

1 DISCLAIMER

2 IN RE: Hake v Coleman Homes

3 DEPOSITION OF: Ronald Gots, M.D. and Andrew Saxon M.D.

4

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1 CERTIFICATION, THIS ROUGH REALTIME DRAFT CAN ONLY BE
2 USED FOR THE PURPOSE OF AUGMENTING COUNSEL'S NOTES AND
3 CANNOT BE USED OR CITED IN ANY COURT PROCEEDING OR
4 DISTRIBUTED TO ANY OTHER PARTIES.

5 I ALSO HEREBY ACKNOWLEDGE THAT THIS CONSTITUTES MY
6 ORDER FOR A CERTIFIED COPY OF THE TRANSCRIPT.

7 * * * * *

8 LAS VEGAS, NV, 28th day of November, 2006,

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13 (Prior to the commencement of the deposition,
14 all of the parties present agreed to waive statements by
15 the court reporter pursuant to Rule 30(b)(4) of NRCP.)

16

17 Thereupon--

18 RONALD GOTS, M. D.,
19 was called as a witness, and having been first duly
20 sworn, was examined and testified as follows:

21

22 EXAMINATION

23 BY MR. DUFFY:

24 Q. Doctor, good morning. How are you?

25 A. Good morning.

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1 Q. Doctor, you have a Rule 26 list with you?

2 A. I do.

3 Q. Okay, thanks.

4 Thank you, Doctor, I appreciate it. There's a

5 couple of copies of this here. It looks like there's a

6 couple, three?

7 A. I don't know.

8 Q. I'll pass these down so you can take a look at

9 them. I'll mark as Exhibit 56 your Rule 26 list that

10 you produced here today.

11 (Exhibit 56 was marked.)

12 Q. I take it this is true, accurate and correct

13 to the best of your knowledge?

14 A. To the best of my knowledge, it's true.

15 Q. Okay, great. Hold on a second. Last time

16 I've had the opportunity to depose you, Doctor, just for

17 your acclimation was 2004, the Pella windows class

18 action case, which is still pending, I might add.

19 At that time I asked you a series of questions

20 that I'm going to reask if I can here.

21 In all the years that you've been testifying

22 about symptomatology secondary to mold exposure, is it

23 still a true statement that you have found only one

24 opposing plaintiff to have such symptoms?

25 A. I don't know whether I've ever actually said

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1 that, Mr. Duffy. I mean, I've certainly testified
2 primarily for the defense, and that's not necessarily
3 because nobody had any symptoms from, say, allergy to
4 mold, but the primary focus of the case may have been
5 mycotoxicity or something of that sort in which case
6 I've testified that that doesn't happen in indoor
7 environments, but I don't know that it's true that I've
8 never said that people don't get symptoms from mold.

9 Q. In terms of the specific causation in these
10 particular cases where you've been retained for your
11 time to testify, have you ever found a plaintiff that
12 has had symptomatology secondary to mold exposure
13 allergenic based? Let's forget about immunocompromised
14 mycotoxicosis or mycotoxins?

15 A. I have certainly found some possibilities of
16 some possibilities of some symptomatology related to
17 mold, including mold in the indoor environment. Whether
18 that was the primary issue or whether there were

19 alternate causation issues, I mean, that would usually
20 have been the substance of my testimony in people who
21 are allergic, for example.

22 Q. Okay. Since I've seen you in 2004, the
23 testimonies that you have post the Pella window case on
24 the first page, I take it all these cases are not
25 necessarily mold cases, are they?

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1 A. That's correct.

2 Q. In terms of the mold cases, do you think you
3 could tell me which ones are the mold cases?

4 A. I can try.

5 Q. Why don't I give you this Exhibit 56.

6 A. I'll do the best I can.

7 Q. Put a little M next to it or whatever is
8 easiest for you.

9 A. I'll put a question mark where I'm not sure
10 because there are some where I'm just not sure.

11 Q. Fair enough.

12 A. Okay. (Witness complied.)

13 Q. Okay, thanks. I appreciate it.

14 Most of them are mold cases?

15 A. It looks like most of them were, yes.

16 Q. Okay. And several of them are trials?

17 A. Yes.

18 Q. Okay. In the trials, do you have what I'm

19 going to call -- maybe I'll have the indulgence of

20 counsel -- standard trial exhibits that you use in the

21 presentation of teaching of the jury from your mind's

22 eye about mold?

23 A. I have nothing that's standard. I have done a

24 Power Point presentation both in trial and in hearing.

25 Q. Okay. Hearing so as to bar expert witnesses

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1 on the other side, that type of thing?

2 A. Yes.

3 Q. And in terms of that Power Point program and
4 the tiles that make up that program, do you intend to
5 use that here in this case?

6 A. I haven't -- I don't know. I mean, we haven't
7 talked about that.

8 Q. In the trials that you've noted here, have you
9 used essentially the same Power Point program a couple
10 of times, several times?

11 A. No, because there are individual differences,
12 and some are more mycotoxin involved, and some have
13 other specific causation issues than others. So there
14 are differences.

15 Q. Clearly cutting to the chase, we're not going
16 to deal with mycotoxins here or any type of discussion
17 with that.

18 A. Okay.

19 Q. But if we're sticking to basically
20 symptomatology secondary to exposure, allergenic based,
21 allergenic assumed, et cetera, do you have a certain
22 go-to Power Point, if you will, that you use to teach
23 the jury, advise the jury, anything like that?

24 MR. HAYES: Asked and answered.

25 A. Actually, I don't.

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1 BY MR. DUFFY:

2 Q. You don't?

3 A. No.

4 Q. What makes your answer to that question
5 different than the other?

6 A. Because I do have certain generic Power Point
7 presentations about mold and where it is and where it
8 comes from and so forth, but I haven't used a Power
9 Point presentation specifically dealing with allergenic
10 issues.

11 Q. Okay. Going back to the first topic I wanted
12 to ask you, I'd asked you this once before, but in the
13 19 years of the cases where you have provided testimony
14 or affidavits on behalf of defendants, would it be a
15 correct statement that you have found only one
16 relationship between exposure and disease in a mold

17 case?

18 A. You'll have to show me what I actually said.

19 Q. Do you mind if I show it to you?

20 A. No, I'd be happy to see that.

21 Q. Just for edification of counsel -- I was
22 yelling at Minnesota counsel for a minute or two, as you
23 can see on Page 48 at the Pella window deposition taken
24 in April of 2004. Ignore my marks, if you can.

25 Start at Page 48, read through Page 50. I'm

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1 not trying to impeach you or anything like that, Doctor.

2 I'm just trying to get acclimated.

3 A. I understand.

4 Q. Just so you don't have to get defensive about
5 the case.

6 A. Okay, I see what you're talking about, and I
7 think that needs some qualification.

8 Q. All right. I'll let you talk.

9 A. Certainly in those cases in which I've
10 testified in defense of mold-related allegations, the
11 primary substance of those cases were issues that I did
12 not believe could be causally connected to mold. That
13 doesn't mean that there weren't some minor issues that
14 might have been connected to mold among other things,
15 for example, some irritant responses or some allergic
16 responses, and I don't think that that differs from what
17 I said there. I mean, I wasn't asked that specifically.

18 Q. So it would be that you didn't find there was
19 specific causation of, let's say, mycotoxicosis in those
20 cases?

21 A. Right, or even significant allergic disease
22 that could not be linked specifically to the mold in the
23 home but might have been somewhat connected or that may
24 have been a factor. So I don't think I've ever said
25 that mold can never be a factor.

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1 Q. Well, no, and I'm mindful of that in terms of
2 general causation. Even within the four corners of this
3 report, you tell the reader and from a general
4 standpoint that mold can have a sequelae secondary to
5 exposure.

6 A. Sure.

7 Q. But in terms of specific causation, that's
8 where the analysis for you therein lays?

9 A. Well, even in specific causation, there have
10 been matters in which I have found that there could have
11 been some specific causation for some minor aspects of
12 the allegations as opposed to the major aspects of the
13 allegations.

14 Q. Allergenic type based?

15 A. Sure.

16 Q. Let me try it a different way. Let's use it a
17 different way. Pretending that you would be on the
18 plaintiffs' side in those cases -- and I know that's a
19 stretch -- let me ask you this: Would you have
20 testified within a reasonable degree of medical
21 certainty that the individuals had any type of
22 symptomatology secondary to mold exposure allergic

23 based?

24 MR. HAYES: Assumes facts not in evidence,
25 calls for speculation, incomplete hypothetical, lacks

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1 foundation.

2 A. I don't believe I would find it easy to say
3 that within reasonable medical certainty in most cases.

4 What I probably could say in some cases is
5 that mold may have been a contributor to an individual's
6 allergic responses, and mold in the indoor environment
7 could be given the right set of circumstances.

8 BY MR. DUFFY:

9 Q. But you wouldn't be able to frame it within a
10 reasonable degree of medical certainty?

11 A. I can't say that I never could do that, I
12 mean, without thinking of all the potential fact
13 patterns, but I think it would be uncommon to be able to
14 do that.

15 Q. Okay. In the testimonies on these Rule 26
16 lists that you've given me, you've testified on the
17 defendant's side in each of these matters. Would that
18 be a fair statement?

19 A. I believe in this group I have, yes.

20 Q. In regard to mold symptomatology secondary to
21 exposure on all matters that you have been involved
22 with, you have always testified on the defendant's side
23 of those matters, correct?

24 A. That's correct.

25 Q. And that's whether the issues involved in

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1 symptomatology secondary to exposure were based in
2 alleged mycotoxicosis, immunocompromise or allergy,
3 correct?

4 A. Correct.

5 Q. All right. In regard to these cases where you
6 have testified on the defendant's side on symptomatology

7 secondary to exposure, has the mechanism -- the alleged
8 mechanism of exposure been inhalation as opposed to
9 ingestion as opposed to dermis?

10 A. It's almost always inhalation.

11 Q. Okay. In this particular matter in the Hake
12 family, did you make any request of counsel to see any
13 of the plaintiffs in an IME setting?

14 A. No.

15 Q. And would it be a fair statement that in
16 regard to your analysis on these matters where you are
17 retained for your time by the defendant's side, mold
18 cases, you never asked to see the plaintiffs in an IME
19 setting?

20 A. No, that wouldn't -- I have seen plaintiffs in
21 IME settings.

22 Q. What are the criteria in your mind's eye as to
23 when you would want to see a plaintiff in an IME setting
24 as opposed to not?

25 A. There are situations where we are -- I'm

1 examining the range of symptoms that a person has and
2 trying to understand the etiology in that range of
3 symptoms when I have examined patients primarily -- I
4 mean, partially to do a physical examination and
5 extensively to do a history and have a discussion with
6 the plaintiff.

7 Q. Clinical differential diagnosis, classic
8 methodology?

9 A. Well, differential diagnosis and causation
10 assessment.

11 Q. Okay. In regard to those cases where you
12 would ask defense counsel who has retained you for your
13 time to arrange for an IME of the opposing plaintiffs,
14 have those basically been in regard to allegations of
15 allergy as opposed to alleged immunocompromise or
16 alleged mycotoxicosis?

17 A. Generally there's been a claim of
18 mycotoxicosis as well when I've seen people, although I
19 have seen people in conjunction with allergists at the
20 same time and actually been there while allergy testing

21 was performed or when pulmonary function testing was

22 performed usually in their offices.

23 Q. Can you give me any sense from your mind's

24 eye, Doctor, whatever is easiest for you, as to the

25 percentage of times that you will actually seek to have

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1 an IME of the opposing plaintiffs?

2 A. It's probably a relatively small percent,

3 probably -- I don't know the number -- maybe 20 percent

4 or something like that.

5 Q. Okay, thank you. And as to the Hakes, what,

6 if any, criteria was in your mind as to why you didn't

7 request an IME here?

8 A. I didn't think it was necessary. First of

9 all, there were IMEs performed by the gentleman from

10 UCLA.

11 Q. Dr. Saxon?

12 A. Yes, Dr. Saxon and the otolaryngologist.

13 Q. Dr. Sercarz?

14 A. Yes, Sercarz, and also there were substantial
15 medical records, there was substantial allergy testing,
16 and there was nothing that I really could add to that by
17 seeing the patients.

18 Q. I might as well take care of this right now.
19 Prior to you rendering your opinions in this case as we
20 see in your report of October 20, 2006, you had the
21 ability to read and understand Dr. Saxon's conclusions
22 as to this family, correct?

23 A. That's correct.

24 Q. And that would be by virtue of his April
25 report and his September report which included the IME

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1 of Dr. Hake, correct?

2 A. That's correct.

3 Q. Also you had the ability prior to the
4 preparation of your report and conclusions of seeing Dr.

5 Sercarz's work, the otolaryngologist?

6 A. Yes, correct.

7 Q. Even though I misspoke, I might as well ask
8 you this as well as to Dr. Craner, are you familiar with
9 him?

10 A. I am.

11 Q. You've been on opposite sides in the past,
12 have you not?

13 A. On a few occasions.

14 Q. A few occasions. Do you have any criticisms
15 or concerns concerning Dr. Craner's credentials?

16 A. No.

17 Q. Do you have -- thank you. Do you have any
18 criticisms or concerns that you would testify to at
19 trial regarding his methodology in reaching his
20 conclusions in this case?

21 A. Yes.

22 Q. And just outline that for me in terms of his
23 methodology and process.

24 A. Well, I don't know that he has methodology for
25 arriving at either a differential diagnostic conclusion

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1 or a causation conclusion that meets acceptable
2 standards. He also makes a diagnosis which is not a
3 known diagnosis. I mean, I think he talks about sick
4 building syndrome as a diagnosis, which it is not.

5 Q. When you talk about Dr. Craner from your
6 mind's eye and his methodology, what in particular are
7 you making reference to his standards in your answer a
8 couple of minutes ago -- a couple seconds ago?

9 A. Well, I think basically Dr. Craner, as I see
10 it, takes a -- purely a history from the claimants and
11 including from them a history of some problem with their
12 indoor environment and reaches a conclusion that they
13 have a problem from their indoor environment.

14 So it's a -- it's an analysis which is not
15 very analytical, which does not comprehensively review
16 alternative causation issues and, quite frankly, for
17 example, in this case doesn't even look at the
18 environmental issues.

19 Q. So do you find his diagnosis temporal based?

20 A. I think it's just purely statement based on
21 the part of the claimants.

22 Q. Okay. Have you ever testified in any type of
23 a hearing where there has been an attempt to bar Dr.
24 Craner?

25 A. I don't believe so.

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1 Q. And in terms of the cases where you have been
2 involved with Dr. Craner as the expert retained on the
3 plaintiffs' side, the opposing side by counsel, have you
4 ever had one of those cases go to trial?

5 A. I can't answer that question. I don't think
6 so, but I'm not sure.

7 Q. I don't think so either, but I wanted to ask
8 what your perspective was. I'm not trying to box you in
9 on that.

10 All right, let's talk about Dr. Schroeder.

11 He's obviously not a typical name that people like you
12 and I see in these cases. He's obviously a treater of
13 Dr. Hake, correct?

14 A. Correct.

15 Q. And as to Dr. Schroeder, can I assume you have
16 no problem with his credentials to so treat Dr. Hake?

17 A. None whatsoever.

18 Q. And if I may, at the time of trial, would you
19 be critical of his diagnostic methodological or
20 analytical process?

21 A. Not --

22 MR. HAYES: Objection, compound.

23 Go ahead.

24 A. Not with regard to diagnosis but certainly
25 with regard to causation.

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1 Q. Okay. You disagree with his remarks regarding
2 causation?

3 A. I do.

4 Q. Are you critical at all of his care, treatment
5 or course with his patient, Dr. Hake?

6 A. That is not my area of expertise. I'm not
7 going to comment on that.

8 Q. Fair enough. But in terms of the causation
9 remarks that Dr. Schroeder makes of the home being
10 causative of the symptomatology of Dr. Hake, you would
11 of course by reading your report have issue with him,
12 correct?

13 A. I would, yes.

14 Q. We'll get to that. We'll get to that.

15 In terms of your work in this particular case,
16 did you collaborate directly with Dr. Saxon in any way,
17 or have you guys operated in separate and distinct
18 spheres in terms of your work from your mind's eye?

19 A. I think it was primarily separate and
20 distinct. I believe we had one phone conference with
21 counsel. I don't recall exactly when that was, but it
22 was at least six or eight months ago when Dr. Saxon and
23 I were both on the phone. I think that's the only time
24 I've spoken to Dr. Saxon about this matter.

25 Q. And I appreciate your adding that.

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1 In terms of when you, Dr. Saxon and counsel
2 spoke over the phone, would that have been before or
3 after, if you can recall, the April 2006 report that Dr.
4 Saxon had already issued in this case?

5 A. I don't recall. I believe it was before, but
6 I'm not positive of that.

7 Q. All right. And will you tell me what the
8 substance of the conversation was?

9 A. I think basically we just talked about the
10 issues that I've talked about in my report and he's
11 talked about in his. I don't recall other specifics
12 besides that.

13 Q. Okay. And it was certainly well prior to the
14 issuance of your October 2006 report that this
15 conversation took place?

16 A. Yes.

17 Q. It was certainly prior to the IME in September

18 of 2006 of Dr. Hake, correct?

19 A. Yes.

20 Q. Okay. The issue is as to what its timing was

21 in terms of the April report of Dr. Saxon, correct?

22 A. Yes, I'm not sure.

23 Q. All right. Do you keep detailed billing

24 records for counsel to pay you for your time?

25 A. I do.

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1 Q. Okay. Would that call have been a billed

2 call?

3 A. Yes.

4 Q. Okay. And if I were to look at the printout,

5 getting an arrangement from counsel to see that, I could

6 find when that call took place from the billing records,

7 correct?

8 A. Yes.

9 Q. In preparation for the call or post to the
10 call, was there any exchange of documents and/or
11 e-mails?

12 A. I'm quite sure there was not.

13 Q. In regard to Dr. Saxon, did you men have any
14 exchanges of e-mails, documents or any other type of
15 communications other than this one call?

16 A. About this? No.

17 Q. Okay. Did you have any collaboration or
18 contact with any other doctor whom you were aware was
19 involved in this matter in any way?

20 A. No.

21 Q. Okay. Dr. Sercarz -- your understanding of
22 him and what his remarks are in this case is only
23 through his paperwork?

24 A. That's correct.

25 Q. And this is a gentleman who can I assume you

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1 did not have prior institutional knowledge of to this
2 case?

3 A. Also correct.

4 Q. In terms of Dr. Saxon, what was your knowledge
5 of Dr. Saxon prior to the Hake case?

6 A. Well, I've certainly read a lot of Dr. Saxon's
7 writings. I've met him once. We correspond
8 periodically, send e-mails to each other.

9 Q. Okay.

10 A. And that's really how I know him.

11 Q. Which sort of leads to this. Rather than, you
12 know, squirreling around here, let me get right to it.
13 Do you ever make any referrals to each other, you know,
14 for a case, refer her name to counsel, that type of
15 thing?

16 A. I think that's probably happened a few times.
17 There's no formal arrangement for that, but I think
18 we've referred matters to each other.

19 Q. And the referred matters to each other have
20 been in the area of symptomatology secondary to mold
21 exposure?

22 A. Or in areas of alleged mold-related disease.

23 Q. And on the defense side?

24 A. I believe so, yes.

25 Q. Okay. In regard to your involvement in this

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1 particular matter, can you tell me how you got involved
2 here as far as you know? I'm not asking you to
3 speculate why a lawyer called you or anything, but how
4 did you get involved here?

5 Let me redo the question. I'm looking at the
6 expression on your face. We'll just kill that one and
7 move it on.

8 Who contacted you first in this case?

9 A. I don't know whether it was Mr. Hayes or one
10 of his colleagues.

11 Q. And certainly when we get the billing
12 records -- do you have the billing records here or not?

13 A. I don't.

14 Q. Okay, we can get those later as we've done in

15 the past.

16 A. Sure.

17 Q. And how long ago were you retained? If the
18 report is done in October of 2006, work backwards.

19 A. I don't know that either. It's certainly been
20 probably a year but -- or more, but I don't know
21 exactly.

22 Q. Okay. And did counsel advise you as to how he
23 came to you to possibly work on this case?

24 A. I may have worked on something with Mr. Hayes
25 prior to this. How he originally contacted me I really

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22

1 don't recall.

2 Q. Okay. Do you know Dr. Portnoy out of
3 Missouri?

4 A. I don't know him personally. I just know him
5 from some of his writing.

6 Q. And one of his most recent writings was the

7 paper that was done in February of 2006, correct?

8 A. That's correct.

9 Q. In the journal of -- was is the journals?

10 A. Allergy Asthma Immunology.

11 Q. Allergy Asthma Immunology. And cutting to the
12 chase so we don't beat around the bush here, are you
13 aware of the issue concerning him, why he had his name
14 removed from the paper?

15 A. I don't know any details about that.

16 Q. Are you aware of the issue of
17 conflict-of-interest statement that arose in regard to
18 the generation of the paper?

19 A. I'm aware of about six letters that were
20 written by a total of -- signed by a total of maybe 15
21 people out of an organization of 10,000 or so who
22 disagreed with the position that that paper took.

23 Q. Right.

24 A. And also of the response by Dr. Platt-Mills,
25 who is the editor of the journal, I believe -- he may be

1 the president of the American Academy -- that said,

2 "Fine, we're still standing by our position."

3 Q. He said that?

4 A. And there are some issues of other interests
5 that need to be disclosed.

6 Q. And eventually the article was further
7 published and produced with conflict-of-interest
8 disclosures, correct?

9 A. That's correct.

10 Q. Including as to Dr. Saxon the fact that he
11 receives moneys for his time as an expert witness in
12 defense mold matters, correct?

13 A. Yes.

14 Q. Okay. Now, this happened at this year in
15 regard to the writings that you do -- and they are
16 extensive per your vitae, which we'll mark -- do you do
17 conflict-of-interest disclosures to the reader so that
18 the reader can make up his or her mind about the
19 motivation of the beast, if any?

20 A. I think if the journal requires it, we

21 certainly do.

22 Q. And if the journal does not require it, do
23 you?

24 A. I don't know that it's generally done if the
25 journal doesn't ask for it.

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1 Q. Okay. And I hear your answer, and I'll
2 respectfully go back to my question. How about
3 yourself, whether a journal requires it or not, whether
4 an organization requires it or not, what is your
5 practice in terms of a conflict-of-interest disclosure
6 for the reader?

7 A. I don't think we -- I put that down.

8 Q. Okay, thank you.

9 In terms of the ACOEM paper that was done in
10 2002, certainly as to Mr. Kelman, Ph.D., Mr. Hardin,
11 Ph.D., and Dr. Saxon, there is no conflict-of-interest
12 statement on that paper, is there?

13 A. I don't believe so.

14 Q. And in terms of the update of the ACOEM paper
15 done by Kelman, which you make reference to in your
16 report, is there a conflict-of-interest update on that
17 paper to your knowledge?

18 A. I don't recall.

19 Q. Okay. Is Kelman affiliated with GlobalTox?

20 A. I think they changed their name, but that used
21 to be the name of his company.

22 Q. Have you had any interest in GlobalTox at any
23 time?

24 A. No.

25 Q. And in regard to your organization, has

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1 Kelman, Ph.D., been employed by you or affiliated with
2 you in any way?

3 A. No.

4 Q. Same question with Hardin?

5 A. No.

6 Q. And certainly not Saxon?

7 A. Correct.

8 Q. And it is your position to this day that you

9 had nothing to do with the generation of the original

10 ACOEM paper in 2002, correct?

11 A. I had nothing whatsoever to do with it.

12 Q. Okay. However, you endorsed the conclusions

13 and remarks in the 2002 ACOEM paper, correct?

14 A. Yes. I still do.

15 Q. And you also endorse the remarks in the 2006

16 article in the journal, correct?

17 A. Correct.

18 Q. In fact, you cite them in this paper here?

19 A. Correct.

20 Q. Okay. In terms of the vitae, do you have one

21 that I can put a little sticker on so it looks really

22 official?

23 A. Sure.

24 Q. And I'm going to mark your vitae as Deposition

25 Exhibit Number 57.

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1 (Exhibit 57 was marked.)

2 Q. Just so we can make this formal, Doctor, is
3 that true, accurate and correct to the best of your
4 knowledge?

5 A. Yes.

6 Q. And any changes, corrections or additions that
7 you want to make?

8 A. No sir.

9 Q. I want you, if I can ask you, please, Doctor,
10 to just go to the section of the vitae -- let's go to
11 selected speaking engagements and visiting
12 professorships. That should be Page 5 of the vitae.
13 Let me know when you're there.

14 A. I'm there.

15 Q. Okay. And in terms of the calendar year 1980,
16 is it still a correct statement, Doctor, that the last
17 time that you had hands-on clinical treatment of a
18 patient was in the calendar year 1980?

19 A. Approximately, yes.

20 Q. Okay. What would be -- obviously from my side
21 of the ball, I have to get a firm answer. What would be
22 the possibly in the answer?

23 A. Well, it may have been 1981. It was around
24 1980 or '81.

25 Q. All right, 1980 or 1981. So it would be a

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1 fair statement if I were to tell the jury at trial that
2 you have not hands-on clinically treated a patient since
3 Ronald Reagan was in office?

4 A. That would be a correct statement, Mr. Duffy.

5 Q. All right. Going to the publications, I'm
6 going to tell you that I will show the jury certain of
7 these publications at the time of trial. Is this list
8 true, accurate and correct?

9 A. I believe so.

10 Q. Okay. And when you have the publications

11 called DRI -- and there are, I think, about six in total
12 here -- are you aware that DRI is the acronym for The
13 Defense Research Institute?

14 A. Certainly.

15 Q. And that is an organization of civil trial
16 defense lawyers, correct?

17 A. That's correct.

18 Q. Okay. Yours truly is a former member of that
19 organization, as you know.

20 A. I understand.

21 Q. And when you have your articles in regard to
22 the publication for the defense, you are aware that that
23 publication is a publication of the Defense Research
24 Institute, correct?

25 A. Yes.

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1 Q. The PLRB -- you are aware that the Property
2 Loss Research Bureau is an arm of the insurance

3 industry, correct?

4 A. I don't know about an arm of. It's an
5 insurance organization.

6 Q. Okay. And it focuses on the defense of
7 litigation matters against the insurance industry on a
8 first-party basis and insureds of the insurance industry
9 on a third-party basis. You're aware of that?

10 A. I really don't know all the things that PLRB
11 does. So I can't affirm that statement because I just
12 don't know.

13 Q. From your mind's eye, give me your
14 understanding of the PLRB's purpose.

15 A. I'm not conversant with PLRB's purpose. I
16 understood that they were an organization of first-party
17 insurers, but I don't know exactly what their purpose
18 is.

19 Q. Okay. There are three articles in here that
20 make reference more recently to Daubert type motions or
21 Daubert type motions, depending on how you say it.
22 Those are motions in regard to the gatekeeping function
23 of a judge as to whether to allow the expert testimony
24 of the opponent, correct?

25 A. Correct.

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1 Q. And you have written and commented on advising
2 attorneys on causation issues in connection with Daubert
3 type motions, correct?

4 A. That's correct.

5 Q. And the gravamen of the articles, the thesis
6 statement of the articles is assisting the defense
7 lawyer in barring the opposing plaintiff's lawyer on
8 Daubert and causation criteria, generally speaking,
9 correct?

10 A. I'm not sure which articles you're talking
11 about. I mean, that may be one thing that I've talked
12 about in some, but I don't know that that's universally
13 the case. I'd have to look at the articles again.

14 Q. But you have made reference to that in these
15 articles?

16 A. Oh, I'm sure I have.

17 Q. Okay. All right. Speaking of books and
18 things, you are familiar with the ACGIH publication
19 Bioaerosols: Assessment and Control, editor Jay Mocker.
20 You're aware of that document, that book?

21 A. Yes.

22 Q. The red book, as the certified industrial
23 hygienists call it from time to time?

24 A. Yes.

25 Q. Do you find that to be an authoritative

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1 source?

2 A. I would have to look at it. I can't vouch for
3 its authoritativeness in general. I mean, I'd have to
4 look specifically at some of the things that are said in
5 that book.

6 Q. In terms of environmental assessment and
7 remediation, have you made reference to that book in
8 regard to your remediation activities?

9 A. I believe we have, but I just can't recall

10 sitting here today everything that's in that book.

11 Q. And will you accept my representation for you

12 that the ACGIH publication Bioaerosols: Assessment and

13 Control, 1999, is cited as authoritative, both the 2006

14 journal article as well as the 2002 ACOEM paper as

15 authoritative on assessing environments and

16 environmental control?

17 A. I don't know. I'd have to look at those

18 papers to see whether they actually use those words,

19 that journal, that manual or whatever you want to call

20 it is authoritative. I don't know what they said about

21 it.

22 Q. Do you doubt that they are even footnoted?

23 A. It may well be footnoted, but I don't know

24 whether they've said it's authoritative for all things

25 or whether they've cited it for specific purposes. I

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1 mean, I just don't know.

2 Q. Let me ask you this: In regard to assessing
3 an environment, taking samples and making conclusions
4 from the samples, that isn't something that you do, is
5 it?

6 A. Well, I don't actually physically personally
7 do the sampling.

8 Q. Correct.

9 A. But I've been with people who are doing
10 sampling, and I've worked with people on sampling and in
11 sampling protocols.

12 Q. Okay. You're not a certified industrial
13 hygienist?

14 A. That's correct.

15 Q. You would not classify yourself as a
16 microbiologist, correct?

17 A. Correct.

18 Q. You would also not classify yourself as the
19 subtersect of microbiology, a mycologist, correct?

20 A. That's correct.

21 Q. And in terms of the ACGIH manual on
22 Bioaerosols: Assessment and Control, are you aware of

23 the standard as stated in that book on interpretation of
24 sampling in terms of a space and remediation practices?
25 A. I've certainly read it. I'm not -- I don't

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1 have it committed to memory.
2 Q. Well, in terms of 7.3.2 of that particular
3 matter -- manual, wouldn't it be accurate to your memory
4 that the ACGIH, while not recommending standards, does
5 promote that one should exercise one's best judgment
6 based upon experience, education and background, not
7 only for the assessment of an environment but also for
8 remediation protocols?
9 A. Well, if you're asserting that that's what it
10 says in that manual, then I have no argument with that.
11 I can't say whether it says that or not --
12 Q. Fair enough.
13 A. -- because I just don't have the manual
14 memorized. It sounds like something that might be in

15 there.

16 Q. And taking for a moment as true my
17 paraphrasing of Section 7.3.2 of that manual, do you
18 agree or disagree with that remark?

19 A. I'd have to see the context of that to answer
20 that. There is a lot more since 1999 that has been
21 learned about sampling and about the prevalence of mold
22 in various indoor environmental situations and media,
23 and I'd just have to review that again, frankly, to see
24 whether I would agree or disagree. I can't answer that.

25 Q. Okay. You don't have a position as you sit

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1 here?

2 A. I do not.

3 Q. Okay. Well, let's go to your report. You got
4 one there that I could put an exhibit sticker on so it
5 looks formal?

6 A. Well, I have stickies on mine.

7 Q. We'll work it out later then. Let's put this
8 on there. You can keep your copy of it, and we can work
9 all that out. I'm going to put exhibit sticker 58.
10 That's on your copy of the report, correct?

11 A. Correct.

12 Q. And that's the report that was produced in
13 this particular case, is that correct?

14 A. Yes.

15 Q. Anything you want to change?

16 A. No.

17 Q. Before I let you go on that one, let me turn,
18 if I could, please, to -- to a remark you made on -- of
19 course, I'm not going to be able to find it now -- on
20 Page 13, the first full paragraph, last sentence.

21 (Exhibit 58 was marked.)

22 Q. And I'm wrong. I apologize, Doctor. Let me
23 get my act together here. I'll strike that last
24 question, if I could, please. I apologize.

25 I'll tell you what I'm looking for, Doctor.

1 You made a remark here that obviously I'm not finding
2 that there may be some further records. In fact, it's
3 on Page 26. It is the second full paragraph, first
4 sentence. It reads, "I'm aware that more medical
5 records exist concerning this claimant," and "this
6 claimant" would be Doctor Steven Hake. "I, therefore,
7 reserve the right to supplement this report and my
8 conclusions once these records become available."
9 That's the paragraph I'm making reference to.

10 Anything else that you need to see, want to
11 see?

12 A. No. I mean, I -- there probably were some
13 records from 1990, and that, I think, is what I was
14 referring to. We don't have those.

15 There may have been some additional records
16 from 1993 to 1999 -- I'm not sure of that -- or, I'm
17 sorry, 1993 to 2000 really. I'm not sure about that,
18 but if they are, it would be nice to see them.

19 Q. Okay. And as of the date of this writing and
20 today's deposition, you don't have those?

21 A. That's correct.

22 MR. HETLEY: For the record, there are
23 depositions that are ongoing as well including that of
24 Dr. Schroeder.

25 MR. DUFFY: And?

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1 MR. HETLEY: And I'm making a statement on the
2 record that it may be an additional item that he
3 reviewed since it also references in his report that he
4 reviewed the deposition transcript of Dr. Cohen.

5 BY MR. DUFFY:

6 Q. You heard that, didn't you?

7 A. Yes.

8 Q. Is that going to change your opinions on this
9 man, his wife and his children?

10 A. I don't believe so.

11 Q. Did any of it buttress your opinions, or did
12 you find anything interesting in what you've read about

13 depositions that change your opinions or add some facts

14 that buttress your opinions?

15 MR. HAYES: Calls for speculation.

16 A. Well, that's -- I mean, that's a broad

17 statement, and, you know, I don't know. I can't tell

18 you exactly what I've gotten out -- or what I might get

19 out of Dr. Schroeder's deposition, for example, that

20 might be relevant to my opinions.

21 I don't think -- nothing will change, I don't

22 think, the opinions I have because I have, I think, his

23 records, but it would be nice to see that deposition.

24 Q. Sure. All right. Let's go to the first few

25 pages of your report where you go to the environmental

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1 assessment.

2 Now, Aspergillus and Penicillium genus are

3 found in tape, bulk and swab at various times in various

4 locations. Is that a fair general statement?

5 A. Yes. Yes, that's true.

6 Q. All right. And when you make reference of A.
7 ustus, A. niger, and A. terreus, those are Aspergillus
8 species, is that correct?

9 A. That's correct.

10 Q. There is no speciation of the Penicillium
11 genus noted, I think, save one place where you have
12 noted on Page 7 of your report Penicillium phialides,
13 correct?

14 A. Correct.

15 Q. So in terms of nonairborne sampling, there is
16 the presence of Aspergillus Penicillium, and airborne
17 sampling there is the presence of Aspergillus
18 Penicillium, correct?

19 A. Well, with the proper understanding that these
20 were very localized samples done in often odd places,
21 and the airborne sampling was done during remediation,
22 if I'm not mistaken, and then subsequent to that.

23 Q. And I appreciate that, Doctor. Let's go back
24 to my question that it is a true statement that you can
25 have Aspergillus Penicillium species in the nonairborne

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1 samples as well as Aspergillus Penicillium genus in the
2 airborne samples, correct?

3 MR. HAYES: Asked and answered.

4 MR. DUFFY: No, it's not, different question.

5 BY MR. DUFFY:

6 Q. I'd like an answer to that question, Doctor.

7 A. Yes, that's correct.

8 Q. All right, thank you. I appreciate that.

9 And in regard to the air sampling of February
10 of 2004, there is the presence of Alternaria inside the
11 home in the kitchen containment area, and that is a
12 genus that is not found outside at the time of that
13 sampling. Is that a correct statement?

14 A. Well, it wasn't found on that particular
15 sample outside at that time of sampling.

16 Q. So my statement is correct?

17 A. That is correct.

18 Q. All right. Going to Page 7, the air sampling,

19 Doctor, of 16 March 2004, read quickly on page -- hold
20 that page, Doctor. On Page 13, you make reference to
21 the Baker paper, the first full paragraph, last line,
22 concerning that study's conclusion concerning clean
23 residential buildings being less than 1200 spores per
24 cubic meter. Do you see that?

25 A. Yes, it's not Baker. It's Baxter.

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1 Q. Baxter. I misspoke; I apologize.

2 If we keep that in mind, the 3,800 spores per
3 cubic meter in the master bedroom on the 16th of March
4 2004 eclipses Baxter's remarks, doesn't it?

5 A. That's correct.

6 Q. And also in regard to the air sampling March
7 2004, the spores per cubic meter eclipse the outdoor
8 air, correct, both the front yard and balcony patio
9 backyard?

10 A. By "eclipse," you mean are greater than?

11 Q. Yes, I apologize. Yes.

12 A. Well, the backyard was higher than the 1200.

13 The front yard was around 1200. It was about the same.

14 Q. Okay. But certainly compared to the master

15 bedroom, there was certainly less outdoors?

16 A. In that particular single sample, that's true.

17 Q. Okay. Thank you. So the answer to my

18 question would be yes, correct?

19 A. Yes.

20 MR. HAYES: Asked and answered.

21 Q. Let's talk about Dr. Steven Hake. If I read

22 the several pages that you've written about him, rather

23 than ask a lot of questions to fill the air, you find

24 his time in the house incidental to his condition, is

25 that correct?

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1 A. That's correct.

2 Q. Had it before, had it since, correct?

3 A. Correct.

4 Q. Now, on Page 19 of Dr. Jim Craner's report at
5 the top where he has his conclusions, Doctor, Jim Craner
6 makes the conclusion that the atmosphere of the home
7 aggravated the condition that Dr. Hake had. Do you
8 disagree with Dr. Craner?

9 A. Yes. He has no basis for that.

10 Q. Okay. And what in particular would you say as
11 to why you feel Dr. Craner has no basis for that?

12 A. Well, I mean, there is certainly no basis to
13 say that his sinusitis was in any way aggravated by
14 indoor environmental exposure. There's no evidence of
15 indoor environmental exposure at that time. There's no
16 evidence of airborne mold in the home at that time, and
17 let's take a look at the allergies. He was
18 significantly allergic to many agents, the least of
19 which was a common outdoor mold, namely, Alternaria.

20 We don't have any evidence that he was
21 allergic to those molds that -- at least not
22 significantly allergic to those molds that you mentioned
23 were found later in the indoor environment.

24 Q. Right.

25 A. He had many other allergies. He had many

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1 other factors that were contributing to his sinus
2 disorder, and ultimately he had proven
3 Curvularia-related fungal allergic sinusitis which had
4 nothing to do with the indoor environment.

5 So I don't see any basis for saying that the
6 indoor environment had any contributing role either in
7 aggravation or causation.

8 Q. In regard to the Curvularia genus that has
9 been found in his sinus area, is that a type of mold
10 that is recognized that can be found in individuals who
11 have problems with drainage in light of the kind of
12 condition, for instance, that Dr. Hake has?

13 A. You mean problems with sinus drainage? Is
14 that what you're saying?

15 Q. Yes.

16 A. Yes.

17 Q. And what is your basis for saying that,

18 Doctor?

19 A. I've read that. I mean, I'm not an expert in
20 that. I'll leave that to Dr. Saxon and others to talk
21 about more.

22 Q. In fact, in the ACOEM paper in the 2002
23 version, it speaks of Curvularia as being a typical
24 fungus in regard to individuals who have drainage and
25 sinus problems, correct?

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1 A. I'd have to look at that again, but it may
2 well.

3 Q. But you'd defer to Dr. Saxon to discuss that?

4 A. I would.

5 Q. Okay, I'll discuss that with him.

6 Go to Page 2 of your report for a second, and
7 let's look at this chart, and while you're flipping,
8 I've asked you this before. Did one of the staff

9 paralegals prepare all this and you reviewed it, or did
10 you do all this yourself? There's 43 pages here.

11 A. Well, we don't have paralegals. We have
12 nurses and physicians, and it was a combination of
13 nurses and physicians.

14 Q. What was your role in putting this document
15 together as opposed to the staff participation?

16 A. Well, some of the background material were
17 probably written by one of our other physicians, but I
18 wrote the assessments, causation.

19 Q. Okay. And when I take a look at the time
20 sheets, I'll be able to accurately, in your mind, be
21 able to assess how much time has been invested in this
22 case?

23 A. Yes.

24 Q. And that would be for the preparation of this
25 43-page document, correct?

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1 A. Correct.

2 Q. And which individuals and their credentials
3 did what?

4 A. I don't know that it's delineated that way in
5 our reporting.

6 Q. Okay. The individuals that worked on this
7 case, can you tell us who they were as you sit here?

8 A. I don't know for sure. I think certainly
9 Nancy Layton, who is one of our nurses, assists in these
10 matters. Dr. Pirages often puts together the exposure
11 information. Dr. Barbara Gots does some of the
12 organization and some of the background information.

13 I don't know that all of them were involved in
14 this, but they probably were.

15 Q. All right, and the time sheet -- let me ask
16 again; I may have lost the answer somewhere. The time
17 sheet will tell me or not tell me?

18 A. I don't think it will. I think it reflects
19 activities as opposed to people.

20 Q. So as I sit here today with you, you can't
21 tell me which individuals worked on it with you, and you
22 can't tell me the credentials of the individuals that

23 worked on it with specificity. Is that a correct

24 statement?

25 MR. HAYES: Misstates testimony.

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1 A. Well, I can tell you with reasonable
2 probability. I can't tell you with absolute certainty,
3 but I have a pretty good idea.

4 BY MR. DUFFY:

5 Q. Let's go to Page 2, if we can, and let's look
6 at the big chart here for Steven Hake. In terms of the
7 various items stated under Steven Hake, if I'm hearing
8 you correctly, based upon your review with your
9 background, you are saying that this plaintiff has none
10 of these symptomatologies secondary to this house
11 environment, correct?

12 A. At least no one can say with any probability
13 that he does, and I think there is certainly no evidence
14 that the case is that he does.

15 Q. Okay. So you would put a strike or a zero

16 next to each and every one of these?

17 A. In terms of probabilities, absolutely.

18 Q. Earlier in this deposition, I kind of turned

19 it around on you, pretend you were on the plaintiffs'

20 side. If you were on the plaintiffs' side here, Doctor,

21 within a reasonable degree of medical certainty would

22 you state that any of these symptoms listed in this

23 chart were causally or contributorily related to Dr.

24 Hake's exposure in the home?

25 MR. HAYES: Asked and answered.

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1 A. Absolutely not.

2 Q. Okay. In terms of our discussion earlier,

3 would you put a may be related as to any of these items

4 on this chart?

5 A. I could not do that either.

6 Q. You could not do that either?

- 7 A. No.
- 8 Q. All right.
- 9 You've seen Dr. Saxon's --
- 10 A. Well, excuse me one second.
- 11 Q. Sure.
- 12 A. I don't know whether some of his emotional
- 13 distress has anything to do with things that happened in
- 14 the home or any of his anxiety issues. I know that he's
- 15 had that for a long time, but he may have some emotional
- 16 distress related to the home. I mean, that's certainly
- 17 a possibility.
- 18 Q. How do you mean?
- 19 A. I mean, I can't say that with medical
- 20 certainty, but that's certainly a possibility.
- 21 Q. You mean emotional stressors as a result of
- 22 the home having to be remediated, vacating the home,
- 23 things of that nature?
- 24 A. That's a possibility.
- 25 Q. Okay. Anything else from an emotional

1 standpoint or psychological standpoint related to the
2 situation with the home that you might state other than
3 the stressors that I've mentioned?

4 A. No, not that I can state.

5 Q. Now, you've read Dr. Saxon's report, correct?

6 A. Yes.

7 Q. And you've read his IME report?

8 A. Both of his reports, yes.

9 Q. Why don't you pull those out for a second, if
10 you would, and let me ask you about some of his remarks
11 and see what your reactions are.

12 A. Which one do you want?

13 Q. Tell you what. Let's go to his of April 17,
14 2006, and if you wouldn't mind, Doctor, go to the sixth
15 page of the eight pages of that report. Let me know
16 when you're there.

17 A. I'm there.

18 Q. Okay. Now, in order to be fair to you, this
19 is what I'm going to ask you to do. We're going to stop
20 for a second at this major paragraph the doctor has

21 here, starting, "Dr. Hake had and has underlying

22 allergic disease." Do you see that start?

23 A. Yes.

24 Q. And then going to the end of that paragraph,

25 I'm going to ask you about that, but I think, in order

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1 to put it all in context, I want you to read the whole

2 thing, and I think on Page 7 of 8 he has --

3 A. I'm sorry, Page 7?

4 Q. Page 7, yes. He has three paragraphs at the

5 top there. You see the paragraph that reads, "The sole

6 role that indoor exposure may have played." Do you see

7 that?

8 A. Yes.

9 Q. I'd like you to read those three paragraphs to

10 yourself as well as the big paragraph on Page 6, and I

11 want to ask you some questions, but I don't think -- I

12 don't want to get into an issue where I want you to read

13 context, et cetera. I want you to read those. Take a
14 second, if you don't mind, and let me know when you're
15 ready.

16 (Recess taken.)

17 BY MR. DUFFY:

18 Q. Doctor, I'll tell you why I've gone to where
19 I've gone. In the middle of the paragraph on Page 6,
20 Dr. Saxon writes as follows: It reads, "There is no
21 reason to posit that increased indoor mold exposure in
22 his home played a significant role in the development of
23 these polyps given that he was exposed to a broad range
24 of allergens outside his home and to more important
25 allergens e.g. dust mites and potentially dog dander in

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1 his home and the natural recurrence of polyp disease."

2 Do you see that sentence?

3 A. I do.

4 Q. And do you see the doctor's use of the word

5 "significant" next to "role"?

6 A. Yes.

7 Q. Okay. I want to read you one more. Go to the
8 next page, and let's read the doctor's sentence in the
9 third paragraph. It reads, "The sole role that indoor
10 mold exposure may have played in Dr. Hake's medical
11 issues is being one of a host of factors that were and
12 are involved in his overall allergenic response to
13 airborne allergens. However, given his broad range of
14 allergenic sensitization and the levels of mold in his
15 home, this is expected to be a minimal role."

16 Do you see Dr. Saxon's use of the word
17 "minimal" as to role and his use of the words "may have
18 played"? Do you see those?

19 A. I do.

20 Q. Taking both of these remarks of Dr. Saxon
21 together, do you see how his conclusion as to Dr. Hake
22 is a bit different than your conclusion as to Dr. Hake?

23 MR. HAYES: Objection, calls for speculation,
24 lacks foundation, vague and ambiguous.

25 A. Not really. I mean, I think that you're

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1 parsing specific words, and frankly, I don't see how one
2 can say that it played any role, you know, and I
3 think -- I don't think that Dr. Saxon says anything
4 terribly different, and I'm not sure whether Dr. Saxon
5 reviewed -- I mean, there was no testing prior to the
6 testing in 2004.

7 So there's no evidence of indoor exposure
8 prior to that time. So, you know, I would say that I
9 don't see how one can say that it played any role, and
10 he may have used the word significant, and I'm not sure
11 why he used the word significant.

12 BY MR. DUFFY:

13 Q. So you don't think it played any role?

14 A. I don't see any basis for it.

15 Q. And Doctor says that it did not play a
16 significant role, correct?

17 A. Well, I agree with that, too.

18 Q. But he doesn't use the word any role, does he?

19 A. No, he didn't in that case, but when you go to
20 the next page that you've asked me about --

21 Q. He says "minimal role."

22 A. No. "This is expected to be a minimal role,"
23 but I'm not sure what he's referring to when he says
24 "this" since there really wasn't any evidence of
25 exposure during that period of time.

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1 Q. In your writing, you do not use the word may
2 have played a significant role. You do not use the
3 words minimal role?

4 A. That's correct.

5 Q. Let's go on to Fredna Hake. Okay. You find
6 that -- at the bottom of Page 27 -- she is showing
7 positive mold tests as to the Aspergillus genus,
8 correct? The last paragraph, Page 27.

9 A. Her intradermal tests were positive for that,
10 not her prick testing.

11 Q. Okay. And in regard to the intradermal as to
12 Alternaria, she also showed positive to that genus as
13 well, correct?

14 A. Correct.

15 Q. Alternaria and Aspergillus were genres that
16 were found not only in bulk, tape and swab samples but
17 were also found in air samples, correct?

18 A. Correct.

19 Q. And in regard to her symptomatology secondary
20 to exposure, did any of it have anything to do with the
21 home, cutting to the chase?

22 A. Once again, I don't know how anyone could make
23 that statement with any degree of likelihood or
24 probability. I mean, it would be a pure guess to say
25 that there was Aspergillus and/or -- first of all, these

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1 are intradermal tests. So I'm not sure whether she's
2 actually allergic or not. Prick testing is much less

3 sensitive than intradermal testing. Intradermal testing
4 is more sensitive.

5 However -- and I think this is where Dr. Saxon
6 and I essentially would agree that I don't see how
7 anyone could say that the home actually contributed to
8 or more probably than not contributed to her
9 symptomatology.

10 I mean -- and it would be a pure guess to say
11 that there was *Aspergillus* and *Alternaria* in sufficient
12 quantities in her indoor environment during the year
13 2003, let's say, to actually produce allergic-based
14 symptomatology. I mean, there's no data to support
15 that.

16 Q. What about an aggravation condition?

17 A. There's simply no data that would support
18 that. I mean, is it possible? I guess it's possible,
19 but there's no support for that, and so it's certainly
20 not probable or certain.

21 Q. So using what we talked about earlier today,
22 kind of switching it around on you, pretend if you were
23 the plaintiffs' retained expert, within a reasonable
24 degree of certainty, could you indicate that any of the

25 symptomatology of this particular plaintiff was related

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1 to the environment of the home from a causation
2 standpoint?

3 A. No, I couldn't.

4 Q. How about the same question using the term
5 "aggravation" or "exacerbation"?

6 A. No, sir.

7 Q. Okay. Go do Page 42 real quickly on the same
8 plaintiff, Ms. Hake, and I'm actually going to the
9 overall conclusions concerning family.

10 As to the second full paragraph under overall
11 conclusions, it reads as to this particular plaintiff,
12 "The medical records do not reveal evidence of
13 exacerbation or remission of allergy symptoms related to
14 occupancy of the home, remediating or vacating it,
15 strongly suggesting little association between mold
16 exposure there and symptoms.

17 Doctor, you don't say no association. You use
18 the word "little." Why?

19 A. No special reason. I think that maybe I
20 should have been more precise in some of my wording, but
21 I think the answer is there is no evidence really of an
22 association.

23 Q. Okay. But you say in your writing that you
24 signed on October 20, 2006 "little association,"
25 correct?

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1 A. That's what the words say, yes.

2 Q. Okay. Let's go back to Page 2, and that's the
3 big chart on Page 2 of all these plaintiffs. In terms
4 of the symptomatology as to Mrs. Hake, other than what
5 we've talked about on Page 42 of the report, would you
6 attach any of those symptomatology to her exposure in
7 the home?

8 A. You know, as I said for Dr. Hake, I think

9 there's certainly a possibility that she had some
10 emotional response to the problems in her home.

11 Q. Again, emotional stressors --

12 A. Sure.

13 Q. -- that we talked about with Doctor?

14 A. Sure.

15 Q. Okay. Let's go to Stephanie. Again, so we
16 don't take a lot of time, go to Page, if you would,
17 please, Doctor, 33, first full paragraph. Let me know
18 when you're there.

19 A. Yes.

20 Q. And in terms of the allergic reactivity as to
21 the Penicillium Alternaria and Aspergillus genus
22 specifically for purposes of my question, all of these
23 that I've outlined in my question were found in air
24 samples in the home, correct?

25 A. Yes, those were found in air samples in the

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1 home.

2 Q. All right. And in regard to this particular
3 plaintiff, did you find any of the symptomatology
4 complained of by this plaintiff to be related to the
5 home?

6 A. No, not with any degree of probability.

7 Q. Okay. So, again, if I were to pretend for a
8 moment that you are the plaintiffs' expert on behalf of
9 this child, you would -- could not say within a
10 reasonable degree of medical certainty that any of her
11 allergic symptomatology is related to the home, correct?

12 A. That's correct.

13 Q. Okay. Well, having heard that, would you go
14 to the bottom of Page 33 and conclusions concerning
15 Stephanie Hake. It reads in that paragraph in pertinent
16 part, "It is apparent that the symptoms and diseases for
17 which Stephanie Hake was evaluated are not consistent
18 with a causal connection from any conceivable exposures
19 she may have had in her home at 1850 Bogey Way in
20 Henderson, Nevada with the possible exception of some
21 allergic symptoms."

22 Those are your words, correct, Doctor?

23 A. Sure.

24 Q. What do you mean by "possible exception" as
25 you wrote it there despite your answer to my last

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1 question?

2 A. Well, I mean, that's a pure speculative
3 statement that if there were elevated levels in her
4 house prior to the year 2004, when the testing was
5 ultimately done, she may have had some symptoms based on
6 the fact that she has some allergic responsiveness.
7 It's a pure hypothetical.

8 Q. And in terms of the allergenic symptoms that
9 you indicate is possible exception at the bottom of Page
10 33 against the chart at Page 2, what would those
11 symptoms have been?

12 A. And, again, this is total speculation. It
13 would be upper respiratory, shortness of breath,
14 asthma-like symptoms.

15 Q. Okay. Go to Page 34. If you would, please,
16 Doctor, and the portion of the top paragraph which in
17 pertinent part reads as follows, at least for purposes
18 of my question: "Because of her multiple allergic
19 sensitivities to ubiquitous substances including dog
20 dander from her family's three dogs, one cannot with
21 scientific or medical merit state that the molds in her
22 home were solely responsible for her allergenic
23 symptoms." Do you see that?

24 A. Yes.

25 Q. Let me go to the next thing that lawyers who

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1 ask you questions from the opposite side usually say at
2 this point. What about exacerbation of symptoms or
3 aggravation of symptoms?

4 A. We don't know. There's just no evidence for
5 it. There's no support for it in any of the
6 environmental testing. There's no evidence that there

7 was mold in the house during those years, and actually I
8 probably should not have used the word "solely" in this
9 instance, but that there was any responsibility at all
10 on the part of mold.

11 Q. So, again, for purposes of my record here, if
12 I were to pretend you were testifying for this child as
13 the plaintiffs' retained expert, you would not say
14 within a reasonable degree of medical certainty that
15 there were any factors that this house contributed to
16 for her symptoms from an aggravation or exacerbation
17 standpoint, correct?

18 A. That's correct. We have no evidence that
19 that's the case, that's correct.

20 Q. Let's stay on the same child, if we could,
21 please, but let's turn now to Page 43 of your document.

22 Now, you signed the document, correct?

23 A. Yes.

24 Q. And you'll ultimately be responsible for this
25 document for your corporation's work in this case,

1 correct?

2 A. Yes.

3 Q. And you were the captain of the ship of all
4 those that worked on this case or that you reasonably
5 believe worked on this case, correct?

6 A. That's correct.

7 Q. And the use of the words are your choices in
8 the final analysis, correct?

9 A. Correct.

10 Q. Okay. In regard to Stephanie on Page 43, it
11 reads in pertinent part, "The medical record does not
12 support her claim that she had developed symptoms
13 attributable to the home or to significant molds." The
14 words "significant molds" is quoted. Can you tell me
15 why?

16 A. I'm trying to recall. It may have been
17 something that someone else, Dr. Cohen or perhaps Dr.
18 Craner or someone, said. I just don't recall why that's
19 in quotes.

20 Q. Well, you have that sitting there on Page 43,

21 and as I turned back to Page 33 in regard to the same
22 plaintiff, a child, you make a possible exception of
23 some allergenic molds as we discussed a few moments ago.
24 Can you square that, Doctor?

25 A. Well, again, with total speculation. I mean,

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1 if there were mold there of those sorts, there would be
2 the possibility that those could have contributed to her
3 symptomatology, but those are totally speculative
4 statements.

5 Q. Okay. In regard to Dr. Jim Craner's
6 conclusion as to Stephanie Hake at the top of Page 19 of
7 his report, I take it you disagree with his conclusions
8 as to this plaintiff? You want to take a look at that
9 report?

10 A. I'm sorry, where is it?

11 Q. Page 19, the top.

12 A. Regarding Dr. Hake?

13 Q. Dr. Craner regarding Stephanie Hake.

14 A. Yes, I do disagree with it.

15 Q. As you've told me with Doctor and his wife,
16 what about emotional stressors connected with the home
17 concerning Stephanie Hake? Is that a possibility in
18 your mind or a probability?

19 A. I suppose it's a possibility. Having to move
20 out of your home might be an emotional stressor.

21 Q. You think that would be an emotional stressor
22 for a child?

23 A. I suppose that's possible.

24 Q. Okay. Now, as to James Hake and Emily Hake,
25 you don't believe there's any symptomatology secondary

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1 to mold exposure inasmuch as on an IGE basis they did
2 not demonstrate as allergic, correct?

3 A. Well, that's one of many reasons, but that's
4 certainly an important factor.

5 Q. So in terms of the chart on Page 2 of your
6 report as to James and Emily as to the physiological
7 symptomatology outlined in those two charts, you would
8 indicate that there is no connection to the home,
9 correct?

10 A. That's correct.

11 Q. In terms of the emotional issues, as you have
12 with the other three plaintiffs, would you attribute
13 those in terms of the emotional stressors of having to
14 move out of the home and going through what this family
15 had to go through concerning the home?

16 A. It would be a pure guess or speculation on my
17 part, but it certainly is a possibility.

18 Q. As you said with the other child, Stephanie,
19 as a physician who has dealt with children during your
20 time that you were actually working as a clinician and
21 having looked at these cases for the better part of 20
22 years, it certainly is something you have seen of people
23 undergoing emotional stressors in connection with a mold
24 problem in their home, correct?

25 MR. HAYES: Assumes facts not in evidence,

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1 vague and ambiguous, overbroad.

2 Q. Go ahead, Doctor.

3 A. You know, I suppose it's a possibility.

4 Q. And as to Dr. Craner's conclusion concerning
5 Emily Hake at the top of Page 19 of his report, I take
6 it you're going to disagree with him on that, correct?

7 A. Yes.

8 Q. I want to go to the bibliography that you
9 have. Go past the 43rd page, if you wouldn't mind, the
10 references again on Page 44, and let me know when you're
11 there.

12 A. I'm there.

13 Q. All right. One of the references you make is
14 to Emil Bardana in the fourth reference, correct?

15 A. Yes.

16 Q. You are aware that Emil Bardana testifies on
17 the defendant's side in mold cases?

18 A. I believe he may. I'm not positive, but I

19 believe he may. I don't know whether he testifies for
20 claimants or has or not. I have no idea.

21 Q. Okay. In regard to the position paper that
22 we've talked about issued earlier this year by Bush,
23 Portnoy, Saxon, Abba Terr and Wood that you make
24 reference to, you are aware that Dr. Saxon testifies on
25 the defendant's side of mold cases, correct?

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1 A. Yes.

2 Q. You are also aware that Dr. Abba Terr
3 testifies on the defense side of mold cases, correct?

4 A. I believe that's correct.

5 Q. Okay. Going to Page 46 for a moment, if you
6 wouldn't mind, you make a reference to a cite by Dr.
7 Johanning who, among other authors, is Dr. Chin Yang,
8 who is a mycologist, correct?

9 A. Yes, I believe he is.

10 Q. You know Chin from the practice? From time to

11 time you've met and talked and I think even

12 collaborated, correct?

13 A. I don't know that we've collaborated, but I

14 think I've met him.

15 Q. You read his work?

16 A. I've read some of his things.

17 Q. Dr. Yang as a mycologist refers to Penicillium

18 and Aspergillus genus as indicator species or Barker

19 species of damp, wet or water-infused buildings. Do you

20 agree with that?

21 A. They're certainly among the species or the

22 genre --

23 Q. The genre. I apologize.

24 A. -- that are commonly found on wet materials in

25 indoor spaces. They're also very commonly found

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1 outdoors, but, yes, they are found on wet, indoor

2 spaces.

3 Q. And would you agree with Doctor that that can
4 be classified as signature species or signature genre of
5 damaged indoor spaces?

6 A. I'm not sure what the term "signature" means.
7 I mean, they are certainly commonly found. I mean,
8 there are others that are found as well at times, but
9 Aspergillus and Penicillium are among those that are
10 very commonly found in those situations.

11 Q. Let's go to the site of Drs. Kelman, Robbins,
12 Swenson and Hardin. You know these authors, correct?

13 A. You mean personally?

14 Q. Let's say professionally.

15 A. I don't know Dr. Swenson. I know Dr. Robbins,
16 Dr. Kelman, and I've met Dr. Hardin.

17 Q. You are aware that Kelman, Robbins and Hardin
18 all testify on the defendant's side of mold cases,
19 correct?

20 A. I don't know anything about Dr. Hardin. I
21 believe Dr. Kelman and Dr. Robbins have.

22 Q. Are you aware of a case done earlier this year
23 in northern California where Dr. Robbins' work was
24 barred?

25 A. With whom?

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1 Q. Dr. Robbins' work, Dr. Brent Robbins' work was
2 barred from admission as insufficient scientific
3 process?

4 A. No.

5 Q. Are you aware that it was this article and the
6 studies and the mathematics that were in this article
7 that you cite as authoritative that was stricken, barred
8 and not allowed into evidence in a case in northern
9 California three months ago?

10 A. No.

11 Q. You have no knowledge of any of that?

12 A. None whatsoever.

13 Q. All right. Paul Lees-Haley, you understand
14 that he is not a medical doctor, correct?

15 A. That's correct.

16 Q. You understand that he is a neuropsychologist,

17 correct?

18 A. Yes.

19 Q. You also understand that he always testifies
20 on the defense side of mold cases, correct?

21 A. Well, I think when he testifies in mold
22 issues, it's been because of the mycotoxin allegations,
23 and he's, I think, testified generally for the
24 defendant, perhaps always.

25 Q. You have worked with Doctor Haley in the past

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1 or been on the same cases as Doctor Lees-Haley?

2 A. I have.

3 Q. One of those would be a case that we had
4 together down in Amarillo, Texas for the Gluckman family
5 as an example, correct?

6 A. That's correct.

7 Q. Turning to the next page of your references
8 for this paper on the Hake family, second reference,

- 9 Brian Shel ton is ci ted, correct?
- 10 A. Yes.
- 11 Q. Okay. He works at Pathcon Laboratories in
- 12 Atlanta, Georgi a, correct?
- 13 A. Correct.
- 14 Q. You are aware that Brian Shel ton testi fies on
- 15 the defendant's side of mold cases?
- 16 A. I have absolutely no knowl edge of Bri an
- 17 Shel ton's li ti gati on acti vi ti es.
- 18 Q. You don't know ei ther way one way or the
- 19 other?
- 20 A. No, I don't.
- 21 Q. You're not aware that their websi te says they
- 22 assi st defendants in debunki ng mold cl ai ms? You have no
- 23 knowl edge of that?
- 24 A. Never seen that.
- 25 Q. Do you know Dani el Sudaki n who you make

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1 reference to?

2 A. I know who he is. I've talked to him, I
3 think, once or twice. I don't know him well.

4 Q. Are you aware that he testifies on the
5 defendant's side of mold cases?

6 A. I have no idea of Dr. Suiten's testimony.

7 Q. He's affiliated with a group up in Oregon with
8 Emil Bardana. Do you know that?

9 A. I didn't know there was a group.

10 Q. You didn't know?

11 A. No.

12 Q. Do you know his affiliation with Dr. Bardana?

13 A. No.

14 Q. How about Dr. Jim Seltzer, who is the second
15 author of the last citation that you use as a reference
16 in this paper? He's out of San Diego, California. Do
17 you know him?

18 A. Yes, I do.

19 Q. And you're aware that he testifies on the
20 defendant's side of mold cases as well?

21 A. He testifies in a lot of plaintiff's matters
22 as well, as far as I know.

23 Q. In the mold area?

24 A. Yes.

25 Q. Should this house have been remediated based

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1 upon what you read?

2 MR. HAYES: Objection, vague, ambiguous,
3 overbroad, calls for speculation.

4 A. You mean in 2004 when they found what they did
5 and the ceiling fell through? Absolutely.

6 BY MR. DUFFY:

7 Q. Why?

8 A. Well, for one thing, the ceiling fell down.

9 Q. Yeah, but if mold doesn't cause any problems,
10 why remediate? If it's no big deal, what do we
11 remediate for?

12 A. In this case, we have a perfect example, one
13 of the main reason, and that is there was structural
14 damage. There was water damage, structural damage, and

15 that requires repair and remediation.

16 Q. What about from a health standpoint?

17 MR. HAYES: Vague, ambiguous, overbroad, calls
18 for speculation.

19 A. If mold is behind walls, I mean, as 20 to 30
20 percent or more of homes have, then one doesn't go
21 looking for it and remediating it. If it certainly
22 becomes visible and in people's living spaces, then I
23 think it's an important thing to do, or if walls are wet
24 and damp and damaged, then remediation is appropriate.

25 Q. In terms of this particular home and these

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1 particular plaintiffs, have you made any conclusion that
2 it should have been remediated in terms of their further
3 health in living in that space, their further health
4 considerations in living in that space?

5 A. I haven't been asked to look at that, and I
6 mean, I'm not sure what the question is. I mean, there

7 needed to be remediation of this house. I don't think
8 it was specifically health based. It was because there
9 was mold growing behind walls, and there was a lot of
10 wet areas, and there was damage to structural materials
11 in that house.

12 I think it's -- once that's found and
13 identified, then certainly remediation should take
14 place.

15 Q. Okay. But I'm asking you as a physician, in
16 light of having reviewed all these records and seen all
17 this material -- I know you didn't want to see the
18 plaintiffs personally for the reasons you've stated, but
19 should it have been remediated to protect their health
20 on an ongoing basis? Is that a factor at all in your
21 mind's eye?

22 A. To the extent that there was the potential for
23 growth of mold in the living space and the potential for
24 mold spore release in the living space and you had some
25 allergic people, then it was probably a good idea from

1 the health prospective as well to do remediation once
2 this was identified.

3 Q. In this house?

4 A. Yes.

5 Q. You made reference in your last answer to
6 allergic people in terms of the need to do remediation
7 in this house. What were you making reference to,
8 Doctor?

9 A. Well, we have some allergies, as you pointed
10 out, in the children or at least potential allergies.
11 We're not sure any of them responds to mold or any of
12 them actually has clinical mold-related allergies, but
13 we have a family who does have some allergic responses
14 to things, and to the extent that mold might have grown
15 by virtue of the water damage in a way that could have
16 affected the living spaces, then it makes sense to
17 remediate from the health standpoint.

18 Q. Well, then, Doctor, how can you say it made
19 sense to remediate and you found absolutely nothing
20 wrong with these individuals secondary to their exposure

21 in this house?

22 A. Because they didn't have any evidence of
23 exposure while they were living in the house, for one
24 thing.

25 Q. Then isn't it incongruent for the need to

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1 remediate from a health standpoint as you've outlined in
2 your last answer?

3 A. No, because it's conceivable that there could
4 have been additional water activities which in turn
5 affected the walls in the living space which in turn
6 might have led to additional mold growth in living
7 spaces.

8 Q. And you're referring to the molds that were in
9 the wall cavities that eventually could have moved into
10 the air space through whatever methodology?

11 A. Well, or that if additional water -- if the
12 dampness of the walls continued, then the mold could

13 actually have grown into the living spaces.

14 Q. And as we talked about earlier, this is the
15 Aspergillus and Penicillium genus found in those
16 cavities as well as in the air spaces with the testing
17 we had anyway?

18 A. What's your question? Those would have been
19 the molds?

20 Q. Yes.

21 A. Potentially.

22 Q. Okay. Doctor, would you agree that
23 remediation should be done in an environment that calls
24 for such remediation in order to reduce the risk of
25 developing or exacerbating injuries or allergies?

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1 A. Yes.

2 Q. Okay. Now, in the first page of this report,
3 you tell the reader that you have -- in the second
4 paragraph that you have prepared remediation plans and

5 overseen remediation, correct?

6 A. That's correct.

7 Q. And you have overseen remediation activities
8 in structures, correct?

9 A. Yes.

10 Q. In regards to this structure, this is a
11 structure from your review of these materials and your
12 background that call for remediation both from a
13 property damage standpoint and also from a prophylactic
14 health standpoint?

15 A. Once the issue was identified, and I don't
16 think anyone had any idea of that until essentially
17 2004.

18 Q. So the answer to my question would be yes?

19 MR. HAYES: Asked and answered.

20 A. Eventually, yes, correct.

21 MR. DUFFY: All right, give me one second.

22 BY MR. DUFFY:

23 Q. Doctor, can you give me a yes or no answer to
24 the following question: This house needed to be
25 remediated both from the property damage standpoint and

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1 the health standpoint of its occupants?

2 MR. HAYES: Vague and ambiguous, calls for
3 speculation, lacks foundation.

4 A. I don't think I can give you a yes or no. I
5 think I can give you a qualified answer to that, and
6 it's a qualified yes, and the qualification is that if
7 there is some potential of risk related to the
8 possibility of allergic response and once you've found a
9 situation as it was found, then it is certainly
10 appropriate both from the structural and the health
11 protective standpoint to do remediation.

12 BY MR. DUFFY:

13 Q. Doctor, you have a remark in the report that
14 20 to 30 percent of the homes have mold in them anyway?

15 A. That's correct.

16 Q. What is the genesis of that remark?

17 A. That comes from the National Home Builders,
18 and they've done some evaluation of that.

19 Q. However, even with that, inasmuch as mold is
20 ubiquitous, isn't the issue in terms of indoor spaces
21 one of a difference of genus outdoor compared to indoor
22 compared or the difference of CFUs per cubic meter of
23 various molds in terms of elevation?

24 A. Well, I think the former is irrelevant. I
25 mean, the fact that you have a different genus or --

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1 first of all, you don't have a different genus. You
2 have plenty of Penicillium and Aspergillus outdoors.

3 The fact that you may have more -- a higher
4 percentage of Aspergillus and Penicillium growing on
5 indoor materials is not a reason for remediation from
6 the health standpoint because Penicillium and
7 Aspergillus are no more problematic than Alternaria or
8 Cladosporium, which are the major outdoor molds. So
9 that has nothing to do with them.

10 I think the issue is the potential for there

11 being significant indoor levels which might affect

12 someone who has some allergies to them.

13 Q. So you would be more apt to argue on the side

14 or take the position of the elevation of molds in an

15 indoor environment in terms of CFUs to the cubic meter?

16 A. Well, either measured elevations which are

17 always problematic because individual tests are so

18 variable and also problematic because there is a lot of

19 mold in indoor environments, including lots of

20 Aspergillus and Penicillium as the Hicks paper showed, a

21 couple hundred thousand colony forming units per gram of

22 dust.

23 So primarily the situation -- situations need

24 to be taken care of if there is obvious indoor growth

25 because of water-damaged material.

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1 Q. Okay. Such as we have in this house, as

2 you've already shared with me?

3 A. No, this is not really indoor. This is behind
4 the wall growth. I'm talking about visible mold growth
5 in indoor environments.

6 Q. That would be the 20 to 30 percent?

7 A. No, 20 to 30 percent is behind the wall.

8 Q. Okay. So -- and it might be my doing, Doctor.
9 I'm confused now. Is this a house that shouldn't be
10 remediated or should be if it falls within the 20 to 30
11 percent?

12 MR. HAYES: Asked and answered, compound.

13 A. It is both impossible and unnecessary to
14 remediate 20 to 30 percent of houses in this country
15 that have mold behind walls.

16 Q. Okay. What distinguishes this house?

17 A. This house had a lot of damage, and, you know,
18 the ceiling fell in, and there was a wet space and wet
19 areas, and, you know, we didn't -- I mean, it needed to
20 be remediated.

21 Q. What else did you notice wrong with it,
22 Doctor, as to why it got wet and why it needs to be
23 remediated from a property standpoint other than what
24 you've already said?

25 MR. HAYES: Lacks foundation, calls for

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1 speculation.

2 MR. HETLEY: Assumes facts not in evidence.

3 MR. HAYES: Join.

4 A. Well, it wasn't clear to me where some of
5 these things were, quite frankly. I mean, there was
6 some mold around the HVAC unit. I thought that was in
7 the garage, but I'm not sure.

8 So the air conditioning platform had some mold
9 on it -- whether that was accessible to the people or
10 not I'm not sure -- some mold at the bottom of the hot
11 water heating platform, and I'm sure that all of our hot
12 water heating platforms if they were on things that had
13 mold growth would have mold growth on them.

14 BY MR. DUFFY:

15 Q. Do you know what this platform was made out
16 of? Do you know if it was cellulose based or not?

17 A. I'm not sure.

18 Q. Okay.

19 A. There was no large amount of mold that I could
20 see in these reports found anywhere. I mean, there were
21 some in -- some small amounts in the bathroom around the
22 toilet perhaps. The soffit -- the master bedroom
23 fireplace and soffit above the patio doors may have had
24 some, but there really was not a great deal of mold
25 found -- identified in the indoor environment.

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1 Q. Okay. I'll ask you a few other questions
2 here, and while I'm scrolling here, do you know how much
3 you've charged the defense lawyers in this case for your
4 time in working in this case to date?

5 A. No, I don't, Mr. Duffy. I don't.

6 Q. And why don't you give for our record the
7 hourly rate scheduled as it currently states and is
8 applicable to this case?

9 A. We have hourly rates that differ for different
10 activities. I don't have them all in my head. My
11 review activities are billed at 385 an hour, my
12 testimony at 450.

13 Q. And you'll produce the billing records to
14 counsel so it gets to us?

15 A. Sure.

16 Q. Okay. Let's talk a little bit about you,
17 Doctor, if I can.

18 Tell us what your medical residency or
19 residencies were at the time.

20 A. Intern in surgery and did a year of general
21 surgical residency.

22 Q. And have you ever had any formal training in
23 the evaluation and treatment of occupational diseases?

24 A. Not in a residency training program, not that
25 kind of formal training, no.

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1 Q. Have you ever had any formal training in the
2 evaluation and treatment of environmental disease?

3 A. Not formal training, no.

4 Q. Have you ever had any formal training in the
5 evaluation and treatment of toxicological exposures?

6 A. Well, yes. I mean, certainly I've had that,
7 and let me back up a second. I mean, I've certainly had
8 some formal training in the prior two in medical school
9 but no formal training residency programs thereafter --

10 Q. Okay.

11 A. -- in toxicology, also in medical school but
12 also in my Ph.D. program in pharmacology.

13 Q. How about in regard to a residency experience
14 for formal training in the evaluation and treatment of
15 toxicological exposure?

16 A. Not in a residency program, in my Ph.D.
17 program.

18 Q. How about in regard to residency, formal
19 training in the evaluation and treatment of biological
20 exposure?

21 A. Residency training in that?

22 Q. Yes.

23 A. No.

24 Q. Okay. Doctor, have you ever completed a
25 residency or fellowship in occupational and

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1 environmental medicine?

2 A. No.

3 Q. Have you ever completed a residency or
4 fellowship in internal medicine?

5 A. No.

6 Q. Have you ever completed a residency or
7 fellowship in allergy?

8 A. No.

9 Q. Have you ever completed a residency or
10 fellowship in immunology?

11 A. No.

12 Q. Have you ever completed a residency or
13 fellowship in pulmonary medicine?

14 A. No.

15 Q. Same question in regard to medical toxicology?

16 A. In -- a residency in medical toxicology, no.

17 Q. Have you ever been affiliated with or employed

18 in a medical practice or clinic that treats --

19 clinically treats injured workers?

20 A. Yes.

21 Q. How long ago?

22 A. Oh, 25, 30 -- 25 to 30 years ago.

23 Q. Have you ever been employed or affiliated with

24 a medical practice or clinic that treats individuals

25 with occupational and environmental diseases?

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1 A. Yes.

2 Q. How long ago?

3 A. Again, 25 or 30 years.

4 Q. Do you have a master's or doctorate degree in

5 public health?

6 A. No.

7 Q. Do you have any coursework completion at an
8 accredited institution in epidemiology?

9 A. I don't know whether I actually had a
10 course -- a formal course in epidemiology in my Ph.D.
11 program, but I don't believe so.

12 Q. Have you ever had any coursework from an
13 accredited institution in any area of environmental risk
14 assessment?

15 A. In courses given at various conferences where
16 we have two- or three-day courses I have, yes.

17 Q. Okay. And how about in industrial hygiene?

18 A. No formal courses in industrial hygiene.

19 Q. In regard to your Ph.D. in pharmacology, what
20 percentage of your coursework, Doctor, focused on
21 occupational disease?

22 A. I would say that probably none of it directly
23 focused on occupational disease.

24 Q. In regard to your Ph.D. in pharmacology, what
25 part of it focused on environmental disease?

1 A. Probably none directly.

2 Q. In regard to your Ph.D. in pharmacology, what
3 portion of it focused on toxicological exposure outside
4 of ingested medication or ingested poison?

5 A. I can't answer that, how much may have dealt
6 with other toxicological agents besides those that were
7 ingested. I'm just not sure.

8 Q. In regard to your Ph.D. in pharmacology,
9 Doctor, what percentage of your coursework involved
10 biological exposure?

11 A. Probably none.

12 Q. In regard to your Ph.D. in pharmacology,
13 Doctor, what portion of your coursework involved
14 industrial hygiene?

15 A. None.

16 Q. In regard to your Ph.D. in pharmacology,
17 Doctor, what portion of your coursework dealt with
18 interpretation of environmental laboratory testing?

19 A. None.

20 Q. Would it be fair to say, Doctor, that your

21 coursework in Ph.D. pharmacology did not involve any
22 training on how to conduct a site visit of a workplace
23 or residence for chemical or biological contamination?

24 A. That's correct.

25 Q. You advise in your vitae, Doctor, that you

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1 have taught a course at Georgetown on environmental
2 toxicology. Do I have that correct?

3 A. Yes.

4 Q. What department are you affiliated with in
5 connection with that course?

6 A. The department of pharmacology and toxicology.

7 Q. And is that an ongoing appointment, or is it a
8 one time? Give me a little bit of a sense of that.

9 A. I still have an appointment, but it's an
10 episodic seminar program.

11 Q. And in terms of the curriculum, is that
12 something that you could provide if asked?

13 A. I believe so.

14 Q. Okay. And is Georgetown aware of your work
15 where your time is compensated on the defense side in
16 mold-related litigation?

17 A. I don't think Georgetown cares one way or the
18 other.

19 Q. Back to my question. Have you disclosed to
20 Georgetown about your compensation for your time on the
21 defense side of mold cases?

22 A. No.

23 Q. They have no idea about that?

24 A. No.

25 Q. In 2002, your corporation affiliated with

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1 Georgetown Medical School in cosponsoring a major mold
2 symposium. Do you remember that?

3 A. Right.

4 Q. In connection with that symposium, did you

5 ever disclose to the individuals -- appropriate
6 individuals at Georgetown that you are compensated for
7 your time as a defense expert witness in mold matters?

8 A. Yes, well, the chairman of the department of
9 pharmacology who is officially my boss at Georgetown or
10 was knew very well what our professional activities
11 were, yes.

12 Q. And who was that?

13 A. Oh, I don't recall his name. I can't for the
14 moment. It will come back to me.

15 Q. That's all right. In terms of your episodic
16 teaching of this environmental toxicology course at
17 Georgetown University School of Medicine, do you deal
18 with students on symptomatology secondary to mold
19 exposure?

20 A. One of our sections dealt with mold and
21 various things that mold does and doesn't do, yes.

22 Q. Did you disclose at any time that you have
23 taught this course to the students that you are teaching
24 at Georgetown University School of Medicine,
25 environmental toxicology, that you are an individual who

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1 receives compensation for your time in testifying on the
2 defense side of mold cases?

3 A. Of course not.

4 Q. What did you use as a text or what do you use
5 as a text especially or any type of written materials
6 especially as to the mold section of the environmental
7 toxicology course that you teach at Georgetown
8 University?

9 A. Well, we have outlines and lecture notes, and
10 I may have had some papers. I don't know whether we had
11 any papers specifically on the mold issue, but we often
12 gave the students papers to read.

13 Q. Do any of the papers that the students were
14 given to read on the course that you taught on
15 toxicology concerning mold area in specific reveal to
16 the reader that you receive compensation for your time
17 as a defense witness in mold matters?

18 A. No.

19 Q. On the first page of your report, you advise
20 the reader that you have been -- you have worked on
21 hundreds of mold contamination matters since the late
22 1980s. What I want to ask, Doctor, is in regard to the
23 percentage of these matters, to the best that you can,
24 what percentage of these matters involved an occupant
25 contacting you directly to evaluate and diagnose the

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1 cause of their illness in connection with a
2 mold-contaminated building?

3 A. Probably none.

4 Q. In regard to these hundreds of mold
5 contamination matters, can you give me some type of a
6 percentage of those things that you have been involved
7 with since the late 1980s where you treated an occupant
8 for symptoms that related to the environment of any
9 particular building?

10 A. None.

11 Q. In regard to the hundreds of mold
12 contamination matters that you advise the reader of in
13 your report in this case since the late 1980s,
14 approximately what percentage of those matters involved
15 or have involved you conducting an epidemiological
16 investigation of the occupant's health problems and
17 complaints?

18 A. It depends on what you mean by an
19 epidemiological investigation. If you mean a health
20 hazard assessment, I've done that on a number of
21 occasions. We are now doing a very extensive
22 epidemiological health hazard assessment for a major
23 government set of buildings with 40,000 employees on
24 mold-related issues or other environmental -- indoor
25 environmental issues.

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1 I have and my colleagues have done many
2 evaluations of people in occupied spaces for either --

3 for mold-related issues or other kinds of issues in
4 those occupied spaces. They may not have been formal
5 epidemiological evaluations, but they've been health
6 evaluations.

7 Q. Would it be a correct statement that these
8 evaluations that you speak of in your answer to my last
9 question, Doctor, would be involved in litigation-based
10 matters?

11 A. No. Many of them were not involved in
12 litigation-based matters.

13 Q. Who retained you for your time?

14 A. There wasn't any litigation. I mean, for
15 example, I was involved in a couple of assisted-living
16 facilities for the Marriott Corporation where we had
17 significant mold contamination on the first floors of
18 those buildings following a hurricane, and I dealt with,
19 evaluated some, talked to, met with and assisted with
20 the oversight and remediation of those buildings, and
21 there were about 800 elderly people involved.

22 There was no litigation. It was simply a
23 matter of determining whether individuals were at risk,
24 whether they had to be moved out of those facilities

25 during remediation and talking to them about any

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1 symptomatology that they might have been having.

2 Q. These were outside of litigation. Can you
3 give me a percentage of the amount of work you have done
4 in that regard in regard to the overall mold work that
5 you have done involving litigation matters?

6 A. We've done a lot of investigation that had
7 nothing to do with litigation.

8 Q. Let's keep it with just the mold area.

9 A. I'm talking about the mold area.

10 Q. I apologize, Doctor. I cut you off.

11 A. Yeah, I don't know what the percentage is, but
12 probably 20 or 30 percent of my mold-related activities,
13 maybe more, has nothing to do with litigation.

14 Q. And the remaining percentage would?

15 A. Of the mold issues, yes.

16 Q. 80 to 70 percent?

17 A. Probably.

18 Q. Okay, I appreciate your candor.

19 Now, have you ever published the result of any
20 original research in the mold area aside from reviews or
21 critiques of other people's work at any time?

22 A. Not as yet, no.

23 Q. Okay. Do you run any type of medical practice
24 outside of ICTM?

25 A. Well, I actually have several companies, but

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1 they're not medical practices in terms of actually
2 taking care of patients.

3 Q. That's what I wanted to hear.

4 Why don't you tell us a little bit of what
5 ICTM's business is?

6 A. Well, it's a rather broad-based consulting
7 firm. It does a fair amount of forensic work, and
8 probably half of the work we do involves matters that

9 are in litigation or that might be in litigation.

10 We also do and have done lots of
11 investigations of indoor environmental matters. We've
12 done quite a number of occupational health evaluations
13 and investigations to determine -- in manufacturing
14 settings, for example, to determine health issues with
15 regard to potential exposures.

16 I worked with the City of Shreveport,
17 Louisiana on a large group of firefighters and police
18 personnel who were concerned about exposures to PCBs.

19 Q. Okay.

20 A. I've done a lot of risk communication to
21 community groups and to others concerned about various
22 kinds of exposure issues.

23 We've done toxicological analyses for various
24 clients, reviews of literature, preparing reports,
25 preparing materials that were matters not in litigation.

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1 Q. Okay.

2 A. So it's -- there's a broad array of things we
3 do in our organization.

4 Q. As to mold in terms of ICTM, 70 to 80 percent
5 would be litigation related?

6 A. For ICTM that's probably true. For my other
7 firm, which is Building Health Sciences, almost none of
8 it is litigation related. That's pure investigation and
9 evaluation.

10 Q. That is, no litigation support is done through
11 Building Health Sciences, correct?

12 A. If so, very little. It's mostly
13 investigation, evaluation, remediation, oversight of
14 remediation.

15 Q. You are CEO of ICTM?

16 A. That's correct.

17 Q. You are CEO of Building Health Sciences?

18 A. No, I think I'm called the chief science
19 officer.

20 Q. And you have a financial interest in both of
21 these companies?

22 A. Yes.

23 Q. The current ICTM website that has been up the
24 last two calendar years -- assume for purposes of this
25 question that I have all versions of it for the last two

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1 calendar years. Is it true, accurate and correct?

2 A. I don't know. I mean, what are you talking
3 about?

4 Q. It provides on the website that ICTM provides
5 medical and scientific support in tort, mass tort claims
6 for insurance companies and defendants being defended by
7 insurance companies?

8 A. That's true.

9 Q. Okay. Would the following statement that
10 appears on your website -- would you endorse it as being
11 correct? "We diligently strive to lessen the impact of
12 subjective complaints, erroneous medical histories and
13 ill-grounded testimony by uncovering objective, provable
14 evidence."

15 A. Absolutely.

16 Q. In regard to ICTM, what percentage are
17 patients, people who actually come to see you or your
18 associates for a diagnosis and treatment of health
19 problems unrelated to litigation or potential
20 litigation?

21 A. We don't treat patients.

22 Q. I want you to assume for purposes of this
23 question that I have a Claims magazine article where you
24 are quoted, and you actually wrote -- excuse me -- that
25 reads as follows in pertinent part concerning your work

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1 at ICTM: "One approach we have used in homeowner
2 matters is requiring a physical examination of residents
3 who complain of symptoms," requiring physical
4 examination of residents who complain of symptoms.

5 A. I don't recall whether I wrote that or not.

6 Q. You don't recall that?

7 A. No, but if I did, I certainly don't disagree
8 with that.

9 Q. In light of our earlier discussion today, you
10 didn't require a physical examination of the residents
11 of the Hake matter who complained of symptoms, did you?

12 MR. HAYES: Assumes facts not in evidence,
13 calls for speculation, lacks foundation. Go ahead.

14 A. It doesn't mean we are the ones that have to
15 do it. I mean, these people have had examinations.

16 BY MR. DUFFY:

17 Q. At any point in your time in your conversation
18 in this case, did you tell the defense counsel to get an
19 independent evaluation or an examination of any of the
20 Hake members?

21 A. I don't recall that. I mean, I have no
22 recollection of having done so.

23 Q. Thank you. I appreciate your candor.

24 This particular matter here, of course, is
25 pending in Nevada. Have you ever had an opportunity to

1 testify in a matter in Nevada before, mold matter?

2 Let's narrow it down.

3 A. I don't believe so, at least not at trial. I
4 may have testified -- I may have testified at
5 deposition.

6 Q. Have you been retained by counsel on behalf of
7 home builders in the past before?

8 A. Yes.

9 Q. Can you outline some of the home builders who
10 have retained you for your time to testify on the
11 defense side of litigation matters in the past that come
12 to mind? You can use your Rule 26 if it helps refresh
13 your recollection.

14 A. I can't tell from this whether I was retained,
15 frankly, by the builders or by some other defendant, but
16 let me see what I can do for you. I mean, I don't
17 really know.

18 There is a Jones matter versus Prowant
19 Construction Company. Whether we were working with
20 Prowant Construction Company -- I don't know who we were

21 working with in that matter.

22 Q. I'll move on to something else. Let's try
23 something else.

24 In regard to the percentage of ICTM's -- well,
25 strike that.

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1 In regard to mold litigation matters,
2 everything is billed through ICTM, correct?

3 A. I think most of it. I'm not sure that all but
4 most.

5 Q. And you're not doing it personally. You're
6 doing it through the company?

7 A. Oh, that's correct.

8 Q. Of course. You're an employee of the company.
9 You get paid a salary from the company, maybe a bonus,
10 whatever way it works.

11 So let's go to ICTM. In terms of the gross
12 income to ICTM on mold-related litigation matters where

13 it is retained for its time on the defense side, what
14 percentage of the income has that been for ICTM over the
15 last couple of years?

16 A. I haven't the faintest idea.

17 Q. You don't know?

18 A. No.

19 Q. There's no way to determine that?

20 A. Not readily.

21 Q. Well, what would one need to do to determine
22 that?

23 A. Well, we have to do some intense auditing
24 which would take a great deal of time and analytical
25 effort. I mean, we don't keep our financial information

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1 that way.

2 Q. Okay. You don't keep your financial
3 information in any type of a retrievable way on
4 encrypted information in a computer system as to what is

5 a mold litigation matter as opposed to lead paint as

6 opposed to radon or something of that nature?

7 A. No.

8 Q. Are you a member of ACOEM?

9 A. Yes.

10 Q. Okay. How long have you been a member of
11 ACOEM?

12 A. Oh, I would have to guess, probably 20 years,
13 but I'm not sure exactly.

14 Q. Certainly at the time the paper was generated
15 in 2002?

16 A. Oh, yes.

17 Q. Have you ever served on any of the boards of
18 ACOEM or any of the panels?

19 A. I'm trying to recall. I don't know that it
20 was ACOEM. I think it was AIHA when I was on the
21 toxicology committee, but I don't believe I've been on
22 any of the committees for ACOEM.

23 Q. So in regard to the approval of the ACOEM
24 paper, you don't have any knowledge of that?

25 A. I had nothing to do with it.

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1 Q. Okay. The 2006 paper generated by the
2 journal -- did you have any involvement in the approval
3 of that paper and peer?

4 A. Not at all.

5 Q. Have you had any involvement of the approval
6 of any paper in peer or as a peer reviewer in the mold
7 area?

8 A. In the mold area, no.

9 Q. Have you submitted any paper for peer review
10 in the mold area?

11 A. Well, I have a number of peer review papers in
12 the mold area --

13 Q. Okay.

14 A. -- that are on my CV.

15 Q. I understand, and that was a dumb question.
16 Have you kept the peer remarks in regard to
17 the process that led to the publication of the papers
18 that you have?

- 19 A. I don't think so.
- 20 Q. Okay. In regard to the papers that were
- 21 actually peer reviewed, how many are there?
- 22 A. In the mold area?
- 23 Q. Yes.
- 24 A. Three or four.
- 25 Q. Three or four?

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- 1 A. Correct.
- 2 Q. And just for the press of time, would you
- 3 advise counsel what those are so that we would know at
- 4 some point and just let us know?
- 5 A. Sure.
- 6 Q. So out of all publications, you have three or
- 7 four peerred in the mold area, correct?
- 8 A. Correct.
- 9 Q. We'll get those from you to save a little
- 10 time. You don't know them off the top of your head, do

11 you?

12 A. No. I mean, I know a couple of them.

13 Q. Sure. Just give it to us so we can find them?

14 A. There was one on mycotoxins which I did with

15 Dr. Kelman and Coreen Robbins, and I think there were

16 some other authors. And there was one by Dr. Pirages

17 and me on mold and indoor environments, and I don't

18 recall offhand which other ones were peer review.

19 Q. Okay, we'll figure that out. And Dr. Pirages

20 works for you, correct?

21 A. Yes.

22 Q. Real quickly give me his credentials.

23 A. Hers. She's a Ph.D., a toxicologist. She has

24 a Ph.D. in biology, but she's been doing toxicology for

25 about 30 years.

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1 Q. Is she an ACOEM member?

2 A. No.

3 Q. And back to the ACOEM paper, do you have any
4 knowledge how Kelman, Hardin or Saxon were selected to
5 be authors of the ACOEM paper?

6 A. None whatsoever.

7 Q. Do you have any knowledge as to how three
8 non-ACOEM members, only one having an MD, Saxon, became
9 the designated individuals to do the ACOEM paper?

10 A. I don't have any specific knowledge, but there
11 is no reason why that wouldn't happen. It happens all
12 the time.

13 Q. Do you have any knowledge as to why the 2002
14 ACOEM paper was not submitted to the membership for
15 review as opposed to the one committee of 12?

16 A. I have -- I don't know that that's -- I mean,
17 that's probably just the way they do their consensus
18 development papers. I have no specific knowledge about
19 how ACOEM does its reviews of this sort, but I would be
20 very surprised if they ever submitted things to the
21 entire membership because it would be unmanageable to
22 have 10,000 people providing input on a consensus
23 document. It would be impossible.

24 So I strongly suspect that that's never done

25 and that it can't be done.

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1 Q. All right. In regard to Kelman and/or Hardin
2 and/or Saxon, a compound question just to save counsel
3 the objection real quickly, are you aware any of them
4 has done any independent research outside of the
5 litigation sphere in evaluating the health effects of
6 individuals exposed to mold in water-damaged buildings?

7 A. I don't know one way or the other.

8 Q. Okay.

9 MR. DUFFY: Will you let me take a short break
10 and see if I'm done?

11 THE WITNESS: Sure. I'd like to do the same.

12 MR. DUFFY: We'll go off the record.

13 (Recess taken.)

14 BY MR. DUFFY:

15 Q. One more thing and we'll move on.

16 Doctor, the authors of a certain paper back in

17 2003 as listed are Robbins, Swenson, Hardin, Risks From
18 Inhaled Mycotoxins, Indoor Office and Residential
19 Environments, journal ed in the International Journal of
20 Toxicology 2004. Did you have any contribution to that
21 paper whatsoever?

22 A. No, I didn't.

23 MR. DUFFY: The plaintiff passes the witness.

24 EXAMINATION

25 BY MR. HETHEY:

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1 Q. I have a question, Doctor. My name is Mike
2 Hetey.

3 In an earlier portion of your testimony in
4 response to one of plaintiff counsel's questions, you
5 were asked about remediation to the home, and I
6 believe -- and correct me if I'm wrong here -- in
7 connection with one of your answers, you mentioned that
8 the kitchen ceiling had fallen in.

9 I quickly looked through your report. Is
10 there a portion of your report where you reference the
11 kitchen ceiling falling in?

12 A. I'm not sure whether that's in my report or
13 not, and, frankly, I'm not sure where I got that. I
14 thought that someone had said that, and that may be an
15 error, or it may have been said in error. I'm not sure.

16 Q. And I'm not suggesting this would change your
17 testimony in any way, but if the kitchen ceiling had
18 not, in fact, actually fallen in, does that impact your
19 testimony in any way?

20 A. Not basically. I mean, the only thing I would
21 say with regard to some of Mr. Duffy's questions about
22 how much remediation needed to be done based on
23 potential health risks is that that really depends on
24 the extent and nature of contamination and whether there
25 was an ongoing water source and a variety of things

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1 which I don't have a lot of information about because we
2 have fairly incomplete environmental testing and
3 assessments and fairly incomplete remediation
4 discussions, or at least I do. So I don't know how much
5 really needed to be done for health reasons.

6 I had the impression which may have been a
7 misimpression that the ceiling was wet, and it had
8 fallen -- part of it had fallen in during the renovation
9 activities. That may be incorrect.

10 MR. HETLEY: Thank you. I don't have anything
11 further.

12 MR. HAYES: All finished?

13 MR. DUFFY: Not quite in light of that.

14 EXAMINATION

15 BY MR. DUFFY:

16 Q. Doctor, at any point in time, did you ask --
17 who do you understand has retained you for your time,
18 all of the defendants, one of the defendants, part of
19 the defendants? Who retained you for your time in your
20 mind's eye?

21 A. I think it was Coleman Homes.

22 Q. And do you know whether or not the defendant

23 Coleman Homes is sharing your testimony in their behalf
24 in any way, shape or form? Just asking what you know.
25 MR. GRAF: Objection, vague. What do you mean

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1 by share testimony?
2 MR. DUFFY: Is he your expert, too, question,
3 vague?
4 MR. GRAF: I said that. Rusty Graf. I'm not
5 sworn in, and I'm not testifying here. I just want to
6 know the point of your question.
7 MR. DUFFY: That's the point.
8 A. I have no official way of knowing that. I
9 assume -- I made an assumption that that may be the
10 case, but I haven't spoken to other counsel.
11 BY MR. DUFFY:
12 Q. The only counsel you've spoken to is who
13 during the course of your involvement in the case?
14 A. I believe it was just people from Mr. Hayes'

15 firm. Whether there was anyone else on the phone during
16 that phone call that we had or not I really don't
17 recall. I'm not sure.

18 Q. Have you gotten any remuneration so far for
19 the time that ICTM has put into the case yet?

20 A. I would imagine we have. I haven't checked
21 that.

22 Q. And how that remuneration was forwarded in
23 terms of the payer on the check, you don't know as you
24 sit here?

25 A. I have no idea.

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1 Q. Now, during the course of the time that you've
2 worked on this case, is there anything that you have
3 asked for and didn't receive?

4 A. I don't believe so.

5 Q. Is there anything you were told you couldn't
6 do, shouldn't do or mustn't do?

7 A. No.

8 Q. You've indicated several times on questions
9 that I've asked you and questions that defense counsel
10 just asked you about whether or not you had information
11 on certain topics.

12 My query to you then, Doctor, is at any point
13 in time outside of the submission of the paperwork from
14 defense counsel, have you ever made a request for
15 further documentation on anything whatsoever,
16 environmental, medical, whatever?

17 A. I can't answer that, Mr. Duffy. I don't
18 believe I have, but I just don't recall that for sure.

19 Q. In terms of your work on this case, did you
20 generate any electronic correspondence, e-mail, or did
21 you generate any hard-copy correspondence?

22 A. I did not.

23 Q. In regard to your work on this case, have
24 defense counsel generated any electronic correspondence
25 to you or any hard correspondence to you?

1 A. I don't believe I received any. Let me stop
2 that. I don't know, for example, whether some of the
3 materials were received electronically. I don't know.

4 Q. And I'm not talking about the medical records
5 themselves. I'll be more specific. You know what I'm
6 referring to, Doctor, letters or an e-mail from counsel
7 with thoughts from counsel outside of medical records,
8 environmental records?

9 A. Not to my knowledge.

10 Q. Okay. I don't mean to be unnecessarily pithy
11 about it.

12 In terms of what you've brought here today, we
13 can do it the old-school way or you can just tell me
14 because I'm going to trust you what generally have you
15 brought here to assist you as we testify today, if need
16 be?

17 A. I brought a summary of all the medical records
18 that we had of these individuals.

19 Q. Okay.

20 A. My report, the various reports of various

21 experts and the investigation reports and Forensic
22 Analytical reports, and that's essentially -- and some
23 literature that -- you know, that's referred to in my
24 report.

25 Q. Okay. I'll mark as Exhibit 59 the medical

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1 record abstract that you had done. I'll just give you
2 the original back here now.

3 Looking at that, let's go back to some earlier
4 questions I had about other people at ICTM that worked
5 on this case specifically, not generally. In reviewing
6 that document, does it reveal its authors as to who went
7 through all those records and came up with all those
8 summaries?

9 (Exhibit 59 was marked.)

10 A. Well, I can simply tell you the process.
11 There is no -- I don't know which of our nurse
12 consultants did each one of these.

13 Q. Okay.

14 A. We have an in-house director of our nurse
15 consulting group, Nancy Layton, and all of the materials
16 after they're done by the nurse consultants are reviewed
17 by her and then reviewed by Dr. Barbara Gots, and that's
18 how these materials are quality controlled, and these
19 are essentially verbatim extracts from medical records.
20 There's no opinion in them. They're word-for-word
21 medical record information.

22 Q. I understand. I understand that.

23 In terms of the literature that you brought
24 with you today, just give me a general idea of what
25 articles or abstracts or whatever that you brought here

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1 for the deposition time that you have handy, and as you
2 pull them out, would they be on your references for this
3 paper?

4 A. I think they're -- I think they're probably

5 all on my references except I don't know whether -- this
6 is irrelevant anyway -- medical toxicology position
7 paper.

8 Q. That would get into mycotoxicosis and things
9 of that nature?

10 A. That's right.

11 Q. Let's move on from that.

12 A. I don't know whether the Hicks paper is on my
13 bibliography or not, but it's a fairly important one.

14 Q. Why?

15 A. It talks about the levels of mold in
16 nonwater-damaged homes in about 19 facilities -- I think
17 19 residences that were tested in California.

18 Q. Okay.

19 A. And I think all of the others are there.

20 Q. If I would want a copy of what you brought
21 here today to have at your ready for this deposition,
22 you could work that out with defense counsel?

23 A. Sure.

24 Q. Okay. I think we'll do that.

25 Coleman Homes, the entity with whom defense

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1 counsel has been retained to represent the defense
2 counsel that retained you for your time here -- have you
3 ever been affiliated on the defense side with Coleman
4 Homes ever before in a mold matter?

5 A. I don't know. I don't recall having been
6 retained by Coleman Homes. I think it's possible, but I
7 just don't know.

8 Q. How about Stockdale Homes?

9 A. Same answer.

10 Q. Let me go over those articles for a second.
11 Let me show you the one article that you have
12 in here on the children, symptoms before and after
13 knowing about an indoor fungal contamination.

14 I note that the fourth author out of four is
15 David Strauss of Texas Tech, is that correct?

16 A. Correct.

17 Q. Have you ever worked with Dr. Strauss from
18 Texas Tech before, Ph.D.?

19 A. No, I haven't.

20 Q. Okay. What was your thinking in including
21 that article in this folder for this case in light of
22 the issues that you considered in this case?

23 A. Well, I mean, it's well known. I'm sure you
24 and I have talked about this before, Mr. Duffy --

25 Q. Sure.

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1 A. -- that people who perceive a hazard develop
2 symptoms, and this paper dealt with an evaluation of
3 that in a particular setting, and that was in a school
4 setting.

5 Q. So you're referring to the DSM-IV view of
6 somatization?

7 A. Perhaps. I'm not sure it would be called a
8 formal disorder, but it's human nature.

9 Q. Okay. And you're making reference in terms of
10 pecuniary gain and things of that nature?

11 A. Well, not necessarily. I mean, that is
12 certainly at times a factor, but it certainly wasn't in
13 these school children. I mean, it's just normal human
14 nature to develop symptoms if they perceive hazards.

15 Q. The first time you've been in Nevada for this
16 case is to give this deposition?

17 A. For this case, yes.

18 Q. Yes.

19 A. That's correct.

20 Q. Never seen these kids, never seen the house,
21 correct?

22 A. That's correct.

23 Q. And in regard to these kids or their parents,
24 do you have any information from any source whatsoever
25 that they are showing any indications of being somatic,

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1 malingerers or ones that are benefiting for pecuniary
2 gain?

3 A. I have no knowledge one way or the other in
4 that regard.

5 Q. What is the expert evidence report from BNA
6 doing here? Again, as I asked with David's article --
7 David Strauss' article, what is your thinking of
8 including that here?

9 A. Well, this is a paper that I did on the
10 difference between differential diagnosis and causation
11 assessment, and I think there is some relevance to that
12 in this matter because we don't have very careful
13 causation assessments done by Dr. Schroeder or Dr.
14 Craner.

15 Q. And you would be referring to the remarks in
16 your paper of specific causation versus general
17 causation, correct?

18 A. Well, both, yes. For causation assessment,
19 it's both general and specific causation, but
20 differential diagnosis is a different process, and
21 they're two separate and distinct processes, and that's
22 what that discussion is about.

23 MR. DUFFY: The plaintiffs don't have any
24 further questions. Thanks, Doctor.

25 MR. HAYES: We're finished.

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1 (Adjourned at 11:54 a.m.)

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1 (Prior to the commencement of the deposition,
2 all of the parties present agreed to waive statements by
3 the court reporter pursuant to Rule 30(b)(4) of NRCP.)

4

5 Thereupon--

6

ANDREW SAXON, M. D. ,
7 was called as a witness, and having been first duly
8 sworn, was examined and testified as follows:

9

10

EXAMINATION

11 BY MR. DUFFY:

12 Q. Doctor, good afternoon. You did two reports
13 in regard to this case, one in April of '06, one in
14 September of '06 after the IME, correct?

15 A. Correct.

16 Q. Have you got your copies of those reports
17 here?

18 A. Yes.

19 Q. Tell you what. Why don't we do this: As to
20 the first one that you have, we'll put an exhibit
21 sticker on it so we have an exhibit sticker on 61 --
22 hold on. Wait a second, Doc. 60 will be the --

23 A. Make it A and B because when I went through my
24 file, I found two of these reports. They're identical,
25 as best I can tell. One is dated the 17th and the 20th.

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1 I can see no difference except where I put a pagination
2 in, but they're both in here. So I wasn't sure which is
3 the one I actually finally provided to Mr. Hayes.

4 Q. I appreciate your candor. Do you have one
5 dated September 16, 2006?

6 A. Yes, that one I've got easy, only one of
7 those.

8 Q. You've only got one of those?

9 A. Yes.

10 Q. Let's call that Exhibit 60, and I'm going to
11 tell you that the one that I got for production -- here
12 is all my fancy notes and things -- is the September 16
13 one.

14 A. Yes, that one.

15 Q. All right, fair enough. Now, Exhibit 61 -- do
16 you have something that's dated pretty close in time to
17 this?

18 A. To this? No.

19 Q. What is the next one?

20 A. The next one is the April '06 report, the
21 first one.

22 Q. Let me see that one.

23 A. See, they're identical but the date.

24 (Exhibit 60 was marked.)

25 Q. Well, we've made this interesting. We have

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1 marked as Exhibit 60 the September 16, 2006 report so

2 everybody gets that straight. Fair enough, correct,

3 Doctor?

4 A. Yes.

5 Q. All right. You have an April 17, 2006 report

6 called Expert Report of Dr. Steven Hake. We'll call

7 that 61, fair enough?

8 A. All right.

9 (Exhibit 61 was marked.)

10 Q. You have an April 20, 2006 report, which I

11 know I have seen neither one of these before, and that

12 is now Exhibit Number 62.

13 (Exhibit 62 was marked.)

14 Q. Doctor, this has my notes and things all over

15 it. Let me see if I'm not mistaken. I have seen the

16 April 17th.

17 A. I just want to clear it up for you. So I

18 found two in my file.

19 Q. The April 17th and the April 20th?

20 A. Yes, and I went to look through them. They
21 seemed to be identical, but since they were both in my
22 file, I brought them both because I'm not sure what the
23 date is that I provided the one to Mr. Hayes' office.

24 MR. HAYES: Are both of the reports signed?

25 THE WITNESS: No, the only one that is, in

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1 fact, signed is the 17th one.

2 BY MR. DUFFY:

3 Q. All right. Tell you what. Relax. This isn't

4 any big deal. All right. My 17th one is signed, too.

5 Let's just make sure it's the same deal. Okay. That

6 looks like the same signature to me. Maybe it isn't. I

7 don't know.

8 And then this April 20th, 2006 report --
9 expert report by Dr. Steven Hake, Exhibit 62 -- you've
10 told me you've read it, and it seems to be identical to
11 the word?

12 A. Except I made a change in the pagination, and
13 there's a mark on one where I think they called me and
14 told me his age was wrong in one place, but I never
15 fixed it.

16 Q. Fair enough.

17 A. But there's two of them, and I think that's
18 all it is.

19 Q. And other than that, they're identical?

20 A. As far as I can tell.

21 Q. So for my purposes, Exhibit 62, the April 20,
22 2006 version or expert report of Dr. Steven Hake -- I'll
23 put that right here. We'll work off of April 17, 2006,
24 fair enough?

25 A. It's called the Expert Report Regarding Dr.

1 Steven Hake, not of.

2 Q. You corrected me.

3 A. He didn't write it; I wrote it.

4 Q. All right, Exhibit 61, correct?

5 A. Yes.

6 Q. All right. That's what I am going to ask you
7 about first.

8 All right. Now, the September 16, 2006
9 document is marked Exhibit 60, and that's your
10 independent medical evaluation of Dr. Hake, correct?

11 A. That's when I physically examined him.

12 Q. That's when you physically examined him, and
13 just to be clear, not to be pithy, are there any other
14 versions of this September 16, 2006 document?

15 A. No. I don't have it.

16 Q. All right. Fair enough. Fair enough.

17 Now, the September 17, 2006 document, March --
18 I know. I know. Strike that. I see what you meant.

19 The April 17, 2006 letter marked as Exhibit
20 61 -- is there anything you want to change in this

21 today?

22 A. I think that's the one that had his age wrong.

23 I think I called him 53.

24 Q. You can fix that now. His age is what it is.

25 A. No. No.

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1 Q. So you don't have any differences you want to
2 put in this one?

3 A. No.

4 Q. Okay, you're good.

5 Now, in regard to the September 16, 2006
6 report, Exhibit 60, anything you want to change in that
7 one?

8 A. No.

9 Q. You're good. All right. Thank you.

10 Now, as of the time you came to your
11 conclusions about Dr. Hake in your writing dated April
12 17, 2006, had you requested an independent medical

13 examination of him prior?

14 A. I don't think I personally requested one.

15 I've been sent records, and they asked me to write a

16 report on the records. So I hadn't personally requested

17 physically to see him at that point. They said they'd

18 like me to write a report from the records. That is my

19 recollection.

20 Q. And who is "they said"?

21 A. Attorneys at Mr. Hayes' office. I don't

22 remember if it was Miss Tiscareno. It may have been

23 somebody else. It may have been Mr. Hayes..

24 Q. So they told you to go ahead and write a

25 report about Dr. Hake based upon the records they

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1 provided you, correct?

2 A. Yes.

3 Q. And you did so as they requested, correct?

4 A. Yes.

5 Q. And you came to certain conclusions about Dr.
6 Hake based upon those records without physically seeing
7 him in your remarks dated April 17, 2006, correct?

8 A. That is correct.

9 Q. Dr. Gots sat in your chair before you did
10 today, and Dr. Gots has a recollection -- we'll see if
11 you do or not -- has a recollection of having a
12 conversation wherein you were present on the telephone,
13 he was present on the telephone, and a lawyer was
14 present on the telephone regarding this case, and
15 judging by your facial expression, do you have any
16 recollection of that?

17 A. No, I don't ever recall speaking with Dr. Gots
18 in this case.

19 Q. At any time?

20 A. Except in the hallway when I --

21 Q. I saw that. I understand.

22 A. Yes. I don't recall it. It doesn't mean -- I
23 just don't recall it.

24 Q. And other than the letter reports that we have
25 marked today, have you generated any other

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1 correspondence in this case by e-mail or by hard copy?

2 A. Yes.

3 Q. What have you generated generally?

4 A. There's a couple of e-mails which I didn't
5 bring saying I made a mistake on my plane reservation.
6 It's trivial, and then there was a letter that I
7 generated with Dr. Sercarz in response to something Miss
8 Tiscareno sent us, and that was this paragraph.

9 Q. And this is dated October 11, 2006?

10 A. Correct.

11 Q. Okay. All right. We'll mark that.

12 A. I wasn't done.

13 Q. Go ahead while I'm looking for stickers.

14 A. And then I also generated but I don't think I
15 actually provided to the attorneys some reports, brief
16 chronologies on the other members of this family from
17 their medical records.

18 Q. I saw that in one of your reports. I'll ask

19 you about that. Anything else other than what you've
20 outlined?

21 A. No.

22 Q. This letter dated October 11, 2006 -- I'm
23 going to mark it Exhibit 63. That's your signature,
24 correct?

25 A. One of them is. That's me, and that's Dr.

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1 Sercarz.

2 Q. The letter is an authentic of the original,
3 correct?

4 A. Yes.

5 Q. Just as Exhibits 60 and 61 are authentic,
6 correct?

7 A. Sure.

8 Q. They bear your signature, correct?

9 A. Yes.

10 (Exhibit 63 was marked.)

11 Q. When you bill through UCLA, Doctor, will your
12 billing records have specific entries of time for
13 activities?

14 A. Yes, they will.

15 Q. In terms of the following scenario, a phone
16 call with another doctor on the case along with counsel,
17 is that the type of item you would bill time for to
18 prepare and actually do?

19 A. If it was more than five minutes, but it would
20 not -- it may not say -- it might just say phone call.
21 It may not name the participants.

22 Q. Okay. All right. Do you have any
23 recollection whatsoever, now having talked about it a
24 couple of times here, you and I, of talking to Dr. Ron
25 Gots at all?

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1 A. No. Again, I just don't recall. It may have
2 been a long time ago. I don't remember. I just don't

3 recall.

4 Q. In regard to any type of a correspondence,
5 electronic or hard copy, anything between you and Gots
6 at all?

7 A. No.

8 Q. Tell me about Dr. Sercarz. Tell me a little
9 bit about him. Have you worked with him before?

10 A. Occasionally. You want a quick narrative?

11 Q. Yes, give me a short narrative.

12 A. Dr. Sercarz is a head and neck surgeon at UCLA
13 who does a lot of sinus surgery. I'm not sure where his
14 main base is, and I don't use him a lot simply because
15 there's a generational -- that I tend to use people
16 older than him, though I'm moving to him now because
17 they are retiring. So that's Dr. Sercarz. He's a head
18 and neck surgeon.

19 Q. So you brought him into the case?

20 A. I don't think so. I meant work with him
21 medically. What I meant to say is I don't work with him
22 a lot. I meant medically. I didn't mean legally.

23 Q. I didn't mean either.

24 A. So that's what I meant. I don't have a lot of

25 interactions with him simply because of our age

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1 difference, but more in the future, I think.

2 Q. In terms of Dr. Sercarz, did you ask him to
3 take a look at this case, help you out?

4 A. I don't think so. No. Generally, no, I would
5 never do that. I wouldn't do that.

6 Q. I apologize. How did he become involved in
7 this case?

8 A. Probably -- I don't know, but often when
9 they -- the attorneys ask me, "Do you have a
10 recommendation of a good head and neck surgeon,"
11 something like that.

12 Q. You may have said so?

13 A. Sure. I would have no compunction saying not.
14 I may have given his and several other names of good
15 surgeons who deal with this specific disease at UCLA.

16 Q. And in terms of head and neck surgeons, Dr.

17 Sercarz, you actually worked with him in concert in

18 terms of the IME of Dr. Hake?

19 A. Yes. We drove down together. We felt we
20 could take one history together. His expertise is
21 different than mine obviously. So rather than take two
22 independent histories, we drove down together, and I
23 drove back -- I came back alone.

24 Q. Did he have any participation in the
25 preparation -- Dr. Sercarz -- in the preparation of your

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1 report on the independent medical evaluation, Exhibit
2 60?

3 A. No. If he asked a question, I listened to the
4 answer, but actually preparing the report, no.

5 Q. And coming to the conclusions, he had no
6 involvement?

7 A. No.

8 Q. Did he write any type of a report?

9 A. I'm told he did, but I haven't seen it.
10 Q. Did he ask you for any collaboration or
11 consult or help in any type of report he was preparing
12 to your --
13 A. I don't recall because we didn't actually come
14 back together to talk about it. He stayed there for
15 reasons that are personal, I'm sure, but, you know, so
16 we didn't really talk about much except he went and ate,
17 and I got out of there.
18 Q. So the only written collaboration in this case
19 by both Drs. Sercarz and yourself is Exhibit 63, this
20 October 11, 2006 letter which you just handed to me?
21 A. Correct.
22 Q. What was the genesis of this letter? You
23 apparently are responding to some inquiry of counsel?
24 A. Yes, and I can't locate -- it may be with Dr.
25 Schroeder's report, but Miss Tiscareno sent us a more

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1 recent report than we had seen before. It may have been

2 after the IMEs were done, and we sent our reports in.

3 I sent my report in -- I assume he sent his

4 report in -- saying, "Here is a new report from Dr.

5 Schroeder. Do you think it's necessary to modify your

6 reports?" So I said, "Joe, rather than go through it

7 you look at it and I'll look at it, if I don't see

8 anything, we'll take, and we'll just send a letter."

9 So that's the genesis of it. So we sent her
10 that letter together just for efficiency.

11 Q. And I take it the gravamen of this letter,
12 October 11, 2006, Exhibit 63, written by you and Dr.
13 Sercarz, is that it doesn't change your opinions?

14 A. I think that's right, but you used a word I
15 don't recognize. Gravamen?

16 Q. A basis.

17 A. I learned a new word.

18 Q. You can use it. It's free.

19 A. Thank you.

20 Q. You're welcome.

21 A. Right. It doesn't change our opinions.

22 Q. All right. What was the genesis of an IME in

23 this case from your mind's eye? You had already written

24 a report. You already came to conclusions.

25 A. One is they asked me to do an IME.

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1 Q. The lawyers did?

2 A. I was asked to do an IME, and we discussed
3 whether Dr. Sercarz should do it or I do it, and they
4 said, "It would be better if you both because you have
5 different expertise."

6 I had no problem doing it. There's always a
7 small chance I could learn something new. It's not a
8 bad thing. It's just a cost versus benefit issue.

9 So if you have really robust medical records,
10 I told you before you don't really need to because it's
11 just a memory contest for the person. If you've got the
12 records, you've got the real-time stuff. I had pretty
13 good records. So it was useful. I learned a few
14 things, but it didn't change my opinion.

15 Q. And that's my point, I think, Doctor. You had
16 already come to a conclusion and opinion about this man
17 based upon the medical records before you did an IME,
18 correct?

19 A. Correct.

20 Q. And the only reason you did an IME is because
21 the defense lawyers who retained you for your time on
22 the defense side of this case asked you to do an IME?

23 A. That's not the only reason. They asked me to
24 do it. The reason I said sure is because I might learn
25 something. I actually did learn some things that

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1 modified my opinion, made it stronger or weaker in
2 certain areas, but it's like someone has multiple
3 sclerosis. You're not about to have them tell you
4 something -- you could -- that's going to change that.
5 So I think it was pretty clear what was going on. It
6 actually did help a little bit.

7 Q. In regard to the April document wherein you
8 tell the reader your conclusions about Dr. Hake without
9 ever having seen him in a clinical setting, how long
10 after the issuance of that letter did the possibility or
11 the talk of an IME come up, months later?

12 A. Well, I don't recall. It kicked around for
13 quite a while before because we were trying to get it
14 scheduled. In fact, they said there was going to be an
15 IME later, but they wanted a report, and so it wasn't
16 like you can't do one.

17 For some reason they gave me the impression
18 they wanted a report before I actually saw the man, and
19 then there was -- I would be guessing, but it wasn't --
20 it was well early in the summer, and then it was
21 problems getting to see him.

22 Q. Okay.

23 A. Him and Dr. Sercarz's schedules are hard to
24 resolve.

25 Q. In any event, the conversation about having an

1 IME didn't take place with defense counsel until after
2 you issued your April report, correct?

3 A. I don't know if that's correct simply because
4 they may have told me they wanted this report without
5 the IME, without seeing him. There was some reason they
6 wanted this report. That's what I remember because
7 there was some reason they wanted a report at that time,
8 and I don't know what their time pressure reasons were.

9 Q. In terms of coming up with your conclusions in
10 the April document, you had medical records that were
11 provided you by defense counsel?

12 A. I had extensive medical records they provided
13 me.

14 Q. About Dr. Hake and his family members?

15 A. No, I think the family members came later.

16 Initially, to my knowledge, it was only regarding Dr.
17 Hake.

18 Q. Because your April report only makes reference
19 to Dr. Hake, not anyone else?

20 A. That's correct, and I received the records

21 later on the family members, I think, in the summer.

22 Q. In regard to your remark about robust medical
23 records, did you feel you had robust medical records
24 here to review in light of your background and
25 experience?

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1 A. On him?

2 Q. Yes.

3 A. From about 1999 on, yeah, there was a heck of
4 a lot of records. There wasn't a lot missing.

5 Q. That prompts my next remark. Did you ask the
6 defense lawyers that retained you for your time for any
7 type of further records or any further information or
8 anything else?

9 A. On Dr. Hake?

10 Q. Dr. Hake. Let's just leave it with him.

11 A. I don't have a specific recollection of that,
12 you know, in that time frame. If there was some

13 critical piece of data, they may have gotten it. I just
14 don't recall if there was like skin tests that weren't
15 in there or CTs they sent me. They did send me some
16 CTs, but I don't know if I asked them where they sent
17 them.

18 I always ask if there were other records, and
19 they -- I always like all the earlier records, but if
20 they don't have them, they don't have them.

21 Q. You rely on defense counsel to tell you what
22 the universe of records is?

23 A. I don't have another choice. I don't think
24 I'm allowed to go look for them myself.

25 Q. If I can ask, Doctor, are you going to render

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1 opinions regarding the wife and the kids in this case or
2 not?

3 A. I don't know. Again, I have these very --
4 there were limited medical records on some of them, and

5 some -- and, you know, from that there is some opinion,
6 you know, about their allergies. They had some testing.
7 So I might have asked.

8 Q. I'm going to ask today, just to be
9 prophylactic about it, but in terms of the time of
10 trial, have you been asked by defense counsel that that
11 will be part of your charge to render opinions regarding
12 the wife and the children?

13 A. You say have I been asked?

14 Q. Yes.

15 A. I don't think they've said one way or the
16 other to me.

17 Q. They haven't said one way or the other?

18 A. No.

19 Q. Is there any information you've currently
20 asked for in regard to the wife and children that you
21 haven't received?

22 A. I just always ask, "Can you get me more
23 medical records?"

24 Q. Has that been satisfied?

25 A. I got what I got. I mean, I can't produce

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1 things that don't exist because on a couple of them
2 there's not a lot.

3 Just to say for the record, my understanding
4 was they have to get them from someone else, but I don't
5 know how that works.

6 Q. Did you collaborate with any other doctors in
7 this matter?

8 A. No.

9 Q. Okay. And in terms of your work on this
10 matter, do you feel that you're done?

11 A. For Dr. Hake, sure. Again, if other records
12 turn up on the family members, we'll look at them, but I
13 think the records were pretty good on a few of them.
14 There was a couple that had very few records. Maybe
15 they just weren't sick.

16 Q. In regard to trial in this case -- you've been
17 at trial yourself in the past. In terms of
18 allergic-based symptomatology secondary to mold

19 exposure, put mycotoxins to the side, immunocompromise,
20 infection and irritants, do you have any type of
21 standard, quote-unquote, trial exhibits that you use
22 either to explain to the jury, teach the jury, foster
23 the jury in any way prior to rendering connective
24 opinions?

25 A. I don't have any standard exhibits.

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1 Q. And I suppose that would beg the question in
2 regard to this case there just hasn't been any
3 discussion yet as to what the trial preparation exhibits
4 and things would be, correct?

5 A. You are correct.

6 Q. Dr. Schroeder and Dr. Craner -- do you know
7 Dr. Craner through practice or of him?

8 A. I know of him. I've physically seen him once.

9 Q. And Dr. Schroeder should be a new name to you
10 I would imagine?

11 A. Only in this case.

12 Q. In terms of Dr. Craner, do you have any
13 criticism of his credentials?

14 A. Criticism. His credentials are his
15 credentials. I don't have a criticism on that.

16 Q. But in terms of him rendering the kinds of
17 opinions he's rendered in this case based upon the
18 background information he has considered, from your
19 background, are you critical of his background and
20 credentials?

21 A. I'm not critical of his credentials. Let me
22 put it this way: The stuff he says about allergies are
23 generally far off base, but that doesn't have anything
24 to do with his credentials. So his credentials are his
25 credentials.

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1 Q. Okay. But you have a problem with his
2 methodology?

3 A. I don't know if it's even his methodology.

4 I'll just say some of his opinions seem to be something

5 I don't agree with in some specifics and some

6 generalities.

7 Q. You disagree with Dr. Craner. That would be a

8 fair statement?

9 A. Some of his opinions, yes.

10 Q. Do you agree with any of his opinions?

11 A. You know -- well, there's a long report. I

12 may well have agreed, you know, some of the factual

13 stuff may be correct, but there are some things I

14 recall -- and it would be in his report -- that I do

15 disagree with.

16 For example, he says things about allergy

17 testing that are simply way off base, but that's just as

18 it is. That's an example. Just as a general thing, his

19 view of how allergy testing works, his accuracy is

20 mistaken in my view.

21 Q. All right. And in terms of Dr. Schroeder, are

22 you critical of his care at all of this patient, Dr.

23 Hake?

24 A. I think the answer is yes. I think you can

25 see that in my report. I was critical in the sense of

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1 saying there was opportunities missed.

2 Q. Are you critical in regard to opportunities
3 missed vis-a-vis diagnosis or vis-a-vis treatment or
4 both?

5 A. Both.

6 Q. Sum up briefly, if you can, vis-a-vis
7 diagnosis and then treatment.

8 A. I'll sum up, but I think they're well laid out
9 in my reports. I'm from New York, and I speak too
10 quickly. So I'll speak slowly, if I can.

11 The diagnosis is that -- if I was in the
12 south, I'd get paid a lot more because I'd speak slower.

13 Q. You're paid by the word in the south, not by
14 the word.

15 A. I see.

16 Okay. Getting back to seriousness, you know,

17 diagnostically I think there was about 18 months where
18 red flags were actually up that this man had allergic
19 fungal sinusitis.

20 Now, this is not a disease I'm generally
21 critical about people not making the diagnosis rapidly
22 because it's a rare disease. I see it because of where
23 I sit, so to speak, but it is not a common thing, and
24 many doctors won't even think of it, even ENT doctors
25 who are good.

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1 But in this case, there were some real red
2 flags. The nature of the material is almost
3 pathognomonic. That's a nice word. I can't spell it.

4 The fact that they actually grew fungus and
5 they saw hyphae and loads of eosinophils in this, and he
6 was having a refractory course way before -- it was a
7 year to 18 months before -- that was a missed
8 opportunity to get on it sooner, and the disease would

9 have been less extensive. It progressed over those 18
10 months and made it more difficult to treat.

11 Q. From your mind's eye, does Dr. Schroeder have
12 the experience and the credentials to have been able to
13 catch this? Is that what you're saying?

14 A. I can say he has the credentials. This is not
15 a common disease. We teach about it. Until you think
16 of it, you don't make the diagnosis. So it didn't pop
17 into his head. I think once it pops into your head --
18 so I don't know his experience in this. I'm sure he was
19 trained about it.

20 Q. When you refer to this disease that Dr. Hake
21 has as uncommon, can you give me some type of a
22 parameter to get an idea, one out of a million cases, 1
23 percent of something? I don't know.

24 A. Let me give it to you another way.

25 Q. Please, whatever is easiest for you, Doctor.

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1 A. So just so the record is clear, the allergies
2 he's got are extremely common, 20 percent of the
3 population. Among them, allergic fungal sinusitis is
4 very uncommon, meaning I would see in my life at UCLA on
5 a referral basis probably no more than in 30 years 15
6 cases that were clear, and that's a disease -- the
7 disease wasn't even recognized as such until 20 years
8 ago.

9 So if there is epidemiology, I don't recall
10 the numbers, but it's not something -- most doctors may
11 never see it in their lifetime, and even ENT doctors may
12 not see it, I would think, in a general ENT practice.

13 Q. I think that's enough in regard to diagnosis.

14 What about treatment?

15 A. Well the treatment -- so the opportunity was
16 missed there, and second thing I think I've outlined in
17 great -- in some detail is once you really realize
18 that's what it is, you have to exonerate. You have to
19 cut the whole thing out.

20 You cannot be tissue preserving, which most
21 surgeons are taught with this endoscopic surgery, save
22 tissue. Here you've got to get it all out or it's going

23 to come back, and you've got to give them steroids, and
24 you've got to give them significant doses of systemi c
25 steroids.

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1 I'll leave it up to Dr. Sercarz to discuss
2 whether the surgery was aggressive enough, but I do know
3 from both the records and specifically asking Dr. Hake,
4 he never received the treatment with the steroids that
5 would be required to try to get this disease under
6 control.

7 And then on top of that, he also had this --
8 okay. So that's the issue.

9 So I don't think they were aggressive enough
10 to try and get rid of it. This led to the fact -- it's
11 like a smoldering fire. You almost get it out, and it
12 comes back. This disease needs to be put out, or it
13 comes back.

14 Q. Let's go to Page 5 of 8 of your report dated

15 April 17, 2006, if you need to take a look at it.

16 A. I have one more point about treatment.

17 Q. Go ahead, please. I want to hear it.

18 A. I know you do. I was trying to keep it
19 pigeonholed.

20 Q. And I'll tell you why I want to hear it.

21 Dr. Schroeder isn't finished with his deposition. I
22 want him to respond. I'll be candid with you.

23 A. And I assume he's read my report.

24 The other thing is he has this
25 methicillin-resistant staph aureus in his notes, which

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1 is really there because of a couple of factors. One is
2 he's had surgery, and when you get a drying of the nose,
3 that crusting, this organism doesn't grow on wet tissue.
4 It grows on dry tissue. That's why it's on your skin.
5 It's in the hairy part of your nose, not in the back.

6 When you do this kind of surgery, it tends to

7 dry -- those tissues lose their moisture, and you get a
8 dry nose, and it can get colonized with staph, which
9 makes the problem worse.

10 And it's clear in the records you get staph
11 and staph and staph over months or maybe a couple of
12 years. I don't recall, but it's in my report, and at
13 that point, it could have been potentially eradicated
14 because there are ways to eradicate it.

15 It was never attempted, and it may be
16 difficult, but it's easy to try to do. It's not
17 dangerous. There's very little danger. He was never
18 given the appropriate treatment to try and eradicate
19 that organism which was contributing to the problem. So
20 that's my criticism.

21 Q. In terms of your background, have you ever
22 been in a position like Dr. Schroeder with a patient
23 like Dr. Hake presenting with that symptomatology in
24 order to make the decisions that Dr. Schroeder had to
25 make?

1 A. Sure.

2 Q. How many -- rare, though, in your lifetime?

3 A. Fifteen times.

4 Q. Fifteen times?

5 A. And others didn't have it. This is not a
6 common disease.

7 Q. Are you a surgeon?

8 A. No.

9 Q. Have you done these types of surgeries?

10 A. No, that's why I was deferring to Dr. Sercarz
11 about the extensiveness of the surgery and the
12 specifics.

13 Q. So even if you were in Dr. Schroeder's
14 position having Dr. Hake as a patient, you would be
15 in a surgeon as a consultant?

16 A. Oh, yes. I would actually have to send him to
17 a surgeon because that's the primary treatment, is once
18 I make that diagnosis, is to work with a surgeon to make
19 sure they get the right medical and surgical treatment
20 to get better.

21 Q. You understand here in this matter Dr.
22 Schroeder was treater and surgeon as well for Dr. Hake?
23 A. Oh, I understand that.
24 Q. So I'm going to read a passage from Page 6 of
25 8, the one that I marked April 17th. We're going to go

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1 with that one.
2 We're going to go to the big paragraph on Page
3 6 of 8. I read this to Dr. Gots. So now I'm going to
4 read it to you, sort of in the middle upper side.
5 "There is no reason to posit that increased
6 indoor mold exposure in his home played a significant
7 role in the development of these polyps given that he
8 was exposed to a broad range of allergens outside his
9 home and to more important allergens e.g. dust mites and
10 potentially dog dander in his home and the nature and
11 the natural recurrence of polyp disease."
12 I read that sentence correctly?

13 A. Good job.

14 Q. Thank you very much. Those are your words?

15 A. Yes.

16 Q. And your use of the word "significant" is

17 deliberate in this sentence?

18 A. Well, I can't say zero. You never can say
19 zero, but it's like the old Humphrey Bogart, you line up
20 the usual suspects. The chance of indoor mold in this
21 setting being a factor that you could say had any role
22 that you could identify is very small because there was
23 no evidence of increased mold in the home.

24 He's got more important allergens that he's
25 had for years driving this disease, and I mentioned

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1 them. So you never can say zero because we don't know
2 what was in his home before the testing, and he's
3 allergic to a whole host of things.

4 Q. You saw Dr. Craner's report, and I made

5 reference to Dr. Gots and I'll make reference to you of

6 Page 19 of Dr. Craner's report.

7 A. Let me look because it's been a long time.

8 Q. I understand. It's his conclusion page, and

9 it's toward the upper right-hand corner. Read to

10 yourself his conclusion regarding Dr. Hake. This is Dr.

11 Jim Craner's. Let me know when you're ready.

12 A. Sorry. Read which?

13 Q. Dr. Craner's conclusion as to Dr. Hake. You

14 can read it to yourself. Let me know when you're ready.

15 He basically points to an aggravation

16 mechanism here. Do you agree with him?

17 A. In Number 2. I think the first one is

18 etiology unknown. What does he mean? Etiology is very

19 well known. I disagree with the first one. There's a

20 very clear reason for his polyps and the whole thing.

21 So I disagree completely with the first one.

22 The second one, he's an atopic allergic

23 rhinitis, and I'm only talking about Steven.

24 Q. That's all I'm asking.

25 A. I know, just for the record. I'm trying to

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1 I learn to be clear.

2 Genetic and multifactorial environmental
3 etiology. Now, he says aggravated by indoor
4 environmental mold contamination. First of all, I
5 disagree only -- as I said before, we don't see any
6 evidence of indoor respirable mold contamination, and
7 compared to the others, I don't see how you would say it
8 was aggravated by this to a degree that would be
9 recognizable among the others.

10 Q. So you couldn't differentiate among the
11 others?

12 A. Well, we know the others are generally far
13 more important, dust mite, dog. These are in the home.
14 We know outdoors he's going to get mold exposures higher
15 than we saw in his home. So blaming indoor mold seems
16 to be the last suspect -- not the last but it's at the
17 very end of my list. I can't say no because we don't
18 have all the data.

19 Q. So you don't agree about saying no?

20 A. Zero, no. I can't go to zero, but, you know,
21 I never get to zero.

22 Q. Go to Page 7 of your report, Doctor, if you
23 wouldn't mind.

24 A. Okay.

25 Q. The second full paragraph, I will read it to

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1 you. It reads as follows: "The sole role that indoor
2 mold exposure may have played in Dr. Hake's medical
3 issues is by being one of a host of factors that were
4 and are involved in his overall allergic response to
5 airborne allergens.

6 "However, given his broad range of allergic
7 sensitization and the levels of mold in his home, this
8 appears to be a minimal role?"

9 I read that correctly?

10 A. Yes.

11 Q. Those are your words?

12 A. Correct.

13 Q. Those are your deliberate words, "may have
14 played" and "minimal"?

15 A. Right.

16 Q. Like with the other passage on Page 6, you're
17 not going to say no. You're not going to say zero?

18 A. I can't say zero. I'm saying the same thing
19 right here as I said before. I'm consistent.

20 Q. I'm okay with it.

21 A. That's what I said. I should be nervous about
22 that. Just kidding.

23 Q. Not you, but in regard to minimal and in
24 regard to significant or not playing a significant role,
25 can you quantify at all?

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1 A. Less than 5 percent.

2 Q. Less than 5 percent. And what are you basing

3 that on?

4 A. Based on the fact that if you look at people
5 and mold allergens and the range of things, we generally
6 say mold plays 5 to 10 percent overall mold, and indoor
7 molds are less important than outdoor molds, and the
8 other thing you've got to remember in Dr. Hake -- I
9 guess it's somewhat -- it's important we bifurcate sort
10 of background allergy problems in the allergic fungal
11 sinusitis. The indoor mold exposure does not have a
12 direct role in his allergic fungal sinusitis. I can
13 just call it AFS.

14 Q. So this 5 percent, et cetera -- did you read
15 Ron Gots' report, which is dated, I'll tell you, October
16 of this year, and it's 43 pages long. Did you read his
17 report concerning the Hake family?

18 A. No.

19 Q. That's all I need to hear.

20 A. I knew that would be quick.

21 Q. In terms of his conclusion as to Dr. Hake in
22 terms of the role of the indoor environment of the home
23 on Dr. Hake's condition, to any regard whatsoever as you
24 sit here today giving this deposition, you have no idea

25 what Dr. Gots said?

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1 A. Correct.

2 Q. Okay. Now, the Curvularia that's in the
3 sinuses, being mindful that it wasn't found in the home,
4 that particular genus, can't Curvularia generate and
5 grow in the sinuses that are as damaged as Dr. Hake's in
6 the normal course of his daily routine due to the
7 reconstructions and things and the lack of sinus
8 drainage?

9 A. That's a long question.

10 Q. It is.

11 A. First, it's Curvularia. Just for the record,
12 it will be clear.

13 Q. Just like you, I'll learn, too. Go ahead.

14 A. Curvularia does grow in sinuses. He had it in
15 his sinuses. You ask can it. It does. It's an outdoor
16 organism that can grow, and in fact, we now know is

17 probably the most common cause of the problem Dr. Hake
18 had. Even though it's called allergic fungal sinusitis
19 and we sort of thought it was Aspergillus in the
20 beginning, Aspergillus is more important in the lung
21 area.

22 In the nose Curvularia and Bipolaris, a cousin
23 of that, are probably the most common causes. So it
24 does, not only can, it does.

25 Q. And knowing that you're one of the authors of

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1 2002 ACOEM paper --

2 A. Uh-huh.

3 Q. -- you would agree that Aspergillus and
4 Curvularia are the most common forms, although the
5 number of fungal organisms involved continues to
6 increase, in connection with allergic fungal sinusitis?

7 A. Whoever wrote that did a very good job.

8 Q. You wrote this portion of the report.

9 A. I know. I was being tongue-in-cheek.
10 Q. We'll throw you that bone.
11 And this condition presents in subjects who
12 because of poor nasal drainage the fungus colonizes in
13 the sinus cavity, correct?
14 A. Correct.
15 Q. Now, that's the ongoing condition the doctor
16 has, correct?
17 A. Which one?
18 Q. The growing of mold *Curvularia* in his sinus
19 condition.
20 A. Not anymore.
21 Q. Not anymore?
22 A. It looks like that is gone now. It looks like
23 that may finally have been resolved. It took maybe four
24 years to get that finally cleaned up, but it looks like
25 that may be resolved now. It may be.

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1 Q. But in terms of the condition that led to
2 where Doctor found himself status wise sinus, mold
3 played at least a role, the mold in the house at least
4 played a role in putting his condition the way it is,
5 albeit minimal?

6 A. I'm not sure what you mean by that.

7 His allergic fungal sinusitis is related to
8 his underlying disease. Mold is a small player in his
9 overall allergic disease, and indoor molds could be a
10 player, though there's no evidence, again, that he had
11 any elevated levels in his home.

12 So if he had indoor mold -- we all have indoor
13 mold -- it would have come in through the window. I
14 mean, if he had opened his window, he would have had
15 higher levels in his house than he had if he had his
16 windows closed from the testing we've seen.

17 So indoor allergens, however they got there,
18 it doesn't mean that it was the water damage in his
19 house that led to increased levels because we don't see
20 increased levels, but people get exposed to allergens,
21 indoors and outdoors.

22 The whole range of his indoor allergens are

23 going to be dog, dust mite, and when he opens the
24 windows, we all get some pollens, we all get some molds,
25 and naturally even in dry homes there is some mold

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1 growth. Aspergillus grows in homes. Penicillium grows
2 in all homes. So there's some. So it would have played
3 a role in that regard. There's nothing abnormal about
4 that.

5 Q. Well, in terms of this particular home, this
6 was a water-damaged home. You saw that paper.

7 A. It had some water damage in it, yes.

8 Q. And it also had the presence, as a result of
9 water damage, of the type of genus that you recognized
10 in the 2002 ACOEM paper, Penicillium genus and
11 Aspergillus genus, in the air?

12 MR. CORRICK: Objection. That misstates the
13 facts of the case.

14 A. It's in the air no matter what. It wasn't as

15 a result or from the water damage. It's in everyone's
16 house. Just having onions and potatoes, you'll get them
17 in your home. So we all have those species in our homes
18 even if there had never been water damage.

19 Q. In regard to any of the air testing that was
20 done in this home, none of it was elevated in terms of
21 CFUs to the cubic meter?

22 A. I'd have to look again because I'm talking
23 about air testing, which is per cubic meter.

24 Q. So am I.

25 A. I'd have to look at it again. As I recall,

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1 the first testing which was done when the home was
2 already having some reconstruction or remediations done
3 didn't show any elevation of -- so we could look at the
4 numbers, though. Nothing struck me.

5 Q. So when you tell the reader in yours of April
6 of 2006 that, "Mold in his home is a minimal role,"

7 explain in lay terms what you're telling the reader.

8 A. It's not important.

9 Q. Not important?

10 A. No. It may not be zero because saying it's
11 zero means it couldn't be, and, you know, if it's 1
12 percent -- fixing the mold isn't fixing the issue. He
13 should have gotten rid of the dust mites. He should
14 have gotten himself treated. The answer was not
15 worrying about the mold for his health if you asked me
16 that.

17 Q. But it played some role?

18 A. I've tried to answer that multiple times.

19 Q. And how have you done?

20 A. Pardon me?

21 Q. And how have you done? Have you told me, yes
22 or no?

23 A. I think I've told you.

24 Q. Let's try it a different way. I did this with
25 Dr. Gots.

1 If I were to pretend for a moment that you're
2 the plaintiff's expert on behalf of Dr. Hake as opposed
3 to Dr. Craner as opposed to Dr. Schroeder, within a
4 reasonable of medical certainty could you indicate that
5 he has any symptomatology secondary to mold exposure?

6 A. To mold exposure is a general term, not just
7 in the home. You said mold exposure?

8 Q. In the home. Thank you, Doctor.

9 A. No, not as a result of anything particular to
10 his home, no.

11 Q. Not at all?

12 A. No. Only from the point of view if you could
13 open the windows and there were high counts outside,
14 but, no, from a reasonable degree of medical certainty,
15 I couldn't get close to that. That's the reason I'm
16 saying if you really ask me what are the important
17 factors, you know...

18 Q. Okay. Tell me about what you've read in terms
19 of Mrs. Hake and the children.

20 A. Okay. Let me -- there is a series of medical

21 records in the box behind me.

22 Q. I saw that.

23 A. So I read those medical records, and I can't
24 tell you exactly what they are. I mean, they're just
25 some medical records.

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1 Q. Have you generated any type of a report?

2 A. Yes, I did, and out of that I generated a
3 little report or a little chronology which I don't know
4 if I ever provided to the attorneys. I don't know if
5 they ever asked for it, and I don't think Mr. Hayes'
6 office has ever seen it, to be frank.

7 They sent me the records on these people, and
8 I just read them all and put them in a file.

9 Q. Billed for your time?

10 A. I'm sure I did.

11 Q. Did they ask you to do it? Well, I guess if
12 they sent it to you, they asked you to do it.

13 A. Yes, but I usually wait to send things to
14 attorneys until they say, "Hey, send me your report." I
15 don't know why, it's guessing, because everyone was
16 thinking about Dr. Hake that it never came up. So it's
17 just been sitting in my file.

18 Q. We'll make this a little bit easier. Do you
19 have any opinions that any of these individuals, Dr.
20 Hake's wife or any of his children, have any
21 symptomatology secondary to mold exposure to this indoor
22 environment?

23 A. Let me say yes, I do.

24 Q. Okay. What is that opinion?

25 A. Well, let me -- I'll go through them all

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1 quickly.

2 Q. Let's do that. You can do it in a narrative.

3 A. So for Emily, no. No. She has allergies, but
4 not mold is a problem. The dog is a problem.

5 For Fredna --

6 Q. That's his wife.

7 A. Yes, Fredna. She also has got allergies, but
8 no molds is a problem and some other problems I'm not
9 going to mention.

10 Q. Did she test positive for any molds through
11 intradermal tests?

12 A. I don't recall, but if they were by
13 intradermal tests, I wouldn't even -- sorry, I'll go
14 back to my note, speak slowly, I'll start over. I was
15 just reading.

16 Intradermal testing said she was positive for
17 cat, dog, dust mites, Alternaria, Aspergillus but no
18 other mold and more pollens including all the grasses.
19 However, I don't rely on intradermal testing for the
20 dog, the dust mite or the molds.

21 I think those tests are -- 90 percent of the
22 time the data is -- they are inaccurate. So my
23 conclusions were based on the prick testing on them, on
24 all of these people.

25 Q. Did you ask -- as we move down the list to the

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1 children, did you ask for any independent medical
2 examinations of the wife or children?

3 A. I did not.

4 Q. Did the lawyers ask you to do any independent
5 medical examinations of the wife or the children?

6 A. I don't think so. I think they just fell
7 through the cracks from the point of view of me talking
8 to them about it.

9 James also has hayfever, pollen and animals,
10 not molds, but Stephanie does have mold. So Stephanie
11 has allergic rhinitis, allergic to pollens, animals,
12 dust mite and some mold, and I can't remember which mold
13 she was allergic to.

14 So in a sense, though, she is going to be like
15 her father. So yes, she's got multiple sensitivities.
16 The question is does indoor mold in this home play a
17 role, again, for the same reason, probably nothing
18 that's worth talking about. That doesn't mean she's

19 very positive to Alternaria. I'm looking at
20 Aspergillus.

21 So if she were to have markedly elevated
22 exposures in her home, it could have played a role, but
23 I don't see any evidence for that.

24 Q. You indicated that all of his children have
25 atopic allergic disease on Page 4 of 15 of the

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1 independent medical evaluation report dated September
2 16, 2006.

3 A. Fair.

4 Q. Correct?

5 A. Yeah, I believe they do.

6 Q. They do?

7 A. Yeah.

8 Q. But in regard to this particular home, it has,
9 in your view, no role in their symptomatology?

10 A. No, that's not true.

11 Q. Okay.

12 A. What I said was the indoor allergens are
13 important. Any indoor mold, the best we know, in this
14 home is a particularly -- it's minimal. I'll use that
15 word.

16 Q. Same word you used in the report?

17 A. Yeah, exactly. There is mom and dad's kids.

18 Q. Got it.

19 Go to Page 6 of 15 of the independent medical
20 examination report, if you would, Doctor.

21 A. 6?

22 Q. Please. And we've already talked about
23 diagnosis and treatment as far as I'm concerned, and I'd
24 like you to go to the third full paragraph which begins,
25 "As I outlined." Do you see that?

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1 A. Yes.

2 Q. I'm going to go to the middle of it and read

3 as follows: "While fungal exposures in his home may
4 have been" -- I think there was a typo there -- "may
5 have been a contributor to his upper airway allergic
6 disease that ultimately led to the allergic fungal
7 sinusitis, I expect it to be a very minor factor given
8 that he, like most atopic patients, is allergic to a
9 whole host of things including grass, tree and weed
10 pollen, dust mite and dog allergens."

11 Have I read that sentence correctly?

12 A. Correct.

13 Q. Are you going to stand behind that sentence as
14 written?

15 A. Yes, it's pretty much saying what I've said
16 before.

17 Q. I agree.

18 And in terms of Stephanie, do you have a
19 similar opinion?

20 A. Stephanie was the last one?

21 Q. Yes.

22 A. That's what I was trying to say. We don't
23 have that much information. We know her range of
24 allergies, and it would be a range of information. In

25 that way, she would be like her father.

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1 Q. You also in the last sentence of the same
2 paragraph make the same remark. I'll start at the
3 prepositional start. It reads: "At the same time, he
4 moved into an area that has higher, not lower, mold
5 counts outdoors compared, I think, to what was tested in
6 a respirable air in his home in Las Vegas."

7 Have I read that accurately?

8 A. Yeah. Yes, but there was a -- there's an
9 another typo. It wasn't really in his home, at his
10 home. I meant the outdoor air, and if you go to La
11 Jolla, it's got higher counts than it does in Las Vegas.

12 Q. And despite which preposition we use, what I
13 want to ask you is, what is your basis for saying that?
14 Where is your thinking coming from?

15 A. Well, the thinking is coming from I can show
16 you the mold counts just for six months, which I brought

17 today. It's a more damp environment, and there is the
18 mold counts for six months from La Jolla where he is now
19 versus Las Vegas, and coastal areas have more, and New
20 Orleans has got a hell of a lot more. Excuse me for
21 swearing.

22 So it's just the point that it wasn't moving
23 away from molds in general. There's other things that
24 will help him in San Diego.

25 Q. You gave me this chart from your notebook

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1 here. The genesis of this chart, you know, who did it,
2 what's the methodology -- tell me a little bit about it
3 other than just handing me this. In the law thing, we
4 call it what's the foundation?

5 A. Thank you. I learned that.

6 Okay. So the point is you can go on the web
7 and get from the National Allergy Board, which is part
8 of the AAAAI website, just the mold counts, the pollen

9 counts for different places around the country.

10 So just as an exemplar, I asked it to print
11 out six months, and it was the only six months I could
12 get. I didn't choose it because they won't let you take
13 years. They say the maximum you can get is six months.
14 So I took it six months, and by the end date you can
15 tell when I did it because the end date on it when I did
16 it, it just shows the differences.

17 Q. And in terms of what you've handed me here in
18 terms of total mold counts of La Jolla versus Nevada,
19 Las Vegas, the time period is basically February 2006
20 through August 2006, fair enough?

21 A. Whatever is on it, yes.

22 Q. In terms of the time periods, I'm going to
23 make the assumption that your foundation is accurate for
24 purposes of this question, in terms of the time periods
25 where Doctor was in this house and in Nevada before

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1 this, can you get this kind of information for me with
2 little bar graphs so I can make comparisons, yes or no?

3 A. You can, but it costs money. You have to get
4 it from the National Allergy Board, and they have it
5 going back, and I'm not sure, they have it going up
6 through -- I don't know the years. It may be
7 accessible; it may not.

8 Q. But you didn't make an attempt to get that
9 accessibility to see what it would be?

10 A. No. I don't think it would surprise anybody
11 that damp environments with higher humidity have higher
12 background levels, just an exemplar so I could show you.

13 Q. When did you get this done?

14 A. Whatever the last date is. So it would be the
15 end of August sometime.

16 Q. So 8/18/06, just about a month prior to your
17 report, the service date of this report, September 16,
18 2006?

19 A. Yes.

20 Q. All right. Is there any other basis for the
21 phrase, "At the same time, he moved into an area that
22 has higher, not lower, mold counts outdoors compared to

23 what was tested in respirable air in his home."

24 Anything else other than this document in this chart?

25 A. Well, I've seen lots of other documents like

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1 that. It was just an example. It's -- I'll call it

2 general knowledge.

3 Q. And now I have to be a little pithy. So I'll
4 give you a heads up about that. Can you outline those
5 documents for me as we're sitting here today?

6 A. Yes, the National Allergy Board has -- you
7 know, I've looked at these before. It's just I can't
8 get them out without having to pay for them. So that as
9 I've looked at them over time.

10 Q. We'll mark as 64 this document you've given to
11 me, Doctor, with the bar graphs of La Jolla versus
12 Nevada, Las Vegas, and in terms of our questions, is
13 this the document you handed to me that we've been
14 discussing in that regard?

15 A. Yes.

16 (Exhibit 64 was marked.)

17 Q. This notebook you've got in front of you --
18 you've got a box of documents and a notebook. The box
19 of documents is the medical records, correct?

20 A. Yes.

21 Q. For Steve, the wife and kids or just the wife
22 and kids?

23 A. Everybody. And the depositions, everything
24 the lawyers, everybody has provided to me I tried to put
25 in that box except for the few things that ended up in

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1 this binder.

2 Q. Fair enough.

3 So the universe of documents that were given
4 to you by the defense lawyers for you to review for the
5 defense side of this case is in that box except for
6 what's in the binder, right?

7 A. Correct.

8 Q. So the binder is a choice on your part of
9 certain documents?

10 A. It's anything that I've generated because I
11 know you'd want to have that readily accessible and a
12 few other documents like Dr. Schroeder's reports, Dr.
13 Craner's report because you asked about them and things
14 like that and a couple of articles I had provided the
15 attorneys with. So I felt I should bring them since I
16 had provided them.

17 Q. Let me see the articles that you make
18 reference to. Maybe you can show me your book.

19 A. It may be just quicker to show you the
20 articles. I'll just pull them out because there's
21 nothing else in here other than what I've already told
22 you.

23 Q. I absolutely believe you.

24 A. Even if you don't, it's the truth. Here you
25 go.

1 Q. You have Brian Shel ton's article on airborne
2 fungi in buildings I see, is that right?

3 A. In buildings and outdoors around the Uni ted
4 States.

5 Q. Do you know Bri an?

6 A. No.

7 Q. Are you aware of hi s company, PathCon
8 Laboratories, in Atlanta?

9 A. No.

10 Q. Are you aware of how he testi fies in mold
11 cases, pl ainti ff's side, defendant's side?

12 A. No.

13 Q. How about George Morris? Do you know George?

14 A. No.

15 Q. Okay. So in terms of Fred Kuhn's article,
16 Mark Schubert's, I'd like copies of those. We'll work
17 that out at some point in time.

18 Anything else in this binder that we haven't
19 already gone through at least in some vein yet?

20 A. Did you mention the correspondence? Just the

21 cover letters for the attorneys.

22 Q. Tell you what. From your mind's eye, what do
23 those talk about, where to be, where to go?

24 A. No, they're sending me stuff. I try and put
25 it in here so I know when they first contact me.

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1 Q. And I'm sure no one tells you in writing they
2 want you to reach certain conclusions?

3 A. No one, I hope, would have the audacity to
4 tell me that even in the spoken word.

5 Q. And with regard to the written documents you
6 have there, it's just stuff that's being sent to you,
7 right?

8 A. Yes.

9 Q. I don't need to see it.
10 Anything else in there?

11 A. No. Well, they did tell me this thing,
12 disclosure of expert testimony, and that's why in that

13 first report -- I was following those rules when I wrote
14 that first report on April 17th.

15 So when they sent me that, I followed the
16 rules. That's what I was trying to do. That's why that
17 report has that format, and you'll have to ask the
18 attorneys why I was doing that. I did what I was told.

19 Q. Well, they're quoting Rule 16.1(a)(2)(B)(A).
20 I guess I reversed those. Why did this have anything to
21 do with whether or not an IME was going to requested
22 back in April?

23 A. I don't know. They said, "We want your
24 report," and they sent me this about disclosure of
25 expert testimony, and they said to put it in that

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1 format. That's why it was put in there. You wanted
2 copies. I put those away. I'm sorry.

3 Q. We'll worry about it later. I thought I saw a
4 document of Gots there.

5 A. Yes.

6 Q. What do you have of Gots?

7 A. This was, I think, called a Case Fact Sheet.

8 I'm not sure when it was sent to me. That was sent.

9 MR. BALMER: The stuff in his notebook -- has
10 that been deposited?

11 MR. HAYES: I'll check. It should have been.
12 It certainly would have been our practice to do it, and
13 I don't know what Sylvia did.

14 BY MR. DUFFY:

15 Q. When did you get the case fact sheet that was
16 generated by Ron Gots' company?

17 A. Like I say, months ago. I looked at it, put
18 it in here, and I don't recall when I got it.

19 Q. Did you ever read it?

20 A. I looked it over. I just went over
21 information I had already looked at myself.

22 Q. Did you read it prior to the generation of
23 your April 2006 report?

24 A. Probably not. I don't think I got it until
25 after that.

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1 Q. So you would have gotten it in between the
2 time of the April report and the IME in September of
3 '06, correct?

4 A. Right, but I had seen the same information as
5 what I call primary data. This is just a tabulation.

6 Q. Okay. The review of the medical records --
7 did you do all of this yourself?

8 A. Can't you tell from the typographical errors?
9 I did.

10 Q. I've seen your work before. Yeah, I kind of
11 did, but I have to ask.

12 A. I know.

13 Q. Did you have any help or assistance in putting
14 this together?

15 A. No. The typing group types what I dictate,
16 but that's the only help I get, and I have to correct
17 it.

18 Q. All right. Let's switch gears.

19 THE WITNESS: Can we take a break so I can go

20 to the bathroom?

21 MR. DUFFY: Yes.

22 (Recess taken.)

23 BY MR. DUFFY:

24 Q. Back on the record.

25 All right, Doctor, let's go to the notebook

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1 one more time. Anything else in there other than what

2 we've talked about?

3 A. Yes, there are a couple of skin tests that are

4 just copied from the records and a blood test on Dr.

5 Hake that I just -- when I originally went through my

6 copy in the case, someone wanted to look at them so we

7 wouldn't have to dig through the records.

8 Q. These are the intradermal tests?

9 A. These are both. Well, these are tests done

10 for the record by Victor Cohen on 10/3/00, 10/5/00 and

11 3/20/03 and blood tests done at Specialty Labs on

12 3/20/03.

13 Q. All right. Anything else in the notebook that
14 we haven't gone through?

15 A. No.

16 Q. All right. Doctor, you bill for your time
17 differently for testimony versus review of records?

18 A. Yes.

19 Q. Tell us what those are right now.

20 A. The rates are \$510 for nontestimony.
21 Testimony is 720.

22 Q. Okay. If we need to see your billings,
23 invoices and statements in this matter, we can work that
24 out with you, UCLA and counsel, correct?

25 A. Sure. Sure.

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1 Q. And is your testimony here going to be, as it
2 has in the past, that in terms of yourself, you're an

3 employee of UCLA, correct?

4 A. I am.

5 Q. The moneys that the defense lawyers will be
6 writing their checks for for your time for review and
7 other matters will go to UCLA, correct?

8 A. No.

9 Q. It goes to the Regents?

10 A. No.

11 Q. Where does it go to?

12 A. Me.

13 Q. Personally?

14 A. Yes. I retired effectively September 1, and
15 I'm back at UCLA as an employee doing teaching, research
16 and patient care, but since I'm officially emeritus, now
17 the money is actually made out to me.

18 Q. How long has that been the case?

19 A. September 1.

20 Q. So this is one of the very first cases under
21 this new arrangement?

22 A. That's right.

23 Q. Prior to that, you essentially got about 43
24 cents of every dollar, correct?

25 A. That's what -- you remembered what my wife

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1 told me.

2 Q. Yes, I did. And that was in terms of
3 consulting as well as review of records?

4 A. Medical/legal work. All aspects of it were
5 thrown in one pot at UCLA.

6 Q. In terms of mold cases and litigation, you've
7 always testified on the defense side?

8 A. Testified, yes.

9 Q. And --

10 A. I'm talking about depositions and trials
11 testimony.

12 Q. So am I. And also hearings like in the
13 CHKGorman case was on the defense side?

14 A. Yes.

15 Q. And testifying in mold cases on the defense
16 side started sometime in 1999. Is that approximately

17 correct, according to your testimony?

18 A. It sounds about right.

19 Q. And from 1999 until your retirement where we
20 have this different arrangement of compensation for your
21 time, do you have a sense as to what the total gross
22 dollars to UCLA were?

23 A. I wouldn't have a clue, really, no.

24 Q. And despite that answer, do you know what your
25 43 percent was?

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1 A. No.

2 Q. Okay.

3 A. The answer is no.

4 Q. All right. To determine that, how would one
5 go about that?

6 A. Well, one would have to get very detailed
7 monthly and quarterly payment statements from the
8 university because it's all folded in one check. It's

9 not evident, and that's all electronically deposited in
10 the bank, and then one would have to speak to my wife
11 because -- I'm not joking; I probably told you before --
12 she deals with all the money in our family. So that
13 money goes into the bank directly.

14 Q. In the last three calendar years, how much of
15 your time has been taken up with medical/legal work on
16 mold?

17 A. On mold?

18 Q. Yes.

19 A. If we average all together, I'll say 10
20 percent.

21 Q. Averaged all together over what period of
22 time?

23 A. The last three years. There's probably a
24 little bit less. Mold has become such -- I do other
25 legal work, but I generally say about 10 percent of my

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1 time. It used to be less but say 10 percent.

2 Q. About 10 percent. And now, in your status of
3 retirement, what is your sense of medical/legal work?
4 Is this a full-time thing or no?

5 A. No. It's going to be increased because all
6 the administrative work is gone, but I still do my
7 research. I still do other things. So since I'm going
8 to hopefully work less than a hundred hours a week, it
9 will come -- the total hours I work will be less. The
10 legal work will hopefully stay the same, and percent
11 wise it will go up to 15 percent, maybe 20.

12 Q. And in terms of the gross dollars, the checks
13 now go to you directly?

14 A. They'll be made out to me.

15 Q. And same hourly rates. You just keep all the
16 money?

17 A. I keep all the money. I have some small
18 overhead, but it certainly isn't the amount the
19 university was charging.

20 Q. Got it. You are one of the authors of the
21 2002 ACOEM paper, correct?

22 A. I'm one of the people who wrote it, yes.

23 Q. And you are also one of the authors in the
24 recent Journal of Asthma and Allergy 2006 February,
25 correct?

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1 A. Let me correct. It's the Journal of Allergy,
2 Asthma, Clinical -- Journal of Allergy -- I'm confused.
3 It's abbreviated JACI, Journal of Allergy and Clinical
4 Immunology -- the word asthma isn't in it -- position
5 paper, February 2006.

6 Q. So when we talk about the February 2006 paper,
7 we're on the same page, correct?

8 A. Right.

9 Q. All right. Now, this doctor in Missouri,
10 Portnoy -- do you know him?

11 A. I've talked to him. I don't know him.

12 Q. He is one of the authors on the paper.

13 A. True.

14 Q. He wants his name taken off the paper. Are

15 you aware of that?

16 A. That's not true.

17 Q. Are you aware of a deposition he has given in
18 Arizona in 2006 about his position about this paper?

19 A. No.

20 Q. No one has advised you of what is said about
21 you in that paper -- in that deposition?

22 A. No, I'm totally unaware of it.

23 What I'm aware of is based on a phone
24 discussion we had in May or June where he then was aware
25 the paper was published, and he said he wasn't going to

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1 ask about having his name taken off. That's what I'm
2 aware of.

3 Q. That's your view?

4 A. That's the last thing I recall about from that
5 phone call where there were about ten of us on the call.

6 Q. Who were the other people on that call?

7 A. If I speak about it, it may help me recall the
8 names. It was a call. I think Dr. Bush -- it was a
9 call about the position paper and the fact they had
10 published it without the appropriate response to
11 questions potentially and how the journal was going to
12 handle it.

13 So it was myself, Dr. Bush. I think Dr.
14 Portnoy was on it. I don't recall, frankly, you know,
15 if the other authors -- some of them were on it. Some
16 weren't. So whether Dr. Terr -- who else is an author?

17 Q. Bush.

18 A. Yeah, I don't know -- I think Dr. Wood was on
19 it. I don't think Dr. Terr was, and I think some of the
20 staff, and I think potentially Dr. CHKLee Young, the
21 editor, was on it potentially. I think someone from the
22 journal and someone from the society may well have been
23 on it, but I don't remember the names.

24 Q. Was this after the document was published?

25 A. Yes.

1 Q. And what were the response to questions you
2 recall were of issue in this call?

3 A. Some letters had been written, and the
4 question was how to respond to the letters, and these
5 were original letters that the counsel or someone at the
6 society had received, and in fact, at that time -- and,
7 again, the timing may be wrong. It was after February
8 and before June. So it's in that time frame.

9 I don't think Dr. Portnoy was aware that the
10 paper had actually been published yet, and so that the
11 questions were -- there was issues about -- somewhere in
12 the files there was issues of science in the paper
13 about, you know, how much -- how strong certain
14 statements should be. They weren't anything exciting
15 that I recall in those letters.

16 Q. Was one of the unexciting things in the call
17 about the disclosure of conflict of interest?

18 A. No, because that had been done. They had
19 forgotten to put it out there. We had all done that
20 before. So I don't recall that being anything -- if it

21 was discussed, the answer was it was already done. It
22 was their mea culpa. They hadn't published it. They
23 should have.

24 Q. In regard to Dr. Portnoy, are you going to say
25 this was the only phone conversation you had with him

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1 about the paper was being a part of this conversation
2 post publishing?

3 A. Post publishing, yes.

4 Q. How about prepublishing?

5 A. He and I probably had maybe one or two. Well,
6 I take that back. There were several conference calls
7 from the -- you know, of the writers. You know, it went
8 on for a couple of years, and he missed, I would say,
9 the majority of them, but he was on some of them.

10 So there were a number of conference calls
11 that he was on regarding the things because we each got
12 the sections to review and critique if we wanted, and

13 then I think I probably had one call with him, one or
14 potentially two since he and I were assigned to write
15 together on certain sections that -- about stuff.

16 Q. Did you ever -- strike that.

17 Did you men ever have a discussion, you and
18 Portnoy, that you completely rewrote his section so that
19 what was printed wasn't anything that he wrote?

20 A. No, I don't remember him saying that. He
21 wrote a section -- no, I don't remember a discussion --
22 him saying that. I mean, he wrote something. I'm sure
23 he still has it, and they're the final ones.

24 Q. So if he has testified under oath that you
25 completely rewrote his section and he wanted his name

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1 removed from it because he was no longer the author as a
2 result of what you did, you don't have any recollection
3 of that?

4 A. I don't have any recollection of that, and not

5 only that, the section -- we were assigned a variety of
6 sections. So the section I rewrote -- I certainly
7 didn't rewrite the whole thing because you can compare
8 the drafts -- is the section on irritancy.

9 We didn't write -- a lot of the other sections
10 were written totally by other people, and I wrote a lot
11 of sections and sent them to him, and he had no critique
12 whatsoever on the section saying there was anything
13 wrong with them for two years.

14 Q. Okay. Did he ever, to your knowledge, express
15 the concern that the paper was not balanced?

16 A. Yes.

17 Q. Let's go through a list first and come back.

18 A. Oh, I'm sorry.

19 Q. Did he ever express a concern to you that he
20 felt there was an antimold agenda by some of the
21 authors?

22 A. I don't recall that.

23 Q. Did he ever request -- did he ever express a
24 concern to you about the negative tone of the paper
25 draft?

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1 A. I think he expressed that on a conference
2 call, not to me personally, but on one of these
3 conference calls, he may have expressed that, yes.

4 Q. Did he ever express a concern to you that the
5 article was demanding a greater degree of evidence for
6 mold exposure than other things that are accepted as
7 being valid?

8 A. I don't recall that, no, but -- I don't recall
9 it, no.

10 Q. Did he ever express a concern of not knowing
11 that you are compensated on the defendant's side of mold
12 cases as a testifying expert witness and that that was
13 not known to him?

14 A. If he did, he expressed it after the thing was
15 published, though I had already -- anyway, I declared my
16 conflicts of interest to the society way before.

17 Q. How about to him and your coauthors? Had you
18 declared your conflicts to him or potential conflicts?

19 A. Personally?

20 Q. Yes.

21 A. No, I see no -- no, I did not individually
22 speak with -- what do you call it -- the authors of the
23 paper and discuss any conflicts of interest with any of
24 them.

25 Q. Did he ever express his concern to you during

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1 the writing of this article that it was clearly wrong in
2 that the article takes the position there is no evidence
3 that mold can cause allergic rhinitis?

4 A. He did not express that to me. He may have
5 expressed it, and I'm not of that opinion even, so to
6 speak. So if he expressed it, I don't recall him
7 expressing it to me, but let me put that in the
8 framework. I didn't write primarily that section. So
9 he may not have expressed that to me.

10 Q. And did he ever express to you that he felt

11 that this was a document that was not promoting science

12 but was promoting agendas for litigation purposes?

13 A. Not to me, no. Again, if he had said it, I
14 don't recall it, but I don't think he ever expressed it,
15 and our phone calls that I recall with him directly may
16 have been one or two max about the things we were
17 supposed to be writing.

18 The general phone calls where the group met --
19 I don't recall discussions like that, but that's just my
20 memory.

21 Q. Now, you say the corrected version or the new
22 version of the paper that goes out on the
23 conflicts-of-interest box reads as follows.

24 A. Pardon me?

25 Q. I'll finish my sentence, Doctor. "A. Saxon

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1 has served as an expert witness for the defense in mold

2 litigation and has received compensation for his

3 testimony." Accurate?

4 A. I'm not sure what you're reading.

5 Q. It is the disclosure statement of the journal
6 on further printing of the article, the February 2006
7 article.

8 A. I think they wrote that in an addendum in
9 June.

10 Q. Now, in fairness to you, it says, "This was
11 inadvertently omitted at the time of publication."

12 A. That's right.

13 Q. When did you submit a notice of potential
14 conflict of interest to this journal?

15 A. I can't recall when I submitted it, but I do
16 recall when they called me twice, and I recused myself.
17 I said I shouldn't do this because people will claim I
18 have a conflict of interest, and I declared that to the
19 people who called me. I declared it on the phone to
20 Mr. CHKSchultz, who called me, and finally the third
21 time the president of the society called me and asked me
22 to do it.

23 So I don't remember what the writing was, but
24 I certainly remember doing stuff way ahead of -- you

25 know, in 2004 probably.

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1 Q. Okay. All right. And when the original paper
2 came out without the declarations of the conflict of
3 interest, did you bring that to anybody's attention?

4 A. I didn't even see it. It was a surprise it
5 came out at that time. So I was unaware of it because
6 it had been put out for membership response, and then it
7 appeared in the journal simultaneously.

8 Q. Okay. Let's talk about that. According to
9 the document, it was received for publication on
10 November 18, 2005, revised November 28th, the same year,
11 published three days later, December 1st, 2005.

12 A. Published? It's weird because it was
13 published in February.

14 Q. Accepted for publication December 1, 2005.
15 Excuse me. Were you any part of that process?

16 A. No. I mean, let me just -- to be more

17 accurate, there were some questions raised. We
18 discussed them on the phone. Dr. Bush -- Wood, I think,
19 is the first author.

20 Q. He is.

21 A. Questions were left to him to revise stuff,
22 but it was sent back for membership comment, and then it
23 appeared in February to my surprise.

24 Q. A number of letters were sent in response to
25 the document, correct, complaining about it?

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1 A. I'm sure there were. You're talking about
2 September now?

3 Q. Yes.

4 A. The number of letters were published in
5 September of this year. Sure, I read them all.

6 Q. And they're from individuals you know that
7 have always testified in mold litigation matters on the
8 plaintiff's side.

9 A. Is that true?

10 Q. Yes. Those are some of the authors. Let's be

11 candid here.

12 A. You mean about 15 of the 17 with degrees are

13 plaintiff's experts, would you think?

14 Q. I don't think it's that high, but it's high.

15 A. It is.

16 Q. There's also a response letter from the

17 authors, Bush and Wood. Did you participate at all in

18 that?

19 A. No.

20 Q. Did you ask to participate in that?

21 A. I was unaware of the whole situation. I

22 wasn't even informed.

23 Q. You weren't even informed?

24 A. I was not.

25 Q. Did you make any effort from your view to

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1 write anything without anybody asking you in response?

2 A. No.

3 Q. Do you know why the issue of conflict of
4 interest was never responded to by Wood and Bush in
5 terms of the rebuttal to the letters on this article
6 that you wrote?

7 A. I can only estimate. I have no knowledge
8 personally whatsoever, no. That's probably the best
9 answer.

10 Q. Let's just let it go at that.

11 Now, in the ACOEM paper in 2002, as of 2002,
12 you were serving as a defense witness in mold cases from
13 time to time?

14 A. True.

15 Q. And when that paper was published by ACOEM,
16 there is no conflict-of-interest advisory regarding you
17 in that paper, is there?

18 A. I think it had been filed, but they didn't
19 publish it. I think it says something to the effect
20 they're on file. We provided them for sure.

21 Q. But it's not within the printed version of the
22 paper?

23 A. No, they didn't do it.

24 Q. Did you do anything to change that
25 circumstance?

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1 A. No. I mean -- no, I did not. I made them
2 aware of it, and then when they publish it, I mean, they
3 published it.

4 Q. When the lay version of the ACOEM paper was
5 printed by the Institute For Legal Reform, the ACOEM
6 again did not have any conflict-of-interest waiver on
7 your part, did it?

8 A. I have no idea. I've never seen that version.
9 I'll call it the nonscientific piece that has my name on
10 it.

11 Q. From your view, did you make any efforts,
12 despite anyone calling you or anything else, to make
13 sure that a conflict-of-interest waiver was included
14 with the lay version put out by the Institute For Legal

15 Reform?

16 A. No, because I didn't even know my name was on
17 it.

18 Q. The ACOEM paper was also given an iteration in
19 the Manhattan Institute document. You were aware of
20 that?

21 A. I think I'm getting confused. I'm sorry. I
22 thought we were just talking about the same. What was
23 the one you were just talking about?

24 Q. The lay version was by the Institute For Legal
25 Reform, and then the Manhattan Institute reprinted it.

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1 A. I didn't know that. I thought they were the
2 same thing. I haven't seen it, but I didn't realize
3 there were two versions.

4 Q. So you're only aware of two versions?

5 A. There was a paper I was an author on, as you
6 know, in the ACOEM paper.

7 Q. Yes.

8 A. Then it was reworked for lay publication by
9 Dr. Hardin and Dr. Kelman, who asked some input from me,
10 which I gave them, and it appeared somewhere that I was
11 unaware of until some attorneys brought it to my
12 attention, and I call that not the Manhattan one, the
13 name you used for the other one.

14 Q. You called it the lay version, the law
15 institute version?

16 A. Yeah, whatever it was, not the Manhattan. The
17 Manhattan Institute I thought was the same thing.

18 Q. You don't know what that is?

19 A. No.

20 Q. All right. Now, you've published a lot,
21 Doctor. I'm certainly respectful and mindful of that.

22 In regard publishing a paper that specifically
23 deals with the issue of mold in the title, the first
24 time that you have done that was in 2002 in connection
25 with the ACOEM paper?

1 A. I'll say yes.

2 Q. And since 2002, the next time that you had
3 been involved in a paper that was subjected to peer was
4 the February 2006 article that we've discussed?

5 A. Sure, the next one relating to mold in the
6 title.

7 Q. Correct. And there have been no others?

8 A. That have anything to do with the kind of mold
9 we're talking about today, correct.

10 Q. Thank you. I appreciate it.

11 And you've never been a member of ACOEM,
12 correct?

13 A. Correct.

14 Q. And Kelman and Hardin are not members of ACOEM
15 as far as you know?

16 A. I don't know that. We went through this
17 before.

18 Q. We did.

19 A. And my knowledge is that I thought they were
20 members of ACOEM.

21 Q. But you don't know?

22 A. I don't know.

23 Q. And they're Ph.D.s, not MD?

24 A. I know Kelman is a Ph.D. I'm not sure about

25 Hardin. I'm not sure about Hardin.

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1 Q. What, if any, due diligence or investigation
2 did you do of Hardin and/or Kelman before agreeing to
3 collaborate with them for the ACOEM document?

4 A. The only due diligence -- the due diligence I
5 did for Dr. Hardin was I had seen his CV, and he had
6 been a deputy -- what is it -- something for the
7 deputy -- assistant surgeon general for the US, and Dr.
8 Kelman I simply knew from the toxicology meetings that I
9 talked on my work, diesel stuff, and we talked unrelated
10 to mold about scientific issues, and he seemed to have a
11 good handle on science, toxicology science.

12 Q. Are you aware that at the time of the 2002

13 ACOEM report and currently, Kelman and Hardin testify on
14 the defendant's side of mold cases?

15 A. I'm aware of that now. I knew about that
16 Kelman in the time of this, but I had no idea about Dr.
17 Hardin, no.

18 Q. Have you ever relied in terms of your work on
19 a paper by Coreen Robbins that was printed in 2004
20 concerning a rat study and certain extrapolated
21 mathematics on mold called Risks From Inhaled Mycotoxins
22 in Indoor Office and Residential Environments? Have you
23 ever relied on that article?

24 A. Would you mind, just show me the title. I
25 won't look at your notes.

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1 Q. I don't mind if you look at my notes. Number
2 6 in the footnote.

3 A. I think that's more of a review. You know, we
4 were just -- that's probably a review. So I don't

5 remember. You know, just like the papers we wrote, they
6 CHKdata synthesis. So I don't remember if I relied on
7 that one particularly.

8 Q. Let me tell you it's cited in the February
9 2006 paper as authoritative.

10 A. You're only allowed 10 references or 12
11 references. So you tend to cite reviews so people can
12 look up the data.

13 Q. In regard to that review, have you become
14 aware that that document and Coreen Robbins'
15 collaborative testimony was not allowed into evidence in
16 a case in the San Francisco area about three months ago?

17 A. I have no knowledge.

18 Q. As being nonscientific?

19 A. I have no knowledge of that.

20 Q. In regard to the introductory paragraphs of
21 the 2006 document, one of the introductory paragraphs
22 read as follows: "In this position paper, we will
23 review the state of the science of mold-related diseases
24 and provide interpretation as to what is and what is not
25 supported by scientific evidence." This is the

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1 important one.

2 "This is important for members of the allergy
3 clinical immunology community who are frequently asked
4 by patients, parents and other interested parties to
5 render opinions about the relationship of mold exposure
6 to a variety of patient complaints."

7 All right. Those are the two sentences.

8 A. All right.

9 Q. The phrase "and other interested parties" --
10 who are those other interested parties that you authors
11 intended to mean by that?

12 A. I have no idea. I didn't craft that sentence.
13 So...

14 Q. Who did?

15 A. Probably doctor -- again, estimating.

16 Q. Bush is first.

17 A. Probably Dr. Wood. Can I see just the front
18 page?

19 Q. Please, use mine.

20 A. So this is the introduction. I mean, we broke
21 it up that Dr. Wood, I think, would do the introduction,
22 the summary, and then we broke it up, for example, like
23 Dr. Terr and someone else did the allergy, and I did the
24 irritants with Dr. Portnoy.

25 So I don't remember. You know, it just seemed

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1 I like others to me. So I didn't craft it. So I'm not
2 sure.

3 Q. As a practical matter in terms of reality,
4 other interested parties in regard to the relationship
5 of mold exposure to a variety of patient complaints have
6 wound up being litigation people, lawyers and people of
7 that nature. They would be included in other interested
8 parties, rationally speaking, wouldn't they?

9 A. Okay.

10 Q. Do you go along with that?

11 A. Lawyers, environmental health physicians. You
12 know, there's all sorts of people you can think of that
13 might be interested parties, sure.

14 Q. Now, in regard to the men that were on this
15 panel to write this paper, you have yourself and Abba
16 Terr as two of the four, correct?

17 A. Five or four? How many?

18 Q. Of the five, two of the five. All right,
19 ready?

20 A. Yes.

21 Q. Now, in regard to yourself, you have testified
22 on the defendant's side of mold cases, and that is also
23 true of Dr. Abba Terr, isn't it?

24 A. I've been told that, right.

25 Q. And you knew that at the time that this paper

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1 was crafted?

2 A. I knew he did that, yes.

3 Q. Okay.

4 A. Let me say I had nothing to do with picking
5 the other people who wrote this, just for the record.

6 Q. I understand. And based upon that remark,
7 then I guess I would say you did nothing to remove
8 yourself from the group at any point in time?

9 A. No, that's not true. I twice said I wouldn't
10 do it, and because people say it's not balanced, they
11 would make this claim which I think is not correct
12 because I think I would accurately represent the
13 science, said, "You will be open to that criticism. You
14 shouldn't put me on it." So I tried not to do it twice,
15 and the third time the president -- I think it was
16 Schultz -- called and said, "We want you to do it," and
17 I said, "Okay."

18 Q. It was still your choice to make the choice?

19 A. That's correct, in the end.

20 Q. All right.

21 A. I'm sorry. It wasn't Schultz. He was the
22 staff person.

23 Q. I know who you're making reference to. That's
24 all right. I got it.

25 In regard to testifying on the defendant's

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1 side of mold cases since 1999, based upon past
2 testimony, it is just a little over 100 cases that you
3 have worked on, correct?

4 A. Not testifying.

5 Q. I understand.

6 A. Probably that have come across my desk, it's
7 probably a hundred cases, maybe even more, because we've
8 talked before -- a lot of them go nowhere. So I don't
9 even -- well, I wouldn't say a lot, a percent.

10 Q. Okay. Let's go to Page 8 of yours dated April
11 17, 2006.

12 A. Uh-huh.

13 Q. And start with Item 18. Let's go downwards.

14 A. Item 18. Oh, I got it.

15 Q. Some of these I know; some of these I don't
16 know.

17 A. Sure. Sure.

18 Q. Just to help you out, I have no need to ask
19 you any questions about Harold, Number 21 and 25. I
20 know all about that. I also know about Gorman. So we
21 can make this quick.

22 In regard to CHKGary being HomeLand Central,
23 is that a mold case or not if you can recall?

24 A. Yes, I think it was.

25 Q. Real quickly, what was that about, a couple of

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1 sentences?

2 A. Someone who lived in the Bay area and went and
3 saw Dr. CHKgray after they had actually -- anyway, it
4 was something with mold, Dr. Gray, and it went away very
5 quickly.

6 Q. So that's a mycotoxicosis allegation case?

7 A. Whatever it was, a Dr. Gray case. You seemed
8 to roll your eyes back. You know what it is.

9 Q. Well, I don't know about that, but in any
10 event, in terms of this particular case, mold case, you
11 testified it went away, is that right?

12 A. I did a deposition, and it went away, never
13 heard anything.

14 Q. Now, you've been retained by a home builder in
15 regard to this case through their counsel, the
16 defendant's side, the home builder that's involved in
17 this case. Have you ever worked with this outfit
18 before?

19 A. I don't know. I don't even know the name of
20 them.

21 Q. Just know the lawyer's name?

22 A. I generally only know the attorney's name. It
23 would be unusual otherwise.

24 Q. What about CHKH and B Shea Homes, a mold case,
25 Number 20?

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1 A. Yes, that was a mold case.

2 Q. Two sentences. Did this involve allergenic
3 response, immunological or mycotoxicosis?

4 A. All of the above.

5 Q. Okay. Who testified on the other side?

6 A. Dr. CHKMoracovitch.

7 Q. Let's move on. In regard to O'Connor versus
8 Boeing North America, what was that?

9 A. That was called a CHKRockadyne matter. It had
10 to do with chemicals in the environment from stuff.

11 Q. Okay. CHKGinter Geit versus Home Depot?

12 A. A trial of mold causing, I'll just say, brain
13 rot, brain problems.

14 Q. What happened there in the trial?

15 A. Defense verdict.

16 Q. Defense verdict, okay.

17 Now, in the Gorman case, you did the 402, and
18 that case settled, correct?

19 A. I guess so. I only was involved. I don't
20 know the Gormans at all. I just was involved in the
21 science of the 402 hearing.

22 Q. This was, at least in terms of one of the

23 claims of the plaintiffs, autism, right?

24 A. Again, I heard that, and I wasn't -- I really

25 would be misspeaking because I didn't do any of the

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1 personal injury aspects.

2 Q. And in terms of the Harold case, that wound up
3 in a rather substantial plaintiff verdict, didn't it?

4 A. For his home but not for his health, as I
5 recall.

6 Q. Although there was a verdict for his health,
7 too.

8 A. I don't recall.

9 Q. And do you recall the Harold verdict now
10 looking at it as to whether this was the case where the
11 Robbins paper was barred as improper science?

12 A. I don't know. I'm unaware of that.

13 Q. That doesn't help you?

14 A. No.

15 Q. Okay, fair enough.

16 And the list that you have here, Doctor, since
17 the -- since October of 2004 -- is it accurate, correct
18 and complete?

19 A. No, because this ended in 4/12/06.

20 Q. Okay, that's why I'm asking.

21 A. Yes.

22 Q. So let me ask you -- I guess we have to do it
23 off your memory. You don't have any papers here to help
24 you. How many more have you done since then?

25 A. Two, three. Achin, A-c-h-i-n, went to trial.

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1 It was a defense verdict.

2 Q. Got it. What else?

3 A. I did a totally unrelated one for what I'll
4 call malfeasance, medical fraud against a doctor.

5 Q. Move on.

6 A. And I did some, I'm sure -- I think I did

7 another mold deposition, but I can't recall. I can't

8 even recall it at this point.

9 Q. We can figure out if there's one more sitting
10 out there.

11 A. There may be.

12 Q. All right. So you don't know what the
13 parameters of the Gorman settlement were?

14 A. No. As I said, I only did a 402 hearing on
15 one very limited aspect.

16 Q. And in terms of the Harold case, you don't
17 know what the aspect was of the plaintiff's verdict on
18 the personal injury?

19 A. No.

20 Q. Okay. Going back up to the Rice case that was
21 mine in Minnesota, do you remember what the verdict was
22 there?

23 A. No. In fact, I didn't even -- as you may
24 recall, I didn't remember it was even Minnesota because
25 they talked to me once in Los Angeles.

1 Q. Let's be fair. Your deposition was read at
2 trial. You didn't even have to go.

3 A. Yes, that's why it was all a surprise to me.
4 You said you've been in Minnesota. I didn't even know
5 I'd been there.

6 Q. To this date, do you know what the parameters
7 of the personal injury verdict CHK___ with the
8 plaintiffs was in that case?

9 A. No idea.

10 MR. DUFFY: Just a second, Doctor.

11 BY MR. DUFFY:

12 Q. Doctor, do you -- inasmuch as it's cited in
13 the 2006 paper, I take it that you find as authoritative
14 the Bioaerosols: Assessment and Control book, the red
15 book, if you will, that CIH people used in 1999 by Jay
16 Mocker as editor?

17 A. I can't answer that. You know, I don't even
18 recall what the red book looks like. It's probably a
19 bunch of data that's got information in it.

20 Q. It's cited in the article upon which you are

21 author in 2006. "An in-depth analysis of methods to
22 measure fungal organisms, mold products and mycotoxins
23 in the environment is outside the bounds of this
24 article. Such information is viewed in depth
25 elsewhere," and then there's the cites, and one of them

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1 is to the bioaerosols book. You're fine with that?

2 A. Yes, I'm fine with it as a direction for the
3 reasons we talked about. I guess everything in it is
4 right.

5 Q. But you acknowledge that that is a cited
6 authority in the paper of 2006 that you are coauthor?

7 A. Yes, CHK____. It's a place where people go to
8 look up the methods of how to do these kinds of tests.
9 People who are expert in that field might say, well,
10 it's 1999. It's changed, but we're trying to give
11 people guidance to look up the stuff that's outside the
12 purview of this article.

13 Q. And that's where you men directed the readers
14 to look?

15 A. Yes, among others.

16 Q. Correct. While I'm flipping here, let me ask
17 you about Portnoy. Are you aware that he is preparing
18 an -- or what do you call it -- a rostrum paper on this
19 issue or, as he has said in his deposition, a paper that
20 more balanced reflects his views?

21 A. No, I'm not. Let me say, you know, there were
22 five writers, and he had every chance to express himself
23 during the writing process, and he's certainly welcome
24 to write anything, but I'm not aware of him in the
25 process of writing anything currently.

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1 Q. That's all I want to ask about that.

2 MR. HAYES: He probably ought to write it
3 himself.

4 MR. DUFFY: We're getting there, Doctor.

5 THE WITNESS: I want to accuse your colleague

6 of having 62.

7 MR. DUFFY: We'll straighten all that out.

8 BY MR. DUFFY:

9 Q. All right, we're going to do easy stuff now.

10 A. I thought we had.

11 Q. From my mind's eye -- when you read Dr. Gots',

12 I think you'll agree, from my mind's eye, it's been

13 easy.

14 In regard to the attorneys that retained you

15 for your time, are you aware whether it's one firm or

16 all these firms? What do you think it is? Do you have

17 any idea?

18 A. I'm only aware of working with Mr. Hayes'

19 firm. I know there were other firms, but I have no idea

20 who they are.

21 Q. You know what you know. You don't know what

22 you don't know.

23 And with regard to the firm you had the

24 contact with, have you had any prior working background

25 with that firm?

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1 A. I think yes.

2 Q. Tell me what that is from your view.

3 A. More likely than not, I've met or talked to
4 Mr. Hayes in a case or two before in the last six years.
5 That's all I recall, though. I don't think he was a
6 stranger.

7 Q. All right. In terms of Ron Gots and yourself,
8 have you men given referrals to each other in mold
9 defense work?

10 A. I don't know about referrals here. When
11 people ask me to do cases on the east coast, I try to
12 avoid it, and I will give a number of names, and Dr.
13 Gots is one of the names I mention on the east coast.

14 Q. And you feel he does likewise for you in terms
15 of west coast?

16 A. I hope not because I don't need the extra --
17 to do any more. So I don't know.

18 Q. You don't know either way?

19 A. No.

20 Q. I appreciate that.

21 Okay. In regard to this particular case, do
22 you know how you got involved -- and I mean to get past
23 the probably silly answer of I got called by a lawyer.
24 Do you know how they found you or what was involved
25 there?

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1 A. No, I'll make an assumption, which is not a
2 bad estimate, that Mr. Hayes knew me already.

3 Q. Okay. Now, since it's come up here today
4 about the April 20, 2006 version of your expert report
5 of Dr. Steven Hake in addition to the April 17 version,
6 are there any other drafts of anything sitting out
7 there?

8 A. No, that I could find.

9 Q. And I'm going to take your representation as
10 gold that the April 20th matches the April 17th. That's

11 my predicate.

12 In your computer anywhere, are there any
13 further drafts of either of your two papers?

14 A. No, because I looked in there, and the only
15 one I have is one of those, but since they were both in
16 my file, I brought them both.

17 Q. At any point in time, did you forward a draft
18 to counsel before a publication date as reflected in the
19 document, be it either April 17th, April 20th or
20 September 16th?

21 A. It's -- not generally, but if they ask me to
22 do it, I might have. I don't recall. Let me say I
23 would generally not because I don't like to give them
24 drafts.

25 Occasionally I'll do that if it's a

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1 declaration and something like where I say I don't
2 understand the format this is to be in and stuff but not

3 for scientific critique. So occasionally I've done

4 that, but I don't have any specific recollection.

5 Q. Have you ever -- in terms of that work in the

6 past with lawyers, have there been corrections or

7 changes to your reports that you've incorporated with

8 counsel?

9 A. Yes, again, in the sense that when I send

10 something like one of these rule -- federal things, it's

11 a matter of getting it in the format and answering the

12 questions because if there's things that don't make

13 sense, I'll fix it. It may sound like arrogance, but I

14 don't really find they're able to change one of my

15 opinions.

16 Q. Okay. Now, you met Dr. Hake?

17 A. Uh-huh.

18 Q. You have not met the other members of his

19 family, correct?

20 A. No.

21 Q. In regard to Dr. Hake, from your position as a

22 clinician, did you make any determination during the

23 giving of the history that he was somatic or he was a

24 malingerer or that he was not cooperating or that he was

25 over or understating?

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1 A. No.

2 Q. Okay.

3 A. Let me look at my report, but I don't think

4 so.

5 Q. You want me to get you a copy?

6 A. It's right here.

7 Q. All right.

8 A. No. The only, we'll say, issue of that ilk
9 was he still had some recurrent mood disorder but was
10 doing well.

11 Q. Okay. In terms of emotional or psychological
12 issues, did you make any determination as to whether
13 Doctor or any of the members of his family were
14 suffering from any type of emotional stressors as a
15 result of the problems occurring with the home? Did you
16 go in that area whatsoever?

17 A. Well, I read it. I didn't try to come to
18 conclusions about it, but clearly the records -- he had
19 a variety of issues in his life. So I was aware of
20 those, and he had depression with a variety of
21 stressors, work, family, illness stressors.
22 So he had those. It's in his record. I
23 didn't try to parse out that, and he had depression, and
24 it's been well treated at this time. He seemed pretty
25 good when I saw him.

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1 There's only one other thing I recall. One of
2 the people in the record had an issue of panic attacks.
3 I don't remember who it was.
4 Q. One of the children?
5 A. I don't recall.
6 Q. That's okay. And with regard to emotional
7 stressors, are you going to give any conclusions at the
8 time of trial about that?

9 A. I'm not planning on it. It's not my -- no.

10 Q. In terms of the symptomatology reported by
11 Doctor secondary to exposure, can you attribute -- will
12 you attribute any of his symptomatology as emotional
13 stressors as a result of what was happening to his
14 family and his home?

15 MR. HAYES: Vague and ambiguous, calls for
16 speculation.

17 MR. DUFFY: I agree it does. Let me add to
18 that because I think it does.

19 Q. In terms of being out of their house, the home
20 having to be fixed, just the family being kept from a
21 routine?

22 A. It clearly didn't help him with his overall
23 depression, which I said he had business problems, he
24 had health problems, and then it upset his life, of
25 course, but I didn't focus on that.

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1 Q. All right. And you didn't utilize the DSM for
2 any type of analysis of him from an emotional or
3 psychological point?

4 A. No, I said he was depressed, but the records
5 say all that he's been treated for. So I didn't think
6 it was necessary.

7 Q. I'm asking a bunch of questions that somebody
8 else wrote.

9 A. No, I don't mind. I'm just saying -- because
10 I often do do that when it's not been addressed
11 somewhere else.

12 Q. When you were at UCLA, were you ever a
13 full-time professor?

14 A. Thirty years. I'm now a part-time professor.

15 Q. And how much clinical practice did you have
16 hands on with patients in mold exposure matters?

17 A. So to get at that, 20 percent of my time was
18 patient matters, and since most allergic patients who
19 see us have mold issues, they're routine. You know,
20 varying up to the rare AFS, I would say a lot.

21 I mean, a lot of the patients over the last
22 three years deal with mold issues because it's part of

23 the general allergy immunology community, besides the
24 fact that I have a particular interest in immune
25 deficiencies and infections with mold, which is not that

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1 relevant.

2 Q. Are you still hands on in terms of clinical
3 with patients?

4 A. Yes.

5 Q. Now, in this case, you and Dr. Gots are both
6 being retained by the defendant's side. Have there been
7 other occasions, to your knowledge, where you and Dr.
8 Gots have been on the same side in a case?

9 A. Once that I recall.

10 Q. What case was that that you recall?

11 A. What I recall is we met Dr. Craner in a room
12 in California, and Dr. Gots was there. That's the only
13 time I've ever met Dr. Gots, and the case was Spectrum,
14 something called Spectrum.

15 Q. Spectrum Condominiums in Santa Ana?
16 A. That's more than I remember.
17 Q. That would have been CHKAI ex Robertson's case?
18 A. Mr. CHKrobinson I remember, and Dr. Gots was
19 there, and that's the only time I met Dr. Gots, and
20 that's the only case I recall we've been on.
21 You know, I take that -- and then I think over
22 the years there's been one or two cases where his firm
23 has asked me to write something, but I can't be sure if
24 Dr. Gots was on those cases or not, you know, I like write
25 a report on general aspects of mold.

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1 Q. ICTM, his company, asked you to write --
2 A. Yes, there's been a couple of times over the
3 last six years where they said, "You know, write us" --
4 it's sort of like a rehash, I'll say, of what mold does
5 and doesn't do. I said, "Read the paper."
6 Q. And has that been for specific litigation

7 matters?

8 A. I think so, but I don't remember the cases. I
9 didn't do the kind of review here. I looked at the
10 cases, looked over the details, as I recall.

11 Q. Would those have been defense side mold cases?

12 A. I am pretty sure they were. The reason I
13 bring it up is he could have been involved. He might
14 not have been. I don't recall. There's another lady
15 named Pirages at his company, I think, who contacted me.

16 Q. That's right. There is a lady by that last
17 name in his company.

18 A. Did I say it right?

19 Q. Yes, close enough.

20 A. Good.

21 Q. And in regard to the paper or the writing you
22 provided to ICTM, is that something you can get your
23 hands on?

24 A. No, I'll call it routine stuff. I don't keep
25 them. It wasn't anything special.

1 Q. Here in Nevada, have you had the opportunity
2 in a mold-related case to testify before?

3 A. I'm looking because you surprised me when you
4 told me I was in Minnesota, and to my knowledge, I'll
5 say never been in Nevada before, though they may have
6 taken my deposition in California, and it was counted as
7 Nevada.

8 Q. Were you ever retained in regard to work on
9 the Pahrump Justice Center in Nye County?

10 A. Where?

11 Q. Nye County is the county north of here with
12 the Pahrump Justice Center.

13 A. I don't think so.

14 Q. You don't recall ever being retained and then
15 let go by a law firm there?

16 A. No. It's more likely they called me, and I
17 told them I couldn't do it.

18 Q. All right. Doctor, something has come up.
19 Can we take a couple minutes for a second?

20 A. Sure.

21 MR. DUFFY: I apologize, guys. We're going to

22 take a quick break.

23 (Recess taken.)

24 BY MR. DUFFY:

25 Q. Doctor, you want to make a correction of some

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1 kind?

2 A. Well, you showed me a paper by Robbins that
3 you said may have been excluded, and you said it was the
4 one that we cited in our article. I think it was a
5 different one that we cited.

6 If you look at the one in the Bush article
7 itself, it's Robbins, Swenson and Hardin. Risk From
8 Inhaled Mycotoxins in Indoor Office and Residential
9 Environments is the title. I thought the one you showed
10 me had a different title.

11 Q. No, it's the same title.

12 A. Oh, it just went by quickly.

13 Q. The same title.

14 A. Okay.

15 Q. Here you did an independent medical evaluation
16 in regard to Dr. Hake. In regard to mold-related
17 litigation prior to this particular evaluation of him,
18 how many times have you done that on the defense side in
19 a litigation-related matter?

20 A. Let me answer in cases or actually -- some
21 case might do 30 people. So how do you want it
22 answered?

23 Q. What's easiest for you?

24 A. Probably in cases.

25 Q. So cases.

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1 A. I would say that comes up, you know, in the
2 hundred cases that come across my desk probably 25
3 times, but many of those go nowhere. So I'd say in ones
4 that have some substance to them, at least about half of

5 the time.

6 Q. I'm talking about litigation matters where,
7 you know, you were on the opposite side of the
8 plaintiff?

9 A. Yes, that's what I'm talking about.

10 Q. About a quarter of the time?

11 A. Well, again, half of those are so superficial
12 it doesn't get to the point where you'd even get there.
13 So, you know, you look at a record. They don't need it.
14 So where it would come to the point where they want to
15 know more information, I'd say half of the time.

16 Q. Okay. About half the time?

17 A. And that's an estimate.

18 Q. Okay. In regard to the CHKHair litigation in
19 North Carolina, the 16 plaintiffs that were in that
20 case, you didn't see any of them?

21 A. That's right.

22 Q. So go to Page 8 of your original report.
23 Let's just use that as a start. As to those plaintiffs
24 after that North Carolina matter -- well, here, you also
25 didn't see any of the Rice family, the mom, the dad or

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1 the five children?

2 A. That's right.

3 Q. Okay. Start from 13 in the Rice case and go
4 all the way down. Which of those individuals did you do
5 IMEs of, if any, other than the Rice case and Number 17?

6 A. I would think I did on Achin, I did on
7 CHKLoren, a number of them. There were a large number
8 of people there. The CHKMetavoy is a patient of mine.
9 So that's not relevant.

10 So going down, Harold -- I don't recall if I
11 did. I don't recall on Harold. Geit I did. O'Connor
12 was not relevant again.

13 Q. That's all right.

14 A. And Gorman I was not related, you know, to the
15 medical stuff. So it would have been not appropriate,
16 and Harold is the same one. So there you go. It's
17 about half.

18 Q. In each of these, was it at the request of the

19 lawyers that you do it, or was it at your request that
20 it be done?

21 A. It's a hard thing to answer in the sense
22 that -- well, what I meant is, you know, I'm happy to do
23 them. I like to do them. Sometimes they ask me to do
24 them. Sometimes I say I don't really need to like in
25 this case, say it will help round things out a bit. So

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1 it's a joint decision.

2 As I said a number of times, I don't really
3 need to. There's not much I'm going to learn for the
4 effort, but -- so it varies. I mean, I never do it
5 without the lawyer agreeing a request obviously. CHK

6 Q. Okay. At any time while you were doing your
7 mold litigation work on the defense side while
8 affiliated with UCLA, who was your immediate supervisor
9 at UCLA?

10 A. Dr. CHKAI an Fogelman.

11 Q. And other than Dr. Fogelman, who else did you
12 have to report to?

13 A. I mean, that's the chain of command. I mean,
14 you could go up to CHKGerald Levy, the dean, or the
15 chancellor.

16 Q. Let's start with Dr. Fogelman. What was his
17 title in the last few years?

18 A. The chairman of the department of medicine.

19 Q. And at UCLA, did the chairman of the
20 department of medicine -- was he aware that the
21 consulting legal work you were doing in mold cases was
22 all on the defense side?

23 A. Sure. I don't think I informed him what side
24 I was doing. So I don't think it really came up. I
25 think he was probably aware of that for other reasons,

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1 but I can't promise it.

2 Q. But you never specifically told him?

3 A. There's no reason to.
4 Q. So the answer to my question would be no?
5 A. Your question was did I ever tell him?
6 Q. Yes.
7 A. The answer is no.
8 Q. Prior to your involvement in the ACOEM paper,
9 had you ever personally conducted independent or funded
10 research on mold health effects?
11 A. Sure. I mean, again -- can you read the
12 question back, independent or something?
13 Q. Or funded research.
14 A. I'm not sure what you mean by "research." I
15 didn't have a grant to study mold, but I studied, you
16 know, diseases related to mold, yeah.
17 Q. Did you generate a peer-reviewed paper as a
18 result of that independent or funded research?
19 A. Sure.
20 Q. Okay. Prior to ACOEM?
21 A. Yes, but it's infections with mold.
22 Q. Okay. Allergenic responses to mold?
23 A. No. Allergy is just part of the regular
24 allergy picture.

25 Q. So the answer to my question would be no?

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1 A. No, nothing special to mold as an allergen.

2 Q. Okay. Thank you.

3 At the time that you were asked to do the
4 ACOEM article with Kelman and Hardin, did you disclose
5 to ACOEM that you had served exclusively on the defense
6 side of mold litigation?

7 A. I would have done something like I said here.
8 I've served in mold litigation defense of, or, you know,
9 I have been retained by plaintiffs a couple of times.
10 So -- but I don't know what I disclosed to them. I
11 disclosed something. So I wouldn't recall, too long
12 ago.

13 Q. Okay. Were you paid for your time in
14 connection with the ACOEM paper?

15 A. No.

16 Q. Was UCLA compensated for your time in

17 connection with the ACOEM paper?

18 A. No.

19 Q. After the ACOEM paper was released, was there

20 a difference from your view in the number of mold

21 litigation cases that you handled? Was there any

22 increase, decrease?

23 A. I didn't see a change.

24 Q. Do you have any specific formal training in

25 the area of occupational medicine?

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1 A. Only as all immunologists and allergists do

2 because occupational asthma, occupational lung

3 diseases -- there are a number of occupational

4 diseases that are included that I teach. In fact, I

5 taught occupational aspects of mold for 20 years to the

6 graduate students.

7 Q. But you do not have a specialty in

8 occupational medicine?

9 A. No.

10 Q. Are you familiar with a company called

11 Global Tox?

12 A. Yes.

13 Q. Have you had any work or affiliation with

14 Global Tox at any time?

15 A. Only that I know that Dr. Kelman was -- worked

16 at Global Tox. So my association with writing with Dr.

17 Kelman is the only association, none other.

18 Q. You're aware that Coreen Robbins is also

19 affiliated with Global Tox?

20 A. Yes. I think the name has changed, just for

21 the record.

22 Q. It's called Veri Tox.

23 A. Yes, Veri Tox.

24 Q. Do you still keep up with Hardin and Kelman at

25 all?

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1 A. No.

2 Q. When did you lose track of these men?

3 A. I didn't lose track of them. We never kept
4 up. You know, I contact them as much as I ever did,
5 which is I might bump into them once every six months.

6 Q. Prior to the publishing of the ACOEM paper,
7 were you aware of any writings of Dr. Gots urging
8 occupational medicine physicians to, quote-unquote, take
9 a position that mold is not valid?

10 A. No.

11 Q. Are you aware of any of his writings prior to
12 2002, the release of the ACOEM paper, where he advised
13 occupational medicine physicians to take a position on
14 mold?

15 A. No.

16 Q. And in regard to Dr. Gots, did he have any
17 involvement whatsoever with you, Hardin or Kelman during
18 the preparation of the ACOEM paper?

19 A. I'd say for me absolutely not, and I have no
20 knowledge on the others.

21 Q. Okay.

22 A. They didn't say he did. So I have no positive

23 information.

24 Q. Do you know if Kelman or Hardin had ever
25 worked for Dr. Gots?

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1 A. No idea.

2 Q. Dr. Hardin is affiliated with Global Tox, are
3 you aware?

4 A. I am now.

5 Q. Now called Veri Tox?

6 A. Veri Tox, yes.

7 Q. All right. Do you know a doctor by the name
8 of CHKDaniel Sadakin?

9 A. Yes.

10 Q. Is he also with Global Tox?

11 A. I don't know.

12 Q. He is another doctor, MD, out of Oregon that
13 testifies on the defense side of mold matters?

14 A. I know who he is, I'm saying, but I don't know

15 if he's related to that company.

16 Q. Do you know that that's what he does in terms
17 of mold litigation? He testifies exclusively on the
18 defense side?

19 A. I don't know that. I didn't know that, no.

20 Q. Okay. In terms of ICTM, Dr. Gots' company and
21 GlobalTox, were you aware prior to your work on the
22 ACOEM paper that both organizations held themselves out
23 on their web sites as organizations that provided
24 assistance to the insurance defense litigation industry?

25 A. I was not aware. I've never been aware of

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1 that, never looked at their web sites. So I have no
2 knowledge.

3 Q. Okay. By count, you have approximately 180
4 peer-reviewed publications in your time, correct?

5 A. Probably.

6 Q. And the only two publications that make

7 specific reference to mold in the titles and in terms of
8 the thesis statements are the ACOEM paper and the
9 February 2006 paper that we've discussed here today?

10 A. Correct.

11 Q. In regard to the collection of samples by
12 bulk, swab, air or tape, are you going to render any
13 opinions at this trial in terms of that methodology? Is
14 that something you get into at all?

15 A. The methodology for obtaining them?

16 Q. Right.

17 A. No.

18 Q. In regard to interpretation of results and
19 samples, are you going to comment at this trial about
20 that?

21 A. I may.

22 Q. Okay. In what regard?

23 A. In regard to respirable air samples and the
24 levels that were seen in the air samples.

25 Q. And what is your background to be able to so

1 comment?

2 A. Training in the aspects of aerobiology that
3 all of us allergists get in our formal training
4 including identification of mold spores up through the
5 use of these for the last 30 years, 20 years.

6 Q. Do you know CHK Chin Yang?

7 A. I know the name. I do not know him. I think
8 I know who Chin Yang is.

9 Q. Microbiologist/mycologist?

10 A. A laboratory mycologist.

11 Q. Yes.

12 A. Yes.

13 Q. Have you ever heard of Aspergillus and/or
14 Penicillium genus referred to as signature species or
15 water damage indicator species?

16 A. No, because that I think would be incorrect
17 because they're not water damage species. There are
18 others that are, but Aspergillus and Penicillium are
19 normal residents of CHK__ homes that are not water
20 damaged. So I would be surprised to use that term for

21 those.

22 Q. You don't think that Aspergillus and
23 Penicillium genus make reference to or indicate water
24 damage issues inside of indoor environments?

25 A. The mere presence of those two molds,

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1 absolutely not. They're present in homes, normal homes.

2 Q. Do you know what Dr. Gots' view is of that?

3 A. No.

4 Q. You don't know if his view is different than
5 what you've just enunciated?

6 A. No, I don't.

7 MR. DUFFY: Okay, Doctor, good to see you
8 again. Pass you as a witness.

9 MR. HAYES: Anybody have any questions?

10 MR. HETTY: I would just like to have his file
11 marked so that we have everything in here.

12 MR. HAYES: That's fine. What next in order

13 are we?

14 THE REPORTER: 65.

15 MR. HAYES: Put that on there. It will be on
16 the black binder, and we'll copy everything.

17 MR. BALMER: On one of the breaks, I checked
18 the depository. That has not been deposited.

19 MR. HETLEY: I think it's been fairly routine
20 that most of the experts in this case have shown up to
21 depositions with job files not previously deposited.

22 However, the document that you referenced when
23 you were being questioned by Mr. Duffy about your
24 opinions relative to Mrs. Hake and the three Hake
25 children -- are they present in that black binder?

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1 A. Yes.

2 MR. HETLEY: Okay, thank you.

3 MR. HAYES: Just before we close the record
4 out, we're going to make a copy of this, and it's going

5 to be part of the transcript, but we'll also put a copy
6 in the depository, should put a copy in the depository.

7 (Exhibit 65 was marked.)

8 (Adjourned at 3:35 p.m.)

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Deposition_Hake__Saxon_and_Gots. txt

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