

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 II of II

BEFORE THE HONORABLE KAREN D. McDONALD, CIRCUIT COURT JUDGE

Pontiac, Michigan - Tuesday, February 27, 2018

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1 Pontiac, Michigan

2 Tuesday, February 27, 2018 - (09:06:38 a.m.)

3 THE CLERK: -- versus Schmitt. Case number
4 2015-831539-DM.

5 MS. NIEUSMA: Good morning, your Honor.
6 Laura Nieusma for the defendant, Mike Schmitt, who's running
7 a couple of minutes late, but we can start without him
8 without a problem.

9 THE COURT: Okay.

10 MS. RUBY: Good morning, your Honor. May it
11 please this Honorable Court, Amy Ruby appearing on behalf of
12 the plaintiff, Ms. Lori Schmitt, who's approaching and
13 present to my right.

14 MR. SIRI: Aaron Siri, co-counsel on behalf
15 of the defendant.

16 THE COURT: All right, let's get started. Do
17 we have Dr. Holtrop here?

18 UNIDENTIFIED SPEAKER: Dr. Holtrop is here.

19 THE COURT: Good morning.

20 DR. HOLTROP: (Inaudible response).

21 THE COURT: Could you stand and raise your
22 right hand, please?

23 THE CLERK: Do you solemnly swear or affirm
24 that the testimony you're about to give by this matter
25 before this court will give today will be the whole truth

1 and nothing but the truth?

2 MR. HOLTROP: I do.

3 TERESA HOLTROP

4 (At 9:07:27 a.m., witness sworn, testified as follows:)

5 CROSS-EXAMINATION

6 BY MR. SIRI:

7 Q Good morning, Dr. Holtrop.

8 A Good morning.

9 Q Yesterday we left off talking about post-licensure vaccine
10 signs. Now isn't it true that in 2011, the Institute of
11 Medicine issued another report on vaccine safety and this
12 time, it looked at 158 of the most commonly claimed serious
13 injuries after vaccination?

14 A That is possible.

15 Q Are you aware that I asked Dr. Plotkin the same question and
16 he said yes?

17 A I am not aware of that.

18 Q Are you aware that Dr. Plotkin was one of the reviewers on
19 this 2011 IOM report?

20 A I am not aware of that.

21 Q Out of the 158 most commonly claimed serious injuries after
22 vaccination, isn't it true the IOM in 2011 concluded that
23 for five, the evidence favors rejecting causation; for 18 of
24 them, the evidence favors causation; but that for the vast
25 majority, 135 of them, the IOM concluded the science had not

1 been done to determine causation.

2 A My answer is what I've told you before, I go by the
3 recommendations of the CREDIT CARD and the base of --

4 Q Is it -- Dr. Plotkin (sic), I have limited time. Is it a
5 yes or no?

6 A I do not know the answer to that.

7 Q Okay, thank you, Dr. Plotkin.

8 A It's not Dr. Plotkin.

9 THE COURT: She's not --

10 MR. SIRI: Sorry, Dr. Holtrop.

11 BY MR. SIRI:

12 Q Are you aware that there has been testimony in this case
13 that Ms. Matheson has ITP thrombocytopenia?

14 A I am not aware of that.

15 Q Okay, are you aware that her father also has ITP?

16 A I am not aware of that.

17 Q ITP is a condition where a person's immune system attacks
18 it's own platelets, correct?

19 A Correct.

20 Q It's a chronic, lifelong condition?

21 A It can be.

22 Q Okay, platelets are a portion of the blood that cause
23 clotting when you get a cut?

24 A Yes.

25 Q And you can't live very long without platelets, correct?

1 A You can live, with treatment.

2 Q Can the MMR vaccine cause thrombocytopenia?

3 A It is listed as one of the side effects that it can happen.

4 Q I'm sorry?

5 A It is listed as one of the adverse events that can happen.

6 Q I'm asking you, can it cause thrombocytopenia?

7 A It is listed as one of the events that can happen.

8 Q Are you aware that I asked Dr. Plotkin the exact same

9 question and he said yes?

10 A I am not aware of the testimony Dr. Plotkin gave.

11 Q Thank you, Doctor, thank you. Are you aware Dr. Plotkin

12 developed the MMR -- the rubella component of the MMR

13 vaccine?

14 A I am not aware of what Dr. Plotkin developed.

15 Q Okay. Isn't it true that genetic variance in human or

16 microbiome DNA, environmental exposures, behaviors,

17 intervening illness or developmental stage can each increase

18 a child's susceptibility to a vaccine injury?

19 A Say the question again?

20 Q Sure. Isn't it true that genetic variations in a child, all

21 right? Or environmental exposures that the child might have

22 had, or behaviors, intervening illness the child might have

23 had or the developmental stage of the child can each, in

24 certain situations, increase a child's susceptibility to a

25 vaccine injury?

1 A That is a very broad question and very difficult to answer
2 with a yes or no.

3 MS. NIEUSMA: I'm going to object to the
4 compound nature of the question. He can ask her one at a
5 time.

6 THE COURT: Sustained.

7 BY MR. SIRI:

8 Q Can genetic variance of a child's DNA increase
9 susceptibility to a vaccine injury?

10 A Yes, it can.

11 Q Okay, can environmental exposures potentially increase the
12 susceptibility to a child to a vaccine injury?

13 A To the best of my knowledge, I'm not aware of any cases,
14 let's put it that way.

15 Q How about intervene illnesses?

16 A Yes.

17 Q Okay, how about developmental stage?

18 A Yes.

19 Q In addition to ITP, are you aware multiple members of Ms.
20 Matheson's family also have rheumatoid arthritis, RA?

21 A I am not aware of Ms. Matheson's family history.

22 Q Okay, given Faith's family history, wouldn't you agree that
23 she has an increased likelihood of developing ITP or RA?

24 A Not secondary to vaccines.

25 Q Okay, do you know whether Faith's genetic makeup makes her

1 more likely to develop ITP or RA from vaccination?

2 A I have not examined Faith and I have no specific knowledge
3 of her health.

4 Q Do you know whether Faith's behavior -- past illnesses,
5 behaviors -- or behaviors make her more likely to develop
6 ITP or RA from vaccination?

7 A As I have said, I have not -- I have no specific knowledge
8 of Faith.

9 Q Okay, isn't it true that the rate of autoimmune disease,
10 chronic illness, and developmental delay in children has
11 gone from 12.8 percent of children in 1986 to 54 percent of
12 children in 2011?

13 MS. NIEUSMA: I'm going to object. He gets
14 some latitude to lead a witness on an adverse witness, but
15 at this point he's testifying, not asking her a question.

16 THE COURT: Overruled.

17 Can you answer the question? Are you aware
18 of that?

19 THE WITNESS: I'm aware that the numbers that
20 are reported now days are higher than they used to be.

21 BY MR. SIRI:

22 Q Isn't it true that the rate of chronic illness in -- excuse
23 me. Isn't it true that the rate of developmental delay
24 among children today is approximately 15 to 18 percent of
25 children?

1 A It is true that we are now more aware of developmental
2 delays then we were in the past because we are looking for
3 them.

4 Q And do -- the Michigan Department of Health and Human
5 Services puts out an annual report of the number of so
6 called vaccine preventable diseases, correct?

7 A Correct.

8 Q Okay, the last years in which they have issued these reports
9 is in 2016 and 2015, correct?

10 A I have reports from them from 2017.

11 Q You do?

12 A Yes.

13 Q Do you have them here today with you?

14 A That is what I -- what we were talking about yesterday.

15 Q They're not yet available on the website though, right?

16 A I believe not.

17 Q Okay. Isn't it true that there have been no cases of polio
18 in the last three years in Michigan?

19 A I believe that's true.

20 Q Okay. Isn't it true that there have been no cases of
21 diphtheria in the last three years?

22 A I believe that is true.

23 Q Okay, and there have been no cases of rubella?

24 A I am not sure, that I believe there have been cases.

25 Q Do you have -- okay, well, the only thing available on the

1 Michigan Department of Health website is the 2016/2015, so
2 let me ask you about those. Have there been any cases of
3 rubella in 2016 and 2015 in Michigan?

4 A It's -- I'm sorry, I would not know those specifics for
5 those years.

6 Q Okay.

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

8 THE COURT: Yes.

9 BY MR. SIRI:

10 Q These are the summary reports issued by the Michigan
11 Department of Health and Human Services, correct? Regarding
12 the rate of vaccine preventable diseases in Michigan?

13 A That is the title on these sheets, yes.

14 Q Okay, thank you. Do you have any reason to doubt these are
15 not from the Michigan Department of Health and Human
16 Services?

17 A I do not.

18 Q Okay, can you go to the last page of the 2016 report, which
19 is the second page? Do you see in the first row it lists
20 the number of cases of congenital rubella?

21 A Yes.

22 Q What number does it provide for 2016?

23 A For 2016 it says zero.

24 Q And for 2015?

25 A It says zero.

1 Q Okay, how many -- isn't it true that there were zero cases
2 of HIB reported in 2015 and 2016?

3 A Actually that's not -- no, that's -- oh, I see what it says.
4 It has 17 cases of haemophilus influenzae, but zero of the
5 serotype b.

6 Q Right. And the vaccine only protects against the serotype
7 b, correct?

8 A Correct.

9 Q Okay, so there was zero cases of HIB, all right, which is
10 haemophilus influenzae b in 2016 and 2015, correct?

11 A That is correct. That is not true for 2017 though, but it's
12 not on here.

13 Q Okay, well, I -- that's not, you know, that's apparently
14 available to you and not to the public yet. And how many
15 cases were there?

16 A Of what?

17 Q Of HIB in 2017?

18 A Zero.

19 Q Okay, isn't it true that those reports showed only one case
20 of tetanus in an adult male for 2015 and 2016?

21 A It reports one case.

22 Q Right. And if you look right up the page under "Tetanus,"
23 it says the patient was an adult male.

24 A Yes.

25 Q Okay. Isn't it true that the report showed only two cases

1 of measles in 2015 and 2016?

2 A That is correct.

3 Q Okay, but both were in adults. It's in the summary
4 description.

5 A I accept what you say.

6 Q Isn't it true that those reports showed eight or less cases
7 per year of meningococcal?

8 A It says there are a total of 14 cases of meningococcal
9 disease between 2016 and 2015.

10 Q Right, six cases in 2016, right?

11 A Correct.

12 Q And eight in 2015?

13 A Correct.

14 Q Okay, isn't it true that those reports showed a few dozen
15 cases of mumps in 2015 and 2016?

16 A It shows 38 cases of suspected mumps in 2016 and 18 cases of
17 mumps in 2015.

18 Q Right, they're not all laboratory confirmed.

19 A Include suspect count.

20 Q Right. Isn't it true that the mumps vaccine is known to
21 have efficacy issues and that the -- and that they're
22 working on creating a better version that doesn't have the
23 same efficacy issues?

24 A I know that they have just made a recommendation to give a
25 third dose of the MMR in certain situations.

1 Q Okay, is that a yes to my question?

2 A The answer is that there -- I know that there are issues
3 with the efficacy of the MMR or which reason they have rec
4 -- made a change in the recommendation as to the dose and
5 how many doses you should get.

6 Q Okay. Isn't it true that those -- that the report that
7 you're looking at showed a few hundred cases of pertussis
8 each year because the FDA -- but the FDA has concluded the
9 vaccine has efficacy issues, right? For pertussis?

10 A Actually, I would disagree with that conclusion that you are
11 suggesting. The rise in pertussis cases is attributed in
12 general to a drop in immunization rates.

13 Q If Dr. Plotkin said that it was primarily attributable to
14 efficacy issues and that he was personally working on
15 creating a better pertussis vaccine would you disagree with
16 that?

17 A I cannot comment on Dr. Plotkin's testimony.

18 Q But would you disagree if he testified to that?

19 A I cannot comment on his testimony.

20 Q But would you disagree, yes or no?

21 THE COURT: You -- you -- she's answered.

22 MR. SIRI: Okay.

23 BY MR. SIRI:

24 Q Has there ever been a study which looked at the total health
25 outcomes of children following the CDC's vaccination

1 schedule and those that are completely unvaccinated, such as
2 Faith?

3 A Has there ever been a study that has looked at the outcome
4 of those immunized versus those not immunized? I do know
5 that there has been a large study done in another country
6 looking at those who have immunized against MMR versus those
7 who have not been immunized against MMR.

8 Q But were those who were not immunized against MMR, were they
9 otherwise not vaccinated? Meaning, did they not receive any
10 other vaccines?

11 A That was not part of the study.

12 Q Right. So as far as you know, there's never been a study
13 that's actually looked at total health outcomes between
14 fully vaccinated children and children such as Faith that
15 are completely unvaccinated, correct?

16 A Correct.

17 Q Okay, if the court orders Faith to be vaccinated and she has
18 a seizure, develops an autoimmune disease or has some other
19 adverse reaction, do you think the pediatrician should have
20 the discretion to stop the vaccinating Faith?

21 A If she has --

22 THE COURT: Can you repeat the question?

23 MR. SIRI: Absolutely.

24 BY MR. SIRI:

25 Q If the court orders Faith to be vaccinated and she has a

1 seizure, develops an autoimmune issue, or has some other
2 adverse reaction, do you think the pediatrician should have
3 the discretion to stop vaccinating Faith?

4 A The question is a little bit too broad because it may depend
5 on which of the vaccines administered is -- can be
6 attributed to having caused the problem. And if it is a
7 seizure, the question becomes as to whether it was a febrile
8 seizure, which is considered to be benign, and is not a
9 contra indication to giving further immunizations.

10 Q It's complicated, right?

11 A It's very complicated.

12 Q So you think that probably the pediatrician should have the
13 discretion then, right?

14 A I think there are --

15 THE COURT: Well, I don't -- stop.

16 MR. SIRI: Yes?

17 THE COURT: You're asking her whether she
18 thinks the Court should decide or the pediatrician?

19 MR. SIRI: No, no, the pediatrician should be
20 able to have discretion to stop vaccinating or not.

21 THE COURT: And what does the Court have to
22 do with it? Why are you asking?

23 MR. SIRI: I -- you know what, it's not
24 necessary to the question.

25 THE COURT: Okay, okay.

1 MR. SIRI: I'll remove that portion of the
2 question.

3 THE COURT: All right, thank you.

4 BY MR. SIRI:

5 Q So if Faith -- I just -- if Faith were to be -- if the
6 parents decided --

7 THE COURT: Let me try. Let me take a stab
8 at it for you.

9 MR. SIRI: Can I -- I'm going to --

10 THE COURT: If something -- if you had to --
11 if you were vaccinating a child and they had adverse
12 reactions, what would you -- would -- have you -- would you
13 stop the vaccination process?

14 THE WITNESS: Not necessarily the full
15 vaccination process. It would --

16 THE COURT: It would depend on what the
17 reaction was?

18 THE WITNESS: -- it would depend on -- it
19 depends on the reaction, it depends on which vaccines were
20 given that could have potentially caused it.

21 THE COURT: Okay.

22 BY MR. SIRI:

23 Q Okay, checking the antibody levels in the blood to a disease
24 is also known as checking titers, correct?

25 A Correct.

1 Q Okay, isn't it true that in the State of Michigan, a child
2 has sufficient titers for measles, mumps, rubella, Hep B, or
3 varicella is not required to get these vaccines, the
4 vaccines for these diseases to attend school?

5 A That is correct.

6 Q Okay, what is the Vaccine Adverse Events Reporting System?

7 A It is a reporting system where we report adverse events that
8 appear in association with vaccines. We do not always know
9 the cause and the effect, but we are required to report
10 that.

11 Q And the CREDIT CARD administers VAERS, correct?

12 A Yes.

13 Q Along with the FDA.

14 A If you say so.

15 Q Okay.

16 A It's very well possible. As I testified yesterday, I don't
17 know the details of that.

18 Q Right, or you said your not an expert in vaccines.

19 A Correct.

20 Q Okay, isn't it true that fewer than one percent of adverse
21 vaccine events are reported to VAERS?

22 A They need to be -- if they -- when you talk about averse
23 vaccine events, they have to be significant to be reported.
24 If it's just the child developed a fever, you would not
25 report that, that's an expected side effect.

1 Q Okay, right. So, isn't it true that less than one percent
2 of the type of events that you're talking about that should
3 be reported, are actually reported to VAERS?

4 A I'm not aware of that.

5 Q Okay, are you familiar with Harvard Medical School and the
6 Harvard Pilgrim Healthcare?

7 A I'm familiar with Harvard Medical School and what was the
8 other one?

9 Q Harvard Pilgrim Healthcare?

10 A I'm assuming that's their healthcare system at Harvard?

11 THE COURT: Is that a yes? She's asking you
12 a question.

13 BY MR. SIRI:

14 Q It's -- that's my understanding, yes, and it's one of the
15 healthcare HMOs that's part of the Vac -- the Vaccine
16 Safety Data Link? You might be familiar with that that the
17 CREDIT CARD administers?

18 A I'm not familiar with that.

19 Q Okay, yes. So my understanding is that yes, it is the
20 healthcare system that's that's associated with Harvard
21 Medical School, that is my understanding.

22 A Okay, and your question was am I familiar with it? No, I am
23 not familiar with it.

24 Q Are you familiar with Harvard Medical School?

25 A Absolutely.

1 Q Okay, would you consider a report prepared by Harvard
2 Medical School researchers under a grant from the United
3 States Department of Health and Human Services looking at
4 the Vaccine Adverse Events Reporting System a reliable
5 authority?

6 A My hesitation in answering that question is I'm not quite
7 sure what you are implying by considering it a reliable
8 authority. It is certainly something that I would take
9 seriously. Would I accept it as 100 percent gospel? Not
10 necessarily.

11 Q Well, we wouldn't -- most people wouldn't accept any -- most
12 things at 100 percent gospel, correct? But you would
13 consider it an authority, correct?

14 A If -- as -- yes.

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

16 THE COURT: Yes.

17 BY MR. SIRI:

18 Q Can you kindly read the yellow, the highlighting from the
19 report that I just mentioned?

20 A This is from the electronics support for public health
21 Vaccine Adverse Event Report System.

22 From 2007 to 2010, performed by the Harvard
23 Pilgrim Healthcare, Inc. Under Results, it says,
24 "Preliminary data were collected from June 2006 through
25 October 2009 on 715,000 patients and 1.4 million doses (of

1 45 different vaccines) were given to 376,452 individuals.
2 Of these doses, 35,570 possible reactions (2.6 percent of
3 vaccinations) were identified. This is an average of 890
4 possible events, an average of 1.3 events per clinician per
5 month. These data were presented at the 2009 AMIA
6 conference."

7 And then the other part that is in yellow
8 reads, "Adverse events from drugs and vaccines are common,
9 but under-reported. Although 25 percent of ambulatory
10 patients experience an adverse drug event, less than 0.3
11 percent of all adverse drug events and 1 to 13 percent of
12 serious events are reported to the Food and Drug
13 Administration. Likewise, fewer than 1 percent of vaccine
14 adverse events are reported."

15 BY MR. SIRI:

16 Q Isn't it true that in the last 10 years VAERS has received
17 reports of 511 deaths, 829 permanent disabilities and 3,021
18 hospitalizations following polio antigen containing
19 vaccines?

20 A I don't know. That's not my area of expertise.

21 Q Okay, but you said you considered the CREDIT CARD website a
22 reliable authority, correct?

23 A Correct.

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

25 THE COURT: Yes.

1 MS. NIEUSMA: I'm going to object to this
2 line of showing her these reports. The report's admissible.
3 I presume this is a reliable authority 707 argument, are
4 admissible only for impeachment purposes. He's trying to
5 admit these for hearsay purposes to get their -- get the
6 evidence contained within these reports admitted by having
7 her read them into the record.

8 They don't mention Dr. Holtrop. Dr. Holtrop
9 hasn't been qualified as an expert in immunology or
10 vaccines. There's no reason she would be aware of it.

11 THE COURT: He can ask her if she's aware of
12 these.

13 MS. NIEUSMA: But having her continue to read
14 --

15 THE COURT: She either is or she isn't and --

16 MS. NIEUSMA: -- them aloud is where my
17 objection is based.

18 THE COURT: Okay, overruled. Do you have a
19 question?

20 MR. SIRI: Yes, thank you, your Honor.

21 THE COURT: Okay.

22 BY MR. SIRI:

23 Q So, you're holding a report from the CREDIT CARD of reported
24 adverse events from the polio containing vaccines for the
25 last 10 years. Across from deaths, can you read me --

1 what's the number of reports?

2 A I'm sorry, I cannot tell what this reports. It just says,
3 "The Vaccine Adverse Event Reporting System VAERS results."

4 Q Absolutely. Do --

5 A It does not say what this is specific to.

6 Q Sure. If you go to page 4, okay? Do you see the date
7 report received line?

8 A Yes.

9 Q Okay, do you see that it says, "January 2007 to December
10 2017"?

11 A I do.

12 Q Do you understand that to be around a 10 year period?

13 A Correct.

14 Q Okay, and do you see the next page, "Vaccine products." It
15 contains the products that have polio antigens in them.

16 A It has -- the vaccine products are numerous --

17 Q Okay --

18 A -- and it's not all just ones that contain vac -- polio.

19 MR. SIRI: You know, I've got limited time so
20 I have to just make a proffer on this at the end or can I
21 get a little extra time to -- for the witness to look at
22 this?

23 THE COURT: What do you want to ask her about
24 this?

25 MR. SIRI: Well, I just want her to con --

1 I'm just trying to confirm -- have her confirm that the
2 number of deaths, permanent disabilities and
3 hospitalizations. And it looks like she's going to take a
4 little time to look at the document.

5 THE WITNESS: Well, my question -- my concern
6 is that you asked me about polio and this is not specific to
7 polio. This looks at all the different vaccines that are
8 listed.

9 BY MR. SIRI:

10 Q These are all the vaccines that have polio containing
11 antigens.

12 A Actually, no.

13 Q Okay.

14 A The first one listed is diphtheria and tetanus toxoid. The
15 next one is acellular pertussis.

16 Q That's one vaccine, doctor.

17 A There is no way to be able to tell that that's the case.

18 Q Do you see the plus symbols? Each plus symbol denotes a
19 different vac -- the break between a different vaccine.

20 A If that's the case then, why is diphtheria and tetanus
21 toxoid listed twice before the first plus?

22 Q I did not design the VAERS system, I'm just telling you that
23 that's the way they do it.

24 A I cannot tell what this is based on what you have handed me.

25 Q Okay, that's fine. Fair enough. We're limited on time

1 anyway. Isn't it true the last case involved polio in the
2 Unites States has -- was in 1979?

3 A I believe that's true.

4 Q Okay, isn't it true that in the last 10 years, VAERS has
5 received reports of 615 deaths, 888 permanent disabilities
6 and 4,666 hospitalizations following diphtheria containing
7 vaccines?

8 A I have no idea if that's true or not.

9 Q Assuming it's true, since VAERS only captures a small
10 fraction of vaccine adverse events, these numbers are likely
11 to be higher, correct?

12 A Based on what you pointed out earlier, I would say yes.

13 Q The tetanus vaccine was introduced into the routine
14 childhood schedule in the late 1940s, correct?

15 A Correct.

16 Q According to the CREDIT CARD, prior to it's introduction to
17 the routine childhood schedule, there were only 500 to 600
18 cases, not deaths, cases a year of tetanus, correct?

19 A I wouldn't know.

20 Q Isn't it true that in the last 10 years VAERS has received
21 reports of 1,060 deaths, 1,341 permanent disabilities and
22 10,974 hospitalizations following tetanus containing
23 vaccines?

24 A Again, this is not my area of expertise. Also, I would like
25 to point out that when you make a report to VAERS, an

1 association does not mean causation.

2 Q Right. You would need a -- you should do a clinical trial,
3 which aren't done, to check those who received it versus
4 those who don't.

5 A Correct.

6 Q But those studies aren't done, right?

7 A Correct.

8 Q Okay, and since -- assuming those statistics were true that
9 I just read from the VAERS report, isn't it -- since VAERS
10 only receives a tiny fraction of vaccine adverse events,
11 isn't it true that these numbers are likely higher?

12 A Yes.

13 Q Okay, isn't it true that there are 1.2 million people in
14 Oakland County and that there have only been around 100
15 cases of Hep B total since the outbreak you mentioned
16 yesterday?

17 A The outbreak I mentioned was not Hep B, it's Hep A.

18 Q Hep A, I apologize. Hepatitis A.

19 A And say the question again?

20 Q Absolutely. Isn't it true that there are 1.2 million people
21 in Oakland County and there have only been around 100 cases
22 of Hep A total since the outbreak you mentioned yesterday?

23 A That is not correct.

24 MS. NIEUSMA: Again, I'm going to object to
25 the compound nature of the question.

1 THE COURT: She's answered it.

2 THE WITNESS: It's actually not true anyway.

3 BY MR. SIRI:

4 Q Okay, what part's not true?

5 A The number. There's been more cases.

6 Q In Oakland County?

7 A Yes.

8 Q Okay, you consider the Department of Community Health of
9 Michigan a reliable authority, right?

10 A I do. And yesterday afternoon after being in court here I
11 went to the Michigan Department of Health and Human Services
12 and -- where an official from the -- from Michigan Medicaid
13 presented on the Hepatitis A outbreak and presented us with
14 data by county.

15 Q Okay, and what was the number for Oakland?

16 A I don't know the exact number, but it was in the several
17 hundreds.

18 Q Okay, this is not the report.

19 MR. SIRI: Your Honor, move to strike as
20 hearsay.

21 THE COURT: You asked her a follow-up
22 question on it.

23 MR. SIRI: I know.

24 THE COURT: Okay.

25 MR. SIRI: I know, but -- you know, she's not

1 --

2 THE COURT: I'm not going to strike it.
3 Let's just move on.

4 MR. SIRI: But I, you know, she's testifying
5 --(inaudible)-- document on her lap.

6 THE COURT: I can't hear what you say when
7 you duck down. We talked about this yesterday.

8 MR. SIRI: Okay, sorry. I'll have to come
9 back to that.

10 BY MR. SIRI:

11 Q All right, aluminum adjuvants are used in vaccines, correct?

12 A Correct.

13 Q Why are aluminum adjuvants used in vaccines?

14 A Because they make the vaccine more effective.

15 Q Okay, and how do they do that?

16 A I don't know.

17 Q Okay, what's an antigen?

18 A An antigen is typically a protein that, in this case it
19 would be, if you're talking about vaccines, an antigen is a
20 protein that causes a reaction and often times is an
21 infectious agent but not always.

22 Q Antigen -- okay, antigens are contained in vaccines,
23 correct?

24 A Correct.

25 Q Antigens bond to the aluminum, correct?

1 A Correct.

2 Q What are macrophages?

3 A Those are a type of cell in the blood.

4 Q Only in the blood?

5 A And other parts of the body too.

6 Q What do they do?

7 A They eat up stuff that you shouldn't have in your body.

8 Q And antigens bound to aluminum are taken up by macrophages,
9 correct?

10 A I -- yes.

11 Q Okay, and macrophages present the stuff they gobble up to
12 the parts of the immune system that create antibodies,
13 correct?

14 A I believe so. I don't --

15 Q And they travel --

16 A -- I have not studied the actual mechanism of action.

17 Q And they also travel to different parts of the body
18 including the brain, correct?

19 A Correct, correct.

20 Q And they will deposit the materials they gobble up there,
21 correct?

22 A Correct.

23 Q Okay, what is encephalitis?

24 A It's an inflammation of the brain.

25 Q What is encephalopathy?

1 A It is a chronic condition of the brain being out of whack.

2 Q What is encephalomyelitis?

3 A Encephalomyelitis?

4 Q It is an inflammation of the myelin within the brain?

5 A Isn't it true that most vaccine inserts report for most
6 vaccines -- excuse me, strike that. Isn't it true that most
7 packaged inserts for most vaccines report encephalitis or
8 encephalopathy as a reported adverse event from vaccination?

9 A I would have to look at all the package inserts to be able
10 to say yes or no to that. It is possible.

11 Q Okay, are you aware that all DTaP containing vaccines list
12 encephalopathy within seven days of a prior pertussis
13 containing vaccine is a contra indication?

14 A Yes.

15 Q Okay, do any of the vaccines in the childhood schedule
16 contain monkey kidney cells?

17 A I do not know.

18 Q Blood serum from cows?

19 A I do not know.

20 Q Kidney pig cell cultures?

21 A I do not know.

22 Q Gelatin from pigs and cows?

23 A I don't know.

24 Q MRC-5 human diploid cells?

25 A Those are specifics that I typically --

1 Q Okay.

2 A -- do not --

3 Q Are you aware that MRC-5 diploid cells are cells cultured
4 from the lung tissue in aborted fetus?

5 A I am aware that there are two vaccines out on the market,
6 the MMR and the VZB, that have -- that use a cell in the
7 production of it, use a cell line from aborted fetuses from
8 1962 and 1966. Those are the only two aborted fetus tissue
9 cell lines that are used.

10 Q Okay --

11 A And there is no alternative to it.

12 Q So the cultures -- the -- Japan has a MMR vaccine, correct?

13 A I believe so.

14 Q And theirs doesn't have any fetal cell tissues.

15 A I'm not aware that there is one that is licensed in the
16 United States other than what we have.

17 Q Okay, so there are vaccines that contain the cell lines from
18 aborted fetal tissue, correct?

19 A From 1962 and 1966, yes.

20 Q But the vaccine --

21 A Actually the vaccine doesn't contain the cell line, the
22 anti-- the vaccine is, requires culture within those cell
23 lines.

24 Q And you're saying that none of those, none of the aborted
25 fetal tissue culture cell lines actually end up in the

1 vaccine product?

2 A The vaccine doesn't have cells in it.

3 Q The cellular pieces from the aborted fetal tissue do --

4 A That is potentially possible, yes.

5 Q Okay, isn't it true that, in fact, there's more of that

6 cellular debris in the MMR, for example, than there is

7 actually antigen?

8 A I don't know.

9 Q Okay, isn't it true that the Havrix, hepatitis A vaccine --

10 the hepatitis A vaccine contains millions of fragments of

11 human DNA?

12 A Possible, I don't know.

13 Q If Dr. Plotkin said that it does would you disagree?

14 A If he says it does than I will agree.

15 Q Isn't it true that Verivax, the chickenpox vaccine, contains

16 approximately one trillion fragments of human DNA?

17 A Again, if Dr. Plotkin says it does then I will agree.

18 Q Okay, do any vaccines in the childhood vaccine schedule

19 contain human albumin, which is part of the human blood?

20 A Not to my -- albumin is, yes, it is found in human blood,

21 but it can also be produced separately, to the best of my

22 knowledge.

23 Q But you're not aware of whether it's in vaccines or not?

24 A I don't know if it's in there or not.

25 Q Okay, isn't it true that a monkey virus, SV40, infected

1 millions of Americans before it was discovered in the polio
2 vaccine?

3 A That is possible.

4 Q You're not aware?

5 A I'm not aware of that, no.

6 Q Okay, isn't it true -- are you aware that SV40 has been and
7 continues to be found in various human tumors?

8 A I'm not aware of that.

9 Q Isn't it true that an adjuvant will only -- will not only
10 bind to the target antigen that's in the vaccine, but also
11 to the impurities and bi-products such as the animal and
12 human parts left in the vaccine of the manufacturing
13 process?

14 A You're asking me specifics about physiology that I'm not --
15 that's not my area of expertise.

16 Q Are you aware I asked Dr. Plotkin the same question and he
17 said, "Probably, yes"?

18 A As I've mentioned previously, I have no idea what you asked
19 Dr. Plotkin.

20 Q Once the aluminum adjuvant is bound to the impurities and
21 bi-products, the body may also develop antibodies to these
22 impurities and bi-products, correct?

23 A I suppose that would make sense from a physiological point
24 of view.

25 Q All right, and if Dr. Plotkin said that it might, it could,

1 would you disagree?

2 A I would not disagree.

3 Q Isn't it true that in just one study related to vaccine
4 development conducted by Dr. Plotkin, he used 74 normally
5 developed fetuses, three months or older, many of which were
6 electively aborted?

7 MS. NIEUSMA: I'm going to object to the
8 relevance of what Dr. Plotkin did in his study. She's
9 already testified that she's an expert on everything he's
10 written. He's not here today. I realize they want to spend
11 a lot of time impeaching him, but he's not a witness.

12 MR. SIRI: Your Honor, my client has an
13 objection of a religious nature to vaccination that relates
14 to the use of aborted fetuses. The use of aborted fetuses
15 in the development of vaccines is clearly relevant to this
16 dispute.

17 THE COURT: I'll allow it.

18 MR. SIRI: I've only got two more questions
19 on it and then I'm almost --

20 THE COURT: Good, great.

21 MR. SIRI: -- done.

22 THE COURT: Okay.

23 MR. SIRI: Okay, I -- all right.

24 BY MR. SIRI:

25 Q Isn't it true these 74 aborted fetuses had almost piece of

1 their bodies including skin, tongue and heart cut into
2 little cubes to be used for culture?

3 A I'm aware of any studies that Dr. Plotkin -- the specifics
4 of any studies that Dr. Plotkin did.

5 Q You're aware that he's developed numerous vaccines, correct?

6 A I am aware of that, yes.

7 Q Isn't it true that at least hundreds of aborted fetuses have
8 been sacrificed in the development of vaccines?

9 A Again, I cannot comment on that.

10 Q Okay.

11 A I can comment on what the Vatican has said about the
12 vaccines and whether to use them or not.

13 Q What principles and methods did you rely upon in reaching
14 your opinion regarding vaccine safety?

15 A I used the -- again, the recommendations of the CREDIT CARD
16 and the American or the Advisory Committee on Immunization
17 Practices and the American Academy of Pediatrics to make --
18 form an opinion about the vaccine safety.

19 And also, I used my experience in seeing
20 children who have died from conditions that were vaccine
21 preventable. Once you have seen a child die from a vaccine
22 preventable disease, your focus on how you feel about
23 vaccines changes dramatically. I have seen children die
24 from meningococcal disease very rapidly. As soon as the
25 vaccine became available on the market I made sure that my

1 daughters got that vaccine.

2 Q Do you believe --

3 A The same is true for HPV vaccine.

4 Q You believe in informed consent, I presume?

5 A I believe in informed consent.

6 Q And I --

7 A Informed consent --

8 Q -- and I --

9 A -- involves --

10 Q Dr. Holtrop --

11 A -- also knowing not just knowing what the potential side
12 effects are, but what the actual risks are of having the
13 disease.

14 Q That's right, but it also involves understanding the risks
15 of the product itself, correct?

16 A You have to balance the risks versus the benefits. In this
17 case, the benefits far outweigh the risks.

18 Q Okay, and the basis for that opinion is the information on
19 the CD -- the CREDIT CARD web? It is -- is because it's a
20 CREDIT CARD recommendation, correct?

21 A Both that as well as what I have personally experienced.

22 Q Okay, so your basis -- so I understand, the principle
23 methods that you relied upon in reaching your opinion
24 regarding vaccine safety and vaccine efficacy are what the
25 CREDIT CARD recommends and your claim that you've seen some

1 people die of some diseases that -- for which there are
2 vaccinations, is that correct?

3 A Correct.

4 Q That's the sum and total, right?

5 A And the American Academy of Pediatrics recommendations.

6 Q Okay, that's it?

7 A How we form opinions is quite --

8 Q Doctor --

9 A -- complex. And you're asking me how I formed all of these
10 opinions and I have to say there are probably other
11 influences that I am not thinking of at this point.

12 Q Okay, but that's --

13 A But in general, those are the major.

14 Q Okay.

15 MR. SIRI: Your Honor, I'm -- on that basis,
16 if those are the principles and methods she's relied upon, I
17 move to disqualify her as an expert with regards to vaccine
18 safety and efficacy. The *Daubert* standard requires
19 principles and methods that are reliable, that are
20 reproducible that you can actually evaluate in a peer view
21 publication based on data.

22 THE COURT: We already -- she's already been
23 qualified as an expert in pediatrics.

24 MR. SIRI: Right, but I'm moving to -- I
25 understand that, but I'm moving to have all of her testimony

1 regarding vaccine safety and efficacy -- pediatrics can be
2 viewed broadly, your Honor, and I -- and obviously, you knew
3 I objected at the beginning and so I'm in some ways renewing
4 my objection in that to the extent that her qualification as
5 a pediatrician, which is fine, she -- I don't contest that
6 there are certainly areas in pediatrics where she is
7 qualified to be a -- an expert --

8 THE COURT: You're welcome to brief it. It
9 sounds like you probably should, but for now are you done
10 with your cross-examination?

11 MR. SIRI: Okay, but that's an issue that
12 you'll take under advisement, your Honor?

13 THE COURT: If you'd like to brief it, but
14 you're going to have to come tomorrow with a two minute oral
15 argument of some case law -- court rules.

16 MR. SIRI: Okay.

17 THE COURT: Anything else?

18 MR. SIRI: Well, I -- you know, I went
19 through things a bit, a lot quicker than I would have
20 normally done, given that the 30 minute limitation.

21 THE COURT: I gave you 45 minutes.

22 MR. SIRI: I, well I --

23 THE COURT: It's 9:45.

24 MR. SIRI: I did pause it every time. I was
25 -- every time somebody else did something -- I've got 30

1 minutes and 42 seconds.

2 THE COURT: Okay --

3 MR. SIRI: But I do appreciate that, your
4 Honor.

5 THE COURT: -- but do --

6 MR. SIRI: I do appreciate that.

7 THE COURT: -- but you're concluded, right?

8 MR. SIRI: I'm concluding --

9 THE COURT: Okay.

10 MR. SIRI: -- just reserving for any recross
11 if there's something that comes up.

12 THE COURT: Got it. Redirect?

13 MS. NIEUSMA: All right.

14 REDIRECT EXAMINATION

15 BY MS. NIEUSMA:

16 Q Dr. Holtrop, we'll make this pretty quick. Tends to be my
17 habit. So let's start with, I'm going to go in reverse
18 chronological order as well.

19 So when there was some conversation about
20 aborted fetal cell lines and not a lot of -- can you tell me
21 what you mean when you say, "A cell line"?

22 A A cell line is a stem cell typically that a cell that can
23 still reproduce and in -- for example, if you take tissues
24 from lung fibroblasts, those can be made to reproduce and
25 continue to be lung fibroblast cells. And they have been

1 reproduced year after year after year.

2 Q How are they reproduced?

3 A Those are specifics that I could not tell you.

4 Q Are they grown in a lab?

5 A They're grown in a lab, yes.

6 Q So, they're -- the word "aborted fetal cells" has been used
7 a lot. Is there -- are there -- and I'm trying to phrase
8 this delicately. Are there new aborted cells being added to
9 this?

10 A To the best of my knowledge, there are not new aborted cells
11 being added to it. But again, this is -- vaccine
12 manufacturing is not my area of expertise.

13 Q All right, I'm going to go to something that kind of is so
14 you'll appreciate that. So we talked about encephalitis and
15 encephalopathy and myelitis and we also spent a lot of time
16 discussing aluminum. And you've done -- have you done
17 research on specifically metal toxicity in the human body?

18 A I have, lead poisoning, specifically.

19 Q All right. All right, why isn't the aluminum in vaccines
20 concerning to you? Or, is the aluminum in vaccines
21 concerning to you?

22 A It is not concerning to me because the amount of aluminum
23 that we ingest in general, just through our diet is much
24 higher than what we get through vaccines. There's no reason
25 to believe that that amount, that additional small amount,

1 is anything to be concerned about.

2 Q All right. Are you aware of the relative proportions of the
3 aluminum that we ingest versus the aluminum that we received
4 in vaccines?

5 A It is significantly higher what we ingest. I would -- it's
6 somewhere's between 50 to 100 times more than what we get in
7 vaccines.

8 Q All right, thank you. Let's talk about VAERS for a bit.
9 Are you familiar with the process to report a vaccine injury
10 to VAERS?

11 A There is a website to report it on and a phone number that
12 can be called.

13 Q All right, is it the physicians reporting these adverse
14 events?

15 A Yes.

16 Q Can someone report their own adverse event without a
17 physician?

18 A It would be possible, yes.

19 Q All right.

20 A There's no limitation as to who makes the report.

21 Q So would it be possible for a person or persons with an
22 agenda to make reports?

23 A That is possible, I would assume.

24 Q All right, and are there any standards for the timeline to
25 make a report to VAERS?

1 A You typically are required to make that report as soon as
2 possible, as soon as you become aware of it.

3 Q Is there a timeline for how long the alleged adverse
4 reaction takes place after the administration of the
5 vaccine?

6 A I'd have to look up the guidelines. It's generally within a
7 few days of -- after the vaccine.

8 Q All right, and -- all right, so we also talked about titers
9 a bit and that -- how would a child develop immunity that it
10 would show in a titer?

11 A Okay, so when you are -- when your body is -- encounters an
12 antigen, the body typically responds to it by producing an
13 antibody. Antibodies are sort of like the little soldiers
14 that help to fight off the antigen or the infection. Some
15 antibodies are effective, some are not effective and that is
16 actually a part of the process of developing a vaccine is to
17 help a body produce antibodies that are effective in
18 fighting off the infection.

19 Q All right. So there was a lot of talk about the fact that a
20 lot of vaccine preventable diseases we don't see.

21 A Correct.

22 Q Why do we still vaccinate against those diseases?

23 A Because they haven't been eliminated and because in a
24 globalized world, it is possible to be exposed to them from
25 somebody traveling on an airplane bringing it into the

1 country and we know that that has happened with a number of
2 diseases.

3 Q All right, and next -- this is almost of my last question.
4 I have good news for you. So, when you're looking at a
5 patient and making the determination as to what vaccines
6 they should receive, what family history factors are
7 concerning to you?

8 A One of the big family history factors that I would take into
9 consideration is, is there a history of anybody who's immune
10 suppressed? And actually, in certain, knowing that there's
11 certain conditions in the family would make me more likely
12 to immunize rather than less likely because -- especially
13 folks who have a chance of having diabetes or asthma may --
14 if there's a family history of it the chance of that the
15 child might have it is higher and then that child may be
16 more likely to suffer severe side effects if they were to
17 catch that disease.

18 Q All right, and are you familiar with The Institute of
19 Medicine at all?

20 A I'm familiar with it, yes.

21 Q Can you explain, briefly, what it is?

22 A I can't.

23 Q All right, that's fine.

24 A I know that there are recommendations that come out from the
25 Institute of Medicine, and I -- I'm sorry, I haven't looked

1 at that in a while.

2 Q That's fine. That's fine. No further questions.

3 THE COURT: Anything?

4 MR. SIRI: Yeah, just --(inaudible)--

5 THE COURT: Only related to anything new that
6 was brought up.

7 MR. SIRI: No, only exactly what was brought
8 up.

9 THE COURT: Okay.

10 MR. SIRI: I'm not going to go outside of the
11 scope.

12 THE COURT: Okay.

13 MR. SIRI: If I do I'll gladly take that
14 objection and sit down.

15 THE COURT: Okay.

16 RECROSS-EXAMINATION

17 BY MR. SIRI:

18 Q Okay, isn't it true that there actually has recently been a
19 new cell line, human cell line from aborted fetal tissue
20 that has been approved for use in vaccines?

21 A I'm not aware of that.

22 Q Okay. Isn't it true that the only polio vaccine used in the
23 United States is an activated polio vaccine which is
24 injected in muscle tissue?

25 MS. NIEUSMA: Objection, that's outside of

1 the scope of Redirect.

2 THE WITNESS: Incorrect, that's inaccurate.

3 THE COURT: Let her answer.

4 THE WITNESS: It's an inactivated polio virus
5 vaccine.

6 BY MR. SIRI:

7 Q Right, and it's injected into muscle tissue?

8 A Correct.

9 Q Okay, versus what we used to be used as an oral --

10 A Actually, it's not into the muscle tissue, it's given sub-Q,
11 typically.

12 Q And isn't it -- and the polio vaccine that used to be used
13 in America and the one that's still used in most other
14 countries, oral polio vaccine?

15 A Correct.

16 Q And isn't it true that the World Health Organization
17 recommendation provides that because -- strike that. Polio
18 vaccine is -- polio is transmitted from mouth to fecal
19 contamination, correct?

20 A Mm-hmm.

21 Q Right?

22 A Correct.

23 Q Okay, so it infects and proliferates in the intestines?

24 A Correct.

25 Q Okay, isn't it true that the World Health Organization

1 provides that if there's an outbreak of polio in a country
2 that uses IPV, they're supposed to switch over to OPV
3 because IPV gives personal protection because it only
4 creates immunity in the blood, not in the intestines. So
5 therefore, it -- the polio vaccine can still proliferate and
6 spread if all you have is IPV and not OPV, correct?

7 A That is correct.

8 Q Right, so -- right. So the pol -- okay. And that goes to
9 the point that my opposing counsel was saying that the
10 reason we need to con -- well, strike that, I think the
11 point is clear.

12 In terms of VAERS, for the very small
13 fraction of adverse events that are reported to VAERS, the
14 CREDIT CARD does follow-up on some of them, correct?

15 A Yes.

16 Q And so, if people were making phony reports to VAERS, they
17 find out, wouldn't they?

18 A I would assume so.

19 Q Have you ever read any article about phony VAERS reports?

20 A I have not.

21 Q Okay, are you aware of any phony VAERS reports?

22 A I have not.

23 Q Okay, last topic. Aluminum and then I'm done. So you said
24 that the quantity of ingested aluminum is small, or excuse
25 me, is much large in the amount of injected aluminum and

1 therefore you deem it safe?

2 A Correct.

3 Q Okay, are you aware that the -- this FDA provides that in
4 terms of ingested aluminum, eaten aluminum, .3 percent or
5 less is actually taken up by the blood? Do you know that or
6 not? Yes or no?

7 A I don't know the exact numbers, no.

8 Q Okay. And that if it is, it's taken up in ionic form? Do
9 you understand what I mean by that?

10 A I understand what you mean by that.

11 Q It means in it's smallest elemental form, that's how it's
12 taken into the blood, right?

13 A Correct.

14 Q Okay, and aluminum in ionic form is not able to cross the
15 blood brain barrier, correct?

16 A I am not aware that that's true.

17 Q You don't know?

18 A I don't know that that's true.

19 Q Okay, if you don't know that's fine.

20 Okay, in contrast, injected aluminum is --
21 are nano particles, correct? They're there to create a
22 irritant to the immune system so that the vaccine creates
23 antibodies. And so there are actually these nano particles
24 that are in the vaccine, right? Or do you not know?

25 A You're talking about specifics that are very detailed and --

1 Q Aren't the -- huh? Aren't the details important? I mean,
2 you said that --

3 A Not in this case because we're talking about a metal and
4 we're talking about a metal that doesn't change it's form in
5 a way that is -- it's not like the -- there was a law -- a
6 big controversy about mercury in vaccines. And the mercury
7 in vaccines, the form, was different than the mercury that
8 was typically ingested in fish, for example.

9 Q I'm not asking about mercury though, Dr. Holtrop.

10 A I know you're not, but that concern is not present for
11 aluminum.

12 Q I'm going to ask my question again --

13 A The amount of -- the --

14 Q Is the -- the aluminum that's injected into the body, are
15 you aware that it's in nanoparticle form? That it's, it is
16 in chemistry --(multiple speakers)--

17 A It is bound to something else.

18 Q I'm sorry?

19 A It is bound to something else. It's used as an adjuvant.

20 Q Right, meaning you can't have ionic aluminum binding to
21 these giant antigens, you need big pieces of aluminum to
22 bind to the protein antigens, right?

23 A When you say big pieces of aluminum --

24 Q Relative to an ion of aluminum. That would be ingested.

25 A Sir, you're asking me specifics that are far beyond my --

1 Q If you don't know just say you don't know, that's fine.

2 A -- area of expertise.

3 Q Okay. Okay, but if you don't know, that's fine. But I'm --
4 there is -- okay, so you're not aware that there's a
5 difference between the form that aluminum -- so when it's
6 ingested, take up an ionic form, when it's injected it's in
7 these nanoparticle forms and nanoparticle forms --

8 MS. NIEUSMA: I'm going to object. It hasn't
9 presented any authority other than himself to say this.

10 THE COURT: Let him finish, just let him
11 finish. He's almost done.

12 BY MR. SIRI:

13 Q And the nanoparticle forms that we discussed earlier are
14 gobbled up by macrophages are deposited around the body
15 including the brain. You know, strike that. I think she's
16 already said she doesn't know.

17 THE COURT: Okay.

18 MR. SIRI: So, thank you very much.

19 THE COURT: All right, thank you. You can
20 step down and you're excused.

21 THE WITNESS: Thank you.

22 THE COURT: We're going to take a brief
23 break.

24 (At 9:56:01 a.m., witness excused)

25 THE CLERK: All rise.

1 (At 9:56:10 a.m. court recessed)

2 (At 10:34:39 a.m. court resumed)

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

5 THE COURT: No. All right, anymore
6 witnesses?

7 MS. RUBY: Plaintiff would now like to call
8 Lisa Costella to the stand, the plaintiff's sister.

9 THE COURT: Okay. Good morning, can you
10 raise your right hand, please?

11 THE CLERK: Do you solemnly swear of affirm
12 that the testimony you're about to provide in this matter
13 before this court be the whole truth and nothing but the
14 truth?

15 MS. COSTELLA: Yes, I do.

16 LISA COSTELLA

17 (At 10:35:07 a.m., witness sworn, testified as follows)

18 THE COURT: State your name.

19 THE WITNESS: Lisa Costella.

20 THE COURT: You can have a seat and just keep
21 up -- keep your voice up nice and loud.

22 THE WITNESS: Okay.

23 THE COURT: How do you spell your last name?

24 THE WITNESS: C-O-S-T-E-L-L-A.

25 THE COURT: All right, thank you.

DIRECT EXAMINATION

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BY MS. RUBY:

Q And Ms. Costella, what's your relationship to the plaintiff,
Ms. Lori Matheson?

A She's my sister.

Q And what's your relationship to the minor child in this
case?

A She's my niece.

Q To the best of your knowledge, did you mother or father or
any other family member have any known diseases, disorders
or conditions?

A My mother or father, specifically?

Q Mother or father, any other family members?

A Yes, there are several family members that have autoimmune
diseases.

Q Could you go through them for me?

A Okay, my great -- maternal great grandmother had graves
disease. She passed away from a goiter as a result. My
grandmother had rheumatoid arthritis, lupus, low platelets,
vasculitis, and psoriasis.

Q And what was your grandmother's name?

A Mildred.

Q Mildred?

A Caliguri.

Q Can you spell the last name for me?

1 A C-A-L-I-G-U-R-I.

2 Q Okay, great grandmother and grandmother?

3 A Yes.

4 Q And who else?

5 A My mother and both of my aunts have RA.

6 Q And what are your aunts' first names?

7 A Linda and Edna.

8 Q And what's Linda's last name?

9 A What's Linda's last name?

10 Q Correct.

11 A Modico (sp).

12 Q Anyone else?

13 A My aunts and my mother's cousin, first cousin, Debbie, her
14 name's Debbie, she had RA also and she passed away from it.

15 Q Okay, and do you recall when she passed away?

16 A Two or three years ago.

17 Q Okay.

18 A My father has low platelets, my sister, Lori, has low
19 platelets, I have psoriasis and my nephew William, Lori's
20 son, has eczema.

21 Q Okay, anyone else that you can think of in your family with
22 any other diseases, autoimmune disorders?

23 A No, nobody else really.

24 Q And you indicated that you have psoriasis?

25 A I do.

1 Q Okay, and how long have you had that?

2 A I've had it for about 32 years or that I've known of it that
3 long.

4 Q Okay, and just a few other questions. Were you present when
5 Lori moved out of the marital home?

6 A Yes, I was.

7 Q And who else was present that day?

8 A My -- both of my parents, two of Lori's other friends --

9 MS. NIEUSMA: I'm going to object to this
10 line of questioning. It's outside the scope of the motion
11 and the objections that are up.

12 THE COURT: What's the relevance?

13 MS. RUBY: It just goes back, your Honor, the
14 defendant father had indicated about the date that my client
15 moved out of the marital home and that was just a short few
16 questions to rebut that testimony has far as what happened
17 on that day.

18 THE COURT: How is it relevant though?

19 MS. RUBY: It was relevant. I mean, it sets
20 up the parenting time issues, I think, because she's -- has
21 witnessed some of the interactions between my client and the
22 defendant father. Like I said, it's four or five questions,
23 not much.

24 THE COURT: Okay, go ahead.

25 MS. RUBY: Thank you.

1 BY MS. RUBY:

2 Q Who else was present? You indicated both of your parents?

3 A Both of my parents and two officers from the Troy Police
4 Department.

5 Q And were they there by way of civil standby or were they
6 called specifically?

7 A They were called by my sister to accompany us.

8 Q Okay, so for a civil standby?

9 A Yes.

10 Q Okay, anyone else that was there with you that you recall?

11 A That was who was immediately there. Later other people
12 came.

13 Q To assist with the moving or for some other reason?

14 A I don't know the reason why they were called, but Mike
15 Schmitt's parents were called.

16 Q Okay, do you know why the police were called by your sister?

17 A My sister was afraid of possible --

18 MS. NIEUSMA: I'm going to object. She has
19 no --

20 THE COURT: Sustained.

21 BY MS. RUBY:

22 Q Could -- had you seen any interaction between your sister
23 and the defendant?

24 A I have, yes.

25 Q At that point or in previous times to that?

1 A What type of interaction?

2 Q Just how they interacted with one another.

3 A Yes, I have. Yes.

4 Q Okay --

5 MS. NIEUSMA: I'm going to object. This is
6 all prior to the entry of the last Order.

7 THE COURT: It is, it's not relevant.

8 MS. RUBY: Okay, I just was asking if she had
9 personally observed that. So, I'll finish with that. Thank
10 you.

11 THE COURT: Thank you. Any cross?

12 MS. NIEUSMA: Just very brief.

13 CROSS-EXAMINATION

14 BY MS. NIEUSMA:

15 Q How do you know that -- what your great grandmother died of?

16 A We've been told by my great -- by my grandmother, Mildred.

17 Q All right --

18 A It was her daughter.

19 MS. NIEUSMA: At this point I'm going to ask
20 the Court to strike anything that she's been told by other
21 people.

22 THE COURT: She can testify how her great
23 grandmother died.

24 MS. NIEUSMA: Okay, nothing -- no further
25 questions then.

1 THE COURT: All right, step down. You can
2 step down. You're excused. All right, any more witnesses?

3 (At 10:39:40 a.m., witness excused)

4 MS. RUBY: Your Honor, I have a records
5 custodian that's en route, that's on the way. I've
6 contacted another one and I'm hopeful that I can convince
7 him to come today. At this point I would like to address a
8 few housekeeping matters, if that would be okay?

9 THE COURT: So you don't have any more
10 witnesses to call?

11 MS. RUBY: I don't have any more witnesses at
12 this moment.

13 THE COURT: Okay, so Findings of Fact and
14 Conclusions, you don't have any more witnesses?

15 MS. NIEUSMA: Correct, I'm finished.

16 THE COURT: Okay, Findings of Fact
17 Conclusions of Law?

18 MS. NIEUSMA: All right, when would you like
19 those?

20 THE COURT: I can give you -- how much time
21 do you need?

22 MS. NIEUSMA: I am leaving Friday to go out
23 of town, is my only concern. If they could be due, let's
24 see, the 13th, 14th, 15th, by maybe March 15th, is that too
25 late? If not I can --

1 THE COURT: I'll send my staff attorney out
2 for a scheduling order on that.

3 MS. NIEUSMA: All right, thank you.

4 MS. RUBY: Your Honor, I just -- the few
5 housekeeping matters I need to address, there was some
6 outstanding stipulated exhibits, so I just wanted to confirm
7 that those would be admitted so I can --

8 THE COURT: You can do that with my clerk and
9 make a list of them and submit them.

10 MS. RUBY: Okay.

11 MS. NIEUSMA: I already reviewed the binder
12 and agreed to it.

13 THE COURT: Okay.

14 MS. RUBY: So the records custodian that's on
15 the way, I will be able to have them come testify?

16 THE COURT: No, we're concluding. I -- we're
17 done. So what does your -- what do you need your witness
18 for and why aren't they here?

19 MS. RUBY: I have been calling and then
20 because we were moved til today and I had them subpoenaed
21 for today I contact their office, I spoke with them last
22 week. They indicated it's a one doctor office, they didn't
23 have an office manager that they could send. I contacted --

24 THE COURT: Who --

25 MS. RUBY: This is from Dr. Risk's office.

1 So I would renew my request for the admission of the
2 proposed Exhibits 7-P, 7-M and 7-N, which are --

3 (At 10:41:04 a.m., Plaintiff's Exhibits 7-M,
4 7-N and 7-P are offered)

5 THE COURT: Whose records are they?

6 MS. RUBY: This is William Matheson's
7 records, who's the custodian of records, is on the way to
8 this courthouse today, right now. Dr. Shaw's office, I had
9 already contacted this morning --

10 THE COURT: Who's medical records?

11 MS. RUBY: Linda Modico, Joanne Evans --

12 THE COURT: Sister?

13 MS. RUBY: That's the great aunt, the
14 grandmother and the brother of the child.

15 THE COURT: All right, and you aren't going
16 to stipulate to that?

17 MS. NIEUSMA: I am not.

18 THE COURT: Okay, but they're going to come
19 here and say those are the medical records.

20 MS. NIEUSMA: If -- if -- I'll stipulate to
21 the medical records, they can come in.

22 THE COURT: Okay, thank you, so we don't need
23 the witness. All right, Findings of Fact and Conclusions of
24 Law.

25 MS. RUBY: All right.

1 THE COURT: Well, you just need to see my
2 staff attorney as to the date that they're due.

3 MS. RUBY: And your Honor, I just need to
4 indicate that Dr. Bark is not here. I indicated to the
5 court yesterday that she was traveling back from LA. She
6 was boarding a plane when I contacted her about coming
7 today. She got in late from LA to Chicago and is unable to
8 be here today. I could -- if it's possible to permit her to
9 testify by telephone or Skype or some sort of way --

10 THE COURT: Okay, I think the Court has been
11 more than lenient in allowing extra days, days of your
12 choosing, days that your experts could be here. We are now
13 on the sixth day of testimony. I believe the first day of
14 testimony was in September, October?

15 MS. RUBY: I think it was October.

16 THE COURT: Yes. It -- I told you yesterday,
17 early on, this was going to be it. And I only added this
18 day so that you had sufficient time to cross-examine their
19 expert, which I think is really important. So I am -- if
20 you're asking for an adjournment, my answer is no. We
21 concluded, we are concluding today. I told you, I gave you
22 plenty of notice and this is the sixth day of testimony.

23 MS. RUBY: And your Honor, when we got here
24 yesterday we were informed that Dr. Holtrop wasn't available
25 or was only available until noon. We were not informed of

1 that until --

2 THE COURT: But Toni Bark wasn't here
3 yesterday. So even if I -- even if you --

4 MS. RUBY: I understand that.

5 THE COURT: Don't interrupt me, please.

6 MS. RUBY: Sorry.

7 THE COURT: Even if you didn't stipulate to
8 allowing Dr. Holtrop to go out of order, you still didn't
9 have your witness here to testify.

10 MS. RUBY: Your Honor, we --

11 THE COURT: And I am completely sympathetic
12 to bringing out of state witnesses in, I am, and out of
13 state lawyers. And I've done my best to accommodate. But
14 at this point, Dr. Bark's been here three different days and
15 she wasn't here yesterday and I'm just not going to let this
16 go on. It's not fair to this child and it's not fair to the
17 litigants. It's the sixth day of testimony, I have been
18 more than gracious about trying to accommodate your
19 schedules and I gave you fair warning, this was it. We are
20 done.

21 So I will send my staff attorney out for a
22 scheduling order to give you ample time to submit findings
23 of fact and conclusions of law.

24 MS. RUBY: Your Honor, Ms. -- we just have
25 one more housekeeping matter in regards to the deposition of

1 Dr. Plotkin.

2 MR. SIRI: Can I -- just two minutes, if I
3 may, your Honor. I'd like to move into -- with respect, I'd
4 like to move into evidence the deposition of Dr. Plotkin.
5 This is an original copy that's authenticated by the court
6 reporter. I also have a certified copy for opposing counsel
7 --

8 MS. NIEUSMA: Thank you.

9 MR. SIRI: -- as well.

10 THE COURT: Did you give her notice that you
11 were going to move for this transcript?

12 MS. NIEUSMA: No. Actually, I requested the
13 transcript on the 14th because I don't have the \$1500.00 to
14 order a copy and was told if I didn't stipulate to the
15 medical records I couldn't have the transcript.

16 MR. SIRI: Well, there was no stipulations
17 happening at that time and so, you know.

18 THE COURT: So you didn't give her the
19 transcript until just this very second?

20 MS. NIEUSMA: This is the first time I've
21 seen it.

22 MR. SIRI: She was at the deposition, your
23 Honor. She was there.

24 And Michigan Rules of Evidence, as I
25 understand it, don't require me to provide a copy. In fact,

1 they provide that the other side should purchase a copy if
2 they want a copy. There's no reason she couldn't have
3 gotten a copy. She's well aware that this is something that
4 we were relying upon and she was at the deposition itself.

5 So, I've -- it's an original copy, it's their
6 expert witness that they designed in this case. He is, you
7 know, in terms of, you know, finding out about vaccines, he
8 is somebody as -- his CV is going to be coming into
9 evidence. He's probably the most prominent figure with
10 regard to vaccinology in the world, according to the
11 defendants, and --

12 THE COURT: Okay, here's the thing. I don't
13 know who that doctor is, I haven't looked at exhibits unless
14 they've been admitted, I haven't read the transcript.

15 I didn't know, I had no understanding of what
16 depositions you took or what you didn't, although I knew
17 that you were taking many of them. I had no notice that you
18 wanted to enter this into evidence and it doesn't appear
19 that opposing counsel did too.

20 So just out of fairness, you need to give
21 some notice. I don't know how you're going to get that in,
22 but if you want to brief it or motion it up, you have plenty
23 of time to do that.

24 MR. SIRI: Okay, I mean, in terms of -- okay,
25 sure, Michigan Rules of Evidence, you know, in terms, it's

1 not hearsay, there's an exception to hearsay to deposition
2 transcripts by an expert in the same here, it's 903.18, I
3 believe?

4 MS. NIEUSMA: I'll indicate --

5 THE COURT: I know the rules, thank you.

6 MR. SIRI: Yes, your Honor, sorry.

7 THE COURT: I'm concerned about notice to
8 opposing counsel.

9 MR. SIRI: Okay.

10 MS. NIEUSMA: I'll also indicate --

11 THE COURT: I'm also concerned that we've
12 been sitting here all day yesterday and all this morning and
13 you didn't say to opposing counsel, "I'm going to move --

14 MR. SIRI: Yes.

15 THE COURT: -- to enter a 1500 page
16 deposition transcript. Just an FYI before I bring it up in
17 front of the court. That's just common courtesy. So I'm
18 telling you, I'm requiring that.

19 MR. SIRI: Here's the reason, and I'll tell
20 you the reason. The reason is when they brought an expert
21 who is the head of the Michigan American Academy of
22 Pediatrics, I presumed that she would know something about
23 vaccines.

24 THE COURT: You were talking about Dr.
25 Plotnik yesterday all day. If you were going to enter his

1 -- if you wanted to move to enter that into evidence --

2 MR. SIRI: What -- what --

3 THE COURT: I'm just saying notice. Just,
4 just out of fairness.

5 MR. SIRI: And what would have -- what --

6 THE COURT: So we're not doing it right now.
7 When you want to argue it, you can talk amongst yourself.
8 Because as I said --

9 MR. SIRI: Okay.

10 THE COURT: I encourage professional courtesy
11 to one another.

12 MR. NIEUSMA: I'll also indicate that Dr. --
13 I would not classify Dr. Plotnik as an expert in this matter
14 given that my trial brief made it explicitly clear that he
15 was not test -- not participating.

16 MR. SIRI: It was note -- he was designated
17 as an expert by her in her own motions to have him appear as
18 an expert remotely as well as providing his CV. He said he
19 was an expert in his deposition. They said he was an
20 expert. So, I mean, to say now that he wasn't noticed as an
21 expert, I'm not really sure how to respond to that.

22 THE COURT: Okay, so why don't you have a
23 conversation off the record --

24 MR. SIRI: Yeah.

25 THE COURT: -- and then decide how you want

1 to proceed.

2 MR. SIRI: One final little thing.

3 THE COURT: What's that?

4 MR. SIRI: Okay, so in -- as stepping into
5 this case in the middle, obviously, I did review the prior
6 transcripts to have -- in this case, and one of the things I
7 came across that I think might be important to just address
8 to the Court briefly is -- cuz I think it's an important
9 thing, is in one of the transcripts you said that, you know,
10 "I wish your client, Ms. Matheson, and all of her friends
11 would stop making remarks about how I love to make decisions
12 about poisoning children."

13 I just want to tell the Court that that, you
14 know, to the extent remarks like that are made, they're
15 completely unacceptable. Obviously we find those remarks
16 unacceptable, my client finds those remarks unacceptable.
17 Nobody should be attacking the Court in that way and that's
18 totally inappropriate, all right?

19 And so, you know, I've had a discussion with
20 my client about that and without obviously revealing any
21 privileged communications, Ms. Matheson has taken a careful
22 look to try to find any comments like that online or any
23 place and she has no memory of making any comments.

24 So she went and she looked to see if maybe
25 somebody made one in her name, she looked to see if anybody

1 she knew made comments like that, she hasn't been able to
2 locate anything. She's concerned maybe somebody is making
3 comments in her name. And obviously if they're out there,
4 she wants to address them. They're not appropriate, they
5 shouldn't be out there.

6 And so if those comments are, you know, we
7 respectfully request that if the Court could provide us
8 copies of those comments and -- so that either Ms. Matheson
9 can say, "Oh, that's not me," and address it or if it's
10 maybe somebody she does know she can -- she would gladly
11 interface to deal with that so that those things are not out
12 there.

13 THE COURT: I don't think it's proper
14 appropriate. But if she's concerned that somebody's
15 misrepresenting her comments or what she said then she
16 should take it up with a law enforcement agency. Anything
17 else?

18 MR. SIRI: Well, she can't find them, that's
19 the problem.

20 THE COURT: I don't know what to -- I don't
21 have a -- I'm not sure what relief you're asking for, but
22 what you've already asked for, there's no mechanism for me
23 to provide it.

24 MR. SIRI: Okay, thank you.

25 THE COURT: Anything else?

1 MR. SIRI: I would just like to preserve it
2 for appeal to the extent that we can't continue with Dr.
3 Bark. And I understand all the arguments, I won't rehash
4 any of them, that we would move for a mistrial?

5 THE COURT: Okay, well you're going to have
6 to again, come forward with a little bit more than you're
7 moving for a mistrial.

8 MR. SIRI: Okay, well I'm happy to explain
9 it.

10 THE COURT: Well, you're required to explain
11 it. Not only are you required --(multiple speakers)--

12 MR. SIRI: Well, thank you, your Honor. I
13 didn't want to --

14 THE COURT: One moment please, don't -- I --
15 you're required to explain it, you're required to provide
16 case law and statutory basis on your requests. So, again --

17 MR. SIRI: Okay.

18 THE COURT: -- I prefer to do that in a way
19 that gives everybody notice and you are -- there's relief
20 available to you pursuant to the court rules, so you should
21 use it.

22 MR. SIRI: So, we'll --

23 MS. NIEUSMA: I'm --

24 THE COURT: It is not --

25 MR. SIRI: Yes.

1 THE COURT: -- it is not, as I've said
2 before, my staff attorney and my clerk come out here every
3 single time you've appeared and ask if there are any
4 preliminary matters you want to address before we take --
5 before I take the bench, any motions you want to address,
6 any motions in limine.

7 And precisely, so that somebody's not being
8 ambushed. And it's unfair to opposing counsel. If you want
9 to make a motion like that, use the proper court rules and
10 the statutes and do it appropriately.

11 MS. NIEUSMA: I am prepared to respond today,
12 if you'd like, to save myself having to brief it, but --

13 THE COURT: Well, I need --

14 MR. SIRI: Well, I'm happy to make the
15 argument then.

16 THE COURT: Okay, go ahead.

17 MR. SIRI: Okay. Well, and we can brief it
18 as well if your Honor would like. But Dr. Bark has come
19 here, flown out two different times to appear as, I think,
20 the court's aware. And because of how those two days
21 unfolded, she wasn't able to actually complete her
22 testimony.

23 Her Direct Examination has begun and in terms
24 of yesterday and today, which are the next dates in this
25 trial, my co-counsel provided notice to opposing counsel in

1 these halls and I believe somebody from your chambers was
2 present, in which she advised that Ms. Bark, right away, was
3 not going to be available for yesterday. And that carries
4 over for today cuz she was in California over the weekend.

5 And so, you know, I don't think there's a lot
6 left to do in terms of Dr. Bark, but her Direct Examination
7 is still out there. We'd just like the opportunity to
8 complete it.

9 And I also think that, you know, there's
10 usually also a right to rebuttal witnesses. I think that a
11 number of things that Dr. Holtrop has said call for rebuttal
12 witness and I think the rules would generally permit that.

13 And so, you know, the Court, of course, it's
14 a wide discretion to control this calendar. Case law's
15 pretty clear on that. But, Michigan Rule of Evidence 611(a)
16 provides that discretion, but it also provides, and I think
17 as the Michigan -- there's a number of cases in the Michigan
18 Court of Appeals, have said that, including I've got *Graven*
19 *v Detroit Board of Education*, 215 Westlaw, 3757580. I
20 couldn't find a Michigan cite, I'm sorry.

21 And they said, you know, "Placing time limits
22 on the examination of witnesses is a discretion decision by
23 the trial court, but the decision must be consistent with
24 the parameters set forth in Michigan Rule of Evidence
25 611(a). And there are three parameters in there.

1 The first one is that, you know, whether the
2 testimony is necessary to ascertain the truth. And I think
3 that here we're still trying to figure out. I think Dr.
4 Bark adds to the truth of whether or not the risks outweigh
5 the benefits for Faith. And so I think the first prong is
6 met.

7 Second prong is that it doesn't needlessly
8 consume the time of the Court. And here, the questions that
9 we're going to ask are relevant so, and -- so, I don't think
10 it would needlessly consume the time of the Court.

11 And then third is that the Court can
12 constrain time if it needs to protect the witness against
13 harassment, embarrassment. And here, I don't think that
14 would be the case for Dr. Bark. I -- we don't need that
15 protection to protect her.

16 So, for sure I don't, you know, we're just
17 asking for a little more time just to conclude her testimony
18 and if we can't, I think there's case law that provides, and
19 there are cases, you know, obviously there needs to be
20 prejudicial. We would, you know, move -- and this would be
21 the basis for a mistrial.

22 And then I think most importantly, and this
23 is the most critical piece in terms of a proffer, we're
24 finally, today, for the first time, have gotten in the
25 medical records, ever in this whole case. And so this will

1 be the first time Dr. Bark, our expert, can actually testify
2 as to her -- as to those medical records. And that's
3 critical.

4 I mean, this whole case is about should the
5 -- should Faith -- is Faith's family history of auto-
6 immunity continence against vaccinating her. And there
7 isn't been an expert yet who's had the opportunity to look
8 at those medical record.

9 And so since they literally just came in, we,
10 you know, that is the proffer of what I would provide Dr.
11 Bark will be -- would be testifying about and why it's
12 important in the interest of justice and pursuant to the
13 prongs in MR. ABRAMS 611(a) to permit her to testify.

14 Again, we'll keep it short. I think I tried
15 to do that this morning under your orders. I really tried
16 to punch through and we'll abide by the orders that the
17 Court has in terms of giving us some limited amount of time
18 to finish Dr. Bark's testimony. Thank you very much.

19 THE COURT: All right, your response?

20 MS. NIEUSMA: This -- I'll stand at the
21 podium and do it the right way. This would all be extremely
22 important and relevant if Dr. Bark were here and available
23 to testify today. What they're actually asking for is an
24 additional adjournment. Adjournments in Michigan are
25 governed by MCR 2.503, which makes it clear that denial of

1 an adjourn -- that in order to grant an adjournment due to
2 the absence of witness, the Court has to find both that the
3 evidence is material and that diligent efforts have been
4 made to ensure the witness's availability.

5 Moreover, pursuant to MCR 2.503, let me see,
6 (c)(1), the motion to adjourn the trial based on the
7 unavailability of the witness must be made as soon as
8 information is available.

9 Ms. Ruby has been aware of this trial date
10 since January 22nd, when it was -- of yesterday's date,
11 since January 22nd, when it was scheduled.

12 On February 14th, reached out to me to ask if
13 we could take witnesses out of order. She had ample time to
14 ensure that Dr. Bark would be available for this testimony,
15 she's had her here three times, made the decision to take
16 witnesses in another order, and ultimately, as regards to --

17 Actually, I'll go -- I'll give you some case
18 law on this one too, "Denial of the request for an
19 adjournment or a continuance is proper in cases where there
20 have been multiple past continuances and the need to an
21 adjournment is a result of the moving parties own lack of
22 preparation." That's *Roselot versus Muskegon*, 123 Michigan
23 App 361.

24 And "Denial for adjournment for the absence
25 of a witness is proper when the moving party fails to

1 provide an adequate explanation for the lack of their
2 witness," which is *Tils -- Tisbury versus Armstrong*, 194
3 Michigan App 19.

4 In this case, there's no reason they
5 shouldn't have taken the steps to have their witness here on
6 the prior day or requested that this Court adjourn the
7 trial. Certainly on February 14th there was ample time to
8 file a motion to adjourn. Whether that motion would have
9 been granted, I can't say based on how long this has been
10 continuing.

11 And regarding Dr. Bark's availability to
12 interpret the admitted medical records, Dr. Bark has been
13 qualified as an expert in general medicine and surgery. The
14 Court's order was very clear that if they wanted to
15 interpret these medical records, they needed to bring an
16 immunologist. They didn't do that.

17 So ultimately, there's no real reason for Dr.
18 Bark to evaluate these medical records. She's not qualified
19 to form an expert opinion on them as far as the child's
20 medical -- family medical history.

21 THE COURT: All right, I'm going to take it
22 under advisement and issue a written opinion shortly, but in
23 the meantime you're going to get your scheduling order.
24 Thank you.

25 MR. SIRI: Thank you, your Honor.

1

THE CLERK: All rise.

2

(At 10:57:08 a.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of seventy-four (74) pages, before the 6th Judicial Circuit Court, Oakland County, Michigan:

LORI ANN SCHMITT

v

MICHAEL WILLIAM SCHMITT

_____ /

Location: Pontiac, Michigan

Date: Tuesday, February 27, 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 3, 2018

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