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NO. 08-13423

SON TRAN and TRAM DO,	X	IN THE DISTRICT COURT
Individually and as Next	X	
Friends of Hannah Tran, a	X	
Minor,	X	
Plaintiffs,	X	
	X	
vs.	X	DALLAS COUNTY, TEXAS
	X	
THERESA M. PATTON, M.D.,	X	
THERESA M. PATTON, M.D.,	X	
P.A.; and METHODIST	X	
HOSPITALS OF DALLAS d/b/a	X	
METHODIST DALLAS MEDICAL	X	
CENTER	X	
Defendants	X	L-193rd JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
GARY DONOVITZ, M.D.
January 15, 2010

ORAL AND VIDEOTAPED DEPOSITION OF GARY DONOVITZ, M.D.,
produced as a witness at the instance of the Plaintiffs,
and duly sworn, was taken in the above styled and
numbered cause on January 15, 2010, from 2:13 p.m. to
3:41 p.m., before JUDY K. HOBART, CSR in and for the
State of Texas, reported by machine shorthand at STEWART
STIMMEL, 1701 N. Market Street, Suite 200, Dallas, Texas
75202, pursuant to the Texas Rules of Civil Procedure
and the provisions attached herein.

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EXHIBITS

NUMBER	DESCRIPTION		IDENTIFIED
1	Subpoena	Page	5
2	"Ethical Issues Related to Expert Testimony by Obstetricians and Gynecologists."	Page	6
3	AMA policy	Page	6
4	Girards letter of 6/9/99	Page	9
5	Donovitz letter of 6/17/99	Page	10
6	TMLT letter of 9/10/99	Page	11
7	Girards letter of 3/15/00	Page	14
8	Girards letter of 9/12/00	Page	15
9	Donovitz letter of 10/30/00	Page	15
10	Donovitz letter of 5/10/01	Page	15
11	Rule 194 Disclosure	Page	40
12	Memo from Judy Roseborough 2/12/02	Page	40
13	Girards letter of 3/12/02	Page	42
14	Donovitz letter of 3/12/02	Page	42
15	Girards letter of 3/13/02	Page	48
16	Stewart Stimmel letter of 3/15/02	Page	49
17	Stewart Stimmel letter of 3/18/03	Page	49
18	Girards letter of 5/7/02	Page	49
19	Girards letter of 7/8/03	Page	49

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RESERVED FOR SIGNED AGREEMENTS PAGE

1 GARY DONOVITZ, M.D.,
2 having been first duly sworn to testify the truth, the
3 whole truth, and nothing but the truth, testified as
4 follows:

5 BY MR. GIRARDS:

14:15:12 6 Q. Will you tell me your full name, please.

14:15:14 7 A. Gary Steven Donovanitz.

14:15:15 8 Q. What do you do for work?

14:15:16 9 A. I'm a gynecologist.

14:15:18 10 Q. Have you received your subpoena for today?

14:15:22 11 A. Yes, sir.

14:15:23 12 Q. Let me show you what has been marked Donovanitz
14:15:23 13 1.

14:15:27 14 (Deposition Exhibit Number 1 identified.)

14:15:27 15 Q. (By Mr. Girards) Is that the subpoena that --
14:15:28 16 a copy of the subpoena that you received?

14:15:32 17 A. Yes, sir.

14:15:33 18 Q. There is a list of things I asked you to bring
14:15:36 19 on that. Have you brought anything to the deposition
14:15:40 20 today?

14:15:40 21 A. No. I looked for the things that you asked,
14:15:43 22 but I don't have any of them.

14:15:49 23 Q. Okay. Have you done anything in order to
14:15:51 24 prepare for the deposition today?

14:15:55 25 A. No, other than just a meeting with my attorney.

14:15:58 1 Q. Have you reviewed any materials at all for
14:16:00 2 today?

14:16:00 3 A. No.

14:16:00 4 Q. Have you met with any representatives of the
14:16:04 5 Texas Medical Liability Trust company?

14:16:07 6 A. No.

14:16:07 7 Q. Are you still a TMLT insured as we are sitting
14:16:10 8 here right now?

14:16:10 9 A. Yes.

14:16:12 10 Q. Doctor, you have in the past reviewed records
14:16:19 11 as a licensed physician in the specialty of obstetrics
14:16:23 12 and gynecology for patients that believe they may have
14:16:27 13 been injured by medical malpractice?

14:16:30 14 A. Yes.

14:16:30 15 Q. Let me show you what I have marked as Donovanitz
14:16:38 16 Exhibits 2 and 3.

14:16:40 17 Deposition Exhibits Nos. 2-3 identified.)

14:16:40 18 MR. BELL: Thank you.

14:16:47 19 Q. (By Mr. Girards) I just brought those for your
14:16:52 20 reference. Exhibit 2 is the ethics opinion from ACOG
14:16:57 21 related to expert witness testimony. Have you seen that
14:17:00 22 before?

14:17:01 23 A. Yes, sir.

14:17:02 24 Q. Exhibit 3 is the AMA statement on medical
14:17:07 25 testimony. Have you seen that before?

14:17:12 1 A. No, sir.

14:17:12 2 Q. Are you a member of ACOG?

14:17:15 3 A. Yes, sir.

14:17:15 4 Q. Were you a member of ACOG in the years 1999
14:17:20 5 through 2002?

14:17:21 6 A. Yes, sir.

14:17:22 7 Q. ACOG -- ACOG ethical guidelines says that an
14:17:28 8 obstetrician/gynecologist has a legal and moral duty to
14:17:33 9 provide expert witness testimony in appropriate cases.
14:17:36 10 I highlighted that part on, I believe, Page 2 of that
14:17:40 11 document, and it has some of the ACOG's official
14:17:45 12 position on providing medical expert testimony.

14:17:47 13 A. There is nothing highlighted on Page 2, sorry.

14:17:51 14 MR. BELL: Okay.

14:17:53 15 Q. (By Mr. Girards) If I didn't highlight this
14:17:56 16 then I will direct your attention to line -- that must
14:18:00 17 be on Page 1. Oh, there it is right here, highlighted
14:18:05 18 on the right column there (indicating).

14:18:07 19 Would you just read that highlighted
14:18:10 20 sentence for me, please.

14:18:11 21 MR. BELL: Excuse me. Let me object to
14:18:11 22 the form of the question and to the sidebar comment. Go
14:18:15 23 ahead.

14:18:16 24 A. (By the Witness) "The moral and legal duty of
14:18:19 25 physicians to testify before a court of law in

14:18:20 1 accordance with their expertise is recognized."

14:18:22 2 Q. (By Mr. Girards) Now, back when you were doing
14:18:26 3 reviews of patient care in the late '90s and early 2000s
14:18:31 4 you were doing that, I take it, in part to meet your
14:18:36 5 moral and ethical duties as a licensed physician and
14:18:40 6 obstetrician/gynecologist to provide expert witness
14:18:45 7 testimony in appropriate cases?

14:18:47 8 MS. SHAW: Objection; form.

14:18:47 9 A. (By the Witness) Yes.

14:18:47 10 MR. BELL: May we have an agreement, so as
14:18:53 11 to not be disruptive, objection by one good for
14:18:53 12 everyone?

14:18:53 13 MR. GIRARDS: No. Sorry.

14:18:57 14 MR. BELL: Okay. Object to form.

14:18:57 15 Q. (By Mr. Girards) Now, when you did the medical
14:19:02 16 reviews you provided truthful testimony, did you not?

14:19:10 17 A. Yes.

14:19:10 18 Q. You provided testimony that was limited to your
14:19:16 19 area of expertise; true?

14:19:18 20 A. Yes.

14:19:19 21 Q. You made sure that your opinions were based on
14:19:26 22 both reasonable medical probability and on the
14:19:30 23 prevailing standards of care at the time of the
14:19:32 24 treatment that was in question; is that true?

14:19:35 25 A. True.

14:19:35 1 Q. When did you first start reviewing records for
14:19:51 2 attorneys for patients who thought they may have been
14:19:54 3 injured by medical malpractice and/or physicians or
14:19:58 4 hospitals that had been sued based on an allegation of
14:20:02 5 medical malpractice?

14:20:04 6 A. I don't remember the exact date.

14:20:06 7 Q. What is your best approximation?

14:20:10 8 A. Sometime in the late '90s, probably.

14:20:13 9 Q. Let me show you what has been marked as
14:20:23 10 Donovanitz Exhibit Number 4.

14:20:27 11 (Deposition Exhibit Number 4 identified.)

14:20:30 12 Q. (By Mr. Girards) Do you recognize Donovanitz
14:20:37 13 Exhibit Number 4 as a letter that I sent to you back in
14:20:38 14 1999 related to the medical care of a patient named
14:20:44 15 Shelby Marquardt?

14:20:47 16 A. I mean I don't remember the letter
14:20:48 17 specifically, but it is addressed to me, yes.

14:20:51 18 Q. Okay. Now, do you recall back in 1999 you and
14:20:55 19 I had a phone conversation and you agreed to review the
14:20:58 20 medical care for the purpose of determining whether
14:21:02 21 Shelby Marquardt had been injured due to substandard
14:21:06 22 medical care?

14:21:06 23 A. Yes.

14:21:07 24 Q. And that is just one of the letters from the
14:21:09 25 file where I sent you medical records. Do you see that?

14:21:13 1 A. Yes, sir.

14:21:13 2 Q. You agreed to review the case and provide that
14:21:19 3 expert witness testimony if you thought that substandard
14:21:22 4 care had been rendered and injured this baby?

14:21:25 5 A. Yes.

14:21:26 6 Q. Let me show you what has been marked Donovan
14:21:34 7 Exhibit Number 5.

14:21:34 8 (Deposition Exhibit Number 5 identified.)

14:21:35 9 Q. (By Mr. Girards) It is a letter from June of
14:21:38 10 1999 signed by you, addressed to me; is that true?

14:21:42 11 A. Yes, sir.

14:21:42 12 Q. And is that a letter that you wrote based on
14:21:49 13 your findings of your review of the medical care of
14:21:53 14 Shelby Marquardt?

14:21:53 15 A. Yes, sir.

14:21:54 16 Q. And do you recognize your signature?

14:21:57 17 A. Yes, sir.

14:21:58 18 Q. And then you confirmed that Shelby Marquardt
14:22:09 19 had been injured by substandard obstetrical care?

14:22:12 20 MR. BELL: Object to form.

14:22:15 21 Q. (By Mr. Girards) Is that true?

14:22:15 22 A. I would have to reread the letter just to see
14:22:18 23 what I said but.....

14:22:18 24 (Witness reading.)

14:22:22 25 Yes, sir.

14:22:22 1 Q. And then you recognize your letterhead?

14:22:24 2 A. Yes, sir.

14:22:28 3 Q. And you agreed to testify as a witness in the
14:22:32 4 case on medical standards of care related to the labor
14:22:36 5 and delivery of that child?

14:22:38 6 A. Yes, sir.

14:22:39 7 Q. Let me show you what has been marked Donovanitz
14:22:42 8 Exhibit Number 6, a letter from September 1999 from Bob
14:22:47 9 Fields, with Texas Medical Liability Trust.

14:22:43 10 (Deposition Exhibit Number 6 identified.)

14:22:43 11 Q. (By Mr. Girards) Do you recognize that letter?

14:22:51 12 A. Not this letter specifically, but I can read
14:22:55 13 it.

14:22:55 14 Q. Please take moment and read that letter. What
14:22:57 15 I would like to know is if you received that letter, or
14:23:00 16 if you received a letter similar to that, even if it is
14:23:04 17 not identical.

14:23:34 18 A. (Witness examines documents.)

14:23:35 19 I don't remember this letter specifically
14:23:37 20 at all, so I can't say.

14:23:38 21 Q. Did you have a moment here to review the
14:23:41 22 content or subject matter of the letter?

14:23:44 23 A. Yes.

14:23:44 24 Q. It is a letter where TMLT is wanting their
14:23:51 25 physicians to refuse to review cases -- potential

14:23:55 1 medical cases for injured patients?

14:23:57 2 MR. BELL: Objection; form.

14:23:59 3 MS. SHAW: Objection; form.

14:24:01 4 Q. (By Mr. Girards) Did I state that accurately?

14:24:04 5 A. Yes.

14:24:04 6 MR. BELL: Objection; form.

14:24:05 7 MS. SHAW: Objection; form, misleading.

14:24:08 8 Q. (By Mr. Girards) Do you recall receiving

14:24:11 9 letters similar to that where TMLT discouraged or

14:24:16 10 prohibited you from reviewing cases for medical

14:24:22 11 malpractice patients?

14:24:23 12 MR. BELL: Objection; form.

14:24:24 13 MS. SHAW: Form.

14:24:25 14 A. (By the Witness) No, they didn't prohibit me

14:24:28 15 from.....

14:24:29 16 Q. (By Mr. Girards) They discouraged you?

14:24:30 17 MR. BELL: Objection; form.

14:24:32 18 A. (By the Witness) They may have discouraged me

14:24:36 19 at one time, but they didn't prohibit me.

14:24:38 20 Q. (By Mr. Girards) So are you saying that you

14:24:40 21 recall receiving letters similar to the one you hold in

14:24:43 22 your hand with some type of similar theme or similar

14:24:45 23 words?

14:24:46 24 MS. SHAW: Form.

14:24:46 25 Q. (By Mr. Girards) Even if it is not that

14:24:50 1 identical letter?

14:24:50 2 MR. BELL: Objection.

14:24:53 3 A. (By the Witness) Well, I don't remember, you
14:24:53 4 know, a letter that looks like this letter. I mean they
14:24:54 5 discouraged me at one time. That is all I can remember.
14:24:56 6 It is a long time ago.

14:24:58 7 Q. (By Mr. Girards) Sure. Who was your insurance
14:25:03 8 adjuster at TMLT in the 1999-2000 timeframe?

14:25:07 9 MS. SHAW: Objection; form, privileged.

14:25:07 10 MR. BELL: Well, let me give you an
14:25:09 11 instruction I may give you later in this deposition. To
14:25:13 12 the extent that that relates to cases in which you were
14:25:18 13 being defended in your own lawsuit, or cases in which
14:25:21 14 you were consulting only and not testifying expert, I am
14:25:25 15 going to instruct you not to answer that. Outside of
14:25:28 16 that, you can answer.

14:25:28 17 A. (By the Witness) I don't remember who the
14:25:30 18 adjuster was to tell you the truth.

14:25:34 19 Q. (By Mr. Girards) Who was your contact person
14:25:34 20 with TMLT in the 1999-2002 time frame?

14:25:39 21 A. That is what I am saying. I don't remember who
14:25:41 22 that was at that time because it is different now.

14:25:45 23 Q. Who is it now?

14:25:48 24 MS. SHAW: Objection; form.

14:25:48 25 A. (By the Witness) (Inaudible.)

14:25:48 1 THE COURT REPORTER: I'm sorry.

14:25:48 2 Freddy.....

14:25:48 3 A. (By the Witness) Not Freddy. Ray, R-A-Y

14:25:53 4 Godine, G-O-D-I-N-E.

14:25:56 5 Q. (By Mr. Girards) Do you recall who it was

14:25:56 6 before Ray Godine?

14:25:58 7 A. No, I just don't recall.

14:26:21 8 Q. Was your contact person with Texas Medical

14:26:21 9 Liability Trust ever Shawn McDaniel at any time?

14:26:21 10 A. Not that I remember.

14:26:21 11 Q. What about Brenda Alvaredo?

14:26:21 12 A. Not that I remember.

14:26:21 13 Q. What about David Strickland?

14:26:21 14 A. Not that I remember.

14:26:27 15 Q. Steve Hampton?

14:26:27 16 A. Not that I remember.

14:26:27 17 Q. Dianne Ott?

14:26:30 18 A. Dianne Ott rings a bell. The name does.

14:26:34 19 Q. What about David Peabody?

14:26:36 20 A. No.

14:26:41 21 (Deposition Exhibit Number 7 identified.)

14:26:41 22 Q. (By Mr. Girards) Let me show you what I have

14:26:44 23 marked as Donovan Exhibit Number 7, another transmittal

14:26:47 24 letter from my office sending you more records on the

14:26:52 25 Marquardt case. Do you recognize them?

14:26:55 1 A. I mean I recognize the case against Dr. Adami,
14:26:59 2 sure, but I don't recognize this letter specifically.

14:27:02 3 Q. What about Donovan Exhibit No. 8, another
14:27:02 4 transmittal letter of records to you.

14:27:05 5 (Deposition Exhibit Number 8 identified.)

14:27:13 6 A. (By the Witness) It is the same case, yes.

14:27:15 7 Q. (By Mr. Girards) Let me show you Donovan
14:27:19 8 Exhibit Number 9.

14:27:19 9 (Deposition Exhibit Number 9 identified.)

14:27:19 10 Q. (By Mr. Girards) Will you tell me what
14:27:20 11 Donovan Exhibit Number 9 is.

14:27:22 12 A. It is a letter dated October 30th, 2000,
14:27:27 13 written to you.

14:27:29 14 Q. That is your final designation report in the
14:27:34 15 Marquardt case designating you as an expert witness and
14:27:38 16 revealing the full extent of your opinions?

14:27:41 17 MR. BELL: Objection.

14:27:41 18 A. (By the Witness) Yes, sir.

14:27:43 19 Q. (By Mr. Girards) And you recognize your
14:27:44 20 signature on it as well as the letterhead?

14:27:46 21 A. Yes, sir.

14:28:04 22 Q. Let me show you what has been marked Donovan
14:28:11 23 Exhibit Number 10.

14:28:11 24 (Deposition Exhibit Number 10 identified.)

14:28:11 25 Q. (By Mr. Girards) Will you tell me what

14:28:12 1 Donovaniz Exhibit Number 10 is?

14:28:16 2 A. It is a letter -- it was a personal letter
14:28:18 3 written to Les Weisbrod and David Norton.

14:28:20 4 Q. It is dated May 10, 2001?

14:28:23 5 A. Yes, sir.

14:28:24 6 Q. And you had reviewed and been designated as an
14:28:31 7 expert and testifying witness in cases brought by Les
14:28:36 8 Weisbrod and David Norton?

14:28:38 9 A. Yes.

14:28:38 10 Q. How long -- how many cases do you recall that
14:28:42 11 you had reviewed for Mr. Weisbrod?

14:28:47 12 A. I don't know the total number. I reviewed
14:28:51 13 quite a few.

14:28:53 14 Q. Do you recall how many cases you have testified
14:28:56 15 in as a witness in the case?

14:28:59 16 A. In terms of giving deposition?

14:29:02 17 Q. Yes, sir.

14:29:02 18 A. Or in terms of an expert? I am not sure what
14:29:05 19 your question is.

14:29:05 20 Q. In giving deposition or trial testimony.

14:29:09 21 A. No. I can't remember. I don't know if we ever
14:29:16 22 actually ever took depositions. I was an expert a few
14:29:20 23 times.

14:29:21 24 Q. Let's look at the letter that you wrote to
14:29:24 25 Mr. Weisbrod on May 10, 2001.

14:29:25 1 A. Okay.

14:29:26 2 Q. This is a correct copy of the letter. This is
14:29:28 3 your signature and everything; correct?

14:29:30 4 A. Yes, sir.

14:29:30 5 Q. And it says "Well, the party is over. I have
14:29:33 6 been in a three-month war with TMLT."

14:29:37 7 Did I read that correctly?

14:29:37 8 A. Yes, sir.

14:29:38 9 Q. Explain to me what your three-month war with
14:29:42 10 TMLT was about.

14:29:45 11 A. Well, there was some concern about me being an
14:29:52 12 expert witness and on the plaintiff's side, and working
14:30:01 13 with Les, so they kind of felt like we had a conflict of
14:30:06 14 interest and they were sort of a co-op, and I was part
14:30:09 15 of the co-op, and I really wasn't being a team player.

14:30:13 16 So they said, "Well, you know, we are not
14:30:16 17 going to stop you from doing expert work. We just think
14:30:20 18 that it is probably better that you are not part of the
14:30:22 19 co-op and that that way you can do whatever you want to
14:30:29 20 do because it is not good for the team.

14:30:32 21 So that is really what the war was about.

14:30:36 22 Q. And that is what TMLT explained to you?

14:30:40 23 A. Yes.

14:30:40 24 Q. Who was it at TMLT that explained that to you?

14:30:44 25 A. Well, that is what I can't remember who -- I

14:30:45 1 don't know who it was.

14:30:47 2 Q. Do you remember if it was a man or a woman?

14:30:53 3 A. This was back in '01. I'm not sure. I can't
14:31:01 4 remember having a woman, but it could have been.

14:31:03 5 Q. So the basis of the war with TMLT was that you
14:31:08 6 were reviewing cases for injured patients and testifying
14:31:11 7 about that, and they didn't want you to do that anymore;
14:31:16 8 true?

14:31:16 9 MR. BELL: Object.

14:31:18 10 A. (By the Witness) Repeat your question one
14:31:20 11 more time.

14:31:20 12 Q. (By Mr. Girards) The war was about the fact
14:31:22 13 that you had been testifying as a witness in official
14:31:28 14 proceedings on behalf of injured malpractice patients
14:31:30 15 and TMLT did not want you to do that anymore; true?

14:31:35 16 MR. BELL: Objection; form.

14:31:35 17 A. (By the Witness) Well, I think they -- they
14:31:39 18 didn't say "You know what, you can't do that anymore."
14:31:41 19 They just said, you know, "We are a co-op. We're sort
14:31:41 20 of all partners in this thing, and in -- you are going
14:31:44 21 to be a partner in a co-op and then you are going to
14:31:48 22 testify in cases against your own co-op, it is not going
14:31:52 23 to -- it is not going to work."

14:31:52 24 So, but they didn't say don't do it. They
14:31:56 25 just said, you know, "We are going to have to terminate

14:31:59 1 you as a -- if you are going to do it, then, you know,
14:32:02 2 you can't be part of the co-op."

14:32:05 3 Q. They didn't want you to do it and said
14:32:07 4 something to the effect of "You can do it if you want
14:32:11 5 to, but you can't be insured by us anymore"?

14:32:16 6 MS. SHAW: Objection.

14:32:16 7 MR. BELL: Objection; form.

14:32:16 8 Q. (By Mr. Girards) Have I summarized that
14:32:19 9 accurately?

14:32:19 10 A. Well, no, because you are associating the two,
14:32:22 11 so I am not sure what their intentions were. I mean,
14:32:25 12 you know, they did cancel me; but when they canceled me
14:32:28 13 they didn't give me a reason why they canceled me, so I
14:32:30 14 am not sure what the reason why they canceled me was.

14:32:33 15 Later on -- it came later on. Later on we
14:32:36 16 had this discussion of the co-op and, you know, team
14:32:39 17 player and the whole bit; but at that time, no. It was
14:32:42 18 just they just canceled my insurance.

14:32:43 19 Q. So at the time your three-month war was about
14:32:46 20 the idea that you weren't a team player and they didn't
14:32:50 21 want you to testify against TMLT insureds in malpractice
14:32:50 22 litigation?

14:32:50 23 MS. SHAW: Form.

14:32:50 24 MR. BELL: Objection; form.

14:32:58 25 A. (By the Witness) No.

14:32:58 1 They canceled my insurance. I got a
14:33:03 2 letter terminating my insurance, so that's what I am
14:33:03 3 saying. And then the war was how to get reinstated
14:33:08 4 because I needed to get reinstated because I needed
14:33:11 5 malpractice insurance.

14:33:13 6 Q. (By Mr. Girards) Let's look at more of the
14:33:14 7 letter and flesh out some more of the details. Would
14:33:19 8 you read the second sentence for me in its entirety.

14:33:21 9 A. "They have harassed me, canceled me, reinstated
14:33:24 10 me with huge premium increases greater than 100,000;
14:33:28 11 attempted to ruin my group contract, lied to members of
14:33:31 12 my group regarding my practice patterns, falsified
14:33:33 13 information to the TMLT board, and the list goes on
14:33:36 14 forever."

14:33:38 15 Q. All right. So "they" is TMLT?

14:33:42 16 A. Yes, sir.

14:33:42 17 Q. Tell me everything they did to harass you.

14:33:46 18 A. Well, they -- we have a group that we were
14:33:49 19 contracting with TMLT and then I was -- at one time I
14:33:54 20 was president of the group and then I kind of passed it
14:33:55 21 on to one of my partners, to do that, to the paperwork
14:33:59 22 part, and so we got discounts from TMLT for the group
14:34:04 23 malpractice insurance, right.

14:34:05 24 So they actually came to my group and had
14:34:12 25 said that they were going to cancel me and they also

14:34:14 1 said -- told the group that I was testifying on the
14:34:18 2 plaintiff's side.

14:34:21 3 Q. So TMLT didn't care if you testified on the
14:34:25 4 doctor's side?

14:34:25 5 MR. BELL: Objection; form.

14:34:27 6 A. (By the Witness) I don't know what they cared
14:34:29 7 about. I am just --

14:34:29 8 Q. (By Mr. Girards) I want to understand -- I
14:34:32 9 want to know what your understanding was. Was it your
14:34:33 10 understanding that you could testify on the defense
14:34:35 11 side; but not on the plaintiff's side?

14:34:39 12 A. That was never said. It was just they were
14:34:41 13 telling people in my group, particularly the people that
14:34:43 14 dealt with the contracts, and the paperwork, and all of
14:34:47 15 this because we get a list of everybody and what their
14:34:51 16 premiums are, and who is staying, and who is going,
14:34:53 17 whatever. And they were mentioning to people in the
14:34:55 18 group that I was doing.....

14:34:59 19 Q. You were testifying on --

14:35:01 20 A. Expert.

14:35:01 21 Q. -- on the patient's side?

14:35:04 22 A. Right. So there would be people in my group
14:35:08 23 that would not think that was a good thing, and so it
14:35:13 24 was irritating.

14:35:15 25 Q. So what they did was they -- they canceled your

14:35:20 1 policy. That is one of the things they did --

14:35:20 2 MR. BELL: Objection.

14:35:23 3 Q. (By Mr. Girards) -- to harass you?

14:35:24 4 MR. BELL: Objection.

14:35:24 5 MS. SHAW: Objection; form.

14:35:26 6 A. (By the Witness) They weren't trying to harass
14:35:28 7 me as far as I know. They just canceled my policy.

14:35:33 8 Q. (By Mr. Girards) Well, okay, let's get back to
14:35:33 9 the part where you wrote "they have harassed me"?

14:35:35 10 A. Right.

14:35:35 11 Q. That's what you wrote.

14:35:35 12 A. Right.

14:35:37 13 Q. Tell me everything they did to harass you. You
14:35:38 14 have told me about them going to members of your group
14:35:40 15 and saying "Hey, Donovanitz is reviewing cases for
14:35:43 16 plaintiffs"?

14:35:45 17 A. And then my -- when I did get reinstated then
14:35:46 18 my premiums went up, and my premiums were higher than
14:35:52 19 everybody else's, and I didn't really have any, you
14:35:58 20 know, big cases hanging out there or anything. So my
14:36:00 21 premiums went up in excess to what everybody else's went
14:36:04 22 up.

14:36:04 23 Q. So they -- when they went to members of your
14:36:09 24 group to tell the members of your group that you were
14:36:12 25 reviewing cases for plaintiffs, what was your

14:36:15 1 understanding of the purpose of that?

14:36:17 2 MR. BELL: Objection; form.

14:36:17 3 A. (By the Witness) I don't know it. Again I
14:36:20 4 wasn't at those meetings, so I heard about it through
14:36:23 5 the back door, and I don't know what their purpose or
14:36:25 6 their intent was. I just thought it was hurtful.

14:36:28 7 Q. (By Mr. Girards) And you interpreted that as
14:36:31 8 not only being hurtful but harassment?

14:36:35 9 MR. BELL: Objection; form.

14:36:36 10 Q. (By Mr. Girards) True?

14:36:36 11 A. Well, when I wrote this letter I was kind of
14:36:39 12 mad, so, yes.

14:36:39 13 Q. Right, but when you wrote this letter you did
14:36:41 14 your very best to be as truthful and straightforward
14:36:45 15 with Mr. Norton and Mr. Weisbrod as you were capable of;
14:36:49 16 true?

14:36:49 17 MS. SHAW: Objection; form.

14:36:50 18 MR. BELL: Objection.

14:36:51 19 A. (By the Witness) Like I said, I was pretty
14:36:52 20 upset and I used words that I would use because I was
14:36:57 21 really upset.

14:36:58 22 Q. (By Mr. Girards) But they are truthful words,
14:37:00 23 aren't they?

14:37:00 24 MS. SHAW: Objection; form.

14:37:00 25 MR. BELL: Objection; form.

14:37:02 1 A. (By the Witness) Well, I wasn't lying.

14:37:03 2 Q. (By Mr. Girards) Well, I mean then they are

14:37:03 3 truthful words.

14:37:05 4 A. But it was my feeling at that time, and that is

14:37:09 5 why I said it.

14:37:11 6 Q. So did they do -- or they harassed you, they --

14:37:16 7 it says "cancelled me." They, TMLT, canceled you?

14:37:21 8 A. Yes, sir.

14:37:21 9 Q. And then it says "reinstated me with huge

14:37:25 10 premium increases greater than 100,000." Is that

14:37:28 11 \$100,000?

14:37:29 12 A. Yes, sir.

14:37:29 13 Q. Does that mean that compared to your -- that

14:37:34 14 premium, insurance premium from the year before, they

14:37:36 15 had added over \$100,000 on to it?

14:37:40 16 A. Well, they took my premium and this is again,

14:37:42 17 not positive on the numbers, but they took my premium up

14:37:47 18 over \$50,000 for two years, so.....

14:37:50 19 Q. So that is where you get the greater than

14:37:52 20 \$100,000?

14:37:55 21 A. Uh-huh.

14:37:56 22 Q. It says "they attempted to ruin my group

14:37:58 23 contract." Tell me everything they did to attempt to

14:38:01 24 ruin your group contract.

14:38:03 25 A. Well, because we had a group contract where

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14:38:08 1 pretty much everybody got the same rates, and initially
14:38:15 2 by mine jumping sort of out of the box on the whole
14:38:20 3 thing, it just made mine look totally different than
14:38:24 4 everybody else's and I was the head -- well, one of the
14:38:31 5 head people in the group, so, you know, we would have
14:38:34 6 had to go -- especially if I had been dropped we would
14:38:36 7 have had to go elsewhere and look for insurance, and we
14:38:39 8 even talked about doing that in the group.

14:38:41 9 So that would have meant going to another
14:38:41 10 company. Some guys didn't want to go to another
14:38:44 11 company, so it would adversely affect my group. So in
14:38:48 12 the end it didn't matter because I got reinstated and
14:38:52 13 everything was fine.

14:38:52 14 Q. All right.

14:38:54 15 A. So we stayed with TMLT.

14:38:56 16 Q. But when you say they attempted to ruin your
14:38:59 17 group contract, what they did was they jacked up your
14:39:01 18 rates so that everybody would know that it was your
14:39:03 19 rates that was going up, and that the group's insurance
14:39:06 20 liability coverage was in dang -- in jeopardy.

14:39:06 21 MR. BELL: Objection to form.

14:39:08 22 A. (By the Witness) I think I answered the
14:39:09 23 question earlier. We can go back to it a little bit, or
14:39:11 24 if we don't have to. But that is right, what I said the
14:39:14 25 first time.

14:39:14 1 Q. (By Mr. Girards) Did they do anything else to
14:39:17 2 attempt to ruin your group contract other than what you
14:39:22 3 have just told me?

14:39:22 4 A. No, sir.

14:39:22 5 Q. It says "they," TMLT, "lied to members of my
14:39:26 6 group regarding my practice patterns." Tell me
14:39:28 7 everything they did when they lied to members of your
14:39:31 8 group regarding your practice patterns.

14:39:35 9 MR. BELL: Object to form.

14:39:40 10 A. (By the Witness) I can't remember what the
14:39:40 11 specifics on that were. I don't know. I can't remember
14:39:42 12 what they said. So, I am sorry on that, but I mean.....

14:39:45 13 Q. (By Mr. Girards) Can you explain the
14:39:47 14 generalities of it if you don't remember the specifics?

14:39:49 15 A. I mean no, I can't remember what they said.
14:39:51 16 Obviously they must have said something that made me
14:39:57 17 feel that way when I wrote the letter to Les, but I
14:39:57 18 can't remember what they said now.

14:40:01 19 Q. Well, what was it about your practice patterns
14:40:01 20 that made it an issue that they would lie about it to
14:40:04 21 your group members?

14:40:08 22 MR. BELL: Objection; form.

14:40:08 23 A. (By the Witness) Like I said I can't remember.
14:40:11 24 So you're asking me the same questions. If I remembered
14:40:13 25 I would tell you what it was.

14:40:15 1 Q. (By Mr. Girards) The next phrase is "they
14:40:15 2 falsified information to the TMLT board." What does
14:40:18 3 that mean?

14:40:18 4 A. Well, they told the TMLT board that -- and
14:40:28 5 again I can't remember the specifics -- that I was doing
14:40:30 6 plaintiff work, and doing all of these plaintiff cases
14:40:33 7 and was going to adversely affect the co-op; and it
14:40:37 8 really -- they never got to tell the Board that I had
14:40:41 9 saved them a bunch of cases because I reviewed a lot of
14:40:45 10 cases where the cases never went anywhere, and I told
14:40:47 11 them it was terrible cases.

14:40:48 12 So, you know, I felt like I was a team
14:40:51 13 player at the time, and they didn't think I was a team
14:40:56 14 player, so we just sort of were on different pages; but
14:40:59 15 I never really got a chance to address the board about
14:40:59 16 that.

14:41:02 17 Q. Okay. And then you wrote "and the list goes on
14:41:06 18 forever." So is there anything else in addition to what
14:41:06 19 you have told me that you can describe for me about --
14:41:11 20 that would fall under "the list goes on forever"?

14:41:14 21 A. No.

14:41:14 22 Q. Now, your understanding, based on what TMLT did
14:41:20 23 and said to you was that all of the harassment, the
14:41:24 24 canceling, the reinstating, the huge premium increases,
14:41:28 25 attempts to ruin the contract, lying to members of the

14:41:30 1 group, falsifying information, all stemmed from the
14:41:33 2 Plaintiff's work you did for Mr. Weisbrod?

14:41:35 3 MS. SHAW: Objection; form.

14:41:37 4 MR. BELL: Objection; form.

14:41:37 5 Q. (By Mr. Girards) Is that true?

14:41:40 6 MR. BELL: Objection; form.

14:41:40 7 A. (By the Witness) Yes.

14:41:40 8 Q. (By Mr. Girards) All right, and tell me all of
14:41:47 9 the reasons why you were confident that all of that
14:41:47 10 stemmed from the Plaintiff's work that you had done for
14:41:52 11 Mr. Weisbrod.

14:41:52 12 A. Ask that question again. I am not sure I
14:41:54 13 understand your question.

14:41:56 14 Q. Yes. Tell me the basis for your belief that
14:41:58 15 all of that harassment, all of the things you just told
14:42:01 16 me about, stemmed from your doing plaintiff's work for
14:42:04 17 Mr. Weisbrod.

14:42:06 18 MR. BELL: Objection; form.

14:42:07 19 A. (By the Witness) Well, I think that, like we
14:42:11 20 have already said, what happened at the time, and they
14:42:15 21 knew that Les and I were friends, and that I was
14:42:18 22 consulting on cases even besides the cases that I was an
14:42:21 23 expert on, that I was going to still remain friends with
14:42:24 24 Les, and that I was going to still be consulting, and I
14:42:26 25 think that, like I said before, that is where the whole

14:42:33 1 thing stemmed from.

14:42:36 2 Q. (By Mr. Girards) There was no doubt in your
14:42:36 3 mind that it all stemmed from your doing plaintiff's
14:42:39 4 work for Mr. Weisbrod, is there?

14:42:41 5 A. I don't know what their intent was because when
14:42:43 6 they first canceled me they just canceled me; but -- and
14:42:47 7 again I didn't really understand the whole co-op thing,
14:42:51 8 and so then they got their chance to explain that, and
14:42:54 9 then I don't know in terms of -- I think we had a bit of
14:42:58 10 a war because I didn't understand what they were trying
14:43:00 11 to do and they didn't understand what I was trying to
14:43:04 12 do, and so until we got to the end of the war where both
14:43:08 13 people understood each other, then we were in a giant
14:43:08 14 misunderstanding.

14:43:11 15 But at the end of the day it all was fine.

14:43:13 16 Q. So when you asked TMLT why they canceled you,
14:43:18 17 they explained to you, you weren't a team player because
14:43:20 18 you were doing plaintiff's work; right?

14:43:23 19 A. Not exactly. They said, you know, "we have a
14:43:26 20 co-op here that" -- they went through the whole co-op
14:43:29 21 thing we've already been through, and I don't think you
14:43:31 22 understand that it is -- not "you." It's me. "That it
14:43:34 23 is a co-op and we don't think you understand how the
14:43:37 24 whole thing works," and dah, ta dah, ta dah. They
14:43:39 25 explained how that all works and I didn't understand.

14:43:43 1 So I never felt like I was adversely
14:43:46 2 affecting my co-op.

14:43:47 3 Q. And so what did they explain about how you
14:43:51 4 doing plaintiff's work would impact the co-op?

14:43:57 5 A. Well, it's the way a co-op works. I mean there
14:44:01 6 is money that's -- it is not really an insurance
14:44:04 7 company. It is more of a trust or co-op, and there is
14:44:08 8 money in there; and if you are part of that, and there
14:44:08 9 is money that stays in there, then the partners, I
14:44:12 10 guess, get some sort of rebate at some time, or premium
14:44:12 11 decreases.

14:44:16 12 If there is no money in there then
14:44:20 13 premiums go up, so if you adversely affect the
14:44:23 14 partnership or the co-op then you are adversely
14:44:29 15 affecting everybody.

14:44:29 16 Q. So let me see if I am understanding you. What
14:44:34 17 TMLT explained to you was that TMLT is a co-op, and if
14:44:34 18 you provide truthful expert witness testimony in a
14:44:40 19 medical malpractice case against another TMLT insured,
14:44:43 20 that that would cause your and everybody else's premiums
14:44:46 21 to go up and adversely affect the co-op and your
14:44:50 22 insurance coverage?

14:44:50 23 MR. BELL: Objection.

14:44:50 24 Q. (By Mr. Girards) Have I summarized that
14:44:53 25 accurately?

14:44:54 1 MR. BELL: Objection; form.

14:44:54 2 A. (By the Witness). Yes.

14:44:54 3 Q. (By Mr. Girards) Now, if you go down to the
14:44:59 4 third paragraph there it says "unfortunately, in order
14:45:02 5 to preserve my credibility as general partner of my
14:45:06 6 group, to continue to negotiate group malpractice
14:45:10 7 contracts with TMLT, to be able to afford my own
14:45:16 8 insurance, and to reduce insurmountable stress, I must
14:45:17 9 resign from any and all review, past present and
14:45:22 10 future."

14:45:22 11 Have I read that correctly?

14:45:22 12 A. Yes.

14:45:24 13 Q. What TMLT was doing to you as a result of your
14:45:32 14 Plaintiff's work was eroding your credibility as general
14:45:34 15 partner of your medical group?

14:45:36 16 MR. BELL: Objection; form.

14:45:39 17 A. (By the Witness) That is what initially they
14:45:40 18 tried to do, yes.

14:45:41 19 Q. (By Mr. Girards) And then what was hampering
14:45:46 20 your ability to negotiate group malpractice contracts
14:45:49 21 with TMLT?

14:45:51 22 A. Well, I answered that before, Jim, where -- I
14:45:54 23 already told you. They drove my rates up. In order for
14:45:58 24 everything to be affordable as a general partner it made
14:46:02 25 me want to go out and get other insurance, but I had

14:46:06 1 other people in my group that didn't want to go out and
14:46:08 2 get other insurance because maybe they had claims, maybe
14:46:12 3 they had tales, or maybe they liked TMLT. So we would
14:46:14 4 have to split up to do two different insurance
14:46:16 5 companies.

14:46:16 6 Q. So if you were forced out of TMLT and had to
14:46:25 7 seek coverage elsewhere, that would mean, as a practical
14:46:28 8 matter, the breakup of your obstetrical group?

14:46:28 9 MS. SHAW: Objection; form.

14:46:28 10 MR. BELL: Objection.

14:46:30 11 A. (By the Witness) No. This was just a
14:46:30 12 contracting group. These are all individual practices.

14:46:34 13 Q. (By Mr. Girards) So to be kicked out of TMLT
14:46:38 14 would have caused the break-up of your contracting
14:46:42 15 group?

14:46:42 16 A. It would have meant that I would have had to
14:46:44 17 seek alternate -- if I was thrown out I would have had
14:46:51 18 to seek alternate insurance.

14:46:51 19 Q. Did TMLT say anything to you that made you
14:46:56 20 think that they were going to -- that their actions
14:46:56 21 would make it more difficult for you to get medical
14:47:01 22 malpractice insurance from other companies?

14:47:05 23 A. No.

14:47:05 24 Q. Now, you talked about your increased insurance
14:47:08 25 rates and the next phrase here says "to be able to

14:47:12 1 afford my own insurance." That is what you were talking
14:47:14 2 about in the letter?

14:47:14 3 A. Yes, sir.

14:47:16 4 Q. Because you couldn't afford the greater than a
14:47:18 5 \$100,000 increase in premiums that they levied against
14:47:21 6 you?

14:47:21 7 A. Well, I didn't really want to pay that much.

14:47:26 8 Q. And then what is the insurmountable stress?

14:47:29 9 Help me to understand what that was for you.

14:47:32 10 A. Well, like I said it was a bit of a war between
14:47:36 11 us, so it was kind of stressful because I didn't know,
14:47:41 12 one, if I was going to have insurance because initially
14:47:45 13 I didn't. And then it was stressful getting that
14:47:48 14 insurance back, and then it was stressful trying to
14:47:50 15 figure out how I was going to pay for the \$50,000 twice
14:47:54 16 a year, twice in for two years so.....

14:47:56 17 Q. That increase in insurance premium had nothing
14:47:59 18 to do with your claims history? It only had to do with
14:48:01 19 your plaintiff's work for Mr. Weisbrod?

14:48:05 20 MS. SHAW: Objection; form.

14:48:05 21 MR. BELL: Objection; form.

14:48:09 22 A. (By the Witness) Well, they didn't say that.

14:48:09 23 Q. (By Mr. Girards) Well, that was your
14:48:09 24 understanding, wasn't it?

14:48:09 25 MS. SHAW: Form.

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MR. BELL: Form.

A. (By the Witness) I didn't -- I -- they never said that to me, so I -- I mean I may have assumed it, but I don't know.

Q. (By Mr. Girards) Yeah, but I want to know what your understanding was.

A. I didn't really focus in on just the \$50,000. It was just the whole process of everything that was going on for those -- that 2 or 3 months, so.....

Q. You didn't have any claims --

A. I mean I --

Q. -- of any significance?

A. I have had claims in the past.

Q. Right. You didn't have any claims of any significance that would have resulted in over \$100,000 insurance premium increase; true?

MR. BELL: Objection; form.

A. (By the Witness) Not that I would have known; not that I would have thought.

Q. (By Mr. Girards) And so your understanding was that TMLT increased your premiums by that amount because of the plaintiff's work, not because of your claims history; true?

A. I guess --

MR. BELL: Objection; form.

14:48:52 1 A. (By the Witness) I guess that is maybe what I
14:48:56 2 thought at the time, yes, sir.

14:48:56 3 Q. (By Mr. Girards) Is there any doubt that that
14:48:56 4 is what you thought at the time?

14:49:01 5 A. Well, it was ten years ago, but that is
14:49:01 6 probably what I thought at the time.

14:49:03 7 Q. Okay. Now, it says: "So you must resign from
14:49:06 8 any and all review past, present, or future." That
14:49:08 9 means reviewing of medical, potential malpractice cases,
14:49:13 10 for Mr. Weisbrod; true?

14:49:15 11 A. Yes, sir.

14:49:15 12 Q. You didn't want to resign from that. That has
14:49:20 13 happened solely because of what TMLT had done to you?

14:49:24 14 MR. BELL: Objection; form.

14:49:24 15 A. (By the Witness) That's correct.

14:49:26 16 Q. (By Mr. Girards) It says the Board of TMLT --
14:49:29 17 I tell you, why don't you read that last sentence of
14:49:32 18 that paragraph, the third paragraph down.

14:49:32 19 A. "The board of TMLT has made me write a letter
14:49:36 20 to this effect and they have received it as of yesterday
14:49:37 21 as a provision for calling off the dogs."

14:49:41 22 Q. Okay, the Board of TMLT is whom?

14:49:44 23 A. Is who?

14:49:45 24 Q. Is whom? Do you know?

14:49:47 25 A. There is a lot of people on their Board. I

14:49:51 1 don't know who they are.

14:49:51 2 Q. Did you address that letter to the Board, each
14:49:53 3 member individually, or just the Board in general,
14:49:57 4 whole?

14:49:58 5 A. Just to the Board I think.

14:49:59 6 Q. Did you keep a copy of that letter?

14:50:01 7 A. I mean it was probably in an old computer.

14:50:04 8 Q. Do you have a TMLT file at your office
14:50:09 9 somewhere?

14:50:09 10 A. No. I just write it on the computer and
14:50:12 11 then -- but, you know, laptops last a couple of years,
14:50:13 12 three years and then done. So I just save the stuff I
14:50:16 13 need.

14:50:16 14 Q. Are you saying that you have been a TMLT
14:50:19 15 insured all of this time and you have not kept a file on
14:50:22 16 them?

14:50:22 17 A. I have a file of my facesheets. Is that what
14:50:24 18 you are asking?

14:50:27 19 Q. Well, do you have a file that you keep on TMLT
14:50:29 20 related materials?

14:50:31 21 A. No.

14:50:31 22 Q. Have you looked to see if you have this letter
14:50:35 23 somewhere in your files?

14:50:35 24 A. It would be in my computer. I don't have
14:50:37 25 any -- well, I got a brand new computer --

14:50:37 1 Q. Okay.

14:50:40 2 A. -- so -- but I don't have as you are thinking a
14:50:43 3 file of letters in it, I don't have that, and I did
14:50:48 4 look.

14:50:48 5 Q. Okay, did you look on whatever computers you
14:50:48 6 have just to see if you had it archived or backed up?

14:50:55 7 A. Yes, sir.

14:50:55 8 Q. And you didn't find them?

14:50:55 9 A. No, sir.

14:50:55 10 Q. So tell me what this letter to the Board of
14:51:19 11 TMLT said.

14:51:19 12 A. You are asking me to remember a letter from --

14:51:19 13 Q. Uh-huh. What I would like you to do is tell me
14:51:19 14 exactly what it said if you can; but if you can't
14:51:19 15 remember the specific words just tell me as in general
14:51:19 16 what it says?

14:51:19 17 MR. BELL: Objection; form.

14:51:19 18 A. (By the Witness) Well, obviously I can't
14:51:19 19 remember exactly what it said since it is nine years
14:51:53 20 ago, but I just wrote a letter that said that I wasn't
14:51:53 21 going to do any more plaintiff work in Texas, and that,
14:51:53 22 you know, I was sorry that I didn't understand the whole
14:51:53 23 co-op issue before, and I apologized to the Board for
14:51:53 24 any problems that I caused them, and that I wanted to
14:52:24 25 stay part of my group and part of my group contract.

14:52:24 1 Q. (By Mr. Girards) Okay, and did TMLT call off
14:52:24 2 the dogs in response to that letter?

14:52:24 3 MR. BELL: Objection; form.

14:52:24 4 A. (By the Witness) Yes.

14:52:24 5 Q. (By Mr. Girards) Do you remember the name of
14:52:24 6 any person with TMLT that you spoke to during this time
14:52:24 7 who explained to you what their position was that was
14:52:24 8 involved in this at all?

14:52:24 9 A. No.

14:52:24 10 Q. Now, if you wrote the letter TMLT would call
14:52:48 11 off the dogs, meaning that you wouldn't have to pay over
14:52:48 12 \$100,000 in premium increase?

14:52:48 13 A. No, no --

14:52:48 14 MR. BELL: Objection.

14:52:48 15 A. (By the Witness) -- I had to pay.

14:52:48 16 Q. (By Mr. Girards) So you had to pay anyway?

14:52:48 17 A. Yes.

14:52:48 18 Q. So they didn't lower that premium at all after
14:52:48 19 you agreed to write the letter?

14:53:27 20 A. No. I had to pay anyway.

14:53:27 21 Q. But they stopped harassing you, cancelling you,
14:53:27 22 leaning on you, and attempting to ruin your group
14:53:27 23 contract, and lying to the members of your group?

14:53:27 24 MR. BELL: Objection; form.

14:53:27 25 Q. True?

14:53:27 1 A. It was a closed matter as far as -- at that
14:53:27 2 time.

14:53:27 3 Q. So from your perspective this was clearly
14:53:27 4 coercion on TMLT's part to get you to agree to stop
14:53:27 5 reviewing cases for plaintiffs, and you in fact did
14:53:27 6 write the letter and stop reviewing cases for plaintiffs
14:53:50 7 in return for them calling off the dogs?

14:53:50 8 MR. BELL: Objection.

14:53:50 9 Q. (By Mr. Girards) Have I summarized that
14:53:50 10 accurately?

14:53:50 11 MR. BELL: Objection.

14:53:50 12 A. (By the Witness) I guess we had a deal and I
14:53:50 13 followed through with my part.

14:53:50 14 Q. (By Mr. Girards) Is the deal as I have just
14:53:50 15 stated it?

14:53:50 16 MR. BELL: Objection.

14:53:50 17 A. (By the Witness) It is more like I stated it.
14:53:50 18 They gave me stuff to do, I did what they said, and then
14:53:50 19 we had -- I wrote the letter, I wrote them the letter, I
14:53:50 20 paid the premiums, and then everything went forward.

14:54:14 21 Q. (By Mr. Girards) And do you have any
14:54:14 22 documents, or memos, or letters, or anything you can
14:54:14 23 think of that relate to this three-month war with TMLT
14:54:14 24 that you described in your May 2001 letter?

14:54:14 25 A. No, sir.

14:54:14 1 (Deposition Exhibit Number 11 identified.)

14:54:14 2 Q. (By Mr. Girards) Let me show you what has been

14:54:14 3 marked as Donovan Number 11. That is the designation

14:54:14 4 document identifying you as a witness in a filed

14:54:39 5 lawsuit. Do you recognize that document?

14:54:39 6 A. You mean this document?

14:54:39 7 Q. Uh-huh, yes, sir.

14:54:39 8 A. I don't remember the document, but I see my

14:54:39 9 name in there.

14:54:39 10 Q. Okay, that's you, and your address, and your

14:54:39 11 opinions as they are reflected on your letter that we

14:54:39 12 went over earlier?

14:54:39 13 A. Yes, sir.

14:54:45 14 Q. It has got your CV attached; is that true?

14:54:45 15 A. Yes, sir. I'm sorry.

14:54:45 16 Q. Now, on -- in the spring of 2002 my office

14:54:56 17 called you up to get dates for you to be deposed in this

14:55:00 18 filed lawsuit as a witness that had been disclosed to

14:55:05 19 the defense. Do you remember that?

14:55:09 20 A. Not specifically, but.....

14:55:09 21 (Deposition Exhibit Number 12 identified.)

14:55:11 22 Q. (By Mr. Girards) Well, let me show you what

14:55:12 23 has been marked Donovan Exhibit Number 12. That's an

14:55:15 24 internal memo from my office reflecting a conversation

14:55:16 25 that you had with my legal assistant, Judy. Does that

14:55:21 1 jog your recollection?

14:55:35 2 MR. BELL: Objection.

14:55:48 3 A. (Witness reading.) Yes.

14:55:48 4 Q. (By Mr. Girards) Okay, so tell me about the
14:55:51 5 conversations, what you and Judy discussed, February of
14:55:58 6 2002?

14:55:58 7 A. Like I said I can't remember the conversation,
14:56:00 8 but it was basically that I wasn't doing plaintiff work
14:56:08 9 in Texas and that I needed -- if I was doing any work,
14:56:15 10 you know, it couldn't be with TMLT as the insurer; but I
14:56:21 11 wasn't doing any plaintiffs work anyways.

14:56:21 12 Q. Okay, and she wrote in there that you told her
14:56:23 13 that they had tripled your insurance premium as a result
14:56:25 14 of your expert witness work?

14:56:27 15 A. Right.

14:56:28 16 Q. Is that --

14:56:28 17 MR. BELL: Wait, what is the question.

14:56:32 18 Q. (By Mr. Girards) So, that --

14:56:32 19 A. Well, it was more like doubled, but I probably
14:56:35 20 said tripled.

14:56:35 21 Q. Okay.

14:56:36 22 A. But it was more like doubled. I think we have
14:56:39 23 already covered the rates.

14:56:39 24 Q. Okay, so this -- you don't dispute what is in
14:56:44 25 this memo then that Judy wrote up?

14:56:47 1 MR. BELL: Objection; form.

14:56:53 2 THE WITNESS: It is the same?

14:56:55 3 MR. BELL: Yeah.

14:56:56 4 A. (By the Witness) No, I mean it probably
14:56:58 5 doubled my rate; not tripled it, but aside from that.

14:57:00 6 (Deposition Exhibit Number 13 identified.)

14:57:00 7 Q. (By Mr. Girards) Now, Dr. Adami was not a TMLT
14:57:04 8 insured and so you gave us dates for your deposition in
14:57:07 9 the Marquardt case. Here's Donovan Number 13, I
14:57:16 10 believe.

14:57:16 11 A. Yes.

14:57:13 12 MR. BELL: Object to the sidebar.

14:57:16 13 Q. (By Mr. Girards) And do you have reason to
14:57:19 14 recall that that is how it happened and these were the
14:57:21 15 dates that you offered?

14:57:27 16 A. I'm sure I did.

14:57:27 17 (Deposition Exhibit Number 14 identified.)

14:57:31 18 Q. (By Mr. Girards) All right, now, let me show
14:57:33 19 you Donovan Number 14. Do you recognize your signature
14:57:38 20 on that document?

14:57:38 21 A. Yes, sir.

14:57:39 22 Q. You recognize that as a document you wrote to
14:57:42 23 me on March 12, 2002?

14:57:48 24 A. Yes, sir.

14:57:48 25 Q. Okay, why don't you read the first sentence for

14:57:52 1 me, please. I am going to ask you about that.

14:57:52 2 A. "Dear Jim, I have discussed your request for
14:57:56 3 times for deposition with my malpractice carrier.
14:57:59 4 Unfortunately I agreed in our last renewal not to do the
14:58:03 5 expert work on the plaintiff's side as a prerequisite
14:58:07 6 for being insured."

14:58:07 7 Q. Okay, now, your malpractice carrier was TMLT;
14:58:11 8 that is who you are referring to in the letter?

14:58:14 9 A. Yes, sir.

14:58:14 10 Q. And you had called TMLT to inform them that you
14:58:18 11 were a witness in a lawsuit, and your deposition was
14:58:22 12 being requested; true?

14:58:23 13 A. Yes, sir.

14:58:23 14 Q. Okay. And your agreement not to do expert work
14:58:31 15 on the plaintiff's side was a prerequisite to you being
14:58:35 16 insured by TMLT; true?

14:58:37 17 MR. BELL: Objection; form.

14:58:37 18 A. (By the Witness) Yes.

14:58:41 19 Q. (By Mr. Girards) Okay, you explained to them
14:58:42 20 that the case didn't involve them; right?

14:58:43 21 A. Yes.

14:58:44 22 Q. And they were towing the line. They wouldn't
14:58:45 23 let you testify; true?

14:58:49 24 A. Yes.

14:58:49 25 Q. And so read that sentence there that begins

14:58:53 1 with "therefore."

14:58:55 2 A. "Therefore I will be unable to continue as an
14:58:58 3 expert on your case and regret any inconvenience that
14:59:03 4 this may have caused you. I understand the timeframe
14:59:06 5 that you are working on is short, but I did feel like I
14:59:10 6 should consult the legal department of TMLT before
14:59:10 7 making the decision which would adversely affect my
14:59:12 8 malpractice policy."

14:59:13 9 Q. Okay, so your continuing -- your giving sworn
14:59:20 10 testimony in an official proceeding, you had to refuse
14:59:24 11 to do that in order to continue to be insured by TMLT?

14:59:27 12 MR. BELL: Objection.

14:59:28 13 Q. (By Mr. Girards) Correct?

14:59:29 14 A. Yes.

14:59:29 15 Q. And it was TMLT who explained that to you;
14:59:34 16 right?

14:59:34 17 A. Yes.

14:59:34 18 Q. Who was it at TMLT that you spoke to in the
14:59:39 19 legal department?

14:59:40 20 A. I don't remember.

14:59:40 21 Q. Male or female?

14:59:41 22 A. That, I don't remember either.

14:59:42 23 Q. Do you remember what specifically was told to
14:59:46 24 you?

14:59:46 25 A. Well, they just reminded me that, you know, I

14:59:49 1 had told the Board that I wasn't going to do any
14:59:52 2 plaintiff work in Texas; and so that's plaintiff work in
14:59:57 3 Texas. That was their opinion.

15:00:00 4 Q. Did you speak to any of your colleagues about
15:00:04 5 what TMLT was doing to you in this three-month war and
15:00:09 6 then in this lawsuit that you were a witness in and a
15:00:14 7 designated witness?

15:00:16 8 A. Did I speak to anybody about this case?

15:00:18 9 Q. Well, what I am wondering is: You have
15:00:21 10 explained this war you had with TMLT?

15:00:24 11 A. Yes, sir.

15:00:24 12 Q. And they didn't want you to testify in court
15:00:31 13 for patients, and they were going to -- they cancelled
15:00:36 14 your insurance, they harassed you, they reinstated you
15:00:38 15 with a huge insurance premium increase, all of those
15:00:41 16 things we went over?

15:00:42 17 MR. BELL: Object.

15:00:43 18 Q. (By Mr. Girards) Did you talk to any of your
15:00:45 19 colleagues about whether this experience with TMLT was
15:00:48 20 unique to you or was something that others had
15:00:50 21 experienced?

15:00:51 22 MR. BELL: Objection to form; object to
15:00:53 23 the sidebar. Go ahead.

15:00:54 24 A. (By the Witness) Well, if I did it was more in
15:00:59 25 line with, you know, I wasn't trying to do anything

15:01:02 1 wrong to the insurance, to the insurance carrier, to our
15:01:07 2 deal, and that sort of stuff; not specifically about,
15:01:11 3 you know, being harassed or something. It was -- I
15:01:14 4 thought I was doing a good thing, you know, when I was
15:01:19 5 doing it.

15:01:19 6 Q. (By Mr. Girards) Right.

15:01:19 7 A. And I didn't really understand the whole co-op
15:01:23 8 thing so, you know.....

15:01:23 9 Q. What was explained to you is if TMLT had to pay
15:01:28 10 money on cases that you were testifying on the
15:01:30 11 plaintiff's side for, then that would result in costing
15:01:34 12 you money in the long run?

15:01:36 13 A. Well, no, it would cost the co-op money.

15:01:39 14 Q. Uh-huh, which would in turn what?

15:01:41 15 A. Right.

15:01:41 16 Q. Cause --

15:01:41 17 A. Which could cost everybody in the co-op money.

15:01:46 18 Q. Including you?

15:01:46 19 A. Including me.

15:01:48 20 Q. All right, but what I am wondering is this
15:01:50 21 TMLT's refusal to allow you to testify for plaintiffs,
15:01:53 22 did you talk to any colleagues about whether they also
15:01:57 23 were being told that they couldn't review cases for --

15:02:01 24 A. No.

15:02:01 25 MR. BELL: Objection.

15:02:02 1 MS. SHAW: Objection; form.

15:02:10 2 Q. (By Mr. Girards) Did TMLT explain to you that
15:02:15 3 this was a TMLT policy that their insureds could not
15:02:18 4 testify on behalf of plaintiffs?

15:02:20 5 MR. BELL: Objection; form.

15:02:22 6 A. (By the Witness) No.

15:02:22 7 Q. (By Mr. Girards) Did they tell you that
15:02:24 8 that's -- when they told you about how the co-op works
15:02:26 9 did they tell you that this is how they liked all of
15:02:29 10 their insureds to behave, or was this something unique
15:02:33 11 to you is what I am wondering?

15:02:35 12 MR. BELL: Object to form.

15:02:38 13 A. (By the Witness) I don't -- they never said
15:02:38 14 anything about it being policy or, you know, for
15:02:40 15 everybody. I mean it -- we never discussed it like
15:02:42 16 that.

15:02:42 17 Q. (By Mr. Girards) Was it more in the context of
15:02:44 18 "this is a co-op, this is how we do it" sort of thing?

15:02:47 19 A. No --

15:02:47 20 MR. BELL: Objection.

15:02:50 21 A. (By the Witness) -- it was more like, you know,
15:02:52 22 this is a co-op and like I said at the very beginning,
15:02:54 23 you know, it adversely -- can adversely affect the
15:02:56 24 co-op, but we don't mind you doing plaintiff cases. It
15:02:59 25 is just you can't do it both ways. So can't be part of

15:03:03 1 the co-op and do these cases. But you can choose
15:03:06 2 whichever way. It is okay with us because you can get
15:03:09 3 insurance anywhere.

15:03:10 4 Q. (By Mr. Girards) But you explained to TMLT,
15:03:12 5 related to the Marquardt case, that this was a
15:03:15 6 deposition, this was a filed lawsuit, this was an
15:03:17 7 official proceeding, and --

15:03:18 8 A. Well, again, I don't remember what I told them
15:03:21 9 other than the fact that I was asked for depo dates in
15:03:23 10 the case, that I was a designated expert, and that --
15:03:28 11 tried to get their permission to do it.

15:03:37 12 Q. Okay. And they told you not to do it and
15:03:39 13 reminded you about the letter that you signed?

15:03:41 14 A. Yes, sir.

15:03:44 15 Q. And so then you withdrew as a witness, refused
15:03:50 16 to sit for the deposition?

15:03:53 17 A. I remember, yes, withdrawing as a witness.

15:04:07 18 (Deposition Exhibit Number 16 identified.)

15:04:07 19 Q. (By Mr. Girards) Okay. This is Donovitz
15:04:10 20 Exhibit Number 16, the transmittal letter for the notice
15:04:13 21 of your deposition. You're familiar with how notices
15:04:17 22 work; correct?

15:04:18 23 A. Yes, sir.

15:04:18 24 MR. BELL: What number is that, Jim?

15:04:22 25 THE WITNESS: 16.

15:04:23 1 MR. BELL: Thanks.

15:04:23 2 MR. GIRARDS: 16.

15:04:26 3 Q. (By Mr. Girards) The notice is the legal
15:04:38 4 document that obligates you legally to testify in an
15:04:42 5 official proceeding?

15:04:43 6 MR. BELL: Objection; form.

15:04:45 7 Q. (By Mr. Girards) You knew that; correct?

15:04:45 8 MR. BELL: Objection; form.

15:04:47 9 A. (By the Witness) Yes, sir.

15:04:47 10 Q. (By Mr. Girards) Do you recall us sending you
15:04:49 11 a copy of the notice?

15:04:50 12 A. Long time ago, so I don't remember
15:04:53 13 specifically, but I'm sure I got it.

15:04:57 14 Q. Okay, here's Donovitz 15.

15:05:02 15 (Deposition Exhibit Number 15 identified.)

15:05:02 16 Q. (By Mr. Girards) I am not sure that you would
15:05:05 17 have seen any of these, but let me just show them to you
15:05:07 18 and see if they jog your recollection.

15:05:07 19 (Deposition Exhibits Nos. 17-19
15:05:15 20 identified.)

15:05:15 21 Q. (By Mr. Girards) Here's Donovitz 17 relating
15:05:19 22 to your deposition, and 18 and 19 are the letters
15:05:24 23 confirming your withdrawal as a witness in the case. Do
15:05:30 24 you have any recollection of those letters, getting
15:05:32 25 copies of those or anything?

15:05:37 1 A. No, but I'm sure I did.

15:05:52 2 Q. All right, so it was solely the influence of
15:05:57 3 TMLT that resulted in you withdrawing as a witness in
15:06:00 4 that legal proceeding, the Marquardt case?

15:06:03 5 MR. BELL: Objection; form.

15:06:03 6 Q. (By Mr. Girards) Is that true?

15:06:03 7 A. Restate your question.

15:06:05 8 Q. Yes. The only reason you withheld testimony in
15:06:10 9 the Marquardt case was because of what TMLT did and said
15:06:17 10 to you?

15:06:17 11 MR. BELL: Objection; form.

15:06:18 12 A. (By the Witness) Yes, I was following their
15:06:20 13 direction.

15:06:21 14 Q. (By Mr. Girards) Okay. And as a result of
15:06:23 15 their influence you withheld your testimony that you had
15:06:30 16 offered up in your letters in the designation?

15:06:34 17 MR. BELL: Objection; form.

15:06:34 18 Q. (By Mr. Girards) Is that true?

15:06:36 19 A. Yes.

15:06:39 20 Q. Did your insurance premiums later go down in
15:06:43 21 the next renewal period?

15:06:46 22 A. Yes, sir.

15:06:46 23 Q. Was that what you understood would happen if
15:06:50 24 you agreed to not testify on behalf of plaintiffs?

15:06:54 25 MR. BELL: Objection to form.

15:06:57 1 A. (By the Witness) No, we didn't have a deal as
15:06:59 2 to what would happen to my premiums.

15:07:02 3 Q. (By Mr. Girards) Was there any understanding
15:07:03 4 on your part, even if it wasn't stated, that your
15:07:07 5 premiums would go back down?

15:07:08 6 A. No.

15:07:13 7 Q. If you wanted to know the names of the people
15:07:16 8 who actually told you to withdraw from the Marquardt
15:07:23 9 case, how would you find out who that was?

15:07:25 10 MR. BELL: Objection; form.

15:07:27 11 A. (By the Witness) I have no idea because
15:07:29 12 whenever I call TMLT I -- I mean now I just talk to Ray
15:07:34 13 Godine. He is the only name I even know down there.

15:07:37 14 Q. Okay, there is no doubt in your mind that you
15:07:38 15 called the TMLT number and you talked to the TMLT legal
15:07:41 16 department and it was TMLT people in their offices who
15:07:44 17 told you those things that we have gone over today?

15:07:47 18 MR. BELL: Objection; form.

15:07:49 19 Q. (By Mr. Girards) True?

15:07:49 20 A. You mean versus dialing the wrong number?

15:07:51 21 Q. Exactly.

15:07:53 22 A. No, I wouldn't dial the wrong number. I got
15:07:57 23 the right number.

15:07:57 24 Q. Okay, and then there is no doubt in your mind
15:08:00 25 that the things that you outlined in your May 2001

15:08:04 1 letter to Mr. Weisbrod, those harassments, and the
15:08:08 2 cancelling, the reinstating, all of the things we went
15:08:11 3 over, those were absolutely by TMLT representatives even
15:08:14 4 if you can't remember the specific names; true?

15:08:17 5 MS. SHAW: Objection; form.

15:08:17 6 MR. BELL: Objection; form.

15:08:20 7 A. (By the Witness) Yes.

15:08:22 8 MR. GIRARDS: Now, we have been going
15:08:29 9 about an hour. Y'all want to take a break?

15:08:30 10 MR. BELL: Yes, please, thank you.

15:20:15 11 (A short recess was taken.)

15:20:15 12 Q. (By Mr. Girards) Doctor, going back to the
15:20:23 13 three-month war and how you resolved it by sending the
15:20:25 14 letter to the TMLT Board, will you identify for me all
15:20:29 15 of the benefits that came to you for agreeing, promising
15:20:34 16 TMLT that you wouldn't testify for patients anymore.

15:20:38 17 MS. SHAW: Objection; form.

15:20:39 18 MR. BELL: Objection; form.

15:20:40 19 A. (By the Witness) I just was reinstated on
15:20:43 20 my -- excuse me -- my group policy. That was really it.

15:20:50 21 Q. (By Mr. Girards) Okay, and then with respect
15:20:51 22 to the \$50,000 per year premium increase for that policy
15:20:57 23 period, did you receive any kind of credit, or was it
15:21:01 24 recalculated, or did anything happen to it at all?

15:21:06 25 A. No, it was what it was.

15:21:12 1 Q. And so your next renewal, what was your
15:21:16 2 premium?

15:21:16 3 MR. BELL: Object to form. I am going to
15:21:16 4 instruct you not to disclose how much his premium was.
15:21:22 5 He can do it in terms of percentage or something would
15:21:25 6 be fine, but I think it is proprietary and personal as
15:21:27 7 to what he is actually paying.

15:21:30 8 MR. GIRARDS: Well, he already told us the
15:21:32 9 premium for the 2001 policy period; right?

15:21:33 10 Q. (By Mr. Girards) Do you know what the premium
15:21:34 11 was for the --

15:21:35 12 A. I can't remember for 2003 what it was, or four.

15:21:39 13 Q. The best source for that material would be the
15:21:42 14 TMLT records on their renewal and how they calculated
15:21:46 15 your premium; true?

15:21:48 16 A. Yes.

15:21:49 17 Q. All right. Well, do you know what percentage
15:21:55 18 it was reduced, the next renewal?

15:21:58 19 A. In 2004?

15:22:02 20 Q. Yes.

15:22:02 21 A. I'm not sure. It was probably half.

15:22:08 22 Q. Half of the hundred plus thousand dollars?

15:22:11 23 A. No. I was paying 50 some thousand dollars,
15:22:14 24 maybe 58 or somewhere in there, so probably half of that
15:22:18 25 maybe, but that is pure guessing.

15:22:20 1 Q. Is that what it was before they jacked it up
15:22:25 2 50 -- to 50 -- over \$100,000?

15:22:28 3 A. Well, it's more in the ballpark.

15:22:31 4 Q. Okay, so your premium was somewhere around the
15:22:35 5 \$25,000 a year, and then your renewal that you mentioned
15:22:39 6 in your 2001 letter, went up over \$100,000 dollars for
15:22:44 7 that policy period?

15:22:44 8 MS. SHAW: Objection.

15:22:46 9 MR. BELL: Objection; form.

15:22:48 10 A. (By the Witness) No. It's for two years. The
15:22:48 11 policy is one year.

15:22:51 12 Q. (By Mr. Girards) Right, and then it came back
15:22:51 13 down to what it was before in the next renewal?

15:22:56 14 A. It was above that, still above it, but better
15:22:58 15 than \$58,000, whatever it was. Of course we had tort
15:23:01 16 form so that is helpful.

15:23:09 17 Q. Now, when you -- explain to me all of the
15:23:12 18 benefits you can think of that came to you as a result
15:23:14 19 of your agreeing to TMLT's demand that you withdraw from
15:23:20 20 the Marquardt case?

15:23:20 21 MR. BELL: Objection; form.

15:23:23 22 A. (By the Witness) I didn't get any benefit
15:23:25 23 other than just staying with TMLT.

15:23:27 24 Q. (By Mr. Girards) Well, you understood that if
15:23:28 25 you continued, if you gave the deposition in the

15:23:31 1 Marquardt case you would be back in this war situation;
15:23:34 2 true?

15:23:34 3 MR. BELL: Objection; form.

15:23:36 4 A. (By the Witness) Again, they -- no, they
15:23:38 5 didn't say that. That wasn't -- that wasn't said at
15:23:38 6 all.

15:23:40 7 Q. (By Mr. Girards) But that was your
15:23:42 8 understanding, wasn't it?

15:23:42 9 A. It was just they said that was part of our
15:23:45 10 deal; that was part of what I agreed to.

15:23:47 11 Q. So they reminded you what happened to you in
15:23:52 12 2001 and said "you signed the letter and that was a part
15:23:52 13 of our deal"; correct?

15:23:55 14 A. Yes.

15:23:55 15 Q. And they said something to the effect of "you
15:23:59 16 don't want to open that can of worms again"?

15:24:02 17 A. No, they didn't say anything else. That was
15:24:05 18 it.

15:24:05 19 Q. Okay. Well, what was the implication, what was
15:24:09 20 your understanding of that, what would happen if you
15:24:12 21 gave that deposition?

15:24:14 22 A. Well, I don't know.

15:24:15 23 MR. BELL: Objection.

15:24:16 24 A. (By the Witness) I mean I can't comment to
15:24:17 25 what their intent or what they were feeling, but I asked

15:24:19 1 for their opinion on whether this was okay, and they
15:24:22 2 said no, that was part of the original deal.

15:24:25 3 Q. (By Mr. Girards) Well, their intent was that
15:24:25 4 you not testify and that was clear; right?

15:24:28 5 MR. BELL: Objection.

15:24:29 6 A. (By the Witness) Again, I don't know what
15:24:32 7 their intent was. I know that I -- all I did was call
15:24:35 8 and ask if I was okay to do it.

15:24:36 9 Q. (By Mr. Girards) And they said "no"?

15:24:38 10 A. Yes, sir.

15:24:38 11 Q. The Marquardt case, that was testimony that
15:25:26 12 you -- that was truthful testimony you planned to give;
15:25:26 13 correct?

15:25:31 14 A. Yes, sir.

15:25:31 15 Q. It was based on an adequate knowledge base of
15:25:37 16 facts and data that was within your medical specialty;
15:25:37 17 correct?

15:25:42 18 A. Yes, sir.

15:25:42 19 Q. The testimony that you planned to give was in
15:25:47 20 line with both the -- with all of the moral, and
15:25:51 21 ethical, and legal requirements for expert testimony
15:25:53 22 that we have gone over today; true?

15:25:56 23 MR. BELL: Objection; form.

15:25:56 24 A. (By the Witness) Yes.

15:25:58 25 Q. (By Mr. Girards) The sole reason you withheld

15:26:00 1 your testimony was because of TMLT and what they said to
15:26:03 2 you; correct?

15:26:04 3 MR. BELL: Objection.

15:26:04 4 A. (By the Witness) Correct.

15:26:06 5 Q. (By Mr. Girards) Did you withdraw as a witness
15:26:10 6 from any other filed lawsuit other than the Marquardt
15:26:13 7 case that you can tell me about?

15:26:15 8 A. Yes.

15:26:15 9 Q. How many other cases did you withdraw from?

15:26:20 10 A. Two, I think.

15:26:22 11 Q. Do you remember the names of cases?

15:26:25 12 A. No, sir.

15:26:26 13 Q. Do you remember the lawyers on either side?

15:26:28 14 MR. BELL: I am going to instruct you,
15:26:30 15 Doctor, to the extent that you were disclosed to third
15:26:35 16 parties, designated as a witness in that case, you can
15:26:38 17 answer that question; but to the extent you were only a
15:26:42 18 consulting witness and not yet been disclosed, I am
15:26:42 19 going to instruct you not to answer that question.

15:26:45 20 A. (By the Witness) The cases, I can't remember
15:26:48 21 the names, they were cases that were with Les.

15:26:55 22 Q. (By Mr. Girards) Okay. Did you withdraw as a
15:26:58 23 witness from those two cases with Mr. Weisbrod's firm
15:27:02 24 solely as a result of what TMLT did and said to you?

15:27:08 25 A. Yes.

15:27:09 1 Q. Did -- have you testified as a witness in any
15:27:30 2 lawsuit in Texas since you withdrew from the Marquardt
15:27:34 3 case in 2002?

15:27:36 4 A. One case.

15:27:38 5 MR. BELL: And for clarification,
15:27:40 6 Gentlemen, I am sorry to interrupt, you mean testimony
15:27:41 7 being deposition and trial testimony?

15:27:43 8 Q. (By Mr. Girards) Deposition or trial
15:27:47 9 testimony.

15:27:47 10 A. Yes.

15:27:47 11 Q. In cases that you were -- where you were a
15:27:51 12 consulting witness who was a testifying expert witness?

15:27:55 13 A. Yes, one.

15:27:56 14 Q. Okay, when was that?

15:27:58 15 A. A few years ago.

15:28:00 16 Q. Did you testify for the doctor or on behalf of
15:28:04 17 the patient?

15:28:04 18 A. I was on the defense side.

15:28:06 19 Q. TMLT said it was okay for you to defend doctors
15:28:10 20 in court?

15:28:11 21 MS. SHAW: Objection; form.

15:28:11 22 MR. BELL: Objection; form.

15:28:13 23 A. (By the Witness) Actually, I never asked them.

15:28:15 24 Q. (By Mr. Girards) Well, was all of the
15:28:17 25 discussion with TMLT, their objection to you doing

15:28:22 1 plaintiff's work only?

15:28:25 2 A. Back in 2001?

15:28:29 3 Q. Uh-huh.

15:28:29 4 A. Yes, sir.

15:28:29 5 Q. There was never -- they never raised any fuss

15:28:31 6 with you about testifying on behalf of a doctor that had

15:28:34 7 been sued?

15:28:35 8 A. And let me just clarify one thing. It was only

15:28:39 9 plaintiff testimony in Texas.

15:28:42 10 Q. Okay.

15:28:43 11 A. Okay.

15:28:47 12 Q. But they never did give you -- make any fuss

15:28:48 13 with you about testifying on behalf of a doctor who had

15:28:51 14 been sued?

15:28:51 15 A. No, that never came up.

15:28:55 16 Q. Is that why you never called them about

15:29:00 17 testifying on behalf of a doctor in this case you

15:29:02 18 mentioned?

15:29:04 19 A. Well, it was a case of theirs. They called me.

15:29:08 20 Q. Oh, I see.

15:29:09 21 A. I didn't really need to call them.

15:29:11 22 Q. Okay, was it a case in which you were a

15:29:15 23 subsequent treating physician?

15:29:16 24 A. No, sir.

15:29:17 25 Q. Were you involved in the patient's care at all,

15:29:21 1 firsthand?

15:29:21 2 A. No, sir.

15:29:21 3 Q. Who -- how was it that they contacted you to
15:29:24 4 get you onboard as an expert to testify on behalf of a
15:29:28 5 TMLT insured?

15:29:30 6 A. Gosh, I don't know who -- I am guessing the
15:29:34 7 attorney who was on the defense side was the one that
15:29:38 8 called me, but I'm not positive. I can't remember.

15:29:39 9 Q. Do you remember who that lawyer was?

15:29:42 10 A. Yes.

15:29:42 11 Q. Who?

15:29:43 12 A. Diane.

15:29:44 13 Q. Okay. When did she call you?

15:29:47 14 A. If I knew that, I would know when they called.

15:29:51 15 Q. Oh, I see. What year was this?

15:29:51 16 A. I think it was a few years ago.

15:29:54 17 Q. Okay. Have you talked to Diane about this
15:29:56 18 deposition today?

15:29:56 19 A. No.

15:29:59 20 Q. Have you talked to her about your involvement
15:30:01 21 in this situation at all prior to today?

15:30:04 22 A. I talked to her one time because when I got the
15:30:13 23 first subpoena --

15:30:13 24 Q. Uh-huh.

15:30:13 25 A. -- is that what you call it?

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15:30:15 1 Q. Right.

15:30:15 2 A. And then I called Ray and he had told me to --

15:30:20 3 MR. BELL: You don't need to discuss what
15:30:23 4 you talked about with him, but.....

15:30:24 5 A. (By the Witness) Oh, so, anyways, I called her
15:30:28 6 because she was on the defense side of this case; so I
15:30:30 7 thought maybe she would help me.

15:30:32 8 Q. (By Mr. Girards) Okay, because you -- all
15:30:35 9 right, well, now, when I called your office in December
15:30:39 10 and I was told to request dates for your deposition and
15:30:42 11 I was told I needed to call Diane Shaw for dates, how
15:30:46 12 was it that your office knew to tell me to call Diane
15:30:51 13 Shaw for dates for this deposition?

15:30:54 14 MS. SHAW: Objection; form.

15:30:54 15 MR. BELL: Objection; form.

15:30:54 16 A. (By the Witness) Because that is what I told
15:30:56 17 them.

15:30:56 18 Q. (By Mr. Girards) Okay, you told them because
15:30:59 19 you had spoken with her?

15:31:00 20 A. No, I don't know if I had spoken with her yet,
15:31:05 21 but it was my understanding that she was on the defense
15:31:07 22 side of this case that you have.

15:31:09 23 Q. How did you know that? How did you come to
15:31:11 24 that understanding?

15:31:13 25 A. Because I got the subpoena.

15:31:15 1 Q. Oh, and saw her name on it?

15:31:17 2 A. Yeah, and saw --

15:31:18 3 Q. Makes sense.

15:31:19 4 A. Just makes sense.

15:31:19 5 Q. Okay.

15:31:22 6 A. Because I knew her, so.....

15:31:23 7 Q. Yeah, and so did she help you on this?

15:31:27 8 A. No.

15:31:27 9 Q. What were you told?

15:31:30 10 A. That she couldn't help me because she couldn't

15:31:35 11 help me.

15:31:35 12 Q. Is it your intention that so long as you are a

15:31:40 13 TMLT insured you will not testify on behalf of an

15:31:44 14 injured patient in Texas no matter how meritorious the

15:31:48 15 case?

15:31:48 16 MR. BELL: Objection; form.

15:31:49 17 A. (By the Witness) Well, I can't say what I am

15:31:53 18 going to do in the future.

15:31:53 19 Q. (By Mr. Girards) That is why I am asking you

15:31:56 20 what your intention is as we are sitting here right now.

15:32:00 21 MS. SHAW: Objection; form.

15:32:00 22 MR. BELL: Objection; form.

15:32:03 23 A. (By the Witness) Again, I am not going to -- I

15:32:03 24 don't know what I would do -- I mean they have never

15:32:05 25 changed their policy about what I can and can't do. I

15:32:08 1 mean I have never changed my letter to them, so as we
15:32:11 2 sit here today.

15:32:11 3 Q. (By Mr. Girards) Now, do you know of other
15:32:14 4 doctors who have had the kind of experience you had with
15:32:19 5 TMLT, or on the other hand, is it your impression that
15:32:21 6 you were just someone they made an example of with this
15:32:25 7 whole war thing?

15:32:26 8 MS. SHAW: Objection; form.

15:32:26 9 MR. BELL: Objection; form.

15:32:28 10 A. (By the Witness) I don't know anybody else,
15:32:29 11 but then, you know, after the three-months was up we
15:32:34 12 never talked -- I don't talk about it to anybody. I
15:32:35 13 mean it is not something that has been ongoing.

15:32:39 14 Q. (By Mr. Girards) Okay, and the three-month war
15:32:39 15 was what? From January '01 to March, April '01,
15:32:43 16 something like that?

15:32:43 17 A. Something like that.

15:32:44 18 Q. Was TMLT's position on this -- I take it their
15:32:57 19 policy on this had nothing to do with whether your
15:32:59 20 testimony was truthful and meritorious or not? It was
15:33:02 21 just this is how it is and "we need you to tow the line,
15:33:08 22 be a team player," quote?

15:33:09 23 MR. BELL: Objection; form.

15:33:11 24 MS. SHAW: Form.

15:33:13 25 A. (By the Witness) Correct. They never asked

15:33:15 1 for facts.

15:33:16 2 Q. (By Mr. Girards) Who was the plaintiff's
15:33:19 3 attorney in the Shaw, the Diane Shaw case, that you
15:33:21 4 worked on years ago.

15:33:23 5 A. I don't know. It was somebody from Fort Worth.

15:33:27 6 Q. You understood that if you gave the deposition
15:33:46 7 in the Marquardt case it would adversely affect your
15:33:49 8 liability coverage with TMLT?

15:33:50 9 MS. SHAW: Objection; form.

15:33:53 10 MR. BELL: Objection.

15:33:53 11 A. (By the Witness) Well, they never said that.
15:33:54 12 They just said it was part of our original deal.

15:33:56 13 Q. (By Mr. Girards) Right, I mean that was your
15:33:58 14 understanding. That's why you put it in the letter to
15:34:01 15 my office?

15:34:01 16 MR. BELL: Objection.

15:34:01 17 Q. (By Mr. Girards) True?

15:34:01 18 A. Yes, I felt like that was part of the original
15:34:04 19 deal; and I did it, that I might get in trouble, yes.

15:34:09 20 MR. GIRARDS: Well, Doctor, I sure
15:34:12 21 appreciate you taking time out of your schedule on a
15:34:15 22 Friday afternoon to visit with me, and I will pass the
15:34:15 23 witness.

15:34:15 24 MR. BELL: Anybody else?

15:34:19 25 EXAMINATION

15:34:19 1 BY MS. SHAW

15:34:19 2 Q. Dr. Donovitz, you know I am Diane Shaw and I --
15:34:22 3 I just have a couple of follow-up questions. There is a
15:34:25 4 suggestion in this case, the Tran case, where I am
15:34:31 5 representing Dr. Patton, that Mr. Girards made to the
15:34:39 6 court that you actually wanted to give your deposition
15:34:42 7 testimony; is that true?

15:34:46 8 A. In this case?

15:34:46 9 Q. Yes, sir.

15:34:48 10 A. I don't know anything about the case. No one
15:34:49 11 has called me.

15:34:53 12 Q. Well, did you ask -- there was a statement to
15:34:56 13 the judge that you actually wanted to give your
15:34:58 14 deposition about these issues that Mr. Girards has been
15:35:03 15 questioning you about; is that true?

15:35:04 16 A. No.

15:35:06 17 Q. Okay, and in fact to some extent how many times
15:35:14 18 has Mr. Girards noticed or attempted to get your
15:35:21 19 deposition either in this case or other cases about
15:35:25 20 these issues he is questioning you about today?

15:35:28 21 A. Well, I don't know how many. I heard there was
15:35:31 22 a lot, but from my own personal getting subpoenaed, I
15:35:37 23 think he sent me 3 or 4 subpoenas on the same issue; but
15:35:39 24 I don't know how many cases he has tried to get me to
15:35:42 25 testify in.

15:35:42 1 Q. Okay, but you have actually received 3 or 4
15:35:44 2 subpoenas from Mr. Girards?

15:35:47 3 A. (Witness nods head in the affirmative.)

15:35:47 4 Q. At any time when you received those subpoenas
15:35:51 5 did you communicate to him that you did not want to be
15:35:55 6 deposed or that you did want to be deposed on these
15:35:57 7 issues?

15:35:59 8 A. Well, he called my office and I told him "I am
15:36:01 9 not going to talk to you about this," to call you; and
15:36:04 10 so I think the other time I told him I wasn't -- I mean
15:36:10 11 every time it has either been quashed, or changed, or
15:36:14 12 something.

15:36:14 13 So, no, I never wanted to give it.
15:36:17 14 Because again my own insurance company, I didn't want to
15:36:21 15 have to rehash everything from '01 because it is sort of
15:36:24 16 a dead issue.

15:36:27 17 Q. The issues that occurred back in 2001 relating
15:36:34 18 to opinions for Les Weisbrod, did you and Les Weisbrod
15:36:41 19 have a long-term relationship?

15:36:42 20 A. Yes, we were friends back in high school.

15:36:44 21 Q. And you testified that your insurance was
15:36:57 22 canceled, you got it reinstated, and the premium -- your
15:37:05 23 premiums were affected; and while you were angry when
15:37:08 24 you wrote a letter outlining this information, TMLT
15:37:15 25 never actually directly represented to you that you were

15:37:21 1 cancelled, or that your premiums went up, or that you
15:37:24 2 were reinstated because of this issue with testifying
15:37:29 3 for Les Weisbrod. Is that true?

15:37:31 4 MR. GIRARDS: Object to form.

15:37:34 5 A. (By the Witness) Not specifically because I
15:37:35 6 testified for Les.

15:37:39 7 Q. (By Ms. Shaw) Or plaintiff's?

15:37:40 8 A. No. The cancelling came just as a cancelation
15:37:44 9 letter.

15:37:44 10 Q. All right, and, it just in terms of the
15:37:48 11 environment of that time, that was leading up to the
15:37:53 12 need for tort reform?

15:37:56 13 MR. GIRARDS: Object to form.

15:37:58 14 Q. (By Ms. Shaw) Is that correct?

15:38:00 15 MR. GIRARDS: Object to form.

15:38:01 16 A. (By the Witness) Well, there was a lot of
15:38:04 17 malpractice cases being filed at that time, yeah.

15:38:06 18 Q. (By Ms. Shaw) Okay, and were you aware of any
15:38:08 19 numerous insurance companies who were not trusts, but
15:38:12 20 were pulling out of Texas --

15:38:15 21 A. Yes.

15:38:15 22 Q. -- because of this crisis in Texas?

15:38:18 23 MR. GIRARDS: Object to form.

15:38:18 24 A. (By the Witness) Yes.

15:38:20 25 Q. (By Ms. Shaw) All right, and it was -- was it

15:38:23 1 your understanding that those issues were affecting
15:38:27 2 coverage for physicians as well as premiums during that
15:38:31 3 timeframe just in general?

15:38:33 4 MR. GIRARDS: Object to form.

15:38:34 5 A. (By the Witness) Yes, but that was my whole
15:38:36 6 point as, you know, if I didn't have insurance with them
15:38:43 7 I had a very limited opportunity to get insurance with
15:38:43 8 someone else at a lot more money, and still stay in my
15:38:50 9 group and everything else. We didn't have 10 or 15
15:38:50 10 choices. There was only a couple of choices at the
15:38:53 11 time; so I was not looking forward to that.

15:38:58 12 Q. (By Ms. Shaw) All right, and since tort reform
15:39:02 13 there have been a lot more choices, but you and your
15:39:08 14 group have elected to stay with TMLT; is that correct?

15:39:10 15 A. Yes.

15:39:10 16 MR. GIRARDS: Object to form.

15:39:11 17 Q. (By Ms. Shaw) Would you agree, sir, that TMLT
15:39:15 18 never asked you to change your testimony or your reports
15:39:23 19 that you did for plaintiffs in any way?

15:39:26 20 A. No, they --

15:39:26 21 MR. GIRARDS: Object to form.

15:39:29 22 A. (By the Witness) -- never asked me to do that.

15:39:29 23 Q. (By Ms. Shaw) And I believe you already
15:39:32 24 testified to this also, that they never told you that
15:39:36 25 you couldn't testify for a plaintiff. It was -- but

15:39:41 1 they did express a concern with regard to particularly
15:39:48 2 the Les Weisbrod cases as it related to the co-op trust
15:39:56 3 or group that TMLT is?

15:39:58 4 A. That's correct.

15:39:59 5 MR. GIRARDS: Object; form.

15:40:00 6 MS. SHAW: I believe that is all I have.

15:40:03 7 Thank you, sir. I appreciate you're time.

15:40:06 8 MR. BELL: Jennifer, you have any?

15:40:06 9 MS. KING: I don't have anything.

15:40:06 10 MR. BELL: Jim? Everybody is done? Okay.

11 Thank you.

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I, GARY DONOVITZ, M.D., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

GARY DONOVITZ, M.D.

THE STATE OF TEXAS
COUNTY OF _____

Before me _____ on this day personally appeared GARY DONOVITZ, M.D., known to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2010.

Notary Public in and for the State of Texas
My Commission Expires: _____

1 NO. 08-13423

2 SON TRAN and TRAM DO, X IN THE DISTRICT COURT
 Individually and as Next X
 3 Friends of Hannah Tran, a X
 Minor, X
 4 Plaintiffs, X
 X
 5 vs. X DALLAS COUNTY, TEXAS
 X
 6 THERESA M. PATTON, M.D., X
 THERESA M. PATTON, M.D., X
 7 P.A.; and METHODIST X
 HOSPITALS OF DALLAS d/b/a X
 8 METHODIST DALLAS MEDICAL X
 CENTER X
 9 Defendants X L-193rd JUDICIAL DISTRICT

10 REPORTER'S CERTIFICATION
 DEPOSITION OF GARY DONOVITZ, M.D.
 11 January 15, 2010

12 I, JUDY K. HOBART, Certified Shorthand
 13 Reporter in and for the State of Texas, hereby certify
 14 to the following:

15 That the witness, GARY DONOVITZ, M.D., was
 16 duly sworn by the officer and that the transcript of the
 17 oral deposition is a true record of the testimony given
 18 by the witness;

19 That the deposition transcript was
 20 submitted on January 19, 2010, to Charles Bell for
 21 examination, signature, and return to Judy K. Hobart by
 22 February 8, 2010;

23 That the amount of time used by each party
 24 at the deposition is as follows:

25 Mr. James Girards 1:07
 Ms. Diane Shaw 0:07

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1 That pursuant to information given to the
2 deposition officer at the time said testimony was taken,
3 the following includes counsel for all parties of
4 record:

5 FOR THE PLAINTIFFS
6 Mr. James E. Girards
7 and
8 Mr. J. Michael Ramey
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16 PATTON, M.D., P.A.
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41 I further certify that I am neither
42 counsel for, related to, nor employed by any of the

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1 parties or attorneys in the action in which this
 2 proceeding was taken, and further that I am not
 financially or otherwise interested in the outcome of
 the action.

3 Further certification requirements
 pursuant to Rule 203 of TRCP will be certified to after
 4 they have occurred.

Certified to by me on January 17, 2010

5
 6 

JUDY K. HOBART, RPR, CSR No. 2439
 7 Expiration Date: December 31, 2010
 Firm Registration No. 126
 8 6440 N. Central Expressway, Ste. 410
 Dallas, Texas 75206
 9

10 FURTHER CERTIFICATION UNDER RULE 203 TRCP

11 The original deposition was/was not
 returned to the deposition officer on _____;

12 If returned, the attached Changes and
 Signature page contains any changes and the reasons
 13 therefor;

14 If returned, the original deposition was
 delivered to James Girards, Custodial Attorney;

15 That \$ _____ is the deposition officer's
 charges to the Plaintiffs/James Girards for preparing
 the original deposition transcript and any copies of
 16 exhibits;

17 That the deposition was delivered in
 accordance with Rule 203.3, and that a copy of this
 certificate was served on all parties shown herein and
 18 filed with the Clerk.

19 Certified to by me this _____ day of
 _____, 2010.

20
 21 JUDY K. HOBART, RPR, CSR No. 2439
 Expiration Date: December 31, 2010
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 Dallas, Texas 75206
 23 214-363-7471
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 25