

1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-L-1881-17  
4

5 JULIE F. PETRY )  
and DAVE C. PETRY, )  
6 her husbands, )  
 )  
7 Plaintiff, )

) VIDEOTAPE DEPOSITION OF:  
8 vs. )  
 ) MARIA CHIARA CARTA, M.D.

9 WILKIN AND GUTTENPLAN )  
and/or ABC CORP #1-10 )  
10 (representing unknown )  
companies or entities )  
11 responsible for the )  
accident in question), )  
12 )  
Defendants. )

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15  
16 THURSDAY, APRIL 19, 2018  
17 HAMMONTON, NEW JERSEY  
18 1:54 p.m.  
19

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21  
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B E F O R E:

JACQUELINE A. GEARY, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the offices of Integrative Neurological Care, 663 South White Horse Pike, Hammonton, New Jersey, on Thursday, April 19, 2018, commencing at 1:54 p.m., pursuant to Notice.

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21     A L S O     P R E S E N T:

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JOSHUA GROSSMAN, VIDEOGRAPHER

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## I N D E X

MARIA CHIARA CARTA, M.D.	VOIR DIRE
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BY MR. ROTHENBERG	19
	DIRECT
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(EXHIBITS RETAINED BY COUNSEL)

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(Fee Schedule received and marked for identification as Deposition Exhibit P-8, retained by counsel)

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(Welcome to ExamWorks Form received and marked for identification as Deposition Exhibit P-9, retained by counsel)

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(ExamWorks Registration Form marked for identification as Deposition Exhibit P-10, retained by counsel)

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MR. ROTHENBERG: So clearly, in this case, Dr. Carta's report recites the opinions of non-treating -- I'm sorry, non-testifying individuals who have provided opinions. Concerning the present case of -- present case law, it would be inappropriate for Dr. Carta to refer to those opinions, specifically, for example, the MRI reports, what they contain, and providing that as a basis for her opinion, discussing the contents thereof. Since she never saw the reports and can't verify the veracity, they are hearsay. They were

1 never named as any experts by the defense. And so  
2 to the extent that, even if -- I've gotten a  
3 subpoena with respect to Dr. Visani, V-I-S-A-N-I,  
4 perhaps, even if he were to testify, he could not  
5 give an opinion as to what is in his MRI report  
6 because he was never named as an expert.

7 Consequently, his interpretation of the MRI is it  
8 would still be inappropriate.

9           So to the extent that defense counsel  
10 intends to conditionally rely upon that, I will  
11 object. And to the extent that it pollutes the  
12 transcript, if it becomes so inextricably  
13 intertwined, I will suggest that that would be  
14 defense counsel's problem, not mine. So that as the  
15 Pandora's box is opened, it becomes part and parcel  
16 of the examination and I'm not going to waive any  
17 rights to have it stricken or have her entire  
18 testimony stricken on the basis of relying upon  
19 something which is inadmissible and in order for her  
20 to articulate an opinion. For example, for her to  
21 articulate an opinion concerning what's in the MRI  
22 of the brain, she would have had to have reviewed  
23 that and so she can't formulate an opinion on that  
24 basis.

25           And so I think that's particularly

1 problematic. I think defense counsel certainly has  
2 to be aware of that and I'm placing my objection on  
3 the record before we start.

4 MR. PAULUS: Thank you, counselor. Your  
5 objection is duly noted. However, I plan to protest  
6 on a case-by-case basis, as it were, in terms of  
7 whether there is a violation of the James, Ruiz  
8 opinion, so we'll go forward.

9 MR. ROTHENBERG: Well, I would look even  
10 further to the Hayes case, which says that, very  
11 clearly, you can't back-door inadmissible hearsay by  
12 virtue of an expert. So Hayes is a Supreme Court  
13 case, which my partner, Ms. Gozsa, was recently  
14 involved in, which further expounded upon the  
15 concepts and principles set forth in Hayes.

16 And to that extent, you know, you  
17 shall do as you shall do, but you know, I put it on  
18 the record. And to the extent that I have to spend  
19 time, money, and energy on that issue, I will seek  
20 to be reimbursed to the extent that there is any  
21 clear violation of the precautions.

22 MR. PAULUS: Again, counselor, your  
23 objection is on the record and we'll take it on a  
24 case-by-case basis.

25 MR. ROTHENBERG: In addition, I was sent --

1 when we took Dr. Carta's deposition February 8,  
2 2018, at that time, we were in discovery, discovery  
3 was still open, and she was produced as a request  
4 that we had made long before and it had to actually  
5 be rescheduled. I think it may have actually been  
6 taken after the close of discovery simply because  
7 Dr. Carta's -- she had not been produced in a timely  
8 fashion, and by agreement, she was produced after  
9 the discovery end date. At that time, we asked for  
10 certain things, including her invoices, which we  
11 still have not received despite the fact that the  
12 court rules say that we're entitled to them and they  
13 should be produced with an expert report. And while  
14 oftentimes they're not, I made a request.

15           Second of all, at the deposition,  
16 Dr. Carta was asked to produce any studies she  
17 relied upon with respect to specific testimony  
18 concerning how head injuries occur and the forces  
19 involved in head injuries. We sent a letter -- her  
20 deposition was scheduled the following -- I think  
21 within two weeks, for trial testimony, and that  
22 deposition was unexpectedly adjourned for no reason  
23 whatsoever, the trial testimony. At that time, we  
24 had a trial date. So this deposition gets  
25 rescheduled. I was told -- actually, I was told the



1 reason why she was rescheduled was because she was  
2 going to appear live. Despite that representation,  
3 she was not produced live and she is now being taken  
4 in her office again, now two months hence plus.

5           During the deposition, I asked for  
6 certain studies. I was told that they would be  
7 supplied. Defense counsel said they would be  
8 supplied. When this was scheduled in March, I wrote  
9 a letter saying that I would not go forward unless  
10 the studies were provided at least a week ahead of  
11 time. I then wrote two weeks before this deposition  
12 saying that we still hadn't received the studies and  
13 I would not proceed unless they were produced a week  
14 ahead of time.

15           I received the studies by FAX  
16 yesterday, sixty-three pages of additional  
17 information, which I did not have, despite the fact  
18 that a representation would be made that they would  
19 be supplied. According to defense counsel, this was  
20 printed up last night. So apparently, despite a  
21 long time request and a representation that defense  
22 counsel -- or the witness was aware of certain  
23 studies, I didn't get a study. One is a book  
24 chapter. Another is something from the National  
25 Brain Injury Association, which is not adopted by

1 them. It is not a chapter. It's not a study. And  
2 we'll, I'm sure, have some time to discuss that.

3 But in any case, the sixty-three pages  
4 that was supplied, I object to insomuch as it was  
5 provided in an untimely fashion. Rather than  
6 adjourn this and further adjourn the trial date, I'm  
7 going forward, but I reserve my right to recall  
8 Dr. Carta if I am able to find -- I haven't had a  
9 chance to, obviously, do any research. The book  
10 that apparently this chapter is taken from she  
11 printed off on-line. In the short -- this was FAXed  
12 at one-fifty yesterday, so in the twenty-four hours  
13 that have passed, I have not had a chance to  
14 actually obtain the book myself, read the book, and  
15 be able to review it in an appropriate fashion.  
16 This is quite unfair to have a study that is  
17 produced essentially at trial. And this is like  
18 showing up at the courthouse steps with a study or  
19 book chapter for the first time. That's not  
20 appropriate.

21 Same thing with the article from the  
22 International Brain Injury Association website,  
23 whoever they are. So I place that objection on the  
24 record as well.

25 MR. PAULUS: Duly noted.

1 MR. ROTHENBERG: Will you be referring to  
2 the report -- I mean, to these studies?

3 MR. PAULUS: I don't know. We'll find out.

4 MR. ROTHENBERG: Okay.

5 MR. PAULUS: It depends -- you know,  
6 entirely up to you in terms of what your  
7 cross-examination is going to be. If you're asking  
8 whether I'm going to be referring to these reports  
9 in my direct examination of my expert, the answer is  
10 no. Is that a satisfactory answer, Adam?

11 MR. ROTHENBERG: Mr. Paulus, it is as good  
12 as I could possibly hope in this scenario we're  
13 sitting in.

14 MR. PAULUS: I don't know what that means,  
15 but let's proceed.

16 MR. ROTHENBERG: That means what else could  
17 I expect you to say.

18 MR. PAULUS: Fair enough, Adam. Are we  
19 ready?

20 MR. ROTHENBERG: It was a polite, respectful  
21 response. Yeah.

22 THE VIDEOGRAPHER: We are now on the record.  
23 This begins videotape number one in the deposition  
24 of Maria Chiara Carta, M.D. in the matter of Petry  
25 versus Wilkin, et al., in the Superior Court of New

1 Jersey, Law Division, Middlesex County, Docket  
2 Number MID-L-1881-17.

3 Today is Thursday, April 19, 2018, and  
4 the time is two-o-five p.m. This deposition is  
5 being taken at 663 South White Horse Pike,  
6 Hammonton, New Jersey. The videographer is Joshua  
7 Grossman of Sentry Court Reporting and the Court  
8 Reporter is Jackie Geary of Sentry Court Reporting.

9 Will counsel and all parties present  
10 state their appearance and whom they represent.

11 MR. ROTHENBERG: Good afternoon. This is  
12 Adam L. Rothenberg of the firm Levinson Axelrod on  
13 behalf of Julie and David Petry.

14 MR. PAULUS: Good afternoon. William E.  
15 Paulus from the Law Firm of Gerard M. Green on  
16 behalf of the defendant, Wilkin and Guttenplan.

17 THE VIDEOGRAPHER: Will the Court Reporter  
18 please swear in the witness.

19 - - -

20 MARIA CHIARA CARTA, M.D., 663 South  
21 White Horse Pike, Hammonton, New Jersey, sworn.

22 - - -

23 V O I R D I R E

24 - - -

25 BY MR. PAULUS:

1 Q. Good afternoon, Dr. Carta.

2 A. Good afternoon.

3 Q. We are in your office in Hammonton for  
4 your videotaped deposition for trial. We thank you  
5 for agreeing to do this here today. Would you  
6 kindly give the jury the benefit of your educational  
7 background?

8 A. Yes. So I am a board-certified  
9 neurologist. I went to medical school at University  
10 of Padua in Italy. I graduated medical school with  
11 an M.D. Degree in 1980. Came to the United States  
12 for all my post-graduate training. I did one year  
13 of internal medicine at Albert Einstein Medical  
14 Center, a three-year neurology residency at Temple  
15 University Hospital, a one-year neurophysiology  
16 fellowship at Thomas Jefferson University Hospital.  
17 And then, '87, '88, I went back to Temple to teach  
18 residents and medical students.

19 In the end of 1988, I joined a private  
20 practice group in Burlington County, Maple Shade,  
21 New Jersey. And then, in 2006, I opened my own solo  
22 neurology practice here in Hammonton.

23 Q. Doctor, are you licensed to practice  
24 medicine in any state?

25 A. Yes, I'm licensed to practice medicine

1 in New Jersey since 1988.

2 Q. Any other states?

3 A. I have inactive licenses in  
4 Pennsylvania, that's when I was a resident, so --  
5 and then I have an inactive license in Illinois,  
6 which I had obtained because I was originally going  
7 to transfer to Chicago and then that didn't happen.

8 Q. And do you practice in any particular  
9 specialty, medical specialty?

10 A. Yes, I am -- I practice general  
11 neurology.

12 Q. What is the -- what is neurology, for  
13 the jury's sake?

14 A. Neurology is a subspecialty of  
15 internal medicine. And neurologists see all  
16 diseases of the brain and the spinal cord, nerves  
17 and muscles. So seizures, strokes, MS, brain  
18 injuries, tumors. Many reasons. Neck root  
19 disorders, back root disorders, myasthenia,  
20 et cetera. So a long list.

21 Q. Do you treat patients with -- in this  
22 case -- stroke that, Doctor.

23 In this case, the plaintiff,  
24 Ms. Petry, is alleging that she sustained a mild  
25 traumatic brain injury as a result of a motor

1 vehicle accident. Have you -- do you or have you  
2 treated any patients with brain injuries?

3 A. Yes, all the time.

4 Q. How many have you seen in the last  
5 year, for example?

6 A. Well, on average, I see two or three a  
7 week, a lot of adolescents from sports concussions,  
8 a lot of elderly with falls, and all kinds of people  
9 who fall and/or have concussions.

10 Q. Now, you're serving here as an expert  
11 on behalf of the defendant, my client, Wilkin and  
12 Guttenplan. How much of your practice is devoted to  
13 actually seeing patients versus doing forensic  
14 reports like you're doing here for us today?

15 A. I mostly see patients. About ninety  
16 percent of my practice consists of direct general  
17 patient neurology care, about ten percent consists  
18 of forensic reports.

19 Q. And of those ten percent, what kind of  
20 forensic reports do you perform?

21 A. You mean defense versus --

22 Q. Yes, defense versus plaintiff.

23 A. I mostly perform defense reports.

24 Q. Have you ever performed any forensic  
25 reports for a plaintiff?

1           A.     Occasionally, if it's my own patient.

2           Q.     Are you a board-certified neurologist,  
3     Doctor?

4           A.     Yes.

5           Q.     What does it mean to be a  
6     board-certified neurologist?

7           A.     The American Board of Psychology and  
8     Neurology is a national organization that sets an  
9     examination at the end of your training, which  
10    consisted, when I took it, of a multiple choice  
11    one-day testing and followed several months later by  
12    an oral examination. So you have to go through the  
13    test and pass the test in order to become  
14    board-certified. Maybe similar to like a bar for  
15    attorneys, I would say.

16          Q.     And how long have you been  
17    board-certified?

18          A.     Since 1987.

19          Q.     Doctor, are you affiliated, currently  
20    affiliated with any hospitals?

21          A.     I'm affiliated with JFK and  
22    AtlantiCare as a visiting physician.

23          Q.     What does that mean, to be a visiting  
24    physician?

25          A.     It means that I do not admit to the



1 hospital, but I have access to records and I can see  
2 my patients, visit my patients if they're there and  
3 have access to the records.

4 Q. Have you ever had admitting privileges  
5 to a hospital?

6 A. Yes.

7 Q. When was that and where?

8 A. I was attending neurologist in the  
9 Virtua, JFK System, and Hammonton Hospital and  
10 Southern Ocean County Hospital from 1988 to, I would  
11 say, 2005 -- 2004, 2005. So I had visiting -- I had  
12 consulting and admitting privileges at those  
13 hospitals.

14 Q. Have you published any papers or,  
15 yeah, papers on any particular field of neurology?

16 A. I published some abstracts during my  
17 fellowship and then I published some book reviews.  
18 They were -- the abstracts were pertaining to animal  
19 neurochemistry research in epilepsy.

20 Q. And what is an abstract?

21 A. An abstract is something that you  
22 present at the national meeting or a specialty  
23 meeting.

24 Q. And have you given any presentations  
25 in the field of neurology?

1           A.     I give presentations -- I've given  
2 presentations to colleagues and general audiences  
3 all through my career. They're generally -- they're  
4 slide presentations. They're generally informal, so  
5 I don't list them in my CV.

6           Q.     How many patients do you treat a year,  
7 Doctor?

8           A.     Well, I treat, let's see, maybe  
9 eighty, a hundred patients a week, so multiply that  
10 for the weeks of the year, so --

11          Q.     And of those patients, what are some  
12 of the conditions that they -- are you treating them  
13 for on a daily --

14          A.     I treat them for everything,  
15 migraines, seizures, strokes, muscular  
16 radiculopathies, neuropathies, diseases of the  
17 nerves, myasthenia, myopathies, which are diseases  
18 of the muscles, multiple sclerosis, concussions,  
19 et cetera.

20          Q.     Doctor, you are being reimbursed for  
21 your -- and compensated for your time today, are you  
22 not?

23          A.     Yes.

24          Q.     And I'm correct, this is not the first  
25 time you've given videotaped deposition for trial?

1           A.       That's correct.

2           MR. PAULUS:   At this point, I would offer  
3   Dr. Maria Carta as an expert in the field of  
4   neurology.

5   BY MR. ROTHENBERG:

6           Q.       I have some questions, Doctor.  
7   Doctor, is it fair to say you're not an orthopedist?

8           A.       That is correct.

9           Q.       And in this case, you're not going to  
10  be giving any orthopedic opinions?

11          A.       That is correct.

12          Q.       Now, you do treat neck and back  
13  injuries as part of your practice, correct?

14          A.       If they have any neurological  
15  consequences, yes.

16          Q.       You treat people with herniated disks  
17  with neurologic problems, correct?

18          A.       I would only treat people with  
19  herniated disks if they have any nerve root or  
20  spinal cord diseases as a result of it.

21          Q.       And in this case, you're not giving  
22  any opinions concerning the neck or back, correct?

23          A.       Correct.

24          Q.       You're not a psychologist?

25          A.       Correct.

1 Q. You're not a psychiatrist?

2 A. Correct.

3 Q. And you're not going to be giving any  
4 opinions concerning the psychological condition of  
5 Ms. Petry, is that correct?

6 A. That's correct.

7 Q. You're not a neuropsychologist?

8 A. That's correct.

9 Q. And in this case, you're not going to  
10 be commenting upon any neuropsychological testing,  
11 is that correct?

12 A. Not unless you ask me.

13 Q. Well, you didn't give any opinions  
14 concerning any neuropsychological testing, correct?

15 A. That's correct.

16 Q. Now, neuropsychologists are something  
17 that you send your patients to on occasion, correct?

18 A. That's correct.

19 Q. And you rely upon them in treating  
20 your own patients, correct?

21 A. That's correct.

22 Q. And you rely upon them in treating  
23 your patients who have head injuries, is that  
24 correct?

25 A. That's correct.

1           Q.     But in this case, you're not going to  
2 be offering and have not offered any opinions  
3 concerning the neuropsychiatric testing, is that  
4 correct?

5           A.     That's correct.

6           Q.     Now, you're not going to be giving any  
7 opinions concerning post-traumatic stress disorder?

8           A.     That's correct.

9           Q.     You're not a biomechanist?

10          A.     No, I'm not.

11          Q.     You're not a biomechanical engineer?

12          A.     No, I'm not.

13          Q.     You have no board certifications in  
14 brain injuries, correct?

15          A.     I'm sorry?

16          Q.     You have no board certifications in  
17 brain injuries?

18          A.     That's correct.

19          Q.     You've worked with head injuries in  
20 your residency and that's the only special training  
21 you ever had in head injuries, is that correct?

22          A.     That's correct. I also wrote a  
23 graduate thesis about head injuries.

24          Q.     Did you list that?

25          A.     Yes.

1 Q. What's it listed as?

2 A. It's listed as a -- metabolic  
3 complication of head trauma.

4 Q. Where is that located?

5 A. It's in the first page.

6 Q. Metabolic changes of head trauma,  
7 that's, what, increase in heart rate, increase in  
8 what? What are the metabolic --

9 A. Partial oxygen, blood pressure,  
10 partial carbon monoxide pressure, neurochemical  
11 changes, respiratory function, everything concerning  
12 the alteration of body functions as a result of  
13 brain injuries.

14 Q. Do you get increased heart rate with  
15 head injuries?

16 A. Sometimes.

17 Q. Doctor, since that time in 1980, that  
18 was your last work in, specifically, in training, in  
19 head injuries, isn't that correct?

20 A. Yes.

21 Q. So it's been twenty-eight years, is  
22 that right, twenty-eight -- thirty-eight years since  
23 you were specifically involved in any specialty  
24 training with respect to head injuries, correct?

25 A. That's correct.

1           Q.     And so for the thirty-eight years  
2 since, you've been involved in other aspects, more  
3 specifically, such as seizures, right?

4           A.     Well, as I said before, I've seen  
5 seizures, strokes, and brain injuries two, three  
6 times a week, yes.

7           Q.     Now, you've never been a medical  
8 director of a center for brain injuries, correct?

9           A.     Correct.

10          Q.     You reviewed the records of  
11 Dr. Greenwald, who is a medical director of a center  
12 for head injuries, correct?

13          A.     That's correct.

14          Q.     And you relied upon his records in  
15 formulating your opinions, is that correct?

16          A.     That's correct.

17          Q.     You reviewed the records of  
18 Dr. Golden, who is a specialist in head injuries, a  
19 neuropsychologist, right?

20          A.     That's correct.

21          Q.     And you relied upon her records, is  
22 that correct?

23          A.     That's correct.

24          Q.     And only five to six percent of your  
25 practice is actually dealing with head injuries,

1 isn't that correct?

2 A. That -- yeah, that would be correct.

3 Q. We took your deposition. I'm taking  
4 it straight from your deposition.

5 A. Okay.

6 Q. And of the practice, only five -- five  
7 or six percent of your practice has involved  
8 permanent mild traumatic brain injuries, isn't that  
9 correct?

10 A. That's correct.

11 Q. You indicated that you are presently  
12 affiliated with JFK?

13 A. JFK, Washington Township, yes.

14 Q. Is that JFK that's part of JFK in  
15 Edison?

16 A. No, no.

17 Q. Different JFK entirely?

18 A. That's the JFK -- I think now they  
19 call it Rowan University -- no, no. Actually, I  
20 stand corrected. It's now part of the Jefferson  
21 Health System.

22 Q. It's part of what, the Philadelphia  
23 hospital, the Jefferson --

24 A. Jefferson Health System merged with  
25 JFK, yes.



1           Q.     The report that you wrote in this case  
2 was for a company called ExamWorks, right?

3           A.     Yes.

4           Q.     And you've been writing reports for  
5 them for, what, about thirteen years?

6           A.     Yes, that sounds right.

7           Q.     And you had indicated that you don't  
8 have a -- you don't have a contract with that  
9 company, is that right?

10          A.     No -- not that I can find.

11          Q.     Now, when your -- when Ms. Petry would  
12 come here, she would have to fill out a form  
13 concerning her history, is that correct?

14          A.     Yes.

15          Q.     And I have that form, which you have  
16 in front of you, it's the ExamWorks registration  
17 form, which I've marked as Plaintiffs' Exhibit 10  
18 for identification.

19          A.     Okay.

20          Q.     Do you have that?

21          A.     Yes.

22          Q.     And you have such a strong relation --  
23 strike that.

24                   The company, ExamWorks, specializes in  
25 setting up defense examinations, isn't that correct?

1           A.     That's correct.

2           Q.     And your relationship with them is,  
3 you're so affiliated with them that you're actually  
4 one of the doctors who is listed on their special  
5 registration form, isn't that correct?

6           A.     Yes.

7           Q.     Page one?

8           A.     That's correct.

9           Q.     So that you're one of the number of  
10 doctors that they choose to always send patients to  
11 and at a variety of different locations?

12          A.     Yes.

13          Q.     And in fact, you actually, even though  
14 we all drove down here to Mount Laurel for this  
15 deposition, the videotape --

16          A.     You mean Hammonton?

17          Q.     I'm sorry, Hammonton, we're in  
18 Hammonton. My mistake.

19                    You originally thought that the  
20 examination you did for Ms. Petry was in the Mount  
21 Laurel office. Do you remember that during your  
22 deposition?

23          A.     Yes.

24          Q.     You reviewed your deposition before we  
25 started today?

1           A.     Yes.

2           Q.     You've seen that, correct?

3           A.     Yes.

4           Q.     So -- but in fact, that was incorrect.

5     You actually did the examination, according to the

6     form, in Edison, right?

7           A.     That's right.

8           Q.     So you drove an hour and a half up to

9     Edison from Hammonton to do an examination of

10    Ms. Petry, correct?

11          A.     That's incorrect.

12          Q.     That is incorrect, you didn't drive

13    up?

14          A.     No, I drove from Mount Laurel to

15    Edison, so that takes about an hour.

16          Q.     Well, is Mount Laurel --

17          A.     I think --

18          Q.     Mount Laurel is closer than

19    Hammonton --

20          A.     Mount Laurel is much closer to Edison

21    than Hammonton.

22          Q.     So you drove an hour each way along

23    with your nurse, Dottie. You took Dottie with you?

24          A.     Dottie and I generally meet at the

25    office.

1           Q.     So you and -- so Dottie, someone from  
2 your office, went all the way to Edison and you went  
3 all the way to Edison just to examine Ms. Petry for  
4 ExamWorks, right?

5           A.     Yes.

6           Q.     Now, you don't know how much -- how  
7 much ExamWorks paid you last year, do you?

8           A.     I'm sorry?

9           Q.     How much did ExamWorks pay you last  
10 year for all the work that you had done for them?

11          A.     I don't know. That goes to the  
12 accountant.

13          Q.     But even though you don't know how  
14 much they paid you, you do know it's ten percent of  
15 your income?

16          A.     Yes, I would say so.

17          Q.     You don't know how much it is, but  
18 it's ten percent?

19          A.     Well --

20          Q.     Does that make sense?

21          A.     -- it's approximately ten percent.

22          Q.     And most of your medical/legal work is  
23 actually done through this company?

24          A.     That's correct.

25          Q.     And you'll admit that they're at least

1 ten percent of your income, right?

2 A. Yes.

3 Q. And you send -- you dictate the  
4 report, you send it to them, and they make  
5 corrections, they type it up, right?

6 A. No, they don't make corrections. They  
7 send back to me my dictation and I do the  
8 corrections.

9 Q. Well -- all right. So if they -- you  
10 made handwritten notes during the course of your  
11 review of Ms. -- when you spoke to Ms. Petry in  
12 person, right?

13 A. Yes.

14 Q. And you actually wrote down your  
15 diagnoses and your opinions, you sort of jotted them  
16 down on that handwritten piece of paper, right?

17 A. Yes.

18 Q. And so those were those -- the ones  
19 that you made at the time, right?

20 A. Yes.

21 Q. And do you have those handwritten  
22 notes in front of you?

23 A. Yes.

24 Q. Let me see if I can find my copy.  
25 Give me just a moment. Here we go. So one of

1 the -- if we go to page two, for example --

2 A. Yes.

3 Q. -- and you said that they don't change  
4 anything. You make -- these are your opinions in  
5 your report, right?

6 A. This is my handwritten notes that I  
7 take while I see the patient. My opinions are in  
8 the typed report. Because after I handwrite this, I  
9 dictate a report and -- you know, which is, you  
10 know, much more comprehensive. This are just notes  
11 I jot down when I talk to the patient.

12 Q. On page three -- or two of your  
13 handwritten notes, it says A, slash, P. What is  
14 that?

15 A. Assessment, plan.

16 Q. And your opinion in this case, which  
17 we'll get to in length, but for this purpose, you  
18 have A/P and then it says other, right?

19 A. That's correct.

20 Q. And those are your other diagnoses,  
21 right?

22 A. That's correct.

23 Q. And in that, you diagnose a prior neck  
24 problem, correct?

25 A. Yes.

1           Q.     But that's not in your official  
2 report, is it?

3           A.     It is in my official report.  If you  
4 look at the summary of records --

5           Q.     I'm looking at the opinions.

6           A.     -- on page --

7                   No, it's not in my opinions, but it is  
8 in the summary of records.

9           Q.     There's a summary of records.  Is  
10 there somewhere in the records where there's a prior  
11 neck problem anywhere?

12          A.     Yes.

13          Q.     Where?

14          A.     Okay, so we're going back to -- okay,  
15 so -- okay, so I stand corrected.  There is a prior  
16 lumbar spine problem and elbow and wrist.

17          Q.     But in your notes, even though there  
18 is no record whatsoever from any provider at any  
19 time, you wrote prior neck problem even though there  
20 never was, right?

21          A.     I wrote prior neck and back pain,  
22 actually.

23          Q.     But, Doctor, I'm asking about the  
24 neck, so let's just focus on what I've asked you  
25 about.  You understand what I've asked you, right?

1           A.     That's correct.

2           Q.     Did you write prior neck?

3           A.     Yes.

4           Q.     And she never had any prior neck in  
5 any record at any time from any history from  
6 anywhere in the world that you're aware of?

7           A.     Well, I don't really know that because  
8 I never received the records from her primary care  
9 physician.

10          Q.     Did you ask Mr. --

11          A.     It looks --

12          Q.     Did you ask Mr. Paulus for those  
13 records?

14          A.     No.

15          Q.     Who provided you the records?

16          A.     ExamWorks.

17          Q.     And ExamWorks was hired by Mr. Paulus'  
18 firm in order to employ you, correct? Is that  
19 correct?

20          A.     Yes, that's correct.

21          Q.     And you never asked for those records,  
22 correct?

23          A.     That's correct.

24          Q.     And if they had something about a  
25 prior condition, you'd expect you would have been



1 provided them, correct?

2 A. I would expect I would have been  
3 provided, yes.

4 Q. And you're not saying now that there's  
5 something in those records which indicates there's a  
6 prior neck problem, are you?

7 A. I don't know one way or the other, so  
8 I cannot comment on that.

9 Q. That's what I'm asking you. Are you  
10 claiming there is?

11 A. No, I'm not claiming. I said -- I  
12 just said I don't know one way or the other.

13 Q. But, Doctor, let's talk about, then,  
14 where it says prior neck. You had no basis for  
15 writing prior neck, correct?

16 A. That's -- well, it appears that that's  
17 inaccurate, yes.

18 Q. So then you send your notes -- you  
19 always send your notes to ExamWorks, right?

20 A. Yes.

21 Q. And somehow or another, in your final  
22 report, it doesn't say a prior neck under your  
23 diagnoses. Under other diagnoses, it doesn't have  
24 prior neck, does it?

25 A. That's correct.

1 Q. Thank you.

2 A. So I caught myself.

3 Q. Well, first, you made it up and then  
4 you caught yourself.

5 MR. PAULUS: Objection.

6 THE WITNESS: No.

7 MR. PAULUS: Argumentative.

8 THE WITNESS: Obviously --

9 BY MR. ROTHENBERG:

10 Q. Was it true when you wrote it the  
11 first time?

12 A. Obviously, when I reviewed everything  
13 before I dictated the report, I caught myself and  
14 corrected the inaccuracy.

15 Q. Why would you write prior neck if  
16 there was no history of prior neck?

17 A. I cannot --

18 MR. PAULUS: Objection, asked and answered.

19 You can answer it, though.

20 BY MR. ROTHENBERG:

21 Q. Go ahead.

22 A. It appears that I wrote it, but again,  
23 I caught myself and corrected the inaccuracy.

24 Q. Are you sure that ExamWorks didn't  
25 correct it?

1           A.     ExamWorks never corrects anything. I  
2 correct all the reports.

3           Q.     The report doesn't have your address  
4 on it, right? It has a Roseland address, right?

5           A.     That's correct.

6           Q.     It has the name ExamWorks on the top?

7           A.     That's correct.

8           Q.     You send the report -- you send a  
9 dictation to them and they're the ones who type it  
10 up and then send it back to you, is that correct?

11          A.     They type up my dictation and they  
12 send back to me and then I edit all the typos and,  
13 you know, and my -- the grammar and whatever I think  
14 is not in good form, yes.

15          Q.     Now, you send them your notes from  
16 your review of the records, right?

17          A.     Yes.

18          Q.     But you don't have those notes because  
19 they either keep them or destroy them, correct?

20          A.     I have them.

21          Q.     No, the actual -- the handwritten  
22 notes that you made.

23          A.     I have the handwritten notes.

24          Q.     Of the review of the records?

25          A.     Oh, the record review. Yeah, no, I

1 don't have those. No.

2 Q. Doctor, just listen to me. You take  
3 the notes -- you make notes when you review the  
4 records, right?

5 A. Yes.

6 Q. And you send them to ExamWorks, right?

7 A. I think so, yes.

8 Q. And you don't have those records.  
9 They either keep them or they destroy them, correct?

10 A. Yes. I don't know what -- what  
11 happened with my notes, yeah.

12 Q. Doctor, you have been testifying three  
13 to five times a year for at least the last six or  
14 seven years, is that correct?

15 A. Yes.

16 Q. And each time you've testified,  
17 whether it's on videotape or on those very rare  
18 occasions where you actually come to court, you have  
19 testified on each and every occasion, when hired by  
20 an attorney, you've testified for the defense,  
21 correct?

22 A. Yes.

23 Q. In fact, you can't remember ever  
24 testifying on behalf of anyone -- any plaintiff who  
25 wasn't your patient, isn't that correct?

1           A.     That would be correct, yes.

2           Q.     And over the last ten years, you've  
3 only testified for the defense?

4           A.     Yeah, that might be correct. I might  
5 have testified for my patient, but I don't remember  
6 any.

7           Q.     Do you have a copy of your deposition?  
8 I can refresh your recollection.

9           A.     Yes.

10          Q.     Do you want to -- do you want me to  
11 refresh your recollection?

12          A.     No, that's fine. I probably -- for at  
13 least ten years, yeah, that's correct.

14          Q.     Now, how long have you actually been  
15 working for ExamWorks or the company that preceded  
16 them?

17          A.     Since 2006.

18          Q.     And ninety to ninety-five percent of  
19 the reports you actually write for medical/legal  
20 purposes are for defendants, correct?

21          A.     That's correct.

22          Q.     And the only time in which you're  
23 actually writing a report which isn't for a  
24 defendant is when you might be writing a report for  
25 your own patient?

1           A.     That's correct.

2           Q.     And you can't remember the name of a  
3 single plaintiff's lawyer you've actually worked  
4 for?

5           A.     I don't remember plaintiff's or  
6 defense lawyers.

7           Q.     Now, you charge a minimum of eight  
8 hundred and fifty dollars for an exam and report for  
9 defense purposes, is that correct?

10          A.     Yes.

11          Q.     And we were in your office two months  
12 ago to take your deposition. At that time, I asked  
13 for the bills for what you've charged in this case  
14 and you couldn't produce any evidence of what you  
15 charged in this case, is that correct, outside of  
16 for the deposition that was occurring that day?

17          A.     That's correct. I told you, ExamWorks  
18 has the bills.

19          Q.     Well, but -- so you bill for your  
20 patients when they come in, correct?

21          A.     Yes.

22          Q.     And when you provide treatment, you  
23 expect to get paid, correct?

24          A.     Yes.

25          Q.     And so --

1           A.     Well, actually, you submit for payment  
2 to the insurance company.

3           Q.     Right.  And someone in your office  
4 actually follows up to make sure the insurance  
5 companies pay you, correct?

6           A.     Yes, but that is for the office  
7 patients.

8           Q.     Yes, and -- but you want to make sure  
9 you get paid for these exams, correct?

10          A.     That's correct.

11          Q.     But you can't produce any records for  
12 the particular exams you did in this case, is that  
13 correct?

14          A.     The records are with ExamWorks.  I  
15 told you, we FAX the visit record to ExamWorks and  
16 they do the charges.

17          Q.     Right, Doctor.  So how do you make  
18 sure you get paid if you don't keep track of it?

19          A.     Well, then, you know, there is a check  
20 that comes at the end of the month.

21          Q.     Right.  How do you know whether you  
22 got paid for all the exams you did?  You're doing,  
23 you know, ten or twelve a month, right?

24          A.     Well, there is a checklist and my --  
25 this is separate from the regular -- regular medical

1 billings, so --

2 Q. So you're doing them in Edison.  
3 You're doing them down here. You're doing them in  
4 Mount Laurel. How do you make sure you get paid for  
5 all those times you're doing exams for ExamWorks if  
6 you don't keep track of it?

7 A. I don't personally keep track of  
8 anything. I just do the work.

9 Q. But your office doesn't keep track of  
10 what they bill ExamWorks, is that correct?

11 A. Well --

12 Q. Is that correct or not? You can say  
13 it's not correct or it is correct.

14 MR. PAULUS: The witness can elaborate on  
15 her answer.

16 MR. ROTHENBERG: It's not a speaking  
17 objection. If you have an objection --

18 THE WITNESS: ExamWorks generates the  
19 bills -- I think I already explained this in the  
20 deposition. ExamWorks generate the bills and I get  
21 a check at the end of the month.

22 BY MR. PAULUS:

23 Q. So let me point out something --

24 A. And then there is a number -- there is  
25 a name list and it gets checked off. So that, I



1 suppose, would be the keeping track part.

2 Q. Dr. Carta, the jury wasn't there for  
3 your deposition. So when I ask you questions today,  
4 if you refer to the deposition, that's not helpful  
5 to anybody.

6 A. But you keep referring to --

7 Q. That's called cross-examination. So  
8 I'm cross-examining you with your prior testimony  
9 versus you citing to it, which they're not going to  
10 know. So it's different. And I'm going to ask you,  
11 if you will, just answer my questions.

12 So my question --

13 A. I did answer your question.

14 Q. Doctor, do you have records of what  
15 you charge ExamWorks? It's a yes or no question.

16 A. Not at the moment, no.

17 Q. And so you can't tell us how much you  
18 charged in this case, but at a minimum of eight  
19 hundred fifty dollars, plus another two hundred and  
20 fifty to five hundred dollars depending upon how  
21 many additional records you reviewed, correct?

22 A. Correct.

23 Q. And you actually have a fee schedule,  
24 which I've marked as P-8 for identification. Is  
25 that your -- if you don't mind me leaning forward --

1 thank you, Doctor. Is that your fee schedule?

2 A. Yeah, it looks like it.

3 Q. So that's -- that's actually what  
4 you're going to charge ExamWorks for the work in the  
5 case?

6 A. Yes.

7 Q. Okay. And so -- you also charged  
8 three thousand dollars for your videotaped  
9 deposition?

10 A. Yes.

11 Q. Or not -- it wasn't videotaped. I'm  
12 sorry. It was just an in-person deposition, right?

13 A. That's correct.

14 Q. And you charged three thousand dollars  
15 for that.

16 Now, as I understand it, you charge  
17 three thousand dollars for the first two hours, so  
18 it's fifteen hundred dollars an hour. How much per  
19 hour thereafter?

20 A. Well, that's actually not completely  
21 correct. I charge three thousand dollars for the  
22 first two hours, plus the review of all these  
23 massive records and any discussions. So you know,  
24 if you count two hours, would be fifteen hundred an  
25 hour, but if you count that discovery deposition

1     lasted over four hours and then two hours to review  
2     the records and then maybe another half an hour  
3     meeting, that would be a total of four plus two,  
4     six, and so it would be around five hundred, I  
5     guess, yeah.

6             Q.     About how much, five thousand?

7             A.     No.

8             Q.     Eight thousand?

9             A.     Three thousand divided by five and a  
10     half --

11            Q.     So it's three thousand flat --

12            A.     By six and a half.  It's three  
13     thousand flat.

14            Q.     Well, it says that you charge for  
15     extra hours.  Didn't you charge for the extra hours  
16     in your deposition?

17            A.     No.

18            Q.     Why not?  You said you do.

19            A.     Because that is all that we were paid,  
20     I think.  I don't know.  I don't do the billings,  
21     sir.

22            Q.     When we took your deposition, that was  
23     in your office, right?

24            A.     Yes.

25            Q.     And that's where all the billing

1 records would be for your patients, is that correct?

2 A. Well, they would be in the computer,  
3 yes.

4 Q. Okay. And the persons who do your  
5 billing and do your collections and receive the  
6 money and send out invoices, all that, are in this  
7 office where you did your deposition, right?

8 A. Yes.

9 Q. And you're being paid for today's  
10 deposition, right?

11 A. That's correct.

12 Q. And how much are you being paid for  
13 today's deposition?

14 A. As we already said, three thousand  
15 dollars.

16 Q. What about for prep time?

17 A. That's a flat fee. It includes the  
18 prep time and my review of these two binders of  
19 massive records.

20 MR. ROTHENBERG: I have no objection to her  
21 testifying as a neurologist.

22 MR. PAULUS: Thank you, counselor.

23 - - -

24 D I R E C T E X A M I N A T I O N

25 - - -

1 BY MR. PAULUS:

2 Q. Dr. Carta, how many times did you  
3 physically examine the plaintiff, Ms. Petry?

4 A. Just once.

5 Q. And is it fair to say -- let me ask  
6 you. How long was the physical examination of  
7 Ms. Petry?

8 A. I generally take between twenty-five  
9 to forty-five minutes, depending on the complexity  
10 of the case. So that's the figure. Generally  
11 averages out to half an hour, thirty-five minutes.

12 Q. And did you take a history from her  
13 when you examined her?

14 A. Yes.

15 Q. Is a history significant when you  
16 examine the patient?

17 A. Absolutely.

18 Q. What's the significance of taking a  
19 history?

20 A. The significance of taking a history  
21 of a patient is that it gives the patient a chance  
22 to tell her story, that's why it's called  
23 history-taking, and relate all the symptoms that  
24 they are experiencing.

25 Q. And did you also -- you rendered two

1 reports in this matter, is that correct?

2 A. Yes.

3 Q. When did you examine the patient?

4 A. It was November -- sorry.

5 November 29, 2017.

6 Q. And in preparing those two reports,  
7 you reviewed and relied upon certain medical  
8 records, is that correct?

9 A. Yes.

10 Q. And those are actually the medical  
11 records in your binder that's in front of you, is  
12 that correct?

13 A. That's correct, the two binders.

14 Q. And how did you go about actually  
15 doing your neurological evaluation of the plaintiff,  
16 Ms. Petry?

17 A. So the way I go about this is the way  
18 I would examine any office patient for a clinical  
19 evaluation. I take a history and then I do an  
20 examination, which -- with emphasis on the  
21 neurological examination.

22 Q. When you say you do an examination  
23 with emphasis on their neurological evaluation, what  
24 do you mean by that?

25 A. What I mean is that we put a few

1 elements of the general physical examination, just  
2 like height, weight, blood pressure, and then we  
3 focus more on the neurological examination, which  
4 consists of five parts.

5 Q. What are those parts, Doctor?

6 A. The parts of the examination are  
7 mental status, cranial nerves examination, which is  
8 everything concerning the head and face, the motor  
9 examination, that concerns all the movement,  
10 function, and then the sensation testing, and then  
11 the reflexes.

12 Q. What were your findings on those five  
13 subjects?

14 A. Basically, Mrs. Petry had a normal  
15 neurological examination except for, on her mental  
16 status assessment, she seemed kind -- rather  
17 anxious, she had pressured speech, and depressed,  
18 appeared depressed, and at times, tearful.

19 Q. Doctor, for the remainder of my  
20 questions, I'm going to be asking you -- I want you  
21 to understand that I want all of your answers to be  
22 within -- if you express an opinion, I want all your  
23 answers to be within a reasonable degree of medical  
24 probability. Can you do that for us?

25 A. Yes.

1           Q.     What is the definition of a  
2 concussion?

3           A.     A concussion is defined as acute  
4 impairment of brain function due to trauma.

5           Q.     And what is a mild traumatic brain  
6 injury?

7           A.     A mild traumatic brain injury is a  
8 somewhat outmoded, outdated term, but it's an injury  
9 resulting from a concussion. So the two are not  
10 exactly the same.

11          Q.     When you just testified that a  
12 concussion or a mild traumatic brain injury means  
13 acute acceleration of brain function due to  
14 trauma --

15          A.     Acute impairment of brain --

16          Q.     Right. What does acute mean?

17          A.     Acute means sudden and instantaneous.

18          Q.     What kind of signs and symptoms show  
19 up normally -- show up immediately?

20          A.     Well, there might -- there might or  
21 might not be loss of consciousness, impairment of  
22 consciousness. There might be headaches, nausea,  
23 dizziness, sometimes focal neurological functions,  
24 all the way to seizures.

25          Q.     Doctor, I want you to refer to the



1 Milltown Rescue Squad patient care report. Do you  
2 have that?

3 A. Yes.

4 Q. Tell me when you're ready?

5 A. Yes.

6 Q. I want you to look at the section of  
7 the report that's entitled status of arrival -- on  
8 arrival, rather.

9 A. Yes.

10 Q. What is written there?

11 A. What is written is that she was  
12 conscious, alert, oriented in the three spheres.

13 Q. What does that mean, Doctor?

14 A. That there was no impairment in the  
15 mental status.

16 Q. Is there any indication in the report  
17 that Ms. Petry sustained an injury to her -- an  
18 injury, according to the ambulance report?

19 A. Okay, I'm sorry, that she sustained --

20 Q. An injury.

21 A. An injury to the -- to the brain, no.

22 Q. What about any other part of her body?

23 A. Well, they -- they checked off parts  
24 injured and there was back, arm, and forearm, I  
25 believe shoulder.

1           Q.     And where does that information that's  
2 noted in that Milltown Rescue Squad report come  
3 from?

4           A.     That comes from what was related by  
5 Mrs. Petry.

6           Q.     And that was on the day of the  
7 accident, was it not?

8           A.     Yes.

9           Q.     The rescue squad report has a section  
10 entitled Glasgow Coma Scale.

11          A.     Yes.

12          Q.     What's written there in the report?

13          A.     So the Glasgow Coma Scale grades  
14 impairment of brain function based on scores of eye  
15 movements, best verbal response, best motor  
16 response. And these are all normal scores.

17          Q.     Were the scores four for the eyes,  
18 five for verbal, and six for motor?

19          A.     Yes.

20          Q.     So as far as that is concerned, it was  
21 normal findings?

22          A.     Yes.

23          Q.     Is Ms. Petry's condition as documented  
24 in the rescue squad report consistent with a mild  
25 traumatic brain injury or a concussion?

1 A. No.

2 Q. Why not?

3 A. Because there is no documentation here  
4 of impairment in brain function.

5 Q. Do you know where the rescue squad  
6 took Ms. Petry?

7 A. Yes. They took her to New Brunswick,  
8 Robert Wood Johnson University Hospital.

9 Q. And I want you to go to the Robert  
10 Wood Johnson triage assessment form, please.

11 A. Yes.

12 Q. What does it say under assessment,  
13 Doctor?

14 A. Assessment, status post MVC, motor  
15 vehicle collision. Low speed. Hit on passenger  
16 front side. Restrained driver. Reports a car  
17 pulled out in front of her. No airbag deployment.  
18 Self-extricated. Complains of left hip pain,  
19 bilateral knee pain, and shoulder pain. No neck  
20 pain, no tenderness, no chest or abdominal pain.

21 Q. First of all, who provided the above  
22 history to the nurse in the triage form?

23 MR. ROTHENBERG: Objection to form.

24 BY MR. PAULUS:

25 Q. You may answer.

1 MR. ROTHENBERG: Go off the record.

2 THE VIDEOGRAPHER: Two-forty-six p.m., going  
3 off the record.

4 MR. ROTHENBERG: You can't lead her into who  
5 is saying it. First of all, how do we know it was a  
6 nurse. Triage oftentimes is done by a non-nurse --

7 MR. PAULUS: It's authored by the nurse.

8 MR. ROTHENBERG: Pardon?

9 MR. PAULUS: Because it's authored by the  
10 nurse.

11 MR. ROTHENBERG: What page are we talking  
12 about, please?

13 MR. PAULUS: Page one of one, department of  
14 emergency medicine, triage assessment form of adult.

15 BY MR. PAULUS:

16 Q. Do you have that, Doctor?

17 MR. ROTHENBERG: I do. Who says that --

18 THE WITNESS: Yes.

19 MR. ROTHENBERG: -- Shea Stevens --

20 MR. PAULUS: It says nursing signature, Shea  
21 Stevens -- Shae Stepsh, rather, not Stevens.

22 MR. ROTHENBERG: Shea Stepsh. How do we  
23 know she's a nurse? It doesn't say RN --

24 MR. PAULUS: It says nurse signature.

25 MR. ROTHENBERG: -- LPN. There's no

1 indication, so I --

2 MR. PAULUS: There is an indication, but  
3 your objection is on the record.

4 MR. ROTHENBERG: It says that's the person  
5 that signed it. The fact that --

6 MR. PAULUS: Nurse signature, yes.

7 MR. ROTHENBERG: You can contend, but you're  
8 leading her into saying it's a nurse. It's not  
9 appropriate.

10 MR. PAULUS: Your objection is on the  
11 record.

12 THE VIDEOGRAPHER: Two-forty-seven p.m.,  
13 back on the record.

14 BY MR. PAULUS:

15 Q. Doctor, who had provided the  
16 information that we've been discussing in the triage  
17 report to the nurse?

18 A. This is the patient.

19 Q. Is that history consistent with a  
20 concussion or a mild traumatic brain injury?

21 A. No.

22 Q. Why not?

23 A. Because there is no complaint of  
24 anything related to brain function.

25 Q. What complaints would you be looking

1 for if you thought there was a mild traumatic brain  
2 injury?

3 A. Headache, nausea, dizziness,  
4 alteration, confusion. So those are the main ones.

5 Q. Were any imaging studies of the head  
6 or neck done in the ER?

7 A. Yes.

8 Q. And what were they, to what parts of  
9 the body?

10 A. So they were CAT scan of the chest and  
11 then a hip x-ray.

12 Q. Were any imaging studies of the head  
13 or neck indicated in the ER?

14 MR. ROTHENBERG: Objection. Already asked  
15 and answered.

16 MR. PAULUS: No, I'm asking about --

17 MR. ROTHENBERG: That was the same question  
18 you just asked.

19 MR. PAULUS: No, it wasn't, but your  
20 objection is noted.

21 BY MR. PAULUS:

22 Q. Were imaging studies of the head or  
23 neck indicated in the ER?

24 A. No.

25 Q. Why not?

1           A.       Well, if the patient does not complain  
2 or does not demonstrate any -- does not complain of  
3 any symptoms or does not demonstrate any signs  
4 consistent with a brain issue, then the emergency  
5 room doctor wouldn't order an imaging study of the  
6 brain.

7           Q.       I'd like you to also look at the --  
8 from the emergency room record, take a look at the  
9 physician document by Dr. Punjabi. Do you see that?

10          A.       Yes.

11          MR. ROTHENBERG: I'm sorry, what are we  
12 looking at?

13          MR. PAULUS: It's ED physician documents by  
14 Dr. Punjabi, the Robert Wood Johnson medical  
15 records.

16 BY MR. PAULUS:

17          Q.       Do you have that, Doctor?

18          MR. ROTHENBERG: Hold on.

19          MR. PAULUS: Want to go off the record?

20          MR. ROTHENBERG: No, just wait for -- to  
21 find it since, apparently, this is -- it's not the  
22 next page or something like that, so --

23 BY MR. PAULUS:

24          Q.       Do you have that, Doctor?

25          A.       Yes.

1 MR. ROTHENBERG: What page is this?

2 BY MR. PAULUS:

3 Q. Doctor, what page is it?

4 A. Page one-o-six. Robert Wood Johnson  
5 University Hospital at New Brunswick, ED physician  
6 document.

7 MR. PAULUS: Are you ready, Adam?

8 MR. ROTHENBERG: Uh-huh.

9 MR. PAULUS: Okay.

10 BY MR. PAULUS:

11 Q. Does the history of present illness  
12 section of Dr. Punjabi's record provide information  
13 relative to whether or not Ms. Petry suffered a  
14 concussion or a mild traumatic brain injury?

15 A. The complaints that were reported are  
16 pain in the left hip, lower back, and left side of  
17 the chest. And she denied head trauma, loss of  
18 consciousness, headache, or neck pain.

19 Q. Does the physical examination section  
20 of Dr. Punjabi's record provide information relative  
21 to whether or not Ms. Petry suffered a concussion or  
22 mild traumatic brain injury?

23 A. When he does neurological and  
24 psychiatric examination, he puts negative for  
25 weakness or emotional stress.



1 Q. Doctor, have you had an opportunity to  
2 review plaintiffs' expert witness, Dr. Greenwald's  
3 report dated January 8, 2018?

4 A. Yes.

5 Q. I want you to refer to page five of  
6 the report.

7 A. Okay. So I just need to switch the  
8 binder.

9 Q. Take your time.

10 A. Here. Okay, page five?

11 Q. Right.

12 MR. ROTHENBERG: Wait, please.

13 MR. PAULUS: Take your time.

14 MR. ROTHENBERG: Which report are you  
15 looking at?

16 MR. PAULUS: Page five of Dr. Greenwald's  
17 report.

18 MR. ROTHENBERG: Dated?

19 THE WITNESS: 1/8/18.

20 MR. ROTHENBERG: I'm looking at page five.

21 MR. PAULUS: I didn't know whether you found  
22 it. Thank you.

23 BY MR. PAULUS:

24 Q. Dr. Greenwald has findings from the  
25 MRI, does he not?

1 MR. ROTHENBERG: MRI of what?

2 MR. PAULUS: The brain.

3 MR. ROTHENBERG: Objection. Let's go off  
4 the record.

5 THE VIDEOGRAPHER: Two-fifty-three p.m.,  
6 going off the record.

7 MR. ROTHENBERG: She didn't comment about  
8 these findings of his. She can't comment -- he  
9 looked at the MRI of the brain.

10 MR. PAULUS: These are findings. I'm  
11 asking -- you haven't let me finish my question.

12 MR. ROTHENBERG: Doesn't matter. It's  
13 completely inappropriate because --

14 MR. PAULUS: Make your objection, if you  
15 want, Adam, that's fine. I haven't even begun to  
16 finish my questions on this element. And when all  
17 is said and --

18 MR. ROTHENBERG: Somehow or another, you  
19 jump from the emergency room to the MRI of the brain  
20 without even laying a foundation, number one.  
21 Number two is -- which is, you know, your  
22 examination, you can do whatever you want and the  
23 order, but you're asking her to comment about one  
24 expert's report. That's not the role of an expert.  
25 The expert is to give opinions concerning what their

1 findings are and, specifically, here now, we're  
2 going to have a comment concerning Dr. Greenwald's  
3 findings, which are opinions.

4 MR. PAULUS: Well, no, there's a difference  
5 between findings and opinions, as you well know, and  
6 I'm going to be asking her about Dr. Greenwald's  
7 findings from the MRI. That's perfectly  
8 permissible.

9 MR. ROTHENBERG: It is not. We'll see what  
10 happens.

11 MR. PAULUS: See what happens, okay.

12 Go back on the record, please.

13 THE VIDEOGRAPHER: Two-fifty-four, back on  
14 the record.

15 BY MR. PAULUS:

16 Q. Doctor, what were Dr. Greenwald's  
17 findings from the 5/12/2015 MRI of the brain?

18 A. Multiple small foci of T2-FLAIR  
19 hyperintensity involving the periventricular and  
20 subcortical white matter were present. Graded ten  
21 in total, non-specific.

22 Q. And in terms that a jury can  
23 understand, please explain what the finding is  
24 describing in the MRI from -- that Dr. Greenwald  
25 relies upon?

1           A.       So in plain English, this means that,  
2           on a gray background, which is the brain in this  
3           particular imaging sequence, you have a lot of  
4           cotton ball-ish looking white dots or greater than  
5           ten white dots. Those would be defined as increased  
6           signal or hyperintensity in the deep areas of the  
7           brain.

8           Q.       Have you assumed in your opinions that  
9           these findings are accurate by Dr. Greenwald?

10          A.       I -- yes. They're completely in sync  
11          with what the radiologist said in his report as  
12          well.

13          MR. ROTHENBERG: Objection. Move to strike.

14                    And let's go off the record for a  
15          moment, please.

16          THE VIDEOGRAPHER: Two-fifty-six p.m., we're  
17          off the record.

18          MR. PAULUS: I don't want to go off the  
19          record.

20          MR. ROTHENBERG: I am asking to. She cannot  
21          say it's completely consistent with what the  
22          radiologist said. And you know it --

23          MR. PAULUS: These are findings.

24          MR. ROTHENBERG: She can't say it's  
25          consistent.

1 MR. PAULUS: Yes, she can say it. She's  
2 agreeing with your expert.

3 MR. ROTHENBERG: It doesn't --

4 MR. PAULUS: She's agreeing with your  
5 expert.

6 MR. ROTHENBERG: It doesn't matter. You  
7 cannot back-door -- you know, you -- you're going to  
8 make a bad record, make a bad record, but it is  
9 completely --

10 MR. PAULUS: That's your opinion.

11 MR. ROTHENBERG: -- inappropriate. No, it's  
12 actually the Supreme Court's opinion --

13 MR. PAULUS: I think you're interpreting the  
14 case law wrong.

15 MR. ROTHENBERG: And if you're going to let  
16 her continue to do this, I'm going to seek costs,  
17 just so you know. You should instruct your witness.  
18 Because if we were in court, the judge would have  
19 said take the jury out and he would have reprimanded  
20 her at this point and saying you can't do what you  
21 did --

22 MR. PAULUS: You know, Adam, I disagree with  
23 that completely. I don't like the characterization,  
24 but you've made your objection.

25 Let's go back on the record, please,

1 videographer.

2 MR. ROTHENBERG: Mr. Paulus, while we're in  
3 court on trial, I'd prefer proper names, just --

4 MR. PAULUS: Fair enough.

5 MR. ROTHENBERG: Thank you.

6 THE VIDEOGRAPHER: Two-fifty-seven, back on  
7 the record.

8 BY MR. PAULUS:

9 Q. Do these findings in and of themselves  
10 necessarily mean the patient is going to have any  
11 signs or symptoms of an illness or disability?

12 A. You mean related to trauma or in  
13 general?

14 Q. In general.

15 A. No, not necessarily. In fact, they  
16 are non-specific. We see a lot of these findings in  
17 middle-aged brains.

18 Q. Doc, let me backtrack a little bit.  
19 What is an MRI?

20 A. An MRI is an imaging test of the  
21 brain. It's a picture of the brain anatomy.

22 Q. Dr. Greenwald expressed the opinion --  
23 his opinion on page five of his report that the  
24 above findings is most likely secondary to the  
25 traumatic brain injury Ms. Petry sustained on 5 --

1 4/15/2015. Do you agree with that opinion?

2 A. No.

3 Q. Why not?

4 A. Because you would have needed a  
5 massive brain injury to produce these findings.

6 Q. Is there any clinical history of a  
7 head injury severe enough to cause traumatic brain  
8 injury here in this case?

9 A. Absolutely not.

10 Q. If it's not a head injury or a mild  
11 traumatic brain injury, do you have an opinion as to  
12 the most likely cause of the finding of the multiple  
13 foci of the FLAIR signal?

14 A. Yes.

15 MR. ROTHENBERG: Objection. Off the record.

16 BY MR. PAULUS:

17 Q. And what is your opinion?

18 THE VIDEOGRAPHER: Two-fifty-eight p.m.,  
19 going off the record.

20 MR. ROTHENBERG: She can't give an opinion  
21 about something she didn't review. It's the same  
22 thing as an expert asked at -- you know, did you --  
23 what's your opinion of the cause of the herniated  
24 disk. Well, I didn't look at the --

25 MR. PAULUS: No, this is in general.

1 MR. ROTHENBERG: It's the exact same -- no,  
2 it's not. You asked specifically with respect to  
3 her. You're not asking generally. And hiding  
4 behind that in this case is pretense. It's not  
5 honest and it's not appropriate. So I want to place  
6 it on the record.

7 Go back on.

8 THE VIDEOGRAPHER: Two-fifty-nine, back on  
9 the record.

10 BY MR. PAULUS:

11 Q. Do you have an opinion as to the most  
12 likely cause?

13 MR. ROTHENBERG: Most likely cause of what?  
14 Objection, form.

15 MR. PAULUS: The multiple foci of the FLAIR  
16 signal.

17 MR. ROTHENBERG: For who?

18 MR. PAULUS: For your client, Mrs. Petry.

19 MR. ROTHENBERG: So you are asking about her  
20 in particular, which I object to. Go ahead.

21 BY MR. PAULUS:

22 Q. Go ahead, Doctor.

23 A. Am I answering?

24 Q. Yes, you're answering.

25 A. Yes, I do have an opinion. I think



1 two elements stand out. One, she had a prior  
2 history of migraines, and two, she has a history of  
3 mitral valve prolapse, which can cause  
4 micro-embolism to the brain.

5 Q. Did Dr. Greenwald's report state that  
6 there was a cortical contusion of the brain on the  
7 5/12/2015 MRI?

8 A. Yes.

9 Q. Doctor, I would like you to look at  
10 that again.

11 A. Okay. No, no. I'm sorry.

12 Q. What is the diagnostic significance  
13 that there is no finding of a cortical contusion?

14 A. A contusion is bruising, so that goes  
15 with significant brain injury. So another element  
16 or another part of information that tells us there  
17 is no brain injury here.

18 Q. Doctor, did Dr. Greenwald's report  
19 state that there was any evidence of an acute  
20 intracranial hemorrhage on the 5/12/2015 MRI?

21 A. No.

22 Q. What is an intracranial hemorrhage?

23 A. That's a bleed inside the skull  
24 cavity, can be inside the brain or outside the  
25 brain.

1 Q. And what is the diagnostic  
2 significance, if any, of there being no finding of  
3 an acute intracranial hemorrhage?

4 MR. ROTHENBERG: Objection.

5 BY MR. PAULUS:

6 Q. You can answer it.

7 A. Again, no -- no evidence of  
8 significant brain injury or head trauma.

9 Q. Doctor, do you have an opinion in this  
10 case to a reasonable degree of medical probability  
11 as to whether or not Ms. Petry sustained a permanent  
12 brain injury from the 4/15/2000 (sic) motor vehicle  
13 accident?

14 A. Yes.

15 Q. And what is your opinion, Doctor?

16 A. I don't think we have any  
17 documentation that she did.

18 Q. And what is the basis of that opinion?

19 A. The basis of that opinion is that all  
20 her initial records of care do not show any type of  
21 clinical indication that she sustained a brain  
22 injury.

23 Q. Do you hold all these opinions that  
24 you expressed here today to a reasonable medical  
25 degree of probability?

1           A.       Yes.

2           MR. PAULUS:   Thank you, Doctor.   No further  
3 questions.

4                               - - -

5           C R O S S   E X A M I N A T I O N

6                               - - -

7 BY MR. ROTHENBERG:

8           Q.       Doctor --

9           MR. ROTHENBERG:   Let's go off the record for  
10 a moment.   I'd just like to --

11           THE VIDEOGRAPHER:   Three-o-two p.m., going  
12 off the record.

13           MR. ROTHENBERG:   I want to take five.

14           MR. PAULUS:   Sure.

15                               - - -

16                               (At this point, a short recess was  
17 taken, after which time the deposition  
18 resumed.)

19                               - - -

20           THE VIDEOGRAPHER:   This begins DVD number  
21 two.   The time is three-twelve p.m.   Back on the  
22 record.

23 BY MR. ROTHENBERG:

24           Q.       Doctor, I want to cross-examination  
25 you, ask you some questions about your testimony

1 you've given so far. You wrote two reports in this  
2 case, correct?

3 A. Yes.

4 Q. And the purpose of those reports was  
5 to outline your relevant opinions, right?

6 A. Yes.

7 Q. And in those reports, you gave your  
8 opinions that you had in the case, right?

9 A. Yes.

10 Q. You told us what you actually reviewed  
11 and didn't review?

12 A. Yes.

13 Q. Now, today, in speaking about what you  
14 did and didn't review, your testimony today on  
15 direct was about only three documents, one, the  
16 Milltown Rescue Squad, written by some EMT, right?

17 A. Yes.

18 Q. The emergency room record, right?

19 A. Correct.

20 Q. And an MRI report of which you never  
21 actually looked at the film, correct?

22 A. Yes.

23 Q. And peripherally, I suppose, we  
24 discussed Dr. Greenwald's report, right?

25 A. Yes.

1 Q. And Dr. Greenwald was her treating  
2 physician who specializes in head injuries, right?

3 A. Amongst other doctors, it was one of  
4 the treating doctors.

5 Q. But you're aware that Dr. Greenwald is  
6 a specialist in head injuries, right?

7 A. Yes, he's a neurorehabilitational  
8 specialist.

9 Q. Now, in your report, you actually  
10 recited thirty-one items in the first report that  
11 you wrote, correct?

12 A. Yes.

13 Q. And in none of those records was, for  
14 example, Dr. Marmora's records, that's the -- that's  
15 her personal, her primary care physician that she  
16 had seen for the fifteen years before this accident  
17 and saw after the accident, right?

18 A. That's correct.

19 Q. So you didn't talk about those records  
20 today, correct?

21 A. That's right. I didn't have them.

22 Q. Now, when you dictated your report,  
23 you relied upon all these other records, correct?

24 A. Which other records?

25 Q. Well, the thirty-one items you listed,

1 which included Dr. Golden's testing, she was a  
2 treating doctor, Dr. Rosenberg, the doctors who  
3 treated her for her problems with her eyes, her  
4 ears, her brain function. You had the reports of  
5 all these different doctors she's been seeing since  
6 April 15, 2015, right?

7 A. Yes.

8 Q. And you had Dr. Colachtorni (sp) and  
9 Dr. -- you didn't have Dr. Colachtorni. You had --  
10 or Dr. Demesmin's records, right?

11 A. That's the pain management, yes.

12 Q. You didn't have those?

13 A. Yes, I did have those.

14 Q. You have Dr. Greenwald's reports,  
15 which you discussed in your second report, right?

16 A. Yes.

17 Q. You didn't actually review the records  
18 that he cites to. You just relied upon his  
19 recitation of those records in order to give you  
20 insight about what her history was?

21 A. That is only for Dr. Marmora's  
22 records. I have the other records that decides,  
23 like the neuropsychologist, et cetera.

24 Q. Now, the records that you referred to  
25 today are essentially -- the emergency room record

1 has those -- has the EMT report, so we've got that,  
2 which has been previously marked as P-4 for  
3 identification. That's the emergency room record.

4 A. Yes.

5 Q. So it's not that big book of records  
6 that you have in front of you, right?

7 A. No, but we were talking about  
8 Dr. Greenwald's final report, if I understand you  
9 correctly.

10 Q. No, I'm asking you a different  
11 question. We already moved on from that one. So  
12 I'm not sure why you're flipping through --

13 A. I just thought you were talking about  
14 Dr. Greenwald's final report and you were saying I  
15 didn't have all the records. And I said, you're  
16 correct, I didn't have Dr. Marmora's records, but  
17 the other records that he lists, like Dr. -- the  
18 psychologist and the pain man, that he summarizes  
19 excerpts from their records as well, which I have.

20 Q. You never looked at Tara Arhakos'  
21 report --

22 A. Yes.

23 Q. -- she's the psychologist that's been  
24 treating her --

25 A. Yes, I did.

1 Q. Oh, you did?

2 A. They're in my binder.

3 Q. It's in --

4 A. Mindful Moments. That's the --

5 Q. Did you have her report note? I don't  
6 see that.

7 A. Yes. Mindful Moments. And that's  
8 11/5/15, that's the initial one, so I can find it.

9 Q. You have the report?

10 A. Yes, yes.

11 Q. I'm not talking about the treatment  
12 records. I'm talking about the report.

13 A. You mean final report?

14 Q. Yes, ma'am.

15 A. That I would have to look for. I have  
16 her initial -- her intake notes.

17 Q. Right. That's not what I'm asking  
18 about. She wrote a report to -- just like you wrote  
19 a report and said this is what I'm going to testify  
20 about and just like Dr. Greenwald wrote a report,  
21 you didn't see that report, correct?

22 A. No, I believe I saw her treatment  
23 notes, records.

24 Q. So it is correct that you did not see  
25 her report?



1           A.     Yes, that's what I just said.

2           Q.     Thank you.

3                     The records that you have there were  
4     tabbed by ExamWorks, isn't that correct?

5           A.     Now, I wouldn't remember if they were  
6     tabbed by ExamWorks or my office manager, but yeah,  
7     probably they were tabbed by ExamWorks, yeah.

8           Q.     Take out your deposition. I can  
9     refresh your recollection. Do you have that in  
10    front of you?

11          A.     No.

12          MR. ROTHENBERG: If the Court Reporter  
13    doesn't mind handing -- I can't get out from behind  
14    this desk. Actually, I've got to take off the  
15    microphone.

16    BY MR. ROTHENBERG:

17          Q.     I'm going to give you this because we  
18    might need this again down the road. I have a copy.  
19    I'm sure --

20          MR. PAULUS: I have a copy.

21    BY MR. ROTHENBERG:

22          Q.     Defense counsel has his own copy.  
23    Here's a copy of your deposition transcript. You  
24    don't need to open it up quite yet.

25          A.     Okay.

1 Q. Well, actually, let's turn to page  
2 forty-one, see if we can refresh your recollection.

3 MR. PAULUS: You said forty-one?

4 MR. ROTHENBERG: Yeah.

5 THE VIDEOGRAPHER: Excuse me, counsel?

6 MR. ROTHENBERG: Thank you.

7 BY MR. ROTHENBERG:

8 Q. On page forty-one, you indicated that,  
9 in fact, ExamWorks tabbed the records.

10 A. Okay.

11 Q. Right?

12 A. Yeah.

13 Q. And those were tabbed, actually, after  
14 you even wrote your report?

15 A. Yes. They were tabbed in preparation  
16 for the deposition.

17 Q. And they tabbed what you wanted them  
18 to tab?

19 A. Yes. They -- I requested that they be  
20 tabbed in chronological order and with color-coding  
21 depending on what kind of report it is, yes.

22 Q. Let's see if we can get some  
23 agreements first. You would agree that if your  
24 facts are wrong, then your opinion can be wrong?

25 A. Yes.

1 Q. You agree that once you start out with  
2 the wrong information, you are subject to bias in  
3 your conclusion?

4 MR. PAULUS: Object to the form of the  
5 question.

6 You can answer it.

7 THE WITNESS: Well, that's true in general,  
8 but not applied to this case.

9 BY MR. ROTHENBERG:

10 Q. Doctor, we'll leave the jury to decide  
11 that. So the question here is, do you agree with  
12 the premise that once you start out with the wrong  
13 information, you are subject to bias in your  
14 conclusions?

15 A. Again, that is not a yes or no answer  
16 for me. So that's true in general. It doesn't  
17 apply to this case. That's my answer.

18 Q. I didn't ask you about this case.  
19 Again, I'm asking you a general question, Doctor.  
20 So --

21 A. Well, in general --

22 Q. Do you want to argue?

23 A. No, no. In general --

24 - - -

25 (Discussion off the record)

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BY MR. ROTHENBERG:

Q. Doctor, I'm asking you a general question and I asked you if we can get some agreements. And I believe I'm actually quoting you. If you'll turn to page one-sixty-seven. And this is your reference, actually, to Dr. Golden, but do you agree with the premise, in general, that once you start out with the wrong information, you are subject to bias in your conclusions?

A. That's true in general, yes.

Q. And so the same would be true to you, if you were -- if you had the wrong information, then you might be subject to bias in your conclusions?

A. I might, yes.

Q. So you agree now that you were wrong about her having a prior neck injury, correct?

A. No.

Q. You weren't wrong?

A. I was wrong about writing that she had a prior neck injury, which I corrected in my dictation.

Q. But you wrote that contemporaneous with meeting with the woman and taking a history

1 from her and asking her and she told you she had  
2 never had any neck problems. You reviewed all the  
3 medical records at that time and you still wrote  
4 that she had a prior neck injury even though you  
5 were sitting there right with the woman who already  
6 told you that wasn't the case and there was no basis  
7 for that, correct?

8 MR. PAULUS: Object to the form of the  
9 question.

10 THE WITNESS: I wrote that after I was done  
11 the examination in preparation for my report. And  
12 then, as I said three times before, when I dictated  
13 my report, I caught myself and corrected it.

14 BY MR. ROTHENBERG:

15 Q. Doctor, you agree that you  
16 shouldn't -- you should be unbiased and not an  
17 advocate for one side?

18 A. That's true, correct.

19 Q. Do you agree that it's very difficult  
20 to be unbiased when your livelihood depends upon  
21 your relationship with an organization?

22 MR. PAULUS: Objection.

23 THE WITNESS: My lively -- okay, this is a  
24 two-part question, so it cannot be answered --  
25 again, cannot be answered yes or no. Because, A, my

1     livelihood does not depend on them for the most  
2     part, and B, you know, I -- I consider myself  
3     unbiased.

4     BY MR. ROTHENBERG:

5             Q.     You would agree that the more  
6     pertinent information a doctor has, the greater the  
7     likelihood that their opinions will be accurate?

8             A.     Yes.

9             Q.     You agree that if two people have the  
10    same qualifications, the person with more  
11    information is generally more reliable?

12            A.     Yes.

13            Q.     Now, you agree that if someone treats  
14    a patient over a period of time, over and over and  
15    over, and has the same records as someone who sees  
16    the person on a one-time basis, the person who has  
17    seen them over a period of time, their opinions are  
18    likely to be more dependable than the one-time  
19    examiner?

20            MR. PAULUS:  Objection.

21            THE WITNESS:  Well, that depends.  Because  
22    sometimes when you treat a patient for a long time,  
23    you generate your own bias.

24     BY MR. ROTHENBERG:

25            Q.     Do you agree that doctors of equal

1 skill, ability, and honesty may disagree with your  
2 opinions in the case?

3 A. Absolutely.

4 Q. Now, at one point, Mr. Paulus asked  
5 you, you said -- he asked you, when you examine the  
6 patient. She was not your patient, correct?

7 A. Correct.

8 Q. In fact, you had her -- what I've  
9 marked as P-9 for identification, she had to sign a  
10 thing that said welcome to ExamWorks --

11 A. Yes.

12 Q. -- right?

13 And it says, this is not -- you're not  
14 my patient. There's no doctor/patient relationship.  
15 I'm not here to help you, cure you. I'm hired to  
16 examine you. Right?

17 A. Yes.

18 Q. Is that a decent paraphrase?

19 A. Yes.

20 Q. And as far as, you know, that  
21 familiarity and insight, if we had a roomful of  
22 women in their fifties, you couldn't pick her out of  
23 a crowd?

24 A. Well, I wouldn't know that until I see  
25 all the women in their fifties. Her face may look

1 familiar to me.

2 Q. Well, I asked you at your deposition  
3 whether or not you believe you would recognize her.  
4 You want to turn to page one-sixty-two?

5 A. Yes, that's exactly, but you didn't  
6 ask me the same question. You asked me if she had  
7 dark hair or what color hair or --

8 Q. Actually, turn to page one-sixty-two  
9 and I'll use the exact language I used there. So I  
10 tried to change it. We'll make it even more  
11 specific.

12 Outside of looking at the report and  
13 just reading off what the -- I'm sorry. Page  
14 one-sixty-two, line nine, for all fairness. I  
15 apologize. Take your time. Got it?

16 MR. PAULUS: Do you have it, Doctor?

17 THE WITNESS: Okay. That's what I said.

18 BY MR. ROTHENBERG:

19 Q. Doctor, I have to ask you -- I'm going  
20 to read it to you and ask you if this was your  
21 testimony.

22 Doctor, okay, outside of looking at  
23 the report and just reading off what the height and  
24 weight said, you wouldn't be able to pick her out of  
25 a line-up. Answer, that's correct.



1                   Is that correct?

2                   A.     Yes.  That's what I said, yes.

3                   Q.     Now, you agree that every doctor she  
4 saw after the emergency room, she gave complaints  
5 consistent with a mild traumatic brain injury, is  
6 that correct?

7                   A.     Yes.

8                   Q.     So let's talk about the factual basis,  
9 because we talked about how important that factual  
10 basis is.  You reviewed the automobile accident  
11 report, right?

12                  A.     Yes.

13                  Q.     You did not review the video, is that  
14 correct?

15                  A.     That's correct.

16                  Q.     And you're aware that actually your  
17 report recites the way the accident happened  
18 incorrectly?

19                  A.     Yes.

20                  Q.     In fact, you said that the force of  
21 the accident, the speed of the accident, direction  
22 of the accident, some of that was wrong, right?

23                  A.     I'm sorry, say that again?

24                  Q.     With respect to your report, the force  
25 of the accident, the speed of the vehicle, and the

1 direction of impact, some of that was wrong, isn't  
2 that correct?

3 A. Well, I didn't put the speed of the  
4 vehicle or the force of the accident in it, so I'm  
5 not sure what kind of question you're asking.

6 Q. Turn to page one-sixty-nine. Let's  
7 see if I can refresh your recollection then. I was  
8 trying to save us some time. I'm sorry,  
9 one-sixty-eight, page twenty-four -- line  
10 twenty-four.

11 A. Yes.

12 Q. You put in your -- question, you put  
13 in your report and you said that, actually, the  
14 speed of the accident, the amount of force of the  
15 accident, and the light impact were all part of your  
16 opinion, correct. And you answered, that is part of  
17 my opinion, correct. But those were wrong, correct.  
18 Answer, I don't know -- well, some parts were wrong,  
19 yes.

20 A. That's the same I'm saying now, some  
21 parts were wrong, but I didn't put the speed or the  
22 force of the accident down in my report. So I think  
23 it's the same answer.

24 Q. Now, the amount of impact would change  
25 your opinion, isn't that correct?

1           A.     If it was reliable.

2           Q.     Doctor, but you assume that this was a  
3 low-speed impact, correct?

4           A.     Well, I didn't assume, actually.  
5 There was --

6           Q.     Doctor -- Doctor --

7           MR. PAULUS:  She's --

8 BY MR. ROTHENBERG:

9           Q.     I'm asking did you assume that.  You  
10 weren't at the accident, right?

11          A.     No.

12          Q.     You didn't see the video of the  
13 accident, correct?

14          A.     Correct.

15          Q.     So you made assumptions about how the  
16 accident occurred, not -- in terms of how the  
17 accident occurred, you had it wrong in your report,  
18 correct?

19          MR. PAULUS:  Objection.  She didn't -- allow  
20 the witness to answer that she's --

21          MR. ROTHENBERG:  I am.

22          MR. PAULUS:  -- basing her assumption on and  
23 you cut her off.

24 BY MR. ROTHENBERG:

25          Q.     Doctor, did you have that wrong?

1 MR. PAULUS: Asked and answered.

2 THE WITNESS: I had some things that were  
3 partially wrong here and then I had -- no, I'm not  
4 done answering, though. May I continue my answer?

5 BY MR. ROTHENBERG:

6 Q. No. Actually, no.

7 MR. PAULUS: If it's in response to the  
8 question as posed to you, yes, you can.

9 THE WITNESS: Okay.

10 MR. ROTHENBERG: Counsel, I didn't interrupt  
11 you.

12 MR. PAULUS: Actually, you did, quite a bit,  
13 counsel.

14 MR. ROTHENBERG: I objected. We went off  
15 the record. That's different.

16 MR. PAULUS: Well, I have objected to that  
17 question as asked. I object to the question.

18 MR. ROTHENBERG: Thank you.

19 THE WITNESS: So these are complex  
20 questions, so they require complex answers. So if  
21 you cut me off every time, we go back to the four  
22 hours of bullying. So here we are again.

23 BY MR. ROTHENBERG:

24 Q. That was an inappropriate comment,  
25 ma'am. I didn't bully you at all. And that kind of

1 comment I'm going to ask to be stricken. And in  
2 fact, if you do it again, I'm going to ask you be  
3 held in contempt. It is not appropriate in a  
4 courtroom proceeding --

5 MR. PAULUS: Are you threatening the  
6 witness?

7 MR. ROTHENBERG: No, I'm ask -- I'm putting  
8 it on the record right now, okay. I'll ask that  
9 this be stricken from the video record because it's  
10 not going to be shown to a jury, but that's not an  
11 appropriate comment.

12 BY MR. ROTHENBERG:

13 Q. Let's continue, Doctor. My question,  
14 Doctor, was whether or not your version of the  
15 accident was correct. Was it correct or not?

16 A. Some parts were correct, some other  
17 were incorrect.

18 Q. So let me ask you this. Were you at  
19 the accident?

20 A. No.

21 Q. Would the best version of the accident  
22 be a video that showed what occurred?

23 A. Yes.

24 Q. And there is a video of the accident.  
25 Were you aware of that?

1 A. No.

2 Q. And defense counsel didn't provide you  
3 a video which would show actually what happened,  
4 whether it was low speed or high speed, correct?

5 A. Correct.

6 Q. So you made some assumptions about how  
7 the accident happened based upon records you read,  
8 correct?

9 A. Well, that's what the records relate,  
10 so it fits with the history, so I wouldn't call them  
11 assumptions.

12 Q. So one of the things that you -- it's  
13 your opinion that the accident was at a low speed?

14 A. Yes.

15 Q. And that's based, in part, on the  
16 emergency room record?

17 A. Yes.

18 Q. And the emergency room record, if we  
19 can turn to page one of six, the history of present  
20 illness.

21 A. Yes.

22 Q. It says the history of present  
23 illness, Julie Petry is a forty-eight year old  
24 female who reports being the driver involved in an  
25 MVC immediately prior to arrival when she was

1 pulling out of a parking lot and hit a car in front  
2 of her vehicle making a left-hand turn. Is that  
3 true?

4 A. No.

5 Q. So the person who's writing this,  
6 either one or two things has happened here, either  
7 Ms. Petry is confused in giving a history or the  
8 person who's writing this doesn't know what they're  
9 talking about. Which one is it?

10 A. I wouldn't think they don't know what  
11 they're talking about. They just recorded it  
12 incorrectly. It looks like the nurse recorded it  
13 correctly.

14 Q. Well, it's wrong, it's just dead  
15 wrong, right? She wasn't pulling out of a parking  
16 lot, was she?

17 A. It's incorrect. Somebody pulled out  
18 and hit her.

19 Q. So is Ms. Petry confused in giving the  
20 history or is the person who's writing it confused  
21 about what happened?

22 A. I don't know the answer to that, but  
23 she reported that she was traveling at fifteen miles  
24 per hour, she reported.

25 Q. Well, wait, so that's -- that's -- she

1 reports traveling about fifteen miles per hour or  
2 maybe she was talking about the other car. Do you  
3 know?

4 A. Well, I doubt it if he wrote she  
5 reports. She must have --

6 Q. But she also reported that -- the  
7 person who wrote this also said Ms. Petry was  
8 pulling out of the post office, right?

9 A. Yes.

10 Q. So she got that part right, but not --  
11 she got the speed right, but she didn't get what --  
12 where the vehicles were coming from or even the  
13 impact or how the accident occurred. She only got  
14 that fact right?

15 A. Well, that's the first paragraph, yes,  
16 it appears to be incorrect.

17 Q. Well, why do you assume that the speed  
18 is correct and everything else is wrong?

19 A. Because when a physician writes she  
20 reports, they're generally writing or typing this  
21 while they're talking to the patient. So I think  
22 that would be correct. Also, there was no airbag  
23 deployment, which --

24 Q. What do you know about airbags?  
25 Nothing, right?



1 MR. PAULUS: Objection.

2 BY MR. ROTHENBERG:

3 Q. You testified at your deposition I  
4 know nothing about airbags. I'm not an expert on  
5 that. Correct?

6 A. I said I'm not an engineer, right.

7 Q. You don't even know if the vehicle had  
8 airbags, right?

9 A. Well, not for a fact, no.

10 Q. And you don't know what causes an  
11 airbag to go off from the angle of impact, do you?

12 A. Well, generally --

13 Q. No, no, we're -- I'm not talking about  
14 medical records, Doctor. I'm asking you about  
15 whether you're an expert on airbags. Yes or no?

16 A. No, not an expert on airbags. Let's  
17 leave it at that.

18 Q. And you don't know what would cause an  
19 airbag to come -- whether it would go off if it's a  
20 side impact, do you?

21 A. That depends on the airbag, I suppose.

22 Q. And it depends upon the angles of  
23 impact, right?

24 A. That's -- I think so, yes.

25 Q. Mechanically, what causes an airbag to

1 go off, do you know?

2 A. A high-impact collision.

3 Q. Mechanically, what causes an airbag to  
4 go off?

5 A. A force that's strong enough to cause  
6 deployment of the airbag.

7 Q. What kind of force?

8 A. An acceleration force.

9 Q. Actually, it's a deceleration force.

10 A. I'm sorry, a deceleration force.

11 Q. You don't know, do you?

12 A. No. I said I'm not an engineer, so I  
13 just --

14 Q. But you're going to give opinions on  
15 airbags today?

16 A. No, I never said that.

17 MR. PAULUS: Objection. Beyond the scope.

18 BY MR. ROTHENBERG:

19 Q. Is it fair to say that the force of  
20 impact is something that affects your ability to  
21 believe whether there's a traumatic brain injury?

22 A. I'm sorry, say that again?

23 Q. Do you agree that the force of impact  
24 is something that affects your ability to believe  
25 whether there is a traumatic brain injury?

1           A.     The force of impact to the head, yes.

2           Q.     And one of the things I did was ask  
3 you to provide studies. And before we started  
4 today's deposition, you didn't talk about any of  
5 those studies, but you had said that you're aware of  
6 studies concerning the force of impact, right?

7           A.     Yes.

8           Q.     And last night or yesterday afternoon,  
9 after two months, you provided some sort of  
10 documents that you think support your opinions  
11 concerning the force of impact.

12          A.     Yes.

13          Q.     Now, the first one is a book by  
14 A.I. King. Who is A.I. King?

15          A.     He's an engineer.

16          Q.     Do you know anything about his  
17 qualifications?

18          A.     No, but he published a book on  
19 biomechanics of impact injury.

20          Q.     But you don't have that book, right?

21          A.     No.

22          Q.     And he published a book that was,  
23 according to the markings on the document you  
24 provided us, you only provided us chapter two. You  
25 don't have the whole book, right?

1 A. No.

2 Q. Did you ever have the whole book?

3 A. No.

4 Q. You just found this on-line and  
5 decided to send it to us?

6 A. I found this through the links of the  
7 American Academy of Neurology, yes.

8 Q. Well, you said the American Academy of  
9 Neurology does not even use MBTI anymore, correct?

10 A. That's correct.

11 Q. MTBI, I'm sorry, mild traumatic brain  
12 injury, right?

13 A. That's correct.

14 Q. You said that's an outmoded term,  
15 correct?

16 A. Somewhat outmoded, yes.

17 Q. However, this engineer, the first page  
18 of the first paragraph -- of chapter two, the very  
19 first paragraph uses, because of the fact that  
20 effective treatment of TBI, even mild TBI -- MTBI is  
21 generally not available. So his book published here  
22 in 2018, the guy you want to rely upon for your  
23 opinions, uses that term specifically, right?

24 MR. PAULUS: Objection.

25 THE WITNESS: Yes.

1 BY MR. ROTHENBERG:

2 Q. And he says, despite, you know,  
3 despite the fact that he's an engineer, he says in  
4 that paragraph, the second paragraph, that he can't  
5 explain what the mechanism is of a brain injury,  
6 correct?

7 A. Well, he makes a generic statement  
8 that there are a lot of complex factors involved,  
9 yes.

10 Q. But he says I can't explain it. It  
11 says, however, there is still a divided opinion on  
12 the causes of traumatic brain injury because it is  
13 not clear whether linear acceleration or angular  
14 acceleration/velocity is the principal cause of TBI.  
15 Correct?

16 A. Yes.

17 Q. And he says that auto accidents, by  
18 the way, are the third leading cause of traumatic  
19 brain injuries, right?

20 A. Right.

21 Q. And that -- of that, there are two  
22 hundred and eighty thousand hospitalizations a year,  
23 two point two million emergency room visits  
24 associated with brain injuries here in the United  
25 States. Right?

1           A.     Correct.

2           Q.     But most of his article talks about  
3 sports injuries, isn't that correct?

4           A.     That's where all the studies on  
5 concussion were done, yes, and experimental studies  
6 in dummies and laboratory animals, yes.

7           Q.     And the test -- the information that  
8 he uses is based upon experiments with robot  
9 dummies, correct?

10          A.     Some.   Some are on -- in life, pilots,  
11 I think, and then another one on sports injury, and  
12 then there are some laboratory animals, yes.  There  
13 is an extensive bibliography in this chapter.  It  
14 has probably close to fifty references, so there are  
15 a lot of studies quoted in there.

16          Q.     But Dr. King doesn't cite any of the  
17 new studies on brain injuries over the last ten  
18 years.  Everything is harkening back -- he starts,  
19 studies in 1946 as to the causation.  He talks about  
20 a 1985 study.  So over the last thirty years, the  
21 development in traumatic brain injuries, he doesn't  
22 cite to any literature to speak of over the last  
23 thirty years.

24          A.     Well, there are also 2007 studies,  
25 2011 studies, 2008 studies.  If you go through the

1 bibliography, you will see that.

2 Q. Go through his bibliography?

3 A. Yes.

4 Q. Now, this is -- this book, The  
5 Basis -- The Basics of Biomechanics of Brain Injury,  
6 that's something that's used for teaching  
7 engineering students?

8 MR. PAULUS: Object to the form of the  
9 question.

10 THE WITNESS: Not necessarily.  
11 Neurosurgeons would have to know this stuff, you  
12 know, scientists, concussion specialists, doctors,  
13 neurologists who evaluate football players in the  
14 field. So this is a summary of information.

15 BY MR. ROTHENBERG:

16 Q. Doctor, let's turn to questions for  
17 chapter two.

18 A. Okay. What page?

19 Q. It's forty-two of sixty-three that you  
20 FAXed over yesterday. It would be towards the rear.

21 A. Forty-two, okay.

22 Q. At the top, it says forty-two of  
23 sixty-three, questions for -- questions for chapter  
24 two.

25 A. Yes.

1           Q.       Can you answer the question two point  
2 two, select a statement that is valid as it relates  
3 to brain injury?

4           MR. PAULUS:   Are you --

5           THE WITNESS:   Okay, so --

6           MR. PAULUS:   Objection.   Can we go off the  
7 record?

8           MR. ROTHENBERG:   No.   I'm asking --

9           MR. PAULUS:   I want to place an objection.

10          MR. ROTHENBERG:   No, no.   We're in the  
11 middle of the question.   You can place it  
12 afterwards.

13          BY MR. ROTHENBERG:

14          Q.       Can you answer the question in the  
15 book?

16          MR. PAULUS:   Note my objection.

17          THE WITNESS:   Yes, probably it's three or  
18 four.

19          BY MR. ROTHENBERG:

20          Q.       Well, which one is it?   You have to  
21 choose -- it's select the statement that is valid.  
22 It's one, two, three, or four.   This is a basic  
23 text.

24          MR. PAULUS:   Objection to any question  
25 related to taking a test.



1           MR. ROTHENBERG:  It's in the book she  
2 provided.

3           MR. PAULUS:  She provided it, but she is  
4 not --

5           MR. ROTHENBERG:  Counsel --

6           MR. PAULUS:  I'm objecting to any question  
7 that -- I'm objecting to any questioning relating to  
8 taking a test from a book that was published by an  
9 engineer.  You asked her for publication -- I'm  
10 finishing my objection.

11          MR. ROTHENBERG:  Let's go off the video  
12 record, please.

13          MR. PAULUS:  On the record then.

14          THE VIDEOGRAPHER:  Three-forty-two p.m.,  
15 we're going off the record.

16          MR. PAULUS:  We produced a study that you  
17 requested.  She didn't rely upon the engineer's  
18 opinions in that study.  You asked for examples.  
19 She gave you the treatise.  You're not going to  
20 question her and give her a quiz.

21          MR. ROTHENBERG:  I am.

22          MR. PAULUS:  You're not.

23          MR. ROTHENBERG:  It's cross-examination.  
24 You can --

25          MR. PAULUS:  It's so far afield --

1 MR. ROTHENBERG: Then object at the time of  
2 trial and ask it be stricken, but don't talk on top  
3 of it. Speaking objections are inappropriate.

4 MR. PAULUS: I said objection.

5 MR. ROTHENBERG: Then you wanted to talk.  
6 So let's say let's go off the record and that's what  
7 we're supposed to do.

8 MR. PAULUS: That's my objection.

9 THE VIDEOGRAPHER: Three-forty-two p.m.,  
10 back on the record.

11 BY MR. ROTHENBERG:

12 Q. Did you have enough time to find the  
13 answer?

14 A. What's that?

15 Q. Did you have enough time to find the  
16 answer in the chapter?

17 A. No. So I think it's either three or  
18 four.

19 Q. You don't know?

20 A. I'm not a hundred percent sure because  
21 I didn't take the test. This is not the purpose of  
22 this -- of this summary.

23 Q. Two point one, which one of the  
24 answers is correct, all the above or --

25 MR. PAULUS: Objection.

1 THE WITNESS: No, it's not all of the above.

2 BY MR. ROTHENBERG:

3 Q. It's not?

4 A. No.

5 Q. Are you sure?

6 A. I'm sure.

7 Q. Do you have the answer key?

8 A. I'm sorry?

9 Q. Do you have the answer key?

10 A. I don't know. I have to look. I  
11 didn't -- I didn't look at that. Okay, so I said  
12 three or four. The answer key, I just found it,  
13 says four.

14 Q. What is number one, two point one,  
15 what's the answer?

16 A. Four.

17 Q. So you checked the answer key now?

18 A. Well, you did -- yeah, you directed me  
19 to it.

20 Q. I didn't direct you to it. I just  
21 said did you have it.

22 Doctor, you agree that, in terms of  
23 how the impact occurred, you rely upon someone who  
24 clearly wrote that the accident happened differently  
25 than it did, correct?

1           A.     Are you talking about the doctor or  
2 are you talking about the nurse?

3           Q.     I'm talking about the --

4           A.     Which one, because the nurse --

5           Q.     -- the doctor's notes.

6           A.     Because the nurse had it correct. The  
7 doctor had partially incorrect. So I relied -- the  
8 answer is I relied on both.

9           Q.     Is it true that you don't know the  
10 force of impact in this accident?

11          A.     Yes. I think we already went over  
12 that.

13          Q.     Doctor, you don't know if there was  
14 enough force to cause a mild traumatic brain injury,  
15 correct?

16          A.     No, I don't know that, but there was  
17 no traumatic brain injury here.

18          Q.     Doctor, you don't know whether there  
19 was enough force to cause a mild traumatic brain  
20 injury, do you?

21          MR. PAULUS:  Objection.

22                    You can answer.

23          THE WITNESS:  That's correct.

24          BY MR. ROTHENBERG:

25          Q.     You didn't review any of the radiology

1 in this case, correct?

2 A. Yeah, that's correct.

3 Q. Doctor, as part of your normal  
4 practice, you review MRIs?

5 A. Yes.

6 Q. MRIs of the brain, MRIs of the spine,  
7 MRIs of the lumbar spine, cervical spine --

8 A. Yes.

9 Q. -- right?

10 And those are all things that you're  
11 aware of that the other doctors in this case had  
12 reviewed, but you chose not to review them, right?

13 A. I didn't choose not to review them. I  
14 was not provided the studies.

15 Q. Did you ask for them?

16 A. I don't recall if I did or not.

17 Q. Did ask you for them?

18 A. I don't recall if I did or not.

19 Q. Do you have any records that you asked  
20 for them?

21 A. No, I don't think so.

22 Q. Talking about -- you reviewed all the  
23 treating doctors' opinions, correct?

24 A. The ones that were provided to me.

25 Q. And you saw Dr. Golden's opinions and

1 you saw Dr. Greenwald's opinions and you saw Dr. --  
2 and Ms. Arhakos' opinions, correct?

3 A. Arhakos, yeah.

4 Q. And you don't agree with any of them,  
5 correct?

6 A. Correct.

7 Q. As far as the emergency room -- let's  
8 go back to the emergency room record. You would  
9 agree that she had a very elevated blood pressure  
10 when she arrived at the emergency room?

11 A. Well, it's mildly elevated.  
12 One-fifty-five over ninety is not highly elevated.

13 Q. Well, when she arrived, it was  
14 one-fifty-five over a hundred, right?

15 A. Right.

16 Q. And when she was seen by the EMTs, it  
17 was even higher, correct, Milltown Rescue Squad?

18 A. Okay, I have -- because I cannot see  
19 this page without magnification.

20 Q. One-sixty-five over one --

21 A. One -- yes.

22 Q. One-fifty six over ninety-four. So it  
23 was much higher even then?

24 A. Yes.

25 Q. She had a racing pulse at that point,

1 correct?

2 A. Yes.

3 Q. When she got to the emergency room,  
4 she actually did complain of neck pain, isn't that  
5 correct?

6 A. Well, the doctor's note says negative  
7 neck pain and then the nurse's note also says  
8 negative neck pain.

9 Q. So you're saying it's not correct?

10 A. I cannot -- let's see. She says  
11 paralumbar tenderness with mild spasm, tenderness  
12 over the left chest wall --

13 Q. I don't want you to read to me,  
14 Doctor.

15 A. You just asked me to --

16 Q. No, I didn't ask you to read to me. I  
17 said --

18 A. You just asked me what she complained  
19 about, so I'm making reference to the record --

20 Q. I didn't say --

21 A. -- and just asking what -- you're  
22 asking what she complained about.

23 Q. No, I didn't say that, Dr. Carta. I  
24 said did she complain of neck pain.

25 A. I do not find any complaint of neck

1 pain.

2 Q. Okay.

3 A. If I have a moment to look at the  
4 record --

5 Q. Then I'll show you. Then I'll show  
6 you. How's that?

7 A. Well, I can look through it.

8 Q. No, no, I'll show you. Let me show  
9 you what's been marked as P-4 for identification.  
10 And it says location of pain. This is from the  
11 emergency department nursing notes. Where does she  
12 have complaints --

13 A. I --

14 Q. I'm sorry, wait -- wait, wait, wait,  
15 wait, wait.

16 A. I can't see what --

17 Q. You see complaints of pain? And where  
18 does it say, neck? First thing listed.

19 A. That's -- I see hip, knee, and then  
20 something N -- N, and then looks like a nine and  
21 then a D, so I don't -- I cannot read what that  
22 says.

23 Q. So you're saying that you're looking  
24 at that record and you can't tell the word neck on  
25 that record, is that --



1 A. It looks like NGD or N9D. I mean --

2 Q. How many people have an N9D as a part  
3 of their body?

4 A. I don't know.

5 Q. What part of the body is an N9D?

6 A. It's illegible scribble as far as I'm  
7 concerned, so --

8 Q. I'm going to get that back from you.  
9 If you will, looking at the emergency  
10 room record, if you'll turn to page three of six,  
11 from Dr. Kusum Punjabi.

12 A. Yes.

13 Q. And it says emergency department  
14 medical decision-making. He indicates that his  
15 initial considerations were cervical spine injuries,  
16 spinal cord injuries, concussion, intrathoracic  
17 injury and intra-abdominal injury, is that correct?

18 A. Yes. And then he proceeds to say --

19 Q. Doctor --

20 A. No --

21 Q. No, no, Doctor. That's the question.  
22 Okay. We're not going to express opinions. His  
23 initial consideration --

24 A. It's not an opinion. That's his  
25 differential diagnosis. That is --

1 Q. Doctor, Doctor, please, do not --

2 MR. ROTHENBERG: We're going to now go off  
3 the record.

4 THE VIDEOGRAPHER: Three-fifty p.m., going  
5 off the record.

6 MR. ROTHENBERG: I going to ask you to  
7 instruct her appropriately. This is a --

8 MR. PAULUS: I'm going to make a statement  
9 on the record.

10 Doctor, when counsel has a question  
11 for you that is a fair question, requires a yes or  
12 no answer, provide the yes or no answer, that's  
13 appropriate.

14 But I will also ask counsel to be  
15 considerate of the fact that sometimes it's not a  
16 yes or no question and it requires amplification.  
17 That's all I'm asking you to do.

18 MR. ROTHENBERG: I understand.

19 MR. PAULUS: And if both parties don't step  
20 on each other, that would be greatly appreciated.

21 MR. ROTHENBERG: And all I said was the  
22 initial considerations, that's the question.

23 MR. PAULUS: I understand that.

24 MR. ROTHENBERG: I didn't ask her any  
25 further.

1 MR. PAULUS: But I think we can all agree  
2 that --

3 MR. ROTHENBERG: Yes.

4 MR. PAULUS: -- let the other person answer  
5 the question.

6 MR. ROTHENBERG: Yes.

7 MR. PAULUS: Some questions aren't yes or  
8 no, Doctor. Some questions, even feel free to  
9 elaborate on or -- because that's part of the  
10 answer. And everybody will abide by that and it  
11 will be fair.

12 THE VIDEOGRAPHER: Three-fifty-one, back on  
13 the record.

14 BY MR. ROTHENBERG:

15 Q. Doctor, let's talk a little bit about  
16 mild traumatic brain injuries. You agree that the  
17 brain is not meant for rapid deceleration caused by  
18 a car accident?

19 A. Yes, caused by anything.

20 Q. You agree that there's been a lot of  
21 debate about the amount of force that can cause a  
22 concussion or brain injury?

23 A. That's correct.

24 Q. You agree that studies have indicated  
25 that it can be as low as one and a half Gs of force?

1           A.     I haven't seen those studies, but that  
2     could be possible.

3           Q.     Now, I also asked you for studies and  
4     you provided a study that involved -- let's see if I  
5     can find that study. Was that something you had had  
6     before this thing that you pulled out of the  
7     International Brain Injury Association website?

8           A.     Yes.

9           Q.     You had that before today or before  
10    yesterday?

11          A.     Oh, yes.

12          Q.     So who are Asghar Rezaei, Ghodrat  
13    Karot -- Karami, and Mariusz Ziejewski?

14          A.     These are part -- these are part of  
15    the consortium of the International Brain Injury  
16    Association. I don't know them personally, so these  
17    are part of the staff of the International Brain  
18    Injury Association that issues information for  
19    patients and providers.

20          Q.     Actually, doesn't the editors note --  
21    and it says the views and opinions expressed in the  
22    articles contained in this neurotrauma letter are  
23    those of the authors and contributors alone and do  
24    not necessarily reflect the views, policy, or  
25    position of the International Brain Injury

1 Association or all the members of the NTL editorial  
2 board. The NTL is provided solely as an  
3 informational resource. Inclusion of any particular  
4 article does not establish or imply IBIA's  
5 endorsement of its contents.

6 Isn't that at the end of the article?

7 A. Absolutely.

8 Q. So they didn't endorse this article or  
9 adopt this article, did they?

10 A. No, but this is standard disclaimer  
11 that is at the end of any article.

12 Q. But you just claimed that they had  
13 endorsed this article, adopted the article, but in  
14 fact, at end of the article, it says exactly to the  
15 contrary, isn't that correct?

16 A. As I said, yes, that's correct,  
17 standard disclaimer.

18 Q. Doctor, do you know the qualifications  
19 of the authors?

20 A. Yes.

21 Q. What are the qualifications?

22 A. They are engineering experts.

23 Q. How do you know that? Because I went  
24 through the whole article and I actually did a  
25 little research and I tried to find some information

1 and there's nothing listed as to what their  
2 qualifications --

3 A. Well, if you look at the end, its  
4 corresponding author, Mariusz Ziejewski, is listed  
5 as a Ph.D. in engineering department of North Dakota  
6 State University.

7 Q. What about the other two gentlemen?

8 A. I don't know the other two gentlemen.  
9 So it's the last -- generally, for scientific  
10 articles, the last name on the publication is the  
11 head or, you know, professor in the department and  
12 then the other two are collaborators.

13 Q. And they were doing testing with an  
14 FEHM. What is that?

15 A. I'm sorry?

16 Q. They were doing testing with an FEHM.  
17 Do you know what that is?

18 A. They're talking about the FEHM study.

19 Q. Right. What is an FEHM?

20 A. I think it's finite element  
21 simulations.

22 Q. It's a finite element head model.  
23 It's -- it's a dummy.

24 A. Yeah. Finite element head model,  
25 yeah, or sim -- used for simulation.

1           Q.     So they were hitting it with a weight  
2 of twelve pounds, right?

3           A.     Yes.

4           Q.     And so they're hitting -- they're  
5 basically hitting a dummy in the head with a twelve  
6 pound weight, right?

7           A.     That's how experiments are done, yes.

8           Q.     And that's your article that you rely  
9 upon with respect to head injuries in this case,  
10 right?

11          A.     That is one of the articles, yes.

12          Q.     So do you agree with -- by the way,  
13 going back to the book chapter with Dr. King, is he  
14 using an archaic and ill-advised term, MBTI -- or  
15 MTBI, I'm sorry?

16          A.     No. It's a little bit outmoded. I  
17 never said -- I never used the word archaic. There  
18 is a lot of confusion, actually, in the language  
19 referring to this because the American Academy of  
20 Neurology and Neurosurgery are still trying to  
21 develop a standard nomenclature, if you will.

22          Q.     Well, didn't you say that the American  
23 Academy of Neurology advises against the use of the  
24 term?

25          A.     Yes. Well, it says that the term can

1 be confusing, yes.

2 Q. Doctor, isn't it a fact that you  
3 testified that the American Academy of Neurology  
4 actually advises against the use of that term?

5 A. Yes.

6 Q. Now, talking about mild traumatic  
7 brain injury or brain injury, the signs can be  
8 neurological deficits, right?

9 A. Sometimes.

10 Q. Vision problem?

11 A. Sometimes.

12 Q. Motor function problems?

13 A. Sometimes.

14 Q. Equilibrium problems?

15 A. Sometimes.

16 Q. Sensation problems?

17 A. Sometimes.

18 Q. Memory and cognitive deficits,  
19 correct?

20 A. Sometimes.

21 Q. When you saw Ms. Petry, she complained  
22 of headaches, correct?

23 A. Yes.

24 Q. Dizziness?

25 A. Yes.



1 Q. Memory loss?

2 A. Yes.

3 Q. Nausea?

4 A. Yes.

5 Q. Cognitive dysfunction?

6 A. Yes.

7 Q. Concentration problems?

8 A. Yes.

9 Q. Sleep problems?

10 A. Yes.

11 Q. Post-traumatic stress disorder?

12 A. Correct.

13 Q. And she treated for all those  
14 problems?

15 A. Yes.

16 Q. And she had objectively measured  
17 vision problems, correct?

18 MR. PAULUS: Object to the question.

19 THE WITNESS: Well, if you look at the  
20 report of Dr. Rosenberg, it said that her neurologic  
21 and neuro-ophthalmologic examinations were  
22 unremarkable and he thought the visual problems were  
23 due to a convergence --

24 BY MR. ROTHENBERG:

25 Q. Doctor --

1           A.     -- insufficiency.

2           Q.     Right, convergence insufficiency.  So  
3 he found that there was a --

4           A.     He didn't say a word about trauma,  
5 actually.

6           Q.     Doctor, I'm not -- I didn't ask you  
7 any of the things that you just said and what you  
8 said was inappropriate.  I'm going to ask that they  
9 be stricken.  Again, you're not here to give  
10 opinions of other doctors and I didn't ask you  
11 Dr. Rosenberg's opinion.  All I asked you was  
12 whether there was objective testing of her vision.

13          A.     That was -- Dr. Rosenberg did  
14 objective testing of her vision.  He did a full  
15 neuro-ophthalmological --

16          Q.     Doctor --

17          A.     -- evaluation.

18          Q.     -- stick to the question.  Did he do  
19 objective testing of the vision, yes or no?

20          A.     Yes.

21          Q.     And did it show a convergence  
22 insufficiency?

23          A.     Yes.

24          Q.     Now, there was also hearing testing,  
25 is that correct?

1 A. Yes.

2 Q. And there was VNG testing, correct?

3 A. Correct.

4 Q. And those are testing all that you  
5 had, correct?

6 A. Well, I had the MRI of the brain. I  
7 had x-ray reports. You mean testing in general  
8 or --

9 Q. The ones that I just said, the VNG --

10 A. Okay, yes, yes.

11 Q. Thank you.

12 Now, you also took a history or you  
13 got that form from the patient, Ms. Petry, when she  
14 came in, the ExamWorks registration form?

15 A. Yes.

16 Q. And she indicated specifically what  
17 activities that she could do before or was doing  
18 before and ones that she's not doing now, including  
19 aerobics, jogging, weightlifting?

20 A. Yes.

21 Q. She indicated her difficulty in  
22 getting in and out of the shower, her difficulty in  
23 getting dressed, having vertigo, dizziness, fatigue,  
24 head spins when combing or blowing her hair, right?

25 A. Yes.

1 Q. She had trouble getting up and down  
2 from the toilet at times?

3 A. Yes.

4 Q. She felt problems when she put her  
5 head down brushing her teeth. She wasn't able to  
6 drive and had been unable to drive since the  
7 accident, right?

8 A. Yes.

9 Q. She had cognitive decreases and vision  
10 issues, correct?

11 A. Correct.

12 Q. She indicated difficulty in activities  
13 of normal daily living, including cooking, washing  
14 clothes, grocery shopping, cleaning, vacuuming,  
15 washing dishes, sweeping, correct?

16 A. Yes.

17 Q. No indication that she had any of  
18 those difficulties beforehand, is there?

19 A. I don't know one way or the other.

20 Q. Doctor, do you have any records  
21 whatsoever that would indicate that she had any  
22 difficulty in activities of normal daily living  
23 before this accident?

24 A. No. That's what I said, I don't know.

25 Q. How much weight did she put on since

1 the accident?

2 A. I don't know, but she related to her  
3 psychologist that she was concerned about her weight  
4 gain.

5 Q. Now, the reasons for your opinions are  
6 two-fold. Number one is this, that she didn't have  
7 any neurologic symptoms right after the accident and  
8 that -- reason number two was that -- the MRI, is  
9 that correct?

10 A. No, that's not correct. I also have  
11 reports from Dr. Gainey, who was a treating  
12 neurologist before Dr. Greenwald took up the care.

13 Q. So you have more reasons besides the  
14 two that you said?

15 A. Yes.

16 Q. Now, you testified at your deposition  
17 that those were the only two reasons, isn't that  
18 correct?

19 A. Well, I was not asked about  
20 Dr. Gainey's reports.

21 Q. No, I asked you what are the reasons  
22 for your opinions in this case. And you said the  
23 only two reasons are because of the lack of  
24 neurologic symptoms immediately following the  
25 accident and what was shown on the MRI report.

1 Those are the only two reasons. Do you recall  
2 saying that?

3 A. Yes, maybe.

4 Q. So now you want to add a third reason,  
5 which is Dr. Gainey, which you didn't discuss today?

6 A. That's correct, but I think it's  
7 important.

8 Q. Now, you didn't have Dr. Marmora's  
9 records, where she saw Dr. Marmora the same week  
10 following this accident, correct?

11 A. Correct.

12 MR. ROTHENBERG: Give me -- let's go off the  
13 record for just one minute. I need to locate those  
14 records.

15 THE VIDEOGRAPHER: Four-o-three p.m., going  
16 off the record.

17 - - -

18 (At this point, a short recess was  
19 taken, after which time the deposition  
20 resumed.)

21 - - -

22 THE VIDEOGRAPHER: Four-o-four, back on the  
23 record.

24 BY MR. ROTHENBERG:

25 Q. Doctor, you have in front of you

1 Dr. Marmora's records. This is the office visit of  
2 April 21, 2015, her treating physician, correct?

3 A. Yes.

4 Q. In history of present illness, she  
5 describes driving with a seat belt on and hit from  
6 passenger's side. No loss of consciousness. Felt  
7 nauseated, but did not vomit. That's a sign of head  
8 injury, correct?

9 A. It can be or can be a vasovagal  
10 response or it can be from the elevated blood  
11 pressure. So per se, it's not specific. It can be,  
12 yes.

13 Q. Sure. And that's all I'm asking you,  
14 is it can be, so we don't have to argue about it.  
15 That's why I'm using the can. You don't have to say  
16 is. So I'll ask you can so we can dispense with the  
17 speech.

18 Shortly after, had pain across the  
19 chest, back left hip, knees, and shins. Went to the  
20 emergency room. CT of chest was normal. X-ray of  
21 hip was normal as well. Hurts to take a deep  
22 breath. Was put on ibuprofen and Valium. Continues  
23 to feel dazed. Indicating that she had felt dazed  
24 at the time, correct?

25 A. She said she felt shaken up and

1     nauseated.

2             Q.     Has pain in the neck.   Having  
3     headaches daily as well.   Correct?

4             A.     Yes.

5             Q.     She, after walking around the park for  
6     an hour, had to be taken home.   The patient  
7     complains of headache, confusion, visual changes,  
8     nausea, dizziness, and difficult concentrating, but  
9     denies vomiting, and worse with S, slash, S with  
10    recumbency.   And I don't know what S, slash, S is.  
11    Do you?

12            A.     Probably symptoms -- I don't know this  
13    abbreviation.

14            Q.     The patient complains of headache,  
15    confusion, visual changes, nausea, dizziness, and  
16    difficulty concentrating.   Are those all symptoms of  
17    a head injury?

18            A.     They can be, yes.

19            Q.     The patient is also experiencing  
20    fatigue, emotional lability, and somnolence.   Are  
21    those all potential symptoms of a head injury?

22            A.     Potential, yes.

23            Q.     The patient's -- patient impaired  
24    performance with work performance.   Is that a  
25    potential symptom of a head injury?



1           A.     Potentially, yes.

2           Q.     You don't know whether she had any of  
3 these before, correct?

4           A.     That's correct.

5           Q.     Dr. Marmora, in this note, doesn't  
6 indicate that these are pre-existing conditions,  
7 does he?

8           A.     That's correct.

9           Q.     And in fact, treats her and then  
10 ultimately refers her to Dr. Gainey, is that  
11 correct?

12          A.     Yes.

13          Q.     And thereafter, he -- she returns to  
14 him in August and she's still having vision -- and  
15 I'm looking at a record which I'll mark as P-13 for  
16 identification. I'll just read it to you.

17                   - - -

18                   (Dr. Marmora Note marked for  
19 identification as Deposition Exhibit P-13,  
20 retained by counsel)

21                   - - -

22 BY MR. ROTHENBERG:

23          Q.     She's still going to vision and  
24 cognitive therapy. Still has ringing in the ears.  
25 Vision problems, are those a potential problem from

1 a head injury?

2 A. Yes.

3 Q. Ringing in the ears?

4 A. Potentially, yes.

5 Q. Neck injury, neck pain. It says neck  
6 hurts?

7 A. Potentially, yes.

8 Q. Still getting headaches?

9 A. Potentially, yes.

10 Q. So she complained of the problems and  
11 is still having the problems since the accident.

12 You saw Dr. Greenwald's records where  
13 she told Dr. Greenwald she's had these problems, the  
14 headaches, the nausea, the dizziness, the vertigo,  
15 the problem with her eyes, she's had all those  
16 problems since the accident, correct?

17 A. Well, that's what she told him, yes.

18 Q. So is she lying?

19 A. I don't know if she's lying or not.

20 There is somewhat of a discrepancy between what  
21 Dr. Gainey says in the -- in his last visit and what  
22 she reports to Dr. Greenwald the next day.

23 Q. My question was, at the time following  
24 the accident, immediately following the accident,  
25 she's told everybody from the time since she left

1 the emergency room about these symptoms that she's  
2 having, correct?

3 A. Yes.

4 Q. Do you think she just made them up  
5 after the accident, is that what you're saying to  
6 this jury?

7 A. No, I will never say that.

8 Q. Well, I think that's what you did --

9 A. This is generally the stress that she  
10 has, but it is in complete contradiction with the  
11 fact that Dr. Gainey on, I think it was 1/4/16, the  
12 last visit, documenting a dramatic improvement in  
13 all her symptoms, so --

14 Q. Actually, see, that's where you're  
15 wrong. The last visit wasn't January 4, 2016, was  
16 it?

17 A. I'm sorry?

18 Q. The last visit wasn't January 4, 2016,  
19 was it?

20 A. 1/4/16, yes.

21 Q. That wasn't the last visit, was it?

22 A. Okay, that's the last visit I have  
23 with Dr. Gainey.

24 Q. Why didn't they give you the next  
25 visit on March 7, 2016?

1           A.     I don't have that visit.

2           Q.     Well, it would be nice to know that --  
3     now, that note says, I just last evaluated her just  
4     prior to returning to work.  When she returned to  
5     work, she noted a significant setback in her  
6     cognitive function.  For the first week, she was  
7     completely disoriented and could not handle the  
8     workload.

9                     Were you aware of that?

10          A.     I know that's what she said to  
11     Dr. Gold -- Greenwald.

12          Q.     But you just told us about Dr. Gainey  
13     and his opinions.

14          A.     Well, I don't have that note from  
15     Dr. Gainey.

16          Q.     Why didn't they give you Dr. -- this  
17     is going back to 2016.  You have the note that  
18     preceded it.

19          A.     Okay, so I don't have it.  I have nine  
20     visits and the last one is 1/4/16.

21          Q.     The headaches persist.  Were you aware  
22     that she still had, over the past three weeks, she  
23     had sharp, stabbing pains in the right retro-orbital  
24     region?  Were you aware of that?

25          A.     That --

1           Q.     She continues to have episodes of  
2 dizziness when making rapid head turns.  Were you  
3 aware of that?

4           A.     Yes, I know what her -- all her  
5 complaints, even current complaints are.

6           Q.     Well, this is Dr. Gainey.  You were  
7 telling us that Dr. Gainey -- Dr. Gainey said that  
8 she continues to demonstrate a history consistent  
9 with post-concussion syndrome, post-traumatic  
10 headaches, and post-traumatic vertigo on March 7,  
11 2016.

12          A.     Okay.

13          Q.     He didn't say she was better, did he?

14          A.     Well, but how come she is worse two  
15 months later when she has had a dramatic improvement  
16 on 1/4/16.  That's what doesn't make any sense.

17          Q.     But she improved.  She wasn't as bad  
18 as she had been.  Even the testing shows that.  
19 There was improvement between testing, wasn't there?

20          A.     Yes.

21          Q.     Okay.  So she improved on  
22 neuropsychologic testing, but she didn't go back to  
23 baseline.  She still had problems, right?

24          A.     That's what they said, yes.

25          Q.     And all the treating doctors say she

1 continues to have problems as a result of this  
2 accident and the only person who says she doesn't  
3 have a closed head injury is you.

4 A. That's correct.

5 MR. PAULUS: Note my objection to the  
6 question.

7 BY MR. ROTHENBERG:

8 Q. You were aware that she presented with  
9 Dr. Marmora six days later discussing having  
10 symptoms of concussion immediately following the  
11 accident, right?

12 A. Well, she complained of nausea and she  
13 complains of feeling dazed. So since we don't know  
14 if she had a concussion or not, that's what was -- I  
15 mean, since I don't think she had a concussion,  
16 those could have been non-specific symptoms.

17 Q. Seems like you want to just advocate  
18 for a lack of a head injury despite all the evidence  
19 that would suggest that there is.

20 MR. PAULUS: Objection.

21 BY MR. ROTHENBERG:

22 Q. Go ahead, answer the question, Doctor.

23 A. Well, the fact of the matter is that  
24 there is no documentation in her initial records of  
25 care that she sustained a concussion and then she

1     waits six days to see her primary care physician.  
2     And then she sees a neurologist and things seem to  
3     get better.  And then, all of a sudden, she has all  
4     these problems.  So that's the temporal profile.  
5     And then she has a lot of documented psychological  
6     problems, so -- including a history of physical and  
7     sexual --

8             Q.     Wait a second.  Now -- stop.

9             MR. ROTHENBERG:  I move to strike --

10            MR. PAULUS:  You opened the door.

11            MR. ROTHENBERG:  No, I didn't.

12            MR. PAULUS:  Yes, you did.  You've been  
13     referring to all the treating records and now she's  
14     referring to --

15            MR. ROTHENBERG:  She can't talk about --

16            MR. PAULUS:  You certainly can question her  
17     about it.

18            MR. ROTHENBERG:  Let's go off the record,  
19     please.

20            THE VIDEOGRAPHER:  Going off the record.

21                             - - -

22                             (At this point, a short recess was  
23     taken, after which time the deposition  
24     resumed.)

25                             - - -

1           MR. ROTHENBERG: What she said was wildly  
2 inappropriate. It is absolutely, without question,  
3 for her to raise something that has -- she's not  
4 giving any psychological opinions and for her to say  
5 that the reason why now, when she gets her back  
6 against the wall about not having Marmora's records  
7 and not having done a thorough examination and not  
8 having looked at Gainey --

9                     Excuse me, Doctor, step out for just a  
10 second.

11                    It is not appropriate for her to  
12 raise. It's not even -- there's no relationship.  
13 This is simply, you know, an attempt to somehow or  
14 another obfuscate and bring up something that is  
15 extremely painful, something that happened, you  
16 know, in a prior marriage, you know, decades and  
17 decades ago without any medical relationship. It's  
18 just simply one of those things that cries wild  
19 desperation and it is offensive.

20                    And to the extent that -- you know, I  
21 don't even know what sanctions to ask for, to be  
22 honest with you, it's just so -- I'm so offended by  
23 it.

24                    MR. PAULUS: Let me respond if I may. And I  
25 want you to hear my whole response before you



1 interject.

2 MR. ROTHENBERG: I'm not going to say a  
3 word.

4 MR. PAULUS: Thank you.

5 MR. ROTHENBERG: I'm not imputing it to you,  
6 so let me just be very clear.

7 MR. PAULUS: I know that you're not. You  
8 did not. I did not coach her --

9 MR. ROTHENBERG: I can't imagine you would.

10 MR. PAULUS: Thank you.

11 However, to a certain extent, counsel  
12 did open the door as to these -- as to that  
13 statement because you went over treating doctor  
14 records and you were asking whether these complaints  
15 are non-specific or could be related to a mild  
16 traumatic brain injury as is being alleged in this  
17 case. So is it far afield. With all due respect to  
18 my expert, I think we can reach an accommodation and  
19 preserve her testimony of this videotaped deposition  
20 by discussing whether or not we can excise that  
21 comment.

22 Is that fair?

23 MR. ROTHENBERG: We certainly can.

24 MR. PAULUS: So I'm taking it under  
25 advisement and I wish to talk to my expert with the

1 understanding that I am going to advise her that  
2 we're not going to go into that area of  
3 communication. And you can be present when that --

4 MR. ROTHENBERG: I don't need to be.

5 MR. PAULUS: Okay. Then let me talk to her.

6 MR. ROTHENBERG: I trust your integrity  
7 beyond reproach.

8 - - -

9 (At this point, a short recess was  
10 taken, after which time the deposition  
11 resumed.)

12 - - -

13 MR. PAULUS: With the permission of counsel  
14 for plaintiff, I did talk to my expert about the  
15 last testimony regarding -- the last bit of  
16 testimony, we'll leave it nameless, and we have  
17 agreed to strike that portion of the testimony. We  
18 feel that the door was opened by counsel, but for  
19 the interest of the clarity and the integrity of the  
20 record, we'll leave that alone and have that portion  
21 of the testimony stricken.

22 Is that fair?

23 MR. ROTHENBERG: Thank you.

24 MR. PAULUS: You're welcome.

25 THE VIDEOGRAPHER: Four-twenty p.m., back on

1 the record.

2 BY MR. ROTHENBERG:

3 Q. You mentioned Dr. Gainey a bunch of  
4 times and you mentioned that visit of January 4th.  
5 You didn't have the March 7, 2016 records, correct?

6 A. That's correct.

7 Q. Are you sure? Do you want to check?

8 A. No. I reviewed the chart almost page  
9 by page, so I have the dates written down.

10 Q. Well, you have the dates, but do you  
11 have the doctor's whole record there?

12 A. I made notes.

13 Q. Why don't you open up your book to the  
14 record --

15 A. No, no. I made notes of all the  
16 dates of Dr. Gainey's --

17 Q. No. Doctor, can you open up your book  
18 to Dr. Gainey's record.

19 A. Well, they're in chronological order,  
20 so the last one I have is 1/4/16.

21 Q. So look at January -- March 7th, I'm  
22 sorry. Let's go to March 7th.

23 A. This is the last one. Okay, let me  
24 look at -- if I have anything in March.

25 Q. Doctor, I'm going to come up here and

1 take a look over your shoulder.

2 A. JFK Rehab. So this is 1/4/16?

3 Q. Yes.

4 A. Dr. Gainey. Dr. Greenwald. JFK  
5 Rehab.

6 Q. Keep going.

7 A. February is radiology. Radiology.  
8 JFK Rehab. Oh, here it is. Okay. You're right.  
9 I'm --

10 Q. Now see, what's interesting --

11 A. Here's my list.

12 Q. I understand, but see -- so it didn't  
13 exist. You made a mistake again with respect to  
14 records. You have the record, right?

15 A. Yes.

16 Q. It existed, but you chose to ignore  
17 that record and didn't have it tabbed, right?

18 MR. PAULUS: Objection.

19 THE WITNESS: I didn't choose to ignore it.  
20 I couldn't find it and it's not in my handwritten  
21 list. So I, you know, made a mistake.

22 BY MR. ROTHENBERG:

23 Q. Well, you wanted to talk about how she  
24 had this remarkable recovery, but we know that --

25 A. She did --

1 Q. Wait, Doctor, I have to --

2 MR. PAULUS: Let him finish the question,  
3 Doctor.

4 BY MR. ROTHENBERG:

5 Q. You wanted to talk about a remarkable  
6 recovery, but the next note, the last note in which  
7 he sees her, he says that she's had -- she's  
8 actually had a significant setback, correct?

9 A. Yes.

10 Q. Okay. And at that point, he's  
11 recommending that she start cognitive therapy and  
12 vestibular rehabilitation, correct?

13 A. Yes.

14 Q. And he believes that she has a  
15 post-concussion syndrome, right?

16 A. Yes.

17 Q. So unlike what you testified about,  
18 where her position was on January 4th and how it  
19 didn't even -- it was all better, that wasn't the  
20 case. That, actually, it wasn't when he last saw  
21 her, right?

22 A. On March 7, '16, that's correct.

23 Q. And the reason he stopped seeing her  
24 was why?

25 A. He referred her to Dr. Greenwald.

1 Q. No, that's not the reason.  
2 Actually -- again, getting the facts right is  
3 important. The reason was because he moved to  
4 another state, just like she stated, and so she had  
5 to go to another doctor --

6 MR. PAULUS: Objection, mischaracterization  
7 of the testimony.

8 BY MR. ROTHENBERG:

9 Q. He moved and so she couldn't see him  
10 anymore, right?

11 MR. PAULUS: Objection to the form of the  
12 question.

13 MR. ROTHENBERG: What's the objection, sir?

14 MR. PAULUS: The objection is that he was --  
15 the plaintiff was referred to Dr. Greenwald, which  
16 is true, and you're trying to characterize it saying  
17 that because Dr. Gainey's moving, that somehow she's  
18 giving incorrect statements. It's not -- she was  
19 right.

20 Also, on top of that, he didn't --

21 MR. ROTHENBERG: Hold on.

22 BY MR. ROTHENBERG:

23 Q. Doctor, it's important to get the  
24 facts right, correct?

25 A. Yes.

1 Q. And so you're relying upon all the  
2 records, aren't you, not just one particular record,  
3 are you?

4 A. Yes. I try to do that, yes.

5 Q. And so to be fair, you should look at  
6 the whole sum total of the records?

7 A. Yes. I try to do that, yes.

8 Q. Now, Doctor, with respect to the  
9 second reason that you don't think that there was a  
10 mild traumatic brain injury is because of your  
11 reading of the films, correct? Not reading of the  
12 films. I'm sorry. Your interpretation of the  
13 report, because you never saw the films.

14 A. That's correct.

15 Q. Now, you're aware that, we're talking  
16 about Dr. Greenwald, and Dr. Greenwald specifically  
17 indicates that he looked at the films and indicated  
18 that the reason why he gave the opinion he did is  
19 that she does not have a history of risk factors for  
20 any other disease processes, correct?

21 A. Correct.

22 Q. And that he looked at the films and  
23 determined that, based upon his review of this, that  
24 the most likely second -- most likely cause of any  
25 of the changes seen on the MRI of the brain were the

1 traumatic brain injury she sustained on April 15,  
2 2015, correct?

3 A. That's what he says, yes.

4 Q. And that's his area of expertise,  
5 isn't it?

6 A. Interpreting films --

7 Q. No.

8 A. -- or formulating opinions on head  
9 trauma?

10 Q. On treating people with head trauma.

11 A. Okay. So he's not a radiologist, so  
12 that's his opinion about the MRI findings.

13 Q. Yes. You're not a radiologist either,  
14 right?

15 A. Correct.

16 Q. But you didn't even bother to look at  
17 the films, right?

18 A. It's not that I didn't bother. I  
19 didn't receive the films for review.

20 Q. Now, in your report, again, getting  
21 the facts right, you actually didn't even know that  
22 the first doctor that Ms. Petry saw following this  
23 accident was Dr. Marmora. You thought it was  
24 Dr. Gainey. You thought it was several weeks later,  
25 not the few days later as it was, actually?



1           A.     No.  Actually, my report, I said she  
2 was initially treated by her primary care physician,  
3 Dr. Marmora in New Brunswick.

4           Q.     Which report do you write that?

5           A.     My initial, my November 29, '17  
6 report.  That will be the paragraph above the last,  
7 so --

8           Q.     That was in your second report or your  
9 first report?

10          A.     The first report.

11          Q.     I'm sorry, at your deposition you  
12 said -- when did she first see a doctor after the  
13 emergency room.  Turn to page one-o-five.  Turn to  
14 page one-of-five of your deposition.  I don't want  
15 to be unfair to you.  I was going with your  
16 deposition.  If you're finding something different  
17 in your report now, I'm sorry, but you were asked.

18                   Question, on page one-o-five, line  
19 thirteen, when did she first see a doctor after the  
20 emergency room.  Answer, she saw a doctor.  I have  
21 to go back to my records review.  Doctor, what are  
22 you reviewing, your report.  Answer, my report, yes.  
23 She saw Dr. Gainey on 4/23/15.  Gainey.

24                   So that was -- at that point, you  
25 thought Dr. Gainey was the first doctor, right?

1 MR. PAULUS: Objection.

2 THE WITNESS: Okay, ask the question again?

3 BY MR. ROTHENBERG:

4 Q. At the time when initially asked in  
5 your deposition, you thought it was Dr. Gainey,  
6 correct?

7 MR. PAULUS: Note my objection.

8 THE WITNESS: No. I said -- in the next  
9 question in the deposition, I said, according to the  
10 records I have, it looks like, from another  
11 report -- it looks like, from another report, she  
12 might have seen her primary care physician. So  
13 that's in the page of the deposition.

14 Q. Yes, sir -- yes, ma'am. And that's --

15 A. So -- so that's what -- so that's what  
16 the whole, my whole conversation said.

17 Q. Right. And you actually indicate,  
18 according to the records provided, that's the first  
19 doctor she saw. According the records I have, it  
20 looks like, from another report, she might have seen  
21 her primary care physician.

22 A. Yes.

23 Q. And you say Dr. Marmora. I say what  
24 were her complaints to Dr. Marmora. Answer, I don't  
25 have Dr. Marmora's report, but according to a

1 summary done by Dr. Greenwald, she was seen by  
2 Dr. Marmora on 4/21/15. She complained of feeling  
3 dazed, neck pain, headache, confusion, visual  
4 changes, nausea, dizziness, difficulty  
5 concentrating, fatigue, and emotional ability -- I  
6 thinks that's lability -- and somnolence impaired  
7 for over four months and feeling cold.

8 And that was from her family  
9 physician, right?

10 A. Yes.

11 Q. But you didn't have that --

12 A. So that is in my report then.

13 Q. But those -- that recounting of  
14 Dr. Greenwald was only in your second report. It  
15 wasn't even part of your first report, right?

16 A. No. Okay, I'm looking, it's page two,  
17 my first report, where I say, after I took the  
18 notes, the handwritten notes during the examination,  
19 where I said, she was initially treating -- treated  
20 by her primary care physician, Dr. Marmora in New  
21 Brunswick.

22 Q. But you didn't have the complaints at  
23 that point that she gave to Dr. Marmora. You didn't  
24 have his records, right?

25 A. That's correct, but I had -- I believe

1 your question was did I put in the report that she  
2 had seen Dr. Marmora. Yes, I put in the report that  
3 she saw Dr. Marmora and it's also in my handwritten  
4 notes.

5 Q. That was three questions ago. We had  
6 a different question. You're answering the old  
7 question.

8 MR. PAULUS: Note my objection.

9 BY MR. ROTHENBERG:

10 Q. You agree that there is no prior  
11 history of chronic headaches?

12 A. I'm sorry?

13 Q. She had no prior history of chronic  
14 headaches?

15 A. I don't know. I don't know that for a  
16 fact.

17 Q. Turn to page one-sixty of your  
18 deposition, please? You're not aware of -- page  
19 one-fifty-nine, line twenty, through one-sixty, line  
20 seven. Is it fair to say that you do not have any  
21 records that indicate that there were any prior  
22 history of chronic headaches?

23 A. So my answer was I don't know if there  
24 are no medical records because I don't have the  
25 records, any medical records for this patient

1 preceding 2015, which is the same answer I just gave  
2 you.

3 Q. Do you have any records which indicate  
4 that she had chronic headaches beforehand?

5 A. No, but there is --

6 Q. It's a yes or no question. Do you  
7 have any records where she had chronic headaches  
8 beforehand, yes or no?

9 A. No.

10 Q. Are you aware of any records that  
11 would indicate that she had a history of prior  
12 headaches?

13 A. I'm not aware because I didn't receive  
14 them.

15 Q. Are you aware of any prior treatment  
16 for headaches, dizziness, vertigo, balance problems,  
17 nausea, cognitive defects of any kind prior to this?

18 A. Can we go off the record?

19 Q. No, no. Please answer the question.

20 A. Well, I would answer the same way I  
21 just answered and I was instructed not to say that,  
22 so --

23 Q. Doctor, are you aware of any record  
24 which would indicate, or any document, thing of any  
25 kind that indicates that she had prior dizziness,

1 vertigo, balance problem, eye problems, nausea, or  
2 cognitive defects?

3 A. I'm not aware of any documents, no.

4 Q. Are there any problems -- are you  
5 aware of any documents or things that would indicate  
6 she had neck problems or neck pain before this?

7 A. No, I'm not.

8 Q. Any history of confusion that you're  
9 aware of?

10 A. No, I'm not.

11 Q. Any history of visual changes that  
12 you're aware of beforehand?

13 A. No, I'm not.

14 Q. Any problems with difficulty  
15 concentrating that you're aware of?

16 A. No, I'm not.

17 Q. Are you aware of any problems with  
18 sleeping beforehand?

19 A. No, I'm not.

20 Q. She had a VNG test, is that correct?

21 A. Yes.

22 Q. And that demonstrates vestibular  
23 dysfunction?

24 A. Yes, that's what the report said.

25 Q. And for her it showed vestibular

1 dysfunction on the left-hand side?

2 A. Yes.

3 Q. Okay. And that means that it's a  
4 balance issue, is that correct?

5 A. Yes.

6 Q. And is there any indication that she  
7 had any balance issues before this?

8 A. I don't have the records to comment  
9 one way or the other.

10 Q. Are you aware of anything that would  
11 indicate, from any person at any time, that  
12 indicates she had any balance issues before this?

13 A. Again, I don't have any records. I  
14 don't know for a fact whether she did or not.

15 Q. Are you claiming that she did?

16 A. No.

17 Q. Are you claiming --

18 A. I'm just saying I don't know.

19 Q. Let's talk about this. Are you  
20 claiming that she had cognitive defects beforehand?

21 A. No.

22 Q. Are you claiming that she had balance  
23 problems beforehand?

24 A. No. I just --

25 Q. Are you claiming that she had

1 convergence problems beforehand?

2 A. No. I just said --

3 Q. Doctor --

4 A. The answer is we don't know.

5 Q. Doctor, just answer my question. Are  
6 you going to claim that she has visual impairment  
7 before this?

8 A. No.

9 Q. Chronic headaches before this?

10 A. No.

11 Q. Cognitive defects before this?

12 A. No.

13 Q. Vertigo before this?

14 A. No.

15 Q. You agree that these all started after  
16 the accident?

17 MR. PAULUS: Objection.

18 THE WITNESS: That's -- those are her  
19 subjectively reported complaints, yes.

20 BY MR. ROTHENBERG:

21 Q. You agree that you use subjective  
22 complaints to diagnose and treat your own patients?

23 A. Absolutely.

24 Q. Do you agree that the complaints she's  
25 given are consistent with a mild traumatic brain



1 injury?

2 A. In general. I don't believe that  
3 applies to her, though.

4 Q. You agree that the complaints she gave  
5 are consistent with a mild traumatic brain injury?

6 A. They can be, yes.

7 Q. You agree that none of the complaints  
8 were inconsistent?

9 A. That's -- yes, that's correct.

10 Q. And your opinion, the only injuries  
11 she suffered was a lumbar strain and a chest  
12 contusion?

13 MR. PAULUS: Objection.

14 THE WITNESS: No. My -- well, my opinion,  
15 based on the emergency room records, is that, yes,  
16 she had sprain and strain and chest contusion.

17 BY MR. ROTHENBERG:

18 Q. Regardless of what we agreed to as the  
19 cause, whether you believe or not the cause of this  
20 accident was her present problems, you can't tell us  
21 when she's going to get better, can you?

22 A. No, I can't.

23 Q. And you can't tell me whether any of  
24 these problems are ever going to resolve, can you?

25 A. No, I can't.

1           MR. ROTHENBERG: I have no further  
2 questions.

3           MR. PAULUS: Thank you, counsel.

4 BY MR. PAULUS:

5           Q. Doctor, just a few follow-up  
6 questions. What's the difference between an  
7 objective test versus subjective complaints?

8           A. Subjective complaints is what is  
9 reported by a patient, so I have pain or headache or  
10 this and that and that. And objective is what you  
11 find on diagnostic testing or the physical  
12 examination or both, the combination of both.

13          Q. And cross-examination questions came  
14 from plaintiffs' counsel about all of the complaints  
15 that plaintiff has had since the happening of the  
16 motor vehicle accident and they were vision  
17 problems, hearing problems, balance issues, fatigue,  
18 headaches, I may have left out a few, but of those  
19 complaints, can they be attributable to any other  
20 cause other than mild traumatic brain injury?

21          A. Yes, of course.

22          Q. Such as?

23          A. Such as depression.

24          Q. Anything else?

25          A. Medical issues.

1           Q.     Now, in preparation for your reports,  
2 you had medical records that you reviewed and relied  
3 upon, is that correct?

4           A.     Yes.

5           Q.     So even though we discussed only three  
6 of the medical records that stood out in your direct  
7 testimony, you looked at a whole binder full of  
8 medical records, did you not?

9           A.     Yes.

10          Q.     And they were part and parcel of your  
11 opinions, were they not?

12          A.     Yes.

13          MR. PAULUS:  No other questions.  Thank you.

14          BY MR. ROTHENBERG:

15          Q.     Doctor, objective tests, VNG test,  
16 objective?

17          A.     Yes, but that's a --

18          Q.     Doctor, not -- but is --

19          A.     That requires some more complex  
20 answer.

21          Q.     I apologize.  Doctor, tell me if you  
22 can answer this question yes or no.  Is a VNG test  
23 an objective test?  Can you answer that yes or no?

24          A.     Yes, but it doesn't tell us anything  
25 about the cause of a problem.

1 Q. I didn't ask you the cause of the  
2 problem. I'm just asking whether --

3 A. That's the fact about VNGs.

4 Q. Wow. Doctor --

5 A. Just like EMGs or EEGs.

6 Q. Doctor, these questions are yes or no  
7 questions. If you cannot answer it yes or no, tell  
8 me you cannot answer it yes or no.

9 A. I cannot answer yes or no.

10 Q. You haven't heard the question yet.

11 MR. PAULUS: You did --

12 THE WITNESS: You just did ask me about VNG.

13 BY MR. ROTHENBERG:

14 Q. Is it an objective test?

15 A. Yes and no.

16 Q. Is a neuropsychological test an  
17 objective test?

18 A. Yes and no.

19 Q. Is an MRI an objective test?

20 A. Yes.

21 Q. Is a hearing test or tinnitus an  
22 objective test?

23 A. You can't -- tinnitus is a symptom.  
24 You cannot test --

25 Q. It's a yes or no question.

1 MR. PAULUS: I think she's answering it.

2 THE WITNESS: No, because tinnitus is a  
3 symptom. You cannot measure tinnitus. You measure  
4 hearing and which frequencies the tinnitus is as --  
5 is at.

6 MR. ROTHENBERG: Thank you. No further  
7 questions.

8 MR. PAULUS: No follow-up. Thank you,  
9 Doctor.

10 THE VIDEOGRAPHER: This concludes the  
11 deposition. The time is four-thirty-nine p.m.  
12 Going off the record.

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14 (DEPOSITION CONCLUDED - 4:39 p.m.)

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C E R T I F I C A T E

STATE OF NEW JERSEY :  
 : SS  
COUNTY OF CAMDEN :

I, JACQUELINE A. GEARY,  
Certified Court Reporter - Notary Public, within and  
for the State of New Jersey, do hereby certify that  
the proceedings, evidence, and objections noted are  
contained fully and accurately in the notes taken by  
me of the preceding deposition, and that this copy  
is a correct transcript of the same.

\_\_\_\_\_

JACQUELINE A. GEARY  
Certified Court Reporter,  
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Sworn and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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