

1 THE COURT: We ready for the jury?

2 MR. RONEMUS: Yes.

3 COURT OFFICER: Okay, Judge?

4 THE COURT: Thank you.

5 (Whereupon, there was a pause in the
6 proceedings.)

7 THE COURT: All rise.

8 COURT OFFICER: Jurors.

9 (Whereupon, the jury entered the courtroom.)

10 THE COURT: You may all be seated.

11 Good afternoon, ladies and gentlemen.

12 THE JURY: Good afternoon.

13 THE COURT: Defendant, call your next
14 witness.

15 MS. SCIRETTA: Thank you.

16 The defendant calls Dr. Robert April.

17 THE CLERK: Raise your right hand.

18 **DR. ROBERT APRIL,**

19 called as a witness, having been first duly sworn by
20 the clerk of the court, was examined and testified
21 as follows:

22 THE WITNESS: Yes, I do.

23 THE CLERK: Lower your hand.

24 In a loud, clear voice state your name and
25 address for record, spelling your first and last name.

1 THE WITNESS: Robert April. A-P-R-I-L.

2 THE CLERK: Address.

3 THE WITNESS: 4 East 88th Street, New York,
4 New York 10128.

5 THE CLERK: You may be seated.

6 THE WITNESS: Thank you.

7 THE CLERK: You are welcome.

8 THE COURT: You may proceed.

9 MS. SCIRETTA: Good afternoon.

10 DIRECT EXAMINATION

11 BY MS. SCIRETTA:

12 Q Good afternoon, doctor.

13 A Good afternoon.

14 Q Doctor, you said you are a doctor.
15 What is your medical specialty?

16 A I am a neurologist.

17 Q And for how many years have you been a
18 neurologist?

19 A A long time.

20 (Whereupon, there was laughter in the
21 courtroom.)

22 A Over 40.

23 Q Okay. With respect to your background, could you
24 please describe for us your educational background,
25 starting with your undergraduate medical school, and then

1 your training after medical school.

2 A Yeah.

3 Went to the University of California, Los Angeles.
4 And the University of California, Berkeley. And I graduated
5 from medical school at the University of California, San
6 Francisco. Then I came to New York and I interned at the
7 Mount Sinai Hospital in New York City. And I did a general
8 rotating internship in medicine and surgery.

9 Then I started my professional training in
10 neurology which I did at the Mount Sinai Hospital. At the
11 Kings County Hospital in Brooklyn, where I spent a year in
12 neuropathology in the Kings County Morgue. And then I did a
13 year of training at the Rusk Institute as part of my
14 neurology in rehabilitation medicine.

15 Then I went on to a postdoctoral training program
16 in electroencephalography, which is EEG. And
17 electroencephalography, EEG, that was done at the Mount
18 Sinai Hospital for the two years.

19 Then spent two years at the New York University
20 Medical Center in neurophysiology actually doing research on
21 the nature of pain mechanisms in the spinal cord and brain.
22 And then it took my research to London for a year under the
23 auspices of the National Multiple Sclerosis Society and
24 taught and did research at University College, London.

25 Then I was in the service for two and a half years

1 in Baltimore, Maryland. I was the chief of neurology at the
2 United States Marine Hospital in Baltimore. And I had a
3 commission in the Coast Guard.

4 After that, I came back to New York and I went into
5 a job at the Bird S. Coler Hospital, which is on Roosevelt
6 Island. I was the chief of neurology there for 7 years.
7 That's New York City's hospital for chronic diseases as a
8 place where people went with paraplegic, gunshot wounds, end
9 stage results of chronic progressing diseases. Epilepsy,
10 Alzheimer's, various diseases.

11 After 7 years there I went into private practice.
12 I have been in private practice at the address I stated
13 since 1977. And during those years I have been an attending
14 neurologist at many hospitals in New York, some of which
15 have closed, including St. Vincent's.

16 I have been and still am at NYU Medical Center,
17 Mount Sinai Hospital, Lenox Hill Hospital. And I am a
18 member of the New York County Medical Society. And I am a
19 fellow of the American Academy of Neurology. And I am a
20 member of the French Neurological Society in Paris. And I
21 am on a various boards. I am on the board of Generic
22 Disease Foundation at Mount Sinai Hospital.

23 I spend most of my time in my office and I teach
24 courses to NYU medical students once a year in clinical
25 neurology. And I teach residents at Mount Sinai Hospital in

1 their clinics twice a year.

2 So, that's essentially what I do. I see patients
3 and I go to hospitals.

4 Q Have you written any papers that were related to
5 your field of study?

6 A I have.

7 Q And basically could you just give us a brief
8 overview of what the subject matter was of your medical
9 papers?

10 A I have written papers on reflex changes in the
11 spinal cord experimentally. And I have written a paper on
12 Parkinson's disease and several on aphasia, which is
13 language dysfunction from stroke in the brain. And I have
14 published papers also in the history of neurology.

15 Q Approximately how many papers have you written?

16 A About 20.

17 Q And have you --

18 MR. RONEMUS: Sorry. How many what?

19 MS. SCIRETTA: Papers.

20 THE COURT: Papers.

21 MR. RONEMUS: Oh, papers. Okay.

22 Q Are you, you may have said, are you board
23 certified?

24 A I am board certified in neurology by the American
25 Board of Psychiatry and Neurology. And I have board

1 certification from the American Board of Qualification in
2 EEG.

3 Q What does that mean, board qualification in EEG?

4 A Specifically?

5 Q Yes.

6 A Well that I took an examination from that board.

7 After showing them that I had spent the requisite
8 time seeing patients and doing EEGs and reading the
9 requisite number of records, then I had an oral and written
10 examination. And a simulated laboratory examination.

11 Q Approximately, doctor, how many EEGs would you say
12 you performed each year?

13 A Well in my own office?

14 Q Yes.

15 A Between 200 and 250 a year.

16 Q Are you ever called upon to read EEGs for other
17 physicians?

18 A I am sorry?

19 Q Are you called upon to read EEGs while at the
20 hospital or for other physicians?

21 A I've done that, too, as well.

22 Q Doctor, did there come a time that you were
23 requested to see a plaintiff by the name of Karen -- Leslie
24 Karen Lariviere?

25 A Yes.

1 Q And were you contacted with respect to, again to
2 come here today to be in court to give testimony about your
3 findings on that matter?

4 A Yes.

5 Q And with respect to that contact, was there an
6 agreement that you would be compensated for your time away
7 from your office?

8 A Yes.

9 Q And what was that agreement?

10 A \$4,000.

11 Q And that would encompass everything you've done on
12 this case?

13 A Yes.

14 Q Did you actually examine Miss Lariviere?

15 A Yes, I did.

16 Q Do you remember when you did that?

17 A Yes. On December 29, 2010. I saw her once.

18 Q Now, with respect to seeing the patient were you
19 provided the patient plaintiff, were you provided with any
20 medical records for your review?

21 A I was. With some.

22 Q And with respect to that physical exam, did the
23 patient come to your office, plaintiff?

24 A Yeah. She came to my office and she was
25 accompanied by her husband and her attorney, Mr. Ronemus.

1 Q When you conducted the physical examination, who
2 was present in the room?

3 A The three. The plaintiff, her attorney, and her
4 husband.

5 Q With respect to this examination, how did you
6 proceed with the examination? What were the first steps
7 you took?

8 A All right. I asked her to tell me how, what
9 happened to her. How the accident -- what kind of an
10 accident it was and how she was injured. What symptoms she
11 developed. And how they subsequently played out and how
12 she felt today.

13 Q What did you learn, starting from the beginning,
14 about what she told you?

15 A Well what she told me was that on the day of the
16 accident in 2008, in December, she was a pedestrian and she
17 was struck on the side of her head by the mirror on a
18 passing city bus. That caused the local injury. And she
19 was taken to, or she went immediately to Lutheran Hospital
20 in Brooklyn, which was close to where she's, close to where
21 she was as possible. And she went to the emergency room.

22 And she told me she was treated in the emergency
23 room and attention was given to the local scalp injury
24 (indicating). She was examined completely. And other
25 examinations were performed and she was ultimately

1 discharged from the emergency room without being admitted to
2 the hospital. She was given the usual instructions that
3 people get when they go to the emergency room and have an
4 injury to the scalp.

5 And then she told me that sometime later she had an
6 event which was called a seizure. And as a result of that,
7 she was taken to, again to the Lutheran Hospital. And that
8 occurred about five months after the accident in April of
9 2009. And that's what she told me.

10 And she said that the seizure was observed by her
11 husband and he was present. And he, I think he also
12 described it a bit to me. And after that she had -- she
13 developed many different symptoms, which she claimed was a
14 result of this experience. And this involved her thinking,
15 her memory, her emotions. She became sad and depressed.
16 And she said that she became nauseated.

17 And she actually gave me a list that she made of
18 the kinds of ways her life had changed. And I think that
19 was very, very descriptive. And I could essentially read
20 all these points, but it covers so many aspects of life that
21 it affected sleep, sexual feelings, appetite, ability to do
22 mental calculations. Ability to cope with situations of
23 stress. In short, it changed her whole life, according to
24 her. That's what she told me. And as a result of this
25 seizure she was put on medication which included

1 anti-convulsant medication we normally use in the treatment
2 of epilepsy.

3 At this point I would like to state when I say
4 seizure, I am using the word that the plaintiff gave to me
5 and that's been recurrent in the documents that I've
6 reviewed.

7 And I would like to say that seizure is a general
8 non-specific word in terms of cause, because seizures can be
9 caused by many different things. One of which is traumatic
10 brain injury. And at the other end of the spectrum, totally
11 psychological causes.

12 So, in neurology when we see a patient with a
13 seizure we do a number of investigations to see if we can
14 find any physical correlate in the brain to treat or whether
15 this has other etiology such as heart problems, lung
16 problems, reflex postural problems involving falling blood
17 pressures when you stand in different positions, or
18 emotional aspect.

19 So, she said that her seizure was treated by
20 various people and she was put on all of these medications
21 and she hated taking them and this had changed her life as
22 well. So that was the story I was given. She wasn't
23 working any longer. She had been working until the time of
24 the accident.

25 Q Did you, after receiving the history, did you

1 proceed to do a physical examination?

2 A Yes. And I did that because my job as a --

3 MR. RONEMUS: Objection.

4 THE COURT: Sustained.

5 MR. RONEMUS: I don't think she asked why.

6 THE COURT: It's not responsive.

7 Ask the next question.

8 Q Doctor, with respect to your physical examination,
9 can you please describe for us what your findings were and
10 what was your objectives in examining each part of the body
11 that you --

12 A Yeah.

13 Q -- you performed your physical on?

14 A Well I examined each part of the nervous system in
15 order to see if there were any signs of abnormality that
16 would correlate with brain dysfunction.

17 Q And what did you learn?

18 A So I looked at all parts of the neurological
19 examination, which I will enumerate.

20 I looked at the way that she moves spontaneously
21 and spoke to me spontaneously. Listened to the content of
22 speech to see if it was logical. If her motor aspects of
23 speech production were normal. If rhythm content was
24 normal. She had any difficulty in word finding. I looked
25 at the way her face moved in making emotional expression,

1 whether both sides moved equally or whether there was any
2 paralysis of movement.

3 I asked her to look at my finger and track it in
4 the cardinal positions of movement of the eyes to see if the
5 eyes moved together. Or whether she had double vision
6 because one eye didn't move as well as the other.

7 I looked at the pupillary reactions to light.
8 Shining a light in one eye and looking at the pupillary
9 response in that eye and the other eye and then changing
10 that direction. Which is a way of looking at intrinsic
11 brainstem functions.

12 I looked at the way she was able to put her tongue
13 out, move her mouth and tongue. And move her head in all
14 directions. Also I looked at the way that she was able to
15 walk and stand and I looked at the rhythm of gait and its
16 coordination and balance.

17 And I did tests of postural reflexes. And I looked
18 at her motor power in the limbs by seeing how strongly she
19 could contract her muscles against me. To see if there was
20 local paralysis in one place or another. And I looked at
21 the size of muscles in the arms and legs to see if there was
22 any wasting or atrophy, which is another direct sign of
23 neurological damage.

24 I also looked for any deformities of the skull or
25 anything that would look like an external sign of injury or

1 any kind of local abnormality or congenital abnormality may
2 play a role in producing seizures.

3 I also looked at her reflexes because reflexes are
4 another direct indicator of spinal cord and brain injury. I
5 looked at certain reflexes which are telltale signs of
6 nervous system injuries, such as the Babinski sign in which
7 when the bottom of the foot is slowly stroked, the positive
8 sign is an involuntary withdrawal of the big toe and a
9 flexion of the leg away from the stimulus.

10 I looked for the Romberg sign. A sign of postural
11 incoordination which amounts to falling off a narrow stance
12 by placing the legs together, standing erect, putting the
13 arms out and closing one's eyes.

14 I looked at sensory testing. Looked at the
15 anterior to perceive position and touch sense on the limbs.
16 I looked also at her ability to flex, extend the back, lie
17 down, sit up. Do some coordination movements of the legs.
18 And to see if there was any kind of mechanical movement I
19 could make of the limbs or head that would produce pain. I
20 looked for tenderness over the scalp by percussing.

21 And that was a complete neurological examination to
22 see if there was any physical, neurological, abnormal sign
23 to correlate with any of her subjective multiple symptoms.

24 And by subjective I mean what somebody tells you he
25 feels. And objective, which is something that you can see

1 and measure and could be reproducibly sign by someone who
2 you describe the situation. That's what I did.

3 Q What were your findings after doing that
4 comprehensive physical examination?

5 A What I found on this examination was a totally
6 normal examination. There was no abnormal physical,
7 neurological, mental finding on this exam that I could see.
8 At that time.

9 Q Did that also include her checking for double
10 vision that you said you had, had also checked for?

11 A Check for what?

12 Q Double vision?

13 A Yeah.

14 Q Did she have double vision?

15 A No.

16 Q Did she complain of visual problems to you?

17 (Whereupon, there was a pause in the
18 proceedings.)

19 A I can't remember specifically that she did.

20 I just want to go over this list of 24 -- no.
21 There's really no... no. There's no specific visual
22 complaints. No visual complaints.

23 But she did say that she had occasionally
24 subjective olfactory and gustatory complaints. Those are
25 other sensory areas. Taste and smell. She said she would

1 occasionally smell or taste things that really were not
2 present as if they were hallucinatory.

3 Q What would be the significance of that complaint?

4 A It's an interesting question.

5 In some kinds of partial epilepsy that come from
6 the temporal lobe patients can have an onset of a seizure
7 with an olfactory or gustatory hallucination. And these
8 kinds of smells and tastes that they experience, which may
9 be a re-memorization of the smell and a taste from the
10 distant past for a depersonalization as if someplace they
11 have never been before, the smell and taste can be the onset
12 of temporal lobe or complex partial seizures.

13 And that's why I thought it was an interesting
14 symptom to look into and think about.

15 Q And with respect to this physical, was there a
16 purpose to the physical that you were aware of when you
17 were assigned this independent medical examination?

18 A Yes, there was a purpose.

19 Q And what was that purpose?

20 A The purpose was to determine from my physical
21 examination and all of the other data that I was presented
22 to review, whether with reasonable medical certainty there
23 was any kind of neurological damage that could be
24 objectified from the accident and whether it was
25 responsible for all of this change in behavior. That was

1 my job. That was what I was asked to do.

2 Q In your opinion, doctor, based on a reasonable
3 degree of neurological medical certainty, were any of the
4 symptoms that she complained of subjective symptoms
5 related, directly related to the accident she had on
6 December 9, 2008?

7 A Well my conclusion was, with reasonable medical
8 certainty, no. I didn't think so.

9 Q And when you say you didn't think so, what
10 specifically led you to that opinion?

11 A My neurological examination showed no higher
12 intellectual or any motor or physical abnormality.

13 The examination by personnel in the emergency room
14 at the time of the accident showed no signs of any injury to
15 the brain. Even though there was a scalp injury.

16 The seizure that developed months later was
17 witnessed only by members of her family. There was no
18 witnessing at any time in the course since the accident
19 until I saw her. There was no witnessing of a seizure by
20 anybody, any professional personnel or anybody in an
21 emergency room.

22 In addition to that, she was worked up for epilepsy
23 a number of ways. And there were no positive findings. She
24 was given a number of medications to control symptoms.
25 Whereas in a true bona fide case of organic epilepsy we

1 usually only use one medication. We try very hard to limit
2 that to one medication to eliminate side effects.

3 So, the reason that I come to my conclusion is,
4 simply stated, there was no objectification of an injury to
5 the brain and there was no objectification of a true
6 epileptic seizure. Which is the result of a brain injury.

7 And that's why I concluded with reasonable medical
8 certainty that this accident and this scalp injury was not
9 productive of a brain injury, and therefore, was not
10 productive of epileptic seizures, and epileptic seizures
11 were not the nature of this behavioral change.

12 Q Dr. Hausknecht was a doctor that saw her a few
13 times and he took an EEG of which I believe you have a copy
14 of. That is a five second piece of tracing out of 20
15 minutes.

16 At the time that you examined her did you review,
17 also in formulating your opinion, what that EEG showed? Do
18 you know what --

19 A Well it was given to me as a representative
20 example, but this is ten seconds worth, not five. Ten.

21 Q Dr. Hausknecht said it was five.

22 A What it does, it lists over here the placements of
23 the electrodes on the skull which are standard placements,
24 and here is the tracing.

25 Now this copy is a very bad copy. And I must say

1 that I don't see anything in this particular ten second
2 sample that could be called an abnormality, and particularly
3 a paricesible abnormality or epileptic abnormality or any
4 abnormality. I can only base objectively my interpretation
5 of his records on this example.

6 If this was given an as example, I don't think it
7 substantiates his conclusion.

8 Q Dr. Friedman, he testified and he said he had
9 conducted an EEG and he found that there was artifact and
10 it was minimally suggested --

11 MR. RONEMUS: Objection. Could we ask a
12 question rather than leading?

13 THE COURT: Sustained.

14 Q Dr. Friedman said he did an EEG.

15 Have you seen any tracings from that EEG?

16 A No.

17 Q Have you read his report?

18 A I did, but right now I can't remember what it
19 said. I don't remember it saying that he reported
20 epileptic events. Could I look at it again?

21 THE COURT: Yes.

22 MR. RONEMUS: Right here. You want his
23 records?

24 MS. SCIRETTA: Yes.

25 MR. RONEMUS: Right there.

1 A I do remember what it said 'cause I reviewed it in
2 my report.

3 Q Oh, okay.

4 A Just one second.

5 (Whereupon, there was a pause in the
6 proceedings.)

7 A I was under the impression that Dr. Friedman's
8 report referred to Dr. Hausknecht's EEG.

9 (Whereupon, there was a pause in the
10 proceedings.)

11 MS. SCIRETTA: May I approach, Your Honor?

12 THE COURT: Yes.

13 MS. SCIRETTA: This is Plaintiff's 29.

14 (Whereupon, there was a pause in the
15 proceedings.)

16 Q Here is a better copy.

17 A I am looking at a report by Dr. Irving Friedman
18 dated 12/22/08 and titled electroencephalogram report,
19 Leslie Lariviere.

20 (Whereupon, there was a pause in the
21 proceedings.)

22 A First of all, he reports --

23 THE COURT: Wait. Is there a question?

24 THE WITNESS: Oh, sorry.

25 MS. SCIRETTA: There was a pending question.

1 I asked the doctor did he review it. He said he did.
2 And what were the findings.

3 THE COURT: Okay.

4 Q Doctor, go ahead.

5 A Dr. Friedman reports in his conclusion that this
6 is an abnormal EEG because of minimal diffused cerebral
7 dysfunction.

8 The reason I think he says that is because --

9 MR. RONEMUS: Objection as to why he said.

10 THE WITNESS: What's that?

11 THE COURT: Sustained.

12 MR. RONEMUS: I objected to what you are
13 about to say.

14 THE COURT: And objection was sustained.

15 Next question.

16 Q Doctor, what is minimal cerebral dysfunction?

17 A According to this report, the background consists
18 of 7 cycles per second activity up to --

19 MR. RONEMUS: Objection. That's not what she
20 asked him.

21 THE COURT: Sustained.

22 THE WITNESS: That's the answer.

23 THE COURT: Answer the question.

24 THE WITNESS: That's the answer.

25 MR. RONEMUS: Why don't you listen to her

1 question again and --

2 THE WITNESS: I did.

3 THE COURT: Hello. Don't argue with each
4 other.

5 THE WITNESS: I wasn't.

6 THE COURT: Doctor, excuse me, don't respond
7 to plaintiff's counsel's objections. Those are for me.

8 THE WITNESS: Mmm-hmm.

9 Q Doctor, in reviewing that, record's in evidence,
10 you may read from it.

11 In reviewing that report, would you say you had
12 earlier for your other examination, is there anything that
13 you see or learned from that report that would suggest
14 epileptic activity?

15 A No.

16 Q Why is that?

17 A Because there is no activity that seizure activity
18 of any kind.

19 Q What exactly is the activity that Dr. Friedman was
20 referring to?

21 A He was referring to a slowing in the frequency of
22 the basic alpha rhythm by one cycle per second. That's
23 what he was referring to.

24 Q What does that mean?

25 A I am not sure, but it doesn't have anything to do

1 with epilepsy.

2 Q You can close that now.

3 At the conclusion of your examination was there an
4 impression that you arrived at based on her complaints, her
5 subjective complaints, your objective findings? Did you
6 come to a neurological medical impression?

7 A Yes.

8 Q And what was that impression?

9 A That the records did not produce a neurological
10 diagnosis that she does not suffer from traumatic brain
11 injury. And that her seizures are psychological,
12 non-epileptic events and not epileptic in nature.

13 Q Doctor, have you ever heard of a procedure called
14 DTI?

15 A Diffused tensor imaging?

16 Q Yes.

17 A Yes.

18 MR. RONEMUS: Objection. No disclosure with
19 respect to DTI for this doctor.

20 THE COURT: Sustained.

21 Q Doctor, in a case such as this plaintiff's case,
22 have, would, in your opinion, other medical tests be a
23 benefit to assisting with any type of diagnosis for this
24 lady?

25 A For the diagnosis and treatment of her condition,

1 yes, of course.

2 Q Yes. What would you suggest be done?

3 A A video EEG.

4 Q Do you know whether a video EEG was recommended or
5 suggested by doctors who had seen her?

6 A Yes.

7 Q And do you know if a video EEG was done?

8 A It was not. According to what I know.

9 Q What would be the general purpose of an -- of a
10 video EEG? What would be the benefit of a video EEG in
11 this case?

12 A To be able to record the electrical activity from
13 the brain during one of the behavioral episodes and look at
14 the correlation. And that correlation would be able to
15 guide her treating physicians as to how best to treat her.

16 Q With respect to the seizures that she said she
17 sustained, or the seizures she said she sustained on April
18 19, 2009, that was witnessed by her husband, there was a
19 passerby who has worked in a doctor's office for 25 years
20 as an office manager. She is not a nurse or a physician or
21 anything of that kind.

22 MR. RONEMUS: Objection.

23 THE COURT: Sustained.

24 Q Doctor, if a person who works in a medical office
25 for 25 years as an office manager, would that person's

1 opinion that she saw --

2 MR. RONEMUS: Objection. That's not what she
3 testified to.

4 THE COURT: Sustained. That's not the
5 testimony.

6 MS. SCIRETTA: You know we have a transcript.

7 THE COURT: Fine. So show me in the
8 transcript where we have what you are saying.

9 Q Doctor, when you say it was -- her seizure was not
10 witnessed by any medical personnel, what do you mean by
11 medical personnel?

12 A Somebody in a hospital; nurse, doctor, technician.

13 Q Would a layperson who works in a doctor's office
14 qualify, in your opinion?

15 MR. RONEMUS: Objection.

16 THE COURT: Sustained.

17 Q Doctor, in this case Miss Lariviere did not bite
18 her tongue, lose either urine or feces, had normal focal,
19 there were no abnormal focal deficits found in the hospital
20 emergency room record. She did not lose... she was not
21 confused when she got to the hospital.

22 Would that symptomatology have any significance to
23 a doctor who is looking for epileptic seizures or to confirm
24 epileptic seizures?

25 A Yes.

1 Q What would that mean?

2 A Well you've just described the absence of all of
3 the signs that one would look for in a typical epileptic
4 seizure. So, that would be a very atypical presentation
5 for somebody who had just had an epileptic seizure.

6 Q So if she was not responsive at the time and her
7 eyes rolled back, and she stiffened up, what would you,
8 what could you categorize that in absence of loss of, no
9 loss of urine or feces or no tongue biting?

10 A Usually you can only make --

11 MR. RONEMUS: Objection. That's nothing what
12 he categorizes that report as.

13 MS. SCIRETTA: He was asked to evaluate for
14 seizures, too.

15 THE COURT: Approach.

16 (Whereupon, there was a discussion held at
17 the bench off the record.)

18 THE COURT: The objection is overruled.

19 Could we have the question read back?

20 (Whereupon, a portion of the record was
21 read.)

22 A It sounds like a seizure. And the cause of the
23 seizure has to be worked up with other methods.

24 When something sounds like a heart attack, you have
25 to do an EKG. When something sounds like a seizure, you

1 have to do EEG in all of his complexities.

2 Q At the hospital, though, they did an EEG.

3 Did you learn about the results of that EEG?

4 A It was my impression it was normal.

5 Q Would -- they also did blood work.

6 Would a CPK (sic) show whether someone had a
7 seizure?

8 A Not directly.

9 Q Doctor, when you examined her and went over the
10 sensory examination, did you, actually did that from head
11 to toe pinprick, checking her reaction to all the skin
12 changes --

13 MR. RONEMUS: Objection.

14 THE COURT: Sustained. Form.

15 Q Okay. Doctor, when you went over the physical
16 examination you did it from head to toe, correct?

17 MR. RONEMUS: Objection.

18 THE COURT: Sustained.

19 Q Doctor, when you based your impression after your
20 physical examination, was there anything that, on the
21 physical examination that you would have considered to be
22 an abnormal finding or a suspected finding that you would
23 need further follow-up for?

24 A The only part of the examination that would
25 require further follow-up was her history, nothing that I

1 found in my physical examination, but the history is part
2 of the examination. So the answer is yeah, of course.

3 Q What specifically about the history needed --

4 A All of her symptoms and seizures and the question
5 about relations to the event.

6 Q Now, with respect to the history that you have
7 taken, were you also aware from taking the history and
8 having the husband present, that that was the one time they
9 saw that particular type of seizure and that the subsequent
10 seizures were different?

11 MR. RONEMUS: Objection.

12 THE COURT: Sustained.

13 Q Doctor, when she told you she had other seizures
14 besides that one on April 19, 2008, did she describe for
15 you her subsequent seizures?

16 A No.

17 Q Were you aware that she was claiming that she had
18 ongoing seizures?

19 A I was.

20 Q With respect to the ongoing seizures, would you
21 expect that they would be identical to the ones she had on
22 April 19, her first seizure?

23 MR. RONEMUS: Objection.

24 THE COURT: Sustained.

25 Q Doctor, is a seizure, the seizures that you

1 evaluated, would that also -- you said there was something
2 about the smell and taste that could be a precursor to a
3 seizure, right?

4 A I did.

5 Q Would stuttering be a precursor to a seizure?

6 A It could possibly be. Yeah.

7 Q Would headaches be a precursor to a seizure?

8 A That also can be.

9 Q And in her case, did she complain about that to
10 you?

11 A Well she complained of all those. She complained
12 of headaches. Very strong part of her symptoms. Yes.
13 Part of this large list of symptoms. Dizziness, headaches,
14 problems remembering names.

15 Q What significance did you place on it on that
16 history?

17 A Well significance only that somebody is telling me
18 what they feel after an injury. And then it's my job in
19 this particular situation to look at all the data, look at
20 her and come to a conclusion. That's the only
21 significance. She has a complaint and that complaint has
22 to be evaluated in terms of the accident.

23 It wasn't my job to look for the cause of all her
24 complaints apart from the accident. That's for the treating
25 doctors.

1 Q With respect to the complaint of seizure, you said
2 that you had considered psychological, non-epileptic basis
3 for the seizure?

4 A Again, what I said was that the absence of any EEG
5 abnormality that I could objectify with the absence of any
6 scanning abnormality with an absence of any neurological
7 abnormality on my exam, I concluded the seizures were not
8 epileptic. And the other categories of seizures do include
9 psychological non-epileptic seizures.

10 But I can't be in any way sure of what the cause of
11 her seizures is because I'm not her treating physician. I
12 only met her once.

13 Q With respect to your opinion, doctor, based on a
14 reasonable degree of neurological certainty, was the
15 accident of December 9, 2008 the proximate cause of her
16 complaints of seizures starting in April of 2009?

17 MR. RONEMUS: Objection. He just answered
18 that question. He can't he said answer.

19 MS. SCIRETTA: Not to that form.

20 THE WITNESS: That's not what I said.

21 THE COURT: I am going to allow him to --

22 THE WITNESS: That's not what I was --

23 THE COURT: Excuse me. I told you not to
24 respond.

25 THE WITNESS: I am sorry. I was talking to

1 myself.

2 THE COURT: Now you can answer the question.

3 THE WITNESS: I am sorry. Could you just
4 read the question again because it's wording that's so
5 important here.

6 THE COURT: Yes.

7 MS. SCIRETTA: May we have a readback?

8 (Whereupon, a portion of the record was
9 read.)

10 A No.

11 Q Can you explain your basis of your opinion?

12 A Well it's really very, very straightforward I
13 think. The accident did not damage the brain by any of the
14 causes I mentioned, by any of the criteria I have
15 mentioned.

16 The seizures have never been witnessed by a
17 professional who said this looks like an epileptic seizure.
18 There has been no electromyographic correlate that is EGG.
19 And that's what, that's the simple answer.

20 That it's very much like being asked to see if a
21 house burned down because there was a fire. How you are
22 doing that by witnessing somebody who was in the fire, he is
23 coughing and it's months later so he has a cough. And he
24 says cough came from smoke inhalation. You look at the
25 house, there is no evidence of any damage. You conclude

1 from somebody who was there, has a cough, that the house
2 burned down.

3 In the same way that's what the conclusion would be
4 if anybody wanted to make a correlation between this very
5 minor accident, neurologically speaking, and the events that
6 transpired. There is no objective evidence by standard
7 neurological methods that we use today in every day. There
8 is no objective evidence using the methods we use in
9 everyday clinical neurology that she has suffered a
10 traumatic brain injury. Therefore, the seizures which don't
11 have any objective correlates of epilepsy are not related to
12 the accident. No matter what else they might be related to.

13 Q Doctor, you, in your physical examination report,
14 you make reference to medication that she's on and you
15 testified to that a little while ago that she was on
16 several drugs.

17 What would be the significance of a patient that
18 has been ordered by her physician several antiseizure drugs
19 rather than the usual one or two?

20 A Well I can't answer, because to ask what the
21 significance is you have to ask the person who's treating
22 her. But in my opinion --

23 MR. RONEMUS: Objection.

24 THE COURT: You just said you couldn't give
25 an opinion.

1 THE WITNESS: I am saying --

2 THE COURT: The objection is sustained.

3 A I don't know the significance. I would have to
4 speculate.

5 THE COURT: The objection is sustained.

6 Ask a different question.

7 Q A patient like Miss Lariviere, doctor, would one
8 seizure medication be able to control her condition or is
9 that not something you can answer?

10 A I can't answer that. I don't know what her
11 condition is caused by. It's not caused by the accident.

12 Q Those medications, Keppra, the Xanax, the Topamax,
13 the Gabapentin, are they also used for other conditions?
14 Are they also ordered for other conditions other than
15 seizure?

16 A They can be. Yes.

17 Q Did she complain of mood problems to you?

18 A Yes.

19 Q Were any of the mood problems related to her
20 complaints of seizure or were they independent?

21 A Well she said she was very depressed by having to
22 take all of these medicines which she attributed to the
23 seizures.

24 Q Thank you, doctor.

25 THE COURT: Cross.

1 MR. RONEMUS: You have a file, doctor, that I
2 can look at that you brought with you?

3 THE COURT: You want a few minutes?

4 MR. RONEMUS: Yes. Just two minutes.

5 THE COURT: Ladies and gentlemen, we are
6 going to take a break for five minutes or so.

7 All rise. The jury may exit.

8 (Whereupon, the jury left the courtroom.)

9 (Whereupon, there was a break in the
10 proceedings and then resumed shortly thereafter.)

11 MR. RONEMUS: I am ready.

12 THE COURT: Okay. All rise.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: You may all be seated.

15 And cross.

16 MR. RONEMUS: Thank you.

17 CROSS EXAMINATION

18 BY MR. RONEMUS:

19 Q Good afternoon, doctor.

20 A Good afternoon.

21 Q How are you? Do you remember me?

22 A Yes.

23 Q December 2010, right? So a little over a year. A
24 year ago is when we met in your office?

25 A I think that was the date.

1 Q Yeah. December --

2 MS. SCIRETTA: 29.

3 Q December 9 -- wait.

4 (Whereupon, there was a pause in the
5 proceedings.)

6 Q December 29, 2010.

7 Anyway, that's the day?

8 A Certainly December.

9 Q Okay. You remember Mr. Lariviere?

10 A Miss Lariviere?

11 Q Yeah. And Mr. and Mrs. Lariviere?

12 A Yes.

13 Q Can you tell us whether they're in court today,
14 either one of them?

15 A I don't see her. I don't see him, if I remember
16 him.

17 Q Okay.

18 A I remember her better than I remember him. I took
19 a picture of her.

20 Q Okay. That's a picture of her as in a copy of the
21 report, right?

22 A Yes.

23 Q Now, you testified quite frequently on behalf of
24 defendants in court, correct?

25 A Well depends on what you mean by frequently. I

1 used to testify more frequently.

2 Q Okay. Well you review cases frequently behalf of
3 defendants?

4 A Yes, I do.

5 Q And you review about ten cases a week on behalf of
6 defendants doing these type of neurological reviews?

7 A More like three to four.

8 Q Three to four a week?

9 A Mmm-hmm.

10 Q In the past did you do ten in a week?

11 A Sometimes.

12 Q Did you cut down, three to four?

13 A I don't know. Things have changed. They come up,
14 they go down.

15 Q At this point in time you do three to four --

16 A Approximately.

17 Q Just let me finish.

18 Three to four neurological examinations on behalf
19 of -- they're all on behalf of defendants per week, correct?

20 A Well not quite. Not all are on behalf of
21 defendants. Sometimes plaintiffs come in.

22 Q About what percentage of your independent
23 examinations are done on behalf of defendants?

24 A Probably 80 to 90.

25 Q And how many years have you been doing these?

1 A Long time. Since 1980.

2 Q Okay. And do you have a standard charge that you
3 charge for these examinations?

4 A Normally, yes.

5 Q What is it, about?

6 A About \$500.

7 Q What you charged for Miss Lariviere's examination?

8 A Yes.

9 Q Now that whole examination took less than half an
10 hour. Would you agree with that?

11 A No.

12 Q How would you say -- first of all, we had an
13 interview in your office?

14 A Yes.

15 Q I mean they had an interview with you. That took
16 about 15 minutes?

17 A 20.

18 Q Okay.

19 A 15, 20 minutes.

20 Q Then you conducted an examination in your
21 examining room across the hall?

22 A Yes.

23 Q Do you remember that day, by the way?

24 A I do.

25 Q You remember when we got there you had no medical

1 records of her?

2 A Possibly. Yes.

3 Q Well when you say possibly --

4 A I don't remember that specific experience. I
5 remember her and what she told me, giving me her list of
6 complaints, talking to her and you.

7 Q Do you recall -- do you recall when they came into
8 your office that you had no -- you had been provided no
9 medical records regarding Miss Lariviere?

10 A I specifically don't, because now as a time when I
11 review the case I had all these records, so I don't
12 remember that experience. I don't.

13 Q Well, do you remember getting a copy of five, or
14 of her doctor's reports from me on this day?

15 A Yes, I do.

16 Q Okay.

17 A That I can remember.

18 Q Other than this, you had no medical records at
19 that time when we came in?

20 A It's possible.

21 Q Do you remember saying that you weren't going to
22 conduct the examination that day because -- you don't
23 remember? Do you remember --

24 A I don't remember the circumstances or what we
25 talked about because clearly that wasn't germane to what I

1 wanted to do; was to answer the question I was asked.

2 Q Okay. Well have you done about three or four
3 exams per week since that time?

4 A I suppose. Yes.

5 Q Approximately. Okay.

6 So, if you work 50 weeks a year, you have done more
7 than 200 examinations of patients in your office referred by
8 either defendants or plaintiffs since that time?

9 A And many, many more people who were sick every day
10 who come to see me. I have done lots, lots more than that.
11 Yes.

12 Q You have done a minimum number of examinations on
13 behalf of the Transit Authority, correct?

14 A I don't know. I have very few lately. I mean
15 over the years. Talking about 20 years ago.

16 Q Yeah.

17 A Generally speaking, yeah. Lately not so many.

18 Q I am talking over the years --

19 A Yes, I have done a lot for the Transit Authority.

20 Q Let me finish. Then you can answer.

21 When you say you have done a lot for the Transit
22 Authority, would you say you have done over 300 examinations
23 on behalf of the Transit Authority over 20 years?

24 A I don't know. Honestly I am not prepared to
25 answer quantitatively.

1 Q Okay. Well you knew the attorney who was handling
2 the case at the time, Miss Regina Regan, right?

3 A Yes.

4 Q Okay. You have done a number of examinations on
5 behalf of Miss Regan over the course of the years, true?

6 A I think that's a fair question.

7 MS. SCIRETTA: Note my objection to the
8 relevance.

9 A Yes. That's a correct statement.

10 THE COURT: Overruled.

11 Q And is Miss Regan in court today?

12 A She was. There she is.

13 Q Okay. About how many times would you say you
14 performed examinations on cases that Miss Regan was
15 handling at the time?

16 A I really don't know. I could say a handful and be
17 off or I could say three or four. I can't remember all.

18 Q Do you remember trying to call Miss Regan from
19 your office to determine whether or not you should proceed
20 with the examination on this day?

21 A Yes, I do.

22 Q And you were not able to reach her, right?

23 A I don't remember that.

24 Q Okay. Do you remember calling the company called,
25 I think Juris Solution?

1 A No. I think the front desk must have done all
2 that. I wanted to get on with the examination.

3 Q Well the front desk is your wife, right?

4 A Yes.

5 Q Yeah.

6 So she was -- just the two of you were in the
7 office, your wife and you on that day.

8 Do you remember your wife trying to call or you
9 trying to call Miss Regan or the company Juris Solution who
10 had apparently sent you this case to do an examination?

11 A May I answer this question?

12 Q Let me ask the question.

13 A I thought it was the end of your question.

14 Q Do you remember either you or your wife trying to
15 call either Miss Regan or Juris Solution to determine
16 whether you would go ahead with the examination?

17 Do you remember that, yes or no?

18 A I really don't remember the details. All I
19 remember is we did the examination.

20 Q Okay. Have you coached attorneys in the past
21 about how to present a case?

22 MS. SCIRETTA: Note my objection.

23 THE COURT: Yeah. Can you rephrase that?

24 Q Have you instructed attorneys over the time you
25 worked with the Transit Authority about how they should

1 present a case or what questions they should ask in court?

2 MS. SCIRETTA: Objection to that line of
3 inquiry.

4 THE COURT: Overruled.

5 A The answer is on one occasion, yes. Long, long
6 time ago somebody asked me to come do a seminar.

7 Q No. I am talking about during the course of a
8 trial have you communicated with the attorney handling the
9 case on behalf of the Transit Authority, told him or her
10 what they do, should do as far as how to proceed during the
11 course of the trial?

12 MS. SCIRETTA: Order some -- objection.

13 THE COURT: Overruled.

14 A If I was asked that question I would say I have
15 done that on a number of occasions. This is a way I would
16 do it if I were you. Because the questions that were, we
17 are really talking about are medical. This is a way to
18 develop evidence in a medical situation.

19 Q So, would you consider yourself to be independent
20 if you are telling the Transit Authority attorney how to
21 ask questions or what questions to ask during the course of
22 a trial?

23 A Yes. I really would.

24 Q You think your -- this jury should consider you to
25 be independent even though during the course of the trial

1 you have instructed the attorney what questions to ask, for
2 example, or how to ask such a question?

3 You think they should still --

4 A Absolutely.

5 Q You should still --

6 A I will explain why.

7 Q Okay. And isn't it true that during the course of
8 this trial you have instructed Miss Sciretta about what
9 questions she should ask or how she should ask such
10 questions?

11 MS. SCIRETTA: Note my objection.

12 THE COURT: Rephrase your question.

13 Q Have you, during the course of this trial, had
14 e-mail correspondence with Miss Sciretta telling us what
15 her, what questions she should ask or how she should ask
16 those questions?

17 MS. SCIRETTA: Note my objection.

18 THE COURT: Overruled.

19 A I have had e-mail conversations with her about
20 this case. Yes.

21 Q And during those e-mails have you told her what
22 questions she should ask or what areas she should delve
23 into and how she should ask those questions?

24 MS. SCIRETTA: Objection.

25 THE COURT: Overruled.

1 A I've given my opinion about ways I think the
2 information I think is important in this case should be
3 brought out to this jury. Yes.

4 Q Okay. And you still consider yourself to be
5 independent --

6 A Absolutely.

7 Q Let me finish my question.

8 You still consider yourself to be independent, even
9 though during the course of this trial you have instructed
10 Miss Sciretta as to what questions she should ask or how she
11 should ask the questions, correct?

12 A I haven't instructed. And the answer to the
13 question about independent is absolutely. Yes.

14 I would like to explain.

15 THE COURT: You are not being asked to
16 explain.

17 THE WITNESS: Okay.

18 Q Isn't it true you sent her an e-mail March 24,
19 which is in your file, three pages, instructing her what
20 questions she should ask? How she should ask those
21 questions?

22 A Well you might let the jury decide that. I don't
23 know. Let's see what you are talking about.

24 Q Let me ask you some questions about this e-mail
25 was in your file.

1 A Sure. If you found it there, certainly in my
2 file.

3 Q Okay.

4 (Whereupon, there was a pause in the
5 proceedings.)

6 Q Okay. With respect to Dr. Friedman it's, you told
7 Miss Sciretta that he's not an independent treating doctor,
8 but one chosen by the plaintiff's attorney.

9 Isn't that correct that you e-mailed her and told
10 her that?

11 A I was repeating something that we were talking
12 about before. The fact is that Dr. Friedman --

13 Q I didn't ask you that.

14 I am asking you did you --

15 MS. SCIRETTA: Question --

16 THE COURT: He is not responding to the
17 question. Overruled.

18 Q So, when you had discussions with Miss Sciretta
19 about what questions she should ask Dr. Friedman during the
20 course of this trial?

21 A Yes.

22 Q And did you tell her that Dr. Friedman should be
23 considered not an independent doctor in this case?

24 A No. More -- let me put it this way. I felt he
25 was a treating doctor and his relationship to the plaintiff

1 was treating and that she trusted him because he was her
2 treating doctor. But that he had been chosen by her
3 attorney, not by another doctor.

4 And we were talking about the general principle of
5 how patients in the medical community get referred to
6 specialists. And what I was saying was that treating people
7 are referred by treating people. When I am seeing patients
8 it's my colleagues who refer to me. And I treat those
9 patients.

10 Q Okay.

11 A Lawyers don't refer to me for treatment to answer
12 a question in the courtroom.

13 Q Do you know why they went to Dr. Friedman instead
14 of Dr. Maniscalco?

15 A They went to Dr. Maniscalco also.

16 Q Do you know why they went to Friedman rather --

17 A I have no idea.

18 Q Did you read the testimony that no fault --

19 MS. SCIRETTA: Objection. Note my --

20 THE COURT: Overruled.

21 Q Dr. Friedman --

22 A I didn't read it. No.

23 Q Okay. On one paragraph here you talk referring to
24 Dr. Friedman, page twelve, diatribe. You referred to
25 Dr. Friedman as a diatribe?

1 A Perfectly descriptive --

2 Q When I am done with the question then you can
3 answer.

4 A I understand.

5 Q Okay. You said that his page twelve diatribe,
6 that's what you are talking about, his testimony was a
7 diatribe?

8 A I don't remember page twelve. I can't answer.

9 Q No. But do you remember writing this e-mail to
10 Miss Sciretta and calling Dr. Friedman's testimony a
11 diatribe?

12 A I --

13 Q Yes.

14 A The e-mail is --

15 Q Do you remember writing the e-mail --

16 A I remember writing the e-mail.

17 Q -- calling Dr. Friedman's testimony a diatribe?

18 A Yes. A diatribe.

19 Q You consider that to be an independent analysis of
20 Dr. Friedman's testimony or someone who is biased on behalf
21 of the Transit Authority?

22 A That's independent. A diatribe.

23 Q That's fine. You answered.

24 A Okay. With explanation.

25 THE COURT: You are not being asked for an

1 explanation.

2 THE WITNESS: I know. I understand.

3 THE COURT: You can answer the questions yes
4 or no, you should do that. This is cross examination.

5 Q Further down the page you referring to
6 Dr. Friedman, quote, the rest of his chatter is just that.
7 His remarks on page -- on 21 appear to be pandering.

8 Would you consider that to be an independent
9 analysis of Dr. Friedman's testimony, or someone who is
10 biased on behalf of the Transit Authority?

11 A I am not biased on behalf of the Transit
12 Authority.

13 Q Okay. So your answer --

14 A I am biased on behalf of the truth. Yes, it's
15 independent.

16 Q Top of page two, you indicate can't drive in
17 traffic. Did you ever put a surveillance on her.

18 Is that something that you, as a doctor, typically
19 inquire with respect to attorneys about?

20 A Yes.

21 Q Did she tell you whether they had ever conducted
22 surveillance?

23 A No. No.

24 Q She didn't answer that question?

25 A No.

1 Q Do you know whether the Transit Authority ever
2 conducted any surveillance of Miss Lariviere?

3 A I do not.

4 Q So you got no answer to this question?

5 A I don't know.

6 Q When you are talking about surveillance, you are
7 talking about an investigator sitting outside their house
8 perhaps in a van with a video camera who could videotape
9 Miss Lariviere over the last three years, correct?

10 A Yes. That's what attorneys do.

11 Q Okay. And you don't know whether that's been done
12 in this case, true?

13 A No.

14 Q You have never seen any videotape of
15 Miss Lariviere doing anything --

16 A No.

17 Q -- other than what she says she is capable of
18 doing?

19 A No.

20 Q You don't know whether any such videotape exists,
21 correct?

22 A I do not.

23 Q Next line. Great cross on page 27. FF.

24 What's FF mean?

25 A Follow pages following.

1 Q Okay. So you are telling Miss Sciretta she did a
2 great cross examination of somebody, according to what you
3 wrote on the fourth line of page two?

4 A Yes. That's my independent opinion.

5 Q Your independent opinion was that the attorney for
6 the Transit Authority did a great cross examination?

7 A That particular situation, yes.

8 Q Okay. You are not biased towards the Transit
9 Authority whatsoever in your analysis?

10 A Not at all.

11 Q Okay.

12 (Whereupon, there was a pause in the
13 proceedings.)

14 Q Then you are talking about Mr. Lariviere's
15 transcript. You read that as well, correct?

16 A Yes.

17 Q And you coached Miss Sciretta about what she
18 should --

19 MS. SCIRETTA: Coach. You know --

20 THE COURT: Don't use that word.

21 Q Well you, you --

22 A Commented.

23 Q -- wrote an e-mail making recommendations about
24 what she should and shouldn't do with respect to that,
25 true?

1 A I think it was more of a comment.

2 Q Okay. With respect to the husband's transcript
3 you said, no need to dwell on his rendition of accident.

4 Are you talking about the injury to the brain or
5 the seizure that she had in April of 2000 --

6 A I don't remember.

7 Q You don't know what you are talking about?

8 A I don't know what you are referring to.

9 Q Well let me show you. There's no need to dwell on
10 his rendition of accident. Let's cut to the chase.

11 Do you know what you meant by that?

12 A Yes.

13 Q So when you e-mailed that to Miss Sciretta you
14 said don't dwell on what Mr. Lariviere says about the
15 accident. Let's cut to the chase?

16 A Yes. Cut to the chase is very important. That's
17 what I would like to do now.

18 (Whereupon, there was laughter in the
19 courtroom.)

20 Q Okay. We will get to the chase.

21 A I hope so.

22 Q We're getting there.

23 I think you would agree that, you know, your
24 independence, whether you are actually an independent
25 witness or not is important in this case, true? That's an

1 important thing --

2 A Think it's very important.

3 Q Okay. Because do you know that you are the only
4 doctor called by the Transit Authority who has ever seen
5 Miss Lariviere?

6 A No, I didn't know that.

7 Q Have you ever graded other reports from other, any
8 other doctors on behalf of the Transit Authority who
9 examined Miss Lariviere?

10 A No because -- no.

11 Q I didn't ask you because.

12 A No.

13 Q Have you?

14 A No.

15 Q Okay.

16 (Whereupon, there was a pause in the
17 proceedings.)

18 Q You read Susan Brown's transcript, true?

19 A Yes, I did.

20 Q And so you know that there was an independent
21 witness to this event which has been called a seizure
22 April 19, 2009?

23 A Yes. With an explanation.

24 Q Okay. And so when you said here on your direct
25 examination, when you said Mr. Lariviere was the only

1 witness to that, that wasn't correct because --

2 A Sorry.

3 Q On your direct examination when you testified that
4 Mr. Lariviere was the only witness to the seizure, that's
5 not correct, true?

6 A I don't think I said that. I say I think he was a
7 witness to the seizure. I knew Miss Brown had seen this.

8 Q You did?

9 A Yes.

10 Q How about the reports you wrote for this case?

11 A Yes.

12 Q Did you refer to any other witnesses to the
13 seizure other than Mr. Lariviere?

14 A No. I didn't know at that time. I have known
15 since.

16 Q When did you find out that Miss Brown was a
17 witness to the seizure?

18 A Sometime when I talked to the attorney about it.

19 Q When was that?

20 A In the last five days.

21 Q So after the trial started then you learned that
22 there was actually another witness --

23 A Yes.

24 Q -- to the seizure?

25 A Yes.

1 Q Which is inconsistent with what you wrote in your
2 report that Mr. --

3 MS. SCIRETTA: Objection to inconsistent. It
4 predates the report. Predates Miss Brown.

5 THE COURT: Still inconsistent. Overruled.

6 Q Now you wrote in your report, only her husband
7 observed the grand mal seizure. That's not true.

8 A That was true at the time.

9 Q Well, it was true that you didn't know it at the
10 time. It wasn't true at the time. In fact, there had been
11 a witness since the time of the event?

12 A Without information I guess one can only say what
13 he knows at the time as truth.

14 Q Okay. When you wrote in your report, only her
15 husband was the only witness, that, now you have learned,
16 is not true?

17 A Yes.

18 Q You have learned what you wrote in your report
19 since that time, you have learned what you wrote is not
20 true, correct?

21 A Is not true now.

22 Well I don't want to argue. The answer is yes,
23 with explanation.

24 Q Okay. With respect to the plaintiff's testimony
25 you said, I would not emphasize the 1994 marijuana charge.

1 It has nothing to do with the case.

2 That's what you told Miss Sciretta, right?

3 A Nothing to do with the case.

4 Q Right. Nothing whatsoever to do with the case. I
5 would agree with you on that.

6 A Well that's good.

7 Q Okay. Big life stressor. Sister dropped dead in
8 2005.

9 What, if any, relevance does that have with this
10 case?

11 A I think great losses like that have relevance to
12 everybody's life and to symptom production.

13 Q Okay. So, what's the relevance to this case --

14 A I am not sure because I can't get inside of this
15 person's head. It's not my patient.

16 Q When you said has great relevance --

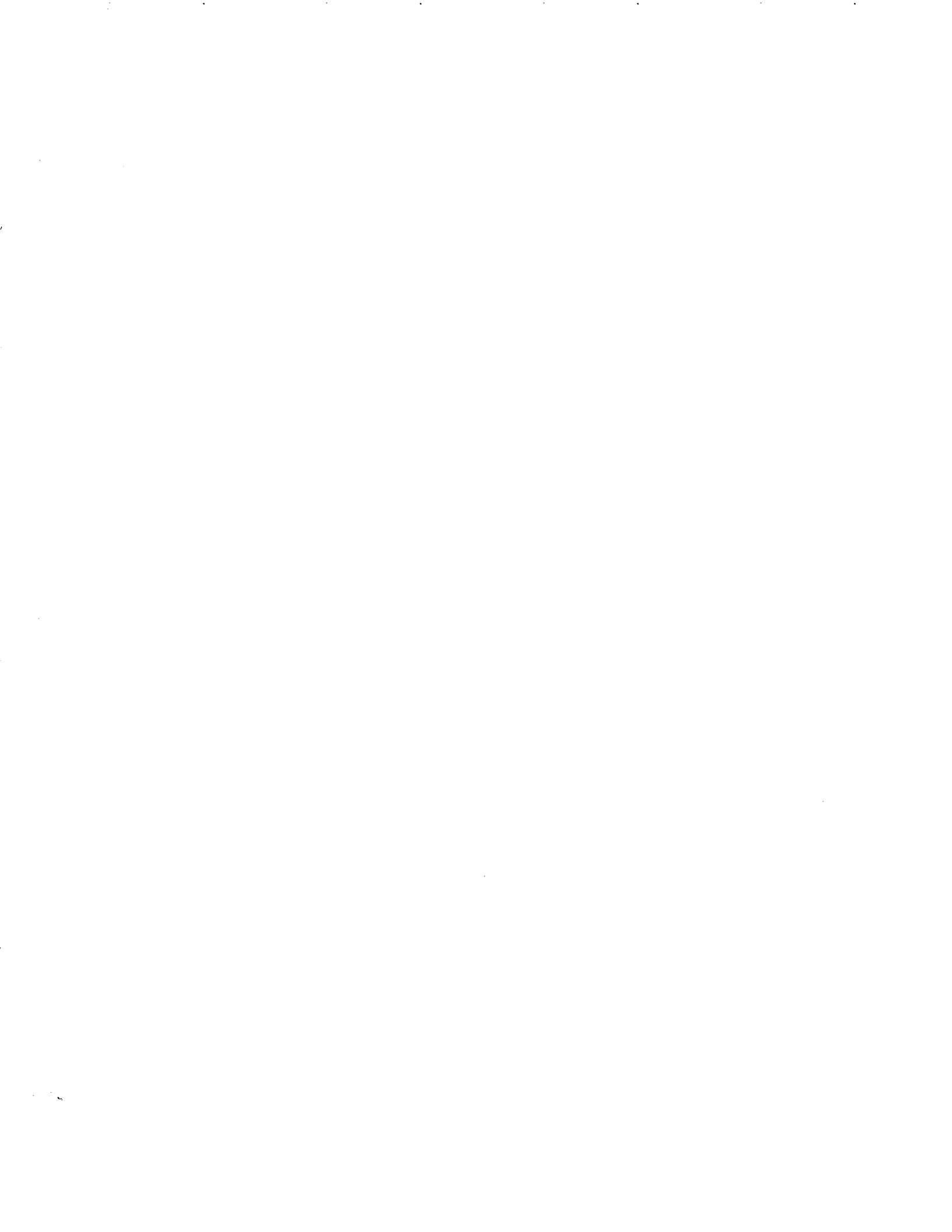
17 A I think it should be explored.

18 Q Let me finish, then you can answer.

19 You have an opinion as you sit here today what
20 relevance the fact that her sister, as you said, dropped
21 dead in 2005, has to this case?

22 A I do. But I can't say it has to this case
23 specify. Therefore, I can't answer; but as to other cases
24 I have seen.

25 Q I am not asking about other cases.



1 A Okay.

2 Q I am asking about the case --

3 A I understand.

4 Q -- we are here in court today.

5 A I cannot say anything more.

6 Q Okay. So as you sit here today you have no
7 opinion whether the sister dropping dead in 2005 has any
8 relation to the complaints Miss Lariviere has made?

9 A None. With explanation.

10 Q Okay. You wrote, she loves Dr. Friedman because
11 he has stuck with you.

12 Is it your opinion Miss Lariviere loves
13 Dr. Friedman?

14 A That's a figure of speech. It means a patient's
15 attached to doctors, and everybody knows that. And he is
16 her treating doctor. He has a special domain in this case.

17 Q Special domain. He is the one who has seen her
18 since immediately after the time of the accident up until
19 today?

20 A Absolutely.

21 Q And so he is in a better position than perhaps any
22 doctor to give an opinion about her to this jury, correct?

23 MS. SCIRETTA: Objection. He is calling --

24 THE COURT: Overruled.

25 A Absolutely not. With explanation.

1 (Whereupon, there was a pause in the
2 proceedings.)

3 Q Okay. So, then at the end of the pointing these
4 things out you make recommendations to Miss Sciretta.

5 In conclusion, Miss Sciretta, I would say I do not
6 think any of these statements by deponents and witnesses
7 really changes the arguments I have raised and I have
8 discussed with you now on two different occasions.

9 What I am --

10 MS. SCIRETTA: The attorney/client. Also my
11 objection in preparation for litigation.

12 THE COURT: Approach. Approach. Approach.

13 (Whereupon, there was a discussion held at
14 the bench off the record.)

15 THE COURT: Let's continue.

16 (Whereupon, there was a pause in the
17 proceedings.)

18 Q Okay. So, just finishing up this e-mail you sent
19 to Miss Sciretta, you said in conclusion, Miss Sciretta, I
20 would say I do not think any of these statements by
21 deponents and witnesses really change the arguments I have
22 raised and discussed with you now in two different
23 occasions.

24 That's what you wrote there, right?

25 A Yes.

1 Q Okay. So, you have discussed how she should
2 present this case on two occasions before the time of this
3 e-mail?

4 MS. SCIRETTA: Note my objection to the
5 topics that we discussed at the time.

6 THE COURT: Overruled.

7 A Not quite.

8 Q Well you had two telephone conversations with her?

9 A No, no, no, no. We are not talking about the
10 nature of communication, we are talking about the
11 substance.

12 Q No.

13 When you say here you are talking about two
14 different occasions, you have discussed with her on two
15 different occasions, were these in person meetings or over
16 the telephone when you had discussions with her about this
17 trial coming up?

18 A Yes. And your question related to --

19 Q I didn't ask you anything else. Just answer the
20 question, if you don't mind.

21 A I am not sure. What's the question?

22 Q My question was, when you discussed with her on
23 two different occasions, what is it, in person or over the
24 telephone?

25 A Oh, no, it was on the telephone.

1 Q Okay. And during those telephone conversations
2 did you discuss with her what questions she should ask and
3 how she should present the case to the jury?

4 A In so doing, yes. Yes.

5 Q Okay.

6 A With explanation, again.

7 Q Okay. All right. So... so just so we're clear,
8 your diagnosis is that she does not have a brain injury?

9 A That's correct.

10 Q Your diagnosis and your opinion is that the
11 accident that we are here about did not injure her brain at
12 all?

13 A That's correct.

14 Q Okay. Following the time she left the emergency
15 room on the date of the accident, December 9, '08, what did
16 she do for the next week?

17 A I don't know.

18 Q Wouldn't that be important in you deciding whether
19 or not she had a brain injury?

20 A No.

21 Q Doesn't matter? Doesn't matter if she went back
22 to work or if she spent the week in bed?

23 A Well all of that has relevance to her treatment,
24 but not to the question we are raising here that I am here
25 for.

1 Q Okay. Well you are here to say whether or not she
2 had a brain injury?

3 A That's correct.

4 Q And your opinion, she didn't have a brain injury?

5 A That's correct.

6 Q You are telling the jury it didn't matter for the
7 week after the accident what she did, true?

8 A No. With explanation.

9 Q Well did it matter what she did during the week
10 after the accident?

11 A No. With explanation.

12 Q When you say no, with explanation, you mean it
13 didn't matter but you want to explain why it didn't matter?

14 A That's what I mean.

15 Q Okay. So, you are saying when you say no, it
16 didn't matter, then it didn't matter to you whether she
17 went back to work the day following the accident or whether
18 she remained in bed unable to move for the week after the
19 accident?

20 A Well --

21 Q Is that what you were saying?

22 A I would say the latter. She moved very well when
23 I saw here. She didn't have a paralytic injury.

24 Q Well was she in bed with headaches and vomiting?

25 A She could have been. She had all the symptoms.

1 Q Doctor, please. Please.

2 A I don't know. I didn't follow her the week after.

3 Q I am just asking. Just don't interrupt me. Okay?

4 I mean the -- you have been in court for 20 years.

5 You know the rules.

6 MS. SCIRETTA: Note my objection to his

7 lecturing the witness.

8 THE COURT: Overruled.

9 Q Just let me finish the question.

10 THE COURT: Doctor, just answer the question

11 and only the question.

12 THE WITNESS: Thank you. I will.

13 Q Okay. All right. So it's your opinion that she
14 had no brain injury following the accident?

15 A That's what I said.

16 Q As a result of the accident?

17 A That is what we said.

18 Q You have read the report of Irving Friedman? The
19 reports of Dr. Friedman, correct?

20 THE COURT: Yes?

21 THE WITNESS: I have. Yes.

22 Q Okay. And you understand that Dr. Friedman is of
23 the opinion she sustained a traumatic brain injury from the
24 accident?

25 A Yes.

1 Q And you disagree with him?

2 A I do.

3 Q And you have read the reports of Dr. Hausknecht?

4 A I have.

5 Q He is a neurologist who examined her on three
6 different occasions I believe, correct?

7 A Yes.

8 Q Conducted an EEG, correct?

9 A Yes.

10 Q And by the way, the ten seconds of EEG, who gave
11 you that page?

12 A The attorney.

13 Q Miss Sciretta?

14 A Yes.

15 Q When did she give that to you?

16 A In the last two weeks.

17 Q Okay. When you wrote your report you had never
18 seen that, as you call it a bad copy, of the copy ten
19 seconds of the EEG?

20 A That's correct. No, I haven't.

21 Q You never seen the actual EEG itself, whether a
22 printout or on a computer screen --

23 A No.

24 Q -- that Dr. Hausknecht conducted?

25 A No.

1 Q Okay. So, you understand, Dr. Hausknecht's
2 opinion is that Mrs. Lariviere sustained a traumatic brain
3 injury from this accident, correct?

4 A I do.

5 Q You disagree with Dr. Hausknecht?

6 A I do.

7 Q Okay. Dr. Greenwald, I think Dr. Greenwald, you
8 had his reports, right?

9 A I read them.

10 Q You know he is a specialist in treating brain
11 injury patients up at Mount Sinai?

12 A I know who he is. Yes.

13 Q You know who he is? Have you met him before?

14 A Yes.

15 Q Have you testified in cases where he's testified?

16 A I don't know.

17 Q Okay. And you understand that Dr. Greenwald
18 treated her over the course of about a year?

19 A I do.

20 Q And how many times did he see her during that
21 year?

22 A I don't know.

23 Q Was it once or twice? Do you have any idea?

24 A I have no idea.

25 Q You haven't read his trial testimony?

1 A I read -- I didn't read his trial testimony.

2 Q Okay. I want you to assume he testified he saw
3 her I think eight times over the course of a year and once
4 again in February in preparation for trial. So, total of
5 nine times, about a half an hour each time. Okay.

6 And you understand that Dr. Greenwald's opinion is
7 that Mrs. Lariviere sustained a traumatic brain injury as a
8 result of this accident, correct?

9 A Yes.

10 Q You disagree with him?

11 A Yes.

12 Q Okay. Dr. Hibbard, have you read Dr. Hibbard's
13 reports?

14 A Some of them.

15 Q Which ones have you read?

16 A I don't remember.

17 Q Are they reflected in your report at all?

18 A No.

19 Q When did you get Dr. Hibbard's reports?

20 A Later.

21 Q When?

22 A Recently.

23 Q Within the, since the time the trial started?

24 A Yes.

25 Q Okay. And you know Dr. Hibbard is a

1 neuropsychologist?

2 A I know her very well. She has seen many of my
3 patients.

4 Q Okay. You think she is a competent
5 neuropsychologist?

6 A I am not going to answer this question.

7 Q Okay.

8 A Because that's not relevant.

9 THE COURT: Don't tell us why.

10 THE WITNESS: Mmm-hmm.

11 Q Okay. Do you know how many days Dr. Hibbard
12 conducted examinations of Miss Lariviere?

13 A I do not. No.

14 Q The report you saw here, did that indicate how
15 many days she tested Miss Lariviere for neuropsychological
16 testing?

17 A I can't remember.

18 Q Do you have the report with you?

19 A No.

20 Q Where is it?

21 A Could be in the chart. Chart's on your desk.

22 Q Take a look. See if it's in your chart.

23 (Whereupon, there was a pause in the
24 proceedings.)

25 A I don't know where it is.

1 Q If it's not in your chart, where else could it be?

2 A It could be in -- I don't know where it is.

3 Q Where were you when you received it?

4 A I am sorry. I don't remember the detail.

5 Q Do you remember -- did you read Dr. Hibbard's
6 report?

7 A I read Dr. Hibbard's report.

8 Q Did you read one report or more than one report?

9 A I can't remember.

10 Q Other than Dr. Hibbard's report, is there anything
11 else missing from your file?

12 A That I read?

13 Q Yes.

14 A Hausknecht's reports.

15 Q That's not in there?

16 A I don't have them in here, I don't think. I have
17 Friedman's reports. I don't know.

18 Q Do you know where Hausknecht's reports might be?

19 A They might be in my office. I may have only taken
20 part of the chart with me.

21 Q Do you have a separate file for this case in your
22 office?

23 A This was the separate file, but in looking through
24 it I might have left the other part there. There was no
25 specific reason I would have done that.

1 Q I am just asking you if there is anything else
2 missing other than Dr. Hibbard's reports and Hausknecht?

3 A No.

4 Q Okay. All right.

5 So, having read Dr. Hibbard's reports, at least one
6 of her reports, you understand Dr. Hibbard, after conducting
7 a full battery of neuropsychology exams is of the opinion
8 Miss Lariviere sustained a permanent brain injury as a
9 result of the accident?

10 A I understand that. And I would like to explain
11 because it's important. I know Dr. Hibbard well. I know
12 how she works. I know how I work with her.

13 Q Okay. You understand that that's her opinion
14 after conducting a full battery of neuropsychology exams,
15 true?

16 A I do understand that.

17 Q Certainly a neuropsychology exam is the standard
18 type of exam to determine whether someone testified a mild
19 traumatic brain injury from an accident, correct?

20 A No.

21 Q Okay. Well that's --

22 A I disagree.

23 Q You disagree?

24 A Very much. Strongly.

25 Q Something that can assist a neurologist in

1 understanding the type of brain injury someone sustained in
2 an accident?

3 A Absolutely not.

4 Q Doesn't help you at all?

5 A Not at all. And I will tell you why.

6 Q Dr. Schuster, have you read Dr. Schuster's report?

7 A Yes. Dr. Schuster prepared the life cost
8 analysis.

9 Q Yeah. What else did he do?

10 A I don't remember. He did psychological testing.

11 Q What else did he do?

12 A I don't remember.

13 Q Where is his report?

14 A I don't know. It's another one that's missing,
15 but I did read it.

16 Q When did you read Dr. Schuster's report?

17 A Mmm. Well my memory says to me I think I have had
18 that a long time, but I don't think I referred to it in
19 here. However, it's in my chart and I did see it.

20 Q It's in your chart now?

21 A No.

22 Q You refer to it in your report of your examination
23 of Miss Lariviere?

24 I have five different reports that I gave you that
25 you refer to in your report.

1 A Right. That's where I got it. I got it from you.

2 Q So you had it as of the date you examined --

3 A You are teasing me.

4 Q I am teasing you?

5 A That's right.

6 Q I am teasing you?

7 A Okay. All right.

8 (Whereupon, there was laughter in the
9 courtroom.)

10 Q I am not trying to tease you, doctor, I am just
11 asking questions.

12 A It does seem that way.

13 Q I am not trying to tease you.

14 You have, according to your report, you have
15 Dr. Schuster's report as of the day you examined
16 Miss Lariviere?

17 A I did. I did. I read it.

18 Q You know he prepared a life care plan where he
19 recommended certain things he says she needs. He also did
20 a neuropsychological examination?

21 A Yes.

22 Q And I don't, I don't know if you remember he gave
23 an evaluation of whether or not she was capable of working
24 a vocational assessment. Those are the three things he
25 did?

1 A Yes. That's what he does. I know Dr. Schuster,
2 too.

3 Q You know him, too?

4 A Yes.

5 Q Dr. Schuster's of the opinion that she can't work
6 because she has a permanent brain injury and it's a result
7 of the accident?

8 A I understand that.

9 Q You are aware that's his plan?

10 A Yes.

11 Q Okay. And you disagree with Dr. Schuster?

12 A For a number of years. I can explain the error of
13 his logic.

14 Q Okay. All these people are in error. All their
15 opinions that she has a brain injury are in error. You are
16 the one that's correct, right?

17 A It's not because I am absolute truth, it's because
18 in this case the facts don't substantiate it. I am not
19 claiming to be absolute truth.

20 Q Okay. I hope not.

21 A No.

22 Q Okay. Finally, Dr. Luciano. You had his report.
23 He is a specialist in epilepsy, correct?

24 A Yes. He is a good one. A good person.

25 Q He is of the opinion that she, Miss Lariviere,

1 sustained traumatic epilepsy or seizures as a result of the
2 accident?

3 A I am not sure of that. Should we go over his
4 report? I don't think that's what it says.

5 Q You have do his report?

6 A I thought so. I hope so. It's very important.

7 (Whereupon, there was a pause in the
8 proceedings.)

9 A No. This is Dr. Schuster right here.

10 Q You have Schuster?

11 A I do have Schuster.

12 Q Schuster is a very small report.

13 All right. I am not going to waste time.

14 You had his report?

15 A Yes.

16 Q You saw his opinions?

17 A They're very important. I don't think that's what
18 he really said.

19 Q Okay. Well if it's not I am sure Miss Sciretta
20 will correct us.

21 A Okay.

22 Q Let's move on. I want to finish.

23 MS. SCIRETTA: Can I get a copy?

24 THE COURT: No. He is moving on.

25 Q Initially the report of Dr. Lipton regarding the

1 MRI done at Montefiore, did you ever see that?

2 A No.

3 Q Are you aware she had an MRI performed up at
4 Montefiore in 2011? That was the radiological report was
5 done by Michael Lipton?

6 MS. SCIRETTA: Objection. He said MRI. DTI
7 was what I started to ask him. It's not the same.

8 Q Are you aware she had -- she had an MRI at
9 Montefiore in 2011 that was reported by Dr. Lipton?

10 A I don't think I saw that report.

11 Q Okay. You don't know what the results of that, of
12 those testings, of that test would be?

13 A No. No, I have seen reports that MRIs were normal
14 but I didn't know who did them.

15 Q Okay. You have never seen an abnormal report of
16 an MRI, correct?

17 A Of the magnetic resonance imaging, no.

18 Q Diffused tensor MRI?

19 A I have not heard about diffused tensor MRI.

20 Q Done in this case?

21 A No. I have heard of an MRI.

22 Q Okay.

23 A That's what I was talking about.

24 Q Okay.

25 (Whereupon, there was a pause in the

1 proceedings.)

2 Q All right. Just briefly I want to just go over
3 the complaints Miss Lariviere's had regarding
4 radiculopathy.

5 You are a neurologist, right? And she saw an
6 orthopedist, Dr. Lichardi.

7 Do you have Dr. Lichardi's records?

8 A It's not even cognizant of that being a major
9 issue in this case.

10 Q Well whether it's a major issue or not, I want to
11 go over it and --

12 A I don't have it. No.

13 Q Okay. You don't have it. Let's talk about that.

14 (Whereupon, there was a pause in the
15 proceedings.)

16 MS. SCIRETTA: Objection. This is beyond --

17 THE COURT: Sustained.

18 MS. SCIRETTA: If he wants to hold us to an
19 IME report --

20 THE COURT: I heard you. And I ruled.

21 Q Have you ever seen records from Hamilton Medical
22 Center or Dr. Lichardi?

23 A I have, but not in this case.

24 Q Okay.

25 (Whereupon, there was laughter in the

1 courtroom.)

2 Q I am talking about this case.

3 A No, I know.

4 Q Okay. You don't know what those records show?

5 A Not in this case.

6 Q Okay. So these records are in evidence, Exhibit
7 Number 3.

8 (Whereupon, there was a pause in the
9 proceedings.)

10 Q And if they show that she had a left C5-C6
11 radiculopathy, tell us what that means, radiculopathy?

12 A Well it means that something is causing
13 dysfunction of the nerve root that comes out of the
14 cervical spine and goes down to the muscles of the upper
15 arm and often causes pain and numbness, sometimes weakness.

16 Q Uh-huh.

17 A And is very disturbing.

18 Q Okay. And do you know that she was diagnosed with
19 a left C5-C6 radiculopathy at Hamilton Medical Center?
20 Hamilton Medical Service?

21 MS. SCIRETTA: Objection.

22 A Do I know?

23 Q Yes.

24 THE COURT: Overruled.

25 You can answer this question.

1 A I can answer. No. I am not aware of it at all.

2 Q Okay. All right. I want you to assume that these
3 records that are in evidence say that on March 24, 2009,
4 right, March 24, so, January, February, March, that's more
5 than three months after the accident, the opinion is, um,
6 Miss Lariviere is status post motor vehicle accident versus
7 pedestrians on December 9, 2008.

8 This means she was hit by a bus in this case,
9 right?

10 A Yes.

11 Q She continues to be in excruciating pain in the
12 cervical region more on the left paracervical area.

13 What's the paracervical area?

14 A Neck to the, neck down on to the shoulder.

15 Q Left shoulder, burning sensation. She can barely
16 stand her clothes. She cannot stand, tolerate either moist
17 heat or cold. Physical therapy worsens her symptoms. She
18 ends up with a migraine headache and throwing up after the
19 ultrasounds and TENS. And that she is disabled, according
20 to this doctor.

21 Do you have an opinion whether that condition at
22 that time was the result of the motor vehicle accident
23 December 9, 2008?

24 MS. SCIRETTA: Objection. He didn't --

25 THE COURT: Sustained.

1 Q Do you have any opinion about her, the
2 radiculopathy that was referred to in these records,
3 whether it's the result of the accident or not?

4 MS. SCIRETTA: Same objection. He did not --

5 THE COURT: Sustained. Approach.

6 MR. RONEMUS: I will move on.

7 THE COURT: Okay.

8 MR. RONEMUS: I am about done.

9 Q Okay. Finally, doctor, I think you made a
10 diagnosis that she doesn't have seizures or brain injury,
11 but she has what you call PNEA, psychological non-epileptic
12 activity.

13 Is that what that means?

14 A Yeah.

15 Q So, your diagnosis, she has, I think you said she
16 has seizures but they're the result of a psychological
17 condition?

18 A I can't be sure of that. I can't be sure of the
19 etiology. But I can tell you with absolute relevant
20 medical certainty based on the facts of this case that it's
21 not due to traumatic brain injury from this accident.

22 And again I will explain why.

23 Q Well what's it due to then?

24 A I don't know. But, you know, I am not the
25 treating doctor. And there is so many causes of seizure

1 that is not epileptic. And Dr. Luciano asked for the
2 definitive gold standard test. It wasn't done.

3 Q All right. You said that before.

4 So, the symptoms that she reported to you, you are
5 not doubting she had those symptoms she complained to you?

6 A Not a bit. She is suffering.

7 Q She is suffering. Okay.

8 And she is suffering the list that she gave you,
9 included she can't remember -- well they're in your report,
10 right?

11 A They're right here.

12 Q Can't remember how to spell?

13 A Right.

14 Q Adding no longer have control of her money. I
15 have a stuttering problem.

16 You want to follow along, just make sure I am
17 reading them right?

18 A I am sure you are. I will be glad to do that.

19 Q Okay. Got them?

20 A Which page are you on?

21 Q I am on number four.

22 A Okay.

23 Q I have a hard time concentrating on anything, on
24 one thing. Number five, don't remember what I said
25 yesterday. Or hour ago. Can't remember where I put

1 things. Number six, loss of sex drive. Number seven, loss
2 of hair. Number eight, I can't remember if I've taken my
3 meds on my own. Number nine, the seizures sucks.

4 A That's right.

5 Q Anxiety and nervous all the time.

6 A Mmm-hmm.

7 Q That's number ten.

8 Number eleven, migraines that make me so sick that
9 I am in bed for two to three days.

10 A That I vomit and I stay in bed in the dark for two
11 to three days.

12 Q Vomiting and staying in the dark.

13 Number twelve, I can no longer work. Number
14 thirteen, feeling dizzy every day. Afraid to be alone.
15 Number fourteen, I don't remember names, faces, old friends
16 and I used to be a hostess. And a very good one at that.

17 A Must have a different one from me because you are
18 always one number ahead. It's different writing. She must
19 have prepared several lists.

20 Q Okay. The next one is, I don't leave the house
21 that often without somebody.

22 A Yeah.

23 Q Going to different doctors all the time and
24 paranoia.

25 A It's out of order, but it's the same information.

1 May I comment?

2 Q No, you may not.

3 A Okay.

4 Q Those are the complaints she voiced to you that
5 day, right? Okay.

6 THE COURT: Yes?

7 A And wrote. Voiced and wrote.

8 Q You are not denying she suffers from all of those
9 symptoms and conditions, correct?

10 A Symptoms are always taken seriously.

11 Q Okay. And at that time when you examined her she
12 appeared tired, worn out and in pain?

13 (Whereupon, there was a pause in the
14 proceedings.)

15 A Just one second.

16 (Whereupon, there was a pause in the
17 proceedings.)

18 A Yes. But she was remarkably able to carry out all
19 the functions I asked her to do.

20 Q Okay.

21 A And no. No, I agree everything --

22 Q I didn't ask you --

23 A I agree with you.

24 Q -- general neurological examination.

25 A The answer is yes. Pardon me.

1 Q The general neurological exam you told us about
2 was a normal neurological exam, correct?

3 A Yes.

4 Q Okay. That does not mean she is not suffering
5 from all of the things she told you about?

6 A No.

7 Q Okay. And you don't doubt her credibility in what
8 she told you that she's suffering from these things?

9 MS. SCIRETTA: Objection to the vouching.

10 THE COURT: He is not vouching, he is being
11 asked a question. Overruled.

12 You may answer.

13 A You can't comment on her credibility. Only a
14 treating doctor could do that possibly.

15 Q Okay.

16 A But --

17 Q We have had treating doctor --

18 A You are talking about motivation report. About
19 motivation, all I can tell you, the facts are the case.

20 Q It wasn't your opinion that she was faking or
21 exaggerating any of these symptoms she complained to you
22 about, true?

23 A You know, that's always in the back of one's mind
24 when there is a reward at the end of the rainbow.

25 Q It's not what I asked.

1 A So I can't exclude it completely.

2 Q You didn't write in any report or anywhere, ever,
3 that she was exaggerating or faking these symptoms
4 whatsoever, true?

5 A There is no way I could be sure and write that in.
6 I could be sure there is no brain injury.

7 Q Did I ask you that?

8 A That's all.

9 Q That's all?

10 A Finished.

11 Q Good. Thanks.

12 MR. RONEMUS: Nothing further.

13 THE COURT: Redirect.

14 You have ten minutes and then plaintiff will
15 have five minutes.

16 MS. SCIRETTA: May I just see your list?

17 THE WITNESS: My list?

18 (Whereupon, there was a pause in the
19 proceedings.)

20 MS. SCIRETTA: Do you have Dr. Lucciardi's
21 subpoenaed record?

22 MR. RONEMUS: No. No, I don't have anything.

23 REDIRECT EXAMINATION

24 BY MS. SCIRETTA:

25 Q Okay. Doctor, on Dr. -- you were asked several

1 questions, you said you needed to give an explanation.

2 Did it change your opinion after reading
3 Miss Brown's trial testimony regarding the, what she
4 observed, that this was a seizure that was observed by a
5 medical personnel?

6 A No.

7 Q And why is that?

8 A Because it was a seizure of some kind. It was a
9 change in behavior and it was sudden and it lasted a
10 certain time. And it wasn't normal. That's a seizure.
11 But that is not epilepsy necessarily.

12 And some of these seizures that are not true
13 epileptic seizures are called pseudoseizures, look very much
14 like epilepsy. People often get treated as if they're
15 epileptic when they're not. That's why new developments in
16 epileptology Dr. Lucciardi himself asked for are very
17 important.

18 MR. RONEMUS: Objection. That's not what she
19 asked him.

20 THE WITNESS: Sorry.

21 THE COURT: The last part about the doctor is
22 out. It's not responsive.

23 THE WITNESS: So --

24 THE COURT: No, you are finished.

25 Next question.

1 Q Doctor, when you sent me this e-mail was it in
2 response to something I had sent you?

3 A No. It was a way of discussing my opinion.

4 Q Did I give you Dr. Friedman's trial testimony?

5 A Yes.

6 Q And did I ask you to comment?

7 A You did.

8 Q These were your comments?

9 A Those are certainly my comments.

10 Q And you have pretty much, as counsel told
11 everyone, three pages here, but you were asked very few
12 questions regarding this.

13 What was your impression of, after reading
14 Dr. Friedman's trial testimony that you --

15 MR. RONEMUS: Objection.

16 Q -- that you wanted to explain to this jury --

17 MR. RONEMUS: Objection.

18 THE COURT: Basis?

19 MR. RONEMUS: Can't comment on doctor's
20 opinion of Dr. Friedman's trial testimony.

21 MS. SCIRETTA: He asked him.

22 THE COURT: No, no. He asked him about that.
23 Sustained.

24 MR. RONEMUS: If he hadn't want to comment on
25 the facts --

1 THE COURT: Rephrase that.

2 MR. RONEMUS: I have no objection to
3 commenting on the facts.

4 Q Doctor, with respect to the trial testimony of
5 Dr. Friedman that you read, when you read his sworn
6 testimony was there, as a neurologist, reading about what
7 another neurologist was testifying to, did you have any
8 observations that would be pertinent to this case to tell
9 us and the jury?

10 A Yes.

11 Q What was that?

12 A Namely, that he was overlooking the real facts of
13 the case in coming up with his formulation. There was
14 never a positive EEG, there were no MRIs findings, CT
15 findings.

16 CT scanning is the one technique that has been
17 developed to put in emergency rooms. Every hospital budget
18 has a place for CT scan because it's the one single way of
19 ruling out traumatic injury to the brain when somebody comes
20 from a fall, a motor vehicle accident, a construction
21 injury, something falls on your head. This is the one way
22 we rule out trauma to the brain, skull fractures, swelling,
23 and bleeding.

24 There was none of that in this case. This was a
25 minor injury to the scalp. Dr. Friedman overlooks those

1 facts. He overlooks the basic facts of neurology in coming
2 to this conclusion about a cause and relationship. That's
3 why I really object to what he says; not his treatment of
4 the patient, that is wonderful. Treat symptoms any way you
5 can. Make people feel better. But this is about this cause
6 and effect relationship in this trial. And this is not
7 correct.

8 Q Did you also tell me that --

9 MR. RONEMUS: Objection.

10 THE COURT: Sustained. Unless that's
11 something that's in evidence.

12 MS. SCIRETTA: Well counsel read from --

13 Q Okay. Did you -- did you make an observation that
14 her prognosis might be improved after any kind of a lawsuit
15 settlement?

16 MR. RONEMUS: Objection.

17 THE COURT: Sustained. Leading.

18 Q Doctor, do you have any impressions about the
19 motivation of the patient --

20 MR. RONEMUS: Objection. There is nothing
21 ever been disclosed about that.

22 THE COURT: Sustained.

23 MS. SCIRETTA: You know, he makes -- it's not
24 one sided here.

25 Q Doctor --

1 THE COURT: No, but your question does not
2 stem from the questions on that document.

3 You want to approach?

4 MS. SCIRETTA: No.

5 Q Doctor, when Dr. Lucciardi have an orthopedist --
6 you are not an orthopedist?

7 A No.

8 Q But an orthopedist who saw her a couple of weeks
9 after her accident came to an impression that there, this
10 is in evidence, that she's status post acute trauma to the
11 cervical spinal, some evidence of left shoulder rotator
12 cuff tendonitis sciatica that, doctor, include a C5-C6
13 radiculopathy?

14 MR. RONEMUS: Objection.

15 THE COURT: Basis?

16 MR. RONEMUS: She is asking a neurologist
17 what an orthopedist would include in their report.

18 MS. SCIRETTA: He asked them that question.

19 MR. RONEMUS: I didn't ask him what an
20 orthopedist would include in a report. I object.

21 THE COURT: I don't know what you are asking.
22 You need to rephrase the question.

23 Q You were asked a question by counsel that were you
24 aware that she, the plaintiff, was diagnosed with C5-C6
25 cervical radiculopathy. And the doctor who saw her, his

1 impression after seeing her and examining her was status
2 post acute trauma of the cervical spine in some evidence of
3 left shoulder rotator cuff tendonitis and left sciatica.

4 Would that, as a doctor, would that include a C5-C6
5 radiculopathy?

6 A Isn't that what you just read?

7 Q The sciatica?

8 A It read there was a, is acute cervical trauma?

9 Q No. Says status post acute trauma to the cervical
10 spine, early evidence of left shoulder rotator cuff.

11 A It could include a cervical radiculopathy. Yes.

12 Q There was an MRI taken by this doctor which was
13 normal?

14 A Okay.

15 Q Would the MRI of the shoulder rule out any issues
16 with her shoulder that he thought might be the early stages
17 of... rotator cuff tendonitis?

18 A I am going to have to defer to an orthopedist.
19 It's a purely orthopedic question.

20 Q This doctor also wrote that she may return -- she
21 returned to work for financial obligations?

22 A She may return to work.

23 Q She did return?

24 A I see.

25 Q But had to return to work for financial

1 obligations.

2 Were you aware of that?

3 A Well that's what I thought. You see, I didn't
4 think she went to bed paralyzed. I thought she carried out
5 her normal functions as best she could, even though you
6 suffered.

7 MR. RONEMUS: I object to that answer about
8 the paralyzed.

9 THE WITNESS: That's the impression I had.

10 MR. RONEMUS: Nobody said that other than
11 him. I object to that answer.

12 THE WITNESS: Sorry.

13 THE COURT: Sustained. That piece is
14 stricken. The rest of the answer will stand.

15 You have 30 seconds.

16 Q What did you want to add, doctor, with an
17 explanation to Dr. Lipton's, the questions stemming about
18 Dr. Lipton's DTI examination?

19 A Well I don't see any reason in this case for DTI
20 because there is no brain injury, and DTI is something that
21 relates to axonal injury in people who are in coma,
22 vegetative states. Really an experimental way at looking
23 at the diffused injury to the brain after major trauma.
24 Nothing to do with this case.

25 Q Did you ever --

1 THE COURT: This is the last question.

2 Q Have you sent patients for DTI, and for what
3 reason?

4 A Yes. We have a big magnet at Mount Sinai looking
5 for precise diagnoses of progressive brain degeneration,
6 such as the olivopontocerebellar degeneration, amyotrophic
7 lateral sclerovis, Parkinson's disease. Other degenerative
8 diseases that are progressive and crippling.

9 THE COURT: That's it.

10 MR. RONEMUS: I got five minutes.

11 THE COURT: Recross. You have five minutes.

12 RECROSS EXAMINATION

13 BY MR. RONEMUS:

14 Q Doctor, you just testified she did not have a
15 brain injury because the CAT scan taken in the emergency
16 room didn't show any evidence of a brain injury?

17 A And the MRI that were done.

18 Q Okay. Now, would you agree that the mild
19 traumatic brain injury often or rarely shows up on a CAT
20 scan?

21 A No.

22 Q You don't agree with that?

23 A No.

24 Q Would you agree that that rarely shows up on a
25 normal MRI exam?

1 A No.

2 Q So you are saying that a CAT scan or MRI would
3 diagnose someone with a mild traumatic brain injury?

4 A That's our today's gold standard.

5 Q Okay. Would you agree, this is in evidence, that
6 the white matter lesions detected by diffusion tensor
7 imaging correlate with persistent cognitive deficits and
8 mild traumatic brain injury?

9 A I don't think there is any literature of diffused
10 tensor imaging in mild brain injury that has been
11 recognized by the neurological community. Absolutely not.

12 Q Okay. Well suppose I told you what I just read to
13 you was written by the defense witness who they called this
14 morning?

15 A Okay.

16 Q You still disagree with that?

17 A I haven't read it.

18 Q You said you disagreed with what I just said to
19 you?

20 A I did.

21 Q That it, a DTI can be useful --

22 A Yes.

23 Q -- in diagnosing cognitive impairments for mild
24 traumatic brain injury?

25 A Yes. With explanation.

1 Q And does the fact that this was written by
2 Dr. Zimmerman, who was the Transit Authority's last witness
3 before you, change your opinion at all?

4 A I don't know what it says.

5 THE COURT: Overruled.

6 MS. SCIRETTA: 2006.

7 THE COURT: I would have to -- overruled.

8 THE WITNESS: Sorry. What's overruled, my
9 question? (Sic)

10 THE COURT: The objection is overruled.

11 A May I see it?

12 THE COURT: I don't know there is any
13 question.

14 Q Does that change your opinion it was written by
15 Dr. Zimmerman? Yes or no? Yes or no? Yes or no?

16 A Is it because it is written by Dr. Zimmerman it's
17 changing my opinion or what you said?

18 Q No.

19 You said you disagree with what I just read to you.

20 A If I understood what you said, I disagree with it.

21 Q Okay.

22 MR. RONEMUS: I have no further questions.

23 THE COURT: You may step down, doctor.

24 THE WITNESS: Thank you.

25 MS. SCIRETTA: May I have a follow-up?

1 THE COURT: We do two rounds. We have done
2 two rounds with every witness. That it's. And it's
3 4:28.

4 (Whereupon, the witness was excused from the
5 stand.)

6 THE COURT: Ladies and gentlemen, all through
7 this trial we have not been here on -- you have not
8 been here on Thursdays. I want to finish this case by
9 Friday. So, we will be here tomorrow morning.

10 Whichever jurors have not been on time
11 previously, I expect you will be on time tomorrow. If
12 you are not on time, if this case goes into Monday,
13 it's because you have not been here. There's only a
14 very limited amount of testimony left, then there is
15 summations, charge, and your deliberations.

16 I am trying to get you out of here by Friday.
17 Close of business Friday. I can only do that if you
18 are here. I am pushing the attorneys to finish
19 quickly. Please, be on time.

20 All rise. The jury may exit.

21 (Whereupon, the jury left the courtroom.)

22 THE COURT: You may all be seated.
23 Summations. I am going to have to limit them
24 in time so, I would say an hour and a quarter each.
25 That's it.