

1 IN THE CIRCUIT COURT FOR

2 ANNE ARUNDEL COUNTY

3 -----x

4 THEODORE E. RUTHERFORD, JR.,

5 Plaintiff,

6 -against-

7 BALTIMORE WASHINGTON MEDICAL

8 CENTER, INC.,

9 Defendant.

10 CASE NO: C-02-CV-16-002412

11 -----x

12 527 Townline Road

13 Hauppauge, New York

14

15 March 22, 2017

16 12:02 p.m.

17

18 Examination Before Trial of Expert

19 Witness DAVID A. MAYER, M.D., F.I.C.S.,

20 pursuant to Notice, before CINDY A. AFANADOR,

21 a Notary Public of the State of New York.

22

Page 2

1 A P P E A R A N C E S:
2 BROWN & GETKA, P.A.
3 Attorneys for Plaintiff
4 7420 Baltimore-Annapolis Boulevard
5 Glen Burnie, Maryland 21061
6 BY: CHRISTOPHER BROWN, ESQ.
7
8 CHASON, ROSNER, LEARY & MARSHALL, LLC
9 Attorneys for Defendant
10 401 Washington Avenue, Suite 1100
11 Townson, Maryland 21204
12 BY: ERIKA ALSID SHORT, ESQ.
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1 **deposed before, but I would like to briefly go**
2 **over some of the ground rules so that you and**
3 **I are on the same page, okay?**
4 A. Yes.
5 **Q. The court reporter to my left and**
6 **your right is taking down everything that**
7 **anyone in the room has to say, as you know, so**
8 **it's very important that you give verbal**
9 **responses, a yes or a no.**
10 **And that you also allow me to**
11 **fully ask my question before you begin to**
12 **answer, so that we do not speak over one**
13 **another, okay?**
14 A. Yes.
15 **Q. All right.**
16 **The second thing is that if I**
17 **pose a question to you and you answer the**
18 **question, I'm going to assume that you have**
19 **understood the question; is that fair?**
20 A. Yes.
21 **Q. All right.**
22 **If you do not understand a**

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1 THE COURT REPORTER: Please state
2 your full name for the record.
3 THE WITNESS: David A. Mayer.
4 THE COURT REPORTER: What is your
5 address?
6 THE WITNESS: 223 Wall Street,
7 Suite 190, Huntington, New York 11743.
8 D A V I D A . M A Y E R, called as a
9 witness, having been duly sworn by a
10 Notary Public, was examined and
11 testified as follows:
12 EXAMINATION BY
13 MS. SHORT:
14 **Q. Good morning, Dr. Mayer. We just**
15 **briefly met off the record. My name is Erika**
16 **Short. I'm counsel for Baltimore Washington**
17 **Medical Center in the lawsuit that has been**
18 **brought by Mr. Rutherford in the Circuit Court**
19 **for Anne Arundel County. We are here in**
20 **New York today to take your deposition.**
21 **And I did a little bit of**
22 **research on you. So I know that you have been**

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1 **question, you need to let me know; is that**
2 **fair?**
3 A. Yes.
4 **Q. Are you taking any medications**
5 **today that would in any way affect your**
6 **ability to provide testimony?**
7 A. No.
8 **Q. Can you please state your full**
9 **name and your current business address for the**
10 **record?**
11 A. David A. Mayer, M.D., 223 Wall
12 Street, Huntington, New York 11743.
13 **Q. Is that the only business address**
14 **that you currently maintain?**
15 A. Yes.
16 **Q. Okay.**
17 **And what is the name of the**
18 **business that is at 233 Wall Street?**
19 A. It's just David A. Mayer, M.D.
20 **Q. Prior to today's deposition I was**
21 **provided with a few documents. The first is**
22 **your CV, which I would like to have marked as**

Exhibit 1.

(Exhibit 1, CV of Dr. Mayer, marked for identification.)

Q. I was also provided with a copy of a report dated July 3, 2016 that has your name at the top. I will have that marked as Exhibit 2, please.

(Exhibit 2, Report dated July 3, 2016, marked for identification.)

Q. And then as part of your deposition today, I requested that you bring a number of documents with you and I see that you have a large file folder. If I can take a quick look at that, please?

A. (Handing.)

Q. Thank you.

Do you have any documents in your possession related to this case that are not contained within this file folder?

A. The only thing I have is a CD with like over 8,000 pages of the hospital records. I think it's in the back of that

A. Yes.

Q. When I'm asking you questions, if you need to see anything to be able to answer a question, certainly let me know.

Was there a particular reason that you made those highlights?

A. Not in particular.

Q. Okay.

There is the transcript of the deposition of Mr. Rutherford; did you review that deposition transcript?

A. Yes.

Q. Okay.

Do you recall making any notes or highlights about that deposition?

A. No. I don't have any notes outside of my report and a memorandum that I subsequently did.

Q. Okay.

There is a stack of medical records from Woodholme Gastroenterology Associates in which you have highlighted the

file, but if it somehow slipped out, that would be the only other thing.

Q. Okay.

On the left side of this manila folder numbered 1 through 19, can you tell me, first of all, if this is your handwriting?

A. Yes.

Q. Okay.

And does this correlate to what is in this file folder or what you reviewed?

A. That would be my file.

Q. Okay.

MR. BROWN: Could I get you something?

THE WITNESS: No. I was looking for the CD to see if I had it, but it may have slipped out.

A. I was provided that by Mr. Brown.

Q. In a document of medical records from Mercy Health Services, there are some highlights on the first page; did you make those highlights?

first page; is that correct?

A. Yes.

Q. Okay.

Any particular reason why you highlighted this like you did?

A. No.

Q. Okay.

And then we have a discharge summary from BWMC in which there are several notations underlying and checkmarks throughout; any particular reason why you did that on this document?

A. I can say for the entire file that often when I'm just reading, I'll highlight or underline things, you know, as I read, it's just a habit of mine.

All my opinions or comments are reflected in the reports, not necessarily in any highlights.

Q. Okay.

I found something that has a red tab on it and lots of underlining, so I'm

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1 **going to get you to tell me if that's your**
 2 **handwriting and, if so, what it says?**
 3 A. It's my -- part of it is my
 4 handwriting. My handwriting says 9/26
 5 tachycardia leak, CTA without abdominal CT.
 6 Stool. I wrote three-day delay. And then
 7 it -- someone else's handwriting, which is in
 8 a darker ink, which is not my handwriting.
 9 **Q. Do you know whose handwriting**
 10 **that is?**
 11 A. I do not.
 12 **Q. Okay.**
 13 A. That would be -- I'm pointing to
 14 the darker ink on that page.
 15 **Q. Okay.**
 16 **It looks like it says question**
 17 **mark, question mark, when identified -- I**
 18 **don't know what that second word is or third**
 19 **word is.**
 20 A. I can't tell either. It's not my
 21 handwriting.
 22 **Q. Did you have an assistant review**

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1 **the records with you? Is there anyone else**
 2 **who had access to the records that you are**
 3 **aware of?**
 4 A. No. No.
 5 **Q. For the record, this is page --**
 6 **the top it says page 35 of 38, discharge**
 7 **summary signed by Dr. Amy Stump at 2:47 p.m.**
 8 **on 11/4/2013.**
 9 **All of these medical records that**
 10 **are printed out in this file folder, did you**
 11 **print these yourself?**
 12 A. Yes.
 13 Obviously, it's a small sample of
 14 what I read, but, yeah, I printed those.
 15 **Q. So as you were reading the**
 16 **medical records that are on CD, is that what**
 17 **you did is you saw things that you thought**
 18 **were pertinent you would print out those**
 19 **pages?**
 20 A. Yes. Not all the pertinent ones
 21 were printed, but a portion are.
 22 **Q. As you were reviewing the medical**

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1 **records on CD, did you make any highlights on**
 2 **the records that are electronic?**
 3 A. No. I don't know how to do that.
 4 **Q. No, okay.**
 5 **I see that you have a copy of the**
 6 **Defendant's expert witness designation; did**
 7 **you review that document prior to today?**
 8 A. Yes.
 9 **Q. Okay.**
 10 **Do you know Dr. Blier?**
 11 A. Not personally.
 12 **Q. Do you know of him?**
 13 A. No.
 14 **Q. Okay.**
 15 A. Only his report.
 16 **Q. Only his report in this case?**
 17 A. Yes.
 18 **Q. Okay.**
 19 **And how about Terrence Fullon,**
 20 **Dr. Terrence Fullon, do you know him?**
 21 A. No.
 22 **Q. We have records in here that do**

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1 **not appear to be Mr. Rutherford's. I'm gonna**
 2 **hand you three pages. Take a look.**
 3 A. (Handing.)
 4 Wouldn't be the first time that
 5 happened.
 6 Yes, these belong to another case
 7 that probably accidentally got into this. I
 8 apologize.
 9 **Q. That's okay. That happens.**
 10 **Maybe we can just keep those to**
 11 **the side.**
 12 A. Yes.
 13 **Q. All right.**
 14 **So then we have a certificate of**
 15 **Dr. Blier and his report and I'm guessing**
 16 **those are all your marks all over it?**
 17 A. Yes.
 18 **Q. Any particular reason that you**
 19 **made these highlights, underlines?**
 20 A. Just seemed interesting
 21 statements, that's all.
 22 **Q. Okay.**

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1 **We'll talk about that in a**
 2 **minute.**
 3 **There is a document that's**
 4 **stapled to the manila folder, which says**
 5 **medical records Theodore Rutherford; is this**
 6 **something you created?**
 7 A. That came from Mr. Brown's
 8 office, but I made the list with what I
 9 actually had in the file, which I think
 10 included just about everything on that list,
 11 so...

12 **Q. Okay.**
 13 A. But mine was a little more
 14 inclusive of other things, like the expert
 15 report and the -- I only saw one deposition.
 16 I don't know if any others have been done, but
 17 I only saw Mr. Rutherford's.

18 **Q. Okay.**
 19 A. You have what's entitled a work
 20 product memorandum dated February 2nd of this
 21 year from you to Mr. Brown. It's two pages
 22 long.

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1 MS. SHORT: We'll have that
 2 marked as Exhibit 3, please.
 3 (Exhibit 3, Work product
 4 memorandum dated February 2, 2017,
 5 marked for identification.)
 6 **Q. Then as Exhibit 4 I'm going to**
 7 **have marked the certificate that you marked up**
 8 **of Dr. Blier.**
 9 (Exhibit 4, Certificate, marked
 10 for identification.)
 11 **Q. And then as Exhibit 5, the notice**
 12 **of your deposition today.**
 13 (Exhibit 5, Notice of Deposition,
 14 marked for identification.)
 15 **Q. As Exhibit 6 I'm going to mark**
 16 **the front of this manila folder, so everything**
 17 **else that's in the manila folder will be**
 18 **Exhibit 6.**
 19 (Exhibit 6, Manila folder, marked
 20 for identification.)
 21 **Q. With your deposition notice I**
 22 **requested that you bring a number of documents**

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1 **today. I asked that you bring any invoices**
 2 **that you have submitted for this case.**
 3 **Have you submitted any invoices?**
 4 A. I don't have copies of them. I
 5 would ask Mr. Brown to produce them, but I
 6 know what I'm charging, say, for the
 7 deposition today.
 8 **Q. Okay.**
 9 **Do you know how many invoices you**
 10 **have submitted to Mr. Brown?**
 11 A. Probably about three.
 12 **Q. Do you know the total of those**
 13 **invoices?**
 14 A. I don't.
 15 **Q. Do you know an approximate**
 16 **amount?**
 17 A. No.
 18 MS. SHORT: Chris, I ask you to
 19 provide me with a copy of that.
 20 MR. BROWN: Yes, we have one for
 21 today, but that's the only one I
 22 brought.

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1 MS. SHORT: Okay.
 2 **Q. I also requested that you provide**
 3 **a fee schedule; do you have such a document?**
 4 A. I don't, regarding this case,
 5 anyway.
 6 **Q. Do you have a fee schedule that**
 7 **you use generally?**
 8 A. Yes.
 9 **Q. Is there a reason why you don't**
 10 **have one for this particular case?**
 11 A. Not particularly, but --
 12 MR. BROWN: This is the invoice I
 13 have for today (handing).
 14 MS. SHORT: Okay.
 15 **Q. Not particularly, you said?**
 16 A. Correct.
 17 **Q. Okay.**
 18 **What is your fee for review of**
 19 **medical records?**
 20 A. Well, this case was billed
 21 through National Medical Consultants, as you
 22 can see by the invoice, so they bill -- they

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1 do a fair amount of billing for me, so I don't
 2 handle it directly, so -- so you probably have
 3 to refer to the invoices to see what the
 4 hourly fee is, et cetera.
 5 **Q. Okay.**
 6 **So you do not know what your fee**
 7 **is for review of records?**
 8 A. Well, it's generally 500 an hour
 9 for review.
 10 **Q. And does National Medical**
 11 **Consultants, P.C. take a portion of your fee**
 12 **for purposes of preparing your bills and**
 13 **sending them out?**
 14 A. Yes.
 15 **Q. Okay.**
 16 **And what portion of your fee do**
 17 **they take?**
 18 A. I'm not sure exactly.
 19 **Q. Okay.**
 20 **Do you know if it's five percent,**
 21 **ten percent?**
 22 A. I don't know.

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1 **Q. What is your fee for providing**
 2 **testimony?**
 3 A. I think it was 2,400 for the
 4 deposition today, plus couple of hours prep
 5 time, as reflected on the invoice.
 6 **Q. And did you set that fee or does**
 7 **National Medical Consultants set that fee?**
 8 A. They did the billing and set the
 9 fee.
 10 **Q. Is that amount, 2,400, for the**
 11 **deposition today what you would typically**
 12 **charge for your deposition if you were not**
 13 **going through National Medical Consultants?**
 14 A. I would charge somewhat higher.
 15 **Q. And what is that amount?**
 16 A. I'm not sure of the relevance to
 17 this case, but because this is what I'm
 18 charging for this case, but...
 19 **Q. It doesn't matter, just answer**
 20 **the question.**
 21 A. Sure.
 22 **Q. Thanks.**

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1 A. It would be 3,000 for the
 2 deposition.
 3 **Q. And if you were not going through**
 4 **National Medical Consultants, would you**
 5 **typically charge \$500 per hour for review or a**
 6 **higher or lower number?**
 7 A. That would be my hourly rate,
 8 yes.
 9 **Q. Okay.**
 10 **Do you charge any other fees for**
 11 **your forensic involvement in a case?**
 12 A. Well, you know, trial fees.
 13 **Q. Okay.**
 14 **What are your trial fees?**
 15 A. I think it's 6,000 for a day of
 16 trial.
 17 **Q. And is that whether you go**
 18 **through National Medical Consultants or**
 19 **someone contacts you directly?**
 20 A. That would be as for this case.
 21 My fee could be 10,000 if I did not go through
 22 them.

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1 **Q. Is that part of an agreement that**
 2 **you have with National Medical Consultants**
 3 **that you will review, be involved, provide**
 4 **testimony in cases for a fee that is reduced**
 5 **from what you would typically charge?**
 6 A. I would say so. Although, I
 7 don't know that it's in writing, but, yes,
 8 that's our understanding.
 9 **Q. Okay.**
 10 **And does National Medical**
 11 **Consultants send you cases, is that how it**
 12 **works?**
 13 A. Yes. They often act as an
 14 intermediary between attorneys and experts.
 15 **Q. And when did you first start**
 16 **working for National Medical Consultants?**
 17 A. Well, I don't work for them. I'm
 18 an independent contractor with them, and I
 19 would say the last two years.
 20 **Q. How many cases has National**
 21 **Medical Consultants sent to you in the last**
 22 **two years?**

1 A. They send about 15 to 20 a year
2 on average.

3 **Q. And of those 15 to 20 cases, what**
4 **is the breakdown between plaintiff and**
5 **defense?**

6 A. That company normally handles
7 plaintiff's cases.

8 **Q. Of those 15 to 20 cases on**
9 **average, how many do you actually take on?**

10 A. Oh, I usually I reject about
11 25 percent saying I can't support it, so I
12 would accept about 75 percent of them, but
13 they are generally prescreened before I see
14 them, so at least the owner/operator of
15 National Medical Consultants, who's a
16 physician, thinks there is something to them,
17 but about 75 percent I support.

18 **Q. Okay.**
19 **And I noticed that, at least from**
20 **this particular invoice, National Medical**
21 **Consultants is operated out of Bayside,**
22 **New York?**

1 A. Yes.

2 **Q. Okay.**
3 **In other words -- are they an**
4 **international or national company, do you**
5 **know?**

6 A. National company.

7 **Q. National, okay, but their home**
8 **base is here in New York?**

9 A. Yes.

10 **Q. Do you personally know the owner**
11 **of that company?**

12 A. Only by talking to him and, you
13 know, I -- so I know him because I have spoken
14 to him a number of times, but we don't have a
15 relationship besides a business relationship.

16 **Q. Okay.**
17 **How is it that you became**
18 **connected with National Medical Consultants?**

19 A. I think they reached out to me.
20 I am a well-known expert in the area, and
21 somehow probably one of their attorneys knew
22 me and they reached out, would I look out for

1 a case for them.

2 **Q. Are there any other expert**
3 **services that you work with?**

4 A. Not at the moment, no.

5 **Q. Okay.**
6 **Have there been in the past?**

7 A. Yeah, I worked with American
8 Medical Forensic Service in the 1980s and
9 early '90s, but this would be the only -- most
10 of my practice is just word of mouth, so this
11 would be really the only service that I work
12 with at the moment.

13 MS. SHORT: Can we have this
14 invoice marked as Exhibit 7, please?
15 (Exhibit 7, Invoice, marked for
16 identification.)

17 **Q. Since we do not have your other**
18 **invoices here today, do you recall roughly how**
19 **much time you've spent to date on the case?**

20 A. Probably over ten hours, I think,
21 you know, but I'd refer you to the invoices.
22 Probably more accurate.

1 **Q. Sure.**
2 **I just don't have them with me**
3 **today.**

4 A. Yes, of course.

5 **Q. Yes.**
6 **Do you keep a list of cases in**
7 **which you've provided testimony?**

8 A. I don't specifically, I don't.

9 **Q. I'm sorry?**

10 A. No.

11 **Q. Have you ever testified in**
12 **Federal Court?**

13 A. Yes.

14 **Q. When was the last time you**
15 **testified in Federal Court?**

16 A. I don't recall exactly.

17 **Q. Has it been more or less than one**
18 **year?**

19 A. Probably more.

20 **Q. Two years?**

21 A. I don't know.

22 **Q. Have you ever had to create a**

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1 **list of cases for purposes of your testimony**
 2 **in Federal Court?**
 3 A. The last time I told the attorney
 4 I didn't have a list, I think he looked it up
 5 on a legal search engine and created a list,
 6 so I haven't personally done it, no.
 7 **Q. When you say you told an attorney**
 8 **that you didn't have a list, do you mean the**
 9 **attorney you were working for, you told that**
 10 **attorney that you didn't have a list and then**
 11 **he created it himself?**
 12 A. Yes. He looked up whatever my
 13 testimonies were on the -- I think Lexis and
 14 printed out a list and I recognized the cases,
 15 so that's what was submitted. I do very few
 16 federal cases, so...
 17 **Q. How often per year do you provide**
 18 **deposition testimony?**
 19 A. Five or six a year.
 20 **Q. How about trial?**
 21 A. Trial, about the same.
 22 **Q. And you said that National**

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1 **Medical Consultants sends you about 15 to 20**
 2 **cases per year and you reject about 25 percent**
 3 **of those; how many cases do you currently**
 4 **have?**
 5 A. Probably have about 40 active
 6 cases, maybe a little more.
 7 **Q. Those other cases that wouldn't**
 8 **be from National Medical Consultants, they are**
 9 **coming from direct referrals of plaintiff's**
 10 **lawyers; is that accurate?**
 11 A. Right now I'm doing 60 percent
 12 plaintiff and 40 percent defense, so they come
 13 from one or the other.
 14 **Q. Okay.**
 15 **Have you ever testified on behalf**
 16 **of defense in Maryland?**
 17 A. No, I haven't.
 18 **Q. In what states have you testified**
 19 **on behalf of the defense?**
 20 A. Only New York and New Jersey.
 21 Oh, and I have one in Texas currently, but I
 22 haven't testified yet in that.

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1 **Q. In that case, okay.**
 2 **By testimony, I want to make sure**
 3 **you and I are clear. I mean whether it's**
 4 **deposition or trial.**
 5 A. Of course.
 6 **Q. Okay.**
 7 **How much of your professional**
 8 **time is spent engaging in forensic work?**
 9 A. About 15 percent.
 10 **Q. And what constitutes the**
 11 **remainder of your professional time?**
 12 A. Just seeing patients and
 13 operating.
 14 **Q. Where do you currently have**
 15 **privileges to operate?**
 16 A. I've had privileges at four
 17 hospitals in the Northwell Health System
 18 throughout the years. Currently, I don't have
 19 active hospital privileges. I'm operating in
 20 a Quad-A certified surgi-center. Actually
 21 reapplying for hospital privileges now.
 22 **Q. When is the last time that you**

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1 **maintained privileges at a hospital?**
 2 A. The end of 2010. I had a medical
 3 leave for a couple of years, had a medical
 4 issue that required surgery.
 5 **Q. And when did you begin operating**
 6 **in a surgi-center?**
 7 A. 2015, right near the end, I
 8 think, the end of the year.
 9 **Q. The 223 Wall Street address that**
 10 **you gave me before, is that the address of the**
 11 **surgi-center?**
 12 A. No.
 13 **Q. Okay.**
 14 **That's just David A. Mayer, M.D.?**
 15 A. Yes.
 16 **Q. Okay.**
 17 **Where is the surgi-center?**
 18 A. It's 903 Park Avenue in
 19 Manhattan.
 20 **Q. What is the name of the**
 21 **surgi-center?**
 22 A. It's -- I'm not sure of the full

1 name, but it's operated by Dr. Shahar,
2 S-H-A-H-A-R.

3 **Q. Do you know a part of the name of**
4 **it?**

5 A. I'm not sure.

6 **Q. Okay.**

7 **You began operating in this**
8 **surgi-center at the end of 2015. By "end," do**
9 **you mean December of 2015 or --**

10 A. No, like October, November.

11 **Q. Okay.**

12 **How many days per month do you**
13 **operate out of that surgi-center?**

14 A. Well, it's -- usually, it's three
15 days a week.

16 **Q. And what type of procedures do**
17 **you perform at the surgi-center?**

18 A. I've been doing some minor
19 excisions, liposuctions, adipose-derived stem
20 cell therapy.

21 **Q. And you said that you were**
22 **reapplying for privileges at a hospital or**

1 **hospitals.**

2 A. Yes. I'm reapplying at
3 Northwell, where my assistant and I are --
4 it's a voluminous application we are working
5 on, but I have my full malpractice insurance
6 and, you know, so it's kind of a formality. I
7 was one of their chairmen of one of their
8 hospitals, chairman of surgery, so I just have
9 to get the application in. So it should be
10 next few weeks fully submitted.

11 **Q. Okay.**

12 **Where is Northwell?**

13 A. They have 12 hospitals across
14 Long Island, so I'm reapplying to Huntington
15 Hospital, which was one of my main hospitals.

16 **Q. When is the last time that you**
17 **operated at Huntington Hospital?**

18 A. The end of 2010.

19 **Q. Again, when you say the end of**
20 **2010, are you referencing October, November,**
21 **December?**

22 A. Be the end of December.

1 **Q. You mentioned that you stopped**
2 **operating because you went on a medical leave?**

3 A. Yeah.

4 **Q. Did you stop operating for any**
5 **other reason?**

6 A. Oh, no.

7 **Q. And what did you do between**
8 **December of 2010 when you began working at the**
9 **surgi-center at the end of 2015?**

10 A. Well, I was fully disabled at the
11 time with an orthopedic problem in the hip
12 that I eventually had operated and fixed, but
13 I have a law degree from Hofstra Law School,
14 so and I've been an expert for a while. So
15 what I did in that interim was I taught at
16 Hofstra Medical School in their structures
17 course and I kept my clinical associate
18 professor position at New York Medical
19 College.

20 So I was working with students
21 and residents there and I was consulting with
22 various law firms who would use me as an

1 expert and was helping them analyze cases as
2 they were coming in and getting experts for
3 them, et cetera.

4 I was doing my own expert work
5 during that time, so I had a small law
6 practice during that time handling like, you
7 know, minor cases.

8 I never had a law office or
9 staff, so any cases I got in I referred to
10 lawyers I knew, all with an eye toward
11 recovering and getting back to the medical
12 practice.

13 **Q. All right.**

14 **Let me ask you some questions**
15 **about all of that.**

16 **You said you received a law**
17 **degree in Hofstra; when did you receive your**
18 **law degree?**

19 A. I graduated December of 2010.

20 **Q. Were you in the day or evening**
21 **program there?**

22 A. Evening.

1 Q. Okay.
2 How many years did it take you to
3 complete the evening program?

4 A. Three and a half.

5 Q. Did you start in 2006 there; do
6 you remember?

7 A. I'm not sure. I thought I
8 started in 2007.

9 Q. Okay.

10 A. Maybe it was '6.

11 Q. That's all right.

12 A. Yeah.

13 Q. While you were in law school,
14 let's go with 2007 to 2010, and you were in
15 the evening program, did you continue working
16 as a surgeon during the day?

17 A. Yes.

18 Q. Okay.

19 And having been through law
20 school myself, I know it's a pretty rigorous
21 thing; how often were you operating during
22 that time frame, 2007 to 2010?

1 A. I had a full operative schedule
2 and would study on the weekends when I could.
3 I didn't do any studying during the week,
4 because I was working as a surgeon.

5 Q. And from 2007 to 2010, were you
6 operating anywhere other than Huntington
7 Hospital?

8 A. Yes, Syosset Hospital.

9 Q. Can you spell that for me?

10 A. S-Y-O-S-S-E-T.

11 Q. Anywhere else?

12 A. Probably not during that time
13 period.

14 Q. Other than operating at
15 Huntington and Syosset and going to law school
16 in the evenings, were you doing anything else
17 professionally at that time period, '07 to
18 2010?

19 A. You know, my teaching
20 responsibilities, which were volunteer, I
21 didn't get paid for them and I did my expert
22 work.

1 Q. And where were you doing the
2 volunteer teaching work?

3 A. Oh, that would be just New York
4 Medical College, 'cause Hofstra came later. I
5 think I have it on my CV what the dates were.

6 Q. Okay.

7 A. The medical school wasn't opened
8 then.

9 Q. Oh.

10 And when you said that you were
11 performing a full operating schedule 2007 to
12 2010 at Huntington and Syosset, how many times
13 per week would you operate, roughly?

14 A. I don't know, but I did about,
15 you know, 600 cases a year during that time,
16 whatever that comes out to a week.

17 Q. And what types of cases were you
18 handling?

19 A. I did all the big major general
20 surgical and vascular cases, peripheral
21 vascular cases and some bariatric surgery,
22 weight loss surgery, laparoscopy, laparotomy,

1 abdominal surgery.

2 Q. Okay.

3 A. Colectomies.

4 Q. Did one area kind of consume more
5 of your practice than another area?

6 A. Yeah, the general surgery was
7 more during that time.

8 Q. You said that you taught at
9 Hofstra Medical School. You can refer to your
10 CV any time that you need to, if that helps
11 answer my question of when you began teaching
12 there.

13 A. I'm going to refer to an updated
14 CV, which I brought with me.

15 Q. That's okay.

16 Why don't we --

17 A. It has it on there.

18 Q. Why don't we have that marked as
19 Exhibit 1? I'm just gonna peel this sticker
20 off, so that we are on the accurate most
21 up-to-date --

22 A. Okay.

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1 **Q. Okay, go ahead, Doctor.**
 2 A. So I'm referring to the CV dated
 3 January 2017.
 4 **Q. Okay.**
 5 A. Which was the latest iteration of
 6 it. So it looks like I started at the
 7 beginning of 2014 ongoing.
 8 **Q. I think you told me that you tout**
 9 **their structures course?**
 10 A. Yes.
 11 **Q. Tell me what that is.**
 12 A. That's anatomy and clinical
 13 correlation course. You teach the gross
 14 anatomy, then you have videos of CAT scans and
 15 x-rays and surgery and try to put the whole
 16 disease process in context for the students.
 17 **Q. Is this something that is taught**
 18 **to first-year medical students?**
 19 A. I think first and second, around
 20 there.
 21 **Q. Is this something that you would**
 22 **teach each semester or one time a year; how**

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1 **did that work?**
 2 A. Yes, I would teach a couple of
 3 times each semester.
 4 **Q. How long was the course?**
 5 A. It was a semester long course. I
 6 would be brought in for abdominal surgery or
 7 vascular surgery, something where I had an
 8 expertise. They wouldn't bring me for like
 9 neurology portion, for example.
 10 **Q. I think I understand. You are**
 11 **not actually teaching the entire structures**
 12 **course. Say a first-year medical student is**
 13 **taking the structures course and they would**
 14 **bring in different physicians to teach**
 15 **different days; is that how it would work?**
 16 A. Yes. Whoever had an expertise in
 17 what they were teaching.
 18 **Q. Okay.**
 19 **And you were teaching anatomy?**
 20 A. Yes, as it related to the abdomen
 21 or the vascular system. Those would be -- I
 22 thought those would be the two things I knew

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1 the most about regarding what they were
 2 teaching, so...
 3 **Q. Okay.**
 4 **So how many days per year did you**
 5 **teach in the structures course?**
 6 A. About five or six a year. It
 7 varied.
 8 **Q. And that is something that you**
 9 **are still doing?**
 10 A. I am.
 11 **Q. Okay.**
 12 **Do you have course materials that**
 13 **you utilize?**
 14 A. Not really. I just kind of ad
 15 lib it, you know, because I know the anatomy
 16 cold from operating, so, you know, I'll bring
 17 in different x-rays, CAT scans, surgical clips
 18 that I put together for the classes, but
 19 there's no course material.
 20 **Q. Is there a PowerPoint**
 21 **presentation or anything that you utilize when**
 22 **you are teaching the students in the**

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1 **structures course?**
 2 A. Not particularly, no.
 3 **Q. So if I understand your**
 4 **testimony, you are basically standing in front**
 5 **of the room and teaching?**
 6 A. You have a cadaver that you are
 7 demonstrating the anatomy, then go to a screen
 8 and show, you know, how that correlates with
 9 CAT scans, x-rays, surgery, et cetera.
 10 **Q. And the purpose of this course is**
 11 **for the students to learn the anatomy?**
 12 A. Yeah, but they don't just teach
 13 anatomy anymore alone. They teach it with
 14 imaging and operating and diagnosis and
 15 treatment, so things have changed since I was
 16 in medical school where you just had a gross
 17 anatomy course. They don't have that anymore,
 18 at least not at Hofstra.
 19 **Q. When you teach five to six days**
 20 **per year, how long is your teaching on those**
 21 **days?**
 22 A. It's probably -- usually from

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1 8:00 in the morning until about 2:00 in the
 2 afternoon, something like that. About six
 3 hours.
 4 **Q. Any other courses that you are**
 5 **currently teaching or have taught at Hofstra**
 6 **Medical School?**
 7 A. No.
 8 **Q. Okay.**
 9 **You said that you were also**
 10 **between 2010 and 2015 involved with New York**
 11 **Medical College?**
 12 A. Yes.
 13 **Q. And what did you do for New York**
 14 **Medical College?**
 15 A. For years and years I taught
 16 their residents in and out of the operating
 17 room, but when I wasn't actively operating in
 18 the hospital during that time, I would just
 19 advise them on research projects, writing,
 20 publication, that type of thing. I wasn't
 21 actually doing in-operating-room teaching
 22 during that period of time.

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1 **Q. Okay.**
 2 **So from the end of 2010 until**
 3 **currently, you were not doing any operating**
 4 **room teaching at New York Medical College?**
 5 A. Yes, that is true.
 6 **Q. Okay.**
 7 **And you said that you were**
 8 **advising on research projects?**
 9 A. Yes.
 10 **Q. Okay.**
 11 **How often did you advise -- was**
 12 **this students you were advising on research**
 13 **projects?**
 14 A. Usually residents. Interesting
 15 subject came up, you know, I have a lot of
 16 experience writing, publishing, I've been an
 17 editor for Archives of Surgery, so I have a
 18 little niche in that type of thing, so, but I
 19 haven't been clinically active with them in
 20 the operating room since 2010.
 21 **Q. Did New York Medical College**
 22 **consider you to be on staff with them from**

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1 **2010 to 2015?**
 2 A. Yeah, of course.
 3 **Q. Okay.**
 4 A. But as a nonsalaried clinical
 5 associate professor.
 6 **Q. Were you paid for your work in**
 7 **advising residents on research projects?**
 8 A. I just answered that,
 9 nonsalaried.
 10 **Q. Well, just because you are**
 11 **nonsalaried doesn't mean that you are not**
 12 **being paid on an hourly basis for your work?**
 13 A. Well, I meant it to mean
 14 noncompensated, that's what I meant it to
 15 mean.
 16 **Q. I appreciate the clarification.**
 17 A. Sure. Thank you.
 18 **Q. Can you tell me how many hours**
 19 **per week or per month you were advising**
 20 **residents on research projects at New York**
 21 **Medical College?**
 22 A. Could vary for a couple of hours.

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1 If we are working on something, could be
 2 20 hours, could be no hours. It was variable.
 3 **Q. Okay.**
 4 A. It wasn't a regular hourly,
 5 monthly commitment.
 6 **Q. Okay.**
 7 **And what type of research**
 8 **projects were you advising them on?**
 9 A. Usually general surgery topics.
 10 **Q. And so I have a better**
 11 **understanding, were you advising them on the**
 12 **substance of what they were writing or more on**
 13 **this is how you write for a publication?**
 14 A. Yeah, I would help them with some
 15 editing and things, which is a special skill
 16 of mine, but more on this is a good area to
 17 look into, that type of thing.
 18 You know, in other words, having
 19 been an editor of a major surgical journal, I
 20 can recognize which ideas might be reasonably
 21 likely to lead to publication and which are
 22 just kind of spinning their wheels, kind of

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1 like that.

2 **Q. Okay.**

3 **Are you still doing this type of**

4 **noncompensated work at New York Medical**

5 **College?**

6 A. Yes. I seem to have a knack for

7 accruing noncompensated work.

8 **Q. Okay.**

9 A. Yes.

10 **Q. Okay.**

11 **And I -- I don't know if I asked**

12 **you this, so let me do it here: The Hofstra**

13 **structures course, are you compensated for**

14 **that?**

15 A. No.

16 MR. BROWN: She is going to get

17 to this case soon.

18 THE WITNESS: I was wondering.

19 MS. SHORT: This is all important

20 information for this case, but thanks

21 for the interruption.

22 **Q. You said during this time you**

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1 **were also consulting with various law firms?**

2 A. Yes.

3 **Q. Do you remember the names of any**

4 **of these law firms?**

5 A. Landers & Cernigliaro, Garden

6 City. Newman, Sanocki & Turret in Manhattan.

7 Christopher Marr & Associates in Westchester.

8 They would be the main ones.

9 **Q. Prior to consulting with the law**

10 **firms beginning in the end of 2010, 2011 and**

11 **onward, had you performed expert witness work**

12 **for any of those law firms?**

13 A. For all three.

14 **Q. Okay.**

15 A. I no longer do, but I did.

16 **Q. Okay.**

17 **And are all three of those law**

18 **firms plaintiff's law firms?**

19 A. They are.

20 **Q. And how much of your time from**

21 **2010 to 2015 was spent consulting with those**

22 **three law firms?**

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1 A. Well, I had a hiatus in my

2 surgical practice, so about 15 percent of my

3 time was expert work, which -- and the rest

4 was really consulting with the law firms and

5 doing the teaching I described, which wasn't

6 the majority of my time, so, you know, I would

7 consult with them, help them analyze their

8 inventory of cases, help get them experts. I

9 would do drafting of various legal documents

10 for them.

11 I'm a good writer, in general,

12 and covered some conferences and do a couple

13 of depositions for them. That's really what I

14 was doing. So I was, you know, doing that at

15 a fair clip while I was trying to recover from

16 the surgery and things.

17 **Q. All right.**

18 **So in that time frame, 2010-2015,**

19 **you told me that your professional forensic**

20 **work was 15 percent?**

21 A. Yeah.

22 **Q. Right?**

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1 A. Always remained about the same

2 for some reason.

3 **Q. Okay.**

4 **And then during that time frame,**

5 **2010 to 2015, the other 85 percent of your**

6 **professional life was spent consulting for the**

7 **three law firms that you told me about and**

8 **then the structures course and advising**

9 **residents on publications, right?**

10 A. Yeah, with probably three months

11 of not doing a lot immediately after my

12 surgery, but, yes.

13 **Q. Sure, but those other years where**

14 **you had recovered from your surgery, that was**

15 **the breakdown?**

16 A. Yes, and I was training in

17 adipose-derived stem cell therapy also during

18 that time, but I wasn't actually practicing it

19 yet until 2015.

20 **Q. Of the 85 percent that you gave**

21 **me, how much of that was spent doing all of**

22 **the things for the law firms, going to**

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1 **depositions, drafting legal documents,**
 2 **consulting with them, versus the teaching and**
 3 **advice giving on publications?**
 4 A. Probably ten to 15 percent for
 5 the teaching and the remainder for the law,
 6 I'll call it law practice, although it was
 7 kind of an extension of my expert work, if you
 8 know what I'm saying.
 9 **Q. And that's what I wanted to --**
 10 A. I wouldn't consult on a property
 11 case, I would consult on injury or med/mal
 12 cases that I knew something about that related
 13 to medicine in some way.
 14 **Q. Okay.**
 15 **And that's what I was going to**
 16 **ask you about as well. When you were**
 17 **attending depositions or drafting legal**
 18 **documents, did that relate solely to medical**
 19 **malpractice or personal injury cases?**
 20 A. Yes.
 21 **Q. Okay.**
 22 **You said that during this time**

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1 **you were also training in adipose-derived stem**
 2 **cell therapy; what is that?**
 3 A. That's extracting stem cells from
 4 fat and deploying them to treat a wide variety
 5 of inflammatory and degenerative conditions in
 6 the body, such as arthritis, autoimmune
 7 diseases, neurologic diseases.
 8 **Q. What did your training**
 9 **constitute?**
 10 A. I trained with Cell Surgical
 11 Network that has a special process under an
 12 IRB, it's FDA-compliant, and went down to
 13 Jacksonville, Florida and trained with them
 14 for a week and -- in a clinic there and
 15 learned the process.
 16 **Q. And when did you do that?**
 17 A. I think in beginning of 2015.
 18 **Q. Okay.**
 19 A. If I'm not incorrect -- well,
 20 actually, why don't I give you a specific
 21 answer. It's probably on the CV here
 22 (indicating).

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1 Yes, beginning of 2015.
 2 **Q. Okay.**
 3 **And the work that you are now**
 4 **doing at the surgi-center, that includes this**
 5 **adipose-derived stem cell therapy?**
 6 A. Yes.
 7 **Q. And you said that you were also**
 8 **doing minor excisions and liposuctions; what**
 9 **is the breakdown of the surgeries that you are**
 10 **currently performing among those three things?**
 11 A. It's probably about a third each,
 12 I would say.
 13 **Q. Okay.**
 14 A. You know, I've been trying to
 15 regain my manual surgical skills after a
 16 layout before reapplying to the hospitals, so
 17 now I feel proficient and that my skills are
 18 back so that's why I'm reapplying. That was
 19 the game plan.
 20 **Q. Okay.**
 21 **And is your goal to return to**
 22 **general surgery in a hospital setting or to do**

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1 **something else?**
 2 A. The former, to return in a
 3 hospital setting.
 4 **Q. Okay.**
 5 **But do you plan on focusing on**
 6 **adipose-derived stem cell therapy or doing**
 7 **other types of surgeries?**
 8 A. No, going back to my general
 9 surgical practice, but I'll probably continue
 10 doing that, because I'm excited about the
 11 research and so, but I'm intending to go back
 12 to the general surgery. They are not mutually
 13 exclusive.
 14 **Q. Okay.**
 15 **And you plan to do that at**
 16 **Huntington Hospital, well, Northwell Hospital,**
 17 **pardon me, right?**
 18 A. Yes. Yes.
 19 **Q. Which I understand Huntington**
 20 **Hospital is under that umbrella?**
 21 A. Yes.
 22 **Q. So when you apply for privileges**

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1 **at Northwell, would this then mean you would**
 2 **operate at Huntington again?**
 3 A. Yes, or one of their other 12
 4 hospitals, but right now I'm gonna concentrate
 5 on the one near where I live, which is
 6 Huntington Hospital.
 7 **Q. Okay.**
 8 **The procedure that Dr. Stump**
 9 **initially performed in the case, when is the**
 10 **last time that you performed that type of**
 11 **procedure?**
 12 A. 2010.
 13 **Q. Do you remember when in 2010?**
 14 A. I do not.
 15 **Q. Do you remember early, mid, late?**
 16 A. I couldn't tell you.
 17 **Q. Do you know how many times you**
 18 **performed that procedure in 2010?**
 19 A. No more than about five times
 20 that year.
 21 **Q. How about in 2009?**
 22 A. Probably a little bit more.

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1 **Q. And so we all have different**
 2 **definitions of "a little bit." Little bit to**
 3 **someone could be 10, someone else could say I**
 4 **operate 600 different times, so it's more.**
 5 A. I estimate probably done
 6 somewhere between 3- and 4,000 sigmoid
 7 colectomies over the course of my career. I
 8 couldn't even tell you how many I did in 2009.
 9 I would say more than ten, yes.
 10 **Q. Was there a reason that in 2010**
 11 **itself you only performed five?**
 12 A. I was becoming disabled and I
 13 could barely walk and stand during that time.
 14 It's a little bit personal, so, you know, that
 15 might have had something to do with it.
 16 **Q. Were you focused on other types**
 17 **of surgeries?**
 18 A. Not particularly. I did a lot of
 19 laparoscopy then, bariatric surgery, Lap-Band.
 20 I couldn't tell you, but I think that's
 21 probably how many I did that year.
 22 **Q. What percentage of your practice**

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1 **was bariatric surgery in 2010?**
 2 A. Probably ten to 15 percent,
 3 20 percent.
 4 **Q. Will you be relying on any**
 5 **literature in forming the basis of your**
 6 **opinions in this case?**
 7 A. I will not.
 8 **Q. Do you consult any literature**
 9 **searches as part of your review in the case?**
 10 A. No.
 11 **Q. Did you speak with any other**
 12 **experts involved in the case?**
 13 A. No.
 14 **Q. Did you speak with**
 15 **Mr. Rutherford?**
 16 A. I did not.
 17 **Q. Did you speak with plaintiff's**
 18 **counsel?**
 19 A. Yes.
 20 **Q. Do you remember on how many**
 21 **occasions?**
 22 A. Just probably three occasions.

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1 **Q. Do you remember when you were**
 2 **first contacted about the case?**
 3 A. I think about a year ago. The
 4 billing will probably --
 5 **Q. -- will help. I wish we had it.**
 6 **Sorry, I have to ask some of these questions.**
 7 **When you were contacted about a**
 8 **year ago, does it work that National Medical**
 9 **Consultants would contact you to say we have**
 10 **this potential case from Mr. Brown in**
 11 **Maryland, are you willing to review it?**
 12 A. Yes.
 13 **Q. Okay.**
 14 A. Then they would send me a file, I
 15 review it and then call plaintiff's counsel.
 16 **Q. All right.**
 17 **The file that you received from**
 18 **National Medical Consultants, is that what was**
 19 **on the CV that we don't have with us today but**
 20 **you have somewhere?**
 21 A. Yeah. Yes, I received only the
 22 hospital records initially.

1 **Q. Okay.**
 2 A. From Baltimore Washington Medical
 3 Center. They were like over 8,000 pages and
 4 everything else came from Mr. Brown
 5 subsequently at various times.
 6 **Q. Okay.**
 7 **Did the CD specifically come from**
 8 **National Medical Consultants?**
 9 A. I couldn't tell you.
 10 **Q. Don't remember?**
 11 A. But they sent it to me. They
 12 obviously got it from plaintiff's counsel.
 13 **Q. Sure. Okay.**
 14 **When you reviewed the records**
 15 **that National Medical Consultants sent to you,**
 16 **did you then contact Mr. Brown?**
 17 A. Yes.
 18 **Q. Okay.**
 19 **And do you remember anything**
 20 **about that conversation?**
 21 A. I don't, but I assume I expressed
 22 my opinions that I eventually wrote in the

1 substance.
 2 **Q. Do you understand that in**
 3 **Maryland there is no privilege or work product**
 4 **between identified experts in a case and the**
 5 **counsel that they are working with?**
 6 A. I couldn't tell you. I don't
 7 know the law on that in Maryland.
 8 **Q. Have you exchanged any**
 9 **correspondence with Mr. Brown or his office?**
 10 A. Only that memorandum.
 11 **Q. Okay.**
 12 **No e-mails, no letters exchanged**
 13 **between you and his office?**
 14 A. No.
 15 **Q. Anything else that you discussed**
 16 **with him this morning other than what you've**
 17 **already told me?**
 18 A. Just it took him over five hours
 19 to drive up and he left at 5:00 in the
 20 morning.
 21 **Q. Like I said, getting onto this**
 22 **island is not easy. There's no easy way in or**

1 report.
 2 **Q. Okay.**
 3 A. I don't remember it, though.
 4 **Q. You said you think you had three**
 5 **conversations with him.**
 6 **What was the most recent**
 7 **conversation?**
 8 A. Today.
 9 **Q. Okay.**
 10 **How long did you meet with him**
 11 **today?**
 12 A. About 10, 15 minutes.
 13 **Q. What did you discuss?**
 14 A. We didn't discuss much about the
 15 case. Actually, it was just that it's
 16 probably going to mediation. Just more of the
 17 procedural posturing of the case than the
 18 substance of the case and that I asked whether
 19 I should disclose my work product memorandum,
 20 because that hadn't been exchanged previously,
 21 and he said that's fine, put it in the file
 22 and so I did. That was really the sum and

1 **off.**
 2 **Okay.**
 3 **And then there was another**
 4 **occasion where you discussed the case with**
 5 **him?**
 6 A. I don't really remember it, but
 7 I'm sure at some point we did, 'cause I got
 8 different flurries of documents and I don't
 9 remember it -- if there was another instance,
 10 I couldn't tell you, but typically, I usually
 11 stay in touch on cases.
 12 **Q. Do you currently have or do you**
 13 **currently advertise your forensic services?**
 14 A. I thought we were talking about
 15 the case now.
 16 **Q. Not yet.**
 17 A. Disappointed me.
 18 Yes, I do.
 19 **Q. Where do you advertise your**
 20 **forensic services?**
 21 A. In SEAK, S-E-A-K. I have an
 22 Internet listing.

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1 **Q. Anywhere else?**
 2 A. Not currently.
 3 **Q. Have you advertised your services**
 4 **elsewhere in the past?**
 5 A. Yes.
 6 **Q. Where is that?**
 7 A. JurisPro, New York Law Journal,
 8 New York State Trial Lawyers Association
 9 Journal, NYSTLA Journal it's called.
 10 That would be about it.
 11 **Q. When is the last time that you**
 12 **advertised your services in the New York State**
 13 **Trial Lawyers Association Journal?**
 14 A. Oh, like ten years ago.
 15 **Q. Okay.**
 16 **How about the New York Law**
 17 **Journal?**
 18 A. About seven years ago.
 19 **Q. And JurisPro?**
 20 A. About five years ago.
 21 **Q. When did you begin advertising**
 22 **with SEAK?**

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1 A. Been with them for 20 years.
 2 **Q. How many cases per year do you**
 3 **receive from SEAK?**
 4 A. It's a passive Internet listing,
 5 so I couldn't tell you. Attorneys call me. I
 6 don't really track how they know me, so I
 7 wouldn't know.
 8 **Q. At the three law firms that you**
 9 **mentioned to me where you were doing**
 10 **consulting work, did you hold a formal**
 11 **position with any of those firms?**
 12 A. No, I wasn't a member or an
 13 associate in any of the firms, no.
 14 **Q. Were you of counsel?**
 15 A. Whatever that means, probably.
 16 **Q. Well, you went to law school, you**
 17 **were practicing as a lawyer for several years,**
 18 **right?**
 19 A. Yes.
 20 **Q. Okay.**
 21 **Do you still maintain your law**
 22 **license?**

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1 A. I do.
 2 **Q. You understand what "of counsel"**
 3 **is?**
 4 A. Not exactly, 'cause in New York,
 5 it has such an ambiguous meaning. I would say
 6 I was of counsel, meaning I came in and
 7 assisted them with cases and did drafting for
 8 them.
 9 The drafting was a large part of
 10 what I did, so I would say yes, but it's an
 11 ambiguous term in New York without a defined
 12 meaning, so...
 13 **Q. Do you know if any of the law**
 14 **firms ever held you out as of counsel?**
 15 A. I'm not sure. Possibly.
 16 **Q. Have you ever been a member of**
 17 **the New York State Trial Lawyers Association?**
 18 A. Yes.
 19 **Q. Okay.**
 20 **And when did you join that**
 21 **association?**
 22 A. I think in 2011.

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1 **Q. Are you presently a member?**
 2 A. Yes.
 3 **Q. How about the New York Academy of**
 4 **Trial Lawyers?**
 5 A. No, I haven't been a member.
 6 **Q. I'm sorry?**
 7 A. No.
 8 **Q. You've never been a member of**
 9 **that?**
 10 A. No.
 11 **Q. How about the American**
 12 **Association for Justice?**
 13 A. I've been a member.
 14 **Q. Okay.**
 15 A. Off and on.
 16 **Q. When did you first become a**
 17 **member?**
 18 A. 2011.
 19 **Q. Are you currently a member?**
 20 A. I'm not sure.
 21 **Q. I think you said that you opened**
 22 **a law firm that didn't have employees; is that**

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1 **a good way of expressing what that was?**
 2 A. I never really had a law firm. I
 3 just was David Mayer, M.D., J.D., and I did
 4 some law-related work while I was disabled and
 5 recovering from surgery.
 6 **Q. And when you did that law-related**
 7 **work, is that separate and apart from what you**
 8 **were doing for the three plaintiff's firms in**
 9 **New York?**
 10 A. Not really. I couldn't handle
 11 cases on my own, because I didn't have the
 12 resources, so I would refer them usually to
 13 one of those firms and assist them with the
 14 case and things.
 15 **Q. Okay.**
 16 **So if a doctor friend of yours**
 17 **called and said, I have this potential case or**
 18 **my friend has this potential case, you would**
 19 **not enter your appearance, but it's something**
 20 **that you would refer to one of those three**
 21 **firms?**
 22 A. I may have on a couple of

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1 occasions entered my appearance initially, but
 2 then I would transfer it, you know, or
 3 sometimes I wouldn't do that at all.
 4 You know, I was in no position to
 5 be the attorney of record on the case, you
 6 know, for any period of time, anyway.
 7 **Q. Why was that that you were in no**
 8 **position to do that?**
 9 A. I was an inexperienced attorney
 10 with a lot of medical knowledge, so I think
 11 you needed better trial attorneys than me to
 12 handle these complex cases.
 13 **Q. Okay.**
 14 **Did your -- I don't know if I**
 15 **want to call it a firm, whatever that was, did**
 16 **it have a name besides David Mayer, M.D.,**
 17 **J.D.?**
 18 A. Well, my -- I have a medical
 19 practice that has a PLLC as David A. Mayer &
 20 Associates, but there weren't any associates
 21 at the moment. But in the past I had a couple
 22 of physicians working for me, so that's --

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1 but, you know, there was no distinction
 2 between whatever law work I did and my medical
 3 practice. I didn't have a new name for my law
 4 work.
 5 **Q. Okay.**
 6 **Do you plan to practice law in**
 7 **the future?**
 8 A. Only to the extent of I have to
 9 go down to the DMV every month or two and get
 10 rid of the speeding tickets or red light
 11 tickets of my kids, that's probably it. Right
 12 now I'm practicing medicine 100 percent of the
 13 time.
 14 **Q. Okay.**
 15 **When you were doing consulting**
 16 **work, whether it was termed of counsel or not**
 17 **for those three plaintiff's law firms, did you**
 18 **see your role or part of your role as being an**
 19 **advocate for the clients that they**
 20 **represented?**
 21 A. Not really, except maybe if I did
 22 a deposition of a defendant doctor, that would

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1 be an advocacy role, but really as a rule, not
 2 particularly. I was more of a medical
 3 consultant role.
 4 **Q. How many depositions have you**
 5 **done, I don't mean where you are being deposed**
 6 **in a forensic setting, but as a lawyer?**
 7 A. Probably about eight or so.
 8 **Q. And did you ever have an**
 9 **opportunity to go into a courtroom and argue a**
 10 **hearing or try a case?**
 11 A. Yes.
 12 **Q. Okay.**
 13 **How many occasions did you do**
 14 **that?**
 15 A. Probably about five occasions.
 16 **Q. And I guess there is a world of a**
 17 **difference between arguing motions, hearing**
 18 **and trying a case, so those five times, what**
 19 **did that constitute?**
 20 A. Well, I mean I went to -- I would
 21 say five times I did some substantive work on
 22 a case. I tried a couple of upstate med/mal

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1 cases for Newman, Sanocki & Turret, that firm.
 2 And with their help, of course. And, you
 3 know, conferences, I probably covered around
 4 ten conferences, compliance conferences or,
 5 you know, preliminary conferences or
 6 something.
 7 **Q. Okay.**
 8 **And when is the last time that**
 9 **you acted as a lawyer in that capacity, if we**
 10 **take aside -- going with your children to deal**
 11 **with speeding tickets?**
 12 A. Probably the last time I went
 13 into court and -- probably 2015 I did a direct
 14 for a couple of medical witnesses on a case,
 15 on a matrimonial case where there was child
 16 abuse and I brought in a couple of doctors to
 17 testify, did their directs. I didn't do the
 18 matrimonial part of the case.
 19 **Q. Okay.**
 20 A. 2015 I think that was.
 21 **Q. Okay.**
 22 **The few cases, the medical**

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1 **malpractice cases that you tried in Upstate**
 2 **New York, do you remember the names of any of**
 3 **those cases?**
 4 A. I don't.
 5 **Q. Have you had any medical**
 6 **malpractice cases against you in your career?**
 7 A. Yes.
 8 **Q. Okay.**
 9 **Do you recall how many?**
 10 A. I think I was named in around
 11 eight.
 12 **Q. When is the last time you were a**
 13 **named defendant in a medical malpractice case?**
 14 A. Like around 12, 13 years ago.
 15 **Q. Okay.**
 16 **What did that case involve?**
 17 A. It involved a leg ulcer that
 18 would heal, not heal, heal, not heal and had a
 19 subsequent biopsy and it had a squamous cell
 20 in it and it was an allegation of a failure to
 21 diagnose squamous cell that got excised and
 22 subsequently -- and cured by another surgeon.

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1 **Q. Have you ever been sued in any**
 2 **cases in which the allegation was similar to**
 3 **that in this case?**
 4 A. I had a -- I was sued on a
 5 colectomy case that had an anastomotic leak.
 6 There wasn't an allegation of it being a delay
 7 in diagnosis, but just that the leak occurred.
 8 And that was subsequently discontinued by the
 9 plaintiff.
 10 **Q. The plaintiff dismissed their**
 11 **case?**
 12 A. For some reason, yes, after
 13 deposing me.
 14 **Q. Any other cases?**
 15 A. No, no other similar cases.
 16 **Q. Okay.**
 17 MR. BROWN: I don't know if you
 18 need a break. If you do, feel free.
 19 MS. SHORT: Yes, any time you
 20 need a break, let me know.
 21 **Q. Earlier you were telling me about**
 22 **Huntington Hospital where you previously**

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1 **operated and where you are working to gain**
 2 **privileges again.**
 3 **Can you tell me what Huntington**
 4 **Hospital is like, how many beds?**
 5 A. It's about a 200-bed large
 6 community hospital, level-two trauma center,
 7 fairly good-sized facility, very modern
 8 emergency room and operating room.
 9 **Q. How many operating rooms?**
 10 A. I would say about 20. It's a big
 11 operation over there.
 12 **Q. Okay.**
 13 **Do you know for how long that's**
 14 **been the case, that Huntington Hospital is a**
 15 **200-bed large community hospital?**
 16 A. I couldn't tell you.
 17 **Q. Okay.**
 18 A. When Northwell bought it about
 19 15 years ago, they expanded it and updated it
 20 and modernized it, you know, so probably about
 21 last 15 years or something. I'm just
 22 estimating the number of beds. That's the

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1 number I'm remembering.
 2 **Q. Okay.**
 3 **So when you were there, when you**
 4 **were last there in 2010, does that accurately**
 5 **describe what the hospital was like, 200 beds,**
 6 **level-two trauma center, 20 operating rooms?**
 7 A. Yes.
 8 **Q. Okay.**
 9 A. They did all types of surgery,
 10 except for open heart, really, they did
 11 everything.
 12 **Q. On what day do you believe that**
 13 **Mr. Rutherford first developed a leak?**
 14 A. On September 25th, just before
 15 midnight when he had the vomiting and blood
 16 pressure fell to 98 over 56 and the heart rate
 17 went to the 130s, at least that's the first
 18 evidence, in my opinion, of a clinical leak.
 19 Leak may have occurred sooner,
 20 but that's when it became -- it produced signs
 21 and symptoms of a leak.
 22 THE WITNESS: I apologize. I

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1 just need a little bathroom break.
 2 MR. BROWN: Absolutely.
 3 MS. SHORT: I'll do the same
 4 thing.
 5 THE WITNESS: Is that okay?
 6 MS. SHORT: Of course, sure.
 7 (Recess taken.)
 8 BY MS. SHORT:
 9 **Q. Doctor, before I lose sight of**
 10 **this, and it sometimes happens when we take a**
 11 **break, when you told me you are operating**
 12 **three days a week at the surgi-center, the**
 13 **other two days, is that devoted to --**
 14 MR. BROWN: Wait. What time
 15 frame are you talking about?
 16 MS. SHORT: I'm sorry. He told
 17 me since the end of 2015 he's been
 18 operating three days a week at the
 19 surgi-center in Manhattan.
 20 **Q. Is that correct?**
 21 A. Yes.
 22 **Q. Okay.**

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1 **I'm just looking back at my**
 2 **scribbled notes here.**
 3 **The other two days of the week,**
 4 **does that relate to your forensic work and the**
 5 **continued noncompensated teaching that you**
 6 **told me about?**
 7 A. Yes, and I also have an office in
 8 Woodbury that I see patients and do
 9 procedures. So I would be there the other two
 10 days a week doing -- I do most of my expert
 11 work on nights and weekends, so I see patients
 12 in Woodbury the other two days.
 13 **Q. And are these patients that you**
 14 **are seeing to then operate on in the**
 15 **surgi-center at a later point?**
 16 A. Yeah, some we operate in
 17 Woodbury. We have a nice, "we," meaning
 18 myself and another surgeon that works with me
 19 and we do some surgeries in Woodbury, but
 20 anything that needs an anesthesiologist or is
 21 more significant we would do in the City,
 22 because that's a Quad-A certified facility.

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1 **Q. Okay.**
 2 **Thank you.**
 3 A. But we can do our stem cell work,
 4 say, in Woodbury. That doesn't require
 5 anything but local anesthesia.
 6 **Q. Okay.**
 7 **Right before we took a break, you**
 8 **were telling me the first evidence of a**
 9 **clinical leak, in your opinion, is just before**
 10 **midnight on 9/25, correct?**
 11 A. Yes.
 12 **Q. I think you were telling me the**
 13 **basis for that opinion, and I listed three**
 14 **things, vomiting, heart rate in the 130s and a**
 15 **blood pressure of 98 over 56.**
 16 A. Yeah, the vomiting is
 17 nonspecific, but hypotension and tachycardia
 18 are signs of a leak.
 19 **Q. And can hypotension and**
 20 **tachycardia be signs of other things as well?**
 21 A. Yes.
 22 **Q. Did Mr. Rutherford have any other**

1 **signs or symptoms clinically of a leak at that**
2 **time?**

3 A. No.

4 **Q. Okay.**

5 A. It became more obvious in the
6 early morning hours on the 26th.

7 **Q. Okay.**

8 **Tell me what signs and symptoms**
9 **he had at that time that made it more obvious.**

10 A. At 2:17 a.m. he desaturated,
11 meaning the oxygen saturation went down to
12 91 percent and then to the mid 80s, despite
13 administration of seven liters of oxygen.

14 Desaturation, tachycardia, rapid
15 heart rate, hypotension are all classic signs
16 of a leak, which needs to be ruled out
17 immediately at that point.

18 They sent him, in the early
19 morning hours, for a chest CAT scan,
20 angiogram, to rule out a pulmonary embolism,
21 which was a good idea, but they failed, "they"
22 meaning Dr. Stump and the intensivist, failed

1 And it should have been ordered at 2:17 a.m.
2 when Mr. Rutherford desaturated, in addition
3 to his tachycardias, especially in view that
4 the chest was being CAT scanned, they could
5 have just run off the abdomen. And certainly
6 at 5:37 a.m. when blood pressure went down
7 into the 80s, heart rate was in the 140s,
8 Mr. Rutherford desaturated again into the 80s.
9 Dr. Stump was made aware and no CAT scan was
10 ordered.

11 The clinical evidence of a leak
12 was so strong that it would justify, in my
13 opinion, just a return to the O.R., even not
14 doing a CAT scan to rule out a leak, but I
15 would have no criticism if a CAT scan was
16 ordered of the abdomen at any of those times.

17 Meaning 11:21 p.m. on the 25th,
18 you know, after 2:00 a.m. on the 26th or after
19 5:00 on the 26th. You know, all three
20 opportunities the leak was evident. The CAT
21 scan needed to rule out a leak. The diagnosis
22 of aspiration or pneumonia or exacerbation of

1 to continue the scan down into the abdomen.

2 If he is in the machine, it just
3 would have been scanning the abdomen with the
4 chest. It would have been very easy to do.

5 To a reasonable degree of medical
6 probability the leak would have been found and
7 promptly operated and ameliorated the sepsis
8 and multi-organ failure and damage.

9 **Q. And I want to clarify something.**
10 **You said Dr. Stump and the intensivist; from**
11 **my read of your certificate, you are offering**
12 **opinions in the case only as to Dr. Stump,**
13 **correct?**

14 A. Yes.

15 **Q. Okay.**

16 A. That is correct.

17 **Q. Specifically at what point and**
18 **what day or time do you believe that Dr. Stump**
19 **should have ordered a CT scan?**

20 A. I believe a CT should have been
21 ordered shortly after his initial bout of
22 hypotension at 11:21 p.m. on September 25th.

1 COPD are all possible, but they are diagnoses
2 of exclusion after a leak has been ruled out.

3 **Q. Will you be testifying in this**
4 **case that it was a breach of the standard of**
5 **care for Dr. Stump to fail to order a CT**
6 **around 11:21 p.m. on 9/25?**

7 A. Yes.

8 **Q. And I'm asking this question,**
9 **because sometimes a physician will tell me I**
10 **would have liked for that to have been done at**
11 **that time, but this is the point at which I**
12 **believe it was a breach in the standard of**
13 **care, okay.**

14 **So what I'm understanding from**
15 **you is that it was a breach in the standard of**
16 **care for her to fail to order a CT at**
17 **11:21 p.m. on 9/25, again around 2:17 a.m. on**
18 **9/26 and again around 5:37 a.m. on that same**
19 **date, correct?**

20 A. Yes.

21 **Q. Okay.**

22 **And if I also understood your**

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1 **testimony, as of 5:37 a.m. on 9/26, you felt**
 2 **that given his signs and symptoms, it would**
 3 **have justified taking him straight back to the**
 4 **O.R. without a CT?**
 5 A. Yes. I would say at 5:37, not
 6 before that. Before that getting a CT would
 7 be standard of care, but at 5:37, the signs of
 8 a leak were so apparent that one could take
 9 the patient right to the O.R. and still
 10 within -- be within standard of care and skip
 11 the CAT scan.
 12 **Q. The chest CT that was done on**
 13 **9/25, this included a partial view of the area**
 14 **below the diaphragm, correct?**
 15 A. Very limited, yes.
 16 **Q. Was there anything on that chest**
 17 **CT that was suggestive of a leak?**
 18 A. Well, it wasn't the right test
 19 for a leak. You need to CT the abdomen, so I
 20 don't think so.
 21 **Q. No. I mean I understand that**
 22 **that's your opinion that they needed to do a**

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1 **CT of the abdomen, that they didn't go far**
 2 **enough -- down far enough, but what I'm asking**
 3 **is whether or not there was anything on the**
 4 **chest CT itself that was indicative or not of**
 5 **a leak?**
 6 A. No, there's nothing diagnostic of
 7 a leak on the chest CT, in my opinion.
 8 **Q. Okay.**
 9 **At that point in time on 9/25,**
 10 **would you have expected to see free fluid on**
 11 **the chest CT with a leak?**
 12 A. Free fluid in the chest?
 13 **Q. Yes.**
 14 A. Not necessarily.
 15 **Q. Generally speaking, when does a**
 16 **leak of this nature generally form post**
 17 **surgery?**
 18 A. Usually happens soon after
 19 surgery, but becomes clinically apparent
 20 somewhere between the second and fifth day.
 21 We don't really know when it
 22 starts, because you only know when it

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1 manifests clinically, but it probably starts
 2 earlier than that and then between the second
 3 and fifth day is the time it usually becomes
 4 detectable or causes signs and symptoms.
 5 **Q. When did Mr. Rutherford's white**
 6 **blood cell count first spike?**
 7 A. I'd have to refer to the chart,
 8 but, for example, even on the 28th, it was
 9 only 9.0, but it had 52 bands.
 10 The bands are signs of a severe
 11 infection. So that's a dramatic finding that
 12 something really bad is wrong. So he had more
 13 of a bandemia than a leukocytosis, but the
 14 exact numbers -- if you have the chart
 15 available, I can answer. I have to refresh my
 16 memory on what the white count was each day.
 17 **Q. Okay.**
 18 **I do have -- this is a somewhat**
 19 **limited -- in other words, I don't have all**
 20 **8,000 pages with me here, but I do have some**
 21 **of the records from 9/21 to 11/4, if you want**
 22 **to take a quick look at that (handing).**

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1 A. Thank you.
 2 **Q. Sure.**
 3 A. (Witness reviewing.)
 4 So what dates are we looking for?
 5 We are looking for the 26th to the 29th?
 6 **Q. Well, I'm asking when his white**
 7 **blood cell first started spiking.**
 8 A. I get it. I get it.
 9 (Witness reviewing.)
 10 So it would be on the 25th, there
 11 is a white count of 18.6 with eight bands.
 12 That was the day that the patient vomited, had
 13 the brown liquid out of the mouth and had the
 14 blood pressure fall and was tachycardic.
 15 **Q. And, I'm sorry, how many bands**
 16 **did you say?**
 17 A. I'm sorry, 11 bands. I think I
 18 said eight, but the answer -- no. No. I
 19 correct myself, 8 bands.
 20 **Q. Okay.**
 21 A. So that's a very abnormal white
 22 count that shows a significant infection.

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1 **Q. What would be normal for a**
 2 **patient like Mr. Rutherford two days post-op,**
 3 **what would you expect to see?**
 4 A. White count, the upper range of
 5 normal is 10.8, could be 11 or 12, sometimes
 6 you get a mild increase, but you can't get
 7 bands postop unless there is an infectious
 8 process.
 9 I think there was another white
 10 count same day that had 11 bands, so, you
 11 know, that's extremely abnormal.
 12 **Q. Do you agree that Mr. Rutherford**
 13 **had aspiration pneumonia post surgery?**
 14 A. I don't agree with that. His
 15 problem was an anastomotic leak, but he did
 16 have some vomiting and may have had some
 17 degree of aspiration as evidenced by some
 18 infiltrates and base of the lungs on x-rays,
 19 but I don't believe that was his primary
 20 issue, which was an anastomotic leak.
 21 **Q. Okay.**
 22 A. There's no proof of aspiration,

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1 because you can get consolidation in the lung
 2 bases just from an intraabdominal leak,
 3 infectious process.
 4 **Q. Could his clinical symptoms of a**
 5 **decreased blood pressure, tachycardia, and I**
 6 **think you mentioned he was desaturating on**
 7 **9/25, have been symptoms of aspiration**
 8 **pneumonia?**
 9 A. I don't believe so. Pneumonia
 10 takes time to develop. Doesn't happen
 11 immediately. So no, I would say -- 25th was
 12 from a leak, not from aspiration pneumonia.
 13 **Q. Was Mr. Rutherford complaining of**
 14 **abdominal pain on the 25th or 26th that was**
 15 **outside of what you would consider --**
 16 (Phone ringing.)
 17 THE WITNESS: I'm sorry.
 18 MS. SHORT: Please.
 19 (Recess taken.)
 20 BY MS. SHORT:
 21 **Q. The question we were talking**
 22 **about was whether or not Mr. Rutherford had**

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1 **abdominal pain on the 25th that would have**
 2 **been outside of what you would anticipate for**
 3 **normal postoperative pain?**
 4 A. Yes. There is a nurse's note,
 5 for example, from 8:30 a.m. on the 25th,
 6 updated Dr. Stump on patient's increased pain
 7 and complaints of nausea, so the patient did
 8 complain of increased abdominal pain.
 9 **Q. How about on the 26th?**
 10 A. Just says incisional discomfort
 11 on his abdomen.
 12 Just looking through this to see
 13 if there's anything else.
 14 (Witness reviewing.)
 15 Abdomen soft with tenderness.
 16 **Q. Is that still on the 26th?**
 17 A. Yeah, that's all -- yes, correct.
 18 **Q. Okay.**
 19 A. That's all I see in entries.
 20 **Q. How about on the 27th, the same**
 21 **question?**
 22 A. Assuming that in a hypotensive

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1 tachycardic desaturating patient you need no
 2 more evidence of a leak than to rule it out
 3 with a CT or a reoperation, the notes indicate
 4 the abdomen was soft and appropriately tender
 5 on the 27th, which are not inconsistent with a
 6 leak and doesn't in any way give you a sense
 7 of security that the patient isn't leaking.
 8 **Q. Tell me about that.**
 9 **Why is that that a patient who**
 10 **has appropriate tenderness in their abdomen**
 11 **postoperatively does not concern you one way**
 12 **or another for a leak?**
 13 A. Well, if a patient had an acute
 14 rigid abdomen with guarding, that would need
 15 to go right to the O.R., and that would be a
 16 sign. But tachycardia, tachypnea,
 17 desaturation, hypertension, regardless of what
 18 the abdomen is, and in this case it was softly
 19 distended and had some tenderness, that's a
 20 leak until proven otherwise.
 21 You don't need the anterior
 22 peritoneal signs to diagnose a leak.

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1 In a case like this, if you wait
 2 for that, it's late in the game and the
 3 patient usually has multi-organ failure and is
 4 very sick.
 5 The early diagnosis or I should
 6 say the timely diagnosis of a leak is often
 7 based on tachycardia and tachypnea and that's
 8 well-known and this patient had both.
 9 **Q. And I think we discussed a few**
 10 **minutes ago that you agree there were**
 11 **infiltrates in the lungs on imaging, right?**
 12 A. Yes.
 13 **Q. Did Mr. Rutherford request food**
 14 **or the ability to eat in the initial**
 15 **postoperative period?**
 16 A. Well, on the 25th, which would be
 17 two days, I believe, post-op, he was belching,
 18 nauseated, eventually vomiting, so he
 19 certainly wasn't asking for food then.
 20 Looking at the 24th, I don't see
 21 anything that he was asking to eat.
 22 It says he's asking to get up and

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1 out of bed, but he was even belching on the
 2 24th, so I don't really see anywhere where
 3 he's asking to eat, unless I'm missing it.
 4 **Q. Okay.**
 5 **How about on the 26th, 27th or**
 6 **28th?**
 7 A. (Witness reviewing.)
 8 On the 27th he requested
 9 something to drink and they gave him some ice
 10 chips with the approval of the surgeon.
 11 That's after he had pulled out
 12 the NG tube, okay.
 13 Let's see what else.
 14 I don't see anything on the 28th
 15 regarding that.
 16 **Q. Would a patient who has a leak be**
 17 **able to eat or typically would they be**
 18 **requesting to eat?**
 19 A. They might be. That really is
 20 kind of irrelevant to the inquiry.
 21 **Q. Why is it irrelevant?**
 22 A. They might be dehydrated and

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1 thirsty and they want something to drink. I
 2 don't see anywhere where he wanted food. He
 3 just wanted liquids.
 4 **Q. If he wanted food, would that be**
 5 **consistent or inconsistent with a leak?**
 6 A. Neither. It's not instructive
 7 one way or another.
 8 **Q. And why is that?**
 9 A. 'Cause it's not of any relevance
 10 to the presence or absence of a leak. It's
 11 not something clinicians look for.
 12 **Q. Are there certain abdominal**
 13 **procedures in which tachycardia is more**
 14 **suggestive of a leak than others?**
 15 A. Bowel anastomosis, of course.
 16 **Q. Any others?**
 17 A. That's where it's useful. It's
 18 also good for leaks as a sign in bariatric
 19 surgery.
 20 **Q. Okay.**
 21 A. And Mr. Rutherford was somewhat
 22 obese. I think his BMI was 32. That would

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1 mask abdominal examination somewhat and that's
 2 why tachycardia and desaturation are critical
 3 in picking up a leak in a patient like that.
 4 **Q. You told me that your opinion is**
 5 **that Dr. Stump should have ordered a CT of the**
 6 **abdomen beginning around midnight on 9/25;**
 7 **what types of things was Dr. Stump doing for**
 8 **Mr. Rutherford in this postoperative period?**
 9 A. Well, that's not my opinion. My
 10 opinion that at all times between
 11 approximately just before midnight on the 25th
 12 up to the time on the 29th that she operated,
 13 she should have either done a CAT scan of the
 14 abdomen and/or an immediate reexploration.
 15 **Q. Let me just interrupt you.**
 16 A. Far beyond that limited opinion.
 17 I think that mischaracterizes my opinion.
 18 **Q. We are not on the same page. Let**
 19 **me make sure we are.**
 20 **We already went over the fact**
 21 **that that was the first time at which you felt**
 22 **that she should have ordered the CT scan. So**

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1 **I'm not saying your opinion is she only should**
 2 **have ordered it at that time.**
 3 A. Okay.
 4 **Q. I'm saying that that's the first**
 5 **time at which you believe that Dr. Stump**
 6 **should have ordered a CT scan, right?**
 7 A. Yes, we agree on that.
 8 **Q. Okay.**
 9 **So I'm saying outside of your**
 10 **opinion that she should have been ordering a**
 11 **CT scan, what was she doing for Mr. Rutherford**
 12 **to address the various clinical symptoms that**
 13 **he was having?**
 14 A. So she was transferring him to
 15 the ICU, giving him ventilatory support,
 16 oxygen, fluids, getting x-rays of the chest
 17 and a CTA of the chest, examining the patient
 18 at appropriate intervals, which were all good
 19 things, good supportive things.
 20 **Q. In other words, you are not going**
 21 **to come into court and say that Dr. Stump**
 22 **abandoned Mr. Rutherford or wasn't paying**

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1 **attention to him; it's your opinion that as of**
 2 **around midnight on 9/25, she should have**
 3 **ordered this CT scan and going forward --**
 4 A. Yes.
 5 **Q. Okay.**
 6 A. She completely missed the
 7 diagnosis of the leak, missed the leak and
 8 didn't rule out a leak, but she wasn't
 9 abandoning or not taking care of her patient.
 10 It was just a -- it was a medical error, but
 11 not one of disinterest or abandoning the
 12 patient. I never implied that.
 13 **Q. Okay.**
 14 **Do you agree that a leak test, I**
 15 **think it's called a bubble test, was performed**
 16 **immediately following the procedure?**
 17 A. Yes.
 18 **Q. Okay.**
 19 **And that that test was negative?**
 20 A. Yes.
 21 **Q. Okay.**
 22 A. I agree with that.

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1 **Q. All right.**
 2 **Once a bubble test is negative**
 3 **following a procedure like this, what is the**
 4 **likelihood that a patient will develop a leak?**
 5 A. The bubble test just means you
 6 can leave the O.R. You know, you still have
 7 probably, you know, somewhere between three
 8 and five percent chance of a leak after doing
 9 a procedure for complicated diverticulitis.
 10 So the leak itself is not malpractice. It's
 11 just the failure to diagnose the leak fell
 12 below standard of care. She didn't do
 13 anything wrong in the O.R., in other words.
 14 **Q. I think you are beating me to my**
 15 **next question, which is, that you would agree**
 16 **that a leak is a recognized complication of**
 17 **this procedure?**
 18 A. Yes.
 19 **Q. Okay.**
 20 **And in this particular instance,**
 21 **Mr. Rutherford was going to develop this leak**
 22 **no matter what, it happened, the issue is how**

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1 **it was being addressed once it happened; is**
 2 **that accurate?**
 3 A. Yeah, the issue is really it
 4 wasn't being addressed for four days, that's
 5 really the issue.
 6 **Q. I understand.**
 7 **The development of the leak was**
 8 **happening no matter what, there wasn't**
 9 **malpractice that caused the leak to develop?**
 10 A. No, that's not my opinion.
 11 **Q. Okay.**
 12 **And do you agree that**
 13 **Mr. Rutherford would have required the same**
 14 **exploratory surgery if the CT scan had been**
 15 **performed on the 25th or 26th?**
 16 A. Yes, he would have needed the
 17 same exploratory surgery. It's not clear that
 18 he would have needed a Hartmann's procedure,
 19 where you resect the bowel and bring out an
 20 end -- end left colon colostomy and staple the
 21 rectal stump, but -- or close the rectal
 22 stump.

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1 He might have just needed
 2 drainage or drainage and a proximal stoma,
 3 which would have been a lesser procedure, but
 4 he may have needed the Hartmann anyway.
 5 I can't say to a reasonable
 6 degree of medical probability what would have
 7 been done, but just that his multi-organ
 8 failure, renal failure, pulmonary failure, all
 9 the critical illnesses, the need for washouts,
 10 the dehiscence and everything, you know, in
 11 all probability would have been avoided or
 12 mitigated.
 13 He wouldn't have been as sick for
 14 as long as he was, but he still would have
 15 needed an exploratory surgery. The earlier
 16 leaks are operated, the less damage to the
 17 patient. That's the bottom line.
 18 **Q. Are you able to give an opinion**
 19 **to a reasonable degree of certainty as to how**
 20 **long his hospital course would have been if**
 21 **the CT was done on the late evening of the**
 22 **25th or really, I mean the first signs are**

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1 **11:30, so the CT is not really going to be**
 2 **done until the 26th, but on the 26th if the CT**
 3 **was done and they went in for exploratory**
 4 **surgery to deal with this leak that was**
 5 **present, do you have an opinion to a**
 6 **reasonable degree of certainty as to how long**
 7 **his hospital course would have been?**
 8 A. Usually somewhere between seven
 9 and ten days in that situation, that's my
 10 opinion. I think he was in I'm remembering
 11 four months, unless I'm in error.
 12 Is that about right?
 13 I would have to check the
 14 discharge summary, but it would have been a
 15 lot shorter and he would have been a lot less
 16 sick. And he wouldn't have had the infection
 17 and destruction of his abdominal fascia from
 18 the leak from -- give me one moment, please.
 19 **Q. Of course.**
 20 A. The leak from the abdominal wall,
 21 the leak of stool from the abdominal wound,
 22 which led to infection, destroyed the fascia,

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1 had multiple ventral hernia procedures. That
 2 would have been avoided had he been operated
 3 earlier.
 4 **Q. Okay.**
 5 **Let me see if I understand this.**
 6 **So your opinion is that because**
 7 **the leak was not operated on until several**
 8 **days after you said it should have been, or at**
 9 **least the CT should have been done, that then**
 10 **caused the stool spillage, which would not**
 11 **have occurred?**
 12 A. So there was a three- going on to
 13 four-day delay in operating on the leak is my
 14 opinion, and if it's operated early, there was
 15 a chance of doing less than a Hartmann
 16 procedure, remembering that there was an
 17 anastomotic leak, but also the rectal stump
 18 was open and leaking. So there was like a
 19 double leak, which, again, is not anything she
 20 did wrong at the time of the first surgery,
 21 but that was also an issue and that was found
 22 during the washout procedure, you know.

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1 So by the time it was operated
 2 three, four days later, everything so
 3 enflamed, there is so much peritonitis, the
 4 leak, the patient has multi-organ failure, is
 5 critically ill, getting all types of organ
 6 systems shutting down, lungs, kidneys, and
 7 when you go in and operate everything is very
 8 inflamed and you have to go back and have more
 9 washouts, delayed closure of abdominal wall.
 10 These things are not necessary if you operate
 11 on the leak early.
 12 You can close the abdominal wall
 13 properly, you don't get -- yes, early surgery
 14 you wouldn't have the drainage of stool
 15 through the wound, because that didn't really
 16 happen until the 29th. So that would have
 17 been completely avoided and that, therefore,
 18 to a reasonable degree of medical probability,
 19 Mr. Rutherford wouldn't have had the ventral
 20 abdominal problems with hernias needing
 21 multiple mesh procedures, leaving him in a
 22 condition where he can't lift anything and

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1 can't work as a commercial operator of a truck
 2 and has basically lost livelihood. Those are
 3 the damages that are causally related to the
 4 delay.
 5 **Q. Was Mr. Rutherford at a higher**
 6 **risk of development of a leak?**
 7 A. Higher than what?
 8 **Q. Than a normal -- the normal**
 9 **population presenting for this procedure. Is**
 10 **there anything about his condition that put**
 11 **him at a higher risk?**
 12 A. Well, because -- I would say yes,
 13 because he had complicated diverticulitis,
 14 meaning there was an abscess that they
 15 percutaneously drained and inflammation, so
 16 that surgeon here, Dr. Stump, would have to
 17 have, according to standard of care, a higher
 18 index of suspicion looking for a leak, if any,
 19 of the tachycardia, tachypnea, hypotension
 20 occurred, desaturation, that's just the reason
 21 why she fell below standard of care, because
 22 she acted for almost four days in an oblivious

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1 fashion to an obvious life-threatening
 2 complication.
 3 **Q. Could Mr. Rutherford have**
 4 **developed a hernia if his leak had been**
 5 **repaired, in your opinion, on 9/26?**
 6 A. It is possible, but much less
 7 likely than when stool is draining through a
 8 wound and a hernia is a virtual certainty.
 9 When you have to leave a wound open with a
 10 VAC, then it's a hundred percent chance of
 11 hernia.
 12 **Q. And how about the procedure that**
 13 **he had to reverse the colostomy, is that**
 14 **something that he would have required?**
 15 A. Yes.
 16 **Q. Okay.**
 17 A. Unless -- unless it could have
 18 been handled merely by drainage with or
 19 without a proximal stoma and then closing the
 20 colostomy is a much simpler method than
 21 closing a Hartmann procedure. That's a big
 22 operation.

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1 **Q. You testified earlier, though,**
 2 **that you can't state to a reasonable degree of**
 3 **certainty or probability that he would not**
 4 **have required a Hartmann procedure if he was**
 5 **taken back sooner than he was?**
 6 A. That's true.
 7 **Q. Okay.**
 8 **I am going to take a moment to**
 9 **read your memo.**
 10 A. Yes, of course.
 11 THE WITNESS: Why don't we take a
 12 ten-minute break, give me a chance to
 13 make a call to the hospital?
 14 MS. SHORT: Okay.
 15 Thank you.
 16 (Recess taken.)
 17 BY MS. SHORT:
 18 **Q. Dr. Mayer, I was just looking**
 19 **over the memorandum that you wrote for Chris.**
 20 **It's dated February 2, 2017, in which you are**
 21 **addressing your review of Dr. Blier's report**
 22 **in this matter and his opinions, correct?**

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1 A. Yes.
 2 **Q. Okay.**
 3 **And do you have any other**
 4 **opinions about Dr. Blier's opinions in the**
 5 **case or report other than what are reflected**
 6 **on Exhibit 3?**
 7 A. No.
 8 **Q. Okay.**
 9 **And there is a little Footnote 2**
 10 **where you say that the chest x-ray showing**
 11 **basal infiltrates is consistent with a**
 12 **subdiaphragmatic process such as an**
 13 **anastomotic leak as well as a primary chest**
 14 **process.**
 15 **Can you explain that to me? Are**
 16 **you saying there that the chest x-ray may not**
 17 **have been evidence of a leak, what is being**
 18 **demonstrated there, but that it's your opinion**
 19 **that the leak had to be ruled out first; is**
 20 **that what you are saying?**
 21 A. Yes. It may or may not be
 22 evidence of a leak. That's not a hard sign of

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1 a leak, but it can be consistent with a leak,
 2 so you need an abdominal CT.
 3 **Q. Okay.**
 4 **What else could it have been**
 5 **consistent with, the showing of basal**
 6 **infiltrates?**
 7 A. Could be some minor aspiration
 8 also.
 9 **Q. You are board certified, correct?**
 10 A. Yes.
 11 **Q. Was there any lapse in your board**
 12 **certification in that 2010 to 2015 period?**
 13 A. I don't think so, no. I
 14 recertified I think in 2012, I think.
 15 **Q. This says 2011.**
 16 A. Maybe 2011.
 17 **Q. How often do you have to**
 18 **recertify?**
 19 A. Every ten years.
 20 **Q. Okay.**
 21 **And what are you board certified**
 22 **in?**

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1 A. General surgery.
 2 **Q. Do you still maintain a valid**
 3 **New York medical license?**
 4 A. Yes.
 5 **Q. Okay.**
 6 **And has that New York medical**
 7 **license ever been acted on in any fashion?**
 8 A. No.
 9 **Q. Okay.**
 10 **Have you maintained a medical**
 11 **license in any other state?**
 12 A. I had a Florida license for a few
 13 years, but I let that go about seven or eight
 14 years ago. I never practiced there, it was
 15 just -- other than that, I don't think so.
 16 **Q. Why did you have a Florida**
 17 **license?**
 18 A. If I ever wanted to relocate
 19 there, but never did.
 20 **Q. Okay.**
 21 A. Seemed warmer.
 22 **Q. Not only does it seem, I think it**

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1 **is warmer.**
 2 **Your CV indicates that you were**
 3 **the director of surgery at North Shore/LIJ**
 4 **Syosset Hospital from '05 to '08?**
 5 A. Yes.
 6 **Q. Okay.**
 7 **And then it also indicates that**
 8 **from 1978 to 2010 you were the medical**
 9 **director of the Huntington Noninvasive**
 10 **Vascular Lab?**
 11 A. Yes.
 12 **Q. Okay.**
 13 **Between 2008 and 2010, what was**
 14 **your professional position outside of being**
 15 **the medical director of the noninvasive**
 16 **vascular laboratory?**
 17 A. I was just an attending surgeon.
 18 I didn't have an administrative position
 19 during that time. Private practice, you know.
 20 **Q. In 2010 how much of your time was**
 21 **spent as the medical director of the**
 22 **noninvasive vascular lab?**

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1 A. I couldn't say really. Every day
 2 I would read some studies, probably about an
 3 hour a day.
 4 **Q. Okay.**
 5 A. Wasn't a -- under ten percent, I
 6 would say.
 7 **Q. Okay.**
 8 **Outside of the opinions that we**
 9 **have discussed here today and those that are**
 10 **contained in your July 3, 2016 report and the**
 11 **February 2, 2017 memorandum regarding**
 12 **Dr. Blier, do you intend to offer any other**
 13 **opinions in this case?**
 14 A. I do not.
 15 **Q. Okay.**
 16 **If, as it is in your opinion,**
 17 **Mr. Rutherford had a CT performed on the 26th**
 18 **forward and the leak had been addressed**
 19 **earlier, do you believe that he would have**
 20 **been able to return to his position as a**
 21 **commercial truck driver?**
 22 A. Yes.

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1 **Q. Okay.**
 2 **Have you ever met Mr. Rutherford?**
 3 A. I have not.
 4 **Q. You are not going to be offering**
 5 **any opinions as to his work capacity**
 6 **currently, correct?**
 7 A. Yes, I will, in terms of that he
 8 can't lift or do his duties as a truck
 9 operator, because of all the ventral hernia
 10 repairs and meshes and likelihood of future
 11 hernias.
 12 **Q. All right.**
 13 **Outside of your opinion that he**
 14 **cannot lift or do duties as a truck operator,**
 15 **you will not be offering any medical opinion**
 16 **as to whether or not he can work in some other**
 17 **capacity?**
 18 A. No.
 19 **Q. Okay.**
 20 **Will you be offering an opinion**
 21 **as to how much he can lift?**
 22 A. Yes.

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1 **Q. Okay.**
 2 **And what is that?**
 3 A. Nothing over 20 pounds with the
 4 type of hernia repairs he's had.
 5 **Q. Any other opinions that you will**
 6 **offer regarding his vocational status?**
 7 A. Only that I'm aware that the
 8 truck driving and inherent lifting were the
 9 only occupation he knew or was trained in,
 10 so -- but I wouldn't have any other opinions
 11 beyond that.
 12 **Q. The report that is marked**
 13 **Exhibit 2, your July 3 report, did you prepare**
 14 **this document?**
 15 A. Yes.
 16 **Q. Did you have any assistance in**
 17 **preparing the document?**
 18 A. No.
 19 **Q. When you sent this document to**
 20 **Mr. Brown, did you send it as a rough draft?**
 21 A. No.
 22 **Q. In other words, the first time**

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1 **that you sent this to him, was your signature**
 2 **on the last page?**
 3 A. I believe so.
 4 **Q. Did Mr. Brown have any changes to**
 5 **this document?**
 6 A. No, he said it looked fine and
 7 that was it.
 8 MS. SHORT: Just go through my
 9 notes here.
 10 (Pause.)
 11 MS. SHORT: A couple of follow-up
 12 questions.
 13 THE WITNESS: Of course.
 14 **Q. Do you plan to do any additional**
 15 **work in the case?**
 16 A. Only if I'm called to testify at
 17 trial.
 18 **Q. Okay.**
 19 **Are you aware of when the trial**
 20 **of this matter is?**
 21 A. No.
 22 **Q. No, because we don't have it yet.**

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1 **Trick question for you. Teasing you.**
 2 MR. BROWN: We don't have a trial
 3 date yet.
 4 MS. SHORT: We are just joking.
 5 We are just joking.
 6 **Q. Once you know the trial date, you**
 7 **would be willing to come to Maryland to**
 8 **testify?**
 9 A. Yes.
 10 **Q. I think you said that your trial**
 11 **testimony charge through this medical**
 12 **consulting company is \$6,000?**
 13 A. Yes.
 14 **Q. Is that inclusive or exclusive of**
 15 **travel time?**
 16 A. I'm not sure, but we do bill,
 17 "we," meaning the company, bills prep time as
 18 well.
 19 **Q. Okay.**
 20 A. Whatever that is.
 21 **Q. And what I'm focused on is the**
 22 **fact that you live in New York and our trial**

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1 **is in Maryland. Is there a fee that you**
 2 **charge to travel to Maryland versus going to a**
 3 **courthouse around the corner from here?**
 4 A. Yes. The counsel would pay for
 5 transportation and hotel and meals.
 6 **Q. Okay.**
 7 A. That's what it is.
 8 **Q. Okay.**
 9 **Other than speaking with**
 10 **plaintiff's counsel about this case and me**
 11 **here today, have you discussed this case with**
 12 **anyone else?**
 13 A. No.
 14 **Q. Earlier when you were telling me**
 15 **that 2010 to 2015 you were doing consulting**
 16 **work for those three law firms, was I correct**
 17 **in saying they are all in New York or was one**
 18 **in New Jersey?**
 19 A. No, they are all in New York and
 20 I think it was 2011 to '15, 'cause I wasn't
 21 through law school in 2010.
 22 **Q. Okay.**

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1 A. And I was still operating at a
 2 high clip in 2010.
 3 **Q. Okay.**
 4 **So 2011 to 2015?**
 5 A. Yes.
 6 **Q. When you were doing that work for**
 7 **them, you said that you were drafting legal**
 8 **documents, sometimes covering conferences and**
 9 **doing depositions, but your primary work was**
 10 **consulting with them. And I understand there**
 11 **are three plaintiff's firms, so can you tell**
 12 **me how that would work? Would they send you a**
 13 **case that they were looking to -- a medical**
 14 **malpractice case that they were looking to**
 15 **pursue and then ask you to review it and say,**
 16 **you know, hey, is this something we should**
 17 **take on? How did that aspect of your**
 18 **consulting work --**
 19 A. Yeah, I would go into the firms.
 20 They would have a table with a bunch of cases.
 21 I would look them over and discuss them as to
 22 their medical merits. And I had input. I

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1 didn't tell them whether to accept the case or
 2 not, but I had input whether it was medical
 3 merit to their case and then if there was, I
 4 would help them get experts, you know, through
 5 contacts that I know or et cetera.
 6 **Q. Okay.**
 7 **Did they have an arrangement**
 8 **where they would pay you by the hour or pay**
 9 **you based on recovery from a case, who you did**
 10 **that work?**
 11 A. I didn't have a contingent fee
 12 arrangement. It would be hourly or some flat
 13 fee for covering a deposition or a conference
 14 or something.
 15 **Q. I'm sorry, I'm just focused on**
 16 **the consulting work where you are coming into**
 17 **that table and giving them a medical opinion**
 18 **about whether or not they should -- that**
 19 **there's malpractice in the case.**
 20 A. They would pay me hourly.
 21 **Q. Okay.**
 22 **And of the about 60 percent of**

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1 **your time that was that, so we talked about**
 2 **10 to 15 percent teaching, 15 percent in other**
 3 **activities, 60 percent with these law firms,**
 4 **of that 60 percent, how much was this**
 5 **consulting work where you come and looked at**
 6 **the files versus covering depositions or**
 7 **conferences, other work?**
 8 A. At least 80 percent was the
 9 consulting. That's really the bulk of what I
 10 did.
 11 **Q. Okay.**
 12 A. What I was best at, you know.
 13 **Q. Sure.**
 14 **Because we discussed a few**
 15 **additional opinions, I will ask a question**
 16 **that I asked maybe fifteen ago, which is,**
 17 **outside of everything we discussed today, what**
 18 **is contained in your report and CQE in this**
 19 **matter, the memorandum that you prepared**
 20 **regarding Dr. Blier's opinions, do you intend**
 21 **to offer any other opinions or basis for**
 22 **opinions in this case?**

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1 A. No.
 2 **Q. Okay.**
 3 **If you do, if your opinion**
 4 **changes in any way, you review additional**
 5 **materials, you have additional opinions, I'd**
 6 **ask that you please let Mr. Brown know, so**
 7 **that he can let me know, so I could come back**
 8 **and ask you questions about those opinions,**
 9 **okay?**
 10 A. Yes.
 11 **Q. I'd also ask you to look for that**
 12 **CD that you received, and to the extent that**
 13 **you can find it, if you send that to Chris so**
 14 **that I can have a copy of it.**
 15 A. Sure.
 16 **Q. Okay.**
 17 **Do you have any other file**
 18 **materials?**
 19 A. I thought --
 20 **Q. Go ahead.**
 21 A. I thought I had it with me,
 22 that's the funny thing. Give me a moment.

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1 **Q. Okay.**
 2 A. I was positive I had it with me.
 3 (Pause.)
 4 A. Yes, I'll look for it.
 5 **Q. So you will look for it and you**
 6 **will produce it?**
 7 A. Yes.
 8 **Q. I appreciate that.**
 9 A. But it had solely the hospital
 10 records, the 8,265 pages, to be precise.
 11 **Q. Okay.**
 12 **The records that you have here,**
 13 **is that from this manila folder; was that in**
 14 **here?**
 15 A. Yes.
 16 **Q. Okay.**
 17 A. (Handing.)
 18 **Q. Thank you.**
 19 **Are there any documents that you**
 20 **have not seen that you would like to see or**
 21 **that you have requested from plaintiff's**
 22 **counsel, but have not yet received?**

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1 A. I don't believe so.
 2 **Q. Okay.**
 3 MS. SHORT: Okay.
 4 I don't think I have any further
 5 questions.
 6 MR. BROWN: I have just one or
 7 two questions for clarification.
 8 EXAMINATION BY
 9 MR. BROWN:
 10 **Q. Doctor, we talked a lot about**
 11 **your time between 2011, 2015; what I'm asking**
 12 **is from 2015 to present, your CV says that you**
 13 **were practicing medicine, surgery full-time**
 14 **from 2015 to present; is that correct?**
 15 A. Yes.
 16 **Q. And is that true?**
 17 A. Yes.
 18 **Q. Okay.**
 19 **And you were working in an**
 20 **office-based surgical practice from 2015 to**
 21 **present?**
 22 A. Yes.

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1 **Q. And this case was reviewed by you**
 2 **in June of 2016?**
 3 A. Yes.
 4 **Q. So you were at that time a**
 5 **full-time surgical practice?**
 6 A. Yes.
 7 **Q. And less than 20 percent of your**
 8 **time, professional activities involved**
 9 **testimony in personal injury cases at that**
 10 **time in 2016?**
 11 A. Yes.
 12 MS. SHORT: Objection to form,
 13 foundation.
 14 A. Yes.
 15 **Q. Okay.**
 16 MR. BROWN: That's all I have.
 17 Thank you.
 18 FURTHER EXAMINATION
 19 BY MS. SHORT:
 20 **Q. The only clarification I have is**
 21 **I understood you to say that you started in**
 22 **December of 2015 to present, correct?**

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1 A. No, I don't think I said that.
 2 I think I -- I think I said the
 3 fall; October, November.
 4 **Q. You are correct.**
 5 **December was when you stopped**
 6 **operating in 2010?**
 7 A. Yes.
 8 **Q. Okay.**
 9 **You are correct.**
 10 **So you stopped operating in**
 11 **December of 2010 and then you started again in**
 12 **October or November of 2015?**
 13 A. Roughly, yes.
 14 **Q. Okay.**
 15 A. Maybe September even of 2015.
 16 **Q. Okay.**
 17 MS. SHORT: Good.
 18 MR. BROWN: No other questions.
 19 He would like to read and sign.
 20 (Time noted: 2:48 p.m.)
 21
 22

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1 **A C K N O W L E D G M E N T**
 2
 3 STATE OF NEW YORK)
 4 COUNTY OF ^{SS})
 5
 6 I, DAVID A. MAYER, hereby certify
 7 that I have read the transcript of my
 8 testimony taken under oath in my deposition of
 9 March 22, 2017, that the transcript is a true,
 10 complete and correct record of my testimony,
 11 and that the answers on the record as given by
 12 me are true and correct.
 13
 14
 15
 16 _____
 17 **DAVID A. MAYER**
 18
 19
 20 Signed and subscribed to before
 21 me, this day of _____, 2017.
 22 _____
 Notary Public, State of New York

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1 **C E R T I F I C A T E**
 2
 3 STATE OF NEW YORK)
 4) ss.:
 5 COUNTY OF SUFFOLK)
 6
 7
 8 I, CINDY A. AFANADOR, a Notary
 9 Public within and for the State of New York, do hereby certify:
 10 That DAVID A. MAYER, the witness whose deposition is
 11 hereinbefore set forth, was duly sworn by me and that such
 12 deposition is a true record of the testimony given by such witness.
 13 I further certify that I am not related to any of the parties
 14 to this action by blood or marriage; and that I am in no way
 15 interested in the outcome of this matter.
 16 IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day
 17 of April, 2017.
 18
 19 -----
 20 CINDY A. AFANADOR
 21
 22

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