p> <p>case 1:64:16 7:6,16 8:2,6 11:5 12:9 13:6 14:5 15:1,4 18:3,4 19:15,18 19:24 20:2 22:17 23:15 25:11 32:11 40:22 46:11 49:4</p> <p>cases 11:15 13:18 18:4,7,9,21 19:8 20:4,6,7,11,18</p> <p>casually 8:14</p> <p>causal 37:16</p> <p>causally 29:25 30:4 30:22 31:6,15</p> <p>causation 3:25 4:3 6:3 13:12</p> <p>causative 56:25</p> <p>cause 4:3 34:23 36:16,20 38:14,23 44:20 45:12,16,18 46:20 48:18,23,25 52:12 57:5,8 61:10</p> <p>caused 30: 10 31:9 35:2 37:8 48:21 49:7</p> <p>causes 6:6</p> <p>causing 40: 19</p> <p>center 44:25 50:4 50:13</p> <p>certain 38:13 43:5 44:6 46:2</p> <p>certainly 9:24 36:23 38:22 48:22 51:19</p> <p>certainty 30:21</p> <p>CERTIFICATE 61:1</p> <p>certification 6:9</p> <p>certified 3:4 6:4</p> <p>certify 61:9,13</p> <p>cervical 5: 18 44:25 53:16 55:8,9,12</p> <p>cetera 55:25</p> <p>Chagrin 8:14,20</p> <p>chair 56: 12</p> <p>chance 6:22</p> <p>change 54:16 60:5</p> <p>charge 21:9,15,20 21:22,23</p> <p>charged 21:10</p>
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<p>chirping 40:2 Christie 7:10 11:1,8 21:12 23:25 24:4 24:25 26:4,9,23 27:7,12,20,25 28:9 58:15 chronic 39:14 circumstances 38:7 cite 38:1 City 21:2 Civil 3:3 61:17 clarified 57:1 classic 45:6,10 classify 33:23 clear 16:6,21 25:5 46:10 clearly 47:9 49:10 Cleveland 2:6,14 9:8 10:23 20:19 21:2 35:10 38:9 41:6,15 52:6 54:4 61:18 clinic 9:8 10:3,19 10:23 35:10 38:9 41:6,15,15 52:6 54:4 clinical 46:2 clock 22:5 close 28:16 closer 39:9 Co 2:3,11 coffee 8:16 collapsed 50:13 collision 29:11 30:1 30:11,23 31:8,9 31:15 32:3,8 36:20 37:11,18 38:5 39:9 40:25 44:20 46:18 47:17 47:21 57:8,13 Colorado 19:16 come 46:16 comes 59:14 comfortable 53:20 commencing 1:20 comment 12:10,12 12:20 13:11 commenting 12:18 commission 60:25 61:24 commissioned 61:8 common 1:1 40:2 52:12</p>	<p>commonly 5:11 55:13 complained 38:3 complains 48:11 complaints 31:2 completed 61:14 completeness 52:23 component 51:17 55:23 computer 23:18 concerning 3:16 24:19 25:7 26:5 33:22 56:24 concert 35:12 36:15 concluded 59:23 condition 39:19,19 57:1 conduct 24:13 confirming 7:15 connection 7:6 considered 57:22 constitute 7:2 26:9 26:18 consulted 7:9 11:11 contacted 11:4 25:10 contained 47:8 contains 25:23 context 44:9 continue 18:10 continuing 39:11 39:13 41:4 54:15 55:8,12 56:7 contract 61:17 conversational 33:20 cope 51:8 copies 6:23 59:2 copy 3:21 corner 18:13,14 correct 4:9,23 5:15 5:20,25 7:10,11 8:3 9:8,9 15:3 16:13 21:1,5 22:9 22:12,15 23:3,11 23:16,19,23 24:2 24:9,11,15,20,24 25:2 26:6,21 27:1 28:13,19 30:12,16 31:10,17,21,25 32:6 33:6 36:24 36:25 37:6,9,14 37:24 38:25 39:2 39:25 40:7,14,23</p>	<p>41:2,7 42:22 44:14,18,22 45:1 45:7 46:22 47:6 47:18 48:7 50:19 51:18 54:2 55:15 56:10,17 57:3,6 57:10,21 58:4,10 61:12 corrections 60:4 correctly 7:8 cost 56:1 counsel 1:14,19 27:2,8 28:10 count 19:5 County 1:261:5 course 17:9 40:9 court 1:1 12:20 14:24 18:5,7,24 19:9 20:5 58:21 61:16 Cousins 1:43:13 4:20 6:23 8:22 24:7,10 27:14,15 29:10 34:8,9,11 39:7 43:24 50:18 cover 7:14 26:3 covered 18:5 47:7 58:13,14 covers 23:22 co-directs 10:4 crickets 40:2 cure 40:13 current 44:16 currently 13:17,23 14:6 19:7,12 cut 41:22 Cuyahoga 1:261:5 CV 3:22</p>	<p>dealing 54:13 dealt 51:16 December 1:11 29:11,11 31:16 61:19 decibel 33:17 decibels 33:15,17 33:19,19 34:20 35:24 36:1,4 43:4 57:25 defendant 1:8 2:10 13:6 20:2,13 defense 3:17 27:8 28:10 defer 5:21 42:8,15 42:17 53:19 defined 61:17 degree 30:21,21 49:6 53:24 55:3 58:8 demonstrating 58:8 demonstration 27:12 deny 49:13 depending 33:8 40:18 deploy 46:20 deposed 3:4 59:6 deposition 1:10,13 4:10,19,22 11:24 13:20,22 15:6 17:9,21 20:20 21:16,17 23:10 58:25 59:7,16,19 59:23 61:13 62:2 depression 48:17 49:9 50:21 51:1 describe 34:3 40:3 description 39:21 40:1 48:4 destination 49:23 details 12:19 developed 31:14 developing 46:5 development 32:5 41:1 devices 41:18 43:17 43:17,20 51:5 devoted 6:20 diagnose 6:7 diagnosed 38:11 diagnostic 53:10 different 12:15 34:4 50:5 57:25</p>	<p>difficult 48:3 Diplomate 1:17 disability 50:25 disabling 34:10,13 discoverable 17:8 discovery 15:6 discussed 27:11 discussion 27:19 28:6 43:18 disease 5:6 37:5 40:20 disorder 40:19 disorders 5:13 dispute 34:15 37:15 42:7 disputing 42:25 divorce 39:10 48:16 48:18 divorce-related 49:8 dizziness 5:9 38:4 38:12,16 44:9,13 44:17,21 45:13 dizzy 56:13 doctor 14:15 15:5 16:17 17:6,20 20:13 28:10 29:9 38:8 56:23 doctors 38:2 42:19 documentation 28:3 doing 15:7 18:18,19 20:14 42:15 43:23 46:9 done 11:9,10 21:21 41:23 56:4,11 58:23 Dr 3:11 6:25 7:1 8:6,8,10,11 9:4,7 9:10,15,19 10:7 10:18,22,25 24:16 24:17,19 26:3 27:24 32:10,22 33:4,22 35:10,22 41:9,10,13,16 42:7,12,12,17 43:1,11,15,16,23 47:2,11 48:6,8 51:20,21 52:2,3 55:19 56:4,18,19 56:19 driving 49:21 drove 49:23</p>
---	--	--	---	--

due 19:21 44:24 56:14 duly 3:3 61:8,10 — E — each 8:19 15:24 ear 5:5,7,8 32:17,17 32:19,19 41:25 53:5 early 7:23 8:1 52:17 ears 5:10 53:4 ECoG 54:8 effects 40:16 effort 40:8 42:3 43:7 eight 22:18 either 5:21 38:13 58:12 61:15 electrocochleogr... 54:7,12 electroneystagmo... 54:7,15 emergency 29:10 emotional 49:15 50:23 51:22 52:1 end 8:25 endolymphatic 54:14 endoscopic 19:22 ENG 54:8 55:10,22 56:4,20 enough 11:11 28:20 enter 43:18 entirety 7:3 entitled 15:17,19,22 entrusted 59:1 equal 46:17 ESQ 2:4,12 et 55:25 evaluation 29:14 even 45:5 event 61:15 ever 3:24 4:2,25 10:17 11:14,24 21:6 every 17:21 evidence 31:13,22 32:3 35:14 37:1 39:12 48:6,9 58:3 58:6,8 exacerbate 49:16 exacerbated 48:21 49:1	exact 19:6 examination 1:15 3:2,6 24:14 examined 24:10 56:15 excellent 36:2 except 34:9 excess 22:13 excuse 27:15 exhibit 3:23 58:24 exhibits 4:13 59:20 62:5 exists 57:25 experience 15:17 42:23 expert 11:12,14,18 11:22 12:17 16:24 18:22 19:23 20:1 20:2,5,11 32:23 35:9,23 49:13 55:17 expires 60:25 61:24 explain 14:13,15 explanation 46:12 46:17,18 50:8 explore 17:8 expressed 36:9 expressing 28:18 extent 48:10 49:3 — F — facets 5:6 fact 31:18,22 33:4 49:14 50:20 factors 52:11,12,16 facts 26:19 48:15 fair 8:1 11:11 28:20 39:17 53:23 59:3 59:4 fairly 33:11 fairness 28:9 Falls 8:15,21 familiar 33:16 far 18:2 21:10 22:1 24:12 25:11 35:7 35:7 41:15,20 50:14 feel 28:25 38:15 41:8,10 53:20 reeling 38:10 felt 42:13 few 3:11 8:17 file 4:6 6:14,22 7:14	files 34:3 filled 35:19 finally 7:22 find 3:17 48:19 finding 47:22 findings 25:7 35:9 fine 6:25 8:6,8,10 8:11 9:4,7,10 15:11,18 24:16 41:10,13 51:21 52:2 55:19 56:18 59:17 finish 4:10 15:14,19 15:25 43:13 finished 11:19 firm 61:16 first 3:3 7:9 8:11 15:25 20:23 43:19 44:7 61:9 fistula 19:21 five 16:14 19:2 fixated 5:13 fixed 45:6 Flexeril 34:23,23 35:2,11 36:19 57:4 flexion/extension 37:8,17 fluid 19:21 flu-like 38:20,22 39:1 following 29:14 33:9 60:3 follows 3:5 foregoing 60:2 61:12 forget 4:16 form 14:3 33:11 35:19 forth 1:22 26:24 27:3,17 28:12 61:11 four 22:25 23:1 Franey 2:11 25:3 26:23 free 56:11 from 4:7 6:8,25 9:14 11:2 14:2 26:2,3,9 28:11 31:5,5 32:9,16,19 33:10,18 34:12 35:9,11,11,13 38:21 39:20 44:24 47:4,11 48:6	51:14 54:4 56:21 58:1,22 60:2 front 6:14 further 14:11 16:4 17:1 41:20 44:23 61:13 — G — gain 32:24 gave 27:11 general 5:4 11:16 generally 8:18 generated 23:17 32:18 gets 39:3 56:13 getting 14:19 give 50:15 given 20:20 52:15 giving 42:22 48:5 go 9:21 14:8 15:21 17:18 18:14,16 28:25 29:5,10 36:6,7 58:19 going 3:14,22 4:11 13:7,9 15:15 16:4 17:19,20 18:2 19:4 21:23 25:13 25:14 28:25 37:4 38:20 39:10,11 42:20 44:1 46:23 48:17 49:5 53:9 53:24 55:5,21 59:5,7 gone 56:23 good 50:8 Gordon 1:16 59:1 61:8,22 governed 18:24 20:5 Gravens 2:11 greater 46:17 50:25 58:2 — H — habituation 40:8,12 half 23:21 58:14 Hamid 56:4 hand 61:18 handling 5:1,15,22 happen 45:5 Hardly 33:24 having 38:16 48:23 48:24	head 45:6 56:12 hear 32:18 33:18 34:21 36:3 49:20 50:1 heard 34:20 50:7 hearing 5:9 35:15 35:15,16 36:2 41:18,25 46:21 53:4,5 help 16:16,18 her 6:24 24:14 26:12,13,15 29:14 32:17 33:16,23 34:12 35:2,7,8,9 35:13,15,18,24,24 36:1,3,16,21 37:2 37:10 38:2,2,8 40:24 41:1,13,14 41:17,20,21 42:16 43:4,4,6,9 44:17 46:12 47:13 48:16 49:7,10 50:23 51:5,7,12,15,20 51:23 52:11 53:16 53:17,18 54:17,25 55:12,23 56:11,12 56:13,14,16 57:1 57:11 58:2,3 hereinafter 3:4 hereunto 61:18 highly 10:2 him 8:14,16,20 9:22 10:1,2,24 11:12 18:3,13 27:11,20 28:4 42:8,15 history 31:19 32:4 37:20 39:8 50:21 hitting 45:6 hold 3:18 9:11 28:23 32:11,17 56:12 holds 18:4 horse 46:9 hour 21:18 23:5,6 hourly 22:20 hours 22:16,23,25 23:2,5 49:24 housekeeping 4:15 Howard 2:4 3:12 18:12 29:6 hydrops 37:2 54:14 57:2 hyperextension 5:18 45:11 46:3
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<p>46:13 hyperflexion 5:19 45:11 46:4 H 34:21 35:25 36:1 H-A-M-I-D 56:5</p> <hr/> <p>I</p> <p>idea 51:18,21 ideas 22:16 identification 59:21 identify 4:12 ignore 49:18 impact 51:23 inappropriate 18:12 incident 31:18 inclined 16:7 Incorrect 33:13 INDEX 62:1 indicate 18:1 39:18 46:2 indicated 17:17 28:22 29:17 46:24 56:25 induced 53:7 infection 5:9 inflammation 39:3 information 4:18 7:3 9:14 16:8 21:11,14 24:22 26:2,8 29:18,21 29:24 32:25 33:3 34:6 38:17 47:2 47:10,12 54:3 initial 22:10 29:14 initially 25:10 30:24 41:10 injuries 5:19,24 45:11 46:4 53:17 53:25 injury 19:20 20:6 37:8,17 40:24 45:2,19 46:13,13 58:3 inner 18:16,20 input 44:24 intend 25:24 58:12 intending 14:21 intent 15:5 35:1,3 interchangeable 44:10 interest 17:24</p>	<p>interested 61:15 interesting 55:20 Internet 34:1,5 internist 53:19 interpretation 33:21 interviewed 51:11 interviewing 8:12 intracranial 52:22 inventory 26:11 28:1 involved 8:5 13:2 15:1 16:23 18:22 19:7 25:20 involvement 25:21 issue 6:3 49:17 53:2 53:15 issues 4:3 13:12 16:22 17:2,17 49:8 52:1,1,12 itemization 6:24</p> <hr/> <p>J</p> <p>J 1:10,13,19 3:1,6 60:17 61:9 62:2 Jacobus 1:74:23,25 Janie 1:43:13 4:20 6:23 8:21 24:7,10 24:19 29:10 34:8 34:9,11 39:7 43:23 50:18 52:10 January 31:19,23 37:23 38:1,3,8,9 39:21 jaw 48:24 John 1:74:23,25 7:1 Judge 1:617:13 juncture 22:14 June 35:25 61:24 just 3:23 20:9 25:5 25:17 28:21 30:9 31:11 46:10 48:3 48:9 55:18</p> <hr/> <p>K</p> <p>Karen 10:14 kite 19:5 kind 53:1 line 10:14 Knapp 7:1 10:22,25 24:17 51:20 52:3 56:19</p>	<p>know 3:13 6:5 8:8 8:10,23 10:1,24 10:25 12:16 16:19 17:14 18:8 24:12 25:12 27:21 28:21 30:4,25 32:21 34:7,10 37:22 38:7,12,19 40:5 46:8 49:2 50:1 51:12,13,16 54:10 56:2,14 knowledge 8:2 11:23 17:7 56:18 known 5:11 6:19 38:17 knows 32:22 34:9</p> <hr/> <p>L</p> <p>L 1:16 61:8,22 lack 42:1 lady 37:19 51:13 last 8:1443:7 late 7:23,25 law 36:12 Lawrence 11:7 lawsuit 3:14 leading 32:2 learn 49:18 learned 25:18 least 12:3 30:21 leaving 58:20 lectured 4:2 led 38:8 lends 33:4 Leonetti 42:12 lesion 55:22 less 21:23 36:23 let 3:23 8:4 15:14 15:24,25 16:21 17:25 35:3 36:6 43:13 letter 7:14,20 26:3 28:2 54:6 58:15 let's 15:4,24 16:8 18:16 58:19 level 32:13,14,25 33:15,22 43:4,6 48:5,12 50:10,11 51:6 levels 33:17 52:11 life 51:15 52:11 life-threatening 53:1</p>	<p>light 52:24 56:6 lightheadedness 37:7,10,17,20,22 38:4,10,23 57:12 like 7:14 9:4 12:16 17:5 19:23 23:17 34:8 38:1640:2 41:18 53:13 56:12 59:11 likely 46:11,15 52:1057:8 line 14:12 31:5 53:9 60:5 list 44:1658:23 listened 49:25 listening 49:22 literature 7:2 45:12 45:1648:20 little 5:2 8:4 14:19 27:11 local 29:3,7 long 35:18 46:10,19 look 6:23 7:18 32:13 34:5 52:22 55:21,22 looked 7:13 looking 44:15 looks 7:14 23:17 loss 5:9 46:21 53:4 loud 32:14,25 Loyola 42:12 LPA 2:3,11 Luke's 8:13 lumbar 5:18</p> <hr/> <p>M</p> <p>made 24:3 magnifying 51:9 main 11:18 make 16:21 35:4 36:12 46:10 52:2 59:12 malpractice 19:24 20:7,8 management 10:7 10:19 manner 20:21 many 12:2 13:14 19:1,12 22:16,23 29:10 mark 3:22 4:12 marked 59:20 62:5 Mary 1:6</p>	<p>mask 51:5 maskers 41:19 masking 40:1243:5 51:5 matching 26:5,8,15 27:24 29:1632:9 33:3 47:11 57:23 material 22:24 matter 16:8 19:24 20:21 25:8,25 42:21 matters 21:7 36:8 may 7:18 10:20 17:23 19:23 28:22 34:23 35:25 39:18 46:8 49:15 50:20 50:22,24 51:3,9 54:1656:6,6 maybe 17:13 48:25 51:24 52:4,5 mean 19:4 27:14 32:14 41:22 medical 6:24,24 13:5 16:24 19:24 20:7,8 39:20 medically 44:12 54:23 medical/legal 11:15 medicine 36:11 Medline 4:7 58:23 meeting 25:14 memory 7:12 Meniere's 37:5 40:20 met 3:11 4:25 8:11 8:16 17:6 24:7 27:9,10 midnight 28:16 might 43:8 53:2 56:25 mind 58:7 mine 35:16 minimize 40:16 minutes 7:13 27:9 27:10 Mishkind 2:3,4 3:7 3:12 14:4 28:24 29:8 58:19 59:5 59:13 62:3 modality 42:2 modification 43:19 44:7 51:7 moment 13:7 14:9 15:5</p>
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moments 3:11 Monday 1:11 59:6 months 39:5 more 2 1:23,25 23:12 25:19 35:7 41:18 44:11 50:23 50:24 52:10 53:20 58:6 most 46:11,15 57:8 motion 38:15,16 motor 30:1 37:11 38:5 40:25 move 20:10 movement 45:9 MRI 52:17 53:10 55:19 much 6:19 21:15,19 49:19 50:5 56:1 Multiple 53:13 muscle 48:24 muscles 48:23 music 50:1,11 mutual 11:6 M.D 1:10,13,20 3:1 3:6,10 56:5 60:17 61:9 62:2	24:10,12 26:22 51:11 56:15 Newman 9:15,19 10:7,18 24:19 26:3 27:13 32:10 32:22 33:4,22 35:10,22 41:9,16 42:17 43:16,23 47:11 48:6,8 56:19 Newman's 27:22,24 42:7 43:1,11,15 47:2 next 3:14 25:14 59:6 noise 32:18 50:5,9 50:16 52:11 53:7 none 56:19 nonprotected 20:25 normal 35:15,16 52:21 nose 5:5,7 noses 5:13 Notary 1:17 60:23 61:8,22 note 60:3 nothing 10:21 16:23 17:4 28:7 31:12 39:24 52:14 61:10 number 19:4,5,6 33:25 40:5,6 42:10 46:1	8:1 9:1 23:25 24:5 28:2,17 off 14:8 41:23 offer 25:25 42:16 58:12 offered 6:17 40:21 41:13,16,17 offering 4:1 20 office 2:5 10:15 11:2 19:8 22:2 24:25 59:3 61:18 offices 1:19 Oh 12:3 Ohio 1:2,18,20 2:6 2:14 3:2 61:3,8 61:19,23 okay 4:17 7:20 14:4 14:18 15:23 16:2 19:3 28:5 32:15 35:21 44:5 45:22 45:24 47:24 48:14 54:24 old 35:12 once 29:14 44:6 one 6:16 8:15 13:23 13:25 14:6 18:6 19:13 20:14 23:14 27:19 30:6 34:9 40:6 42:10 47:14 47:23 53:4 56:18 ones 20:16 58:12 ongoing 39:14 57:17 58:9 only 28:17 32:20 41:14 43:6 opinion 9:10 29:24 30:3,6,14 36:13 42:11 47:9 48:10 54:10 55:17 57:23 opinions 3:18,19 13:6 16:11,25 18:2,4,23 25:24 26:10,20,25 27:4 27:7,18 28:12,18 28:22 32:10 46:25 47:8 49:6 53:19 53:24 55:3 58:11 opportunity 15:10 24:13 option 41:21 options 42:14 order 12:21,24 14:24 18:5,7,24 19:10 20:6 46:24	ordered 52:17 original 54:5 orthopedic 53:21 orthopedist 5:22 other 7:22 8:19 12:19 15:24 16:14 16:23 17:2 18:23 19:8,8 20:4 26:2 26:8 28:22 31:2 40:5 42:19 49:13 49:19 51:8,15 52:12,15 53:4,5 53:12 55:1,19,21 58:11 otherwise 16:7 19:9 61:15 otolaryngologist 6:5 9:4 55:25 otolaryngology 5:4 9:12 40:11 otologist 6:20 otology 6:19 out 3:17 17:3 30:10 30:13 35:19 47:13 52:18,25 53:11 55:19 57:2,4 outside 32:16 over 50:4 51:20 59:8 overlap 55:23 o'clock 1:21	patient's 26:12 40:1 40:17 41:12 44:20 55:8 pattern 53:6 pending 22:4 people 10:1 38:13 42:11 49:18,19 51:19 per 21:17 23:5,6 perceive 18:18 50:5 50:9,9,16 perceives 57:24 perceiving 50:24 58:5 percent 30:18,19 34:13 35:6 45:23 percentage 20:10 perception 49:20 50:15,17,18 58:1 58:2 performed 32:23 perhaps 43:13 51:21 52:25 period 7:25 51:20 59:14 periphery 11:18 permanency 53:16 permanent 54:1 permit 39:12 person 52:5 personal 20:6 pertinent 58:22 phenomenon 39:2 phone 14:23 photocopy 59:2 physician 5:14,22 10:23 52:4 54:25 physicians 8:5 pieces 23:22 41:25 place 61:14 plaintiff 1:5,15 2:2 20:1,3,12,15,17 PLEAS 1:1 please 3:9 pleasure 7:21 plus 36:3 point 37:19 54:21 position 8:12 posttraumatic 44:17 45:13 potentially 25:20 Powers 1 1:7,9,10 12:13 13:1 14:23 15:2 16:5,22 17:3
--	--	---	---	--

<p>20:19 practice 5:3,4 practicing 5:7 predisposition 32:4 preexisting 39:18 39:19 preparation 22:11 prepare 22:24 prepared 3:16 28:16 preparing 22:21 25:19 prescription 53:10 pretty 50:8,13 primary 5:14,22 10:22 52:3 prior 7:25 12:4 15:17 37:20 38:4 probabilities 36:12 probability 30:15 30:22 36:15,19,23 49:7 52:10 53:25 55:4 57:2,5,12 probably 4:11 34:2 problem 42:24 44:16 57:15 problems 5:8,10,11 5:12 38:15 48:24 54:17,17 55:9 Procedure 3:3 professional 8:18 profile 26:11 27:25 29:16 32:9 33:3 47:11 57:23 prohibited 12:19 14:2 prone 50:23,24 proportion 47:14 protected 19:9 20:21 provide 13:6 16:7 16:11 18:23 27:3 49:6 53:24 55:17 provided 3:2 7:4 13:10 21:11 24:23 29:2 33:3 47:10 47:12 48:8 provides 29:17 providing 16:24 25:17 27:16 55:3 psychiatrist 51:25 psychological 49:14 52:1</p>	<p>psychologically 51:10 psychologist 51:24 Public 1:17 60:23 61:8,22 purchase 41:17 purpose 25:6 purposes 4:15 59:21 pursuant 1:18 push 18:13 pushing 18:15 put 15:4 16:8 17:3 22:17 51:5,17 56:11 p.m 1:21 24:1 59:23</p> <hr/> <p>Q</p> <p>qualified 52:2 61:9 question 14:16 15:14,19,25 18:8 36:6 46:11 57:18 58:7 questioned 28:8 questionnaire 28:1 35:8,18 47:1,13 questions 3:15 14:12 15:10,16 16:5 17:11,22 quite 9:3</p> <hr/> <p>R</p> <p>radio 49:22,25 50:4 50:7,10 ran 8:20 rank 26:12 ranking 26:14 rate 22:20 23:4 rather 27:7 51:4 Rawlin 2:11,12 14:2 16:17 17:16 17:25 18:12 25:1 26:24 27:7,10 28:21 29:5 37:13 Rawlin's 11:2 19:8 22:1 24:25 reaching 16:19 reaction 38:12 read 10:17,20 59:8 59:11,15 60:2 reading 59:9 reality 58:1 realize 25:13</p>	<p>really 16:18 17:14 41:19 realm 31:2 reasonable 30:20 41:11 42:2 49:6 52:19 53:24 55:3 reasonableness 43:1 recall 19:16 27:21 27:23 29:13 38:21 41:13,21 57:14 received 3:21 4:22 26:2,7,11,16 28:1 54:4 receiving 41:9 recent 20:16 recently 10:21 Recess 58:18 recognize 9:22 46:1 recognized 40:9 45:12,15,18 recognizing 39:7 recollection 56:21 recommend 44:7 55:9 recommended 42:2 43:19 54:6,19,22 56:20 recommending 43:17 record 3:9 7:18 14:8,10 16:6 17:16,25 38:21 52:14 56:22 57:14 58:20 records 6:24 7:1 13:5,10 16:10 32:2 39:20 reduced 61:11 refer 10:6 41:14 56:3 referenced 34:22 referred 11:8 referring 53:8 reflect 58:20 refuse 14:11 refusing 13:25 14:15 regard 5:23 29:4 34:1 56:8 Registered 1:16 relate 3:24 4:3 5:8 6:11</p>	<p>related 5:10 29:25 30:5,23 31:2,7,15 37:20 57:13 relates 6:2 32:8,10 42:9 43:10,14 51:23 relation 3:13 relationship 37:16 49:11 relative 61:15 relied 26:19 rely 7:12 remember 50:6 remembering 7:8 remind 4:16 removed 50:14 rendered 18:3 repeating 27:8 report 3:16 21:13 22:11,22,24 23:14 23:20,24 24:4 25:6,11,16,17,19 25:23 27:3,17,21 27:24 28:11,15,16 28:17 29:17 31:1 34:12 36:9 44:15 47:5,8 54:5 56:25 58:13 reporter 1:17 50:12 58:21 reporting 61:16 reports 6:25 26:23 29:2,4,7 48:19 represent 3:13 reputation 9:11,19 request 13:5 requested 24:13 27:2 60:5 required 6:5 52:5 requirement 25:20 59:9 residency 11:19 resident 10:21 11:17 residents 8:13 resolve 39:1,5 resolves 39:2,6 restrained 16:6 result 38:14 45:2 46:5 47:17 retention 25:6 return 59:2 review 7:16 13:5 21:10,14 22:10,24</p>	<p>25:10 29:9 32:1 reviewed 4:19 16:10 52:7 58:22 reviewing 56:21 revisions 24:3 riding 8:15 right 12:14 13:4 17:21 20:11,14 59:8 ringing 5:10 risk 52:15 Road 1:20 rock 35:11 36:15 RONALD 2:12 room 29:11 rule 29:3 30:10,13 52:18,25 53:11 55:19 61:17 ruled 57:2,4 Rules 3:3</p> <hr/> <p>S</p> <p>same 12:8 44:9 50:10,10 saw 8:14 saying 48:2 says 35:23 49:24 sclerosis 53:13 seal 61:18 search 4:7 58:23 secondary 19:22 37:2 see 4:19 5:5 8:19 26:17 32:13 34:12 38:8 39:12 43:8 52:14 53:3,6 55:20 56:13 seemed 37:10 seen 9:14 34:2 35:18 51:19 sensory 44:24 sent 22:3 23:24 24:4 27:20 September 7:23 8:1 9:1 35:19 series 15:15 served 11:14,21 13:8 16:25 service 15:24 serving 12:8,9 13:17 14:6 20:4 20:11,12 set 1:22 61:11,18</p>
--	---	---	---	---

<p>Seth 1:10,13,19 3:1 3:6,10 60:17 61:9 62:2 setting 26:24 27:3 27:17 28:11 40:21 severe 33:11 35:7 shared 27:6 shed 52:24 56:6 short 46:24 59:14 shortly 37:11 show 54:16 shows 58:6 sickness 38:15 side 45: 10 sign 59:8,15 Signature 59:24 significance 32:7 significantly 49:15 signing 59: 10 Silberman 1:10,13 1:19 3:1,6,10,11 59:19 60:17 61:9 62:2 similar 56:10 simple 35:4 simplify 20:9 since 11:21 12:5,6 24:4 25: 19 29:6 32:23 42:15 56:15 sinus 5:13 19:22 sitting 17:10 28:14 situation 16:5 20:19,25 38:18 53:1 situations 16:15 38:13 six 12:3 13:16,18 19:2,2 39:5 Skylight 2:5 Solon 1:20,20 56:5 some 4:6 8:5,16 12:21 15:16 20:21 31:1 32:24 34:3 36:15 37:19 38:13 38:17 39:8 41:17 49:18 58:8 somebody 49:24 someone 13:10 16:12 18:22 50:25 something 18:17 51:6 53:1,8 55:11 55:13,16 56:10 sometimes 49:20</p>	<p>somewhere 49:22 sorry 41:22 sort 11:15 sound 33:18 36:5 50:6 sounds 19:23 33:25 34:7 50:10 spasms 53:17 57:11 speak 10:2 12:13 22:6 speaking 7:22 specialist 52:5 53:21 55:25 specialized 6: 1 specifically 5:8 31:3 48:1,12 54:19 specifics 13:9 specified 61:14 speech 33:20 spinal 19:21 spine 53:21 55:24 spoke 7:15 spontaneously 39:6 sprain 55:8 SS 61:4 St 7:1 8:13 stage 40:20 stand 31:13 55:5 Standard 2: 13 standpoint 31:5,6 39:21 51:14 58:2 start 37:11 starting 17:14 starts 59:16 state 1:18 3:8 30:20 35:22 36:14,18 48:20 50:24 52:9 61:3,8,23 stated 20:16 31:3 34:23 35:8 47:9 47:15 54:14 statement 52:3 states 5:6 7:21 30:24 35:14,16 statute 1:15 stenotypy 61:11 stick 46:9 still 22:4,5 54:17 56:12 58:7 stop 46:9 stopped 8:16 strength 18:16,20</p>	<p>stress 48:21,25 49: 15 stressors 51:9,22 strong 9:11 studies 46:2 stuff 5:13 stumbling 16:20 subjective 47:22 subjectively 35:8 Subscribed 60:20 subspecialist 6:18 subspecialty 6:10 successful 42:6 suffer 39: 13 suggest 37:1,4 57:25 suggesting 32:4 43:22 47:16,19 57:16,18 Suite 2:5 Sunday 8:15 supplemental 27: 17 28:11 29:2,4 support 33:4 supported 39:20 sure 3:20 4: 14 6:16 6:19 28:9 34:2 36:13 46:10,19 50:6 59:12 surgeon 53:21 surgery 19:22 40:20 surgical 53:2 Suster 17:13 sworn 3:4 60:20 61:10 symptom 39:20 51:4 symptomatic 56:7 symptoms 26:12,13 26:15 31:3 35:7 38:23 39:15 40:17 41:4,12 46:3 47:20,25 54:16 55:12 56:8 syndrome 38:20,22</p>	<p>taken 1:16 11:25 13:20,24 61:14 talk 8:18,21 13:7 14:1,24 16:2 17:1 17:2 talked 24:16 talking 14:2 16:1 47:25 telephone 27:20 28:7 tell 5:2 14:5 20:10 32:16 35:3 42:10 56:16 telling 50:22 temporal 31:5 term 44:8,12 terminate 17:20 terminology 42: 1 terms 27:16 44:10 53:16,19 55:2,11 57:24 test 27: 12 32:23 53:11 54:20 55:4 55:22 testified 21:4,6 testify 25:8,21 35:1 35:3 49:4 55:7 61:10 testifying 42:20 testimony 16:24 20:20 21:16,17,19 21:21 61:11,12 testing 18:16,19 tests 54:9 thank 58:17 their 27:8 38:14,14 39:4 40:3 thing 6:16 17:3 18:6 52:19,23 things 8:18 20:9 27:11 46:23 49:1 53:13 think 9:3 17:16 18:1 29:8,17 37:25 41:16 44:23 55:20 57:1 though 17:24 54:20 57:14 three 7:13 23:22 49:24 three-page 23:20 threshold 33:16 throat 5:5,7,11</p>	<p>through 6:23 11:6 26:3 39:10 48:17 50:12 56:23 60:3 thru 59:20 62:5 ticking 22:5 33:18 48:13 tight 48:23 49:1 time 6:19 7:25 8:14 8:24 20:23 22:13 23:7 31:4,5,23 35:18 36:20 37:18 38:10,20 39:9 40:25 45:23 48:3 49:9 51:20 58:17 59:14 61:14 times 29: 10 tinnitus 3:25 4:4 5:9 6:2,3,6,6,11 6:12,21 9:20 10:3 10:8,19,19 19:18 26:5,8,12,13,15 26:15 27:24 28:1 29:16,25 30:10,22 30:25 31:4,10,14 31:19,23 32:5,8 32:13 33:1,2,5,7,8 33:12,23 34:2,7 34:24 35:2,5,17 35:24 36:3,16,21 37:2 40:3,9,13,15 40:19 41:1,5,14 41:19 42:4,14 43:4,5,6 45:16,19 46:6,12,21 47:1 47:11,13,16,21 48:5,9,18,20,24 48:25 49:7,10,12 49:16,17 50:25 51:5,23 52:13,16 52:24 53:7 57:9 57:23 58:9 today 27: 10 36:16 told 18:6 tomorrow 59:3 tonsillitis 5: 12 top 23:2 topic 3:25 topics 4:2 totality 54:10 towards 6:20 Trower 2:5 Trade 50:4,13 trained 42:11</p>
--	--	--	--	--

<p>training 6:1,10,18 6:18,20 42:5 transcribed 61:12 transcript 4:20,23 60:2 transcription 61:12 treat 5:1740:9 55:14,18 treated 41:5 treating 54:25 treatment 5:23 6:3 6:12,25 40:10 41:8, 11,14,16,20 42:8 43:1,15 treatments 6:6 threshold 34:20 35:24 36:1 trial 3:14 21:6,19 21:21 23:12 25:8 25:15,25 35:1,4 42:20 true 4:8,20 5:19,24 23:15 24:8,14 25:9 26:20,25 28:12,13 31:16,20 31:24 32:5 37:5 37:12,23 39:22,24 40:6,13 41:6 44:17 45:3,17 47:17 50:18 51:23 54:1,21 56:9 61:12 truth 61:10,10,10 try 3:17 20:9 40:16 43:8,25 44:3,4 46:23 tumor 53:8 tumors 53:12 turn 56:12 two 7:13 23:21 41:4 42:19 47:21 58:14 type 5:23 12:21 38:18,19 39:14,15 41:18 45:11 47:25 52:4,18 typically 39:5 53:3 53:6</p> <hr/> <p>U</p> <p>Uh-huh 16:3 22:7 25:4 29:19 34:25 under 1:15 18:5,7 43:22 44:15 48:25</p>	<p>49:14 61:16 undergo 54:6 55:5 56:20 underlying 50:23 51:1 understand 15:5,7 15:12,13 17:6,10 25:18 28:24 30:9 31:11 36:8,13 43:3,21 49:3,5 50:22 55:2 59:13 understanding 6:1 1 43:16 48:4 underwent 27:13 University 42:13 unless 43:7 unlikely 36:22 54:13 unnecessary 43:23 44:2 upset 14:19 use 34:22 42:3 44:8 44:9 59:7 using 43:17</p> <hr/> <p>V</p> <p>V 2:12 variety 5:5 various 18:7 48:19 vehicle 30:1 37:11 38:5 40:25 venture 28:15 vernacular 33:8 46:4 versus 20:13 57:24 58:1 vertigo 38:4,23 44:8,11,17 45:14 53:16 54:18 55:9 55:18,23 56:8 57:12 very 16:6,21 36:22 42:6 vestibular 39:14 vestibulocochlear 39:4 viable 42:14 videotaped 25:15 59:6,16 viral 39:3 visits 38:2 Vivian 1:16 4:15 59:1 61:8,22</p>	<p>volume 50:11 vs 1:6</p> <hr/> <p>W</p> <p>waive 59:9 waived 59:24 want 4:11 14:22 18:3 30:9 31:11 36:8,12 43:21 49:3,4 warm 9:3 wasn't 13:11 57:15 watch 33:18 way 12:15 18:19 30:6 32:20 40:2 47:15,23 ways 40:6 wear 41:19 weather 9:2 week 3:14 25:14 well 6:4 7:1 12:11 12:14 14:21,22 15:9,14 20:14 21:13 29:5 30:24 34:12 38:11 40:18 42:5 43:12,21 45:12,16 48:2 49:25 50:1 53:5 well-respected 9:24 went 28:3 34:19 44:23 were 7:9 8:13 11:4 16:11,23 29:6 41:23 42:13 55:7 58:13 59:20 62:5 we'll 4:12 WHEREOF 61:18 while 39:17 whiplash 45:19 46:5,12 whisper 33:19 whole 17:3 61:10 wide 5:5 witness 1:14 3:1 12:17 16:16 18:10 59:4,11,17 61:18 woman 32:13 35:14 words 8:17 53:4 55:1 work 10:11 11:9,10 22:2 43:8 52:11 worked 11:1 20:18 working 19:15</p>	<p>workings 32:19 workup 53:11 World 50:4,13 worse 49:19 worst 35:17 worth 43:25 44:3,4 wouldn't 17:10,12 29:5 49:13 55:17 wrap 46:23 wristwatch 36:5 48:13 51:6 write 25:6,11 writing 28:7 written 3:24 10:18 21:13 23:14 25:17 26:22 27:3 28:17 35:23 59:7 wrote 25:16 54:5</p> <hr/> <p>Y</p> <p>Yeah 45:25 year 7:17 years 19:5 35:12 36:15 41:4 47:21</p> <hr/> <p>Z</p> <p>zero 30:18</p> <hr/> <p>\$</p> <p>\$1,200 21:14 22:2 22:10,14,19 \$500 21:17,24 23:6 23:7,8,12</p> <hr/> <p>I</p> <p>I 59:20 60:3 62:5 100 30:19 34:13 35:5 11:50 23:25 1240 2:13 13 38:8 15 27:9,10 35:12 36:1,3 1994 8:12 11:20,21 12:4 1997 31:1,18,20 38:1,9 39:11,21</p> <hr/> <p>2</p> <p>2 1:11 2nd 7:21 61:19 20 33:17 20th 35:25</p>	<p>2000 31:16 32:3 2002 1:11 7:21 24:5 28:17 35:20,25 60:21 61:19 2004 61:24 21 33:15 34:20 35:24 36:3 38:1,9 43:4 57:24 216-241-2600 2:7 216-579-1602 2:15 22nd 23:25 24:5 28:17 24th 35:19 28 61:17</p> <hr/> <p>3</p> <p>3 59:20 62:5 3rd 28:2 3:7 62:3 30 33:17,19 34055 1:20 35 36:4 36 36:4</p> <hr/> <p>4</p> <p>44113 2:6,14 460155 1:6 49-year-old 36:2</p> <hr/> <p>5</p> <p>5:00 1:21 50 33:19 45:23 59 60:3 59:20 62:5</p> <hr/> <p>6</p> <p>6th 29:12 31:16 6:15 59:23 600 34:21 35:25 36:1 660 2:5</p> <hr/> <p>8</p> <p>8 61:24</p> <hr/> <p>9</p> <p>97 31:23 32:2 37:23 38:3 39:11 98 32:2 39:11 99 32:2 39:12</p>
--	---	--	--	--