

BOOK 12  
PAGE 11

1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - ESSEX COUNTY  
DOCKET NO. L-10358-86

3 IRONBOUND HEALTH RIGHTS :  
4 ADVISORY COMMISSION, et al, :  
5 Plaintiffs, : DEPOSITION OF:  
6 vs. : ROGER H. BRODKIN  
7 :  
8 DIAMOND SHAMROCK CORPORATION, : VOLUME II  
9 et al, :  
10 Defendants. :  
-----:

9 SUPERIOR COURT OF NEW JERSEY  
10 LAW DIVISION - ESSEX COUNTY  
11 DOCKET NO. L-045269-85

12 JOHN BRENNAN, et al, :  
13 Plaintiffs, :  
14 vs. :  
15 DIAMOND SHAMROCK CHEMICAL :  
16 COMPANY, et al, :  
17 Defendants. :  
-----:

18 Thursday, November 10, 1988  
19 Cranford, New Jersey

20  
21  
22  
23 Reporting Services Arranged Through  
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2  
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24 **A L S O P R E S E N T:**25 **CHRISTOPHER WEBER**

I N D E XWITNESS                      DIRECT    CROSS    REDIR    RECR

ROGER H. BRODKIN  
By Mr. Haley                      183

E X H I B I T S

<u>FOR IDENT.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
PB-9	Dr. Brodkin's curriculum vitae	202
PB-10	Article entitled Cutaneous Signs of Dioxin Exposure	213
PB-11	Photograph	224
PB-12	Letter from Dr. Bleiberg to Dr. Birmingham dated 3/14/63	263
PB-13	Letter from Dr. Birmingham to Dr. Bleiberg dated 7/6/62	270
PB-14	Letter from Dr. Brodkin to Mr. Guidi dated 3/29/63	296
PB-15	Frank Ostanski's file folder	329
BP-16	Joseph Ostanski's file folder	330
PB-17	Charles Morrissey's file folder	330
PB-17A	Operation chart of Morrissey	332
PB-17B	Letter from Dr. Bleiberg to Mr. Conlan dated 2/20/69	334
PB-17C	Face sheet dated 8/12/68	336
PB-17D	Letter from Dr. Bleiberg to Aetna dated 11/19/68	338
PB-17E	Letter from Dr. Bleiberg to Aetna dated 1/6/70	341
PB-16A	Treatment card of J. Ostanski	343

1 (Before Gary M. Talpins, a Certified  
2 Shorthand Reporter and Notary Public of the State  
3 of New Jersey, held at the offices of Messrs. Dughi  
4 & Hewit, 340 North Avenue, Cranford, New Jersey, on  
5 Thursday, November 10, 1988, commencing at 9:10  
6 a.m.)

7 - - - - -  
8  
9 R O G E R H. B R O D K I N, Previously Sworn.

10  
11 CONTINUED DIRECT EXAMINATION

12 BY MR. HALEY:

13 Q. Good morning, doctor. How are you?

14 A. Fine, thank you. Good morning.

15 Q. You are aware that you have been sworn  
16 and continue to be under the oath that was  
17 administered yesterday?

18 A. Yes.

19 Q. I would like to start this morning with  
20 exhibit PB-8 A for identification, which is the  
21 treatment chart of James Burke that we looked at  
22 yesterday. Doctor, I believe, and again, correct  
23 me if I'm wrong, pointing you to November 1st of  
24 what I think, what we believe to be 1962, you said  
25 that was your notation?

Brodkin - direct

1 A. That's correct.

2 Q. Excuse me, '63, doctor. I believe you  
3 said that was your notation?

4 A. Yes. It is '62, it looks like '62 to  
5 me.

6 Q. Could you tell me if excision of cysts  
7 was something that was done to many of these  
8 workers?

9 A. Yes, it was done to many of the  
10 workers.

11 Q. It's my understanding, and please  
12 correct me if I'm wrong, that you would normally  
13 visit the plant on Thursdays?

14 A. That's correct.

15 Q. Prior to those visits on each Thursday,  
16 would you be informed as to who you would be  
17 treating or who would be coming to see you that  
18 day?

19 A. I don't know because that is a matter  
20 that ordinarily Dr. Bleiberg would take care of.

21 Q. Could you describe for me, if you  
22 would, what would happen when someone would come  
23 in, for example, showing a cyst such as Mr. Burke  
24 did here and describe from when he walked in to the  
25 examining room through the end what would be done

Brodkin - direct

1 and what would be asked of him?

2 MR. DUGHI: Let me object to the  
3 question. I don't see how you can, in a case where  
4 we are dealing with 20 or 21 separate plaintiffs,  
5 how you can ask him to talk about how one specific  
6 medical problem is handled. You can certainly ask  
7 about that cyst but not a general description.

8 MR. HALEY: Then why don't we go to Mr.  
9 Burke's interrogatories.

10 Q. And while we are waiting for those,  
11 doctor, you treated a number of men while the  
12 Diamond plant was operating. Is that not correct?

13 A. Yes.

14 Q. And you treated a number of them for  
15 chloracne. Is that not also correct?

16 A. That is correct.

17 Q. Could you tell me how, if it did, the  
18 treatment would differ from patient to patient?

19 And let me --

20 A. Perhaps you had better ask me again.

21 Q. For example, if Jim Burke had a cyst  
22 and Griffin Baisley had a cyst, would you treat Jim  
23 Burke's cyst any different than Griffin Baisley's?

24 MR. DUGHI: Objection. You are asking  
25 him to speculate as to general matters. This is a

Brodkin - direct

1 malpractice case involving his treatment. I think  
2 you can ask him what he did for each of those and  
3 draw distinctions of what was done differently.

4 MR. HALEY: Fine.

5 Q. What did you do to treat Jim Burke's  
6 cysts?

7 A. Depending on its location --

8 Q. I'm listening, doctor.

9 A. And depending on its size, and  
10 depending on whether or not it showed any  
11 indication of being inflamed, I would manage it in  
12 that way, i.e., I might or might not feel it  
13 necessary to administer a local anesthetic; I might  
14 or might not dissect it with an instrument, that  
15 is, free it up from the surrounding tissue; I might  
16 or might not just be able to squeeze it out,  
17 express it. There are so many available options.  
18 Do you want me to continue listing them?

19 Q. Sure.

20 A. I might empty its contents and then  
21 allow it to quiet down, if that's something  
22 meaningful to you, for a week and then remove it,  
23 be able to remove it the next week; I might  
24 literally ellipse it out, that is, cutting through  
25 normal tissue surrounding the lesion, and suture it



Brodkin - direct

1 or not suture it. We, may I say, did not suture  
2 things, to my recollection, in the Diamond plant,  
3 not that we couldn't for any reason, but I doubt  
4 that we did very much of that. It's a matter of  
5 the time that it would take.

6 Q. Doctor, you mentioned the word "manage"  
7 the cyst. Could you tell me what that means?

8 A. "Manage"?

9 Q. Yes.

10 A. It's a term that is intended to cover  
11 those procedures used to diagnose as well as treat,  
12 which would include history, physical examination,  
13 laboratory or any special other -- (no further  
14 response).

15 Q. You also used the term "quiet" the  
16 cyst. Could you tell me what that is?

17 A. When inflammation occurs in an  
18 anatomical structure, it immediately develops  
19 adhesions and begins to involve surrounding normal  
20 tissue. If you can empty out the source of the  
21 inflammation, the contents, the pus or whatever it  
22 be, that reaction will regress and you will end up  
23 with a smaller lesion that can be excised or  
24 managed in other ways.

25 Q. How would one tell from your medical

Brodkin - direct

1 records -- let's start with the treatment cards --  
2 which of those options which you have described  
3 were employed in any one situation?

4 A. It might be specifically noted or it  
5 might not.

6 Q. Would you consider, for example, the  
7 excision of a cyst on someone's penis and the  
8 administration of Terramycin to be a significant  
9 treatment? And let me define "significant" for  
10 you, doctor, significant in the sense that it would  
11 require a notation on your treatment record?

12 MR. DUGHI: Required by what standard,  
13 by his opinion?

14 MR. HALEY: In his opinion.

15 A. I think it should be noted on the  
16 record.

17 Q. And that would be just as you would  
18 note all things of significance in the course of  
19 treatment?

20 A. I would say yes, if I understand your  
21 question. I hasten to add, though, that Mr. Burke  
22 often had cysts emptied by perhaps less invasive  
23 means.

24 Q. Doctor, you mentioned, when we were  
25 discussing management, the history and physical

Brodkin - direct

1 examinations as part of the management of a cyst.  
2 Could you tell me what that physical examination  
3 would consist of?

4 MR. DUGHI: Would consist of or did  
5 consist of?

6 MR. HALEY: Did consist of.

7 A. Of looking at this lesion and observing  
8 whether or not it was red and swollen. Do you want  
9 to know the examination?

10 Q. Yes.

11 A. Feeling the lesion to determine whether  
12 it was discreet or whether there was hardening of  
13 the tissues surrounding it and perhaps of eliciting  
14 the sign of tenderness by applying pressure to it  
15 and asking the patient does it hurt.

16 Q. What would be the significance to you  
17 of the cyst being discreet?

18 A. I would presume then that it was not --  
19 it did not -- it was not inflamed.

20 Q. And what would be the significance of  
21 the hardening of the tissue to you?

22 A. This is another sign. One sign per se  
23 does not indicate that much but if several or all  
24 of these things were present, this would allow me  
25 to reach more definitive conclusions.

Brodkin - direct

1 Q. If you found hardening of the tissue,  
2 or if you did find hardening of the tissue in a  
3 cyst, what are the other things you would look for  
4 in order to --

5 A. Redness and tenderness and swelling.

6 Q. Doctor, I believe you also mentioned  
7 softening to the touch when talking about the  
8 cyst. What, if any, significance would that have  
9 to you in the course of doing a physical  
10 examination?

11 A. I mentioned softening of the cyst?

12 Q. I believe you said softening to the  
13 touch and then find out whether there was a painful  
14 reaction.

15 A. A pressure on it.

16 Q. Pressure, okay.

17 MR. DUGHI: I think the word was  
18 testing for tenderness.

19 MR. HALEY: That very well could be,  
20 counsel.

21 MR. DUGHI: In fact, the phrase was  
22 eliciting the sign of tenderness by pressure.  
23 Would you like me to test you for tenderness?

24 MR. HALEY: What purpose is that, sir?

25 MR. DUGHI: Jesus Christ. The comment

Brodkin - direct

1 was to be amusing. I apologize for it this early  
2 in the morning. I will save it for the afternoon.

3 Q. I think we agree the phrase is  
4 eliciting tenderness to the touch, do we agree  
5 that's what the phrase is?

6 A. Yes.

7 Q. Can you tell me what the significance  
8 of that is, if any?

9 A. The cardinal signs of inflammation  
10 include calor, rubor, tumor, dolor, heat, redness,  
11 swelling, pain.

12 Q. Having done the physical examination as  
13 we have discussed here, could you tell me if you  
14 found the heat, redness, swelling and pain, would  
15 that indicate anything to you from a clinical  
16 perspective?

17 A. If I found those things?

18 Q. Yes, if you found those things.

19 A. It would indicate that the cyst was  
20 inflamed.

21 Q. Is inflamed the same as infected?

22 A. No.

23 Q. Could you explain what the difference  
24 is to me?

25 A. If I were to take your hand and put it

Brodkin - direct

1 into a pot of boiling water, it would be red,  
2 swollen, painful --

3 Q. And hot.

4 A. And hot. If I were to take  
5 staphylococci and through a variety of measures,  
6 perhaps necrotize some of the tissue and then  
7 inoculate a germ or an organism or put herpes in  
8 you, I would then produce the same clinical signs  
9 resulting from an infection.

10 Q. So perhaps I'm misstating but on the  
11 one hand, you are saying that it could be caused by  
12 heat, as in the case of boiling --

13 A. It could be caused by a lot of things.

14 Q. Caused by boiling water?

15 A. It can be caused by cold, severe cold.

16 Q. What, doctor, with these patients, did  
17 the observation of inflammation lead you to do, if  
18 anything, in their treatment?

19 A. Maybe -- didn't I say what it led me to  
20 do? There are many options.

21 Q. And that would run the range from  
22 excision to management?

23 A. Yes.

24 Q. And all of those types of things?

25 A. Yes.

Brodkin - direct

1 Q. Doctor, what would be the difference,  
2 if any, in the course of treatment if you found an  
3 inflamed cyst or an inflamed lesion versus an  
4 infected lesion?

5 A. It's hard to answer. If I felt it was  
6 infected, I would treat it with incision and  
7 drainage, if possible, and administer antibiotic  
8 treatment.

9 Q. And if it were inflamed, you would do  
10 the things, any one potentially of the things we  
11 discussed previously?

12 A. Correct.

13 Q. Doctor, I notice in the right-hand  
14 column, I'm going to show this to you in a second,  
15 that there is a mention of, for example, SPL,  
16 Terramycin I see here and SPL, also, on Mr. Burke's  
17 treatment card. Am I correct in my understanding  
18 that Terramycin is an antibiotic?

19 A. Yes.

20 Q. And that would have been administered  
21 in a case where you suspected or found infection in  
22 a cyst?

23 A. Yes.

24 Q. Would that have been administered for  
25 any other reason?

Brodkin - direct

1 A. No.

2 Q. And SPL, am I correct it's also my  
3 understanding that that, too, is an antibiotic?

4 A. No, it's not an antibiotic.

5 Q. Can you explain to me what SPL is?

6 A. SPL is staphylococcal phage lysate, it  
7 is a vaccine. Do you know what a vaccine is?

8 MR. DUGHI: Spell that.

9 THE WITNESS: S-t-a-p-h-y-l-o-  
10 c-o-c-c-a-l P-h-a-g-e L-y-s-a-t-e. It's a vaccine.

11 Q. And am I correct in my understanding  
12 that the reason that you would administer a vaccine  
13 is because of fear of infection in the future?

14 A. Correct, prevention.

15 Q. Would there have been any other reason  
16 for administering the SPL other than that?

17 A. No.

18 Q. I would like you to peruse the  
19 treatment card, if you will, because I noticed B-12  
20 and I will get to that in a second. Other than  
21 B-12, SPL and Terramycin, is there the  
22 administration of any other drugs that I'm missing  
23 on that treatment card?

24 A. This patient was given Depo-Medrol and  
25 Lincocin, L-i-n-c-o-c-i-n, D-e-p-o-M-e-d-r-o-l. I



Brodkin - direct

1 presume you mean parenterally or orally, not stuff  
2 that he was given --

3 Q. Not topical.

4 A. He was also given Celestone,  
5 C-e-l-e-s-t-o-n-e, Soluspan, S-o-l-u-s-p-a-n.

6 Q. Let's take them one at a time. For  
7 what reason was Depo-Medrol, if I'm pronouncing  
8 that correctly, administered?

9 A. Depo-Medrol is an anti-inflammatory  
10 agent to reduce inflammation, very effective.

11 Q. And for what purpose is Lincocin  
12 administered?

13 A. Lincocin is an antibiotic.

14 Q. So that would have been administered in  
15 the case of infection?

16 A. Correct.

17 Q. And would there have been any other  
18 reason for administering Lincocin?

19 A. No other reason.

20 Q. And what was the purpose, because I  
21 also note, I believe, doctor, if I'm correct, you  
22 did administer B-12. Is that correct?

23 A. That's correct.

24 Q. What was the purpose in administering

25 B-12?

Brodkin - direct

1           A.       For the most part, B-12 was used as a  
2 diluent in the administration of SPL. Do you know  
3 what I mean by that?

4           Q.       That would be to dilute it?

5           A.       Yes.

6           Q.       Was there any other reason for  
7 administering B-12?

8           A.       Yes. It was felt at that time that  
9 B-12 was useful in the management of neuropathies.

10          Q.       Could you explain to me what a  
11 neuropathy is?

12          A.       A disturbance of nerve function,  
13 perhaps I should say peripheral nerves.

14          Q.       So this would be peripheral  
15 neuropathies, then?

16          A.       Yes.

17          Q.       That you were dealing with here?

18          A.       Yes.

19                 MR. DUGHI: Whoa --

20          A.       It was used in their treatment, okay?

21          Q.       It was used in the treatment of  
22 peripheral neuropathies?

23          A.       It was, yes.

24          Q.       Were you using it in this case for the  
25 treatment of peripheral neuropathies?

Brodkin - direct

1           A.       There were complaints among workers of  
2 weakness and fatigue and there had been, the  
3 question had been raised as to whether this was a  
4 neuropathic fatigue and therefore, it was given by  
5 itself, exclusive of its use as a diluent.

6           Q.       Could you tell me what a neuropathic  
7 fatigue is?

8           A.       You may be anemic or you may have  
9 stayed up all night in preparation for this  
10 deposition and then complain of fatigue. That is  
11 not --

12          Q.       He did that. I can vouch for that.

13          A.       That is not neuropathic fatigue. If,  
14 on the other hand, you had pernicious anemia or  
15 diabetes and had -- or syphilis and had pains,  
16 lancinating pains in your extremities, that would  
17 be a neuropathy.

18          Q.       Did you ever receive any complaints  
19 from these patients as to numbness in their  
20 extremities or in their peripherals?

21               MR. DUGHI: If you can recall that  
22 outside of looking at all the records, fine.

23               MR. HALEY: If you can recall it. We  
24 will stay with Mr. Burke, for example.

25               MR. DUGHI: That's fine.

Brodkin - direct

1           A.       I don't specifically recall it with Mr.  
2       Burke.   May I --

3           Q.       Absolutely.   In fact, here is the  
4       entire file, if that's helpful.

5           A.       I don't see any notations of Burke  
6       complaining of the symptoms of neuritis or  
7       neuropathy.

8           Q.       Other than the two circumstances which  
9       you described in which B-12 was administered, were  
10      there any other reasons why you administered B-12  
11      to patients at this location?

12           MR. DUGHI:   I guess we are following  
13      the same rule, "you" is Dr. Brodkin?

14           MR. HALEY:   Yes, that's correct.

15           A.       I was about to say Mr. Burke's  
16      treatment, by and large, had been established, I  
17      think, prior to my arrival at Diamond Shamrock.  
18      Whether or not I was simply continuing this  
19      treatment for reasons that I had not elicited from  
20      the patient, I don't know.

21           Q.       I assume the person who established  
22      that treatment was Dr. Bleiberg?

23           A.       That's correct.

24           Q.       Did you ever ask Dr. Bleiberg why B-12  
25      was being administered to Jim Burke?

Brodkin - direct

1 A. I probably did.

2 Q. Do you recall if he gave you any  
3 response?

4 A. I certainly don't remember what his  
5 response was.

6 Q. Doctor, could you tell me in  
7 preparation for your deposition, did you review the  
8 medical files in your possession of various  
9 plaintiffs in this case?

10 A. Yes.

11 Q. And could you tell me what else you  
12 reviewed in preparation for this deposition?

13 A. I reviewed articles I had written, I  
14 reviewed the medical files, I reviewed certain  
15 selected copies of the pages of the Physicians'  
16 Desk Reference of 1962 to '65, I think, and I  
17 reviewed a whole bunch of letters and  
18 correspondence.

19 Q. In your review, if you can recall, in  
20 your review of the medical records --

21 A. Would you forgive me one moment?

22 Q. Certainly.

23 (Whereupon a discussion took place off  
24 the record.)

25 MR. HALEY: Strike that last question.

Brodkin - direct

1 Q. When the word "medical record" is used,  
2 are we talking about the manila folders, for  
3 example, that we have marked in Griffin Baisley's  
4 case PB-2 and in Jim Burke's case, PB-8?

5 MR. DUGHI: Photocopies or originals.

6 MR. HALEY: Or photocopies of the  
7 originals.

8 A. Yes.

9 Q. When you use the term "medical  
10 records," is there anything else other than what I  
11 have just described that you reviewed?

12 A. No, not really. I mean I didn't review  
13 all this other stuff in here.

14 Q. You also stated that you reviewed  
15 articles which you have written. I assume that  
16 would have been, one of those would have been  
17 Industrially Acquired Porphyria?

18 A. That's correct. Pardon me, I shouldn't  
19 say I have written, on which my name appears among  
20 the authorship position.

21 Q. Let me ask you this, doctor: Is it  
22 common for your name to appear on an article which  
23 you haven't authored?

24 A. It's very common. If you mean by  
25 "authored" that I initiated, developed, researched

Brodkin - direct

1 and wrote, it's very common.

2 Q. Doctor, I assume another article would  
3 have been the 1984 article Cutaneous Sites of  
4 Dioxin Exposure?

5 A. Yes. Authors are often put on papers  
6 if they do the work with the patient and never see  
7 or write a word. I'm trying to help you  
8 understand.

9 MR. DUGHI: Believe me, the last thing  
10 you should do is help him understand. Just answer  
11 his questions.

12 Q. Could you tell me what other articles  
13 you authored or on which your name appeared that  
14 you reviewed in preparation for this deposition?

15 A. That was all.

16 Q. Before I go into the correspondence,  
17 doctor, I would like to ask you one question. Have  
18 you ever, and I'm speaking about articles again,  
19 allowed your name to be used on an article that you  
20 haven't read prior to its publication?

21 A. I'm afraid I have.

22 Q. Could you tell me which articles those  
23 are?

24 A. Sure. May I have my curriculum, my  
25 list of publications?

Brodkin - direct

1 MR. HALEY: Is that the new one or the  
2 old one?

3 MR. DUGHI: This is the old one.

4 MS. BASS: That's the new one.

5 MR. HALEY: Why don't we mark the new  
6 one PB whatever my next number is. PB-9, a 13 page  
7 document, states "Roger Harrison Brodkin, M.D.," on  
8 the front page and appears to be a curriculum vitae  
9 and bibliography.

10 (Whereupon the document was received  
11 and marked PB-9 for identification.)

12 A. May I ask you a question?

13 Q. If it's -- for clarification purposes,  
14 certainly.

15 A. Some of these articles I have read  
16 various drafts of. You want to know what went out  
17 over my signature without having read the final --

18 Q. Why don't we do this, doctor: We will  
19 do it two ways. First of all, the ones which went  
20 out over your signature which you haven't read and  
21 then we will do the ones which you reviewed drafts  
22 of but may not have reviewed a final draft. As I  
23 understand it, that's what you are saying, correct?

24 A. Yes.

25 Q. Why don't we do it that way.



Brodkin - direct

1           A.           I would like to give you the ones that  
2 I never read a word of.

3           Q.           Okay. I also would like the record to  
4 reflect that Dr. Brodkin -- is this the marked copy  
5 of the exhibit?

6           MR. DUGHI:    No.

7           THE WITNESS: I shouldn't mark it?

8           MR. HALEY:   It might be easier if he  
9 does mark it.

10          MR. DUGHI:   I would rather not do  
11 that. They are numbered, he can give the numbers.  
12 Take your time.

13          A.           May I give you my answer?

14          Q.           Sure. These are the ones, doctor,  
15 could you explain to me which ones these are, the  
16 two classes we described?

17          A.           I'm now telling you which ones I did  
18 not see at all and was included as an author  
19 because I participated in the management of the  
20 patient in an important way; numbers 40, 45 and  
21 51. The ones that I did look at drafts but not the  
22 final copy include number 35 -- pardon me, I will  
23 make number 35 that I never saw the article.

24          Q.           That would be in addition to the other  
25 ones you just mentioned?

Brodkin - direct

1           A.       Correct. Number 36 I reviewed drafts  
2 of; number 39; number 48; number 52 and number 53.

3           Q.       Doctor, other than the articles which  
4 you just mentioned, which in some cases you had not  
5 read prior to release and in some cases of which  
6 you had read drafts, is it safe for me to assume  
7 that with the remainder of the articles listed in  
8 the bibliography on PB-9 for identification, which  
9 is your bibliography, that you had read the final  
10 publication prior to its -- final draft prior to  
11 its being published?

12          A.       Yes.

13          Q.       And would it also be a fair statement  
14 for me to say that you agreed on those which you  
15 read, again, leaving these two classes out that we  
16 just discussed, that those which you read, that you  
17 agree with the conclusions that were stated in the  
18 articles at the time that they were written?

19          A.       That's not always true.

20          Q.       Could you explain to me, doctor, why  
21 your name would appear on an article where you  
22 disagreed with the conclusions?

23          A.       There are a number of reasons but in  
24 general, the reasons are that although -- I  
25 sometimes am in a more or less subordinate

Brodkin - direct

1 position, in which it is determined by the senior  
2 author that my presence being listed among the  
3 authors is important and if you can understand  
4 that, that I, without causing a big fuss, can't get  
5 out of it.

6 Q. Doctor, could you give me examples, if  
7 you can recall, on the bibliography attached to  
8 your C.V., where you have disagreed with the  
9 conclusions stated in the articles?

10 MR. DUGHI: While he is looking, I'm  
11 not sure what the relevancy of this is on general  
12 articles written.

13 MR. HALEY: You will see.

14 MR. DUGHI: I object.

15 Q. Doctor, again --

16 A. I won't necessarily commit myself to  
17 disagreeing with, but I will tell you articles  
18 where I am listed as an author that I would have  
19 written substantially differently and could not --

20 Q. Had you been the principal author?

21 A. Yes, exactly.

22 Q. Fine. I would like to, doctor, preface  
23 that with saying at the time at which the articles  
24 were written, because we talked about that  
25 yesterday.

Brodkin - direct

1           A.       Yes, I realize that. And leading the  
2 list are the two on cutaneous signs of dioxin  
3 exposure and the 1964 article of Bleiberg, et al.

4           Q.       Could you state those by way of number,  
5 doctor?

6           A.       I'm sorry. That is number 44 and  
7 number ten.

8           Q.       Are there any others on this list,  
9 doctor?

10           MR. HALEY: I assume counsel is going  
11 to withdraw his objection on relevancy, not to the  
12 extent that there is any such objection.

13           A.       Would you restate the question,  
14 please.

15           Q.       Doctor, I believe you stated, and  
16 again, you can correct me if I'm wrong, you said  
17 had you been the principal author of some articles,  
18 you would have written them, I believe -- your  
19 statement was, and I'm paraphrasing you, I'm not  
20 quoting you, substantially different than the way  
21 in which they appeared. And I asked you, I  
22 believe, to identify those articles.

23           MR. HALEY: Is that a fair --

24           A.       Yes. In addition to the two, I would  
25 have to say number 37. I don't think that's

Brodkin - direct

1 published but what is being done to it is not with  
2 my approval.

3 I certainly would not have agreed to  
4 number 53.

5 Q. I think we mentioned 53 in the drafts,  
6 I think that was one of the ones we already  
7 mentioned.

8 A. It appeared and I have substantial  
9 regrets that my name is even on it. This is a  
10 situation where I was told I had to assist some  
11 people in the preparation. I was more or less  
12 assigned to it.

13 Q. Assigned by whom?

14 A. By my division director at the medical  
15 school, Dr. Schwartz.

16 Q. Doctor, am I correct -- are there any  
17 others? I didn't mean to cut you short.

18 A. Where I substantially disagreed with  
19 the article.

20 MR. DUGHI: Would have written it  
21 differently.

22 THE WITNESS: Would have written it  
23 differently, yes.

24 A. Just give me another minute.

25 I would have written the article number

Brodkin - direct

1 39 a little differently, also. To the best of my  
2 recollection of the production of these articles,  
3 that pretty much covers it.

4 Q. That's the list as best you can recall  
5 right now?

6 A. Yes.

7 Q. Doctor, it's my understanding, and  
8 correct me if I'm wrong, that in medical  
9 publications, the principal author of an article is  
10 normally listed first; for example, we will take  
11 number ten?

12 A. What do you mean by the principal  
13 author of the article?

14 Q. You have testified, and again, I could  
15 be wrong, that you were not, for example, the  
16 principal author of, let's take an example, number  
17 36, or let me put it to you another way. Were you  
18 the principal author of --

19 Q. May I ask what you mean by "principal  
20 author"?

21 Q. I believe it's a term that you used,  
22 doctor. When you testified principal author, what  
23 did you mean by that?

24 A. I don't recall the context in which I  
25 used it but the principal author might mean the

Brodkin - direct

1 first listed author or it might mean the author  
2 that really does the writing of the article.

3 MR. HALEY: I'm sorry, would you read  
4 back that answer for me, please.

5 (Whereupon the record was read.)

6 Q. Is there any significance, doctor, to  
7 an author being listed first?

8 A. Yes.

9 Q. Could you tell me --

10 A. But there are two reasons for it.

11 Q. Could you tell me what those two  
12 reasons are?

13 A. In the article, number 28, Brodkin and  
14 Bleiberg, Cutaneous Microwave Injury in 1973, I'm  
15 listed first. I first saw that patient, I wrote  
16 the article and I did the research on it.

17 Q. So that was -- that would be an article  
18 that you both wrote and the conclusions of which  
19 you agreed to, if that is any kind of grammar at  
20 all, which it's not?

21 MR. DUGHI: At the time it was  
22 written.

23 MR. HALEY: At the time it was  
24 written.

25 A. Now --

Brodkin - direct

1 Q. That was a question. There was a  
2 question pending. Let me restate it. Doctor, so,  
3 then, in number 28, am I correct in stating that  
4 you both wrote that article and agreed with its  
5 conclusions at the time at which it was written?

6 A. Correct.

7 Q. That was the question pending.

8 Did we discuss the second --

9 MR. DUGHI: He was in the middle of  
10 answering a question and you interrupted.

11 THE WITNESS: Please go on.

12 MR. HALEY: I'm sorry, I really didn't  
13 mean to interrupt an answer.

14 MR. DUGHI: He was explaining what a  
15 principal author meant.

16 MR. HALEY: I thought he was explaining  
17 one prong and there was a second prong to the  
18 answer.

19 MR. DUGHI: Yes, there was a second  
20 prong.

21 MR. HALEY: Let's get to the second  
22 prong.

23 MR. DUGHI: Do you understand where we  
24 are?

25 THE WITNESS: Yes, I understand where I



Brodkin - direct

1 am in my answer and I'm trying to find an article  
2 in which I substantially wrote the article and am  
3 not the first author and then I must find you an  
4 article in which I'm the first author and never had  
5 or had very little to do with the article.

6 The article number 53, I recall I would  
7 claim a good deal of credit for the writing of the  
8 article and I'm not the first author and as I noted  
9 previously, I did not even look at the final  
10 draft. All right?

11 Q. If that is your answer, doctor.

12 A. And finally, I would suggest number 44,  
13 in which I'm the first author and had little to do  
14 with the production of that article.

15 Q. Doctor, did anyone say to you that you  
16 had to participate in the authorship of number 44?

17 A. Yes.

18 Q. Who told you that?

19 A. Dr. Schwartz.

20 Q. And had you not participated in the  
21 writing of that, doctor, what would have been the  
22 penalty?

23 A. I don't know.

24 Q. Did Dr. Schwartz tell you why you had  
25 to write that article?

Brodkin - direct

1 MR. DUGHI: Objection. Have his name  
2 on it, not write it.

3 MR. HALEY: Fair enough.

4 Q. Did Dr. Schwartz tell you why your name  
5 had to appear on that article?

6 A. Yes.

7 Q. And what was the reason that he gave  
8 for that?

9 A. Why my name had to appear on it, that's  
10 your question?

11 Q. That's what the question was.

12 A. He felt it would lend prestige to the  
13 article and to the journal in which it appeared.

14 Q. And why was that, doctor?

15 A. He is an editor of that journal and  
16 wanted to have an article for it.

17 Q. And why would your name increase the  
18 prestige of the article in the journal?

19 MR. DUGHI: Are you asking him what Dr.  
20 Schwartz thought?

21 Q. What Dr. Schwartz told you, if he told  
22 you anything.

23 A. Dr. Schwartz felt that my reputation  
24 and experience vis-a-vis chloracne and so forth was  
25 substantial.

Brodkin - direct

1 Q. Did you ever tell Dr. Schwartz that the  
2 procedures which you utilized to treat the patients  
3 at Diamond Shamrock were not developed by you but  
4 were developed by somebody else?

5 A. The treatment of the patients at  
6 Diamond Shamrock?

7 Q. The protocol for the treatment of  
8 patients at Diamond Shamrock was not developed by  
9 you but developed by somebody else.

10 A. I did not tell him that.

11 Q. Did you tell him that you had not  
12 been -- that you disagreed with the conclusions of  
13 article number ten on this list or that you would  
14 have substantially rewritten them?

15 A. I don't think I told him that.

16 Q. And doctor, in that article in 1984,  
17 the article number ten, Industrially Acquired  
18 Porphyria, was cited. Is that not correct?

19 A. Yes.

20 Q. For what purpose, if you can recall,  
21 was article number ten, Industrially Acquired  
22 Porphyria, cited in article number 44, I believe,  
23 which is Cutaneous Signs of Dioxin Exposure?  
24 Doctor, we can mark it as PB-10.

25 (Whereupon the document was received

Brodkin - direct

1 and marked PB-10 for identification?

2 A. May I refer to it?

3 Q. Absolutely. I'm just marking it right  
4 now.

5 A. May I answer the question?

6 Q. Absolutely.

7 A. This is -- may I preface my answer by  
8 saying this is not a refereed journal and it does  
9 not footnote its references by number. I suspect,  
10 although I'm not familiar with this journal, that  
11 they list a bunch of articles that were used in the  
12 preparation of this article, but I don't know  
13 exactly what they are referring to.

14 Q. Doctor, you did read this article  
15 before it was published, did you not?

16 A. I did.

17 Q. I would like to refer you to page 192.  
18 Prior to the publication of this article, did you  
19 read what we call the squib on the authors?

20 A. I did not.

21 Q. You did not. Would you agree or  
22 disagree with the statement, and I'm quoting about  
23 you, "he has been recognized as an authority on  
24 dioxin since 1964, when he first linked dioxin  
25 industrial exposure to porphyria cutanea tarda"?

Brodkin - direct

1 A. That's not true.

2 Q. What is incorrect about that statement,  
3 doctor?

4 A. First of all, I had no idea what dioxin  
5 was, nor where or anything about dioxin, never  
6 heard the name in 1964, and I did not link dioxin  
7 at any time to industrial exposure, to industrial  
8 exposure to porphyria cutanea tarda.

9 Q. Were you aware in 1963 of the presence  
10 of any intermediate chemicals or chemical  
11 by-products of the 2,4,5-T reaction at Diamond?

12 MR. DUGHI: Did you pick '63 on  
13 purpose?

14 MR. HALEY: I picked '63 on purpose.

15 A. I was aware that there were a lot of  
16 chemicals there and by-products and intermediaries.

17 Q. In the 2,4,5-T process?

18 A. Yes.

19 Q. Could you tell me what, to the best of  
20 your recollection, those were that you were aware  
21 of in 1963?

22 A. I knew there was phenol there, I knew  
23 there were a lot of -- I knew there were  
24 halogenated hydrocarbon chemicals there, I knew  
25 there were cyclic hydrocarbons there.

Brodkin - direct

1 Q. Could you tell me what the halogenated  
2 hydrocarbons were at that plant that you were aware  
3 of in 1963?

4 A. Trichlorophenol is a halogenated cyclic  
5 hydrocarbon itself.

6 Q. And what others, doctor?

7 A. 2,4-D, and I really don't know. I was  
8 not deeply involved in the chemistry of what was  
9 going on there.

10 Q. You also testified that you were aware  
11 that cyclic hydrocarbons were present in the  
12 manufacturing process in 1963. Could you tell me  
13 what those were?

14 A. Not specifically.

15 Q. Generally, could you tell me what they  
16 were?

17 A. Other than 2,4-D and 2,4,5-T. I  
18 remember there were phenoxyacetic acids as  
19 intermediaries and things that were referred to as  
20 esters.

21 Q. Did you know in 1963, doctor, what the  
22 raw materials were that were used in the 2,4,5-T  
23 reaction?

24 A. I knew there was monochloroacetic acid  
25 or some acetic acid. It might have been dichlor or

Brodkin - direct

1 trichlor. I'm not sure. I think it was  
2 monochloroacetic acid and I knew there was phenol.

3 Q. Had you ever heard the chemical  
4 tetrachlorobenzene mentioned in 1963 as being part  
5 of the 2,4,5-T process?

6 A. I do not recall that chemical.

7 Q. Could you tell me in 1963 what, if at  
8 all, was your understanding of the process that  
9 made 2,4,5-T?

10 A. I had very little understanding, Mr.  
11 Haley.

12 Q. Has your understanding of that process  
13 changed between 1963 and today?

14 A. No.

15 Q. So that I would be accurate in stating  
16 that you still understand very little about the  
17 process?

18 A. That's correct.

19 Q. What, if anything, doctor, did you know  
20 in 1963 concerning the 2,4-D process at Diamond  
21 Shamrock?

22 A. As much as I knew about anything else,  
23 very little about the chemicals, the raw materials,  
24 the intermediaries. I really did not involve  
25 myself a good deal in it.

Brodkin - direct

1 Q. I'm going to, doctor, again go back to  
2 the Cutaneous Signs of Dioxin Exposure article and  
3 ask you to take a look at page 190. Did you see  
4 either table two or table three prior to this  
5 article being published?

6 A. Yes.

7 Q. Did table two and table three appear in  
8 the same form in which you reviewed them prior to  
9 publication of this article?

10 A. Yes, they did.

11 Q. And do you agree with the statements  
12 made relating to table two and table three in this  
13 article?

14 A. No, I don't.

15 Q. Could you tell me, doctor, what it is  
16 that you disagree with or with which you disagree?

17 A. First of all, I consider these tables  
18 purile and was told that this is what this journal  
19 wants, tables, tables and more tables.  
20 Specifically what I disagree with in the tables is  
21 in table two, I would question whether the word  
22 "linked" and porphyria cutanea tarda was  
23 appropriate.

24 Q. If you were to substitute a word for  
25 "linked," what would that word be?



Brodkin - direct

1           A.       Was at one time considered possibly  
2 related.

3           Q.       And is your current understanding,  
4 doctor, that it is not now related or that  
5 halogenated compounds are not now related to  
6 porphyria cutanea tarda?

7           A.       Wait a minute, you gave me two  
8 questions. To the question halogenated compounds  
9 and porphyria cutanea tarda, you realize you  
10 include salt, so there are halogenated compounds, I  
11 would presume, that are related to it but there are  
12 many that aren't.

13          Q.       So that this is not, then, an  
14 inaccurate statement, that skin disorders have been  
15 linked with exposure to halogenated compounds?

16          A.       To some rather few halogenated  
17 compounds.

18          Q.       Doctor, in your opinion, would it be  
19 accurate to state that porphyria cutanea tarda has  
20 been linked to exposure to dioxin?

21          A.       I don't think I would use the word  
22 "linked." I think it has not, as I understand the  
23 word "linked," not been linked to dioxin.

24          Q.       What does the word "linked" mean to  
25 you?

Brodkin - direct

1 MR. DUGHI: In that context?

2 MR. HALEY: In that context, correct.

3 A. It means causally or substantially  
4 aggravated by or I would say participating in the  
5 cause in any way.

6 Q. So has exposure to 2,4,5-T been linked  
7 with porphyria cutanea tarda, in your estimation?

8 A. No.

9 Q. And why is that, doctor?

10 A. There has not even been an allegation  
11 of that, I don't think.

12 Q. Let me rephrase my question. In your  
13 opinion, was the 2,4,5-T being manufactured by  
14 Diamond Shamrock in 1963 linked to porphyria  
15 cutanea tarda?

16 A. The final end product?

17 Q. Yes, the final end product.

18 A. The final end product, 2,4,5-T, made by  
19 Diamond Shamrock, was never linked to porphyria  
20 cutanea tarda.

21 Q. Were there any intermediaries,  
22 intermediates which you are aware of in that  
23 process in 1963 which were linked to porphyria  
24 cutanea tarda?

25 MR. DUGHI: Let me object for

Brodkin - direct

1 clarification. You are talking about the process  
2 as it exists in '63? Are you talking about  
3 knowledge up to today or what they knew in '63?

4 MR. HALEY: I'm talking first knowledge  
5 in '63, counselor.

6 A. I would say there was a suspicion of  
7 that possibility.

8 Q. The medical personnel who were working  
9 with Diamond Shamrock in 1963, other than Dr.  
10 Bleiberg and yourself, were whom, if anyone?

11 A. The medical personnel working with me,  
12 like Birmingham?

13 Q. Birmingham would be perhaps one.

14 MR. DUGHI: I'm not sure I understand  
15 the question. What was the question?

16 MR. HALEY: In other words, doctors  
17 were performing -- let me lay a little bit  
18 different foundation, counselor.

19 Q. Doctor, you were paid by Diamond  
20 Shamrock for your medical services in 1963. Is  
21 that not correct?

22 A. I was paid by Dr. Bleiberg.

23 Q. But Dr. Bleiberg was paid for your  
24 services, for services which you rendered at the  
25 Diamond Shamrock plant in 1963. Is that not

Brodkin - direct

1 correct?

2 A. Yes.

3 Q. There were other physicians in Newark  
4 or in the surrounding area in 1963 who also  
5 performed work for Diamond Shamrock and were paid.  
6 Is that not correct?

7 A. That's correct.

8 Q. And one of them would have been Dr.  
9 Applebaum. Is that not correct?

10 A. I really don't know that but I  
11 imagine, yes.

12 Q. It's a fact, is it not, doctor, that at  
13 least two people were referred to Dr. Applebaum,  
14 one of them being Griffin Baisley, for treatment in  
15 the hospital?

16 A. He did participate in their care and I  
17 would presume he was paid by Diamond Shamrock.

18 Q. And are you aware whether Dr. Applebaum  
19 ever rendered a diagnosis that Griffin Baisley  
20 suffered from chloracne and porphyria cutanea tarda  
21 related to 2,4,5-T exposure?

22 A. That Dr. Applebaum rendered a  
23 diagnosis? I really don't know that.

24 Q. So you don't know whether he rendered a  
25 diagnosis at all?

Brodkin - direct

1           A.       I just don't know what his final  
2 conclusions were about these patients.

3           Q.       Let me just nail this down, then. So  
4 you don't know -- do you know if Dr. Applebaum  
5 rendered a diagnosis?

6           A.       I presume he did.

7           Q.       And your testimony is you don't know  
8 what that diagnosis was?

9           A.       That's correct.

10          Q.       Doctor, I have one more question before  
11 we get off the Cutaneous Signs of Dioxin Exposure.  
12 I would like for just a minute --

13                 MR. DUGHY: We will then take a trip to  
14 the head?

15                 MR. HALEY: That's fine. One more  
16 question, counsel.

17          Q.       Do you see the pictures on page 191 and  
18 192 and for that matter, also, on 193 which are  
19 referred to for the record as figures one, two,  
20 three, four and five?

21          A.       I can only reasonably identify one of  
22 the figures on 191. Does anyone have an original?

23                 MR. DUGHY: By "identify," you mean you  
24 can't see because of the quality of the  
25 production?

Brodkin - direct

1 THE WITNESS: I can't tell what it is,  
2 yes. I see these pictures.

3 MR. HALEY: May we have this marked PB  
4 whatever my next number is for identification.

5 (Whereupon the photograph was received  
6 and marked PB-11 for identification.)

7 A. Your question, please?

8 Q. Doctor, I'm going to ask you to look at  
9 PB-11 for identification and tell me if you have  
10 ever seen that before?

11 A. Yes, I will buy that.

12 Q. Could you tell me what that is?

13 A. What this shows?

14 Q. Or what it is.

15 A. It's a photograph of someone's skin  
16 that shows a rather large inflammatory lesion up  
17 here and a resolving, a couple of resolving  
18 inflammatory lesions scattered around it and some  
19 primary lesions, comedoes, too.

20 Q. To the best of your recollection, has  
21 that photograph or a copy thereof ever been in your  
22 possession?

23 A. I suspect it has. I don't remember  
24 this particular photograph definitely. It's a  
25 little shot of some lesions. And there are

Brodkin - direct

1 limitations as to how one could identify it but it  
2 looks familiar.

3 Q. You said you could recognize figure  
4 number one.

5 A. Yes.

6 Q. That's Griffin Baisley's face. Is that  
7 not true?

8 A. It is Mike Kalena's face.

9 Q. It is Mike Kalena's face. Mike Kalena  
10 is one of your patients. Is that not correct?

11 A. Yes.

12 Q. And in fact, doctor, that picture was  
13 taken, was it not, by someone in the course of the  
14 dermatosis investigation in 1963. Is that not  
15 correct?

16 A. I don't know exactly when it was taken,  
17 but I suspect that I might have taken it.

18 Q. Do you recollect whether you have ever  
19 had that picture in your possession or in your  
20 files?

21 A. Yes.

22 Q. And did you supply that picture for  
23 this article?

24 A. I must have.

25 Q. Do you recollect whether you supplied

Brodkin - direct

1 any of the other pictures, and I recognize, doctor,  
2 figure three is absolutely impossible to tell  
3 anything from, but --

4 A. Certainly figure four is familiar to  
5 me. I might well have supplied that.

6 MR. HALEY: Pointing to PB-11, for the  
7 record. That's all the questions I have right  
8 now. Let's take a break.

9 (Whereupon a recess was taken.)

10 Q. Doctor, when Griffin Baisley was  
11 hospitalized in 1963, do you know whether or not  
12 that was a result of a referral?

13 A. I don't understand the question.

14 Q. Let me rephrase it. When Griffin  
15 Baisley was hospitalized in 1964 --

16 MR. DUGHI: 1964 or '63?

17 MR. HALEY: '63, 1963.

18 Q. -- he was hospitalized, was he not,  
19 because of concerns of his health related to his  
20 occupational exposure. Is that true?

21 A. Yes.

22 Q. And you and Dr. Bleiberg were treating  
23 him at the time for his occupational exposure, were  
24 you not?

25 A. Yes.



Brodkin - direct

1 Q. And the primary attending physician at  
2 the hospital during the time that Mr. Baisley was  
3 in the hospital was Dr. Applebaum. Is that not  
4 correct?

5 A. Yes.

6 Q. And doctor, if you know, I would like  
7 you to explain briefly to me or frankly, in as much  
8 detail as you need what a liver biopsy is.

9 MR. MC CARTER: Didn't we have this  
10 yesterday?

11 MR. DUGHI: Yes. We are going to do it  
12 again.

13 A. Ultimately, it's taking tissue, liver  
14 tissue and examining it under the microscope.  
15 There are a variety of ways to obtain it, the  
16 common one being with a needle, special needle that  
17 goes through the abdominal wall into the liver and  
18 then cores out a sliver of it and the common way of  
19 examining it is to fix it and stain it and section  
20 it and look at it through a light microscope. Now,  
21 many, many other things may be done with it but  
22 that's the common procedure.

23 Q. If you know, do you know what the risks  
24 are in taking a liver biopsy?

25 MR. DUGHI: Objection. First of all,

Brodkin - direct

1 he is not here as an expert on liver biopsy.

2 Secondly, there is no indication that he ordered  
3 it. He said Dr. Applebaum was the attending  
4 physician. I don't see how this has anything to do  
5 with this doctor's deposition.

6 MR. HALEY: Let me lay a bit of a  
7 foundation in 1963.

8 Q. Did you --

9 MR. DUGHI: Was he performing liver  
10 biopsies in 1963?

11 MR. HALEY: Counsel --

12 MR. DUGHI: I withdraw it.

13 Q. Doctor, were you aware of the fact that  
14 Griffin Baisley was to be hospitalized in 1963  
15 before he was hospitalized?

16 A. Yes.

17 Q. And had you ever discussed with Dr.  
18 Bleiberg or with anyone else the tests that were  
19 going to be performed on Mr. Baisley while he was  
20 in the hospital?

21 A. I'm sure I did.

22 Q. And would one of those things which  
23 would have been discussed be a liver biopsy?

24 A. Yes.

25 Q. And could you tell me what the purpose

Brodkin - direct

1 would have been in having a liver biopsy taken?

2 A. To determine whether or not there was  
3 and if there was, to what extent as could be judged  
4 by that test, injury to this patient's liver.

5 Q. And was the reason that was being done  
6 in part because he was showing elevated  
7 uroporphyrins in his urine?

8 A. Yes.

9 Q. If you can, could you tell me what was  
10 hoped to have been found or not to have been found  
11 as a result of doing the liver biopsy?

12 A. Exactly --

13 MR. DUGHI: Wait. Go ahead.

14 A. Just what I said to you, whether or not  
15 he had injury to his liver and if so, to what  
16 degree it had been injured.

17 Q. A liver biopsy, is it not, is an  
18 invasive procedure?

19 A. Yes, it is.

20 Q. And could you tell me, if you know, and  
21 again, I'm asking specifically, doctor, in the time  
22 frame of 1963, what the risks were from having a  
23 liver biopsy performed?

24 MR. DUGHI: Objection. Go ahead.

25 A. If you mean by "risks" the mortality

Brodkin - direct

1 following this procedure, the death rate?

2 Q. Anything, risk of infection?

3 A. Anything at all?

4 Q. Risk of infection, whatever adverse  
5 health consequences may have been -- for which  
6 someone may have been at risk for having a liver  
7 biopsy done.

8 MR. DUGHI: Let me object to the  
9 question. You are asking him for information  
10 regarding a procedure he did not perform and you  
11 haven't even established whether or not he  
12 recommended it. He knew it was being done,  
13 perhaps, by the foundation but there is no  
14 indication this was his procedure, he obtained  
15 informed consent regarding it, he performed the  
16 procedure or even he suggested it be done. I think  
17 this is purely expert at this point.

18 MR. HALEY: He testified yesterday that  
19 one of the things that was necessary, for example,  
20 for a diagnosis of porphyria or that would be  
21 useful as an aid in determining a diagnosis of  
22 porphyria was a liver biopsy. He testified to  
23 that.

24 MR. DUGHI: So what? What has that got  
25 to do with the risks of liver biopsy for this

Brodkin - direct

1 patient who wasn't under his care for liver  
2 biopsy?

3 MR. HALEY: He wasn't under his care  
4 for liver biopsy?

5 MR. DUGHI: Correct.

6 MR. HALEY: First of all, the attendant  
7 or someone was going to that hospital every day  
8 from his office.

9 MR. DUGHI: As a dermatologist. No  
10 different than hip surgery.

11 MR. HALEY: Counsel, there has been  
12 testimony in this case, I believe from Dr. Brodkin  
13 himself, that first of all, we are dealing with  
14 something which is a skin manifestation, which is  
15 the porphyria. Second of all, obviously, one of  
16 the things that one would want to look at, and I  
17 think he said this himself in terms of porphyria,  
18 is the liver. I think he said that, also.

19 Now, if he is going to sit here and say  
20 that he had absolutely no participation in this  
21 man's treatment, I think that's one thing. Let me  
22 lay the predicate. Let me lay it another way.

23 MR. DUGHI: Go ahead.

24

25

Brodkin - direct

1 BY MR. HALEY:

2 Q. Doctor --

3 MR. DUGHI: Let me respond to that, if  
4 I may. My point to you is you are making a major  
5 jump from liver involvement to liver biopsy and the  
6 risks of liver biopsy. I haven't cut him off on  
7 anything with the liver, what was done. Now you  
8 are taking from what he testified yesterday, this  
9 patient was referred by an internist for a liver  
10 workup. He doesn't give the risk quantification of  
11 a liver workup of a person going to a liver  
12 biopsy. It's no different than sending a patient  
13 to an orthopedist to have a leg workup.

14

15 BY MR. HALEY:

16 Q. Doctor, prior to Griffin Baisley's  
17 hospitalization, did you agree that a liver biopsy  
18 should be performed when he was in the hospital?

19 MR. DUGHI: Agree with whom, with  
20 Baisley?

21 Q. Did you believe that a liver biopsy  
22 should be performed?

23 A. I will answer your question a little  
24 bit indirectly and say that I agree that a liver  
25 biopsy would be one of the procedures that would be

Brodkin - direct

1 helpful in assessing the porphyria cutanea tarda  
2 but between that agreement and specifically doing  
3 it to Griffin Baisley, there are a few more steps  
4 that have to be taken.

5 Q. And what are those steps, doctor?

6 A. For example, if the man has a low  
7 vitamin K level, a high prothrombin time and is  
8 going to bleed or is anemic and is at risk of  
9 hemorrhage following liver biopsy or has some  
10 congenital anomaly that stands in the way of safely  
11 doing it, allowing that all things are checked out  
12 and that there are no contraindications, et cetera,  
13 et cetera, and frankly, I have to go back to your  
14 conversation aside and say that this is not my area  
15 and not my judgment to make, only in the abstract.

16 I'm sorry to be prolix, but this is a  
17 tough question for a dermatologist to answer.

18 Q. Your testimony, as I recollect, doctor,  
19 am I correct, is that you were not aware of what  
20 the results of the liver biopsy were. Is that  
21 correct?

22 A. That's correct.

23 Q. Yet it also is true, is it not, that  
24 the reason that the liver biopsy was taken was  
25 because of concern regarding Mr. Baisley's health

Brodkin - direct

1 related to his occupational exposure?

2 A. That's correct.

3 Q. And doctor, you were treating him for  
4 that occupational exposure, were you not?

5 A. That's correct. Maybe I can just --

6 Q. No --

7 A. -- say that when you tell me that I was  
8 not aware of the results, I did not see it  
9 firsthand and if I did -- I did not see firsthand  
10 his liver tissue or look through the microscope at  
11 it, nor do I recall seeing the report of the  
12 pathologist on this, but I certainly was given  
13 secondhand a description of what the pathologist  
14 found; that is, I'm sure Dr. Bleiberg said to me  
15 the liver didn't show much significant.

16 Q. Dr. Bleiberg didn't perform the biopsy,  
17 did he?

18 A. Let me add to that. He certainly did  
19 not; that one of these people, their liver tissue  
20 fluoresced the fluid. That statement was made to  
21 me and I remember it clearly. I don't know whether  
22 it pertained to Baisley. Dr. Bleiberg did not  
23 perform the liver biopsy.

24 Q. And Dr. Bleiberg is a dermatologist.  
25 Is that not correct?



Brodkin - direct

1 A. That's correct.

2 Q. And what is it about Dr. Bleiberg's  
3 training as a dermatologist that would allow him to  
4 draw conclusions about the liver biopsy and your  
5 training as a dermatologist would not allow you to  
6 draw conclusions about the biopsy?

7 A. Only that Dr. Bleiberg may have gone  
8 over this with Dr. Kannerstein at the microscope  
9 and I'm sure read Dr. Kannerstein's report and  
10 discussed it with him.

11 Q. And in any event, you did not do that?

12 A. That's correct.

13 Q. And you continued to treat this  
14 patient. Is that not correct?

15 A. After hearing Dr. Bleiberg describe  
16 what Dr. Kannerstein had said, I did.

17 Q. After Griffin Baisley was hospitalized  
18 in 1963, did his treatment change in any way?

19 A. Griffin Baisley I know was at one time  
20 given griseofulvin.

21 Q. Can you explain to me what that is,  
22 doctor?

23 A. After 1963 --

24 Q. Mr. Baisley was discharged from the  
25 hospital in April of 1963, was he not?

Brodkin - direct

1           A.        Something around that. I thought it  
2 was March.

3           Q.        Doctor, to refresh your recollection --

4           A.        I think you are right, it is April.

5           Q.        Would it refresh your recollection if  
6 you looked at your billing records as to when you  
7 went to the hospital, it was in April, or someone  
8 from your office went to the hospital.

9           A.        I can determine that, although it's not  
10 written into the chart, I can determine it from  
11 looking at the chart.

12                    He was hospitalized fairly soon after  
13 he was brought into treatment. His treatment in  
14 the years since the hospitalization certainly was  
15 not the same in many ways than before.

16           Q.        And how did they differ?

17           A.        Prior to his hospitalization, he was  
18 only given the staphylococcal phage lysate.  
19 Following his hospitalization, he was given  
20 something called CMR. May I translate that?  
21 Celestone Soluspan.

22           Q.        And what is that, what is the purpose  
23 of Celestone Soluspan?

24           A.        It's an anti-inflammatory agent. So he  
25 was given that, he was given Terramycin, he was

Brodkin - direct

1 given Kantrex. This is all after.

2 Q. What is Kantrex, doctor?

3 A. Kanamycin is an antibiotic, and he was  
4 given Depo-Medrol, which is another  
5 anti-inflammatory drug. Also he had surgical  
6 treatment following his hospitalization, which he  
7 did not have before his hospitalization.

8 Q. And what was that surgical treatment?

9 A. Excision of the sebaceous cyst of the  
10 chest.

11 Q. What is a sebaceous cyst of the chest?

12 A. A cystic tumor, benign cystic tumor  
13 that involves the sebaceous gland or originates in  
14 the sebaceous gland. He had a cyst of the left  
15 shoulder excised. He also had griseofulvin,  
16 although I don't find that here.

17 Q. What is the purpose of that drug,  
18 doctor, or is that a disease?

19 A. It's an antifungal antibiotic.

20 Q. So we are clear, you recollect that Dr.  
21 Bleiberg told you that there was nothing serious in  
22 the liver biopsy. Is that correct?

23 A. Yes.

24 Q. Did you ever inquire of either Dr.  
25 Applebaum or Dr. Bleiberg whether a diagnosis had

Brodkin - direct

1 been rendered as a result of Griffin Baisley's  
2 hospitalization?

3 A. I'm not sure I understand what you mean  
4 by a diagnosis.

5 Q. Was there a diagnosis or a --

6 A. There must have been a diagnosis. You  
7 don't leave a hospital without a diagnosis.

8 Q. And were you aware of what that  
9 diagnosis was?

10 A. No.

11 Q. Doctor, isn't it important to find out  
12 for the purposes of treating your patient what the  
13 diagnosis is, for example, resulting from a  
14 hospitalization in ten days?

15 MR. DUGHI: Objection. Are you  
16 suggesting that this became his patient to the  
17 exclusion of Dr. Bleiberg?

18 MR. HALEY: He was treating him. I  
19 don't care what Bleiberg was doing but he was  
20 treating him.

21 MR. DUGHI: Of course he was but he is  
22 treating him as an associate of Dr. Bleiberg and  
23 you already established the predicate that Dr.  
24 Bleiberg was aware of the diagnosis.

25 MR. HALEY: I have not established that

Brodkin - direct

1 in the predicate.

2 MR. DUGHI: I don't think the question  
3 is fair but go ahead.

4 A. It might be important. When a person  
5 leaves a hospital, they may have a diagnosis of a  
6 sty in their eye.

7 Q. If that diagnosis would have been  
8 porphyria cutanea tarda and chloracne as a result  
9 of 2,4,5-T exposure, would that have been  
10 important?

11 A. Yes.

12 Q. And would that have been an important  
13 thing for you and Dr. Bleiberg, as his treating  
14 dermatologist, to know?

15 A. Yes.

16 Q. Did you ever inquire of Dr. Bleiberg or  
17 Dr. Applebaum whether there had been a diagnosis  
18 relating to porphyria or chloracne as a result of  
19 the hospitalization?

20 A. I did know whether I inquired or not.  
21 Whether I was told or whether it was told to me as  
22 a result of an inquiry, I did know there was a  
23 question of this patient having porphyria cutanea  
24 tarda.

25 Q. When you say there is a question, what

Brodkin - direct

1 do you mean by that?

2 A. I don't recall that this man had  
3 quantitative uroporphyrins performed.

4 Q. Is that a test that was in common  
5 practice in 1963?

6 A. I would think it was.

7 Q. And how is that kind of test  
8 administered?

9 A. You give the patient a gallon bottle  
10 and you have him empty his bladder and you then  
11 collect all urine that he produces in that bottle  
12 until 24 hours have elapsed and then you have him  
13 empty his bladder again into the bottle and  
14 presumably, you have a half a gallon of urine or  
15 so. Then you take a part of that, let's say ten  
16 cc's, and find out the quantity of the  
17 uroporphyrins in ten cc's. If there is 2,000 cc's  
18 in there, you multiply it by a hundred and you have  
19 got his total uroporphyrins.

20 Q. You don't have to be an internist to  
21 run that test, do you, doctor?

22 A. To order the test?

23 Q. To order the test, to order the test be  
24 done.

25 A. You don't have to be.

Brodkin - direct

1 Q. You can be a dermatologist and do that,  
2 can't you?

3 A. You certainly can.

4 Q. And it wasn't done in this case?

5 A. I don't know. Was it?

6 Q. Is it anywhere in the records, in your  
7 records, as to whether that was done or not?

8 A. Not that I have seen.

9 Q. Is it anywhere in your records where it  
10 suggests that that kind of a test should be done on  
11 Griffin Baisley?

12 A. Not that I have seen. I would have to  
13 see the hospital record.

14 Q. And is that a necessary predicate to a  
15 diagnosis of porphyria cutanea tarda?

16 A. Yes, it is.

17 Q. Is the hospital diagnosis in the  
18 records? Is there a hospital diagnosis from  
19 Griffin Baisley's hospitalization in 1963 in your  
20 medical records?

21 A. From 1963?

22 Q. From 1963, that's correct.

23 A. I don't find one here.

24 Q. Is the answer yes or no? Doctor, I  
25 want you to take as much time as you need to the

Brodkin - direct

1 point where you can answer that question yes or  
2 no.

3 A. No.

4 Q. And doctor, nowhere is there a  
5 diagnosis listed on his treatment card related to  
6 that hospital exposure, is there?

7 A. Yes, nowhere.

8 Q. Doctor, 24 hour uroporphyrin analysis  
9 is not an invasive procedure, is it?

10 A. That's true.

11 Q. Would one need to be hospitalized to  
12 have a 24 hour uroporphyrin analysis run?

13 A. They don't need to be if you have a  
14 very reliable patient.

15 Q. So it can be done potentially on an  
16 ambulatory basis or an outpatient basis?

17 A. It can be.

18 Q. And if, doctor, a 24 hour uroporphyrin  
19 analysis is a necessary predicate to a diagnosis of  
20 porphyria cutanea tarda, why would someone be  
21 hospitalized for a liver biopsy prior to that  
22 having been performed?

23 A. I don't think the liver biopsy was done  
24 to make that diagnosis.

25 Q. Why would a liver biopsy have been



Brodkin - direct

1 performed here?

2 A. May I guess or shouldn't I guess?

3 Q. Doctor, if you are going to qualify it  
4 as a guess, then it's a guess. I would like --

5 MR. DUGHI: Do you have direct personal  
6 knowledge of whether a liver biopsy was done in  
7 this case?

8 THE WITNESS: No.

9 Q. So doctor, even though your patient was  
10 being hospitalized related to exposure for which  
11 you were treating him, it's your testimony that you  
12 have no idea why that liver biopsy was being  
13 performed?

14 A. No, that's not my testimony. I have a  
15 pretty good idea.

16 Q. Then could you tell me what your idea  
17 is as to why it was being performed?

18 MR. DUGHI: And the source of your  
19 information.

20 A. My idea would be to assess the degree  
21 of injury to the liver and to assess, indeed, if  
22 there is injury to the liver.

23 Q. That would be the purpose. Had Mr.  
24 Baisley's physical condition led you to believe  
25 that he may have been at risk for liver damage?

Brodkin - direct

1 A. Yes.

2 Q. And what was the basis for that belief?

3 A. Let me withdraw that answer and say his  
4 physical state did not lead me to that suspicion  
5 and by that I mean his appearance and his vigor and  
6 his signs of good health.

7 Q. Did his skin condition -- was there  
8 anything else?

9 A. No, that's --

10 Q. In his state? Did his skin condition  
11 lead you to the conclusion that he might be  
12 suffering from liver damage?

13 A. It is a consideration. It begins to be  
14 a possibility.

15 Q. Doctor, are you aware during this time  
16 frame what color his urine was?

17 A. Yes, his urine was dark.

18 Q. Would that have been another indication  
19 to you that he may have been suffering from liver  
20 damage?

21 A. Indirectly, yes.

22 Q. When you say indirectly, what do you  
23 mean?

24 A. For example, if a person has biliary  
25 obstruction, which is certainly liver damage, their

Brodkin - direct

1 urine can turn dark. In this case, there was a  
2 suspicion, as stated in Dr. Bleiberg's letter of  
3 whatever it is, 1963, that this man might have  
4 porphyria cutanea tarda and arguing back, porphyria  
5 cutanea tarda sometimes can be related to liver  
6 involvement, liver injury.

7 Q. Can you tell me the circumstances when  
8 it's not related to liver injury?

9 A. Porphyria cutanea tarda?

10 Q. Yes.

11 A. If you mean in genetic cases of  
12 porphyria, that wouldn't be defined by me as  
13 injury.

14 Q. Porphyria cutanea tarda is by  
15 definition, is it not, a hepatic porphyria?

16 A. Yes, it is.

17 Q. And when we say hepatic, we mean liver,  
18 don't we?

19 A. Yes.

20 Q. So isn't porphyria cutanea tarda by  
21 definition a disease in which the liver is not  
22 functioning properly?

23 A. Yes.

24 Q. Doctor, can you tell me what, and I'm  
25 talking during the period of what you have stated

Brodkin - direct

1 is your employment by Dr. Bleiberg, what was your  
2 understanding of your duty to the patients  
3 concerning their medical conditions?

4 MR. DUGHI: The patients at Diamond  
5 Shamrock or all the patients?

6 MR. HALLEY: These patients  
7 specifically.

8 A. To take care of their dermatologic  
9 problems and diagnose, treat.

10 Q. It certainly would have been part of  
11 that, would it not, if they were evidencing  
12 cutaneous signs of systemic disease, to deal with  
13 that, also. Isn't that correct?

14 A. Yes.

15 Q. And --

16 A. Not necessarily, when you say to deal  
17 with it, that I should treat them for it.

18 Q. I'm not necessarily saying that you  
19 should treat them for it but certainly something  
20 which is in your purview? Let me lay a predicate  
21 for that. Cutaneous signs of systemic disease  
22 would be something which would be in your purview  
23 as a dermatologist. Is that correct?

24 A. Yes.

25 Q. Do you feel in any way, shape or form

Brodkin - direct

1 that your duty to the patients was lessened because  
2 you were an employee of Dr. Bleiberg's?

3 A. No.

4 Q. And that your duty to the patients  
5 stems from your position as a physician, does it  
6 not, not as an employee of Dr. Bleiberg?

7 A. Yes.

8 Q. So doctor, didn't you, then, have an  
9 independent duty over and above anything which Dr.  
10 Bleiberg may have told you to go out and find, for  
11 example, if there had been a diagnosis of Griffin  
12 Baisley and what that was?

13 A. I don't know what you mean by to find a  
14 diagnosis. I certainly kept myself aware, unless I  
15 was being deceived, of what this patient's relevant  
16 problems were.

17 Q. And what was your understanding, let's  
18 say in the middle of 1963, of what this patient's  
19 problems were?

20 A. The significant and relative problems  
21 as far as this patient went is that the suspicion  
22 of him having porphyria cutanea tarda existed.

23 Q. Is it your testimony, as I understand  
24 it, that when a patient is discharged from a  
25 hospital, there normally is a diagnosis, whatever

Brodkin - direct

1 that diagnosis may be?

2 A. Yes, there is.

3 Q. Is there any reason that you can think  
4 of why if there had been a diagnosis in this case,  
5 why you couldn't have found it?

6 A. No reason why I couldn't have found it.

7 Q. So it's your understanding, then, that  
8 after his discharge from the hospital, there was a  
9 suspicion but not a diagnosis of porphyria cutanea  
10 tarda?

11 A. There was a strong suspicion, as I  
12 recollect.

13 Q. What is the difference between a  
14 suspicion and a diagnosis?

15 A. A diagnosis suggests that sufficient  
16 criteria, major, minor criteria, clinical and  
17 laboratory, have indicated that this, in fact, is  
18 the problem, the source of the patient's problems,  
19 medical complaints.

20 Q. Other than what Dr. Bleiberg told you,  
21 were there any steps that you took to find out what  
22 diagnosis had been rendered to Griffin Baisley, if  
23 any had been rendered at all?

24 A. I did not. I accepted what Dr.  
25 Bleiberg told me.

Brodkin - direct

1 Q. Then you don't know of your own  
2 firsthand knowledge exactly what that diagnosis  
3 was, if there was one?

4 A. That's correct.

5 Q. And you can't show us, can you, that  
6 from the medical records, that you were aware of  
7 what the results of Griffin Baisley's  
8 hospitalization were, can you?

9 A. That's correct.

10 Q. Would you consider a suspicion of  
11 porphyria cutanea tarda in this context, the  
12 Diamond Shamrock context, to be medically  
13 significant?

14 MR. DUGHI: I'm sorry? I didn't hear  
15 it. I missed the whole thing.

16 MR. HALEY: I was saying would he  
17 consider a suspicion of porphyria cutanea tarda in  
18 this Diamond Shamrock context.

19 MR. DUGHI: To be medically  
20 significant. Go ahead.

21 A. Yes.

22 Q. And what would be the medical  
23 significance to you, again, in 1963, doctor, we are  
24 talking about?

25 A. The significance would be first of all,

Brodkin - direct

1 that it could possibly be due to the chemicals with  
2 which the -- to which the patient is exposed and  
3 his further management.

4 Q. Did you at any time in the 1963 time  
5 frame undertake to do any research on porphyria  
6 cutanea tarda?

7 A. No.

8 Q. Prior to the writing or prior to the  
9 publication of Industrially Acquired Porphyria, did  
10 you, yourself, undertake to do any research on  
11 porphyria cutanea tarda?

12 A. No, I did not.

13 Q. So doctor, is it fair for me to say  
14 that the information that you received by Griffin  
15 Baisley's hospitalization was received by you  
16 secondhand?

17 A. Yes, it is.

18 Q. And even though you stated that a  
19 suspicion of porphyria cutanea tarda is medically  
20 significant to you, you did not write that down in  
21 the treatment records, did you?

22 A. In the outpatient treatment records,  
23 that was not written.

24 Q. And is it or is it not good medical  
25 practice to write significant findings?



Brodkin - direct

1 MR. DUGHI: Objection, direction.

2 MR. HALEY: To what?

3 MR. DUGHI: Is it not good medical  
4 practice? That's setting a standard. It's for an  
5 expert. This is a defendant in a malpractice  
6 case.

7 MR. HALEY: He is a medical doctor.

8 MR. DUGHI: He could be an expert but  
9 he is not. Next question.

10 MR. HALEY: He is a medical doctor. He  
11 is held to the standard of care.

12 MR. DUGHI: Of course he is but he is  
13 not setting it.

14 Q. Is it your understanding, doctor, that  
15 it is good medical practice to write down  
16 significant findings which would impact a patient's  
17 further management?

18 MR. DUGHI: Objection, direction.

19 MR. HALEY: I don't understand that,  
20 counsel, I really don't.

21 MR. DUGHI: You may not understand Hull  
22 against Plume and Rogotski against Schepp and Myers  
23 against St. Francis and all the cases we have in  
24 this state about what questions to ask medical  
25 doctors who are defendants.

Brodkin - direct

1           MR. HALEY: Are you stating, counsel,  
2 I'm not allowed to ask him what his understanding  
3 of good medical practice is? I didn't ask him if  
4 it was, I asked him what his understanding was.

5           MR. DUGHI: By using mere semantic  
6 differences, we cannot elicit questions as to the  
7 standard of care from a defendant. That's been the  
8 law of the state since 1938. If you would like to  
9 change it, be my guest.

10          MR. HALEY: You are telling me, then,  
11 for the record, that I cannot ask him questions as  
12 to what he would consider to be good medical  
13 practice or what he would not --

14          MR. DUGHI: You can ask him anything  
15 you want but you can't ask the question you just  
16 framed.

17          MR. HALEY: I'm asking. I'm asking so  
18 I can potentially avoid further pitfalls later.

19          MR. DUGHI: I hope so. You asked me  
20 yesterday not to frame your questions for you.

21          MR. HALEY: I have no intentions of  
22 having you frame my questions, counsel, but what  
23 I'm asking is are you telling me that I'm not  
24 allowed to ask him what his understanding of good  
25 medical practice was?

Brodkin - direct

1           MR. DUGHI: I'm telling you that the  
2 last two questions you framed were purely expert  
3 questions to set a standard. That is not  
4 appropriate for the deposition of a fact witness,  
5 let alone a defendant in a malpractice case.

6

7 BY MR. HALEY:

8           Q.        Doctor, you did state that in 1963, did  
9 you not, that it was good medical practice to write  
10 down all significant findings in treatment  
11 records. Is that not correct?

12           MR. DUGHI: Objection. Go ahead.

13           A.        Certainly to know them. To write them  
14 down?

15           Q.        Doctor, other than orally or in written  
16 form, how do doctors communicate amongst one  
17 another?

18           A.        That's the only way.

19           Q.        So if a doctor were looking at the  
20 medical records and did not have an opportunity to  
21 speak to you, he would have no way of knowing the  
22 significance of that, would he?

23           MR. DUGHI: Looking at the chart on  
24 this patient?

25           MR. HALEY: That's correct.

Brodkin - direct

1 MR. DUGHI: Dermatology chart. Go  
2 ahead.

3 A. That's right, yes. I'm not  
4 disagreeing, I'm not saying it's not good medical  
5 practice.

6 Q. Then if it's --

7 MR. HALEY: Can I have that read back.  
8 I'm getting hung up in my negatives.

9 A. It would be a nice thing to have on the  
10 chart but the main thing is that one be aware of  
11 it.

12 Q. And how can one be aware of it, doctor,  
13 if they don't have the opportunity to speak to  
14 you --

15 MR. DUGHI: Who is "they"?

16 MR. HALEY: Another doctor.

17 MR. DUGHI: His chart and Dr.  
18 Bleiberg? You can go on this all you want. Go  
19 ahead, doctor.

20 A. It was well communicated to me.

21 MR. HALEY: I wasn't speaking, counsel,  
22 as between Dr. Bleiberg and Dr. Brodkin.

23 MR. DUGHI: I know you weren't.

24 MR. HALEY: I was speaking as to  
25 another doctor who may treat this patient at a

Brodkin - direct

1 later time and was reviewing the medical records.

2 MR. DUGHI: Fine. I will break my rule  
3 and I will say something having cosmic difference  
4 in this case as well as this deposition.

5 Eventually, you are going to have to prove a case  
6 of proximate causation. You can go around this  
7 stuff for the next day and a half all you want but  
8 you have to start thinking of where this case is  
9 going. What other doctors? This is a  
10 dermatological chart at the plant. Now let's go.

11 MR. GORDON: The bolt of lightning.

12 MR. DUGHI: You fellows ain't seen a  
13 bolt of lightning.

14 MR. HALEY: I think there was a  
15 question pending. Can I have an answer?

16 MR. DUGHI: I don't think there was a  
17 question pending.

18 MR. HALEY: Can we read back before Mr.  
19 Dughi's speech.

20 (Whereupon the record was read.)

21 Q. Doctor, if you were unavailable to talk  
22 to a successive doctor and the significant medical  
23 findings were not included on the treatment  
24 records, how would that doctor become aware of  
25 significant findings relating to a patient?

Brodkin - direct

1           MR. DUGHI: Objection. Speculation and  
2 argumentative. If you want to draw an inference  
3 for a jury some day, go ahead and do it but that's  
4 not a question to ask this doctor in discovery.

5           MR. HALEY: Let me rephrase it, then.

6           Q.        Doctor, you have testified, have you  
7 not, that the only two ways that a doctor treating  
8 a patient in the future can discover the treatment  
9 of a patient is to either discuss it with you as  
10 his treating doctor at the time or by reviewing the  
11 medical charts. Is that not correct?

12          A.        Yes.

13          Q.        And so, then, doctor, if you were  
14 unavailable and it wasn't indicated on the medical  
15 charts or if you died, for example, then there  
16 would be no way for that doctor to find out, would  
17 there?

18          MR. DUGHI: Objection. He is alive, as  
19 it turns out. There is no indication he was  
20 unavailable, there is no indication in this case  
21 that Baisley's treatment was ever taken over by  
22 another doctor who needed this information. You  
23 have to tie it to something relevant in this case  
24 plus you are asking what I consider to be an  
25 inferential question. Whether it's phrased

Brodkin - direct

1 argumentally or not, that's not a question for the  
2 doctor. It might be a question for you to make to  
3 a jury.

4 MR. HALEY: Why is it not a question to  
5 the doctor?

6 MR. DUGHI: Or anybody else.

7 MR. HALEY: He stated yesterday --

8 MR. DUGHI: It's self-evident, Mr.  
9 Haley.

10 MR. HALEY: He was trained in medical  
11 school to keep charts.

12 MR. DUGHI: Okay, let me stop. I'm  
13 going to let him answer the question and I'm going  
14 to tell you why, because it's 11:22 in the morning  
15 and these depositions are going to be over soon. If you  
16 want to waste your time on this stuff, be my  
17 guest. Go ahead.

18 MR. HALEY: Thank you, counsel.

19 MR. DUGHI: I object to the form.  
20 Answer the question. If you were dead and you  
21 weren't available, how would somebody find --

22 MR. HALEY: That's not the question and  
23 counsel, I resent you restating my questions.

24 MR. DUGHI: I'm very sorry.

25 MR. HALEY: If we can have the question

Brodkin - direct

1 re-read for the record.

2 (Whereupon the record was read.)

3 A. Yes, there would be no way for the  
4 doctor to find out -- well, pardon me. If he  
5 assumed the obligation for the patient, he could  
6 then go to the hospital and contact other --

7 Q. But for example, again, the  
8 hospitalization of Griffin Baisley in April 1963 is  
9 not indicated on the treatment card. That's  
10 correct?

11 A. That's correct.

12 Q. Doctor, at some time in 1963, prior to  
13 the colloquy here, doctor, I believe you said,  
14 correct me if I'm wrong, that you said that the  
15 suspicion of porphyria was significant for the  
16 future management of the patient. Do you recollect  
17 that or am I misstating what you said?

18 A. I will allow that.

19 Q. Could you tell me, if at all, how the  
20 management of the patient might change if there was  
21 a suspicion of porphyria cutanea tarda?

22 MR. DUGHI: That's speculation. How  
23 did this patient's chart --

24 MR. HALEY: Fine, that's fine.

25 MR. DUGHI: Go ahead, if it did.



Brodkin - direct

1 MR. HALEY: If it did.

2 A. If there were porphyria cutanea tarda,  
3 how would his management change, that's a very,  
4 very big question. Conceivably, that might affect  
5 his medical treatment. I'm laying this on you in  
6 very broad terms. Conceivably --

7 Q. Doctor, counsel said how did the  
8 treatment of this patient change. That was how he  
9 asked the question to be rephrased and I agreed  
10 with that. So in general terms, I really don't  
11 want an answer, I want a specific answer related to  
12 this patient.

13 A. It did not. That knowledge did not  
14 change the future treatment of the patient.

15 MR. HALEY: Can I have the last  
16 question and answer read back, please. I think  
17 there was confusion here as to what was asked.

18 (Whereupon the record was read.)

19 MR. DUGHI: Do you want to go to  
20 lunch?

21 MR. HALEY: I think that's fine,  
22 actually. We can clear up the confusion on our own  
23 time.

24 MR. DUGHI: Good.

25 (Whereupon the luncheon recess was

Brodkin - direct

1 taken.)

2  
3 Q. Doctor, in preparation for your  
4 deposition today, other than the articles which you  
5 participated in which we discussed this morning,  
6 were there any other articles you reviewed?

7 A. No.

8 Q. I believe you also stated that you  
9 reviewed documents and correspondence. Would you  
10 tell me what those were other than anything  
11 relating to discussions or communications with your  
12 attorney?

13 MR. HALEY: He said he reviewed  
14 correspondence and documents.

15 MR. DUGHI: With me.

16 MR. HALEY: With you and he has also  
17 got Mr. Gerrod.

18 MR. DUGHI: I will state for the record  
19 he has not met with Mr. Gerrod to prepare for this  
20 deposition. The items he was mentioning were  
21 reviewed with me.

22 Q. Other than documents prepared by your  
23 attorney.

24 MR. DUGHI: I don't know what you  
25 mean.

Brodkin - direct

1 MR. HALEY: In other words --

2 MR. DUGHI: He didn't look at any of my  
3 memos.

4 MR. HALEY: If you wrote a memo but for  
5 example, I don't think there is any privilege  
6 attached to correspondence.

7 MR. DUGHI: Go ahead.

8 A. I remember reviewing a letter that Dr.  
9 Bleiberg wrote to Mr. Guidi, I believe, that  
10 suggested or stated that Baisley had pigmentation  
11 characteristic of porphyria and going on to talk  
12 about the hexachlorobenzene business in Turkey, I  
13 think. The date of that letter is sometime like  
14 1963. I read a -- it's hard to recall exactly. I  
15 know I read a letter from myself to Gordon Steward  
16 about cooperating with the state in urine  
17 examinations. I think I might have read a letter  
18 from Bleiberg to Birmingham. I remember there was  
19 a letter to Lydell from Bleiberg, there was letters  
20 to Birmingham, Guidi. I think I read something  
21 from Bleiberg to McBurney? If I saw them, I could  
22 tell you if I have seen them previously.

23 Q. Not having been the one, doctor, having  
24 brought those documents out, I can't necessarily  
25 show them, although I do believe the first document

Brodkin - direct

1 that you are referring to is the February 25, 1963,  
2 letter from Dr. Bleiberg which was included in Mr.  
3 Baisley's medical file. I believe that to be  
4 correct.

5 MR. DUGHI: Yes.

6 Q. Who is Lydell? You mentioned Lydell.

7 A. He is at Aetna. I say that partially  
8 in question. I think he is at the Aetna Insurance  
9 Company.

10 Q. Or was at the Aetna Insurance Company  
11 at the time the letter was written?

12 A. I'm not sure.

13 Yes.

14 MR. DUGHI: If you would like the  
15 reference on that, February 25, 1963, letter to Mr.  
16 Lydell in Baisley's chart from Dr. Bleiberg.

17 Q. What was the subject matter of the  
18 correspondence between Dr. Bleiberg and Dr.  
19 Birmingham that you read, if you can recall?

20 A. That there is a problem of chloracne,  
21 that we think -- and of porphyria, that we think  
22 that there may be a relationship between the  
23 chemicals in the factory and the porphyria and of  
24 course, the chloracne, and there were references to  
25 Dr. Key in the article and surveying the plant.

Brodkin - direct

1 MR. HALEY: Could I have this document  
2 marked with my next PB number.

3 THE WITNESS: My problem is there were  
4 several of these things and to try to remember  
5 exactly what went with what and if I saw these  
6 things and where is difficult.

7 Q. And when did you review these  
8 documents, doctor, how soon -- was it a couple of  
9 weeks ago?

10 A. No, a couple of days ago.

11 MR. HALEY: Could we mark this document  
12 with the next PB number.

13 (Whereupon the document was received  
14 and marked PB-12 for identification.)

15 Q. The document that we have marked PB-12  
16 for identification, for the record, is a March 14,  
17 1963, letter from Dr. Bleiberg to Dr. Birmingham.  
18 Was this one of the things which you reviewed,  
19 doctor, in preparation for your deposition?

20 A. I think so.

21 Q. Had you seen this document before you  
22 began reviewing for your deposition today?

23 MR. DUGHI: Before the lawsuit?

24 A. You mean long ago, in 1963?

25 Q. Before the lawsuit, that's fair

Brodkin - direct

1 enough.

2 A. That would have to go back, then, to  
3 1963 and I have got to say I don't know. I was  
4 aware of a correspondence. However, Dr. Bleiberg  
5 corresponded and wrote with many people and I was  
6 not involved in that aspect of this entire  
7 situation. My role was mainly treating medical  
8 problems at the plant.

9 Q. When you say, "this aspect of the  
10 entire situation," what do you mean by "aspect"?

11 A. There was speculation about how to  
12 prevent what was going on, the medical problems at  
13 the plant. There was speculation about various  
14 corrective measures that might be taken, there was  
15 speculation about the cause of the problem. None  
16 of that was I involved in directly; that is, Dr.  
17 Bleiberg might have said hey, I asked Mr. Guidi if  
18 we could screen people's urines but I didn't write  
19 any letters about that.

20 Q. Doctor, was it ever discussed in this  
21 time frame about a potential cure for the  
22 situation?

23 A. I'm not sure I understand what you  
24 mean.

25 Q. In other words, was there, if I can, as

Brodkin - direct

1 I understand, at least what was testified to with  
2 Jim Burke this morning -- let me ask you a  
3 predicate question for that. Do you recollect a  
4 conversation we had about Jim Burke this morning  
5 and his treatment?

6 A. Yes.

7 Q. And we talked, did we not, about the  
8 excision of a cyst?

9 A. Yes.

10 Q. Would I be correct in saying that that  
11 was treating one of the symptoms of the chloracne?  
12 Would that be a correct statement?

13 A. I wouldn't accept that word from one of  
14 my students but I think I know what you mean.

15 MR. DUGHI: If you don't accept it from  
16 a student, don't accept it from him.

17 Q. I don't want you to speculate as to  
18 what I mean, doctor.

19 A. Cysts are a part of chloracne and  
20 treating the cyst is treating that aspect of this  
21 individual.

22 Q. Treating one of the manifestations of  
23 the chloracne?

24 A. Yes, fine.

25 Q. Did you ever talk in this time frame

Brodkin - direct

1 about removing the cause of the chloracne or  
2 eliminating the cause of the chloracne?

3 MR. DUGHI: Talk with Dr. Bleiberg?

4 MR. HALEY: Dr. Bleiberg first of all,  
5 that's fine, counselor.

6 A. Did I talk to Dr. Bleiberg, that was  
7 discussed.

8 Q. And what did you discuss with Dr.  
9 Bleiberg?

10 A. I mean I didn't suggest to Dr. Bleiberg  
11 we have to remove the cause. This has been going  
12 on as to what might be the cause and might be done  
13 to protect the workers from this cause from the day  
14 I set foot -- long before, but I was aware of the  
15 discussions at that time.

16 Q. Did Dr. Bleiberg tell you that he had  
17 an understanding of what the cause was in this 1963  
18 time frame that we have been talking about?

19 A. In a rough way, yes.

20 Q. And what was that that he communicated  
21 to you?

22 A. That there was some unknown  
23 intermediary in the process that was causing this  
24 problem.

25 Q. The chloracne problem?



Brodkin - direct

1 A. Yes.

2 Q. Did he ever mention to you about a  
3 testing program that Diamond Shamrock initiated at  
4 the Mellon Institute concerning rabbit ears? Did  
5 he ever mention that to you in this time frame?

6 A. Not that I recall.

7 Q. Have you ever heard about any testing  
8 program that was done with rabbit ears at the  
9 Mellon Institute by Diamond Shamrock?

10 A. No.

11 Q. Even to this day?

12 A. Even to this day.

13 Q. Did you have any reason, and again, we  
14 will start with the '63 time frame, to believe that  
15 Dr. Bleiberg was incorrect when he told you that  
16 the problem, he suspected, at least, that the  
17 problem was being caused by an intermediate in one  
18 of the processes?

19 A. I had no reason to think that that was  
20 incorrect.

21 Q. You testified at the end of yesterday,  
22 as I recollect, doctor, that when you started  
23 treating these workers, you knew they had chloracne  
24 and you knew that it was caused by the chemical  
25 environment. Is that correct?

Brodkin - direct

1 A. That's correct.

2 Q. And you also testified now that Dr.  
3 Bleiberg, at least, believed that the chloracne was  
4 being caused by an intermediate or intermediary in  
5 one of the processes. Did Dr. Bleiberg ever  
6 discuss with you a method by which a cure could  
7 have been effected other than removal from the  
8 cause?

9 A. You have got two words I have trouble  
10 with. One is a cure and the other is removal.  
11 Presuming that if all contact with this  
12 intermediary, suspected intermediary were removed,  
13 the patient won't wake up the next day and  
14 everything be gone. So I don't know what you mean  
15 by a cure. Cure takes a measure of time and  
16 repair.

17 Q. Let me perhaps again phrase it a  
18 different way. Did Dr. Bleiberg give any  
19 indication to you whether he thought the condition  
20 that was being observed in the 1963 time frame,  
21 again, was reversible or not?

22 A. He thought it was reversible.

23 Q. And did he give you any indication as  
24 to how he thought it could be reversed?

25 A. If the workers were protected, if their

Brodkin - direct

1 exposure were minimized.

2 Q. If their exposure to what was  
3 minimized?

4 A. It was known that here in the plant  
5 were a number of men and it was known that here  
6 among this number were a number who had bad  
7 problems, who had slight problems and others who  
8 had no problems. More or less the severity of  
9 their problem correlated with the exposure, the  
10 intimacy, the directness of their exposure to these  
11 chemicals.

12 Q. And it was Dr. Bleiberg's understanding  
13 at the time, as communicated to you, that the  
14 severity of chloracne was related to the degree of  
15 exposure to the process?

16 A. To some extent, yes.

17 Q. And did you have any reason to  
18 disbelieve what Dr. Bleiberg was telling you?

19 A. No.

20 Q. Did you ever have an opportunity on  
21 your own to determine whether that statement was  
22 true? Did you make any effort to determine whether  
23 that statement was true?

24 A. On my own, no.

25 MR. HALEY: I would like to have this

Brodkin - direct

1 document marked as PB-13.

2 (Whereupon the document was received  
3 and marked PB-13 for identification.)

4 Q. Doctor, you stated, just one thing  
5 finally, that you didn't undertake any efforts on  
6 your own?

7 A. I said that.

8 Q. Did you undertake any efforts in  
9 conjunction with anyone else?

10 A. Of course, I was associated with Dr.  
11 Bleiberg and his efforts I was knowledgeable of.

12 Q. What efforts were those?

13 A. To determine this cause?

14 Q. Right.

15 A. There were certain statistical -- let  
16 me say demographic efforts that he was making. For  
17 example, he wanted to know where these bad cases  
18 were working, in what building or what operation or  
19 something like that, and he would discuss this with  
20 Mr. Guidi, who was the plant director.

21 Q. Were you ever involved in those  
22 conversations?

23 A. No, except that he told me he spoke to  
24 Mr. Guidi.

25 Q. I would like, doctor, to just ask you

Brodkin - direct

1 to review that letter for a second and just tell me  
2 if you have ever seen it before?

3 MR. HALEY: For the record, PB-13 is a  
4 July 6, 1962, letter from Dr. Donald Birmingham to  
5 Dr. Jacob Bleiberg.

6 A. I was shown this letter as a part of my  
7 preparation.

8 Q. But prior to the initiation of this  
9 lawsuit, you had never seen that letter before?

10 A. I was barely in my own office at the  
11 time, no less associated with Dr. Bleiberg, and  
12 would have no access to it unless I demanded it and  
13 I didn't know of its existence.

14 Q. You had access, did you not, to the  
15 correspondence files of Dr. Bleiberg after you  
16 began to work with him, didn't you?

17 A. Yes, I did.

18 Q. Did you ever review those  
19 correspondence files?

20 A. No, I did not.

21 Q. Doctor, I also believe that you stated  
22 in preparation for your deposition, that you  
23 reviewed, I think it was, the 1962 to 1965 editions  
24 of the Physicians' Desk Reference or somewhere in  
25 those time frames?

Brodkin - direct

1           A.       Yes.

2           Q.       And what was the purpose of reviewing  
3 those sections of the PDR?

4           A.       Just to refresh my memory at that time  
5 what was put down in that book about the  
6 medications that we were using.

7           Q.       So, then, your purpose in reviewing  
8 that was to look at what is said about the drugs  
9 that had been administered to refresh yourself?

10          A.       Yes.

11          Q.       I would like again to go back to  
12 something we were doing this morning relating to  
13 the articles. I would like to once and for all  
14 nail down as to each article what your  
15 participation was. In the record, I think the  
16 record will reflect that this is accurate, you  
17 stated that to certain articles, you never read  
18 them at all prior to their publication. Is that  
19 correct?

20          A.       That's correct.

21          Q.       And you said as to certain other  
22 articles, that you reviewed drafts of the articles  
23 but that you didn't at least recollect reviewing  
24 the final drafts of those articles before they were  
25 published. Is that correct, also?

Brodkin - direct

1 A. Yes.

2 Q. And you also stated that there are  
3 certain articles which you would have rewritten or  
4 have written substantially differently at the time  
5 and two of those were Industrially Acquired  
6 Porphyria and Cutaneous Signs of Dioxin Exposure.  
7 Is that correct?

8 A. Yes.

9 Q. Which of these articles, then, that are  
10 listed in your bibliography did you actually write?

11 A. In its entirety?

12 Q. Right, in its entirety.

13 MR. DUGHI: By that question you mean  
14 that was not edited by anybody else?

15 MR. HALEY: I was going to start with  
16 writing in total and then writing part of.

17 MR. DUGHI: But the editing -- you can  
18 ask anything you wish but there is obviously an  
19 editing function.

20 MR. HALEY: Why don't we do this,  
21 then: Why don't we start with number one and I  
22 will just go through them.

23 MR. DUGHI: That would be fine.

24 Q. Doctor, article number one, could you  
25 tell me what your role was in the preparation of

Brodkin - direct

1 that article?

2 A. I was given case reports by Dr. Cohen,  
3 who was Dr. Frank, Sr.'s, junior partner and asked  
4 to write up this article based on these case  
5 reports, and I did that and they took my article  
6 and edited it, whatever, and it was published.

7 Q. Did either Dr. Frank or Dr. Cohen  
8 participate in the writing of that article?

9 A. They might have edited it.

10 Q. But is it your recollection that they  
11 reviewed that article before it was published?

12 A. Oh, yes, definitely.

13 Q. Did they ever express to you whether  
14 they agreed or disagreed with the article's  
15 contents?

16 A. No.

17 Q. Did you ever ask them if they agreed or  
18 disagreed with the article's contents?

19 A. I was a resident and I would not ask  
20 them if they agreed or disagreed. I was given an  
21 assignment and I did the assignment.

22 Q. And so, then --

23 A. They may have changed it.

24 Q. So, then, if they would have had --  
25 they would have disagreed with something, they



Brodkin - direct

1 would have changed it?

2 A. Yes.

3 Q. As to the article number two, could you  
4 tell us, doctor, what your role was in the  
5 preparation of that article?

6 A. Yes. This was the first description in  
7 dermatology of cytomegalic inclusion disease. Dr.  
8 Weinberg saw the patient and I researched the  
9 disease, inserted his description of the case and  
10 Dr. Leider, who wrote the Dictionary of  
11 Dermatology, literally, edited it. Dr. Leider is  
12 professor of dermatology at Bellevue or was. So he  
13 edited it.

14 Q. So would it be a fair statement for me  
15 to say that each of the three of you participated  
16 in the drafting of that article in some way?

17 A. No, I would say I wrote it and Leider  
18 edited it.

19 Q. Am I correct in my interpretation of  
20 your statement that Dr. Weinberg provided you with  
21 a written summary of the treatment of the patient?

22 A. No, oral.

23 Q. It was an oral one. Did Dr. Weinberg  
24 and/or Dr. Leider review this article before it was  
25 published, to the best of your recollection?

Brodkin - direct

1 A. Leider did.

2 Q. Leider did. Do you remember whether  
3 Weinberg did?

4 A. I remember he didn't.

5 Q. You remember he did not. Did Dr.  
6 Weinberg or Dr. Leider ever express to you any  
7 disagreement with what was included in the article?

8 A. No.

9 Q. The third one I think we can skip over  
10 because you are the only name that appears there  
11 and I assume that you wrote that article.

12 A. Yes.

13 Q. Would that be a correct assumption?

14 A. Yes.

15 Q. Did anyone else assist you in the  
16 preparation of that article, to the best of your  
17 recollection?

18 A. No.

19 Q. Article number four, could you tell me  
20 what your -- again, for the record, I should say we  
21 are referring to PB-9 for identification. Article  
22 number four on PB-9, could you tell me what your  
23 role was in the publication of that article?

24 A. I read it and wrote none of it and that  
25 was it.

Brodkin - direct

1 Q. Did you read it prior to its submission  
2 for publication?

3 A. Yes.

4 Q. And did you ever express to Dr.  
5 Bleiberg any disagreements you had with that  
6 article?

7 A. None. Number five I disagreed with.  
8 Dr. Bleiberg wanted to write a part of it and I  
9 disagreed with what he wanted to write but he wrote  
10 it, anyway.

11 Q. That's article number five?

12 A. Yes.

13 Q. Dermatologic Clues to Medical  
14 Emergencies?

15 A. Yes.

16 Q. And what portions of that article did  
17 you disagree with?

18 A. The first sentence or two.

19 Q. Other than the first sentence or two,  
20 you didn't disagree with that article?

21 MR. DUGHI: This is a 1963 article. I  
22 don't know when he last reviewed it.

23 MR. HALEY: To the extent that he can  
24 answer the question.

25 A. I know I disagreed with the insertion

Brodkin - direct

1 of the first couple of sentences but I don't recall  
2 disagreeing with anything else.

3 Q. What was it that caused you  
4 disagreement? What did you disagree with Dr.  
5 Bleiberg over, if you can recall?

6 A. Dr. Bleiberg, the article starts off  
7 something like the noted clinician Emanuel Libmann,  
8 that's like quoting Sir William Mosler, who from  
9 long ago said that a clinician examining a patient  
10 should use every sense, this is paraphrasing, it  
11 goes on to say therefore, in cases of medical  
12 emergencies, and this article deals with coma,  
13 gastrointestinal hemorrhage, stroke, shortness of  
14 breath, abdominal pain and five or six medical  
15 emergencies, therefore, in dealing with medical  
16 emergencies, the use of the faculty of looking,  
17 observing or whatever may be valuable to the  
18 clinician.

19 I told Dr. Bleiberg that I thought that  
20 to insert this statement about Dr. Libmann was not  
21 very pristine, to say the least.

22 Q. And why was that?

23 A. I thought it was sort of rambling. I  
24 thought we should get to the point, say it can help  
25 you in a medical emergency to examine the patient's

Brodkin - direct

1 skin.

2 Q. Would it be fair for me to characterize  
3 that as a stylistic difference?

4 A. Yes.

5 Q. And so this was one that you had read  
6 before it was submitted for publication?

7 A. Yes. He didn't change it.

8 Q. Article number six, can you tell me  
9 what your role was in the preparation of that  
10 article?

11 A. Article number six derives from article  
12 number three.

13 Q. And you were the only author involved  
14 in that?

15 A. Yes.

16 Q. Could you tell me, doctor, first of  
17 all, article number seven, I see that it has the  
18 same --

19 A. It's a mistake, I think.

20 Q. It's the same, as far as I can tell,  
21 doctor, as number five, only a different journal.

22 A. Yes. It's, I think, a mistake.

23 Q. So we will skip that one, then. And  
24 again, number eight, you would have been the only  
25 person involved in the writing of that. Is that

Brodkin - direct

1 correct?

2 A. Yes, and again, this refers to six  
3 and/or three.

4 Q. A continuation in the series or  
5 something akin to that?

6 A. This involves different aspects of the  
7 same case. There were many issue raised in that  
8 case.

9 Q. And doctor, could you tell me what your  
10 role was in writing article number nine, if any?

11 A. Yes. I wrote the article. I did write  
12 the article and therefore, it's in agreement with  
13 me.

14 Q. To the best of your recollection, did  
15 Dr. Bleiberg review that article before it was  
16 submitted for publication?

17 A. Yes.

18 Q. Did he express any disagreement with  
19 what you had written?

20 A. No.

21 Q. Number ten I think we have already  
22 discussed. Number 11, could you explain to me what  
23 your role was in the preparation of that article?

24 A. Yes. This was a patient of mine who I  
25 observed, I wrote up the article. Bleiberg, I

Brodkin - direct

1 simply put his name on it, too, with his agreement.

2 Q. With his agreement?

3 A. Yes.

4 Q. Was this someone whom you were both  
5 seeing or was this a patient of your own?

6 A. A patient of my own.

7 Q. Do you recollect whether he reviewed  
8 this article prior to its submission?

9 A. He may have. I have no particular  
10 recollection.

11 Q. Did he ever express to you that he  
12 disagreed with its conclusions?

13 A. Never.

14 Q. Article number 12, could you tell me  
15 what your role was in the preparation of that  
16 article?

17 A. I wrote the article.

18 Q. You wrote the article. Do you know if  
19 Dr. Bleiberg reviewed that article prior to its  
20 submission for publication?

21 A. I don't know. He may have.

22 Q. Did Dr. Bleiberg ever express to you  
23 any disagreement with the conclusions that were  
24 stated in that article?

25 A. No.

Brodkin - direct

1 Q. Number 13, could you explain to me what  
2 your role was in the preparation of that article?

3 A. I'm not sure about that. I think I  
4 researched it and Dr. Bleiberg -- researched it  
5 partially and Dr. Bleiberg wrote it.

6 Q. Do you recollect whether you read that  
7 article prior to its submission for publication?

8 A. Yes, I did.

9 Q. And did you agree with its conclusions?

10 A. Yes.

11 Q. I think number 14 we are on now. Could  
12 you tell me what your role was in the preparation  
13 of that article?

14 A. This was my patient. I researched it,  
15 wrote it. I think Bleiberg and I were together so  
16 I stuck his name on it.

17 Q. Do you recollect whether Dr. Bleiberg  
18 saw that article before it was submitted for  
19 publication?

20 A. He probably did. He may have.

21 Q. Did he ever express to you that he  
22 disagreed with the conclusions stated in that  
23 article?

24 A. No.

25 Q. Number 15, again, this one I assume, am



Brodkin - direct

1 I correct in assuming because your name is by  
2 itself, that you wrote that article by yourself?

3 A. Not only that, that's the culmination  
4 of a seven year research project that I did long  
5 before I knew Bleiberg.

6 Q. Number 16, could you tell me what your  
7 role was in the preparation of that article?

8 A. I pretty much did the whole thing,  
9 research, my case, wrote it.

10 Q. Do you recollect whether Dr. Bleiberg  
11 saw that article before it was submitted for  
12 publication?

13 A. I would think he did.

14 Q. Did Dr. Bleiberg ever express to you  
15 any disagreement with the conclusions in that  
16 article?

17 A. No.

18 Q. Number 17, doctor, could you tell me  
19 what your role was in the preparation of that  
20 article?

21 A. I think I assisted in more or less  
22 editorial fashion in that article.

23 MR. HALEY: Paul had a suggestion and I  
24 was going to state that perhaps with your consent,  
25 he be allowed to proceed in a narrative fashion.

Brodkin - direct

1 That might speed things up.

2 MR. DUGHI: No, I prefer to do it this  
3 way. I'm afraid we will have trouble later  
4 colating what we are talking about.

5 MR. HALEY: Fine, good enough, then.

6 MR. MONZIO: I was suggesting rather  
7 than question and answering, he go down the list  
8 and tell us what his role was in each one.

9 MR. DUGHI: That's fine. What are we  
10 up to?

11 MR. HALEY: 17.

12 MR. DUGHI: 17, who wrote it, what was  
13 your involvement?

14 THE WITNESS: 17, the only thing I did  
15 was edited it, I probably did read the final copy  
16 and was involved with the patient. The senior  
17 author was more involved.

18 Number 18, all I did in that article  
19 was collect comedones. I barely know the method of  
20 thin layer chromatography. I don't even think I  
21 did see a final copy of it and I have no  
22 disagreement with it.

23 Number 19, Dr. Bleiberg and I were both  
24 involved with the drug. I think I wrote it. I  
25 have no disagreement with it, nor did he.

Brodkin - direct

1           Number 20 was written by a professional  
2 medical writer and I was shown the -- it was at the  
3 end of a clinical study so Dr. Wortzel, who I have  
4 no association with, his material was also put in  
5 with our material. I have no disagreement with  
6 it.

7           21, I'm the sole author so I produced  
8 and edited it and everything and agree with the  
9 whole thing.

10           Number 22, as I recollect, I pretty  
11 much wrote and researched that article and Bleiberg  
12 agreed with it and I don't know why I put him as  
13 the first author -- or I do know, but I did.

14           Q.       Why was that?

15           A.       At this time, and you may note I have  
16 said in the past that Dr. Bleiberg had little to do  
17 with several of these articles on which he is the  
18 second author, those were really to put his name in  
19 print because I had taken him on to the faculty at  
20 the medical school by then and wanted his name to  
21 be in print more. Medical schools judge you that  
22 way.

23           I have no recollection of 23 but since  
24 I wrote it, I have to agree with it; the same with  
25 24; the same with 25, did the whole thing and agree

Brodkin - direct

1 with all of it.

2           Number 26, I edited this. I agree with  
3 everything in it.

4           Number 27, I edited it -- pardon me, I  
5 don't remember 27. Medical Times is not a  
6 prestigious journal.

7           Number 28, I wrote the whole thing and  
8 Dr. Bleiberg agreed.

9           Number 29 I assisted in the preparation  
10 of in terms of editing. I did not research this.

11           Number 30, I assisted in the  
12 dermatologic part of this article or I wrote the  
13 dermatologic part of the article. I did all the  
14 thing in 31, all the thing in 32, all the thing in  
15 33, all the thing in 34.

16           In article 35, I don't even know if I  
17 saw, I think I did not even see a final copy of  
18 it. My participation in that article was to get  
19 crabs, that is, the lice for the doctors.

20           Number 36 I edited and pretty much  
21 agree with. 37 has been corrupted from my original  
22 production.

23           Number 28, I wrote the --

24           MR. DUGHI: 38, doctor.

25           A. Pardon me, 38, I wrote the whole

Brodkin - direct

1 thing. 39 --

2 MR. DUGHI: We discussed that already.

3 THE WITNESS: Yes, and 40 we  
4 discussed.

5 A. In 41, I probably wrote that all by  
6 myself. In 42, it never was produced, simply a  
7 proposal. In 43, I wrote it. 44, I read the final  
8 copy and wrote none of it. 45, never saw it. 46,  
9 I wrote a substantial portion and edited, more or  
10 less edited the thing and certainly agree with what  
11 is in it.

12 Number 47, I edited it; number 48, I  
13 edited it; number 49, I wrote, edited and did  
14 everything.

15 Number 50, I wrote, edited, did  
16 everything; number 51, I don't think I ever saw it  
17 in my life even in print to this day. Number 52, I  
18 assisted in certain drafts of that. Number 53, I  
19 saw some of the drafts, never saw the final copy.

20 Q. And that completes the list, I  
21 believe. Doctor, I just have one question about  
22 number 42. It states that that's in press --  
23 before I ask that question, when was this C.V.  
24 prepared, if you can recall?

25 A. It's added to periodically.

Brodkin - direct

1 Q. Do you remember when the latest  
2 revision of this was?

3 A. There might have been something added  
4 to it as recently as, I would say, at least  
5 November 1987, a year ago.

6 Q. Would that have been the most recently  
7 it would have been written or the farthest back it  
8 would have been written?

9 A. Some of this went on when I first  
10 needed a C.V. and it was added to.

11 Q. My point is, doctor, when you said  
12 November of 1987, I was just attempting to find out  
13 whether you were saying that because that was the  
14 last entry in here?

15 A. Yes.

16 Q. The Dioxin Toxicity, the Clinical  
17 Picture, at that time, apparently, the C.V. was in  
18 preparation --

19 A. That's number 42?

20 Q. Number 42. Would it be -- was it in  
21 press in November of 1987?

22 A. That was a proposal in 19 -- maybe the  
23 early 1980's. A program was developed. This is  
24 not an article, this is a teaching thing, was  
25 developed and submitted and never responded to.

Brodkin - direct

1 Q. Would that have been a teaching thing,  
2 would that be a videotape or slide show or  
3 something like that?

4 A. Slide show.

5 Q. Could you tell me what Med-Com, Inc.,  
6 is?

7 A. Med-Com is a medical publishing company  
8 that publishes a number of nontextbook teaching  
9 devices, slide shows, pamphlets, things like that.

10 Q. Was it ever submitted to Med-Com?

11 A. No.

12 Q. So that it wouldn't have been pulled  
13 off the market after the commencement of this  
14 lawsuit?

15 A. Oh, no. It was never on the market.

16 Q. Doctor, in 1963, other than Griffin  
17 Baisley and Mike Kalena, who we discussed were  
18 hospitalized, did you participate or were you aware  
19 of in any tests of the work force at Diamond  
20 Shamrock to determine whether there was an increase  
21 in, for example, uroporphyrins?

22 MR. DUGHI: At any time thereafter?

23 MR. HALEY: In 1963.

24 MR. DUGHI: Just in that year?

25 MR. HALEY: Just in that year.

Brodkin - direct

1 A. In 1963?

2 MR. DUGHI: Yes.

3 A. I never participated in any tests. I  
4 was aware of.

5 Q. Could you tell me what you were aware  
6 of that was done?

7 A. I was aware of the hospitalization and  
8 actually did participate to the extent of doing a  
9 skin biopsy and I was aware that there was urine  
10 screening. These are the tests I was aware of.

11 Q. And you took, in Griffin Baisley's  
12 case, you took the skin biopsy yourself?

13 A. I think I did.

14 Q. And you didn't -- would you tell me to  
15 the best of your recollection what the urine  
16 screening was, what that consisted of?

17 A. I think --

18 MR. DUGHI: This is pre-op, post-op?

19 MR. HALEY: I don't think anybody -- I  
20 think we are talking about something that was  
21 done -- let me lay one predicate for that.

22 Q. The urine --

23 MR. DUGHI: Excuse me. When I said  
24 pre-op, post-op, lest someone spend a day trying to  
25 figure that out, I meant prehospitalization and



Brodkin - direct

1 posthospitalization. Go ahead.

2 Q. There were at least 28 members of the  
3 work force, were there not, who had urine screening  
4 tests done in 1963?

5 A. Something like that, yes.

6 Q. And could you tell me to the best of  
7 your recollection, if you have any recollection at  
8 all, first of all, how that was accomplished?

9 A. I think they got these guys and  
10 collected a specimen of urine from them, the  
11 workers, took it to the laboratory or had it sent  
12 to a laboratory and had it checked. I think they  
13 were looking for porphyrins. I don't think any  
14 microscopic analysis was performed.

15 Q. Were those urine tests done at the  
16 plant, do you know? Do you know where they were  
17 done?

18 A. I'm not sure. I have an idea that that  
19 was done. I'm not sure.

20 Q. Perhaps my question wasn't clear.  
21 Where the urine samples were obtained, do you have  
22 any recollection of that? Because when I say --

23 A. If I understand you, I think they were  
24 done at the plant.

25 Q. So the urine samples were obtained at

Brodkin - direct

1 the plant? I thought my question might have been  
2 confusing, analyzed as opposed to obtained. And do  
3 you have any recollection of where the urinalysis  
4 was performed?

5 A. I think at the plant.

6 Q. And do you have any recollection of  
7 what the urine was analyzed for?

8 A. I think for porphyrins.

9 Q. Do you know or did you know at the  
10 time -- first of all, did you know at the time what  
11 the results of those screening tests were?

12 A. At the time, I did, yes.

13 Q. How did you find that out?

14 A. Dr. Bleiberg told me.

15 Q. To the best of your recollection, did  
16 that involve any of the plaintiffs in this lawsuit,  
17 if you can recall?

18 A. Did what involve, who were tested?

19 Q. Yes, the urine screening.

20 A. Oh, yes.

21 Q. Would you happen to know which of the  
22 plaintiffs in this lawsuit that involved, if you  
23 can recall?

24 A. They screened 20-odd people.

25 Q. My understanding, doctor, and perhaps

Brodkin - direct

1 I'm incorrect, there were approximately 60 or 70  
2 employees at the plant in 1963. Is that correct?

3 A. Yes.

4 Q. And 28 of them were screened. Is that  
5 also correct?

6 A. Yes.

7 Q. So, then, not everyone who was employed  
8 at the plant was screened. That's really what I  
9 was getting at.

10 A. Okay. I don't remember exactly but I  
11 think production workers, either it was production  
12 workers or it was workers who had chloracne.

13 Q. As a result, there were, were there  
14 not, some elevated porphyrin levels in some of the  
15 employees as a result of those tests. Is that  
16 correct?

17 A. Yes.

18 Q. And how did you find that out?

19 A. I was told it.

20 Q. What, if anything, was the significance  
21 to you of the elevated porphyrin levels in those  
22 workers?

23 A. It's very interesting.

24 Q. Interesting in what sense, clinically,  
25 academically?

Brodkin - direct

1           A.        I wouldn't -- if you asked me before  
2 the urinalysis was done would I expect to find what  
3 we found, I would have said no. So it's certainly  
4 interesting that we found it.

5           Q.        It certainly was unexpected that you  
6 found it?

7           A.        It was unexpected, yes.

8           Q.        Did the elevated porphyrin levels of  
9 these workers have any clinical significance to  
10 you?

11          A.        I think I don't understand your  
12 question. Did it have clinical significance?

13          Q.        Let me ask it another way. Did the  
14 elevated porphyrin levels in these workers require  
15 any change in the treatment which was being  
16 provided to them?

17          A.        No.

18          Q.        What was the purpose of taking the  
19 porphyrin analysis of the urine, if you know?

20          A.        Yes. We had determined prior to that  
21 test that Mr. Baisley and/or Mr. Kalena or others  
22 had porphyrins in their urine. We then considered  
23 that this might be caused by, might be caused by  
24 exposure to these chemicals and therefore, we  
25 wanted to check the workers who were exposed to the

Brodkin - direct

1 chemicals.

2 Q. When you say, "we," are you referring  
3 to yourself and Dr. Bleiberg?

4 A. Yes.

5 Q. Did you ever have discussions with Dr.  
6 Birmingham, and again, when I say you, I mean you  
7 personally, discussions with Dr. Birmingham about  
8 the elevated porphyrin levels in the workers or  
9 what should be done with them?

10 A. I never spoke to Dr. Birmingham, I  
11 never discussed such a thing with Dr. Birmingham.

12 Q. Did you ever discuss with Dr.  
13 Birmingham the potential need to hospitalize  
14 workers who showed either severe chloracne or  
15 elevated porphyrin levels?

16 A. Your use of the word "you" refers to  
17 Roger Brodkin?

18 Q. Roger Brodkin, that's correct.

19 A. No, sir, I tell you I never did speak  
20 to Dr. Birmingham nor did I ever communicate with  
21 him other than to give him a cordial and  
22 deferential smile.

23 Q. So, then, Dr. Birmingham never made any  
24 recommendations to you concerning what should be  
25 done with this work force, again, meaning you,

Brodkin - direct

1 Roger Brodkin?

2 A. Absolutely not.

3 Q. Doctor, so, then, you are positive that  
4 other than a cordial hello or salutation to Dr.  
5 Birmingham, that you had no discussions with him in  
6 the 1963 time frame concerning this?

7 A. I can't imagine.

8 Q. It was your custom and Dr. Bleiberg's  
9 custom to visit the plant on Thursdays. Is that  
10 not correct?

11 A. Yes.

12 Q. And it's my understanding, also, and  
13 correct me if I'm wrong, that Dr. Birmingham toured  
14 the plant on a Thursday?

15 A. I think he did.

16 MR. HALEY: I would like to have marked  
17 as my next PB number a letter dated March 29, 1963,  
18 from Dr. Brodkin to Mr. Guidi and ask you, doctor,  
19 if that refreshes your recollection as to whether  
20 you had any communications with Dr. Birmingham?

21 (Whereupon the document was received  
22 and marked PB-14 for identification.)

23 A. Yes.

24 MR. DUGHI: Take your time to read it  
25 over.

Brodkin - direct

1 Q. Take your time to read it over,  
2 doctor.

3 Does that refresh your recollection as  
4 to whether you had any conversations with Dr.  
5 Birmingham?

6 A. No.

7 Q. Doctor, do you recollect writing this  
8 letter?

9 A. I recollect and know that I am not the  
10 author of this letter.

11 Q. Let me ask this: At the time, was Dr.  
12 Bleiberg in New Jersey, do you recollect?

13 A. No, I don't.

14 Q. You don't recollect whether he was in  
15 New Jersey or not?

16 A. I know he was at the meeting with Dr.  
17 Birmingham, I believe.

18 Q. And again, doctor, this is as good a  
19 copy as I have and I really say that sincerely.  
20 That is Roger W. Brodkin down at the bottom?

21 A. Roger H. Brodkin.

22 Q. Excuse me, doctor.

23 A. Yes, it is.

24 Q. And it's your testimony that you did  
25 not write this letter?

Brodkin - direct

1           A.       I dictated this letter and I did not --  
2 I didn't write it in the sense that the words that  
3 are in it are my words.

4           Q.       Could you explain to me what -- if you  
5 dictated it, is this not the letter you dictated?

6           A.       Yes, it is.

7           Q.       So I can assume, can I correctly  
8 assume, doctor, then, that you dictated this entire  
9 letter?

10          A.       I don't recollect.

11          Q.       Did anybody else dictate this letter?

12          A.       This is Dr. Bleiberg's letter.

13          Q.       Was it customary --

14          A.       Signed by me and so forth.

15          Q.       Signed by you?

16          A.       Yes.

17          Q.       Could you explain to me, doctor, then,  
18 why is this letter written in the first person?

19          A.       I think that Dr. Bleiberg wanted it to  
20 go out and could not sign it because he was not  
21 there, wanted it to go out very quickly, couldn't  
22 sign it because he wasn't there, and therefore,  
23 asked me to sign it and assume the role of  
24 dictating it.

25          Q.       Could you tell me which portions of the



Brodkin - direct

1 letter you recollect dictating?

2 A. I do not recollect a word of dictating  
3 this letter.

4 Q. But you did sign this letter?

5 A. Yes, I did.

6 Q. Doctor, did you read this letter before  
7 you signed it?

8 A. Yes, I think I did, although there are,  
9 I believe, some misspellings that -- I may be  
10 wrong. Is it Kay or Key? I'm surprised I didn't  
11 change it.

12 Q. I thought it was Key myself, doctor.

13 MR. DUGHI: It was Key.

14 Q. I thought it was Key myself but it does  
15 say Kay.

16 A. If I wrote it, I would think I would  
17 have changed Dr. Key's name, the spelling.

18 Q. So, then, Dr. Brodkin, when the  
19 statement appears in the second full paragraph on  
20 page one of that letter, and I'm going to go five  
21 lines from the bottom of that second paragraph,  
22 doctor, "in the process, I learned from Dr. Kay the  
23 very valuable bit of information that TCP may very  
24 well produce chloracne by local contact with the  
25 skin." Do you see that statement?

Brodkin - direct

1 A. Yes.

2 Q. That's Dr. Bleiberg's statement and not  
3 yours?

4 A. Yes.

5 Q. Is that consistent with your knowledge  
6 at the time?

7 A. I had heard this.

8 Q. Is that a yes, that TCP may very well  
9 produce chloracne by local contact with the skin?

10 A. Did I know that when this letter was  
11 written, is that what you are asking?

12 Q. Yes.

13 A. That I don't know. Can I say that you  
14 don't put that stuff on your arm, on your skin, and  
15 the next day you have got chloracne there.

16 Apparently, this takes, I think even in the rabbit,  
17 repeated application.

18 Q. So, then, doctor, you were aware, then,  
19 that Dr. Birmingham, and I will quote from the last  
20 paragraph on page one, which goes on to page two,  
21 that "First, that the cases where significant  
22 findings in the urine had been uncovered, be  
23 admitted to the hospital, not necessarily in a  
24 large group but one or two at a time and that  
25 complete liver profiles be done."

Brodkin - direct

1           Then you were aware of that  
2       recommendation from Dr. Birmingham?

3           MR. DUGHI:   How was he aware of it?

4           MR. HALEY:   He said he read the  
5       letter.

6           MR. DUGHI:   Fine.

7           A.       The recommendations that were made -- I  
8       think what went on was that when Dr. Bleiberg  
9       suggested to Dr. Birmingham that we think we may  
10      have this problem, we would like to hospitalize  
11      these patients and follow through on it, Dr.  
12      Birmingham said yes, that's a good idea, and then  
13      Bleiberg kind of changed it around and said Dr.  
14      Birmingham made the suggestion, the recommendation  
15      that these people be hospitalized. I think the  
16      first initiator of the idea, even before Birmingham  
17      arrived on the scene or knew anything about this,  
18      was that Bleiberg wanted to put patients in the  
19      hospital.

20          Q.       Doctor, if you never said more than a  
21      cordial hello to Dr. Birmingham, how could you know  
22      what his conversations were and what his  
23      recommendations were?

24          A.       I don't.

25          Q.       Do you have any basis on which to

Brodkin - direct

1 believe that Dr. Birmingham did not make the  
2 recommendations in the letter which you signed on  
3 March 29, 1963?

4 MR. DUGHI: Let me just get a  
5 caution -- obviously, a lot of water has gone over  
6 the dam since '63. I want to make sure you are  
7 asking questions about '63.

8 MR. HALEY: '63, that's fine.

9 MR. DUGHI: The last comment by the  
10 doctor may have had some later information. I  
11 don't know. But go ahead. As of '63, whatever you  
12 knew.

13 A. Dr. Bleiberg, when his suspicions were  
14 aroused of a possible relationship between a  
15 chemical exposure and porphyria, began to talk  
16 about the hospitalization of these people, the  
17 in-depth study of some of the people. Therefore --  
18 and he subsequently wrote letters to Dr. Birmingham  
19 and had conversations with Dr. Birmingham and had a  
20 meeting with Dr. Birmingham.

21 Since this was Dr. Bleiberg's opinion  
22 prior to his meeting with Dr. Birmingham, and since  
23 it suggests to me that the following  
24 recommendations were made to me by Dr. Birmingham,  
25 that he is now suggesting that Dr. Birmingham is

Brodkin - direct

1 the originator of these ideas, that I don't see how  
2 Dr. Birmingham could have originated when he didn't  
3 know them first.

4 Q. In the very last line of the first page  
5 of the document, would you tell me what is meant  
6 there by "medical-legal reasons"?

7 A. He meant compensation, workmen's  
8 compensation payment.

9 Q. And that would be if there were liver  
10 damage, there would be compensation claims, is that  
11 the purpose of that?

12 A. Yes.

13 Q. And in fact, then, the reason that  
14 Griffin Baisley and Mike Kalena were hospitalized  
15 was because of a concern about liver damage to  
16 them. Is that correct?

17 A. Yes.

18 Q. And I refer you, doctor, to the  
19 continued paragraph on the second page, the sixth  
20 line, and I will quote, "in addition, Dr.  
21 Birmingham told me that at least a preliminary  
22 urine examination should be done on every member of  
23 the work force who, for any reason at all, gets  
24 within the working areas of the plant even for  
25 brief periods of time. This urine test would

Brodkin - direct

1 effectively rule out, in most cases, the  
2 possibility of any liver involvement. Worse cases  
3 which showed any possibility of liver involvement  
4 as the result of urinary findings should be  
5 subjected to further study."

6 Do you see that?

7 MR. DUGHI: You misread that, it didn't  
8 say, "worse cases," it was "those cases."

9 MR. HALEY: I'm sorry, you are correct,  
10 counsel. The last sentence of that should read  
11 "those cases which showed any possibility of liver  
12 involvement as the result of urinary findings  
13 should be subjected to further study."

14 A. Yes, I do see that sentence.

15 Q. We stated this this morning and you  
16 stated that by definition, porphyria cutanea tarda  
17 was a hepatic porphyria. Is that correct?

18 A. That's correct.

19 Q. And the tests which were, in fact,  
20 carried out, there were tests which, in fact, were  
21 carried out as a result of the suggestions in this  
22 letter. Is that not correct?

23 A. Yes, that's correct.

24 Q. And those were the uroporphyrins, the  
25 28 uroporphyrin tests, were they not?

Brodkin - direct

1 A. Yes.

2 Q. And in fact, 11 of those tests showed  
3 elevated porphyrin levels. Is that not correct?

4 A. That's correct.

5 Q. The elevated porphyrin levels would  
6 have been, would they not, showing the possibility  
7 of liver involvement. Is that correct? Let me  
8 rephrase that question. If there are elevated  
9 porphyrin levels in the urine, that shows, does it  
10 not, a possibility of liver involvement?

11 MR. DUGHI: Objection. You are talking  
12 about elevated porphyrin levels as determined by  
13 the tests that were done in this case?

14 MR. HALEY: That's correct.

15 MR. DUGHI: Go ahead.

16 A. What do you mean by "involvement"?

17 Q. Doctor, it's your words.

18 A. All right. Yes.

19 Q. And the letter states, does it not,  
20 that those cases which showed any possibility of  
21 liver involvement as a result of the urinary  
22 findings should be subjected to further study.  
23 Could you tell me what further study was done on  
24 those people who showed elevated porphyrin levels,  
25 if you know?

Brodkin - direct

1           A.       Those 11 people?

2           Q.       Yes.

3           A.       To the best of my knowledge, no further  
4 study was done.

5           Q.       Doctor --

6                   MR. DUGHI: Excuse me a moment.

7                   (Whereupon a discussion took place off  
8 the record.)

9           Q.       Doctor, is it your testimony here that  
10 the "I" and the "my" and the first person  
11 references in this letter are to Dr. Bleiberg?

12          A.       Yes.

13          Q.       I would like to refer you to the first  
14 full paragraph on the second page. If that's the  
15 case, then would you explain why this sentence  
16 would read as follows: "It would seem to me that  
17 this might be presented as a form of annual checkup  
18 which many companies give their employees and it  
19 might possibly be better done if it were completely  
20 separated from the activity of Dr. Bleiberg and  
21 myself."

22                   Why would Dr. Bleiberg be referred to  
23 in the third person and you be referred to in the  
24 first person if Dr. Bleiberg was supposedly the one  
25 who wrote this letter?



Brodkin - direct

1           A.       It's consistent with the apparent  
2 authorship of the letter.

3           Q.       Which you testified you dictated. Is  
4 that correct?

5           A.       Yes, I may have.

6           Q.       Why in here is it suggested that the  
7 annual checkup be divorced from the work of  
8 yourself and Dr. Bleiberg?

9           A.       I haven't the vaguest idea.

10          Q.       When the phrase, the last line of the  
11 first full paragraph of the second page, "this  
12 would tend to allay any fear on the part of the  
13 men," would that be fear that their livers were  
14 being damaged?

15                   MR. DUGHI: I'm sorry, what was that  
16 question?

17          Q.       The last paragraph, the last sentence  
18 of the first full paragraph on page two states  
19 "This would tend to allay any fear on the part of  
20 the men," relating to having the workups done  
21 separately from Dr. Bleiberg and yourself. Would  
22 the purpose of that have been not to allow the men  
23 to know that they were suffering from a liver  
24 dysfunction?

25          A.       It says to allay the fear on the part

Brodkin - direct

1 of the men. I don't know exactly if that's the  
2 case but certainly it's done to allay fear on the  
3 part of the men.

4 Q. Fear of what, doctor?

5 A. I don't know.

6 Q. And why is that in there?

7 A. I don't know.

8 Q. Did you ever disclose to those 11  
9 patients who were showing excess porphyrin in their  
10 livers that they may be suffering from a liver  
11 illness?

12 A. In their urine.

13 Q. In their urine. I stand corrected.

14 A. Did I ever disclose that? I really  
15 don't know. I really don't remember.

16 Q. Would you consider that a significant  
17 finding, that they had elevated porphyrin levels in  
18 their urine?

19 A. Yes.

20 Q. Would that have been the type of thing  
21 which you would have written down on their  
22 treatment card?

23 A. Maybe.

24 Q. Are you aware of anywhere where it has  
25 been written on a treatment card?

Brodkin - direct

1           A.       No. I don't think -- I'm not aware of  
2 anyplace where it has been written on a treatment  
3 record.

4           MR. DUGHI:   Excuse me one minute.

5                   (Whereupon a discussion took place off  
6 the record.)

7           Q.       Can you tell me what the basis is in  
8 the second full paragraph on page two for the  
9 statement that the ingestion of alcohol might act  
10 very strongly as a synergistic cause of liver  
11 disturbance? Do you see that, doctor?

12          A.       Yes. Alcohol is a toxin to the liver.

13          Q.       Had you ever reviewed literature which  
14 showed that alcohol may have a synergistic effect  
15 on the liver disturbances?

16          A.       Alcoholics sometimes show porphyrinuria  
17 and alcohol is a liver toxin.

18          Q.       Turning to the last two lines -- the  
19 final two lines of the letter say, "when you  
20 receive the report from Dr. Birmingham, we would  
21 appreciate the opportunity of going over it with  
22 you." Would that "we" have been yourself and Dr.  
23 Bleiberg?

24          A.       I did not ever speak to Mr. Guidi about  
25 this material. I would never have appreciated the

Brodkin - direct

1 opportunity of going over a correspondence from Dr.  
2 Birmingham with him. I would think that by March  
3 of 1963, if Mr. Guidi had any idea who I was, it  
4 would be simply as Dr. Bleiberg's assistant.

5 Q. Had you ever asked him?

6 A. Mr. Guidi, I had no contact with Mr.  
7 Guidi. I didn't even smile at Mr. Guidi.

8 Q. So, then, you never asked him for a  
9 copy of the report other than in this letter?

10 A. No, I didn't ask him for a copy of the  
11 report. I had no communication with the man. I  
12 did see Mr. Guidi on one or two occasions, see him  
13 in the distance, but I have never communicated with  
14 Mr. Guidi. I don't think I was introduced, really,  
15 to Mr. Guidi.

16 Q. That contact was done through Dr.  
17 Bleiberg?

18 A. Yes.

19 Q. Did you ever ask Dr. Bleiberg whether  
20 he had received a copy of the report from Mr.  
21 Guidi?

22 A. No. Dr. Bleiberg more or less told me  
23 things on his own.

24 Q. And doctor, just so I'm straight, these  
25 11 people who showed excess porphyrin levels were

Brodkin - direct

1 your patients. Is that correct?

2 A. I need a list of who they were.

3 Q. Doctor, unfortunately, I don't have  
4 that with us.

5 A. My patients are all -- you have their  
6 charts.

7 Q. You were treating more than just the  
8 patients in this lawsuit at the time. In fact,  
9 some of these people you weren't treating at the  
10 time. Isn't that correct?

11 A. Yes.

12 MR. DUGHI: I'm sorry, what was the  
13 question?

14 MR. HALEY: In other words, all I'm  
15 saying is the world of who would have been treated  
16 in 1963 at Diamond Shamrock is not co-extensive  
17 with the plaintiffs in this lawsuit.

18 MR. DUGHI: That is correct.

19 Q. So there would have been others that  
20 you would have been treating who were not  
21 plaintiffs in this lawsuit?

22 A. Yes.

23 Q. And did this information affect your  
24 treatment of these patients in any way?

25 MR. DUGHI: You mean the elevated urine

Brodkin - direct

1 porphyrins?

2 MR. HALEY: That's correct, counsel.

3 A. Affect my treatment of the patients,  
4 no.

5 Q. And these patients, with the exception  
6 of Kalena and Baisley, were not hospitalized. Is  
7 that correct?

8 A. That's correct, as far as I know, and I  
9 haven't seen the list.

10 MR. HALEY: I would like to take five  
11 minutes, if we could.

12 MR. DUGHI: Sure.

13 (Whereupon a recess was taken.)

14 Q. Did you ever have any discussions,  
15 doctor, with Dr. Bleiberg about what the cause of  
16 these elevated porphyrin levels was?

17 A. There was a suspicion that they might  
18 be due to the chemicals.

19 Q. When you say chemicals, what do you  
20 mean?

21 A. The chemicals in the factory.

22 Q. And those would have been the chemicals  
23 that we discussed this morning?

24 A. Yes.

25 Q. Were any other potential causes

Brodkin - direct

1 discussed?

2 A. These people were, a number of them,  
3 heavy or moderate drinkers.

4 Q. Did you ever do any work to find out if  
5 there was a correlation between the alcohol  
6 consumption of these patients and their elevated  
7 porphyrin levels?

8 A. I certainly did not.

9 Q. So the answer is that you don't know  
10 whether alcohol would have been a cause for the  
11 elevated porphyrin levels. Is that correct?

12 MR. DUGHI: I object to that question.  
13 You said if he did anything and you said the answer  
14 is you don't know, you don't know if somebody else  
15 did something. I don't think it's a fair  
16 question.

17 MR. HALEY: I think he can answer the  
18 question and if he says that's not true, then I can  
19 ask him to explain the answer.

20 MR. DUGHI: I don't think it's an  
21 appropriate phraseology for deposition but go  
22 ahead.

23 A. I did not do anything. I don't know  
24 whether someone else questioned all these people  
25 about their alcohol intake.

Brodkin - direct

1 Q. Doctor, did you ever discuss with Dr.  
2 Bleiberg, I'm going to start with chloracne first,  
3 what the possible ranges of treatment were for  
4 these people who were affected?

5 MR. DUGHI: Ranges?

6 MR. HALEY: Yes.

7 A. Ranges of treatment?

8 Q. Yes, the different types of treatments  
9 which one might have used.

10 A. Originally, when I arrived there, I was  
11 told that Dr. Bleiberg had established a treatment  
12 program for workers with chloracne and that these  
13 were the medications that were used and this is the  
14 reason they were used and that's it.

15 Q. And the reasons for the surgery and the  
16 medications would have been the reasons we  
17 discussed this morning?

18 A. Yes.

19 Q. What about for the treatment of the  
20 elevated porphyrin levels, did you ever discuss the  
21 possible options, treatment options with Dr.  
22 Bleiberg?

23 A. There is no treatment for elevated  
24 porphyrin levels. They are not requiring treatment  
25 necessarily.



Brodkin - direct

1 Q. And that would have been in 1963?

2 A. Yes.

3 Q. Are the presence of elevated porphyrin  
4 levels or I guess maybe is the presence of elevated  
5 porphyrin levels something which is a reversible  
6 condition?

7 A. Yes.

8 Q. And how would one go about reversing  
9 that condition?

10 A. If the cause is known and remediable  
11 and its functioning is the sole cause, one can  
12 reduce the exposure to it.

13 Q. Doctor, do you recollect yesterday we  
14 talked a little bit about allergies?

15 A. No.

16 Q. Would it refresh your recollection if I  
17 told you that you testified yesterday that these  
18 patients, meaning the Diamond Shamrock workers,  
19 presented themselves similar to people who have  
20 poison ivy or allergies?

21 A. This is not an allergic reaction, it's  
22 a toxic reaction.

23 Q. What is the difference between a toxic  
24 and an allergic reaction?

25 A. There are a number of differences. An

Brodkin - direct

1 allergic reaction is caused by a harmless material,  
2 a material that has no intrinsic capacity in any  
3 way to harm one. For example, the  
4 pentadecylcatechol of poison ivy most people can  
5 tolerate exposure to with impunity. However, in  
6 certain individuals, not by virtue of the material  
7 but by virtue of the individual and his capacity to  
8 develop antibodies, something called antibodies in  
9 his body, he will react to that harmless material.  
10 On the other hand, the toxic substance is something  
11 which when it contacts anyone, like a strong acid,  
12 it will produce a harmless or deleterious reaction  
13 upon them.

14 Q. Doctor, you said harmless. Did you  
15 mean harmful?

16 A. Harmful. I'm sorry.

17 Q. Let me again show you, and I recognize  
18 that you said that other than the preparation for  
19 your deposition, you had not seen that letter  
20 before.

21 MR. DUGHI: The letter being PB-13?

22 MR. HALEY: PB-13. Thank you,  
23 counsel.

24 Q. The letter, does it not, discusses the  
25 fact that it is difficult or impossible to treat

Brodkin - direct

1 the chloracne condition without removing the  
2 patients from exposure? Is that correct?

3 A. Unless the hygienic practices within  
4 the plant are designed to eliminate contact, you  
5 are going to have continued --

6 Q. Yes.

7 A. That's what it says, yes.

8 Q. Did you and Dr. Bleiberg ever discuss  
9 removal from exposure as a means of reversing,  
10 first of all, the chloracne?

11 A. What do you mean by "removal from  
12 exposure"?

13 Q. In other words, that so long as these  
14 patients were continuing to be exposed to the  
15 chemicals in this environment, they would continue  
16 to contract chloracne?

17 A. This we knew.

18 Q. That you knew. Did you ever discuss as  
19 a treatment option recommending to these employees  
20 the removal of their exposure to stop the disease  
21 process of chloracne?

22 MR. DUGHI: You mean to leave the  
23 plant?

24 A. To leave the factory?

25 Q. Whatever.

Brodkin - direct

1 MR. DUGHI: Not whatever. What do you  
2 mean by removal from exposure? The letter had to  
3 do with contamination in the plant.

4 MR. HALEY: Fine, then.

5 Q. To the extent that so long as they  
6 continued to be exposed to these materials in the  
7 factory, they would continue to contract chloracne?

8 A. Yes, we discussed it constantly.

9 Q. Did you ever tell your patients that so  
10 long as they continued to work at that plant, they  
11 would continue to contract chloracne?

12 A. Yes.

13 Q. And would that have been considered a  
14 significant recommendation by you or a significant  
15 statement to the patients by you?

16 A. I don't deny telling them, I told them  
17 so long as they continued to be exposed to, you  
18 know, enough quantity of these chemicals, they were  
19 going to have chloracne.

20 Q. Doctor, would that have been considered  
21 by you to be a significant statement to have been  
22 made to the patients?

23 MR. DUGHI: Significant as to what?

24 Q. Significant as to, for example,  
25 something which you would have put down in your

Brodkin - direct

1 treatment records?

2 A. It was every day conversation, Mr.  
3 Haley. They were constantly talking about whether  
4 they were better or worse, should they leave or  
5 shouldn't they, was there a way of cutting down the  
6 walls or putting in ventilation.

7 Q. But you did not consider it significant  
8 enough from a medical perspective?

9 A. To write it in my chart?

10 Q. To write it in your treatment records.

11 A. No.

12 Q. What about with the elevated porphyrin  
13 levels?

14 A. I think in one patient, we recommended  
15 removal of him from the exposure.

16 Q. Would that have been either Mike Kalena  
17 or Griffin Baisley?

18 A. No.

19 Q. That would have been someone else?

20 A. Yes.

21 MR. DUGHI: Hold it. Did that -- the  
22 question was uroporphyrins and then you answered  
23 the question.

24 THE WITNESS: I'm not talking about  
25 uroporphyrins. Would you ask the question about

Brodkin - direct

1 uroporphyrins? I'm sorry.

2 Q. In the face of colloquy, I don't  
3 remember exactly what I asked.

4 A. Did I consider the existence of  
5 uroporphyrins in the urine -- maybe --

6 MR. HALEY: Why don't we have the  
7 question read back in fairness to myself and the  
8 doctor.

9 (Whereupon the record was read.)

10 A. What about elevated urine porphyrin  
11 levels?

12 MR. DUGHI: Let's clear it out. Did  
13 you recommend someone to leave the plant because of  
14 elevated urine porphyrin levels or something else?

15 THE WITNESS: No, I did not suggest  
16 someone be removed from the plant because of  
17 elevated uroporphyrin levels.

18 Q. To whom did you make that suggestion?

19 A. Pardon me, I think Bleiberg or at that  
20 time, Bleiberg and I made the suggestion to  
21 probably Mr. Guidi.

22 Q. That would have been Mr. Guidi. Do you  
23 know or were you aware if that recommendation or  
24 suggestion was stated to the patient himself?

25 A. Yes, it was. He knew it, they all knew

Brodkin - direct

1 it but he really knew it.

2 Q. Who was the patient?

3 A. Charles Morrissey.

4 MR. DUGHI: Just so the record is  
5 clear, I don't want to confuse chloracne with  
6 uroporphyrins.

7 MR. GORDON: Can we have Mr.  
8 Morrissey's files?

9 MR. DUGHI: Absolutely. Oh, that may  
10 be the one we didn't have.

11 MR. HALEY: Off the record.

12 (Whereupon a discussion took place off  
13 the record.)

14 Q. Doctor, would removal of these patients  
15 from the exposure to the offending chemicals have  
16 reversed the process of elevation of porphyrin  
17 levels?

18 A. I'm not entirely satisfied that the  
19 original premise is a correct one, i.e., that  
20 exposure to these chemicals in a linear or  
21 proportionate degree caused their uroporphyrin  
22 levels, but one would be hopeful that if that were  
23 true, then that would be the case.

24 Q. If the offending chemicals, potentially  
25 offending chemicals did not, what other causes were

Brodkin - direct

1 there?

2 A. For elevated uroporphyrins?

3 Q. In this work force.

4 A. Alcohol.

5 Q. Alcohol. So, then, all --

6 A. Genetics.

7 Q. All 11 of those people either had a  
8 genetic predisposition towards porphyria or  
9 ingested alcohol to a degree which caused the liver  
10 dysfunction?

11 MR. DUGHI: Let me object. You keep  
12 referring to 11 people. You haven't identified who  
13 the 11 people are.

14 MR. HALEY: Counsel, I have attempted  
15 to find out who those 11 people are but you will  
16 not tell me who they are.

17 MR. DUGHI: That's ridiculous. We are  
18 not going to waste your time at this deposition  
19 arguing that.

20 MR. HALEY: Fine, I will show you. I  
21 know where they come from. The doctor and I have  
22 been talking about 11 people and I think we know  
23 who we are talking about. We may not know them by  
24 names but those were the 11 people who showed  
25 elevated urinary porphyrin levels in response to



Brodkin - direct

1 the testing that was done in 1963.

2 MR. DUGHI: If you let me finish my  
3 statement, reviewing the article in 1964, which is  
4 from where I think you take that 11 figure, it's  
5 not clear they had elevated uroporphyrin levels.  
6 I'm not sure it was 11 people. The chart does not  
7 count up to 11. The comments in that article may  
8 or may not be internally consistent. That's my  
9 point. I'm not making a big deal about it, plus I  
10 don't know if those people are plaintiffs or not.

11 MR. HALEY: I'm attempting to find that  
12 out, Mr. Dughi, and we have asked your office to  
13 identify which of the plaintiffs those were.

14 MR. DUGHI: My office doesn't represent  
15 Dr. Bleiberg, my office represents Dr. Brodkin.

16 MR. HALEY: Are you contending Dr.  
17 Brodkin didn't treat these plaintiffs? Is that  
18 your contention?

19 MR. DUGHI: No, obviously not. He  
20 didn't write the '64 article. That's not his  
21 language.

22 MR. HALEY: Are you testifying that he  
23 didn't write the '64 article?

24 MR. DUGHI: No, sir, I'm just trying to  
25 clear up a problem. I apologize for even starting

Brodkin - direct

1 to try. Go ahead with the 11.

2

3 BY MR. HALEY:

4 Q. Doctor, the fact of the matter is that  
5 if you kept records saying whether they had been  
6 ingesting alcohol or you kept records stating  
7 whether they had had a predisposition towards  
8 porphyria or if you had kept records which had  
9 stated which patients had elevated porphyrin  
10 levels, I would be able to figure that out,  
11 wouldn't I?

12 MR. DUGHI: Objection, argumentative.  
13 Don't answer it.

14 Q. Doctor, is it your testimony that you  
15 did not author the 1964 article entitled  
16 Industrially Acquired Porphyria? Is that your  
17 testimony here today?

18 A. That's my testimony. I'm among the  
19 list of authors but I didn't write that article.

20 Q. Doctor, you remember, do you not,  
21 certifying answers to interrogatories in this  
22 litigation and stating in that certification that  
23 you were going to answer those interrogatories  
24 truthfully under the penalty of perjury. Isn't  
25 that correct?

Brodkin - direct

1 MR. DUGHI: First of all, that isn't  
2 what it says at all, but go ahead.

3 Q. Do you remember that?

4 MR. DUGHI: Show it to him. Are you  
5 going to show him the certification?

6 MR. HALEY: Show him the  
7 certification.

8 MR. DUGHI: Surely. I don't see a word  
9 about perjury, sir. I will read the  
10 certification. "I hereby certify that the  
11 statements made by me in the foregoing answers to  
12 interrogatories are true and correct to the best of  
13 my knowledge, information and belief. I am aware  
14 that if any of the foregoing statements made by me  
15 are willfully false, I am subject to punishment for  
16 contempt of court." Perjury does not appear.

17 Q. Doctor, you are aware if those  
18 statements are willfully false, you are subject to  
19 punishment, correct?

20 A. Yes.

21 Q. I would like to turn your attention to  
22 interrogatory number 18. Doctor, this statements,  
23 does it not, and it's a question, is it not,  
24 concerning the article Industrially Acquired  
25 Porphyria published in 1964?

Brodkin - direct

1 MR. DUGHI: Is that a question?

2 MR. HALEY: That's my question.

3 Q. Do you understand that that's what this  
4 interrogatory refers to?

5 A. Yes.

6 Q. I would like to focus your attention to  
7 subpart M of that interrogatory, which states, and  
8 I quote for the record, "identify all medical  
9 personnel who participated in the writing of this  
10 article." Will you tell me what your certified  
11 answer to that interrogatory was?

12 A. Am I saying that that's --

13 MR. DUGHI: Is that accurate?

14 THE WITNESS: No.

15 MR. HALEY: That's not the question. I  
16 want you to tell me -- the answer is Dr. Roger  
17 Brodkin, isn't it?

18 MR. DUGHI: Is that what the answer  
19 is?

20 THE WITNESS: Yes.

21 Q. And you certified that these answers  
22 are true, didn't you?

23 A. Yes.

24 Q. Is there anything which would have  
25 happened between now and the time when these

Brodkin - direct

1 interrogatories were answered which would make this  
2 answer be untrue?

3 A. It never was true.

4 Q. Did you read these before you signed  
5 them?

6 A. I did.

7 Q. You didn't read articles before you  
8 signed them. Are you sure you read these before  
9 you signed them?

10 MR. DUGHI: Objection, argumentative.  
11 Go ahead, answer it.

12 Q. Can we have an answer to the question.

13 MR. DUGHI: Are you sure that you read  
14 them?

15 A. Am I sure that I had read them, yes, I  
16 thought I had read them.

17 Q. Should we place this in the category of  
18 drafts that you read prior to signing or your name  
19 appearing on them or to letters which you dictated?

20 A. I don't know where you want to place  
21 it, counselor, but I will tell you in answer to  
22 your original question, that I was not the creator  
23 of that article.

24 Q. Did you participate in its writing?

25 A. I did.

Brodkin - direct

1 Q. And what was your participation in that  
2 writing?

3 A. I edited it.

4 Q. You edited that article?

5 A. Yes, I did.

6 Q. So, then, doctor, you edited that  
7 article and you were specifically asked in that  
8 interrogatory, were you not, who else participated  
9 in the writing of that article. Isn't that  
10 correct?

11 A. May I see that question?

12 MR. DUGHI: Sure.

13 A. The only thing I have down is me?

14 MR. DUGHI: Yes, sir.

15 A. I was asked that question, yes.

16 Q. It says state all medical personnel,  
17 does it not?

18 MR. DUGHI: It says, "identify all  
19 medical personnel who participated in the writing  
20 of this article" and the answer as stated in the  
21 interrogatories prepared by our office is "Roger  
22 Brodkin, M.D."

23 Q. Doctor, during the course of the  
24 operation of the Diamond Shamrock plant, several of  
25 your patients died. Is that correct?

Brodkin - direct

1 A. They may have.

2 Q. Griffin Baisley died, for one, didn't  
3 he?

4 A. Okay, yes.

5 Q. And was it Frank Ostanski that died?  
6 And I believe Joseph Ostanski, also, died. Do you  
7 recollect that?

8 A. But I don't disagree. If they died,  
9 they died.

10 MR. HALEY: I would like to mark this  
11 file of Charles Morrissey.

12 MR. DUGHI: I will produce another one  
13 to mark. That's my work copy.

14 MR. HALEY: Counsel, how am I supposed  
15 to work from it?

16 MR. DUGHI: Give me the Goddamn file.  
17 I will have a copy made. Don't be a pain in the  
18 ass, all right? Jesus Christ. Don't lose these  
19 originals, don't shuffle them around.

20 MR. HALEY: So long as we are marking,  
21 I would like to mark as my next exhibit, the manila  
22 folder as PB-15, file of Frank Ostanski.

23 (Whereupon the folder was received and  
24 marked PB-15 for identification.)

25 MR. HALEY: And I would like to have

Brodkin - direct

1 marked as PB-16 the file of Joe Ostanski.

2 (Whereupon the folder was received and  
3 marked PB-16 for identification.)

4 MR. DUGHI: We are about to mark a  
5 photocopy of my chart of Charles Morrissey. I  
6 don't know that the chart that we will produce  
7 tomorrow has more in it or not, it may, but the  
8 original will be here tomorrow morning.

9 Q. Doctor, Charles Morrissey was not  
10 working at Diamond Shamrock in 1963, was he?

11 A. No, I don't think so.

12 MS. BASS: Is Morrissey's chart marked  
13 as PB-17?

14 MR. HALEY: I don't know that we have  
15 marked it yet. Let's do that with the caveats  
16 expressed by Mr. Dughi, let's mark this file as  
17 PB-17, subject to substitution.

18 (Whereupon the document was received  
19 and marked PB-17 for identification.)

20 Q. Doctor, you stated at one point that  
21 you recommended to Charles Morrissey that he leave  
22 Diamond Shamrock's employ. Is that correct?

23 A. Yes.

24 Q. Would you tell me exactly how you  
25 expressed that to him?



Brodkin - direct

1 A. He had finished an extensive operation.

2 Q. Would you tell me what that -- go  
3 ahead.

4 A. He had a dermabrasion. I think he had  
5 several chemical peels prior to the dermabrasion.  
6 However, he underwent a full face dermabrasion.

7 Q. Would you tell me what a full face --  
8 I'm sorry, doctor, were you finished with your  
9 answer?

10 A. And he asked what are the chances of  
11 this coming back again if I go back to work and he  
12 was told that it would in all likelihood come back.

13 Q. Could you describe to me what a  
14 dermabrasion is?

15 A. This case, I believe, was done under a  
16 general anesthesia and using a motor driven, cable  
17 driven stainless steel wire brush, under general  
18 anesthesia using a motor driven stainless steel  
19 wire brush, a dermabrasion of the entire face  
20 exclusive of the eyelids, lips and neck was  
21 performed to the level of approximately the mid to  
22 upper dermis and that is, this brush, this wire  
23 brush rotates at about 15,000 revolutions per  
24 minute and the wires form a brushing surface that  
25 takes off the surface of the skin to about the

Brodkin - direct

1 middle of the hide and that was done over his  
2 entire face.

3 Q. So, then, the upper --

4 A. A superb result.

5 Q. The upper several layers of his face,  
6 then, were scraped off. Is that correct?

7 A. Correct.

8 MR. HALEY: I would like to mark this  
9 as -- let's make it PB-17 A, which is an operation  
10 chart dated 2/13/70 concerning Charles Morrissey  
11 and it notes that the surgeon is Roger Brodkin.

12 THE WITNESS: Dictated by me.

13 (Whereupon the document was received  
14 and marked PB-17 A for identification.)

15 Q. And doctor, you performed that  
16 dermabrasion yourself. Is that correct?

17 A. I did, yes.

18 Q. And at the point at which Mr. Morrissey  
19 asked you if this could recur again, you stated  
20 that it could. Is that correct?

21 A. Yes.

22 Q. And what did he say to you then?

23 A. I really don't recall.

24 Q. But yet you recall that you recommended  
25 to him that he discontinue his employment?

Brodkin - direct

1 A. Yes.

2 Q. Doctor, again, in recognizing that this  
3 file may not be totally complete, but that it's the  
4 only file that we have available to us today, I  
5 would like you to show me in this file where, if  
6 anywhere, that recommendation was made to Charles  
7 Morrissey and recorded.

8 A. In the letter of February 20, 1969, to  
9 Mr. Conlan from Drs. Bleiberg and Brodkin. It  
10 says, "However," this is paragraph two, "very  
11 rapidly, under our very eyes, he developed into one  
12 of the worst cases of chloracne that we have seen  
13 at Diamond Alkali," very rapidly, a period of  
14 something like four months or three months. "So  
15 much so that we felt that he should no longer work  
16 there."

17 I will tell you that he was very  
18 disfigured.

19 MR. HALEY: Could we have that letter  
20 marked, please.

21 MR. DUGHI: This is my copy. Mark it  
22 in yours.

23 MR. HALEY: That was February 20, 1969,  
24 the date of that letter to Mr. Conlan?

25 THE WITNESS: Yes.

Brodkin - direct

1 MR. HALEY: May we have that marked as  
2 exhibit 17 B, subject to substitution.

3 (Whereupon the document was received  
4 and marked PB-17 B for identification.)

5 Q. Other than the letter which you just  
6 pointed out to me, is there any other suggestion in  
7 there that he should not work at Diamond Shamrock?

8 A. No.

9 Q. And doctor, am I correct or incorrect  
10 that Curry & Conlan were the worker's compensation  
11 carriers for Diamond Shamrock -- worker's  
12 compensation attorneys for Diamond Shamrock or  
13 their carrier?

14 A. I presume they were.

15 Q. They weren't Mr. Morrissey's lawyers,  
16 were they?

17 A. No, I don't think so.

18 Q. So, then, the evidence in this record  
19 that you informed Mr. Morrissey is a letter to the  
20 attorneys for Diamond Shamrock's compensation  
21 carriers?

22 MR. DUGHI: Objection. He is not here  
23 to testify as to what evidence is, he is here to  
24 testify to the chart.

25 MR. HALEY: The only reference, then.

Brodkin - direct

1 Q. The only reference to any  
2 recommendation or any statement that Mr. Morrissey  
3 should not work at Diamond Shamrock was in the  
4 letter to Diamond Shamrock's compensation carrier's  
5 attorney. Is that correct?

6 A. Yes, that's correct, but remind  
7 yourself, sir, that I said previously that this was  
8 a constant subject of discussion between patient  
9 and doctor.

10 Q. In what other cases besides Morrissey  
11 did you recommend that an employee leave Diamond  
12 Shamrock's employment?

13 A. To the management of the factory?

14 Q. To the patient.

15 A. In almost -- did I recommend that they  
16 leave?

17 Q. That's correct.

18 A. I would say it was more in the nature  
19 of saying so long as you are here, you are going to  
20 run the risk of having this and if you were not  
21 here, you wouldn't have it.

22 Q. Doctor, I would refer you to -- would  
23 it be appropriate to call this a face sheet?

24 A. Yes.

25 MR. HALEY: Can we have that marked as

Brodkin - direct

1 17 C.

2 (Whereupon the document was received  
3 and marked PB-17 C for identification.)

4 Q. For the record, this is a face sheet  
5 with the names Jacob Bleiberg, M.D., Roger Harrison  
6 Brodkin, M.D., at the top, the name is Charles  
7 Morrissey and the date is 8/12/68.

8 Doctor, just before I go on with this,  
9 the dermabrasion was performed after the plant was  
10 closed. Is that not correct?

11 A. What was the date of the plant  
12 closing?

13 Q. I believe it was --

14 MR. DUGHI: We will agree it was August  
15 of '69, the dermabrasion was February of '70, so it  
16 speaks for itself.

17 A. Yes.

18 Q. Doctor, if you can recall, is this Mr.  
19 Morrissey's writing on the top of the face sheet  
20 here?

21 A. No.

22 Q. Whose writing is that?

23 A. I can't identify it. It's one of our  
24 receptionists.

25 Q. And would you agree with me there are

Brodkin - direct

1 two different writings on that page?

2 A. Yes.

3 Q. And what is the other writing below?

4 A. That's Dr. Bleiberg's writing.

5 Q. So, then, Dr. Bleiberg would have done  
6 the original examination of Mr. Morrissey. Is that  
7 correct?

8 A. Yes.

9 Q. I would like you to take a look at the  
10 disability portion, which is the second entry from  
11 the bottom of the page.

12 A. Yes.

13 Q. Which says, "Should be able to work."  
14 At this time, are you not, you are Dr. Bleiberg's  
15 partner. Is that correct?

16 A. Yes.

17 Q. And it's my understanding, or perhaps  
18 you can correct me if I'm wrong, that Charles  
19 Morrissey was one of the most severe chloracne  
20 cases which you had or which you saw at Diamond.  
21 Is that correct?

22 A. That's correct.

23 Q. When it's stated there "should be able  
24 to work," did you ever discuss Charles Morrissey's  
25 situation with Dr. Bleiberg?

Brodkin - direct

1 A. I'm sure we discussed it.

2 Q. And did he ever tell you why he thought  
3 that Charles Morrissey should be able to work?

4 MR. DUGHI: On August 12, 1968?

5 MR. HALEY: On August 12, 1968.

6 MR. DUGHI: Go ahead.

7 A. No.

8 Q. Doctor, I'm going to show you for the  
9 record, again, we are going to mark this document  
10 17 D, which is a November 19, 1968, letter from  
11 Jacob Bleiberg and Roger Brodkin to Aetna Casualty  
12 and Surety Company.

13 (Whereupon the document was received  
14 and marked PB-17 D for identification.)

15 Q. I ask you to read it. It's very  
16 short.

17 Doctor, did Charles Morrissey ever tell  
18 you that he had looked for employment at eight or  
19 nine places and because of the swelling and  
20 appearance of his face, couldn't get work?

21 A. No.

22 Q. So that would have been whom that he  
23 would have told?

24 A. Bleiberg.

25 Q. Did you ever have an occasion to



Brodkin - direct

1 examine Mr. Morrissey?

2 A. Yes.

3 Q. Could you describe the condition of his  
4 face and body as it related to chloracne to me?

5 A. His face appeared black and the black  
6 was chloracne, not porphyria.

7 Q. Doctor, if you could, while you are  
8 reviewing the records, if you could tell me when  
9 the first date you treated Mr. Morrissey was, I  
10 would appreciate it.

11 A. It looks like October 14, 1968.

12 Q. Other than him being black -- Mr.  
13 Morrissey was not a negro, was he?

14 A. No.

15 Q. Other than his being black, were there  
16 any other symptoms or conditions from which he  
17 suffered during his course of employment at Diamond  
18 Shamrock of which you were aware?

19 A. Yes.

20 Q. Could you tell me --

21 A. Mr. Morrissey was a heavy drinker. He  
22 had been or has become, or both, a bartender.

23 Q. At that time?

24 A. I don't recollect, but he was a heavy  
25 drinker.

Brodkin - direct

1 Q. Is that indicated in his record  
2 anywhere, doctor?

3 A. I don't know. He had hepatitis.  
4 Apparently, he had bronchitis. He didn't take very  
5 good care of himself.

6 Q. He didn't turn himself black, did he?

7 MR. DUGHI: Objection. This is a  
8 deposition. I don't know why -- answer the  
9 question. Did he turn himself black?

10 THE WITNESS: I don't know how to  
11 answer that.

12 MR. DUGHI: Good, then don't.

13 Q. And those were the conditions from  
14 which he suffered?

15 A. Yes.

16 Q. He also had, if you take a look at  
17 the -- he also had jaundice, did he not?

18 A. Yes. I said he had hepatitis.

19 Q. What type of hepatitis?

20 A. Non-A, non-B. Do you want it in the  
21 context of 19 --

22 Q. '69.

23 A. -- '69?

24 Q. Yes.

25 A. I'm sorry, I cannot do that. I do not

Brodkin - direct

1 know when these viruses were defined by blood  
2 testing or by viral isolation.

3 Q. It was done at some point a viral study  
4 to find out whether it was virally induced or that  
5 became available at some point. Is that correct?

6 A. It did become available at some point,  
7 yes.

8 Q. You are not sure whether it was  
9 available --

10 A. Today this is a very complicated  
11 subject and my recollection, I haven't been  
12 involved in that type of work since medical school  
13 and I don't know what tests were done at that  
14 time.

15 MR. HALEY: I would like to mark for  
16 the record as exhibit 17 E a January 6, 1970,  
17 letter from Jacob Bleiberg and Roger Brodkin, M.D.,  
18 to Aetna Casualty and Surety Company.

19 (Whereupon the document was received  
20 and marked PB-17 E for identification.)

21 Q. So, then, viral studies were done on  
22 Mr. Morrissey, were they not?

23 A. Such as they were at that time and were  
24 done, yes.

25 Q. And he was referred to a Dr. Lewis

Brodkin - direct

1 Brodkin. Is that correct?

2 A. Yes.

3 Q. Dr. Lewis Brodkin is a  
4 gastroenterologist. Is that not correct?

5 A. Yes.

6 Q. Is he a relation of yours?

7 A. Yes, as a matter of fact, he is my  
8 uncle.

9 Q. So you referred him to your uncle  
10 and --

11 A. I think Bleiberg did.

12 Q. Bleiberg -- you were partners at that  
13 time, were you not?

14 A. Yes.

15 Q. So the partnership referred him to your  
16 uncle. Is that correct?

17 A. I think Bleiberg referred him to my  
18 uncle.

19 Q. Did you ever refer workers from Diamond  
20 Shamrock to your uncle?

21 A. No.

22 Q. It states in this letter, does it not,  
23 that the reason that it was reviewed or was  
24 referred to Dr. Brodkin was that he was working  
25 with known hepatotoxins. Do you see that?

Brodkin - direct

1 A. I didn't write the letter. Yes.

2 Q. Was Mr. Morrissey working with known  
3 hepatotoxins?

4 A. I can't make that statement.

5 Q. But do you know what Mr. Morrissey was  
6 working with?

7 A. He was down at Diamond Shamrock in the  
8 chemicals.

9 MR. HALEY: Could I have this marked as  
10 16 A. This is a face sheet and treatment card of  
11 Joseph Ostanski with the first entry dated January  
12 3, 1963.

13 (Whereupon the document was received  
14 and marked PB-16 A for identification.)

15 Q. Doctor, I would refer you to exhibit 16  
16 A and ask you to look at the entry dated May 23,  
17 1964, and ask you if that's your handwriting?

18 A. Is that my handwriting?

19 Q. Yes.

20 A. That is not my handwriting.

21 Q. That is not your handwriting. Doctor,  
22 referring to 17 E --

23 MR. DUGHI: I'm sorry, what date was  
24 that?

25 MR. HALEY: May 23, 1964.

Brodkin - direct

1 MR. DUGHI: Thank you.

2 Q. Referring to 17 E and 17 D, PB-17 E and  
3 17 D for identification, the space below the  
4 opening for the signature has both of your names,  
5 meaning Dr. Bleiberg and yourself, does it not?  
6 And I also understand that it would be in the  
7 left-hand side, where we see the J.B. entry there,  
8 for example, is that how you know that Dr. Bleiberg  
9 wrote that letter? Do you see what I'm referring  
10 to?

11 A. Yes, in principle, that's true.

12 Q. Why did both names appear below the  
13 signature line in these two letters?

14 A. Dr. Bleiberg and I had formed a  
15 partnership and were anxious to indicate that a  
16 partnership existed by having both names on the  
17 letter.

18 Q. And that was a fairly common practice  
19 of yours, both yours and Dr. Bleiberg, to have  
20 that?

21 A. Yes.

22 Q. Doctor, did Dr. Bleiberg ever discuss  
23 with you what his feelings were as to the  
24 hepatotoxins in the Diamond Shamrock environment?

25 A. Yes.

Brodkin - direct

1 Q. And what did he say they were?

2 A. The he did not know, but he had some --  
3 he had the opinion that some possibly were and I  
4 think he thought they were esters or something,  
5 intermediary products.

6 Q. Just before I leave this, after your  
7 partnership was formed, were all letters signed or  
8 did they appear with both your names on them?

9 A. Just about all of them.

10 Q. Doctor, when did you first hear the  
11 word dioxin?

12 A. In the 1980's.

13 Q. And let me ask you this: Are you or  
14 have you ever become aware that dioxin was formed  
15 as part of the 2,4,5-T manufacturing process?

16 MR. DUGHI: Ever become aware up until  
17 today?

18 MR. HALEY: Up until today.

19 MR. DUGHI: Go ahead.

20 A. Yes.

21 Q. And when did that knowledge come to  
22 you?

23 A. Sometime in the 1980's.

24 Q. Do you recollect, doctor, and perhaps  
25 counsel would be willing to stipulate to this, that

Brodkin - direct

1 the dioxin in the Ironbound section of Newark was  
2 found in June of 1983?

3 MR. DUGHI: I'm not willing to  
4 stipulate it only because I don't have any  
5 knowledge but if you represent it, I will accept  
6 it. It sounds about right to me.

7 Q. I will ask you to assume that for a  
8 second when I ask you this question, doctor. Did  
9 you obtain that knowledge before or after the  
10 dioxin was discovered in the Ironbound section in  
11 June of '83?

12 A. After.

13 Q. After. And how was that that you came  
14 to obtain that information and knowledge?

15 A. I don't remember exactly, but everyone  
16 suddenly was talking about it.

17 Q. Did you ever make inquiry to Diamond  
18 Shamrock as to what the chemical intermediate may  
19 have been that was causing the problem with the  
20 workers?

21 A. I did not.

22 Q. Do you know if Dr. Bleiberg did?

23 A. He did.

24 Q. Did he ever discuss that with you?

25 A. Endlessly.



Brodkin - direct

1 Q. And did he ever discuss with you to  
2 whom he spoke, the names of the people to whom he  
3 spoke at Diamond Shamrock?

4 A. At times, he did.

5 Q. And what did he say the people at  
6 Diamond Shamrock told him about the intermediates?

7 A. I don't recall him ever saying that any  
8 particular person at Diamond Shamrock had any  
9 theory. He certainly told me his theories and that  
10 he was discussing them and wanted to do this and  
11 that with them.

12 Q. Have you ever read any articles written  
13 by Kimmig and Schultz?

14 A. I may well have. In 1983, I read a lot  
15 of articles.

16 Q. About the formation of dioxin and so  
17 on?

18 A. Yes.

19 Q. And would that have been one of the  
20 articles you would have read?

21 A. Yes, it certainly may have been.

22 Q. And why did you read those articles,  
23 doctor?

24 MR. DUGHI: Now I think you have gone  
25 too far. This is the defendant in a case involving

Brodkin - direct

1 treatment of these patients by Diamond Shamrock.

2 MR. HALEY: He was treating Charles  
3 Morrissey up until like '84. Some of these  
4 people -- I mean do you want me to lay the  
5 foundation to who he was treating and when?

6 MR. DUGHI: I think you are close to  
7 the expert edge but go ahead. Go ahead.

8 A. For one thing, I was suddenly  
9 proclaimed very knowledgeable in this and I didn't  
10 know a thing about it. I thought I better fill in  
11 the blanks fast.

12 Q. Who proclaimed you as knowledgeable?

13 A. A lot of people called me up about it,  
14 asking me about it. Dr. Schwartz is a good example  
15 of someone who did.

16 Q. And you were contacted, also, were you  
17 not, by different newspapers and television and  
18 other media?

19 A. I sure was.

20 Q. Did you ever refuse an interview,  
21 saying I don't know anything about this?

22 A. No, not that I recall.

23 Q. Even though you didn't know anything  
24 about it?

25 A. About dioxin?

Brodkin - direct

1 Q. Right.

2 A. I didn't know all about it. I had some  
3 ideas about it.

4 Q. And those idea were based upon the  
5 material you had read contemporaneously in 1983 and  
6 '84. Is that correct?

7 A. Yes, and I mean I don't know, but I had  
8 general -- I was willing to accept the statement  
9 that there was dioxin there, I was willing to  
10 accept the statement that dioxin was present as a  
11 result of this chemical manufacture and I was  
12 willing to accept the fact that dioxin was the  
13 cause of chloracne. I don't know its metabolism, I  
14 don't know its pharmacology, I don't know its  
15 various toxicities in animals, its MLD-50 and so  
16 forth, but I knew enough about it to say that.

17 Q. So neither you nor, to the best of your  
18 knowledge, Dr. Bleiberg were ever informed by  
19 Diamond Shamrock about the presence of dioxin in  
20 its product?

21 A. Dr. Bleiberg never told me he was  
22 inform about dioxin and I know I wasn't.

23 Q. Again, I don't know which exhibit this  
24 is and I don't have the marked copy, I'm going  
25 to --

Brodkin - direct

1 MR. DUGHI: Which article, Schwartz?

2 MR. HALEY: It's the Brodkin-Schwartz  
3 article.

4 MR. DUGHI: Who cares? It's  
5 identified.

6 MR. HALEY: I don't know which one it  
7 is.

8 MR. DUGHI: It's been identified. I  
9 know what it is.

10 MR. HALEY: We get too hung up in  
11 numbers sometimes.

12 Q. Doctor, again, I'm going to show you  
13 page 192 and what we, as lawyers, refer to as the  
14 squib identifying who the authors are. Did you see  
15 that before the article was published?

16 MR. DUGHI: That exact question was  
17 asked and answered five hours ago. Go ahead.

18 A. No.

19 Q. So you did not see that?

20 MR. DUGHI: That's the third time.

21 No.

22 Q. And then you would say that it's an  
23 inaccurate statement that you have been recognized  
24 as an authority on dioxin since 1964. Is that  
25 correct?

Brodkin - direct

1 MR. DUGHI: Asked and answered. Go  
2 ahead.

3 A. I was no authority on dioxin since  
4 1964.

5 Q. And it would also be inaccurate to say  
6 that you first linked dioxin industrial exposure to  
7 porphyria cutanea tarda. Is that correct?

8 A. That's correct.

9 MR. DUGHI: Let me hear that question  
10 and answer back.

11 (Whereupon the record was read.)

12 MR. DUGHI: When you see a reasonable  
13 breaking point.

14 MR. HALEY: Give me about three more  
15 questions.

16 MR. DUGHI: Yes, whatever.

17 Q. And this article appeared in the Family  
18 Physician, that's correct, September edition of  
19 1984?

20 A. Yes.

21 Q. Did anyone at the magazine ever check  
22 with you about this statement prior to publication  
23 of the article?

24 A. With me, no.

25 Q. Do you have any idea why the magazine

Brodkin - direct

1 would publish something that wasn't true?

2 MR. DUGHI: Objection. Go ahead.

3 A. No.

4 Q. What audience does the Family Physician  
5 reach, if you know?

6 A. Family physicians.

7 Q. That makes sense. Had you ever  
8 complained to the magazine or write them a letter  
9 saying there is a statement that was made about  
10 me --

11 A. No.

12 Q. -- in this article that's not true?

13 A. No.

14 Q. Did you ever complain to Dr. Schwartz  
15 that the statement made about you in this article  
16 was not true?

17 A. I don't know if it was a complaint, but  
18 I do recall my saying that this is -- this is not a  
19 mantle I gently assume.

20 Q. Can you tell me as best you understand  
21 it what the purpose of this article is in  
22 reaching -- in discussing this matter with the  
23 Family Physician?

24 A. That article, Dr. Schwartz -- this  
25 journal, whose existence I knew not of at the time

Brodkin - direct

1 the article was submitted, Dr. Schwartz is an  
2 editor of that journal. It's his duty to solicit  
3 and provide articles for the journal of interest to  
4 family practitioners. Furthermore, Dr. Schwartz is  
5 an academic dermatologist, eager to write articles  
6 and be identified with certain subjects, a broad  
7 number of subjects. He thought and suggested to me  
8 that family practitioners knew nothing of dioxin  
9 and would be asked by workmen in various industries  
10 and so forth about it and this might assist in  
11 educating them about it. He therefore prepared  
12 this article, a draft of this article, and asked me  
13 to be the chief author.

14 I have little recourse but to agree  
15 with Dr. Schwartz.

16 Q. Agree with Dr. Schwartz in what sense,  
17 doctor?

18 A. To say no, I won't participate. I  
19 can't do that.

20 Q. As opposed to the statements in the  
21 article, that you had to agree to publish the  
22 article as opposed to agreeing to the statements in  
23 the article. Is that correct?

24 A. Let me say this, counselor: That Dr.  
25 Schwartz sends in my efficiency profiles every year

Brodkin - direct

1 and unless I feel that this is a matter of risking  
2 my -- you know, it's a trade-off. I'm not about to  
3 risk my entire reputation and fortune and whatever  
4 for Dr. Schwartz. However, if this will do me no  
5 foreseeable harm, I'm willing to swallow a measure  
6 of pride and cooperate.

7 Q. First of all, doctor, are you tenured  
8 at the university?

9 A. No; he is.

10 Q. Second of all, for example, let's go  
11 back to the porphyria cutanea tarda reference in  
12 here, you stated this morning, if you recall, that  
13 it was incorrect to say that it has been linked  
14 with exposure to dioxin?

15 A. I objected to the word "linked." This  
16 was a possibility.

17 Q. So it was a possibility. You said you  
18 didn't want to do harm to yourself or your  
19 reputation. But wouldn't it be harmful to  
20 disseminate information such as the fact that  
21 porphyria cutanea tarda was linked to dioxin when  
22 you don't, in fact, believe that that's true?

23 MR. DUGHI: Harmful to who?

24 MR. HALEY: Harmful to the family  
25 physicians who are reading this article and their



Brodkin - direct

1 patients.

2 MR. DUGHI: How is that relevant to  
3 this lawsuit? Go ahead.

4 A. Do I feel that it is harmful to the  
5 family practitioners --

6 Q. And their patients.

7 A. And their patients to disseminate this  
8 article?

9 MR. DUGHI: Put the language in front  
10 of him.

11 MR. HALEY: I'm just using the table we  
12 were talking about this morning.

13 A. May I explain to you why I have a lot  
14 of trouble with that question?

15 Q. Sure.

16 A. Things that are written to, for and  
17 read by family practitioners and taken in by them  
18 are often -- I mean there is no relationship  
19 between what is told them, what their comprehension  
20 is -- I don't mean to damn family practitioners,  
21 but it's just a question I can't answer.

22 Q. And would that be, doctor, because  
23 dealing with toxic substances and internal problems  
24 might be beyond their ken as family practitioners?

25 A. No. Frankly, I find their reading

Brodkin - direct

1 sometimes not -- or their understanding not  
2 entirely accurate.

3 Q. Do you think that their understanding  
4 of situations is helped by the fact that an article  
5 appears with your name on it stating that dioxin  
6 has been linked to porphyria cutanea tarda when you  
7 don't believe that's true?

8 A. In principle, I agree with you because  
9 I objected to the tables in this article and the  
10 charts in this article, I objected to some of the  
11 things that were stated as fact in it. I'm not  
12 going to go toe to toe with my boss over it, but I  
13 have difficulty with a lot of points in that  
14 article.

15 Q. Again, doctor, would "more likely than  
16 not" be a better term than "linked" in your mind?

17 A. No, I don't accept that terminology,  
18 either. A possible potential relationship.

19 Q. A possible potential relationship.

20 MR. HALEY: That's all I have for  
21 today.

22 MR. DUGHI: Thank you very much.

23 MS. BRENNAN: I want to make a request  
24 for a list of all those plaintiffs you are  
25 contending are no longer plaintiffs in this suit.

1                   MR. GORDON: That's what I thought you  
2 were going to do.

3                   MR. HALEY: It has nothing to do with  
4 this deposition.

5                   MS. BRENNAN: I didn't say it had  
6 anything to do with the deposition. You are saying  
7 I'm not entitled to put something on the record  
8 after we finish deposing someone?

9                   MR. MC CARTER: I join in the request.

10                   MR. DUGHI: Send her a bill for that  
11 comment.

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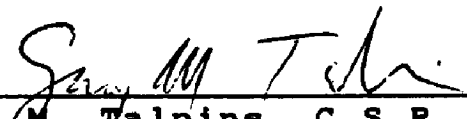
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## C E R T I F I C A T E

1  
2  
3 I, GARY M. TALPINS, a Notary Public and  
4 Certified Shorthand Reporter of the State of New  
5 Jersey, do hereby certify that prior to the  
6 commencement of the examination, ROGER H. BRODKIN  
7 was duly sworn by me to testify the truth, the  
8 whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a  
10 true and accurate transcript of the testimony as  
11 taken stenographically by and before me at the  
12 time, place and on the date hereinbefore set forth,  
13 to the best of my ability.

14 I DO FURTHER CERTIFY that I am neither a  
15 relative nor employee nor attorney nor counsel of  
16 any of the parties to this action, and that I am  
17 neither a relative nor employee of such attorney or  
18 counsel, and that I am not financially interested  
19 in the action.  
20

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22   
23 \_\_\_\_\_  
24 Gary M. Talpins, C.S.R.  
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