

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LORI ANN SCHMITT,

Plaintiff,

v

File No.: 2015-831539-DM

MICHAEL WILLIAM SCHMITT,

Defendant.

_____ /

EVIDENTIARY HEARING, VOLUME I of II

BEFORE THE HONORABLE KAREN D. McDONALD, CIRCUIT COURT JUDGE

Pontiac, Michigan - Monday, February 26, 2018

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1 Pontiac, Michigan

2 Monday, February 26, 2018 - 9:15:23 a.m.

3 THE CLERK: Your Honor, now calling Schmitt
4 versus Schmitt, case 2015-831539-DM.

5 MS. NIEUSMA: Good morning, your Honor, Laura
6 Lee Nieusma for Michael Schmitt who is approaching and
7 standing -- he'll be standing to my left in just a minute.
8 I'm not sure where opposing counsel is, I can step out to
9 the hall and see if I can find them.

10 THE COURT: That would be great.

11 (At 9:16:09 a.m., hearing recessed)

12 (At 9:16:35 a.m., hearing resumed)

13 THE COURT: Are the attorneys --

14 MS. NIEUSMA: Mr. Siri was standing there,
15 I'm not sure where he went. I can go grab him a second time
16 if you'd like.

17 THE COURT: Appearances please?

18 MS. RUBY: Good morning, your Honor. May it
19 please this Honorable Court, Amy Ruby appearing on behalf of
20 the plaintiff, Ms. Lori Matheson, who is present and
21 approaching.

22 THE COURT: All right, let's get started.
23 It's my understanding you're going to call a witness out of
24 order?

25 MS. NIEUSMA: Yep, we're actually going to

1 call several witnesses out of order, that Doctor Holtrop is
2 only available for the morning. She, unfortunately, has to
3 testify -- or not testify about -- actually, it may be
4 before a DHHS committee this afternoon in Lansing.

5 THE COURT: Okay. All right, let's get
6 started.

7 MS. RUBY: I wasn't in here, did Mr. Siri put
8 his appearance on the record?

9 MR. SIRI: Aaron Siri, co-counsel on behalf
10 of plaintiff. Morning, your Honor.

11 THE COURT: So you're calling your witness
12 now?

13 MS. NIEUSMA: I believe Ms. Ruby is going to
14 call Ms. Matheson's sister briefly. I'm not sure of the
15 nature of the testimony.

16 THE COURT: If we have a doctor I'd rather do
17 the doctor first.

18 MS. NIEUSMA: All right, I understand. Dr.
19 Holtrop.

20 MS. RUBY: The only reason we're going to
21 call Ms. Costello is because she was just going to be a
22 short witness and she has to be to work at 10:00 a.m.

23 THE COURT: I understand, but we have a
24 doctor who needs to leave in the afternoon and I don't want
25 to have to continue it. So let's start with her please.

1 MS. NIEUSMA: Dr. Holtrop?

2 THE COURT: Can you raise your right hand
3 please?

4 THE CLERK: Do you solemnly swear or affirm
5 the testimony you're about to provide in this matter before
6 this Court will be the whole truth and nothing but the
7 truth?

8 MS. HOLTROP: I do.

9 TERESA HOLTROP

10 (At 9:18:18 a.m., sworn as a witness, testified as follows:)

11 THE COURT: All right. Have a seat and you
12 must speak up nice and loud and state your name please.

13 THE WITNESS: Dr. Teresa Holtrop.

14 DIRECT EXAMINATION

15 BY MS. NIEUSMA:

16 Q All right. Dr. Holtrop, let's start from the beginning.
17 I've got a handful of questions for you, but let's start
18 with where are you employed?

19 A I'm currently employed with the Wayne Children's Healthcare
20 Access Program.

21 Q And what is your capacity there?

22 A I am their executive director and a medical director.

23 Q All right. And prior to working with the -- for the Wayne
24 Children's Healthcare Access Program where were you
25 employed?

1 A For three months I was medical director of Advantage Health
2 Centers, a federally qualified health center in Detroit and
3 before that I worked for twenty-three years at Children's
4 Hospital of Michigan.

5 Q All right. And what did you do at Children's Hospital of
6 Michigan?

7 A I'm a general pediatrician and I worked in their general
8 pediatric clinic, division of general pediatrics.

9 Q All right. Are you board certified in pediatrics?

10 A I am.

11 Q All right. Did you complete your residency?

12 A I did.

13 Q All right, and where did you complete your residency?

14 A At Children's Hospital of Michigan.

15 Q All right, and as part of your board certification have you
16 done any -- have you completed any part of the
17 recertification process?

18 A I am in the last group of those who did not have to
19 recertify, but I voluntarily took the recertification exam
20 in 2009 and passed it.

21 Q All right, I was going to ask if you passed it. So going
22 through here, other than your work at Children's Hospital
23 what other work have you been involved in?

24 A I'm currently the president of the Michigan Chapter of the
25 American Academy of Pediatrics and I have been on their

1 board in past years.

2 Q All right. And have you served on any state based
3 committees?

4 A I was part of the Michigan Advisement Committee on
5 Immunizations for many years.

6 Q All right.

7 A I stepped down from that when I became president.

8 Q President --

9 A President elect of the MIAAP (ph).

10 Q All right. And how long have you been serving with the M --
11 with the American Academy of Pediatrics?

12 A I'm -- it's a two year tour of duty, so you're -- you're
13 actually -- two years you're president elect and then two
14 years you're actually president. I'm in my second year of
15 being president.

16 Q All right. And where did you attend medical school?

17 A At Michigan State University College of Human Medicine.

18 Q All right.

19 MS. NIEUSMA: At this point in the interest
20 of moving quickly I'd move to qualify Dr. Holtrop as an
21 expert in pediatric medicine.

22 THE COURT: Any objection?

23 MR. SIRI: Yes, your Honor. I -- I have got
24 two objections which I'll take in order.

25 THE COURT: Okay.

1 MR. SIRI: The first one is that pursuant to
2 the Michigan Court Rule 2.401(I), one of the obligations
3 that opposing counsel had was to provide a witness list,
4 state who would be an expert and provide the field of
5 expertise. Now in this case the witness list wasn't
6 provided, but opposing counsel did provide a pretrial brief
7 and in that pretrial brief it did list -- it had a witness
8 section. It didn't list Dr. Holtrop as an expert, but it
9 did list an area in which she would be testifying and that
10 area did not include pediatrics.

11 THE COURT: What did it say?

12 MR. SIRI: It provided, your Honor, Dr.
13 Holtrop will testify as to her own practice, as well as
14 provide testimony specific to Southeast Michigan and the
15 risks that an unvaccinated child would be exposed to. She
16 will also provide testimony as to the official stance of the
17 American Academy of Pediatrics and the American Medical
18 Association, both organizations of which she is a member.
19 You can take that in pieces if you'd like, your Honor.

20 THE COURT: Okay. What's your response to
21 that objection?

22 MS. NIEUSMA: My response to that is that Dr.
23 Holtrop's CV was provided in November I believe saying that
24 she's completed a pediatric internship and residency, as
25 well as the fact that she's a certified -- as well as the

1 fact that she's board certified in pediatrics.

2 I'm happy to limit the testimony to her
3 stance -- you know, I'm actually not happy to limit the
4 testimony to that. I think it's been pretty clearly
5 disclosed that Dr. Holtrop is a pediatrician who is going to
6 be testifying about medicine, children and her --

7 THE COURT: I -- I would agree. I think
8 they've met their burden pursuant to the court rule. What's
9 your next objection?

10 MR. SIRI: May I just -- may I add one point
11 to that?

12 THE COURT: What?

13 MR. SIRI: I would just add that --

14 THE COURT: You've had her CV since November
15 where it says that she's a board certified pediatrician,
16 right?

17 MR. SIRI: Yes.

18 THE COURT: Okay.

19 MR. SIRI: And her CV also provides all kinds
20 of other information on it.

21 THE COURT: To the extent that you need a
22 notice that she was going to testify as a pediatrician, the
23 CV in November gives it to you. What's your next objection?

24 MR. SIRI: For completeness may I just --

25 THE COURT: What's your next objection?

1 MR. SIRI: Well, I -- if -- that's my primary
2 objection, your Honor.

3 THE COURT: All right. So let's proceed with
4 the testimony. I'm qualifying her as an expert in
5 pediatrics.

6 (At 9:23:30 a.m., Dr. Holtrop Qualified as
7 Witness)

8 BY MS. NIEUSMA:

9 Q All right. So, Dr. Holtrop, let's start with your position
10 as the president elect and now president of the American
11 Academy of Pediatrics.

12 A The Michigan Chapter.

13 Q The Michigan Chapter, yes. All right. So what are your
14 responsibilities in that role?

15 A As president of the Michigan Chapter it is my role to
16 interface with the -- the rest of the board and with the
17 public in terms of questions that arise around pediatric
18 issues both policy wise, advocacy wise, etcetera.

19 Q All right. And did you have to fill out any paperwork upon
20 accepting that nomination?

21 A We have to do a conflict of interest statement whenever
22 we're part of the board. So I actually did that long before
23 when I was a board -- a representative to the board.

24 Q All right. And what are you required to disclose in that
25 conflict of interest statement?

1 A We have to disclose that we are not getting any financial
2 support from anybody that would be in conflict with what we
3 are being asked to do.

4 Q All right. And to the best of your recollection what --
5 what are the sources of financial support for you?

6 A Mine currently or -- or at that time when I filled it out?

7 Q Currently.

8 THE COURT: You just have to make sure your
9 voice is nice and loud, okay?

10 THE WITNESS: Okay. So currently, my only
11 source of income is from the work that I do with the Wayne
12 Children's Healthcare Access Program. I do not get any
13 financial reimbursement from the MIAAP for my role.

14 BY MS. NIEUSMA:

15 Q All right. And --

16 A I have gotten some honoraria in the past as my role of
17 medical director of the Michigan Chapter -- Michigan MIAAP's
18 Developmental Screening Project. That was part of grant
19 work that -- that MIAAP received and as medical director I
20 was entitled to get an honorarium.

21 Q All right. And what is the main source of funding for the
22 healthcare -- Wayne Children's Healthcare Access Program?

23 A It is primarily grant funded.

24 Q All right. And what -- do you recall what the main grant
25 sources are?

1 A They've been a whole host of them, but currently they are
2 United Way of Southeast Michigan, we get grant dollars from
3 the Macgregor Fund, we have dollars from -- we just finished
4 up a grant with the Jewish Fund, we have -- there -- we just
5 finished up grant dollars from the Michigan Association of
6 United Ways.

7 We have some grant dollars from ClearCorp
8 Detroit who subcontracted with us on something they get --
9 they were getting money from the Jewish Fund I believe
10 originally. We are currently receiving money from the Wayne
11 State University Department of Family Medicine for a grant
12 where we are subcontracted to provide community health
13 workers and that is an NIH funded grant that Wayne State
14 receives.

15 We have -- are in the process of getting a
16 contract finalized, we're in the last few days of finalizing
17 that with the City of Detroit Health Department. We have --
18 I can go on, it -- it's a long list, but you get the idea.

19 Q I do.

20 A There are some reimbursements that -- or not reimbursements,
21 some contracts that we have on occasion with State of
22 Michigan Medicaid Health Plans and we do have one currently
23 with Aetna.

24 Q All right. Next I want to -- are you still seeing children
25 actively in practice?

1 A I am not.

2 Q When did you stop?

3 A In December of 2015.

4 Q All right. Just -- are you still aware of the ongoing
5 medical issues in this state?

6 A Absolutely.

7 Q Are there any local outbreaks at the moment?

8 MR. SIRI: Objection, your Honor, she hasn't
9 been qualified as an expert in disease or epidemiology,
10 she's only been qualified as an expert in pediatrics.

11 BY MS. NIEUSMA:

12 Q Are there any --

13 THE COURT: Just because somebody makes an
14 objection doesn't mean that that's the end of it. What is
15 your response to that so then I can rule on the objection?

16 MS. NIEUSMA: The outbreaks that I'm asking
17 her about, and I didn't phrase the question as well as I
18 should, are ones that are uniquely relevant to children and
19 something that as a pediatrician she should be aware of.

20 THE COURT: Okay.

21 MR. SIRI: And it's hearsay.

22 THE COURT: Overruled, it is not hearsay.

23 Continue.

24 BY MS. NIEUSMA:

25 Q Dr. Holtrop, continue.

1 A Yes, as part of my work with the Michigan Advisory Committee
2 on Immunizations I continue -- even though I'm not on the
3 committee anymore I still continue to receive their
4 information. And as is I think well known in the news
5 there's a lot of information about outbreaks of both
6 whooping cough as well as Hepatitis A currently. Influenzae
7 has claimed eighty-three lives --

8 MR. SIRI: Objection, your Honor, she --

9 THE WITNESS: -- in the United States.

10 MR. SIRI: She's testifying about information
11 from an ASA publication and from newspapers. She just said
12 she's --

13 THE COURT: You know, we aren't -- let's --
14 you have to lay a proper foundation. I don't know where she
15 is getting her information. So why don't you find out.

16 BY MS. NIEUSMA:

17 Q Dr. Holtrop, as part of the work that you do, you're not
18 obviously on the committee, you still receive the reports,
19 correct?

20 A I do. I should also mention that I am participating in a
21 Southeast Michigan Collaborative addressing immunizations
22 and how to improve immunization rates and that is through
23 the Southeast Michigan Health Association.

24 Q All right. So through your work with that, through your
25 work with the Southeast Michigan Health Authority are you

1 aware of the number of Hepatitis A cases in Oakland County?

2 MR. SIRI: Again, objection, your Honor. She
3 hasn't been qualified as an expert in infectious disease and
4 epidemiology.

5 MS. NIEUSMA: But we have established that
6 she's an expert in pediatrics. This is something related to
7 a committee that she's serving on. I'm asking her if she
8 knows the number. It's not asking her to draw an expert
9 opinion, it's asking her what she knows.

10 THE COURT: As part of your role, both in the
11 Academy and also as a director of your clinic, is it -- is
12 it part of your duties to apprise yourself of any outbreaks
13 of any kind?

14 THE WITNESS: It is.

15 THE COURT: Okay. Tell me about that and how
16 have you through the years done that and why is it your
17 responsibility to do so?

18 THE WITNESS: Okay. So Wayne --

19 THE COURT: Sit down.

20 THE WITNESS: -- Children's Healthcare Access
21 Program is a medical home project that works with numerous
22 practices across Wayne County to help improve the medical
23 home. One of the things that we look at is how can we help
24 the medical practice improve immunization rates. And as
25 part of that it is my duty to be aware of what is going on

1 in the community.

2 THE COURT: And how do -- how do you and
3 other medical professionals normally do that, through your
4 --

5 THE WITNESS: Typically through a number of
6 Public Health notices that we receive.

7 THE COURT: Okay. And those would be
8 through?

9 THE WITNESS: In this case I received it from
10 the Michigan Association of -- of -- sorry. The Michigan
11 Advisory Council on Immunizations from the Michigan
12 Department of Health and Human Services.

13 THE COURT: Okay. Go ahead.

14 MR. SIRI: I'm sorry. I renew my objection
15 because she's -- she hasn't been qualified again in this
16 area and she's testifying as to information received from
17 documents that are not here in this Court today and which
18 they're not subject.

19 THE COURT: Which I think qualify as a
20 hearsay exception, but do you want a minute to -- to look at
21 that?

22 MS. NIEUSMA: I believe it does because it's
23 a general governmental record that she's informed herself of
24 that she has the ability to have the information and the
25 record present to admit. And because they are put out by a

1 government agency I think they fall under one of the
2 exceptions. I don't recall the exact letter, but because it
3 does carry the general indicia of reliability it's the same
4 reason other government publications are admissible.

5 THE COURT: Why don't you cite the -- do you
6 want a minute to look at the court rule?

7 MS. NIEUSMA: I do.

8 THE COURT: Okay. We'll take a five minute
9 break while she does that. Thanks.

10 So just so you know and I've said this a lot,
11 don't -- don't object or respond without your court rules
12 present. And you should have them on your table or
13 electronically, but that's what I expect and both of you
14 know that already. So please -- please follow my rules.

15 THE CLERK: All rise.

16 (At 9:31:28 a.m., court recessed)

17 (At 9:37:18 a.m., court reconvened)

18 THE CLERK: Your Honor, now recalling Schmitt
19 versus Schmitt, case 2015-831539-DM.

20 MS. NIEUSMA: Laura Nieuwma for Mike Schmitt,
21 standing to my --

22 THE COURT: You don't have to continue
23 appearances, we know who you are.

24 MS. NIEUSMA: Okay.

25 THE COURT: Okay. What's your response?

1 MS. NIEUSMA: I think 803(8) allows for the
2 admission of records of government activity in this case.
3 So -- because these are documents that were prepared by DHHS
4 and sent out to Dr. Holtrop in her role as a member of this
5 committee I think they have the addition of reliability and
6 they fall under this specific exception.

7 MR. SIRI: Your Honor, there -- first of all,
8 they are part of a larger -- well they are part of a larger
9 Power Point presentation apparently. And they only have a
10 few of the pages of the whole presentation here. So under
11 rule 106 they are -- they're not complete, which is the
12 first issue.

13 And the other thing is that there has been no
14 testimony that this came --

15 THE COURT: Well, at this juncture you're not
16 offering them as an exhibit, are you?

17 MS. NIEUSMA: No.

18 THE COURT: Okay. I don't know if you are
19 going to or not but with regard to what she's basing her
20 expert opinion on I think she can testify to it because it
21 would come into -- into evidence under 803(8). So let's
22 proceed.

23 BY MS. NIEUSMA:

24 Q All right. So, Dr. Holtrop --

25 THE COURT: Objection overruled.

1 BY MS. NIEUSMA:

2 Q Dr. Holtrop, just catching up on where we left off. Are you
3 aware of any outbreaks in Michigan right now?

4 MR. SIRI: All right, I'll -- I'll -- your
5 Honor, I'm sorry. This was also not part of the exhibit
6 list that we were provided and so we --

7 THE COURT: What was the question?

8 MS. NIEUSMA: I asked her if she was aware of
9 any outbreaks in Michigan right now.

10 THE COURT: Right, I just ruled on this.

11 MR. SIRI: I apologize.

12 THE COURT: Okay, thank you.

13 MR. SIRI: Sure.

14 BY MS. NIEUSMA:

15 Q All right.

16 A Okay, yes there are outbreaks.

17 MR. SIRI: Again I'll object, your Honor,
18 because she's not an expert in infectious disease and
19 epidemiology.

20 THE COURT: Overruled.

21 Continue please.

22 THE WITNESS: There are outbreaks currently
23 in Michigan of Hepatitis A. There are outbreaks of
24 influenzae. There are outbreaks of Pertussis, whooping
25 cough. There are cases -- or have been reported within the

1 last twelve months of Tetanus, of HIB, Haemophilus
2 Influenzae Type B.

3 MR. SIRI: Objection, your Honor, hearsay.

4 THE COURT: Overruled.

5 THE WITNESS: And if I'm not mistaken of
6 mumps. The exact numbers I can't -- I did not bother to
7 memorize.

8 BY MS. NIEUSMA:

9 Q That is fine. So let's start with Hepatitis A. Are you --
10 is that geographically concentrated in any particular
11 region?

12 A It is geographically concentrated in southeast Michigan.

13 MR. SIRI: Your Honor, may I have a standing
14 objection as to her expertise regarding --

15 THE COURT: Yes.

16 MR. SIRI: -- infectious disease and
17 epidemiology?

18 THE COURT: You've made a record. Thank you.

19 MR. SIRI: Thank you, your Honor.

20 THE COURT: Overruled.

21 BY MS. NIEUSMA:

22 Q All right. Have you see Hepatitis A in practice?

23 THE COURT: Let's back up for a second.

24 There's -- you said in southeast Michigan Hep A is?

25 THE WITNESS: Is at -- at epidemic

1 proportions and the health department is desperately trying
2 to immunize as many people as possible. Hepatitis A is
3 typically a condition that children are immunized against at
4 one year of age and then within six to twelve months again
5 afterwards with a second one.

6 BY MS. NIEUSMA:

7 Q All right. Have you seen any cases of Hepatitis A?

8 A I actually have, yes.

9 Q What are the symptoms?

10 A Typically young children when they get Hepatitis A will have
11 some nausea, vomiting, diarrhea. They can get jaundiced,
12 meaning yellow. And those are the main ones, sometimes
13 fever.

14 Q All right. Do you -- are you aware of what the mortality
15 rate is for Hepatitis A in children?

16 A For children it's not very high.

17 Q All right. All right, let's move on to -- that's Hepatitis
18 A. Let's move on to Tetanus. You mentioned that there were
19 cases of Tetanus at the moment?

20 A Correct.

21 Q How common is Tetanus?

22 A Tetanus is not very common, primarily because we immunize
23 against it. It is a disease that you get from spores,
24 they're in dirt. For example, if you step on a rusty nail
25 and -- and it penetrates the skin or if you get a dog bite

1 you typically need to be immunized against Tetanus in order
2 to prevent it. It is not a pretty disease.

3 Q All right. What are the symptoms of Tetanus?

4 A Spasming, seizures and potentially death.

5 Q And for a child of Faith's age would it -- what would the
6 mortality rate be?

7 A It would be fairly high. Again, I am not an expert in
8 infectious disease, I would have to look up the rate.

9 Q So if you were to see a patient in practice who was not
10 immunized against Tetanus and had stepped on a rusty nail or
11 a rose thorn what would you do?

12 A I would immediately recommend that they get immunized
13 against Tetanus. And that's actually what is done in the
14 emergency department when a child comes in with that kind of
15 a condition.

16 Q What is the advantage to a child of receiving the Tetanus
17 vaccine prior to stepping on -- the acute incident?

18 A They are protected.

19 Q Is the protection -- does the protection differ if the
20 vaccine is received prior to the incident versus after?

21 A I don't know.

22 Q All right, that's fine. All right. And let's talk about
23 whooping cough. So are there any cases of that in Michigan?

24 A It is at epidemic proportions.

25 Q All right. What are the symptoms of whooping cough?

1 A Respiratory symptoms such as runny nose, bad coughing that
2 can get so bad that it has actually been known to cause ribs
3 to break.

4 Q All right. And with whooping cough how long does it take
5 for that to be diagnosed?

6 A Because it looks like a common cold it can sometimes -- the
7 diagnosis can sometimes be delayed.

8 Q All right. And what is the treatment for that whooping
9 cough?

10 A It's -- it's an antibiotic.

11 Q All right. And how long does it take to clear up after the
12 antibiotic?

13 A It takes several weeks for the symptoms to go away.

14 Q All right.

15 A The biggest problem is that the delay in diagnosis will
16 sometimes cause children to develop pneumonia and then to
17 die. And there have been cases of it in southeast Michigan.

18 Q Deaths related to whooping cough?

19 A Deaths related to whooping cough.

20 Q Do you know how old the children were?

21 A In this case the child was several months old and the parent
22 had chosen to delay immunizations with the consent of her
23 pediatrician. And -- and is now advocating very strongly
24 for immunizations.

25 Q All right.

1 MR. SIRI: Objection, hearsay, your Honor.

2 MS. NIEUSMA: Yep.

3 THE COURT: Sustained.

4 BY MS. NIEUSMA:

5 Q You can't say that. All right.

6 MR. SIRI: And I move to strike the hearsay
7 testimony.

8 THE COURT: Just let's -- let's proceed. I'm
9 not going to consider it. It's -- it's...

10 BY MS. NIEUSMA:

11 Q All right. Dr. Holtrop, do you -- in your role as the
12 president or president elect at this point?

13 A President.

14 Q As the president of the Michigan Chapter of the American
15 Pediatrics are you aware of what the stance is of the
16 American Academy of Pediatrics on vaccines?

17 MR. SIRI: Objection, your Honor, hearsay.

18 THE COURT: She's the president. I think she
19 can testify to that.

20 MR. SIRI: She's not here in the capacity
21 though as -- as representing the American Academy --

22 THE COURT: Overruled. She can testify.
23 Thank you.

24 THE WITNESS: Yes, the American Academy of
25 Pediatrics is fully supportive of the immunization schedule

1 as published by the American -- the Advisory Committee on
2 Immunization Practices.

3 BY MS. NIEUSMA:

4 Q All right. And do you have any children?

5 A I do, I have two.

6 Q Have you vaccinated your own children?

7 A Absolutely.

8 Q All right. And in making that decision what factors did you
9 consider?

10 A The fact that we knew it was -- my husband and I were very
11 much aware of the negative consequences if we did not
12 immunize in terms of the risks to their health having both
13 of us seen children die from vaccine preventable diseases.

14 Q So in that case did you rely on the fact that the vaccines
15 that the children were administered were on the approved
16 schedule or based on your knowledge of the individual
17 diseases?

18 A We follow the recommendations.

19 Q How would -- if you were to have -- if the Judge were to
20 rule that Faith should receive the age appropriate vaccines
21 and she were to -- and you were in practice and she were in
22 your office, how would you go about catching a child up on
23 vaccines?

24 A In Faith's case my understanding is that she is two and a
25 half years old. I've gone through and looked at all the

1 vaccines that she is behind on. It is -- the fact that she
2 did not receive her immunizations according to the schedule
3 makes it feel very uncomfortable for us as pediatricians to
4 have to catch her up the way we would have to, but I have
5 done it.

6 She is due for at a minimum six needle pokes,
7 which we have done. And the best way to do that, and that
8 is actually a recommendation from a variety of sources, to
9 immunize all at once rather than to put it off and give it
10 spread out over a period of time and the best way to do it
11 is to have multiple people, staff that one immunizes here,
12 one here, one here, one here and it just goes one, two,
13 three go, get it done and over with.

14 Q All right. And in administering these vaccines do you care
15 which manufacturer made the vaccines?

16 A No.

17 Q It's not something that you look into or?

18 A I -- no, we typically -- I worked in a practice that was
19 primarily Medicaid children, I think eighty to ninety
20 percent of our children were Medicaid enrolled, and for
21 those children we get our vaccines from the Vaccine for
22 Children Program, which is a federal program and the
23 manufacturer is determined by the CDC.

24 Q All right. So it's not a choice that you make individually?

25 A No.

1 Q And it doesn't --

2 A If a child has commercial insurance, then there is a little
3 bit of a choice that we can make, but it's -- it's -- we
4 typically don't -- our -- our -- the -- the business side of
5 things, it's not us physicians making that decision it's
6 usually the business people within our organization that
7 make that decision.

8 Q All right. And we heard and I believe you were here, a lot
9 of testimony about conflicts of interest in -- in medicine.
10 What steps do you take to prevent conflicts within your
11 practice?

12 A Well we have limited how many drug reps -- whether we even
13 interview with drug reps and that was typically not done.
14 I'm not sure what other conflicts of interest would arise in
15 this situation. We do not get any money out of this. We --
16 the vaccines are provided to us for free. We bill a vaccine
17 administration fee if -- if it is a Medicaid enrolled child.

18 I -- I don't know the situation here so I
19 really can't --

20 Q Other than drug reps do you have any contact with the major
21 drug manufacturing companies?

22 A Occasionally there will be a -- sometimes at certain
23 conferences sometimes the drug reps will have a separate
24 part of money that they will -- are able to use for
25 educational programming, but it is very -- we're very

1 careful with how we accept that money and we have gotten
2 much more careful over the last five to ten years.

3 And there is a -- there's a policy statement
4 out from the American Academy of Pediatrics, I can't quote
5 it, but it relates to that.

6 Q All right. I do want to while I have you on the stand ask
7 you some more questions about vaccine preventable diseases.

8 A Okay.

9 Q Have you seen measles in children?

10 A No.

11 Q All right. Were you educated in what the symptoms --

12 A Yes.

13 Q -- are and the mortality rate?

14 A Yes.

15 Q What are the symptoms?

16 A Rash, runny nose, they get some funny spots in their mouth,
17 they get red eyes, you can -- a fever, feeling of fatigue
18 and etcetera.

19 Q And what are in the more extreme cases, are there any
20 additional --

21 A It can -- yeah, measles can cause actually brain damage and
22 it can cause death.

23 Q All right. And do you know -- are you familiar with how
24 common that is?

25 A It's not something we see very often. I -- I have never

1 seen a case of measles and the main reason is because we
2 have such high herd immunity. I'm told I myself suffered
3 from it when I was a child.

4 MR. SIRI: Objection, your Honor, she's not
5 qualified to opine on that, but...

6 THE COURT: As to whether she had measles?

7 MS. NIEUSMA: No. As to whether or not the
8 measles has gone down because of the vaccination. That
9 requires historical epidemiological evidence, infectious
10 disease expertise.

11 THE COURT: I think she can testify as to
12 that. Overruled.

13 BY MS. NIEUSMA:

14 Q So all right. And you said -- have you seen any other
15 vaccine preventable diseases in children?

16 A Absolutely. I've seen mumps.

17 Q All right. What are the symptoms of mumps?

18 A Swelling of the carotid glands right here. And actually the
19 one case that will forever stick in my mind is a kid who
20 came in during the mumps epidemic that was going on in the
21 1980's who ended up with orchitis, which is an inflammation
22 of his testes and then developed early stages of
23 encephalitis.

24 Q All right. And what were -- what was the ultimate outcome
25 for this child?

1 A He actually recovered. Now in terms of the orchitis, I
2 don't know exactly if that affected his ability to father
3 children in the future. I don't.

4 Q You're a pediatrician, you don't expect your patients to
5 father children.

6 A Well and I did not follow him after I transferred him over.
7 I was working at another hospital and transferred him to
8 Children's Hospital to the intensive care unit. That's all
9 I know about it.

10 I have seen other cases, HIB, Haemophilus
11 Influenzae Type B, as well as strep pneumonia and those
12 cases were quite striking. Number one, Haemophilus
13 Influenzae Type B I have seen both meningitis as well as
14 epiglottitis, which was an extremely frightful disease
15 because it can cause swelling of the little flap in your
16 throat that can cause you to suffocate within a very short
17 period of time.

18 Q When you say a very short period of time, how long do you
19 mean?

20 A Less than twenty-four hours. You come down with the
21 symptoms and boom you're -- you can be dead. Meningitis,
22 having done spinal taps on infants that have had that and
23 having pure pus come out from the spinal fluid instead of
24 the normal clear watery fluid. I've seen that both in strep
25 pneumonia as well as in Haemophilus Influenzae Type B.

1 I'm still of an age that I -- I experienced a
2 time before we had vaccines for this. Most of our residents
3 nowadays don't see cases of that anymore.

4 Q All right. One of the things I wanted to talk to you about
5 is, you've administered vaccines in your practice, correct?

6 A Absolutely.

7 Q All right. What side effects have you seen from the
8 vaccines?

9 A The -- the most common side effects are redness and swelling
10 at the site of the shot. Sometimes a low grade fever,
11 feelings of tiredness. Sometimes they're -- they're cranky.
12 Those are the main ones.

13 Q Are those concerning to you at all?

14 A No.

15 Q All right. Why not?

16 A Because they'll get over it.

17 Q And have you seen anymore extreme cases of --

18 A I have. Before -- before we switched from the DTP vaccine
19 to the DTaP vaccine, so the A stands for acellular, P stands
20 for pertussis, which is whooping cough. And we used to use
21 a whole cell whooping cough vaccine, that was the DTP.

22 And that one had as a tendency would cause
23 high fever sometimes and sometimes screaming for three hours
24 on end or longer and could cause seizures. And that was
25 then a reason not to give that vaccine the next time around.

1 But since we've switched over to the DTaP, which is the
2 acellular whooping cough vaccine, I have -- I never
3 encountered another case of -- of the high fever and the
4 seizures, etcetera.

5 I mean it's still listed as possible, but
6 quite frankly I've -- I've immunized hundreds and hundreds
7 of kids since then and I've never had a case of that since
8 then.

9 Q Is there anything in a child's family medical history that
10 would cause you to be concerned about vaccinating?

11 A If you have a child who comes from a family where other
12 siblings have had febrile seizures you sometimes take it
13 with a -- you -- you want to be more concerned about a kind
14 of fever that can be caused by the vaccines. Can it cause
15 febrile seizures? But febrile seizures are benign seizures.

16 We -- we -- as a matter of fact if -- they're
17 scary to see, but we try to educate parents as much as
18 possible that if it happens don't worry about it because it
19 does not mean that your child will have epilepsy, your child
20 will not have damage from it, etcetera, etcetera.

21 So that -- that's the -- the other thing
22 that we have to be concerned about is if we are immunizing a
23 child who comes from a family where there is somebody who is
24 immune suppressed in the home, because especially with the
25 live -- well only with the live vaccines, which are --

1 include measles, mumps, rubella and the chicken pox vaccine,
2 there can be some shedding of the virus, the rotavirus
3 actually too, but Faith is not a candidate for the rotavirus
4 vaccine anymore because of her age.

5 But there can be shedding of that virus and
6 then it can theoretically cause the disease in an immune
7 suppressed child, which is actually also the argument for
8 immunizing as many children as possible so that you have
9 some herd immunity.

10 Q So even if -- if there was an immune suppressed child in the
11 home would you still advise vaccinating the healthy child?

12 A Typically we do, yes.

13 Q Do you follow a procedure to ensure that the immune
14 suppressed child is kept safe?

15 A It is -- you educate the family if possible keeping them
16 separate. It's not a high risk, so it's to the -- to the
17 immune suppressed child. The -- the risk to the immune
18 suppressed child is actually if the child, him or herself
19 receives that live virus vaccine.

20 Q Got ya. So I'm going to change topics a little bit. Are
21 you familiar with the vaccine information sheets?

22 A I am.

23 Q Did you provide those when you administered vaccines?

24 A We are required by law to provide them.

25 Q All right. And what information is contained within those

1 sheets?

2 A It --

3 MR. SIRI: Objection, hearsay.

4 THE COURT: We've already litigated --

5 MS. NIEUSMA: She has actual knowledge.

6 THE COURT: Well hold on a second, we've
7 already litigated this and I've allowed the vaccine sheets
8 to -- to be admitted in different -- with different
9 witnesses. Am I right, we've --

10 MS. NIEUSMA: Yes.

11 THE COURT: -- already talked about this?

12 MS. NIEUSMA: Yes.

13 THE COURT: That's -- that's the downside to
14 not being present for the entire hearing.

15 MR. SIRI: I'm sorry, your Honor.

16 THE COURT: It's okay.

17 MR. SIRI: I appreciate it. Thank you.

18 THE COURT: It's all right.

19 BY MS. NIEUSMA:

20 Q What information --

21 THE COURT: We have enough to argue about.
22 We don't need to reargue.

23 BY MS. NIEUSMA:

24 Q What information is contained within those sheets?

25 A The VIS sheets typically will contain information about --

1 sort of a quick overview of what the disease is that is
2 being prevented by the vaccine, what the side effects are,
3 what to do -- what the contraindications are and what to do
4 if there is a concern about the vaccine having caused
5 problems, who to contact, etcetera.

6 In Michigan we are required to hand out a
7 vaccine information sheet that has a modification on it down
8 at the bottom informing about the Michigan Care Improvement
9 Registry. And -- and so that's the one.

10 Q What is the Michigan Care Improvement Registry?

11 A The Michigan Care Improvement Registry is a statewide
12 registry where all immunizations are supposed to be
13 registered in. In pediatrics we use it --

14 Q Oh, is that MCIR?

15 A Yes, it's MCIR, right. Yeah.

16 Q Okay.

17 A It -- when it first came into being it was -- which was in
18 1993 approximately, it was called the Michigan Child
19 Immunization Registry, but it -- and when it -- and once you
20 got to be twenty-one you would get kicked out of it. But
21 then people started recognizing the value of having the MCIR
22 system in place and it was changed to include adults too.
23 And so now it's called Michigan Care Improvement Registry.

24 I can tell you from personal experience that
25 having that registry available has really saved a lot of

1 children unnecessary immunizations, but particularly for
2 foster care children who would come in and we would not have
3 a copy of their immunization record.

4 Q So that's the only difference between the Michigan form then
5 and the one --

6 A Yeah, it's -- it's a little footnote at the bottom.

7 Q All right. And why would a physician not provide vaccine
8 information sheets?

9 A I would expect if they're not very familiar with
10 immunizations or with the -- the rules and regulations
11 around it that they might not and especially in pediatrics,
12 pediatricians typically are aware of it.

13 Q And do you provide your -- what other information do you
14 provide your patients with about the immunizations that
15 children are receiving?

16 A Well we have a vaccine questionnaire that we typically ask
17 that -- that is supposed to try and pick up
18 contraindications to immunizations. That's a -- that's not
19 a significant piece of information, but it is -- it gives us
20 information.

21 And then if the parent has any additional
22 questions they go above and beyond what's on the VIS sheets.
23 We certainly go over that.

24 Q All right. So based on your years of practice as a
25 pediatrician do you believe that the minor child should be

1 -- in this case should be vaccinated?

2 A I do.

3 MR. SIRI: I -- (inaudible).

4 MS. NIEUSMA: She's an expert. I'm asking
5 her to form her expert opinion.

6 THE COURT: Guys, we don't argue with each
7 other. There was no formal objection. I didn't hear one,
8 so just continue.

9 MS. NIEUSMA: All right.

10 BY MS. NIEUSMA:

11 Q That's all I have for you, Dr. Holtrop.

12 THE COURT: All right. Cross-examination?

13 MR. SIRI: Your Honor, can I have a few
14 minute break, would that be okay? If not, that's okay.

15 THE COURT: No, I really want to --

16 MR. SIRI: Okay. Thank you, your Honor.

17 THE COURT: I -- I don't mean to make it
18 inconvenient.

19 MR. SIRI: That's okay.

20 THE COURT: I just want to get through this.

21 CROSS-EXAMINATION

22 BY MR. SIRI:

23 Q Good morning, Dr. Holtrop.

24 A Good morning.

25 Q Thank you for being here. What do you understand the CDC to

1 stand for?

2 A The Center for Disease Control.

3 Q And do you consider its publications and web site a reliable
4 authority for information regarding vaccines?

5 A I do.

6 Q And what do you understand the FDA to stand for?

7 A The Food and Drug Administration.

8 Q And do you consider the FDA's publications and web site a
9 reliable authority for information regarding vaccines?

10 A Yes.

11 Q What do you understand HHS or DHHS to stand for?

12 A Department of Health and Human Services.

13 Q Do you consider the HHS's publications and its agencies to
14 be reliable authorities with regard to vaccinations?

15 A Typically yes.

16 Q And why would it not be?

17 A Typically they -- they -- I'm sorry, the DHHS does not -- I
18 mean they do it through the CDC.

19 Q And -- and because CDC is an agency under --

20 A DHHS, yes.

21 Q Are there any other agencies under DHHS that are involved in
22 vaccination that you're aware of?

23 A Well there's the American -- the -- the Advisory Committee
24 on Immunization Practices, which is an advisory committee to
25 the CDC.

1 Q Okay. Are there any other agencies that you're aware of
2 under DHHS that are involved in vaccination?

3 A Not off the top of my head.

4 Q Are you aware of which agency within DHHS is responsible for
5 licensing vaccines?

6 A I believe it is the Food and Drug Administration.

7 Q Are you aware of which agency is responsible for
8 administering the Vaccine Injury Compensation Program?

9 A It's VAERS, Vaccine -- it's -- it's an -- that's all I know
10 is VAERS.

11 Q The name of the agency, do you know the name of that agency?

12 A I don't know off the top of my head, no.

13 Q What do you understand IOM to stand for?

14 A The IOM, Institute of Medicine.

15 Q Which recently changed its name, right?

16 A I have no idea.

17 Q Okay. Are -- are you familiar with the Institute of
18 Medicine?

19 A I am.

20 Q Okay. Do you consider the IOM's publications a reliable
21 authority regarding vaccination?

22 A There can sometimes be some difference of opinion between
23 one and -- one authority and another.

24 Q Right, right. I mean --

25 A It is not an institute that we go to for vaccine

1 information.

2 Q So the Institute of Medicine you are not aware of their
3 prior publications regarding vaccination?

4 A When I look for vaccine information in terms of safety and
5 recommendations as to how to handle immunizations in
6 children I go to the CDC.

7 Q Okay. And -- and you said that experts can disagree.
8 Surely they can. Experts who are reliable authorities on
9 both sides of an issue can certainly disagree at times,
10 correct?

11 A Yes.

12 Q Yes. But that doesn't make either one an unreliable
13 authority on an issue, right?

14 MS. NIEUSMA: I'm going to object. She's
15 already answered about the IOM. He's trying to get her to
16 say that it's a reliable authority to impeach her with the
17 ninety-seven --

18 MR. SIRI: Your Honor, she's coaching the
19 witness.

20 THE COURT: Wait, wait, wait.

21 MR. SIRI: That's completely inappropriate,
22 your Honor.

23 MS. NIEUSMA: He's just answered the
24 question.

25 MR. SIRI: Completely inappropriate to coach

1 the witness --

2 THE COURT: Okay.

3 MR. SIRI: -- in our objection.

4 THE COURT: All right, stop. Your objection
5 is what?

6 MS. NIEUSMA: That he's trying -- she's asked
7 and answered. She's answered the question as to how she
8 feels about the Institute of Medicine and whether --

9 THE COURT: I -- I don't think she did answer
10 that. I'm going to --

11 MR. SIRI: And -- and --

12 THE COURT: Overruled.

13 So ask the question please.

14 MR. SIRI: Can --

15 THE COURT: You've made your record.

16 MR. SIRI: I respectfully request that
17 speaking objections that coach the witness are not
18 permitted?

19 THE COURT: I will rule on the objection as
20 they -- as they appear.

21 MR. SIRI: Okay. Thank you, your Honor.

22 BY MR. SIRI:

23 Q Okay. So we -- we were -- we were talking about whether or
24 not reasonable experts -- experts who are in the field can
25 disagree about things, right?

1 A Mm-hmm.

2 Q Okay.

3 THE COURT: Is that a yes or a no?

4 THE WITNESS: Yes. I'm sorry.

5 THE COURT: Okay.

6 THE WITNESS: Yes.

7 BY MR. SIRI:

8 Q And the Institute of Medicine is comprised of leaders in
9 their respective fields in medicine, right, including Nobel
10 Prize winners?

11 A I have not studied the Institute of Medicine. It is not a
12 source that I go to for information around immunizations.

13 Q Would you consider it a reliable authority though?

14 A I would say I don't know.

15 Q Okay. Do you consider yourself a reliable authority, Dr.
16 Holtrop?

17 A On immunizations?

18 Q Yes.

19 Q No, I go and ask -- I -- I look for information from others
20 as to what to do and that is what we are taught to do in
21 pediatrics.

22 Q Okay. And -- and so who do you look to for information
23 regarding immunizations?

24 A The Center for Disease Control and the ACIP.

25 Q The Advisory Committee on Immunization Practices?

1 A Yes.

2 Q And those are the only authorities that you rely upon?

3 A For this information, yes.

4 Q Okay. And you wouldn't consider any other governmental or
5 non governmental organization that studies this topic to be
6 a reliable authority?

7 A I guess the answer is no.

8 Q You know or you don't know?

9 A The answer is no. I -- I'm not sure where you're going with
10 this. If I had a better sense of what you're trying to --

11 Q I'm just asking you to answer it as truthfully as you can.

12 THE COURT: So just -- so just yes, no or you
13 don't know?

14 THE WITNESS: No.

15 BY MR. SIRI:

16 Q Okay.

17 A No, I would not go anywhere else.

18 Q Would -- would your answer change based on whether -- where
19 you knew I was going with this, would that change the truth?

20 A Well -- so here's -- here's my thought process. If the
21 Michigan Department of Health and Human Services came along
22 and said such and such is happening around this and this
23 vaccine, I would certainly pay attention to what they are
24 saying and probably follow their guidelines on the
25 assumption that they are following recommendations from the

1 CDC and -- and the Advisory Committee on Immunization
2 Practices. I admit I make an assumption here that MDHHS is
3 trustworthy in that.

4 Q All right. Because -- and -- and they're relying on what
5 CDC and ACIP are deciding, correct?

6 A Correct.

7 Q Okay. What is the Nation Childhood Vaccine Injury Act of
8 1986?

9 A It is the -- the act that established an entity to which
10 reports could be made about vaccine related adverse events.

11 Q And it's also the act that granted vaccine manufacturers
12 immunity from liability for --

13 A Correct.

14 Q -- injuries caused by vaccines, correct?

15 A Correct.

16 Q Were you served with a subpoena to appear in a deposition in
17 this case on February 6th, 2018?

18 MS. NIEUSMA: I'm going to object, the Court
19 has already ruled on the -- on the permissibility of the
20 deposition. Whether or not she's been served with a
21 subpoena is completely inappropriate.

22 THE COURT: How -- how is it relevant?

23 MR. SIRI: I didn't ask about that. I just
24 want to establish that she wasn't disposed --

25 BY MR. SIRI:

1 Q Were you deposed --

2 MR. SIRI: Can I just ask her if she was
3 deposed in the case?

4 THE COURT: Sure. Sure.

5 BY MR. SIRI:

6 Q Were you deposed in this case?

7 A No.

8 Q Okay, thank you. Did you discuss your anticipated --
9 anticipated testimony today with anybody?

10 A With Laura -- I can never pronounce her name. With the --

11 THE COURT: Ms. Nieuwma.

12 THE WITNESS: Nieuwma.

13 BY MR. SIRI:

14 Q Anybody else?

15 A No.

16 Q How did you first learn about this lawsuit?

17 A So the American Academy of Pediatrics is broken up into
18 districts and we are part of District 5. It was the chair
19 of District 5 who sent an e-mail to several of us at the
20 MIAAP talking about the fact that there is a case and could
21 somebody help out.

22 As it turned out it happened to be in the
23 area that I live in. And since I do have some experience in
24 the area of immunizations I volunteered.

25 THE COURT: Don't -- don't say where you

1 live. Okay?

2 BY MR. SIRI:

3 Q And -- and who sent that -- that e-mail from AAP?

4 A Dr. Rick Tuck.

5 Q Okay. And what -- what did -- what is your understanding of
6 what he's specifically asking for?

7 A Somebody to --

8 Q Assist with?

9 A Assistance for somebody to be able to testify on behalf of
10 the importance of immunizations in childhood.

11 Q Okay. So after you got that e-mail what's the next step
12 that you took in order --

13 THE COURT: Counsel, can you just speak up a
14 little bit please?

15 MR. SIRI: Sure.

16 THE COURT: Thank you.

17 BY MR. SIRI:

18 Q After you received that e-mail what's the next step you took
19 that led you to be here today on the stand?

20 A I actually contacted some colleagues of mine to see if there
21 was anybody within the infectious disease world of those
22 that I knew who might be interested in -- in testifying.

23 Q And who did you contact?

24 A I contacted Dr. Eric McGrath, Dr. Bosian Osmar (ph), I'm
25 trying to think who else. I think those were the two

1 primary ones.

2 Q Anybody else you can remember?

3 A Not that I remember right now.

4 Q Okay. And -- and do you understand why they didn't want to
5 testify or did --

6 A We never discussed it, they just said no.

7 Q Did -- understood. So after that what's the next step that
8 you took in order to become an expert in this case, did you
9 -- did you reach out to somebody to say, hey I'm willing to
10 be an expert, what is it that you did next?

11 A I did.

12 Q Okay, who -- to whom was that?

13 A I contacted the lawyer for Mike Schmitt.

14 Q Directly?

15 A I'm trying to remember exactly the process and I don't
16 recall whether it was directly to the lawyer or whether it
17 was to Mike Schmitt himself.

18 Q And -- and how did you get that information?

19 A It was passed on to me through Dr. Rick Tuck.

20 Q From the American Academy of Pediatrics?

21 A Mm-hmm.

22 Q Okay.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes. I'm sorry.

25 THE COURT: It's okay.

1 BY MR. SIRI:

2 Q Did you review any documents to prepare to testify today?

3 A I reviewed the documents about the CDC recommendations, the
4 ACIP Schedule of Immunizations, the VIS sheets and the
5 Michigan Department of Health and Human Services information
6 that had been sent to me in February from the folks at
7 MDHHS, which I received without having requested it.

8 Q Okay. And those are the only documents you've reviewed
9 prior to today, correct?

10 A Mm-hmm.

11 Q You've never seen any of Faith's medical records, correct?

12 A No, I have never seen any of her medical records.

13 Q And you don't know anything about her medical history,
14 correct?

15 A I do not know anything about her medical history.

16 Q Now earlier I believe you were being asked about what you
17 would do to vaccinate a two and a half year old child who
18 never received vaccines, correct?

19 A Mm-hmm.

20 Q Let me go through what vaccines you --

21 THE COURT: Remember to -- keep your voice
22 up.

23 MR. SIRI: Thank you, your Honor.

24 THE COURT: It might be better if you -- if
25 you work from the podium because the mic is closer, but it's

1 up to you.

2 BY MR. SIRI:

3 Q Let's -- if you could kindly, Dr. Holtrop, list the vaccines
4 that you believe a two and a half year old child should
5 receive?

6 A If a two and a half year old child has not received any
7 previous immunizations she would be due for the DTaP, Polio,
8 Hepatitis B, measles, mumps, rubella, chickenpox vaccine,
9 the pneumococcal vaccine, Haemophilus Influenzae Type B
10 vaccine, Hepatitis A. Did I say Hepatitis B already?

11 THE COURT: Yes.

12 THE WITNESS: I'd have to write it down in
13 order to not miss anything.

14 BY MR. SIRI:

15 Q You know what, I think we can help with that. Why don't we
16 -- I think we can put a demonstrative out so we can lay out
17 all of the vaccines just so we can keep track of them as we
18 go forward.

19 THE COURT: We don't really -- if you want to
20 do that you can set that up at some other time. But I just
21 want you to proceed now.

22 MR. SIRI: (Multiple speakers.)

23 THE COURT: I don't want to break for that.

24 MR. SIRI: I won't break for that at all,
25 your Honor. I'll just keep going.

1 BY MR. SIRI:

2 Q So okay. So Hepatitis A?

3 A Yes.

4 Q Any others?

5 A Hepatitis A, Hepatitis B.

6 Q Uh-huh.

7 A The chickenpox vaccine, which is the VZV.

8 Q Okay.

9 A MMR.

10 Q Uh-huh.

11 A DTaP.

12 Q Yep.

13 A Polio, HIB, the pneumococcal vaccine. Is that all. I think

14 I have them all.

15 Q Thank you. Well we're going over the same ones so I think

16 you did. Okay, great. And then can you tell me the number

17 of doses for DTaP?

18 A Well at two and a half years of age if she's never gotten

19 another -- a previous --

20 MR. SIRI: Can we --

21 THE COURT: Why would you, why do you want to

22 put it right here?

23 MR. SIRI: No, not there. Right there is

24 good.

25 THE COURT: Yes.

1 MR. SIRI: That's perfect.

2 BY MR. SIRI:

3 Q I'm sorry, how many DTaP?

4 A In order to be fully immunized she will need a total of
5 three doses at this age.

6 Q Okay. And how many doses of polio?

7 A She will need a total of at least -- it depends a little bit
8 -- there's a delayed immunization schedule and it's -- would
9 be a wise idea to look at that to -- to be sure. I want to
10 -- normally she would have gotten three doses by now with a
11 fourth dose after the fourth birthday.

12 If there is -- by the time they get to their
13 fourth birthday if they haven't gotten the first three, then
14 sometimes they get by with two. It gets really --

15 Q Two or three?

16 A She should have gotten three at that age.

17 Q Very good. And Hep B?

18 A Hep B, she needs to have had three.

19 Q MMR?

20 A She will have gotten one and she will get -- get her second
21 one after the fourth birthday.

22 Q Chickenpox?

23 A Although it can be given earlier.

24 Q Chickenpox?

25 A Chickenpox the same thing.

1 Q Meningococcal, which would be PCV 13, would that be the
2 same?

3 A No, it's not the same thing. PCV 13 is the pneumococcal
4 vaccine. And again, that one I double check because there
5 is a difference depending on what age you get it. The HIB
6 -- I always think of it as the same as the HIB vaccine. The
7 HIB vaccine, if she has not gotten a previous dose of it and
8 she's now over fifteen months of age she only needs one.

9 If I'm not mistaken the same is true for the
10 pneumococcal vaccine. I always double check myself on that
11 because it has gotten so complicated.

12 Q Okay. So one for pneumococcal?

13 A I believe so and one for HIB.

14 Q And -- and you believe she -- one for HIB?

15 A Yes, I know one for HIB.

16 Q Hepatitis A?

17 A She should have two, six months apart.

18 Q Okay. And Hepatitis B?

19 A She should have three. They're given -- the first one, the
20 next one is a month later and the next one is six months
21 after the first one.

22 Q And PCV 13?

23 A PCV 13 is like the HIB. It's the pneumococcal vaccine, it's
24 a one -- I believe it's just one shot that she needs.

25 That's the one I would need to double check on.

1 Q Can you tell me the -- and you've administered all of these
2 hundreds of times, correct?

3 A Correct.

4 Q Okay. And -- and they all come in packaging I assume?

5 A Correct.

6 Q Okay. And there's a product insert inside the packaging?

7 A Correct.

8 Q Okay. And the name of the product is on the box?

9 A Correct.

10 Q The manufacturer is on the box?

11 A And the lot number.

12 Q And the lot number. And you record that information?

13 A Absolutely.

14 Q All right. Can you -- so can you tell me the -- could you
15 please take a look at this cut out of a child and can you
16 tell me if this looks approximately the size of a two and a
17 half year old child?

18 A Mm-hmm, it does.

19 Q Okay. So for the Hepatitis B vaccine you indicated that
20 there's three doses. Can you tell me the brand names and
21 the manufacturer?

22 A I can't tell you the manufacturer. And it depends on which
23 -- again, this is not something that I look at all that
24 closely because I use whatever we are provided with by the
25 vaccine -- the VFC Program primarily.

1 Q Vaccines are products, right?

2 A The vaccine product -- yeah, there's --

3 Q And so -- go ahead, I'm sorry.

4 A We receive the packet -- the package of vaccines from the
5 CDC's distribution site and that's what I will use. I don't
6 bother to try and memorize the vaccine manufacturer.

7 Q Okay. So you don't -- you don't know the manufacturers for
8 any of the vaccines?

9 THE COURT: She doesn't have it memorized.

10 THE WITNESS: I don't have it memorized.

11 BY MR. SIRI:

12 Q That's okay.

13 A I'm not sure what the need for that is.

14 THE COURT: Okay. So you've asked her that.

15 MR. SIRI: Yeah.

16 THE COURT: So let's move on.

17 BY MR. SIRI:

18 Q And -- and do you know the -- the product names for any of
19 them?

20 A Some of them, yeah.

21 Q Okay. Which ones do you know?

22 A Pediarix is a combination vaccine. For Hepatitis B I want
23 to say there's Engerix. But again, this is not something
24 that I spend a lot of time trying to memorize because it's
25 pointless.

1 Q It doesn't matter who manufactures them?

2 A It doesn't.

3 THE COURT: What -- what are we doing?

4 MR. SIRI: The original exhibits, your Honor,
5 are those -- I'm sorry, are those still there?

6 THE COURT: I -- I don't know where your
7 exhibits are.

8 MR. SIRI: May I approach the witness, your
9 Honor, and hand her what has been previously entered as
10 Exhibit UUU?

11 THE COURT: Yes.

12 MR. SIRI: Thank you, your Honor.

13 THE COURT: Mm-hmm.

14 MS. RUBY: Your Honor, the exhibits -- excuse
15 me, the exhibits were left here on -- on the clerk's chair
16 the last time. You wanted them to be left here.

17 THE COURT: My copies.

18 MS. RUBY: No, the witness' copies.

19 THE COURT: I don't know if that's true or
20 not. I don't know.

21 MS. RUBY: Okay. May I approach?

22 THE COURT: Mm-hmm.

23 BY MR. SIRI:

24 Q Have you seen this document before, Dr. Holtrop?

25 A I have seen similar documents. Not this particular one,

1 but...

2 Q Do you see that it provides that it's from the Center for
3 Disease Control?

4 A I see that, yes.

5 Q Okay. And do you see that it lists each vaccine, including
6 by manufacturer and the product names?

7 A Yes, I see that.

8 Q Okay. For the Hepatitis B vaccine, which I believe you
9 indicated Faith -- you indicated that a child of two and a
10 half should receive three doses. Do you see who the
11 manufacturers are?

12 A It says Glaxo Smith Kline and Merck, they are two different
13 manufacturers.

14 Q Okay. Who -- and what is the product name for the Merck
15 product?

16 A It's Recombivax HB.

17 Q And for the GSK?

18 A Engerix B.

19 Q So -- so we're -- and where would you -- where would you
20 approximately -- where would you give these three doses to
21 the child?

22 MS. NIEUSMA: First of all, relevance of
23 where she would administer the doses. Her expertise in
24 where vaccines are administered is not the question for the
25 Court today.

1 MR. SIRI: Your Honor, she -- she testified
2 as to vaccine safety. This is all leading up to safety,
3 your Honor. She testified about adverse reactions, she
4 testified that the child -- she -- she said herself six --

5 THE COURT: I'll -- I'll allow it, go ahead.

6 MR. SIRI: I mean --

7 THE COURT: Overruled.

8 THE WITNESS: She would not get six -- or
9 three doses of Hepatitis B on the same day.

10 BY MR. SIRI:

11 Q Right, you'd have to -- you would space them out over a
12 period of time?

13 A Correct.

14 Q Absolutely. And over time though -- but you would recommend
15 Faith receive three injections -- or three doses of
16 Hepatitis B, correct?

17 A Yes.

18 Q Okay. And would it be -- okay. And -- and these -- so
19 Hepatitis B, this -- I'm just -- I want to keep track of all
20 the vaccines --

21 A Okay.

22 Q -- we're going to talk about. This way you -- you know,
23 this way you don't -- you said before you can't keep track.
24 We'll just -- we'll put them all up and this way as we go
25 through this we can point to this and we can make sure we

1 cover each one, because each of these are a separate
2 product, correct?

3 A Correct.

4 Q Each of them have different ingredients, correct?

5 A Correct.

6 Q Each of them have different contraindications, correct?

7 A Overall, yes.

8 Q Okay. Each of them have a different -- have different
9 effects on the body, correct?

10 A I would say probably not that much different.

11 Q Okay. Well we'll go through that. So we'll put up the
12 three Hepatitis B's. And I believe you said for DTaP you
13 said --

14 MS. RUBY: Where?

15 MR. SIRI: It doesn't matter, arms, legs.

16 BY MR. SIRI:

17 Q That's where they would normally be administered, right,
18 arms and legs, Dr. Holtrop?

19 A Certainly not down there.

20 Q Well why don't we -- why don't we --

21 A It is administered in the deltoid.

22 Q Okay.

23 A Up here. There you go.

24 Q Okay. And three doses of DTaP, right?

25 A Excuse me, if you're asking me what I would give on a given

1 day, I don't think it is correct to put up three different
2 doses of Hepatitis B.

3 THE COURT: I would agree.

4 MR. SIRI: I am not --

5 THE COURT: I mean I -- I know it's for
6 effect, but it's -- it's not going to help me, it's only
7 going to mean to confuse. She doesn't support giving a
8 child three vaccinations of the same --

9 MR. SIRI: I'm not asking about that at all,
10 your Honor.

11 THE COURT: Okay. So --

12 MR. SIRI: I'm asking just -- I want to
13 understand the total number of doses that she's saying a two
14 and a half year old child should receive so we can --

15 THE COURT: You've -- you have established
16 that --

17 MR. SIRI: Okay.

18 THE COURT: -- already. And you're asking to
19 do the demonstrative --

20 MR. SIRI: So we can keep track as we go
21 along.

22 THE COURT: Well no, I think what you're
23 trying to do is put a bunch of stickers up there to show me
24 how many in total. You don't need to do that. And so what
25 she's saying is she wouldn't do it all at once. So put one

1 up there. How's that? And then if you want to do three
2 different times of how many she'll receive each time, that
3 would -- that's -- that's fine.

4 MR. SIRI: (Multiple speakers).

5 THE COURT: I don't think you need that, but
6 if that's important to you, then you go ahead and do it.

7 MR. SIRI: May I do it just like that, your
8 Honor, so we know that --

9 THE COURT: Let's -- let's be accurate.

10 MR. SIRI: We can keep track that it's three
11 doses one time?

12 THE COURT: One. You could put one up there
13 at once because that's what she's testifying to. That's
14 what she's comfortable with and you're using her -- her
15 testimony to do your display.

16 MR. SIRI: But she said that the child would
17 receive three Hepatitis B doses, your Honor.

18 THE COURT: Not at once.

19 MR. SIRI: I'm -- it's not -- I'm -- we
20 obviously can't put them all in the same spot.

21 THE COURT: You're right.

22 MR. SIRI: So -- and -- and it's not supposed
23 to represent at one time. I'm -- I'm making it explicitly
24 clear this is not about one time. This is just so we can
25 keep track of all doses that she believes a two and a half

1 year old should receive could be over -- you know, it's
2 probably going to take what --

3 THE COURT: I'm -- I'm not going to argue
4 with you anymore about this.

5 MR. SIRI: Yes, your Honor.

6 THE COURT: Okay.

7 MR. SIRI: Thank you.

8 THE COURT: Thank you.

9 THE WITNESS: I have a suggestion.

10 BY MR. SIRI:

11 Q Wonderful.

12 A Because it will be impressive enough, the fact that this
13 child has not gotten any immunizations previously --

14 Q Yes.

15 A -- means that their child would have to be tortured with six
16 different injections at the same time. And if you would
17 like to put those six up at the one visit, at her first
18 visit to get all these immunizations I'm happy to do that.

19 Q Dr. Holtrop, at two months of age how many injections does a
20 child receive?

21 A Typically if -- if we use a combination vaccine it is
22 typically the DTaP, Polio, Hepatitis B, then it is the
23 pneumococcal and it is -- usually can get by with three.
24 And then the oral rotavirus.

25 Q And why can't you use the combination vaccine in this

1 situation, Dr. Holtrop?

2 THE COURT: There's no way we're going to get
3 that on --

4 THE WITNESS: I'm saying with the --

5 THE COURT: Stop, stop, stop. When I talk
6 everyone has to stop talking.

7 Counsel, you can't lean down, crouch down
8 with your voice directed towards a box and expect it to be
9 on the record.

10 MR. SIRI: Thank you, your Honor.

11 BY MR. SIRI:

12 Q And why can't you use a combination vaccine in this
13 instance?

14 A You can use a combination vaccine. I am telling you that if
15 you use a combination -- the combination vaccines that are
16 available. She will still need six immunizations all at
17 once.

18 Q Okay. And what would those six be all at once?

19 A It would be a combination of the DTaP, polio, Hepatitis B if
20 you wanted to use that one. There's another -- another
21 combination one that you could also use. It would be the
22 measles, mumps, rubella and chickenpox vaccine, that is a
23 combination one.

24 Q MMRV, right?

25 A MMRV.

1 Q Okay.

2 A And that is it in terms of combination vaccines that are
3 available.

4 Q And then what would the other four be, you said she needs
5 six?

6 A The pneumococcal, she will need the HIB, unless she uses a
7 different -- so backtrack a little bit. There is a
8 combination Pediarix which is DTaP, polio and Hepatitis B.
9 There's also a pentacel, which is DTaP, polio and HIB. In
10 which case you would have to give the Hepatitis B
11 separately.

12 Q Mm-hmm.

13 A There is a combination Hepatitis A and B called twinrix. So
14 if you had that available -- the problem is you can't use
15 that until age eighteen, so we haven't used that. So your
16 Hepatitis A is separate, your pneumococcal is separate, your
17 HIB is potentially separate, if not the HIB then the
18 Hepatitis B is separate.

19 Q So that's five shots, right?

20 A See if I left anything out. Oh, the flu vaccine.

21 Q Okay. So a child goes in for their six months shot, which
22 of these would they not need to receive that you just
23 listed?

24 A It -- it depends completely on which one of these
25 combination vaccines he or she received in the first --

1 THE COURT: Wait, I don't -- there might be a
2 better way to say it.

3 MR. SIRI: Yeah.

4 THE COURT: Which --

5 MR. SIRI: I'll rephrase.

6 THE COURT: Okay.

7 MR. SIRI: I'll rephrase, your Honor. I'm
8 sorry.

9 THE COURT: Just to be clear. That's all
10 right.

11 BY MR. SIRI:

12 Q A child at their six months shot, they would receive DTaP,
13 correct?

14 A Correct.

15 Q They would receive polio?

16 A Correct.

17 Q Hep B?

18 A Correct.

19 Q Pneumococcal?

20 A Yes.

21 Q HIB?

22 A It depends. It depends on the product that was used in the
23 first two sessions.

24 Q Same -- same issue with catching up with a two and a half
25 year old, right? Same -- same choice?

1 A Same choice, yeah. Yeah, in this case, yes.

2 Q All right. And --

3 A No, no, remember, if she's over fifteen months then she only
4 needs one dose of HIB and she needs one dose of pneumococcal
5 vaccine.

6 Q So less, okay good.

7 A So it would be less.

8 Q And -- and Hepatitis A at six months?

9 A At six months after the first -- if she -- well wait a
10 minute. At six months old you don't get the Hepatitis A,
11 you get it at twelve months.

12 Q Okay. So it's -- so six vaccines at two and a half is
13 torture. And I -- excuse me, at two and a half years of age
14 you're saying getting six vaccines is torture, but at six
15 months old would have to receive, we just counted one, two,
16 three, four, five vaccines, correct?

17 A Okay.

18 THE COURT: Are we talking about --

19 THE WITNESS: You've got me so confused at
20 this point --

21 THE COURT: Hold -- hold on.

22 Are we talking about pokes or vaccines, some
23 of them are combinations, correct?

24 MR. SIRI: I think we're talking about
25 injections, number of actual injections.

1 THE COURT: Right. So she's saying --

2 Your testimony was you think it's torture to
3 do that to a two and a half year old to have six different
4 injections at once?

5 THE WITNESS: It is a balance between whether
6 you do it and cause the pain versus you don't do it and then
7 put this child at risk. And typically we will go ahead and
8 do it and I have done it.

9 THE COURT: Okay.

10 BY MR. SIRI:

11 Q And how many pokes would there be at six months of age in a
12 routine check up during flu season?

13 A In a routine six month old?

14 Q Mm-hmm.

15 A Depending on how many -- what product they got at the two
16 month and at the four month visit it -- it isn't relevant
17 for this child.

18 Q I'm asking how many pokes, Dr. Holtrop?

19 A It depends on whether she got the combination that had the
20 HIB in it that isn't required at six months or if she got
21 the one that is required at six months. There are two
22 different HIB products and one of them is given -- the ped
23 vax is given at two months, four months and then at twelve
24 months, whereas the other two products are given at two
25 months, four months, six months and then at twelve to

1 fifteen months.

2 Q So how many pokes, Dr. Holtrop, at six months?

3 A Either two or three.

4 Q And what would the three be?

5 THE COURT: She just testified to that.

6 MR. SIRI: I -- I -- I'm not clear what the
7 three would be, your Honor.

8 THE COURT: I know and it's because you're
9 talking to your co-counsel and getting other things out of
10 boxes. So if she states it one more time please write it
11 down and listen to it so we don't have to do this over and
12 over again.

13 MR. SIRI: Absolutely, your Honor.

14 THE WITNESS: Okay. On the assumption that
15 at two months and at four months she received the Pediarix
16 vaccine, which is the DTaP, Hepatitis B and polio, she would
17 then at the two month visit also have received the
18 pneumococcal vaccine as well as the HIB vaccine and the oral
19 rotavirus vaccine. But we can skip the oral one because
20 that's not necessary.

21 At four months she would have gotten DTA --
22 she would have gotten the Pediarix again, even though the
23 Hepatitis B is not needed. Since she started with the
24 Pediarix we would have given the Pediarix at the four month
25 visit, so she would get the same thing all over again.

1 And then if she -- if the -- the HIB vaccine
2 that she received at two months and at four months was the
3 ped vax, at the six month visit she would get the Pediarix,
4 DTaP, Hepatitis B and polio. She would get the -- the
5 pneumococcal vaccine and that would be it.

6 Q Flu vaccine if it was in season, right?

7 A If it was in season, correct. And that's the earliest that
8 she can get the flu vaccine at six months.

9 Q Who manufacturers the DTaP vaccine?

10 A Well if you're looking at the combination vaccine one of
11 them is made by Glaxo, Smith, Kline, another one of them is
12 made by Sanofi.

13 Q And who manufactures the HIB vaccine?

14 A Hold on a minute. Okay, yeah. And those -- and there are
15 two versions of the DTaP that's not a combination vaccine,
16 one made by Sanofi and the other by Glaxo, Smith, Kline.
17 HIB is made by Sanofi, Glaxo, Smith, Kline and then Merck
18 makes the one that's the -- the -- where you only need the
19 two doses in the first six months.

20 Q And who makes PCV 13?

21 A PCV 13 is made by Phizer.

22 Q And the inactivated polio vaccine, who manufactures that?

23 A Sanofi.

24 Q Okay. And who manufactures a flu vaccine that would be
25 appropriate for a two year old to receive?

1 A Okay. So the one that is appropriate -- there's one put out
2 by Glaxo, Smith, Kline, there's one put out by Sanofi.

3 Q And the MMR vaccine, who manufactures that?

4 A Merck.

5 Q Who manufactures the Varicella vaccine?

6 A Merck.

7 Q And who manufactures the Hepatitis A vaccines?

8 A There's one put out by Glaxo, Smith, Kline and another one
9 put out by Merck.

10 Q Is it okay to refer to Glaxo, Smith, Kline as GSK today?

11 A Correct.

12 Q Great. So every vaccine that the CDC -- every vaccine that
13 the CDC recommends that you're saying a two and a half year
14 old should be administered was produced by either Merck,
15 Sanofi, GSK or Phizer, correct?

16 A Correct.

17 Q And the number of vaccines recommended for children by age
18 two has more than doubled since the 1980's, correct?

19 A Correct.

20 Q Okay. Are you aware that Merck's total revenue from vaccine
21 sales in 2016 was over five point seven billion dollars?

22 A No.

23 Q Are you aware that Sanofi's total revenue from vaccine sales
24 in 2016 was over four point five billion dollars?

25 A No.

1 Q Are you aware that GSK's total revenue from vaccine sales in
2 2016 was over six point four billion dollars?
3 A No.
4 Q Are you aware that Pfizer's total revenue from vaccine sales
5 in 2016 was over six billion dollars?
6 A No.
7 Q Are you familiar with Dr. Stanley Plotkin?
8 A I've heard the name, yes.
9 Q Okay. How are you familiar with him?
10 A He's -- he's mentioned in vaccine literature.
11 Q And what literature is that?
12 A If I'm not mistaken he is a member of the American Academy
13 of Pediatrics and has done -- I -- I -- I know the name.
14 Q Do you know anything about him?
15 A No.
16 Q Okay. Are you aware that he was deposed as an expert for
17 the defendant in this action?
18 A No.
19 Q Are you familiar with the textbook used in medical schools
20 regarding vaccines?
21 A There is no one textbook used in medical school for
22 vaccines.
23 Q Okay. What are there -- what are the textbooks used?
24 A Currently in medical school what is used is basically
25 resources that are published online by reputable sources.

1 It's not a set textbook.

2 Q Someone told me there were multiple textbooks. Is there --
3 is there a textbook regarding vaccinology that you're aware
4 of?

5 A What I say is there is not one textbook that we ever used in
6 medical school when I was in medical school. And now even
7 more so folks aren't using textbooks and many of us have
8 actually gotten rid of textbooks because it is primarily
9 stuff that is available online.

10 Q Isn't it true that the American Academy of Pediatrics
11 foresees and relies upon millions of dollars of donations
12 from pharmaceutical companies, including Pfizer, Merck,
13 Glaxo -- GSK and Sanofi?

14 A What I can tell you is that the American Academy of
15 Pediatrics very carefully reviews whether the donations that
16 they receive from any source as to potential conflicts of
17 interest.

18 MR. SIRI: Your Honor, I move to strike the
19 answer as non responsive.

20 THE COURT: I'm not going to strike the
21 answer.

22 MR. SIRI: Okay.

23 BY MR. SIRI:

24 Q I'll ask it again. Isn't it true that the AAP receives --
25 the American Academy of Pediatrics foresees and relies upon

1 millions of dollars of donations from pharmaceutical
2 companies, including the four major vaccine manufacturers
3 that we just went through?

4 A I have no idea.

5 Q Would you consider information on the American Academy of
6 Pediatrics web site to be a reliable authority?

7 A I do.

8 Q Okay. And would you consider the -- a -- the annual
9 American Academy of Pediatrics Giving Report to be a
10 reliable authority?

11 A Are you referring to their form 990?

12 Q You said that their publications are a reliable authority.

13 MR. SIRI: So, your Honor, may I approach?

14 THE COURT: Well she asked you a question to
15 try to clear up what your question was. So I --

16 MR. SIRI: Sure.

17 BY MR. SIRI:

18 Q Dr. Holtrop, what was that?

19 A Are you referring to their form 990?

20 Q No, I'm not. I'm referring to a document called Stepping
21 Forward 2016 Annual Giving Report American Academy of
22 Pediatrics.

23 A I haven't looked at it.

24 Q Well you would consider -- if it was published by the
25 American Academy of Pediatrics you would consider it a

1 reliable authority?

2 A I would.

3 MR. SIRI: May I approach, your Honor?

4 THE COURT: You may.

5 MR. SIRI: Thank you, your Honor.

6 BY MR. SIRI:

7 Q Would you please turn to the second to last page. The
8 second to the last --

9 A Yes, yes, yes, yes.

10 Q Take your time please.

11 A Yes, go ahead.

12 Q Let me know when you're at the second to last page.

13 A Okay.

14 Q Thank you. In the first column which lists the largest
15 corporate and foundation giving -- foundation donors,
16 correct?

17 A Correct.

18 Q Okay. Do you see any -- do you see any companies listed
19 there or foundations that either manufacture vaccines or
20 promote vaccination?

21 A Merck is listed, Pfizer is listed.

22 Q Are you -- are you aware that Nestle --

23 A Sanofi is listed. I --

24 Q Okay. Are you aware that Astrazeneca is involved in the
25 vaccine development?

1 A Yes.

2 Q And Johnson and Johnson is attempting to?

3 A I don't -- I'm not aware of that, no.

4 Q Not aware. And -- and foundations like the Bill and Melinda
5 Gates Foundation, they're also involved in promoting
6 vaccines, correct?

7 A Correct.

8 Q And the Connolly and Hilton Foundation?

9 A I'm not familiar with the foundation, but that's possible.

10 Q And Nestle Nutrition is also involved in promoting vaccines,
11 correct, vaccination?

12 A I think of them more as a nutritional company.

13 Q Mostly, but yes. Okay. Do you -- do you see any companies
14 in that column called the Vaccine Choice Coalition?

15 A I do not see it, no.

16 Q How about a -- how about a -- do you see the Physician's for
17 Informed Consent listed?

18 A No.

19 Q How about the Faxon Injury Bar Association, are they listed?

20 A No.

21 Q Isn't it true that a significant portion of the American
22 Medical Association's revenue also comes from pharmaceutical
23 companies?

24 A I have -- I have no idea.

25 Q The American Medical Academy publishes numerous journals,

1 correct?

2 A Correct.

3 Q Okay. Over a dozen journals, does that sound about right to
4 you?

5 A I don't know.

6 Q Okay. Are you aware that pharmaceutical companies are the
7 primary advertisers in those journals?

8 A I haven't looked at it. I could see that it might be true.

9 Q Isn't it true that general revenue from pharmaceutical
10 companies has nearly doubled the amount the American Academy
11 of -- American Medical Association collects in membership
12 dues?

13 A I don't know.

14 Q Okay. Can you name me a single group involved with
15 promoting vaccines that does not receive any funding from
16 any pharmaceutical company?

17 A A single group that is involved in promoting vaccine that is
18 not -- well Southeast Michigan Health Association, they're
19 involved in -- in trying to promote immunizations in
20 Southeast Michigan and do not receive any donations from a
21 pharmaceutical company.

22 Q What's the name of the association?

23 A MHA, Southeast Michigan Health Association. They happen to
24 be our fiduciary for the Wayne Children's Healthcare Access
25 Program.

1 Q Can you name me any other that you're aware of that does not
2 receive any funding from pharmaceutical companies?

3 A I don't know this for a fact, but I would think that the
4 Michigan Department of Health and Human Services does not
5 receive donations from pharmaceutical companies.

6 Q Do these organizations receive money from the Centers for
7 Disease Control?

8 A They do.

9 Q Okay. Are you aware that the Center for Disease Control
10 receives money directly and indirectly from pharmaceutical
11 companies?

12 A I am not. I am not involved in that, no.

13 Q I'm sorry I did not hear you.

14 A I'm not involved in that, I wouldn't know.

15 Q So they may receive money from --

16 A I don't know.

17 Q But you don't know?

18 A I don't know.

19 THE COURT: She doesn't know.

20 MR. SIRI: Your Honor, I'm just -- I just
21 want to make sure that that's --

22 THE COURT: I think it's clear, she does not
23 know.

24 Let's take a brief break. Ten minutes
25 please.

1 THE CLERK: All rise.

2 (At 10:45:01 a.m., court recessed)

3 (At 11:03:04 a.m., court reconvened)

4 THE CLERK: Your Honor, now recalling Schmitt
5 versus Schmitt, case 2015-831539-DM.

6 THE COURT: All right. Let's proceed.

7 BY MR. SIRI:

8 Q All right. Dr. Holtrop, earlier you stated that you could
9 identify two organizations that did not receive any money
10 from pharmaceutical companies. One was the Southeast
11 Michigan Health Association, the other one was the Michigan
12 Department of Health and Human Services.

13 You did state that you believe they are
14 receiving -- that they do both receive money from the Center
15 for Disease Control. And do you consider the British
16 Medical Journal a reliable authority?

17 A Generally, yes.

18 MR. SIRI: May I approach, your Honor?

19 THE COURT: Yes.

20 BY MR. SIRI:

21 Q Would you please read the title of the article?

22 A Centers for Disease Control and Prevention: Protecting the
23 Private Good?

24 A And can you please read the first three paragraphs
25 highlighted in yellow?

1 A After -- highlighted in yellow?

2 Q Yes.

3 A The Centers for Disease Control and Prevention includes the
4 following disclaimer with its recommendations. CDC, Our
5 planner and our content experts wish to disclose they have
6 no financial interest or other relationships with the
7 manufacturers of commercial products. CDC does not accept
8 commercial support. The CDC's image as an independent
9 watchdog over the public health has given it enormous
10 prestige and its recommendations are occasionally enforced
11 by law.

12 Despite the agency's disclaimer the CDC does
13 receive millions of dollars in industry gifts and funding,
14 both directly and indirectly and several recent CDC actions
15 and recommendations have raised questions about the science
16 it cites, the clinical guidelines it promotes and the money
17 it is taking.

18 Q And this was written by the associate editor at the British
19 Medical Journal USA, correct?

20 A Correct.

21 Q Okay. Are you aware that the federal government's Vaccine
22 and Injury Compensation Program has paid out over three
23 point five billion dollars for vaccine injuries?

24 A I am not.

25 Q Are you aware that compensation for death and for pain and

1 suffering paid by the Vaccine Court is limited to two
2 hundred and fifty thousand dollars?

3 A I am not.

4 Q Does vaccination create a systemic change in the body?

5 A Does vaccination create a systemic change in the body?

6 Q Maybe I can clarify. Meaning just because you get a vaccine
7 in one part of your body it is supposed to confer for most
8 of your body, correct?

9 A Correct.

10 Q And the systemic body change caused by vaccination is
11 supposed to last years if not a lifetime, correct?

12 A No, incorrect.

13 Q Okay. Tell me why?

14 A Because some vaccines will only be effective for a certain
15 period of time, which is why we have to give booster doses.
16 And this is particularly true of the flu vaccine, but it is
17 also true in very young children, in infants, which is why
18 we have to give multiple doses, especially I mentioned the
19 HIB vaccine.

20 We only give one after fifteen months of age
21 if they haven't gotten any previous ones. We have to give
22 multiple ones when they're younger because it doesn't confer
23 adequate protection in the first few months of life. The
24 other thing is that we are learning as we go forward how
25 long how effective a vaccine is. Not every vaccine is a

1 hundred -- most vaccines are not a hundred percent effective
2 and therefore, many of them require booster doses.

3 Q And -- and which of those require booster doses -- for a
4 child that receives all of the recommended vaccines in
5 childhood?

6 A Mm-hmm.

7 Q Which diseases for which they've received vaccination do
8 they then also need to get a booster in adulthood because
9 the vaccine is not continuing to provide immunity, you know,
10 through the rest of their life?

11 A Well one of the biggies is the tetanus and more recently
12 we've added on a whooping cough, which is included in the
13 tetanus booster. Your influenza vaccine is one that you're
14 supposed to get every year because we know the immunity
15 doesn't last and also there's changes in the virus and
16 therefore the -- the coverage is not the greatest.

17 As you get older you need further protection
18 against chickenpox and so it's recommended that you get the
19 zoster or shingles vaccine. And then there's a pneumococcal
20 vaccine that is also recommended in adulthood.

21 Q What about diphtheria, do you need to get boosters for
22 diphtheria as an adult?

23 A No. Well hold on, hold on, backtrack. There is a
24 diphtheria booster in your tetanus booster. So in
25 pediatrics we have the -- the DTP or DTaP vaccine has a

1 large D, which is diphtheria, large T and then a large P.
2 In adulthood it's the TdAP that's given, which is a large T,
3 but lower -- small d, lower case d to reflect that it's a --
4 it's not the same amount.

5 Q Less antigens, correct?

6 A Yeah, I -- I'm assuming it's less antigens.

7 Q You don't know why?

8 A I -- I don't know exactly what they put in it, no.

9 Q So adults need to get from what I'm hearing so far tetanus,
10 pertussis. Vaccination so that they can also have immunity
11 through adulthood, tetanus, pertussis, chickenpox,
12 pneumococcal. Isn't it also true that the CDC also
13 recommends that adults receive an MMR vaccine in adulthood
14 for measles, mumps and rubella?

15 A No, that's not correct. Unless you're not immune. If you
16 are pregnant and you have not -- if you are planning on
17 being pregnant and you have -- do not have enough immunity
18 to measles, mumps or particularly rubella they try -- you're
19 at risk of having a child and so they will -- you're asking
20 me about vaccines that are given in adulthood. I do not
21 provide care to adults, so I would have to look up some of
22 these recommendations.

23 Q You're not sure?

24 A I'm not sure.

25 Q Okay.

1 A But I do know that MMR is not routinely given in an -- in
2 adulthood. It is only given in certain situations,
3 particularly if you're planning on being pregnant I believe.

4 Q You consider the CDC -- I'm sorry. You consider the CDC --
5 well we've already went through that.

6 MR. SIRI: May I approach, your Honor?

7 THE COURT: Yes.

8 MR. SIRI: Thank you.

9 BY MR. SIRI:

10 Q Dr. Holtrop, what -- what are you looking at?

11 A The recommended immunization schedule for adults age
12 nineteen years or older.

13 Q And -- and this is published by the CDC, correct?

14 A Correct.

15 Q Can you go to page 2 please. Do you see the vaccines
16 highlighted in yellow are the ones that are recommended for
17 adults by the CDC, correct?

18 A Correct.

19 Q And --

20 MS. NIEUSMA: I'm going to object to this.
21 She's already indicated that she doesn't have the
22 familiarity with this. She's qualified as an expert in
23 pediatrics. Essentially, he could achieve the same effect
24 by asking me questions about this. It's not something that
25 she's an expert in or could offer any relevant testimony.

1 MR. SIRI: Your Honor, well the benefits of
2 vaccination are clearly at issue in this case. Dr. Holtrop
3 has testified about how long the immunity conferred by the
4 vaccines in childhood will last.

5 THE COURT: I think it's relevant.

6 MR. SIRI: That's relevant-

7 THE COURT: But -- but -- but to the extent
8 she says she's -- this isn't her area you have to accept
9 that answer and move on.

10 MR. SIRI: You know, I objected vigorously on
11 this area, but -- but fair enough, your Honor.

12 BY MR. SIRI:

13 Q So do you see -- I'm -- I'm almost done. Do you see that
14 MMR is a recommended vaccine during adulthood?

15 A Depending on indication. And the indication is if you did
16 not get immunized in childhood or if you were born -- as
17 well as if you were born 1957 or later and were not -- did
18 not get immunized in childhood.

19 Q Well --

20 A The point is, that if you were born before 1957 the
21 likelihood of you having had those three diseases was much,
22 much higher and therefore, if you -- if you are an adult and
23 you hadn't gotten immunized you probably weren't immune to
24 it and therefore you should get MMR.

25 Q Where does it say in this document that you should get the

1 MMR, but only if you did not receive the vaccines in
2 childhood?

3 A It says here, administer one dose of measles, mumps and
4 rubella vaccine to adults with no evidence of immunity to
5 measles, mumps or rubella. That is on --

6 Q Please continue reading to the next sentence?

7 A Evidence of immunity is born before 1957, documentation of
8 receipt of MMR and laboratory evidence of immunity or
9 disease.

10 Q Doesn't that mean -- when it says documentation of receipt
11 of MMR, doesn't that mean in adulthood?

12 A No, it means you have evidence of immunity if you received
13 your MMR in childhood.

14 Q Are you sure that's what it means?

15 A Yes.

16 Q Most drugs -- most drugs you administer are prescribed or
17 have been for your patients are approved by the FDA,
18 correct?

19 A Correct.

20 Q Prior to licensure drugs undergo clinical trials by their
21 manufacturers to ensure their safety, correct?

22 A Correct.

23 Q The safety review period often lasts for years, correct?

24 A (Inaudible).

25 THE COURT: You've got to watch that mic.

1 BY MR. SIRIS:

2 Q In these trials --

3 THE COURT: No, right in front of you in your
4 podium, if you touch the papers to that it makes a weird
5 noise.

6 MR. SIRI: I'm sorry.

7 THE COURT: That's okay.

8 MR. SIRI: I thought you -- I thought you
9 were reprimanding somebody else.

10 THE COURT: Nope, I wasn't -- I wasn't
11 reprimanding anyone, I was just reminding you.

12 MR. SIRI: I didn't take it that way. Okay.

13 BY MR. SIRI:

14 Q In these trials the rate of adverse reactions is compared
15 between an exposed and an unexposed group, correct?

16 A I haven't studied how these vaccine trials are done, so I
17 cannot comment on that.

18 Q Okay. But in these trials there's a control group?

19 A Typically, yes.

20 Q Okay. And the control group would receive a placebo,
21 correct?

22 A I cannot comment on it, I don't -- I do not know.

23 Q You're not familiar with the use of placebos in clinical
24 trials?

25 A I'm very much aware of the use of placebos in clinical

1 trials, but it is possible that the control group was a
2 group that just simply didn't get immunized.

3 Q So you can have a clinical trial in which one group is
4 receiving the vaccine and the other one, the control just
5 gets nothing?

6 A Correct.

7 Q So they -- they don't -- meaning they don't get a let's say
8 saline injection, they just get --

9 A Correct.

10 Q -- no vaccine? Okay. And that would be the control group?

11 A It could be the control group.

12 Q Mm-hmm.

13 A I do not know the specifics in these trials.

14 Q And -- and the reason you use a control group is so that you
15 compare the adverse reaction rate between the individuals
16 that get the vaccine and those that don't get the vaccine,
17 correct?

18 A I thought I wasn't listed as an expert in immunology?

19 Q You -- you -- well I tried to get -- I didn't -- I actually
20 never tried to limit you with regard to immunology. But
21 you've testified extensively about vaccines in your direct,
22 Dr. Holtrop, but I appreciate the comment.

23 Anyway, going back again. I'm asking you,
24 the -- the reason you compare individuals that receive the
25 vaccine, the subject group, with the control group that

1 don't is so that you can compare the adverse reaction rate
2 between the two groups, correct?

3 A Well you're looking at more than just the adverse reaction
4 rate.

5 Q Right, you're also looking at efficacy?

6 A Correct.

7 Q And efficacy means what?

8 A It's the primary reason you're doing -- you have a control
9 group.

10 Q Mm-hmm. And what is efficacy?

11 A Efficacy means that it does what you're wanting to set out
12 for it to do. In this case protect against the disease.

13 Q Right. So you would do -- so you would do this to compare
14 efficacy and safety?

15 A Correct.

16 Q You -- you -- when I -- and when I say this you understood
17 that to mean comparing those that received the vaccine with
18 those that don't, correct?

19 A I don't know how these trials were carried out so I cannot
20 speak to that.

21 Q Do you believe vaccines are safe?

22 A I do.

23 Q So earlier we discussed that there are two stand alone
24 Hepatitis B vaccines currently on the market, right, Engerix
25 B manufactured by GSK and Recombivax HB manufactured by

1 Merck, correct?

2 A Correct.

3 Q Okay. How long was the safety review period for each dose
4 of Recombivax HB in the pre-licensure clinical trial for
5 this vaccine?

6 A I have no idea.

7 Q Do you think there is more or less --(papers hitting
8 microphone)?

9 A I have no idea.

10 Q Do you think it was more or less than one year?

11 A I have no idea.

12 Q Okay. How many times have you administered that vaccine
13 approximately would you say?

14 A Hundreds.

15 Q And you have -- in the packaging we established earlier
16 there's a product insert, correct?

17 A Correct.

18 Q And in the product insert it will describe the clinical
19 trial experience for the vaccine, correct?

20 A Correct.

21 MR. SIRI: Your Honor, may I approach to
22 provide the witness with Exhibit I -- premarked as Exhibit
23 II and previously stipulated to for admission?

24 THE COURT: Yes.

25 MR. SIRI: And I move to admit it into

1 evidence.

2 (At 11:18:09 a.m., Plaintiff's Exhibit II was
3 offered)

4 THE COURT: And it's stipulated to?

5 MS. NIEUSMA: I believe it's already been
6 admitted.

7 THE COURT: All right.

8 MR. SIRI: Oh, again. I -- I just -- I have
9 it down as -- as not yet. So just for the sake of the
10 record to make sure.

11 THE COURT: Yeah, it's admitted.

12 (At 11:18:24 a.m., Plaintiff's Exhibit II was
13 admitted)

14 MR. SIRI: Thank you, your Honor, I
15 appreciate that.

16 BY MR. SIRI:

17 Q What is -- what did I just hand you, Dr. Holtrop?

18 A Highlights of prescribing information.

19 Q And this is the -- this is the package insert for the -- the
20 Recombivax HB, correct?

21 A It appears to be, yes.

22 Q And the clinical trial experience could be found in section
23 6.1, correct?

24 A Yes, correct.

25 Q If you turn to section 6.1 can you please tell me how long

1 the safety review period was for Recombivax HB in its pre
2 licensure clinical trials?

3 A Because clinical trials are conducted under widely varying
4 conditions adverse reaction rates observed in the clinical
5 trials of a vaccine cannot be directly compared to rates in
6 the clinical trials of another vaccine. It may not reflect
7 the rates observed in practice. In three clinical trials
8 434 doses of Recombivax were administered -- what -- what
9 exactly --

10 Q Please keep reading.

11 A Okay.

12 Q It's micrograms, MCG is micrograms.

13 A I know that, yes.

14 Q Okay.

15 A 434 doses of Recombivax HB 5 micrograms were administered to
16 147 healthy infants and children (up to ten years of age),
17 who were monitored for five days after each dose.

18 Q Okay.

19 A Injection site reactions and --

20 Q You can stop there.

21 A -- systemic adverse reactions were --

22 THE COURT: You can stop there.

23 BY MR. SIRI:

24 Q You can stop there please. Okay. So -- so the -- it says
25 that the -- the subjects in the clinical trial who received

1 the vaccine were monitored for five days after each dose,
2 correct?

3 A Correct.

4 Q Okay. Is five days long enough to detect an autoimmune
5 issue that arises after five days?

6 A Generally not, but there's also post marketing experience
7 that was monitored.

8 Q We'll -- we'll get to that. What I'm asking you right now,
9 before the vaccine is licensed and injected into millions of
10 children in this country I'm asking you, is five days long
11 enough to detect an autoimmune issue that arises after five
12 days?

13 A Sir, you are asking me things that are -- pertain to an
14 immunologist's expertise. This is not my area of expertise
15 and I'm going to make assumptions that they monitored for
16 autoimmune conditions for a length of time outside of the
17 five days when they were looking for immediate reactions.

18 Q But you don't know that, you're guessing?

19 A I do not know that.

20 Q You're guessing, correct?

21 A Correct.

22 Q Okay. And that's not listed in the product insert, is it?

23 A Have I not -- since I have not read this whole product
24 insert recently I cannot tell you.

25 Q But this has been in the box -- a copy of this has been in

1 the box of hundreds of doses of the same vaccine you've
2 given to children, right?

3 A Yes, correct.

4 Q Okay. So -- now I asked you earlier is five days long
5 enough to detect an autoimmune issue that arises after five
6 days. Are you aware that I asked Dr. Plotkin the exact same
7 question and he said no?

8 A I -- I'm not aware of --

9 MS. NIEUSMA: She's already established that
10 she doesn't have any knowledge --

11 THE COURT: Overruled.

12 Just answer it. Do you know if he said yes
13 or no?

14 THE WITNESS: No, I do not know.

15 THE COURT: Okay.

16 BY MR. SIRI:

17 Q Is five days long enough to detect any neurological
18 disorders that arose after the vaccine after five days?

19 A I would suggest that answer is probably no.

20 Q Okay.

21 THE COURT: You have to stop putting your
22 paper on that microphone. Yeah, okay.

23 MR. SIRI: I'm so sorry.

24 THE COURT: No problem.

25 BY MR. SIRI:

1 Q Are you -- and there was no control group in this clinical
2 trial, correct?

3 A I don't know. I did not study this carefully.

4 Q Are you aware that pursuant to federal regulations the
5 manufacturer needs to disclose its clinical trial experience
6 in its product insert?

7 A I know that there is some experience that is listed in the
8 product insert. It -- this is reviewed by the Food and Drug
9 Administration and it is their decision.

10 Q Right, they make sure it's accurate, right?

11 A I believe so.

12 Q All right. And so the FDA has reviewed this product insert
13 and they made sure it's accurate. Okay. And -- and -- and
14 there's no control group that's listed in section 6.1 which
15 is the clinical trial experience section, correct?

16 A Sir, I'm not sure that a package insert can appropriately be
17 used to describe all the studies that have been done to
18 ascertain whether a vaccine is safe.

19 Q Dr. Holtrop, can you please answer the question?

20 A I cannot answer the question.

21 Q You -- so you're not able to determine. Okay. All right.
22 You cannot or you don't want to look at --

23 A I can't.

24 Q -- section 6.1?

25 A I just -- I don't know if what is listed in section 6.1

1 truly reflects all the different studies that were done to
2 ascertain the safety of this product.

3 Q Before it was licensed?

4 A Before it was licensed. I have no idea.

5 Q Okay. Do you think that maybe there were other clinical
6 trials done?

7 A I have no idea.

8 Q You just -- you're just guessing?

9 A I don't know.

10 THE COURT: She doesn't know.

11 BY MR. SIRI:

12 Q In section 6.2 of the product insert, do you see that. Do
13 you see that it's labeled, Post Marketing Experience?

14 A Yes.

15 Q Okay. I -- I -- now in section 6.2 these are the adverse
16 reactions that have been reported to have occurred from this
17 vaccine, correct?

18 A Correct.

19 Q Okay. Can you please read the immune system disorders that
20 are listed?

21 A Hypersensitivity reactions including
22 anaphylactic/anaphylactoid reactions, broncho spasm and
23 urticaria have been reported within the first few hours
24 after vaccination. An apparent hypersensitivity syndrome
25 (serum sickness-like) of delayed onset has been reported

1 days to weeks after vaccination, including
2 arthralgia/arthritis (usually transient), fever and
3 dermatologic reactions such as urticaria, erythema
4 multiforme, ecchymoses and erythema nodosum. And in
5 parentheses (see warnings and precautions).

6 Autoimmune diseases including systemic lupus
7 erythematosus, lupus-like syndrome, vasculitis and
8 polyarteritis nodosa have also been reported.

9 Q We'll read one more and then -- can you read the nervous
10 system disorders that have been reported after this vaccine?

11 A Guillain-Barre syndrome, multiple sclerosis, exacerbation of
12 multiple sclerosis, myelitis including transverse myelitis,
13 seizure, febrile seizure, peripheral neuropathy including
14 Bell's Palsy, radiculopathy, herpes zoster, migraine, muscle
15 weakness, hypesthesia and encephalitis.

16 Q Now because these are just reported after it's licensed
17 without a control group you can't determine whether they're
18 causally related to the vaccine, correct?

19 A That is correct as is stated up above that paragraph.

20 Q That's right. Because -- because in order to establish
21 whether any of these events are causally related to
22 Hepatitis B vaccine you need to conduct a randomized placebo
23 control study, correct?

24 A I would assume so, yes.

25 Q Are you aware that I asked Dr. Plotkin this question and he

1 said yes?

2 A I am not aware of what Dr. Plotkin said.

3 Q But that study was not done for this Hepatitis vaccine
4 before it was licensed, correct?

5 A I don't know.

6 Q Ate you aware that I asked Dr. Plotkin this precise question
7 and he said no?

8 A I am not aware of that.

9 Q Are you aware that Dr. Plotkin has developed numerous
10 vaccines?

11 A I am not aware of that.

12 Q Have you developed any vaccines?

13 A No.

14 Q Ate you aware that Dr. Plotkin has over seven hundred
15 publications mostly involving vaccination?

16 A I am not.

17 Q Do you have any publications that peer reviewed involving
18 vaccinations?

19 A No.

20 Q Okay. And isn't it true that no such clinical trial has
21 been done after the vaccine was licensed?

22 A I do not know.

23 Q And without that -- strike that. Isn't it true that there
24 has not been any clinical trial done for this vaccine
25 comparing vaccinated and unvaccinated children after it was

1 licensed?

2 A I do not know.

3 Q Okay. And you've administered this vaccine to hundreds of
4 children, correct?

5 A Correct.

6 Q Let's look at the second stand alone Hepatitis B vaccine on
7 the market you noted earlier which is Engerix B. And this
8 is another vaccine I believe you indicated you've
9 administered hundreds of times in your career?

10 A To clarify I am not sure which product we used.

11 Q Okay.

12 A I'm going to make the assumption that at some point in my
13 career I've used both vaccines.

14 Q I'm assuming you're not aware of how long the safety period
15 was for Engerix B in its pre licensure clinical trial?

16 A Correct.

17 MR. SIRI: Your Honor, may I approach to
18 supply the witness with what's been previously marked
19 Exhibit JJ and stipulated to?

20 THE COURT: Yes.

21 MR. SIRI: As well as move for its admission
22 into evidence.

23 (At 11:28:45 a.m., Plaintiff's Exhibit JJ was
24 offered)

25 THE COURT: Yes, JJ is admitted.

1 I'm assuming you stipulated to that?

2 MS. NIEUSMA: Yes.

3 THE COURT: Okay.

4 (At 11:28:51 a.m., Plaintiff's Exhibit JJ is
5 admitted)

6 THE COURT: Okay.

7 BY MR. SIRI:

8 Q Could you -- this is the product insert for Engerix B,
9 correct?

10 A Correct.

11 Q This is the second stand alone Hepatitis B vaccine?

12 A Correct.

13 Q Okay. That's given to children?

14 A Correct.

15 Q Thank you. Can you turn to section 6.1 please. That's --
16 that section is titled, Clinical Trials Experience, correct?

17 A Correct.

18 Q Can you please go to the top of page 7 and kindly read the
19 second sentence?

20 A All subjects were monitored for four days post
21 administration.

22 Q Okay. So in the pre licensure clinical trial for this
23 vaccine the safety review period was four days, correct?

24 A Yes.

25 Q Can you please turn to section 6.2 which is the post

1 marketing experience. And can you please just read the
2 nervous system disorders that have been reported to have
3 occurred from administration of this vaccine?

4 A Encephalitis, encephalopathy, migraine, multiple sclerosis,
5 neuritis, neuropathy including hypoesthesia, paresthesia,
6 Guillain-Barre's syndrome and Bell's Palsy, optic neuritis,
7 paralysis, paresis, seizures, syncope, transverse myelitis.

8 Q Can you please turn to page -- and -- and again, we -- we
9 don't know -- well let's just turn to page 11 please. You
10 can see in section 4 -- section 14 describes the efficacy
11 review period, correct?

12 A Mm-hmm.

13 Q Okay. And that's where they look to see, does the vaccine
14 confer immunity, right?

15 A Mm-hmm.

16 Q Okay. Under 14.1 -- I'm sorry. If you take a look through
17 these various clinical trials that were done for efficacy
18 you can see that they followed the recipients for twelve
19 months and in the case of homosexual men up to eighteen
20 months, correct?

21 A Correct.

22 Q So efficacy was reviewed for up to eighteen months, but the
23 safety review period was for four days, correct?

24 A Correct.

25 Q Okay. There's only one stand alone polio vaccine currently

1 licensed in the United States, correct?

2 A Correct.

3 Q I'm assuming you don't know the length of the safety review
4 period for IPOL prior to its licensure before it was
5 administered to millions?

6 A No.

7 MR. SIRI: Your Honor, may I approach?

8 THE COURT: Yes.

9 MR. SIRI: I'm handing the witness what's
10 previously marked as Exhibit KK, which has been stipulated
11 to and which I move to -- for admission into evidence.

12 (At 11:32:58 a.m., Plaintiff's Exhibit KK was
13 offered)

14 THE COURT: KK is admitted.

15 (At 11:33:00 a.m., Plaintiff's Exhibit KK was
16 admitted)

17 BY MR. SIRI:

18 Q Can you kindly turn to page 116. This one is actually
19 numbered correctly.

20 A I'm sorry, which page?

21 Q I apologize. This one is numbered a little differently.
22 Can you please go to page -- page 5 please.

23 MR. SIRI: My apologies, your Honor. The
24 version I have is numbered from -- that I have from the web
25 site has different numbering than this one and my apologies

1 for the delay.

2 BY MR. SIRI:

3 Q Okay. Page 14 please. Do you see that it provides that the
4 pretrial clinical reviewed adverse reactions for forty-eight
5 hours post-vaccination?

6 A Correct.

7 Q Okay. And the -- and the group that got the polio -- the
8 IPOL also received the DTP vaccine at the same time in this
9 clinical trial for safety, correct?

10 A Correct.

11 Q And the control group in this trial was -- received the DTP
12 vaccine, correct?

13 A I'm not sure where the control group is listed here.

14 Q If you look at the top of page 16, table 2, it will describe
15 the control group and the subject group. And tell me if
16 it's accurate that the subject group received IPOL plus DTP
17 and that the control group, instead of receiving a placebo
18 or nothing, like at least with the Hepatitis B trials,
19 actually, with those -- strike that. There was no control
20 group. The control group here received the DTP vaccine,
21 correct?

22 A I'm sorry, I'm not sure I know where you're looking.

23 Q At the top of page 16.

24 A It says table 2 percentage of infants presenting with local
25 or systemic reactions at six, twenty-four and forty-eight

1 hours of immunizations with IPOL vaccine administered
2 intramuscularly concomitantly at separate sites with Sanofi
3 Whole Cell DTP vaccine at two and four months of age and
4 with Sanofi Acellular Pertussis Vaccine Tripedia at eighteen
5 months of age. It doesn't say anything about -- (inaudible-
6 papers hit microphone)-- group here.

7 Q Go to page 15, which will now further clarify that.

8 A The last paragraph on page 15 reads, four additional U.S.
9 studies using IPOL vaccine in more than one thousand, three
10 hundred infants between two to eighteen months of age
11 administered with DTP at the same time at separate sites or
12 combined have demonstrated that local and systemic reactions
13 were similar when DTP was given alone.

14 Q So they compared one group getting DTP plus IPOL, another
15 group getting DTP?

16 A That would be correct by inference.

17 Q And -- and DTP was the vaccine you mentioned earlier which
18 was withdrawn from the market for safety concerns, correct?

19 A Correct.

20 Q Okay. There's only one MMR vaccine available in the United
21 States and it's made by Merck, correct?

22 A Correct.

23 Q I assume you don't know how long the safety review period
24 was for each dose then?

25 A Correct.

1 Q Are you aware that there was no clinical trial prior to the
2 licensure of the MMR vaccine?

3 A I am not aware.

4 MR. SIRI: May I approach, your Honor?

5 THE COURT: Yes.

6 BY MR. SIRI:

7 Q I'm handing you what was previously marked as Exhibit LL.

8 MR. SIRI: It's been stipulated to and I'd
9 move for its admission into evidence.

10 (At 11:38:40 a.m., Plaintiff's Exhibit LL was
11 offered)

12 THE COURT: Is that correct?

13 MS. NIEUSMA: Yes.

14 THE COURT: LL is admitted.

15 (At 11:38:43 a.m., Plaintiff's Exhibit LL was
16 admitted)

17 BY MR. SIRI:

18 Q If you go to section 6.1 of the insert, which would normally
19 have the pre -- which would have the pre licensure clinical
20 trial data. Can you find a section 6.1 in this insert?

21 A There is no section 6.1, these are not numbered.

22 MS. RUBY: Your Honor, were they able to find
23 the exhibits that were here from last time that were
24 previously admitted? May I approach?

25 THE COURT: Yes.

1 BY MR. SIRI:

2 Q If you go to section -- if you go to page 6 please, adverse
3 reactions.

4 A Page 5?

5 Q Page 6 please, adverse reactions.

6 A Adverse reactions are on page 5 and on 6.

7 Q Precaution is on 5 I believe, but I'd like you -- if you
8 could just focus on page 6 that would be great.

9 A Okay.

10 Q So page 5 has the precautions which start from page 4, which
11 are a separate issue. And then on page 6 has a section
12 entitled, Adverse Reactions, correct?

13 A Correct.

14 Q And it runs until page 8, correct?

15 A Correct.

16 Q And it reports all types of adverse reactions after
17 licensure that people have reported occurring from the MMR
18 vaccine, correct?

19 A Correct.

20 Q Okay. And -- and -- and -- and you're aware that over time
21 as more -- as there is a sufficient number of adverse
22 reactions of a specific adverse reaction are received the
23 insert is amended to continue to add more adverse reactions
24 that -- that pass a certain threshold?

25 A Yes.

1 Q Okay.

2 MR. SIRI: Your Honor, may I approach?

3 THE COURT: Yes.

4 MR. SIRI: I'm handing the exhibit which has
5 been previously marked as Exhibit EEEE and as well as
6 previously stipulated to and I'd move for its admission.

7 (At 11:41:11 a.m., Plaintiff's Exhibit EEEE
8 was offered)

9 THE COURT: Triple E?

10 MR. SIRI: Quadruple E.

11 THE COURT: Oh. Is that stipulated to?

12 MS. NIEUSMA: I am looking right now and I
13 don't see that it is. But give me thirty seconds to look at
14 it and I'll let you know if I have any problem with it.

15 THE COURT: Okay.

16 MS. NIEUSMA: I am showing EEEE as a
17 supplement to approval from the FDA.

18 MR. SIRI: That's right.

19 MS. NIEUSMA: So no, it's correspondence. I
20 would say that it's hearsay that needs to be properly
21 admitted.

22 MR. SIRI: Your Honor, we've provided
23 opposing counsel a list of all the exhibits we understood we
24 -- that we're previously stipulated to on February 19th.
25 Came here today, I never received any response that that --

1 those were not stipulated to. And --

2 THE COURT: I don't know what agreement you
3 had with counsel. I don't have anything that was put on the
4 record in terms of what exhibits were stipulated to. But if
5 you want to reserve on that so you can have a further
6 discussion or...

7 MR. SIRI: Can I proceed with it and we can
8 reserve argument --

9 THE COURT: Sure.

10 MR. SIRI: -- whether it gets admitted later?

11 THE COURT: Sure.

12 MR. SIRI: Thank you.

13 BY MR. SIRI:

14 Q So if you take a look at Exhibit EEEE, is this an approval
15 letter from the Federal Drug Administration?

16 A It's a supplemental approval.

17 Q All right. And it's to amend the product insert for the
18 measles, mumps, rubella vaccine, correct?

19 A Correct.

20 Q That's the document we were just looking at, correct?

21 A Correct.

22 Q And -- and what did they amend to add to the adverse events
23 list?

24 A To add the terms, Henoch-Schonlein purpua and acute
25 hemorrhagic edema of infancy to the adverse reaction section

1 based on post marketing reports.

2 Q Okay. And what are those?

3 A What are those two conditions?

4 Q Yeah.

5 A Those are conditions that -- Henoch-Schonlein purpua is a
6 condition that gives you bad rash, can cause kidney
7 problems. Acute hemorrhagic edema of infancy similarly.

8 MR. SIRI: I've got one more exhibit just
9 like this, another supplemental approval. I'm assuming it
10 will be the same objection. And I'm -- and I'll -- and I'll
11 have basically the same line of questioning. Can I present
12 it to the witness?

13 THE COURT: Counsel?

14 MR. SIRI: And is there an argument?

15 THE COURT: Same objection?

16 MS. NIEUSMA: Preserve objection, this is
17 correspondence, not a government -- (multiple speakers).

18 THE COURT: Yeah, go ahead.

19 MR. SIRI: Okay. Thank you, your Honor. May
20 I approach?

21 THE COURT: Mm-hmm.

22 MR. SIRI: Thank you, your Honor.

23 BY MR. SIRI:

24 Q Dr. Holtrop, I'm handing you what's been marked as Exhibit
25 DDDD. That's quadruple D. Luckily we didn't use Roman

1 numerals. So is this another approval letter, Dr. Holtrop,
2 to amend the product insert for the MMR vaccine?

3 A It is.

4 Q Okay. And -- and the last letter was from 2017, correct?

5 A Correct.

6 Q This letter is from 2014?

7 A Correct.

8 Q Okay. And in this letter the FDA approves adding an
9 additional adverse reaction to the list of reactions on the
10 MMR product insert sheet, correct?

11 A Correct.

12 Q Okay. And what adverse reactions?

13 A Transverse myelitis.

14 Q Okay. And what else?

15 A And to update the package -- patient package insert to add
16 the term, difficulty walking based on post marketing adverse
17 event reports.

18 Q And what is transverse myelitis, Dr. Holtrop?

19 A Transverse myelitis is a condition affecting the nervous
20 system.

21 Q And it can result in paralysis, correct?

22 A It can.

23 Q Now, Dr. Holtrop, we don't know whether or not MMR actually
24 causes all of these adverse reactions that are reported
25 unless we have a randomized placebo control study, correct?

1 A Correct.

2 Q But as -- as we've discussed there has been no such clinical
3 trial that was conducted for the MMR before it was licensed,
4 correct?

5 A I cannot comment on that.

6 Q You -- you just don't know?

7 A I don't know.

8 Q Do you have any reason to believe a clinical trial was done
9 but not included in the product insert?

10 A I cannot comment on it, I do not know.

11 Q Are you aware that no such clinical trial has ever been done
12 for the MMR vaccine?

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

14 Q If Dr. Plotkin said it's never been done would you dispute
15 that?

16 A No, I would not dispute that.

17 Q You mentioned earlier that HIB is also on the CDC schedule
18 for children under two, correct?

19 A Correct.

20 Q I assume you don't know how long the safety review period is
21 for each dose of ActHIB in the pre-licensure clinical trials
22 for this vaccine?

23 A I do not.

24 MR. SIRI: Your Honor, may I approach?

25 THE COURT: You may.

1 MR. ROGERS: I'm handing the witness what's
2 been previously marked as Exhibit MM. And that as well is
3 previously stipulated to and I'd move for its admission.

4 (At 11:46:38 a.m., Plaintiff's Exhibit MM was
5 offered)

6 THE COURT: Is that correct?

7 MS. NIEUSMA: Yes.

8 THE COURT: MM is admitted.

9 (At 11:46:42 a.m., Plaintiff's Exhibit MM was
10 admitted)

11 BY MR. ROGERS:

12 Q Please turn to section 6.1 of the clinical trial experience.

13 A Got it.

14 Q Okay. Do you see that the safety review period for this
15 vaccine in its primary clinical trial was forty-eight hours?

16 A Actually, it doesn't say that here.

17 Q Page 7 please.

18 A Adverse -- on page 6 it says adverse reactions generally
19 subsided after twenty-four hours and did not persist beyond
20 forty-eight hours -- (inaudible-papers hitting microphone).

21 THE COURT: Counsel, see --

22 MR. ROGERS: Yeah.

23 THE COURT: Okay.

24 MR. ROGERS: Maybe I should have stayed there

25 huh?

1 THE COURT: That's fine.

2 MR. ROGERS: I shouldn't have moved here.

3 THE COURT: You just have to stop putting
4 your papers up there.

5 MR. ROGERS: I know, I'm trying to focus on
6 it and I again apologize.

7 BY MR. ROGERS:

8 Q If you look at table 1 on page 7?

9 A It just reports -- on table 1 on page 7 it reports what
10 happened at six hours post dose, twenty-four hours post dose
11 and forty-eight hours post dose. But it does not describe
12 how long they actually monitored the kids.

13 Q And do you see on table 2 it provides the -- what the
14 subject group received versus what the control group
15 received, do you see that?

16 A Table 2. There is a column -- or -- with --

17 Q Strike that. Isn't it -- if you take a look at that table
18 isn't it true that the subject group received daptacel,
19 right, plus IPOL, plus ActHIB which was the vaccine under
20 study?

21 A Correct.

22 Q And that the control group next to it received, they're
23 comparing it --

24 A No, that is not correct. That is not a control group, that
25 is a group that received their fourth dose of daptacel, plus

1 the ActHIB vaccine.

2 Q Mm-hmm.

3 A To the best of my knowledge this is the same group of kids,
4 so it's not a control group.

5 Q And what did the control group receive?

6 A I don't know what the control group is. Dose one, two and
7 three received -- one group received daptacel, IPOL and
8 ActHIB for doses one, two and three. To the best of my
9 knowledge the way this is written it looks as if for dose
10 four that same group did not receive the IPOL, the -- the
11 polio vaccine, but the did received daptacel and ActHIB.
12 That's not a control group, that's the same group.

13 Q That's because -- because -- that's because IPOL is only
14 given a three shot series when they did the study, right?
15 So the fourth dose didn't get IPOL, right?

16 A That's not a control group. A control group is a separate
17 set of kids.

18 Q Right, that's not a control group, that's still the subject
19 group?

20 A Yes.

21 Q Right. I'm -- I'm just establishing what the subject group
22 received. So the subject group received for the first three
23 doses they got the ActHIB along with IPOL and daptacel,
24 right?

25 A Correct.

1 Q They didn't get it alone?

2 A Correct.

3 Q And then when they got the fourth dose of the experimental
4 vaccine ActHIB at that time they again didn't get it alone,
5 they got it along with daptacel, correct?

6 A Correct.

7 Q Okay. Now separately do you know what the control group
8 received?

9 A I don't know who the control group is.

10 Q Okay. Now you indicated that after vaccines are licensed
11 there are additional safety tests to ensure -- that are
12 tested to ensure safety, is that right?

13 A I am not a vaccine developer expert.

14 Q So you don't know?

15 A I'm a general pediatrician who accepts what the CDC and the
16 American -- or the Advisory Committee on Immunization
17 Practices recommends.

18 Q So the answer to the last question is you don't know?

19 A I don't know.

20 Q Isn't it true that the vast majority of the most commonly
21 claimed serious injuries from vaccines have not been studied
22 to determine whether they are caused by vaccination?

23 A I don't know.

24 Q Are you aware that the -- when the 1986 Act was passed,
25 that's the -- that's the law we discussed earlier that gave

1 vaccine manufacturers immunity from liability?

2 A Mm-hmm.

3 Q One of the provisions in the Act was for HHS to retain the
4 Institute of Medicine to review whether or not certain
5 vaccines can cause certain serious adverse reactions?

6 A I'm not aware of that.

7 THE COURT: Just for the record, the witness
8 has just indicated to me -- to the Court that she needs to
9 leave at noon.

10 MR. ROGERS: Okay.

11 THE COURT: I'm not asking you to do anything
12 about that, I just don't want there to be any ex parte
13 communication. I -- I planned on concluding at 12:00 for
14 lunch anyway.

15 MR. ROGERS: Okay. And -- and then we'll be
16 -- we will resume for the cross-examination of the day I
17 assume.

18 THE COURT: Why don't you use the last six
19 minutes you have right now and then we'll talk about it.

20 MR. ROGERS: Okay. I apologize for -- okay.
21 I apologize for the delay. Give me just I think one more
22 second. I'm sorry, I got confused it's four Ns and five Ns.
23 My -- my apologies.

24 Your Honor, may I approach the witness to
25 provide a copy of what's been previously --

1 THE COURT: Yes.

2 MR. ROGERS: -- marked as five Ns?

3 THE COURT: Yes.

4 MR. ROGERS: And I understand it's previously
5 admitted into evidence -- or stipulated to.

6 (At 11:55:46 a.m., Plaintiff's Exhibit NNNNN
7 was offered)

8 MS. NIEUSMA: If not admitted it has been
9 stipulated to as conventional report.

10 THE COURT: Okay. NNNNN is admitted.

11 (At 11:55:53 a.m., Plaintiff's Exhibit NNNNN
12 was admitted)

13 BY MR. ROGERS:

14 Q Well, I've handed you -- if you go to just the first page
15 for a moment this was a report by the committee on
16 government reform, correct?

17 A Correct.

18 Q And it's from 2000, correct?

19 A Correct.

20 Q Okay. Can you please turn to page 5 and read the
21 highlighted text in yellow?

22 A The Act called for the Institute of Medicine, IOM, to review
23 existing studies and medical literature and provide a
24 foundation for recommendations on vaccine injury causation.
25 In reports issued in 1991 and 1994 IOM published several

1 conclusions regarding the scarcity of knowledge about
2 vaccine safety, citing severe limits in data and research
3 capability.

4 Of the seventy-six adverse events IOM
5 reviewed for a causal relationship fifty, that is sixty-six
6 percent, had no or inadequate research. Specifically, IOM
7 committees identified the following limitations of existing
8 knowledge.

9 MS. NIEUSMA: I'm going to object to the
10 hearsay within hearsay. The report itself is admissible,
11 but we've already discussed the IOM reports and the issue of
12 whether those are going to be admitted is reserved. The
13 fact that this report summarizes and says what the IOM
14 report is, it's --

15 THE COURT: But you stipulated to its
16 admission, so --

17 MS. NIEUSMA: To the exhibit yes, but not the
18 IOM report.

19 THE COURT: Okay.

20 MR. SIRI: It's in evidence, your Honor.

21 THE COURT: It's in evidence so she can read
22 it.

23 Did you want her to keep reading?

24 MR. SIRI: Please.

25 THE WITNESS: Specifically IOM committees

1 identified the following limitations of existing knowledge.
2 One, inadequate understanding of biologic mechanisms
3 underlying adverse events. Two, insufficient or
4 inconsistent information from case reports and case series.
5 Three, inadequate size or length of follow up of many
6 population based epidemiological studies.

7 Four, limitations of existing surveillance
8 systems to provide persuasive evidence of causation. And
9 five, few published epidemiological studies. IOM warned
10 that, quote, "if research capacity and accomplishments are
11 not improved future reviews of vaccine safety will be
12 similarly handicapped", end quote.

13 IOM recommends more, quote, "more research
14 could be done on potential long term adverse effects from
15 vaccines as well as the potential of vaccines to induce or
16 worsen immune disorders", end quote. DCD agrees that there
17 remains, quote, "uncertainty about estimates of the risk
18 association with vaccination", end quote, and that to,
19 quote, "continue research to improve the understanding of
20 vaccine risks is critical", end quote.

21 Q Okay. So in 1990 -- so in 1991 and 1994 the Institute of
22 Medicine reviewed the most commonly claimed injuries from
23 vaccination and what they found was from a vast majority of
24 them the science had not yet been done to determine whether
25 or not the vaccines caused those injuries, correct?

1 A I -- I -- yes.

2 Q And the IOM then chastised that more research needs to be
3 done to confirm to determine whether or not the most -- you
4 know, commonly claimed injuries from vaccines actually cause
5 that accident, correct?

6 A Correct, but the IOM did not say not to give immunizations.

7 Q Does that say that in here anywhere?

8 A No, but it didn't --

9 Q Okay.

10 THE COURT: Okay. Let's conclude now. How
11 much more time do you need?

12 MR. SIRI: I am about halfway through now.

13 THE COURT: I'm going to you a half hour more
14 --

15 MR. SIRI: What's that?

16 THE COURT: -- for cross-examination.

17 MR. SIRI: I need another half -- what's
18 that?

19 THE COURT: You're going to get one half hour
20 more.

21 MR. SIRI: I need -- I need, your Honor --

22 THE COURT: I have the discretion to limit
23 and I'm doing so. And then you will -- you will get fifteen
24 minutes of redirect.

25 We need the new date for you.

1 MR. SIRI: May I -- may I place an objection
2 on the record, your Honor?

3 THE COURT: No, no. I know what you're going
4 to say. You've already objected, you want more time. But
5 you've had about two hours, so we're -- we have to -- I
6 cannot let this --

7 MR. SIRI: There are too many products.

8 THE COURT: I cannot let this go for another
9 six months. I just can't. I have the discretion to limit
10 time and I'm doing so.

11 MR. SIRI: Okay. Three hours I can finish.

12 THE COURT: All right. So we need a new
13 date, half day for Dr. Holtrop to come back. Are you
14 available tomorrow?

15 THE WITNESS: No.

16 THE COURT: No. You don't have an hour to
17 spare tomorrow?

18 THE WITNESS: I'd have to look at my calendar
19 which is in the car.

20 THE COURT: Okay. Can you do that and call
21 the Court please?

22 THE WITNESS: I'd be happy to.

23 THE COURT: I mean this is going to be done
24 -- you'll -- your portion will be done in an hour.

25 THE WITNESS: Okay.

1 THE COURT: Okay. So we're going to leave a
2 question mark there. And then I'll see everyone back at
3 1:30. Okay. Thank you.

4 (At 12:00:19 p.m., court recessed)

5 (At 2:16:56 p.m., court reconvened)

6 THE CLERK: Your Honor, now recalling Schmitt
7 versus Schmitt, case 2015-831539-DM.

8 MS. RUBY: May it please this Honorable
9 Court, Amy Ruby appearing on behalf of the plaintiff, Lori
10 Matheson, who is present and approaching to my right.

11 MS. NIEUSMA: Laura Nieuwma for the
12 defendant, Mike Schmitt, who is standing to my left and is
13 soon to be seated.

14 MR. SIRI: Aaron Sir, co-counsel on behalf of
15 plaintiff.

16 THE COURT: All right. Are we ready to get
17 started?

18 MS. RUBY: Yes, your Honor, I have one of the
19 records custodians here and the other is on the way.

20 THE COURT: Okay.

21 MS. RUBY: Your Honor, at this time I'd like
22 to call Teresa Oak to the stand please. She does have a
23 little suitcase with her that has some records in there.

24 THE COURT: Okay.

25 MS. RUBY: Can she bring that with her?

1 THE COURT: All right. Can you raise your
2 right hand please.

3 THE CLERK: Do you solemnly swear or affirm
4 the testimony you're about to provide in this matter before
5 this Court will be the whole truth and nothing but the
6 truth?

7 MS. OAK: I do.

8 TERESA OAK

9 (At 2:17:47 p.m., sworn as a witness, testified as follows:)

10 THE COURT: Okay. Go ahead.

11 DIRECT EXAMINATION

12 BY MS. RUBY:

13 Q Ms. Oak, could you please state your name and spell your
14 last name for the record, making sure to speak loudly to the
15 record it's a recording?

16 A Teresa Oak, O-A-K.

17 Q And please state the name and address of your employer?

18 A It is St. Mary's Mercy Hospital, 36475 Five Mile Road,
19 Livonia, Michigan 48154.

20 Q And what's the title of your job or position there?

21 A I'm the supervisor of the medical records department.

22 Q And so your job obviously includes handling medical records?

23 A Yes.

24 Q Do you have in your custody with you today the records that
25 were provided in compliance with the subpoena that were

1 requested that was previously sent?

2 A Yes.

3 Q Could you identify those documents that you have in your
4 possession, what -- what -- who they are for and what type
5 of document they are?

6 A Mm-hmm. (Inaudible).

7 Q The mother here?

8 A Yeah.

9 Q Okay. So Ms. Lori Matheson is who the records are for?

10 A Yes.

11 MS. RUBY: And, your Honor, may I approach
12 please?

13 THE COURT: You may.

14 BY MS. RUBY:

15 Q I'm handing you a document that's been pre-marked as
16 Plaintiff's proposed Exhibit 7Q. And if you wouldn't mind
17 looking at those documents in comparison to the documents
18 that you brought with you today. I'll give you just a
19 minute.

20 A You want me to physically go through it, because I --

21 Q I --

22 A I've been through it a few times and --

23 Q Okay.

24 THE COURT: You just need to identify it.

25 THE WITNESS: Yes.

1 THE COURT: Right?

2 THE WITNESS: It looks like the same.

3 BY MS. RUBY:

4 Q Okay. So the document that I've handed to you is the same
5 that you brought with you?

6 A Yep. Yes.

7 Q Okay. And they appear to be a true and accurate copy of the
8 documents that you brought?

9 A Yes.

10 Q Are the documents that were provided in your hand there,
11 Exhibit 7Q, kept and maintained under the supervision and
12 control of the Records Division at St. Mary Mercy?

13 A Yes.

14 Q Are those documents that were provided maintained by your
15 employer in the regular and normal course of business?

16 A Yes.

17 Q Was it in the regular practice and regular course of
18 business of your employer to have a person who knew about
19 that information that's stated in those documents that
20 you've already identified here to either make or create the
21 documents or to transmit and record that information into
22 those documents?

23 A The actual documents?

24 Q Correct, is it the regular practice that that information is
25 transmitted to what you're holding.

1 A Yes.

2 Q Were the entries contained in the documents that you've
3 identified made at or near the time of the occurrence of the
4 matters that are set forth within those documents?

5 A Yes.

6 Q And who has a business duty to record and transmit those
7 matters at that hospital?

8 A The physicians, the nurses.

9 Q And then in your capacity how are you involved with that?

10 A We just -- we just take the records and make sure that we
11 have a whole complete record --

12 Q Is --

13 A -- not clinically, but just physically.

14 Q Okay. And was the method in process used by St. Mary's
15 Mercy to prepare the documents you've identified trustworthy
16 in this case?

17 A Yes.

18 Q Does your employer routinely rely on the information that's
19 contained in those documents in the course of your
20 employer's regular business practice?

21 A Yes.

22 Q The records contained there in Exhibit 7Q are records that
23 are kept then in the normal course of regularly conducted
24 business activity at St. Mary Mercy?

25 A Yes.

1 Q And it's the regular practice of business there to make such
2 a record?

3 A Yes.

4 MS. RUBY: Nothing further, your Honor. I'd
5 move for the admission subject to cross-examination.

6 (At 2:21:08 p.m., Plaintiff's Exhibit 7Q was
7 offered)

8 THE COURT: And it's marked as what?

9 MS. RUBY: That is proposed Exhibit 7Q.

10 CROSS-EXAMINATION

11 BY MS. NIEUSMA:

12 Q Is this -- is this a complete copy of all records for Lori
13 Matheson at your hospital?

14 A Per the subpoena that was sent, yes.

15 Q Every time she's been treated at the hospital?

16 A Yes, all the records.

17 Q All right.

18 MS. NIEUSMA: The only objections outstanding
19 have not -- nothing to do with the keeper of the records,
20 but rather that there's no relevance to these. They don't
21 show Ms. Matheson being administered a single vaccine or
22 having an adverse reaction. I think if we open the door to
23 seventy pages of mom's history of medical records we're
24 looking at --

25 THE COURT: I don't think we need to --

1 MS. NIEUSMA: -- another trial.

2 THE COURT: -- torture this purpose in any
3 way.

4 You are excused.

5 THE WITNESS: Okay, thank you.

6 THE COURT: You're welcome.

7 (At 2:21:48 p.m., witness excused)

8 MS. NIEUSMA: So while I object to their
9 admission I have no objection to her portion of the issue.

10 THE COURT: Okay.

11 MS. RUBY: May I approach to get those
12 documents?

13 THE COURT: Sure.

14 MS. NIEUSMA: And may I continue, Judge, the
15 other issue?

16 THE COURT: Yes.

17 MS. NIEUSMA: My other objection is, this
18 isn't a complete medical history for Ms. Matheson. She's
19 chosen one section from one hospital. I imagine she's seen
20 other physicians, this isn't her complete medical history.
21 It's one portion of what she's been seen for, we haven't
22 been provided with the entirety of it.

23 And I have the continued objections that
24 these were provided merely days before our last trial date
25 and we were notified of them earlier, but not given copies

1 until I believe the Thursday night prior to a Monday
2 hearing. Obviously now I've had a bit more time to review,
3 but certainly no time to call additional witnesses or
4 additional experts.

5 THE COURT: What's your response? I haven't
6 seen the medical records, so I don't know what they contain.
7 Are they going to show some autoimmune?

8 MS. RUBY: Your Honor, they do have reference
9 to the ITP and the low platelet count for Ms. Matheson, so
10 it is a relevant piece of our argument.

11 To answer a different -- a few of her
12 objections, the records custodian has been here. I believe
13 that they have been properly around the hearsay and as well
14 as the authentication, I do have that verification as well.

15 THE COURT: I agree with you.

16 MS. RUBY: And the content of them is really
17 to the autoimmune issue and as it relates to Ms. Matheson
18 and what she had testified to previously, both at the Friend
19 of the Court and here in front of, your Honor. The complete
20 record, this is from this particular place, I do have other
21 records custodians I've made contact with.

22 I have --

23 THE COURT: I -- I'm going to allow it. And
24 -- and your objection goes to weight not admissibility.

25 MS. RUBY: And so 7Q is admitted?

1 THE COURT: 7Q is admitted.

2 (At 2:23:22 p.m., Plaintiff's Exhibit 7Q was
3 admitted)

4 THE COURT: Your next witness.

5 MS. RUBY: I don't -- I do not have the other
6 -- one is on his way, Dr. Todd Marcus is planning to attend,
7 his office manager was recently terminated, so he was coming
8 to take care of this issue and answer a few other questions.
9 Dr. Tony Bark is traveling back from California, she's
10 actually on her flight right now from California.

11 And Ms. Nieuwma and I had previously
12 discussed, that was the reason for taking Dr. Holtrop out of
13 order today.

14 THE COURT: So where is Dr. Marcus?

15 MS. RUBY: At -- in the car on his way here.

16 THE COURT: From where?

17 MS. RUBY: Livonia.

18 THE COURT: And when did he leave?

19 MS. RUBY: I could check.

20 THE COURT: Can you step out in the hall and
21 find out when he's going to be here?

22 MS. RUBY: Yes. Your Honor, he said he's
23 parking.

24 THE COURT: Oh, great.

25 MS. RUBY: So I asked him to leave his phone

1 in the car, obviously.

2 THE COURT: All right. So we'll wait.

3 MS. RUBY: Your Honor, I do have the original
4 authentication certification. Would you like that with the
5 trial -- the witness events list?

6 THE COURT: Yes.

7 Nobody go anywhere. As soon as he --

8 THE CLERK: All rise.

9 THE COURT: -- in the courtroom. I'll watch
10 the monitor.

11 (At 2:25:16 p.m., court recessed)

12 (At 2:40:25 p.m., court reconvened)

13 THE CLERK: Your Honor, now recalling Schmitt
14 versus Schmitt, case 2015-831539-DM.

15 MS. RUBY: Appearances?

16 THE COURT: No. Okay, your next witness.

17 MS. RUBY: Your Honor, at this time I'd like
18 to call Dr. Todd Marcus to the stand please. And again,
19 your Honor, he has a package with him with records.

20 THE COURT: Raise your right hand please.

21 THE CLERK: Do you solemnly swear or affirm
22 that the testimony you're about to provide in this matter
23 before this Court will be the whole truth and nothing but
24 the truth?

25 MR. MARCUS: I do.

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TODD MARCUS

(At 2:40:52 p.m., sworn as a witness, testified as follows:)

THE COURT: All right, have a seat and state your name please.

THE WITNESS: Dr. Todd Marcus.

DIRECT EXAMINATION

BY MS. RUBY:

Q Would you please spell your last name for the record?

A M-A-R-C-U-S.

Q And the name and address where not only you're employed but the business that you own?

A 36650 Five Mile Road, Suite 106, Livonia.

Q And what's the name of the business?

A Dr. Todd's Pediatrics.

Q And your job is?

A Owner and pediatrician.

Q And does your job include as the owner maintaining medical records?

A Yes.

Q And is that a job that you do primarily?

A Well primarily I see patients, secondarily I guess I take care of whatever else needs to be done.

Q Have -- did you previously have an office manager in place?

A I did.

Q And that person was terminated or no longer works for you?

1 A Yes, she embezzled quite a bit of money from me.

2 Q She no longer works there?

3 A No.

4 Q And do you have in your custody today the records that were
5 provided in compliance with the subpoena that was requested
6 and previously sent?

7 A Say that again.

8 Q Do you have with you today in your custody --

9 A Yes.

10 Q That's a copy of the records that were requested by
11 subpoena?

12 A The entire file, yes.

13 MS. RUBY: And I'm going to approach if you
14 don't mind. May I, your Honor?

15 THE COURT: Sure.

16 BY MS. RUBY:

17 Q This is proposed Exhibit 7R. And if you could flip through
18 the document that I just handed to you as well as you just
19 compare that to the documents that you brought today. The
20 question to you would be, do those appear to be a true and
21 accurate copy of the documents that you brought with you to
22 the copy of the record of Faith Schmitt?

23 A Yes, in part. I'm not sure, let me see what date this goes
24 back to and what I go back to.

25 Q And I see you have some additional paperwork that includes

1 the subpoena and faxes that were sent to your office, those
2 would be included in the medical record specifically?

3 A Yeah, we put everything in the chart. Anything that we
4 receive regarding the patient.

5 Q Okay. Just to be clear, Exhibit 7R does not have copies of
6 those subpoenas or fax confirmations. So the content of the
7 medical records, is that a true and accurate copy of the
8 documents that you brought?

9 A Yeah. My packet seems a lot thicker than this one though,
10 but.

11 Q And -- presume -- I mean you can look through it because you
12 have the documents with you. Does -- there's several
13 subpoenas and faxes that were sent --

14 A Yes.

15 Q -- and transmittal from my office requesting that
16 documentation?

17 A Yes.

18 Q The content of the medical records of the minor child, are
19 those documents true and accurate copies?

20 A Yes.

21 Q And those documents are kept and maintained under your
22 supervision and control in the records at your office?

23 A Yes.

24 Q Are the documents that were provided maintained by you as
25 the employer in the regular and normal course of business?

1 A Yes.

2 Q Was it the regular practice and the regular course of
3 business at your office to have a person who knew about that
4 information that's stated in the documents to identify that
5 or create records such as those and record that information
6 into those types of documents, is that a normal course of
7 business at your office?

8 A I'm not sure, but -- repeat that.

9 Q Is it a regular practice and a regular course of business at
10 your office to create those types of records where medical
11 information is transmitted --

12 A Right.

13 Q -- into documents?

14 A Yes.

15 Q I know it seems like a silly question.

16 A No, that's all right.

17 Q Were the entries contained in those documents you identified
18 made at or near the time of the occurrence of what's
19 indicated in those documents? For example, if you saw a
20 patient on July 5th was the record made on or about July 5th?

21 A It was made -- yeah, the portion of it was from that day.

22 Q And the entries that are contained therein are from
23 information that was transmitted by a person, perhaps
24 yourself or --

25 A Myself, yes.

1 Q -- a PA? Was knowledge of the entries contained in the
2 documents therein?

3 A Yes.

4 Q And who has a business duty to record and transmit those
5 matters, yourself?

6 A Myself or whoever sees the patient.

7 THE COURT: Are you going to object to the
8 records?

9 MS. NIEUSMA: No.

10 THE COURT: Okay. So can we just --

11 MS. RUBY: Yeah, but they were objected to
12 before.

13 BY MS. RUBY:

14 Q Just a few more questions, Dr. Todd.

15 MS. RUBY: I -- I -- well at this point then
16 I'd move for the admission of proposed Exhibit R.

17 (At 2:45:03 p.m., Plaintiff's Exhibit R was
18 offered)

19 THE COURT: Any objection?

20 MS. NIEUSMA: No objection.

21 THE COURT: You use -- you keep them.

22 MS. NIEUSMA: And I think I can also save a
23 step, I'm not going to object if you move to qualify him in
24 pediatrics either.

25 MS. RUBY: I -- I don't think I need to.

1 THE COURT: Okay. Exhibit R is admitted.

2 Move on please.

3 (At 2:45:15 p.m., Plaintiff's Exhibit R was
4 admitted)

5 MS. RUBY: He was previously already --

6 THE COURT: Move on please.

7 MS. RUBY: Making sure that that's clear.

8 THE COURT: Yeah.

9 BY MS. RUBY:

10 Q Dr. Todd, do you think that the Institute of -- Institute of
11 Medicine report entitled, Adverse Effects of Vaccines
12 Evidence and Casualty, which was published in 2001 is a
13 reliable authority regarding vaccine safety?

14 A Yes.

15 Q And you're familiar with that --

16 MS. NIEUSMA: I'm going to object. He was
17 qualified at the Friend of the Court. This is a denovo
18 hearing on the objections. If she's going to use him to
19 establish this procedure with documents she's going to need
20 to establish him as an expert. And again, it's largely
21 making a record that certainly I'll stipulate to his
22 qualifications, but we do need to -- if he's going to be
23 used in that fashion we do need to do that.

24 MS. RUBY: He was already stipulated to as an
25 expert. She just indicated she didn't have a problem with

1 that. So I guess I'm confused what the issue is.

2 THE COURT: You just said he was previously

3 --

4 MS. NIEUSMA: Qualified.

5 THE COURT: -- qualified. But not -- not in

6 front of me. He's -- this is the first he's been here,

7 right?

8 MS. RUBY: That's correct, your Honor, he was

9 --

10 THE COURT: Oh, could he have been previously

11 qualified?

12 MS. RUBY: He was previously -- well it was

13 stipulated to at the Friend of the Court hearing.

14 THE COURT: As you know that's -- this is

15 denovo hearing.

16 MS. RUBY: And you just indicated you were

17 stipulating to him being an expert in pediatrics.

18 MS. NIEUSMA: Correct.

19 THE COURT: Do you want to qualify him as a

20 witness -- as an expert witness in pediatrics?

21 MS. RUBY: Yes.

22 THE COURT: Okay.

23 MS. NIEUSMA: No objections.

24 THE COURT: Okay. And now you're going to

25 ask him some questions relative to that?

1 MS. RUBY: Correct.

2 THE COURT: Okay.

3 BY MS. RUBY:

4 Q Dr. Todd, you're familiar with the medical textbook,
5 Vaccines and the Autoimmunity that was published by Wiley in
6 2005 -- '15, I'm sorry, as -- you're familiar with that
7 book?

8 A Yes.

9 Q Do you consider that a reliable authority as well?

10 A Yes.

11 Q And do you consider the report entitled, Electronic Support
12 for Public Health Vaccine Adverse Event Reporting, that's
13 the VAERS, published by Harvard Pilgrim Health Care and
14 Harvard Medical School Researchers which is funded by the
15 Department of Health and Human Services as a governmental
16 authority as a reliable authority?

17 A Yes.

18 Q Do you consider the Pilot Comparative Study on the Health of
19 Vaccinated and Unvaccinated Six to Twelve Year Old Children,
20 U.S. Children, by a professor at the Department of
21 Epidemiology and Bio statistics School of Public Health,
22 which is from the Jackson State University a reliable
23 authority as well?

24 A Yes.

25 Q Do you know whether Faith -- vaccinating Faith will cause

1 her to develop thrombocytopenia?

2 A I don't know if it will. You can only make a reasonable
3 assumption or -- or -- if I could predict what reaction kids
4 would have to immunizations I am probably in the wrong
5 business, but you can never assume. But I mean you can --
6 you can look -- you can do some studies or you can look to
7 see if a child would be predisposed to having a reaction,
8 yes.

9 Q And to look at something that predisposes would you look at
10 the family history?

11 A Sure.

12 Q Okay. And do you know whether Faith would -- vaccinating
13 Faith would cause her to develop rheumatoid arthritis for
14 example?

15 A I would say she's -- according to the -- the -- some
16 research that has been done it looks like she would be
17 predisposed, but I can't say with a hundred percent
18 certainty she would develop it.

19 Q Same question. Do you know if vaccinating Faith will cause
20 her to develop lupus for example?

21 A I have lupus, I hope not. But I think -- I have to -- I
22 don't know if lupus is one that she would be predisposed to.
23 I know rheumatoid arthritis is.

24 Q And you know the rheumatoid arthritis, is that based on her
25 family history?

1 A The family history and I believe the test that was done.

2 Q And with regards to any other autoimmune --

3 MS. NIEUSMA: I'm going to object. The test
4 that he's basing that opinion on isn't in evidence.

5 THE COURT: Sustained.

6 BY MS. RUBY:

7 Q Do you know if -- if whether vaccinating Faith will cause
8 her to develop any other autoimmune disorder?

9 THE COURT: Remember, this -- we've litigated
10 this. You were given the opportunity to get some testing
11 done in lieu of the Twenty-three and Me, because the Twenty-
12 three and Me is not admitted. So he can't take the stand
13 based on looking just at the Twenty-three and Me.

14 So you need to lay a better foundation as to
15 why he thinks that she's prone to autoimmune disease. What
16 kinds of tests have he done -- has he done or is he aware of
17 that does not include Twenty-three and Me.

18 BY MS. RUBY:

19 Q Dr. Todd, you have not conducted any additional testing of
20 Faith?

21 A No.

22 Q And presumably part of the reason for no further testing
23 being done at your office is it would have to be in
24 agreement between both the father and the mother, is that
25 true?

1 A Right.

2 Q And if there was a test to be done is that something that
3 you would consider performing on the minor child?

4 THE COURT: Well, what -- was there a test
5 that you proposed that --

6 THE WITNESS: There is nothing that can
7 predict like rheumatoid arthritis. I can do a rheumatoid
8 factor, a screening test, a blood marker, but it's not going
9 to tell me if she's predisposed to having it. There's --
10 there are no blood tests that you can do to -- to look for
11 predis -- you know, that would --

12 THE COURT: So then what -- what did you base
13 your opinion on, the Twenty-three and Me which isn't
14 admissible? They must have conducted some test.

15 THE WITNESS: Well and her family history.

16 THE COURT: Okay. So it's not a test or the
17 -- any results you saw, it was family history that made you
18 think so?

19 THE WITNESS: It was the family history and
20 it was the Twenty-three and Me, but I don't know what's
21 admissible or not. I'm just telling -- (multiple speakers).

22 THE COURT: Well -- but what -- what kind of
23 testing -- that's not admissible, but what kind of testing
24 did they do? I don't -- I -- I guess what I'm trying to say
25 is, you -- you just testified that you thought she was prone

1 to some potentially autoimmune?

2 THE WITNESS: Based on family history.

3 THE COURT: And what else, some medical test?

4 THE WITNESS: Well, I can't -- I guess I
5 can't say that if you're not admitting (ph) the Twenty-three
6 and Me --

7 MS. RUBY: Your Honor, I may be able to help.

8 THE WITNESS: -- because I -- I know --

9 THE COURT: Does a medical test exist?

10 THE WITNESS: To predict something?

11 THE COURT: Yes.

12 THE WITNESS: No.

13 THE COURT: Okay.

14 BY MS. RUBY:

15 Q And, Dr. Todd, maybe I can help clarify. Your review of the
16 document, the Twenty-three and Me, which I -- you have a
17 clear understanding was not admitted in this case, there was
18 something on there that would lead you to look into it
19 further, that was some testing that you fought at the Friend
20 of the Court, is that a true statement?

21 A Yes.

22 Q And you are familiar with the family history of Ms. Matheson
23 --

24 A Yes.

25 Q -- as it relates to Faith?

1 MS. RUBY: One moment.

2 BY MS. RUBY:

3 Q You're -- and you're familiar with the ITP that Lori
4 Matheson has as well as part of her family history?

5 A Yes.

6 MS. RUBY: Nothing further. Thank you.

7 THE COURT: Cross?

8 MS. NIEUSMA: Just a few questions as I trip
9 over my own bag.

10 CROSS-EXAMINATION

11 BY MS. NIEUSMA:

12 Q All right. So I'm going to go in reverse order because that
13 makes it a little bit easier. What family history have you
14 reviewed that causes you to -- to base your opinion on?

15 A The mom's medical history and there was a family history, I
16 don't know exactly who in the family, but -- (multiple
17 speakers) arthritis.

18 Q Did you review her mother's family history -- medical
19 history?

20 A Well in total between the whole -- when I ask a family --
21 when I take in a patient for a new patient I ask medical
22 history, family history.

23 Q Have you reviewed any medical records on this file?

24 A On the mother, no. On the grandmother, no, I don't ask for
25 family records.

1 Q All right. So how did you become aware that the -- of the
2 family history of rheumatoid arthritis?

3 A Verbally asking what the family history is.

4 Q All right. And next I'm going to go through -- so you
5 mentioned the authentic -- the reliability of a number of
6 documents. Have you personally reviewed those documents?

7 A I have in the past.

8 Q Specifically Vaccines and Auto Immunity, you've read that?

9 A Yes.

10 Q What journal was that published in?

11 A I believe it was the Institute -- it's been -- I -- it's
12 been a while, but Institute of --

13 MS. RUBY: I'm sorry, you indicated --

14 MS. NIEUSMA: I asked what journal Vaccines
15 and Auto Immunity was published in.

16 MS. RUBY: That's a medical textbook.

17 MS. NIEUSMA: I didn't ask you the question,
18 I asked your witness.

19 THE COURT: She's right. Please.

20 BY MS. NIEUSMA:

21 Q So you don't recall whether it was a textbook or a journal
22 or who published it --

23 A I received --

24 Q -- that you know it's authoritative?

25 A I received copies of it and I -- yes.

1 Q Who provided you with copies of it?

2 A The plaintiff.

3 Q Prior to being provided with copies of it by the plaintiff

4 was it something that you relied on in your practice?

5 A I would -- I have in the past, but I couldn't tell you -- I

6 mean I rely on thousands of -- of resources.

7 Q But in this case it was something that was provided to you

8 by the plaintiff?

9 A Yes.

10 Q All right. Next there's a document -- a document from

11 Harvard Pilgrim Health. Again, is that something that you

12 relied on in your practice prior to being provided a copy by

13 the plaintiff?

14 A I can't provide you a specific example, but yes.

15 Q What was the name of that text again, I didn't -- I just got

16 Harvard Pilgrim Health, I didn't get the rest?

17 A Well again, I see -- I use thousands of resources. I don't

18 --

19 Q But I'm asking, Dr. Marcus, and I apologize for being a

20 little pushy on this, you said this was an authoritative

21 resource that you rely on, what's the name of it?

22 A I relied on it when I was provided with it and I -- it

23 appeared to be a credible source.

24 Q All right. But it's not something that you use routinely?

25 A I would have to say probably not.

1 Q All right. And this Pilot Study that Ms. Ruby indicated,
2 what journal is that published in?

3 A Again, I haven't reviewed these in months. I --

4 Q How did you receive a copy of it?

5 A From the plaintiff.

6 Q All right. Prior to that did you use it in --

7 A No.

8 Q -- your practice? All right, thank you. All right. So
9 let's go back. So we've had various testimony and part of
10 the motion up is changing Faith's pediatrician and have you
11 -- were you the pediatrician for the other Matheson -- for
12 William and Grace Matheson?

13 A Yes.

14 Q When did you first see Grace Matheson, she's the oldest,
15 correct?

16 A Yes. I -- I'd have -- since birth.

17 Q And when did you stop seeing Grace?

18 A I didn't know I have stopped.

19 Q That's a fair answer. What about William?

20 A I don't -- the same. I mean since birth.

21 Q Has William ever been treated by Oakland Pediatrics?

22 A I have -- would have no idea.

23 Q All right. So if I were to show you medical records of
24 William's that were from a different -- from Oakland
25 Pediatrics you wouldn't have seen those?

1 A Not necessarily. Parents doctor shop all the time. I don't
2 know who --

3 Q All right. When was -- when were Grace or William last in
4 your office?

5 MS. RUBY: Objection as to the scope. I
6 don't think that this is -- every time we've tried to bring
7 up the other two children --

8 MS. NIEUSMA: The motion is -- includes my
9 client's motion to change the pediatrician. Part of why he
10 was selected as the pediatrician was because plaintiff
11 claimed that he'd been the pediatrician for her children
12 their entire lives.

13 MS. RUBY: That was not the testimony that
14 was given at the Friend of the Court specifically.

15 THE COURT: Is it in a trial brief or any
16 pleadings?

17 MS. NIEUSMA: I believe it was in the
18 response to the initial motion, which was filed a year ago,
19 so it's not on the top of my head.

20 MS. RUBY: The response from me --

21 THE COURT: You can't -- you can't talk right
22 now.

23 MS. RUBY: -- in the initial motion, is that
24 what you're indicating?

25 THE COURT: So you're not claiming it has

1 anything to do with the fact that this doctor has treated
2 the other children?

3 MS. RUBY: I'm sorry, he is the pediatrician
4 for them. But what I'm indicating is the scope of her
5 questioning, the other children haven't been brought up --

6 THE COURT: No, but she's making a good point
7 and I'm asking you to respond to it.

8 MS. RUBY: I'm sorry, I missed your question.

9 THE COURT: Can you make your --

10 MS. NIEUSMA: Did part of the reason Dr.
11 Marcus was chosen as the pediatrician for Faith was because
12 he had been the pediatrician for Ms. Matheson's other two
13 children. I'm questioning that based on the medical records
14 that I've received. So I'm asking him whether he's treated
15 them, when he last treated them to see if there's a break in
16 the continuity of treatment.

17 THE COURT: Okay. I'm -- I'm going to allow
18 the questions. I don't want any specific information though
19 about the other children.

20 MS. NIEUSMA: I would agree completely.

21 THE COURT: Okay.

22 BY MS. NIEUSMA:

23 Q So when is the last time you saw William or Grace?

24 A I have no idea.

25 Q Has it been in the last year?

1 A I couldn't tell you. I -- I don't know when -- I mean I see
2 thousands of patients. I -- I don't know. I do -- I mean
3 -- well I won't say anything.

4 Q How many of your patients are unvaccinated?

5 A A lot.

6 Q All right. So that wouldn't make William or Grace stand out
7 if they were?

8 A No, not these days.

9 Q All right. All right. So when you first met with Ms.
10 Matheson and I believe Mr. Schmitt was there as well
11 regarding vaccinating Faith, what were her concerns?

12 MS. RUBY: Your Honor, this was asked and
13 answered previously.

14 MS. NIEUSMA: At the Friend of the Court
15 maybe, but this is a denovo hearing.

16 THE COURT: At the Friend of the Court, is
17 that what you're -- okay. You -- do you not have a basic
18 understanding of what we're doing here? This is a denovo
19 hearing.

20 MS. RUBY: I understand.

21 THE COURT: Okay.

22 MS. RUBY: I was relying on his testimony
23 from --

24 THE COURT: I know, but asked and answered
25 based on a testimony that occurred in a different setting

1 and a different hearing is --

2 MS. RUBY: I understand, your Honor.

3 THE COURT: It's not appropriate.

4 THE WITNESS: Could I get some water?

5 THE COURT: We don't have water, but maybe
6 your plaintiff --

7 Did you call -- can you -- I think you had
8 people getting water. Do you mind getting him some water?

9 MS. RUBY: I thought I did.

10 THE COURT: All right. Go ahead.

11 THE WITNESS: All right.

12 BY MS. NIEUSMA:

13 Q Okay. So what were Ms. Matheson's concerns regarding
14 vaccinating Faith the first time that they were brought up?

15 A If we use preservatives, what -- what -- I mean basically
16 the -- the same concerns that most parents are weary of
17 vaccinating are and how many do we give at one time. What
18 are my views on it. Are they allowed in the practice if I
19 don't vaccinate -- if they don't vaccinate.

20 Q And how did you address those concerns? It sounds like
21 you've heard them more than once, so you've probably got a
22 speech down.

23 A Everyday.

24 Q So give me the short speech?

25 A I don't care what decision a parent makes for the family as

1 long as it's an educated decision. My job is not to judge
2 or -- or to tell a parent what to do for their family. My
3 job is to educate them. I'll ask every parent if they -- if
4 they choose -- you know, if they tell me they don't want to
5 vaccinate, I mean they can't give me a wrong answer, but I
6 ask them to -- to tell me why.

7 Q Yeah.

8 A And it's my job to make sure that they're making -- that
9 they're decision is an educated one.

10 Q All right. And so what was your response about
11 preservatives?

12 A We don't use preservatives in -- in our vaccines.

13 Q All right. What about the number that's given at a time?

14 A I -- I prefer to spread them out. The State doesn't like
15 that, but -- because it -- it pushes vaccines off by a
16 month. But I -- I don't believe in -- in mass vaccinating.
17 We'll never be able to prove, you know, whether -- whether
18 giving multiple vaccines can cause anything, but just the
19 pain alone that's -- that's given to a kid the number of
20 times you inject. So I try to limit it to, you know, two --
21 two immunizations per visit.

22 Q All right. And what vaccines did you recommend for Faith?

23 A DTAP, HIB, polio, Hepatitis B, Varicella, roto I think,
24 Prevnar I believe, which she wouldn't -- she's out of the --
25 (inaudible) -- she's out of the HIB age range.

1 Q So is Prevnar the same as HIB?

2 A No, Prevnar is a pneumococcal --

3 Q Okay.

4 A -- which we don't give after two. HIB we don't give after
5 two. Roto we don't give after seven months.

6 Q Hepatitis A?

7 A I don't -- at that time I wasn't offering it when they came
8 in initially, but I do give that now so that would be added
9 to that list.

10 Q What -- what caused you to change your mind to add Hepatitis
11 A to the list?

12 A The State told me that if I don't start giving it they're
13 not going to pay me for any other immunizations.

14 Q All right. And that was a good enough reason?

15 A I have no choice. I mean they -- I don't practice medicine
16 these days, they tell me how to practice. I wanted to get
17 paid. I don't believe in giving that Hepatitis A vaccine,
18 I've never seen a kid with Hepatitis A. I have a hard time
19 giving a vaccine to kids for something I -- I've never seen.

20 Q All right. So, I'm just skimming over my notes right now.
21 Are these medical -- have you seen Faith since the Friend of
22 the Court hearing?

23 A I don't think so. I don't know, maybe I have. I -- I don't
24 know. I -- again, I see -- it's only me in -- in the --
25 it's only me there, so I -- I'd have to look. I don't know,

1 I can't answer -- (inaudible).

2 Q For Faith individually is there anything, and I know every
3 parent thinks their child is unique and wonderful, but is
4 there anything medically that sets Faith apart that's
5 contained within her records, does she have test results
6 that are different than the average child, does she -- has
7 she shown adverse reactions to anything?

8 A I -- I don't remember if she had a reaction to -- to one of
9 the vaccines. I seem to think she did. I'd have to look at
10 her chart.

11 Q Has she received any vaccines?

12 A I don't -- no, did she get one? I think she --

13 THE COURT: Stop, you -- you can't -- you
14 can't look to mom --

15 THE WITNESS: I don't know.

16 THE COURT: -- to ask questions.

17 THE WITNESS: I don't know. I'd have to look
18 in the chart. I -- I don't believe -- I -- I want to say --

19 THE COURT: You don't know whether she's
20 received a vaccine or not?

21 THE WITNESS: I don't -- again, I see
22 thousands of records. I -- I'd have to --

23 BY MS. NIEUSMA:

24 Q Would you like to --

25 A Yeah.

1 Q -- since you do have the records sitting next to you take a
2 look?

3 A Yeah.

4 THE COURT: Mom, you may not say a word.

5 THE WITNESS: According to this she hasn't,
6 so.

7 BY MS. NIEUSMA:

8 Q All right. So has Faith had -- has she been given any other
9 medications?

10 A I --

11 Q You can use the records --

12 A Probably.

13 Q -- that's fine.

14 A I mean maybe amoxicillin for an acute infection or
15 something, but I -- I don't --

16 Q All right.

17 A I know she has not gotten anything.

18 Q So nothing unusual about her in the records?

19 A No.

20 MS. NIEUSMA: All right. No further
21 questions.

22 THE COURT: Any redirect?

23 MS. RUBY: Yes, please.

24 REDIRECT EXAMINATION

25 BY MS. RUBY:

1 Q You indicated that you are still currently treating both
2 William and Grace?
3 A As far as I know.
4 Q And Ms. Matheson would have brought those children to you,
5 they're older than Faith, so she would have had appointments
6 with you regarding those children, correct?
7 A Say that again.
8 Q The -- the meeting that you had with defendant father and
9 the plaintiff mother regarding Faith --
10 A Yes.
11 Q -- that would have taken place after you had already met
12 with her with regards to her --
13 A Yes.
14 Q -- older two children, right?
15 A Yes.
16 Q And when you met with her regarding her older two children
17 that they have not -- are not fully vaccinated either,
18 correct?
19 A I can't -- I don't -- I don't have their charts. I -- I
20 don't remember.
21 Q At Ms. Matheson's meeting with you regarding Faith where the
22 defendant father was present was not your first meeting with
23 Ms. Matheson?
24 A No.
25 Q And it was not the first time she'd indicated she had an

1 issue with vaccinations?

2 A No.

3 Q So when she addressed her concerns when Mr. Schmitt was
4 there regarding the preservatives, how many were given and
5 your views, she addressed other issues at different
6 appointments with you, isn't that true?

7 A That's -- yeah, I mean every -- I -- I know it -- I recall
8 more than one visit it's -- it's been an issue.

9 Q Okay. And the book that was referred to, which was the --
10 the medical textbook, Vaccines and Auto Immunity, do you
11 recall when that book was provided to you, was it anytime
12 recently?

13 A At that last hearing. Prior to that it -- it -- prior -- I
14 know it was prior to that hearing, a couple months prior to.

15 Q And when you say that hearing, are you referring to the last
16 time that you testified?

17 A Yes.

18 Q So last -- 2000 -- sometime in 2016?

19 A Has it been that long?

20 Q Yes.

21 A Okay, yeah.

22 Q Do you have any medical records here with you today for
23 either William or Grace?

24 A No.

25 Q Okay.

1 MS. NIEUSMA: He was here in 2017, not '16.

2 BY MS. RUBY:

3 Q Oh, I'm sorry, it's 2018 now. I meant 2017.

4 A I knew it was a while ago.

5 Q Thank you. And you indicated that it's not your job to tell
6 the family what to do, but to -- to educate. Could you
7 explain that a little bit more?

8 A My -- as a pediatrician my job is not to tell a parent what
9 to do. It is to educate them so that they can make the
10 right decision, whatever that decision is, for their own
11 family.

12 Q And you explain the risks and benefits that come along with
13 vaccinations?

14 A Yeah, that's -- yeah, I mean I -- I'll -- I -- I -- if they
15 ask me what my personal views are I tell them, but that --
16 that shouldn't be a decision, that shouldn't be a factor
17 into their -- whatever works for their family is what I'm
18 okay with as long as it's -- as long they're educated about
19 it.

20 Q And then you had the meeting with Mr. Schmitt and Ms.
21 Matheson. How many questions did Mr. Schmitt ask?

22 A None.

23 Q Have you ever spoken to him?

24 A Yes.

25 Q Okay. And when did that occur?

1 A I think the last couple times he was in -- they were in I --
2 we were -- at least spoke.

3 Q Prior to the -- your testimony at the Friend of the Court
4 had you ever spoke -- had he ever spoke any words to you?

5 A Other than hi, I can't recall.

6 Q And just one final question. The vaccinations that you were
7 listing for Ms. Nieuwma, those were what were recommended
8 when she was three months old and there for the appointment
9 initially, correct?

10 A Yeah, that's what -- for those were recommended for that age
11 group.

12 Q So the rotavirus is no longer on the table?

13 A Correct.

14 Q As well as the PCV 13?

15 A Correct. Prevnar, yes.

16 Q Okay.

17 A And -- and the HIB.

18 Q Okay. That -- those -- the HIB is also?

19 A Correct.

20 Q And that's related to her age?

21 A Age.

22 MS. RUBY: Nothing further. Thank you.

23 THE COURT: All right. Thank you. You can
24 step down. You're excused.

25 (At 3:06:42 p.m., witness excused)

1 THE WITNESS: Do you want these?
2 THE COURT: You didn't -- hand them to the
3 lawyer.
4 MS. RUBY: May I approach?
5 THE COURT: Yes.
6 Anymore witnesses?
7 MS. RUBY: Your Honor, I have tried to reach
8 out -- I contacted Dr. Bark, she's traveling back from LA to
9 see if she would be able to come tomorrow and I don't have
10 an answer.
11 THE COURT: Okay. Well we'll see you
12 tomorrow morning at 8:30 and we'll be concluding tomorrow
13 morning.
14 MS. RUBY: All right.
15 THE COURT: Okay.
16 MS. NIEUSMA: Thank you, your Honor.
17 THE COURT: Thank you.
18 MS. RUBY: When you say tomorrow morning is
19 there a time that we're scheduled for?
20 THE COURT: 8:30.
21 MS. RUBY: And is the --
22 THE COURT: I have -- let me just to look to
23 see what else I have on the Docket. I don't have a lot, so
24 I -- if you got here by 9:00 that would probably -- or ready
25 to go at 9:00 that would be fine.

1 MS. RUBY: And if Dr. Bark is able to get
2 here. I didn't bring any other records custodians, there is
3 several that I contacted to come today, but they indicated
4 they weren't available.

5 THE COURT: Right. So tomorrow we're
6 concluding. So whoever you want to testify must be here
7 tomorrow morning and then we will finish. And you can
8 decide -- well I'll probably have you do findings of fact
9 and conclusions of law.

10 MS. RUBY: Okay.

11 THE COURT: Okay.

12 MS. NIEUSMA: In the scope of this I would
13 appreciate that.

14 THE COURT: All right, okay. Thank you.

15 MS. RUBY: Is it possible to get a written
16 order indicating when we need to return tomorrow in case I
17 need to provide that to the Court?

18 THE COURT: Sure.

19 MS. RUBY: For my other case?

20 THE COURT: And we'll -- we're happy to call
21 as well.

22 MS. RUBY: Okay. I just don't have --
23 (inaudible) -- my office.

24 THE COURT: Okay. You could -- you can step
25 out and call your office.

1 MS. RUBY: I don't have an associate, she
2 doesn't work there anymore.

3 THE COURT: Oh.

4 MS. RUBY: So there --

5 THE COURT: There's no one to call?

6 MS. RUBY: Yeah.

7 THE COURT: Okay, got it. All right. Thank
8 you.

9 (At 3:08:14 p.m., hearing concluded)

10

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and sixty-one (161) pages, before the 6th Judicial Circuit Court, Oakland County, Michigan:

LORI ANN SCHMITT

v

MICHAEL WILLIAM SCHMITT

_____ /

Location: Pontiac, Michigan

Date: Monday, February 26, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

 /s/ **Sally Fritz**

Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: March 4, 2018

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