

STATE OF RHODE ISLAND

PROVIDENCE, Sc.

SUPERIOR COURT

RICHARD SOUTHWELL, et al.)	
)	
VS.)	NO: PC-2021-05915
)	
DANIEL J. MCKEE, et al.)	

HEARD BEFORE THE HONORABLE
MR. JUSTICE JEFFREY LANPHEAR

Volume 3

OCTOBER 5, 2021

APPEARANCES:

GREGORY PICCIRILLI, ESQUIRE
FOR THE PLAINTIFFS

MICHAEL FIELD, ESQUIRE
CHRISANNE WYRZYKOWSKI, ESQUIRE
JON WHITNEY, ESQUIRE
MORGAN GOULET, ESQUIRE
FOR THE DEFENDANTS

Andrea Iacobellis, CSR
Certified Shorthand Reporter

I N D E XWITNESSES

DIRECT

CROSS

DR. ANDREW BOSTOM

6

E X H I B I T S

PLAINTIFFS'

IDENTIFICATION

FULL

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PLAINTIFFS'	IDENTIFICATION	FULL
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C E R T I F I C A T I O N

I, Andrea Iacobellis, CSR, hereby
certify that the succeeding pages, 1 through 90
inclusive, are a true and accurate transcript
of my stenographic notes.

ANDREA IACOBELLIS, CSR
Court Reporter

13:33:18 1 **Tuesday, October 5, 2021**

13:33:18 2 **(Afternoon session)**

13:33:36 3 THE CLERK: Matter of **PC-2021-05915, Richard**
13:33:42 4 **Southwell, et al vs. Daniel McKee.** Counsel please
13:33:46 5 identify yourselves for the record beginning with
13:33:48 6 Plaintiff, please.

13:33:49 7 MR. PICCIRILLI: Greg Piccirilli for the
13:33:50 8 Plaintiffs.

13:33:53 9 MS. WYRZYKOWSKI: Chrisanne Wyrzykowski for the
13:33:54 10 named defendants.

13:33:55 11 MR. FIELD: Michael Field for the Defendants.

13:33:58 12 MR. WHITNEY: John Whitney for the Defendants.

13:33:59 13 MR. GOULET: Morgan Goulet for the Defendants.

13:34:01 14 THE COURT: Good afternoon, everyone. Sorry
13:34:05 15 we're in a tighter courtroom today. If anyone feels
13:34:09 16 uncomfortable let me know and I can try and change things
13:34:12 17 around or try to move to another courtroom. But why
13:34:17 18 don't we just start and see how it goes.

13:34:19 19 So, Mr. Piccirilli, the plaintiffs case continues.

13:34:22 20 MR. PICCIRILLI: Thank you. I call Dr. Andrew
13:34:26 21 Boston.

13:34:29 22 THE CLERK: Your Honor, for the record, the
13:34:31 23 Plaintiffs have premarked Exhibits 1 through 31 for
13:34:31 24 identification.

13:34:31 25 **(PLAINTIFFS' EXHIBITS 1-31 WERE PRE-MARKED FOR**

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IDENTIFICATION)

DR. ANDREW BOSTOM, (Sworn)

THE CLERK: Please state your full name and spell both your first and last name, please.

THE WITNESS: Andrew Bostom, A-n-d-r-e-w B-o-s-t-o-m.

THE CLERK: Tom?

THE WITNESS: M as in Mary, right.

THE COURT: Mr. Piccirilli.

MR. PICCIRILLI: Thank you, your Honor.

DIRECT EXAMINATION BY MR. PICCIRILLI

Q Dr. Boston, where do you currently work?

A I currently work for the Brown University Center for Primary Care and Prevention. It's based at Pawtucket Memorial Hospital.

Q I think you still have to keep your mask on.

THE COURT: If you could try and keep your mask on and we'll see how it goes.

THE WITNESS: Okay.

THE COURT: I appreciate it. I'm sorry, Brown University Center.

THE WITNESS: Center for Primary Care and Prevention.

THE COURT: Thank you.

Q How long have you worked there?

13:35:52 1 A I've been there for five years.

13:35:55 2 Q And prior to that?

13:35:58 3 A Prior to that I was in the Division of Kidney Disease and
13:36:02 4 Hypertension from around 2001 through 2016, 17. They
13:36:09 5 kind of overlap a little.

13:36:11 6 Q Actually, at this point, Doctor I'll show you your, if I
13:36:16 7 could have Exhibit 1.

13:36:28 8 Doctor, I'm going to show you what's been marked as
13:36:31 9 Exhibit 1.

13:36:31 10 MR. PICCIRILLI: Can I have Exhibit 1, please.

13:36:42 11 Q Doctor, I'll show you what's Exhibit 1, can you describe
13:36:44 12 what that document is?

13:36:45 13 A It's my CV.

13:36:47 14 Q Okay.

13:36:50 15 MR. PICCIRILLI: Your Honor, I'm not sure what
13:36:52 16 the other defendants' exhibit -- I have extra exhibits
13:36:54 17 for your Honor or if you want to use the court exhibit
13:36:57 18 and I can give him this?

13:36:59 19 THE COURT: Whatever works best for you. If
13:37:00 20 you only have one I can catch up later.

13:37:02 21 MR. PICCIRILLI: I have one. I have plenty.

13:37:09 22 THE COURT: Thank you.

13:37:09 23 Q BY MR. PICCIRILLI: So I think we were talking about your
13:37:18 24 employment. On Page 2, in 2001 to 2012, you worked
13:37:27 25 where?

13:37:28 1 A So I was a research physician but I was also the director
13:37:34 2 of the Lipid Disorders Program that was housed within the
13:37:39 3 Division of Disease and Hypertension at Rhode Island
13:37:42 4 Hospital.

13:37:42 5 Q Of course, for us lay people, what does lipid mean?

13:37:44 6 A I'm sorry, mostly cholesterol disorders, cholesterol and
13:37:50 7 triglycerides.

13:37:51 8 Q Prior to that, what was your employment?

13:37:53 9 A Prior to 2001, I worked as Co-Director of the Cardiac
13:37:59 10 Rehabilitation Program at Memorial Hospital of Rhode
13:38:01 11 Island.

13:38:01 12 Q And to go back to the first page, did you also have some
13:38:07 13 academic appointments?

13:38:08 14 A Yes.

13:38:10 15 Q Currently your academic appointment is what?

13:38:14 16 A I'm now a research associate professor of family
13:38:19 17 medicine.

13:38:19 18 Q And that's at Brown University?

13:38:21 19 A Right. That's through the Center for Primary Care and
13:38:25 20 Prevention.

13:38:25 21 Q And prior to that, what was your position?

13:38:27 22 A Prior to that I was an associate professor of medicine,
13:38:32 23 that's during my tenure within the Division of Kidney
13:38:38 24 Diseases and Hypertension at Rhode Island Hospital.

13:38:40 25 Q Okay. In your employment and academic field, did you

13:38:47 1 ever teach any classes or were you are a professor?

13:38:51 2 A Yes, so that goes back a ways. I taught at Queen's
13:38:55 3 College Graduate School a course in cardiac
13:39:01 4 rehabilitation in the mid 1980's.

13:39:04 5 And then of course, since being an academic
13:39:09 6 internist, I taught, I taught a course in lipid disorders
13:39:16 7 at the Warren Alpert Medical School for several
13:39:19 8 semesters. And I've had a teaching responsibility for
13:39:25 9 residents, fellows, junior faculty during my affiliations
13:39:29 10 with both Rhode Island Hospital and Memorial Hospital.

13:39:32 11 Q Doctor, what's your educational background?

13:39:36 12 A I got my Bachelors in Physical Therapy from SUNY
13:39:42 13 downstate in 1982. I got a degree in exercise physiology
13:39:51 14 a master's degree in exercise physiology through CUNY,
13:39:58 15 Queens College Graduate School, and then I did my medical
13:40:00 16 training at SUNY Health Science Center in Brooklyn,
13:40:04 17 graduated in 1990.

13:40:07 18 And I got a masters, another masters in epidemiology
13:40:11 19 through Brown, subsequent to medical school.

13:40:13 20 Q Doctor, quite a lengthy CV. The second page you have a
13:40:22 21 number of publications are they all peer reviewed?

13:40:27 22 A No, not all of them. Most of them are peer reviewed
13:40:33 23 publications, some of them are outside peer review and
13:40:38 24 then binding publication. But about 114 or so are peer
13:40:43 25 reviewed publications.

13:40:45 1 Q Okay. I want to direct your attention to a couple of
13:40:56 2 your publications. First, Exhibit 2, Doctor can you
13:41:25 3 explain what this document is that I just handed to you
13:41:31 4 Exhibit 2?

13:41:31 5 A Yes. So while I was in the Division of Kidney Disease
13:41:37 6 and Hypertension, I received a 20 million dollar grant
13:41:42 7 for a major clinical trial, which took, it rolled up a
13:41:49 8 little over 4,000 patients. It took about ten years to
13:41:52 9 complete. And it was the largest randomized control
13:41:58 10 trial ever conducted in a chronic, stable kidney
13:42:02 11 transplant participant population.

13:42:05 12 MS. WYRZYKOWSKI: Objection, your Honor.
13:42:06 13 Relevance at this point. We're here about Covid 19 not
13:42:07 14 about cardiovascular disease and kidney transplants.

13:42:11 15 THE COURT: I'm not sure. He's trying to
13:42:13 16 qualify his client. I'll give him some room. I'm not
13:42:18 17 sure what the relevance is.

13:42:18 18 MR. PICCIRILLI: Thank you.

13:42:20 19 THE WITNESS: So this is the -- this is the
13:42:22 20 final publication or the results from that paper. And
13:42:26 21 then what's attached to it is something from the Cochrane
13:42:34 22 Review. So the Cochrane Review is an arbiter of evidence
13:42:38 23 based medicine, and the Cochrane Review reviews both
13:42:42 24 clinical trials and observational studies and weighs the
13:42:49 25 evidence on given medical questions.

13:42:51 1 And on a particular question that our study
13:42:54 2 addressed, they reviewed 359 reports and found that only
13:42:59 3 ours was a bona fide approach to the question that we
13:43:04 4 addressed, in terms of cardiovascular disease and
13:43:08 5 outcomes in chronic kidney transplant recipients.

13:43:13 6 Q Doctor, what's your field of specialty right now?

13:43:21 7 A So I basically am available to help fellows through the
13:43:31 8 Center For Cardiovascular Disease Prevention with all
13:43:37 9 kinds of epidemiologic questions, clinical trial
13:43:41 10 questions, and we're still engaged in some original
13:43:46 11 research, including a fairly recent publication on Covid.

13:43:51 12 Q Okay. I'm going to show you the next exhibit, Exhibit 3.

13:44:18 13 Doctor, could you explain what that document is?

13:44:20 14 A Yes. So, we start to evaluate an important test
13:44:29 15 characteristic for all the screening tests that are going
13:44:31 16 on. The gold standard is something called reverse
13:44:37 17 transcriptase polymerase chain reaction testing. It's
13:44:41 18 the gold standard for the very commonly administered swab
13:44:46 19 test, the nasal swab test.

13:44:49 20 Q Is that what people generally now refer to as PCR
13:44:54 21 testing?

13:44:55 22 A PCR testing, absolutely. So we became aware that there
13:45:00 23 was a data set that was housed at the Department of
13:45:04 24 Health, and we thought it could be very illuminating, in
13:45:08 25 terms of can we use these test results to watch the ebb

13:45:13 1 and flow basically of the epidemic.

13:45:18 2 Although it took an access to public records request
13:45:21 3 to get the data, they were indeed very interesting data.
13:45:24 4 And essentially what we showed is that, so the cycle
13:45:28 5 threshold is a surrogate for the amount of virus that can
13:45:35 6 be obtained when they do the nasal swab and it's a
13:45:38 7 surrogate, potentially, for how much viral load the
13:45:41 8 individual has.

13:45:43 9 And so we hypothesized that, again, the ebb and flow
13:45:48 10 of the epidemic might be reflected in these values. In
13:45:53 11 other words, all the tests that were done might reflect
13:45:57 12 the hospitalizations, the deaths, et cetera.

13:46:00 13 We also hypothesized that the lower cycle threshold,
13:46:07 14 which corresponds to higher viral loads. In other words,
13:46:10 15 the way the test works is that you amplify this
13:46:14 16 particular virus has RNA as it's genetic code. You
13:46:18 17 amplify the RNA, and the more RNA that's available is
13:46:24 18 more virus that's available.

13:46:27 19 The fewer cycles of this test, which is set to go
13:46:31 20 through at least 40 cycles will result in a positive. So
13:46:35 21 in other words, and it's a -- it's an order of magnitude
13:46:41 22 scale. So in other words, an individual that tests
13:46:44 23 positive at say a cycle threshold of 12 versus 38 has
13:46:52 24 about 250 million times as much virus as the person who
13:46:57 25 tests at the positive end cycle threshold of 38.

13:47:01 1 MS. WYRZYKOWSKI: Your Honor, objection.

13:47:06 2 Dr. Bostom hasn't been qualified as an expert at this
13:47:09 3 point in time, and he seems to be getting a little for
13:47:12 4 afield with that, so I just wanted to raise that to the
13:47:15 5 Court's attention.

13:47:16 6 THE COURT: I understand. But he was
13:47:17 7 questioning what he studied and he's explaining Exhibit
13:47:19 8 3, as I understand it.

13:47:20 9 MS. WYRZYKOWSKI: I also have a second
13:47:21 10 objection, your Honor, with respect to Exhibit 3. I just
13:47:23 11 want the Court to know that this is not a peer reviewed
13:47:26 12 study at this point in time.

13:47:28 13 THE COURT: I understand. It is not a full
13:47:30 14 exhibit either.

13:47:31 15 MS. WYRZYKOWSKI: Thank you.

13:47:32 16 THE COURT: He's just explaining it and his
13:47:34 17 clarity.

13:47:37 18 MR. PICCIRILLI: Thank you, your Honor. You
13:47:37 19 may continue.

13:47:38 20 Q And, Doctor, just remember you're talking to a bunch of
13:47:41 21 lay people here.

13:47:41 22 A I'm sorry.

13:47:41 23 Q But it sounds like what you're saying is according to
13:47:45 24 your analysis someone who could cycle, how many times
13:47:48 25 they run the cycle, at some point it might get a positive

13:47:54 1 test; is that right?

13:47:55 2 A Right. So in other words, what we felt was available,
13:48:00 3 what was not being presented on the daily dashboard was
13:48:04 4 that each individual records the cycle threshold, not
13:48:11 5 just whether it's positive or not in a qualitative way,
13:48:14 6 but what the actual cycle threshold is.

13:48:17 7 And so in fact the Rhode Island Department of Health
13:48:20 8 had those data, and when we analyzed them, again, with
13:48:23 9 the hypothesis that perhaps it would tell us when both
13:48:28 10 positive developments were taking place or negative
13:48:31 11 developments.

13:48:32 12 If the average test was testing at a low cycle
13:48:36 13 threshold with a lot of virus around that might be
13:48:39 14 reflected in some clinical parameters. And we actually
13:48:44 15 looked at mortality and it actually correlated, and
13:48:47 16 again, it's a very crude assessment. We didn't have any
13:48:51 17 data on all the comorbidities. We didn't have individual
13:48:57 18 patient data. We just had the individual test data. And
13:49:00 19 what we found is that you could actually look at the ebb
13:49:04 20 and flow of the first wave at least, in terms of
13:49:06 21 mortality. And by the time you got to the very low death
13:49:10 22 rate period, the cycle threshold were averaging very high
13:49:16 23 values, which suggested that low and behold there was
13:49:19 24 less virus in the community.

13:49:21 25 So its been validated in a peer reviewed study by

13:49:30 1 Michael Lin and colleagues from Harvard-MIT, and they
13:49:34 2 actually published a paper I believe in science, which
13:49:37 3 showed that indeed having these individual values can be
13:49:41 4 useful clinically.

13:49:44 5 THE COURT: Sir, what is the cycle threshold?

13:49:48 6 THE WITNESS: So the cycle threshold is the
13:49:51 7 number of cycles that the sample is taken through the
13:49:54 8 analyzer before it tests positive, before it gives an
13:49:59 9 indicator of positivity, and so when you get a positive
13:50:03 10 test earlier on that's reflective of more virus in the
13:50:07 11 sample.

13:50:08 12 THE COURT: It's at what point during the
13:50:10 13 infection that you're saying?

13:50:12 14 THE WITNESS: No, this is actually the test.
13:50:14 15 In other words, the test -- the sample is going through
13:50:18 16 the analyzer. It's automatically set to run at least
13:50:22 17 40 cycles, but it can become positive at ten cycles or it
13:50:26 18 can become at the end or never become positive.

13:50:29 19 THE COURT: The cycle is something the machine
13:50:32 20 is doing?

13:50:32 21 THE WITNESS: Exactly, exactly. So if it
13:50:34 22 becomes positive earlier that means that's supposed to be
13:50:38 23 a surrogate for more virus being present in the sample.

13:50:43 24 THE COURT: Very well.

13:50:43 25 Q So, Doctor, just to develop that a little bit more, was

13:50:49 1 the PCR test invented to test COVID-19?

13:50:53 2 A Oh no --

13:50:54 3 MS. WYRZYKOWSKI: Objection, your Honor, that
13:50:55 4 calls for a scientific medical opinion. He has not been
13:50:59 5 qualified as an expert at this point.

13:51:01 6 MR. PICCIRILLI: I'll reserve the question.

13:51:04 7 Q Going back to your field, Doctor, are you currently --
13:51:32 8 you currently have a professional license and board
13:51:35 9 certification?

13:51:37 10 A Yes. I am board -- I've been boarded three times now in
13:51:42 11 internal medicine, and I was licensed to do clinical
13:51:52 12 medicine in Rhode Island through 2018-2019, but since I'm
13:51:57 13 just doing clinical you know research now, I'm not -- I
13:52:01 14 don't do any patient care any longer.

13:52:04 15 Q Do you belong to any organizations, professional
13:52:09 16 organizations?

13:52:10 17 A Historically I have. I was a longstanding member of the
13:52:16 18 American Heart Association, particularly the epidemiology
13:52:19 19 council, the American Society of Nephrology, because of
13:52:22 20 my speciality in treating cholesterol disorders, the
13:52:27 21 National Lipid Association.

13:52:29 22 Q Now, Doctor, specifically with regard to COVID-19, what
13:52:38 23 work have you done in that field since the pandemic
13:52:41 24 started last March?

13:52:42 25 A Academically other than this publication, it's just a

13:52:47 1 matter of reviewing the raw data that is available to the
13:52:54 2 public, that would basically be it, and reading as
13:53:01 3 voraciously as I can.

13:53:02 4 Q Are you in communication regularly with the Department of
13:53:06 5 Health to obtain data?

13:53:07 6 A This one experience, in terms of eventually getting the
13:53:17 7 cycle threshold data. I've also tried to get data on
13:53:23 8 pediatric mortality.

13:53:26 9 Eventually we got -- the cycle threshold data that
13:53:30 10 we put out and is frequent, we were unable to obtain
13:53:35 11 without the assistance of representative Patricia Morgan.
13:53:40 12 I didn't know why but there was so much delay in
13:53:43 13 releasing the data.

13:53:45 14 MS. WYRZYKOWSKI: Objection, your Honor. This
13:53:47 15 is a narrative answer. It doesn't respond to the
13:53:49 16 question asked. Move to strike.

13:53:51 17 THE COURT: That last sentence is stricken.

13:53:54 18 Q Let me ask you this, Doctor, pre-Covid, did you have any
13:54:01 19 difficulty obtaining data from the Department of Health
13:54:04 20 as part of your research?

13:54:05 21 A Honestly it was not part of my research.

13:54:08 22 Q Okay. COVID-19 wasn't?

13:54:10 23 A No, no, no. I wasn't working with data sets where I
13:54:14 24 needed to obtain them from the Department of Health.

13:54:16 25 Q So you got then from some other location?

13:54:19 1 A Many, many other data.

13:54:20 2 Q Where would you get your information from your data sets?

13:54:24 3 A Data sets were the ones that I was working on. Largely
13:54:28 4 through the clinical trial that I ran. Collaborations
13:54:32 5 with other investigators that were dealing with, you
13:54:35 6 know, federal data sets, other randomized controlled
13:54:39 7 trials.

13:54:40 8 I had spent a number of years working at the
13:54:43 9 Framingham Heart Study, so I collaborated with them.
13:54:46 10 That's federal data but it's under the control of the
13:54:49 11 Framingham investigators.

13:54:51 12 Q Doctor, fair to say that you rely on certain scientific
13:54:58 13 and technical principals of methods in your field?

13:55:02 14 A Yes, absolutely.

13:55:03 15 Q And could you just briefly describe what those are?

13:55:06 16 A Well, so my emphasis has been on organizing randomized
13:55:15 17 controlled trials, both small and large, primarily
13:55:19 18 related to cardiovascular disease and chronic kidney
13:55:23 19 disease. Although I did have one grant that dealt with a
13:55:28 20 dermatologic disorder.

13:55:31 21 And then evaluating epidemiologic association, so
13:55:38 22 disease association, disease risk factor association in
13:55:43 23 large population based studies. So studies like the
13:55:48 24 Framingham Heart Study, like the Women's Health
13:55:49 25 Initiative, like clinical trial data bases.

13:55:54 1 And that all involves analyzing data in ways that is
13:55:59 2 no different than analyzing data that pertains to the
13:56:05 3 Covid epidemic.

13:56:06 4 Q Now, Doctor, as you're aware this case is about mandating
13:56:11 5 masks in schools. Have you utilized your scientific
13:56:18 6 methods and techniques to analyze the current mask
13:56:26 7 mandates in school?

13:56:27 8 A Oh, absolutely. I mean, the whole question of whether
13:56:33 9 masks should be mandated --

13:56:35 10 MS WYRZYKOWSKI: Objection, your Honor. This
13:56:37 11 calls for a medical conclusion based upon experience,
13:56:41 12 expertise, training and education. He's not been
13:56:43 13 qualified as an expert.

13:56:45 14 THE COURT: Yes answers the question and that
13:56:49 15 stays. Everything else is stricken.

13:56:52 16 MS. WYRZYKOWSKI: Thank you.

13:56:52 17 THE COURT: So far.

13:56:53 18 Q So, Doctor, what have you done to analyze the issues of
13:57:02 19 masks in schools?

13:57:04 20 A As a clinical trial I've analyzed the randomized control
13:57:12 21 trial data on community masks as a clinical trial, which
13:57:16 22 is the gold standard for assessing evidence, and I've
13:57:21 23 analyzed all the existing studies that are randomized
13:57:24 24 control trials, like the one I conducted from 2008
13:57:30 25 through 2021.

13:57:32 1 Q Have you also reviewed other documentation, other
13:57:37 2 studies, other than randomized controlled trials?

13:57:41 3 A Many.

13:57:42 4 Q And what was the nature of that research that you did?

13:57:46 5 A It's simply reviewing the evidence that's put out there
13:57:51 6 as full publications, as MMWR publications, but these are
13:57:58 7 all observational studies outside the realm of clinical
13:58:03 8 trials.

13:58:03 9 Q But in your field do you review those observational
13:58:09 10 studies as well as your randomized control trials as part
13:58:13 11 of your normal practice?

13:58:14 12 A Yes, I have.

13:58:15 13 Q So you're familiar with reviewing those types of studies
13:58:18 14 as well, observational studies?

13:58:21 15 A Yes.

13:58:21 16 Q Doctor, have you been qualified as an expert in any other
13:58:30 17 case involving COVID-19?

13:58:32 18 A Yes. There was a recent vaccine mandate trial that I was
13:58:41 19 qualified as an expert on in Puerto Rico.

13:58:45 20 Q Puerto Rico?

13:58:47 21 A Yes. There's also been, I'm sorry, there's also a
13:58:51 22 series, a whole series of trials about mask mandates in
13:58:57 23 Florida last summer and last fall where I qualified as an
13:59:01 24 expert.

13:59:01 25 Q And you were qualified as an expert in what field?

13:59:07 1 A As an epidemiologist and as a clinical trial.

13:59:10 2 Q And just to be clear for the record, what is the
13:59:13 3 definition of epidemiologist?

13:59:15 4 A So epidemiologist studies diseases in populations and
13:59:20 5 risk factors for those diseases in populations.

13:59:25 6 MR. PICCIRILLI: At this point, your Honor, I'd
13:59:26 7 ask that Dr. Boston be qualified as an expert in the area
13:59:31 8 of clinical trials and epidemiology, as they relate to
13:59:35 9 the study of mask with COVID-19 and move for his CV and
13:59:40 10 to his report to be admitted, Exhibit 1, 2 and 3.

13:59:46 11 THE COURT: Any objection of Exhibit 1 being
13:59:48 12 full, the CV?

13:59:49 13 MS. WYRZYKOWSKI: No, your Honor.

13:59:52 14 THE COURT: Exhibit 1 is full.

13:59:54 15 THE CLERK: Plaintiff's 1 full.

13:59:54 16 **(PLAINTIFFS' EXHIBIT 1 WAS MARKED FULL)**

14:00:00 17 MR. PICCIRILLI: With respect to Exhibit 2,
14:00:01 18 your Honor, I know it doesn't have to do with COVID-19
14:00:04 19 obviously, but I think the relevance of it --

14:00:06 20 THE COURT: Any objection to 2 and 3?

14:00:09 21 MS. WYRZYKOWSKI: Yes, your Honor. Objection
14:00:10 22 to 2 because it's a study based in 2011 and is not
14:00:13 23 relevant to COVID-19. It's "Cardiovascular Disease
14:00:16 24 Outcomes in Kidney Transplants," and it's not relevant to
14:00:21 25 masking mandates and why we're here today.

14:00:23 1 Exhibit 3 --

14:00:24 2 THE COURT: I shouldn't have interrupted you,
14:00:26 3 Mr. Piccirilli. What's the relevance of Number 2?

14:00:27 4 MR. PICCIRILLI: So, your Honor, it shows that
14:00:29 5 my client has been peer reviewed. In fact, he was one of
14:00:34 6 only 359 studies that was peer reviewed and accepted into
14:00:38 7 this journal, and it shows his technique and his methods
14:00:41 8 for analyzing data and producing a report based on that
14:00:45 9 data.

14:00:46 10 Classic clinical research and epidemiology work is
14:00:51 11 probably the most relevant factor in determining the
14:00:55 12 issue of whether or not masks work or are harmful, based
14:01:02 13 upon data, statistics, studies, review of studies, and it
14:01:10 14 shows his expertise in that area.

14:01:12 15 MS. WYRZYKOWSKI: Your Honor -- I'm sorry,
14:01:14 16 Greg. Your Honor, the fact that it was a study done over
14:01:17 17 a decade ago doesn't mean that any study that he did
14:01:20 18 today with respect to Covid or something else were
14:01:23 19 equally done to the same standards.

14:01:24 20 We know Exhibit 3 is a treatment, it's not peer
14:01:28 21 reviewed. So if you put these two together it doesn't
14:01:31 22 necessarily mean that what he did in the survey for
14:01:33 23 Number 3 was also done for Number 1, because it wasn't
14:01:36 24 peer reviewed.

14:01:37 25 And I go back again to the fact that not only is it

14:01:39 1 a decade old, but it's talking about cardiovascular
14:01:41 2 disease and outcomes in kidney transplant recipients.

14:01:45 3 THE COURT: It is prohibitive. Exhibit 2 is
14:01:47 4 prohibitive to how he does studies. It was
14:01:50 5 authenticated. Two is full. It may not be for every
14:01:55 6 purpose but it is for those purposes.

14:01:55 7 **(PLAINTIFFS' EXHIBIT 2 WAS MARKED FULL)**

14:01:58 8 THE COURT: Exhibit 3, what is it for? What
14:02:00 9 does it go to prove?

14:02:02 10 MR. PICCIRILLI: Well, similar to Exhibit 2,
14:02:03 11 only in this case it's recent and it is more on point
14:02:09 12 with regard to COVID-19. It is -- well, it's accepted at
14:02:18 13 Brown University where my client works. I would point
14:02:22 14 out, your Honor, Dr. McDonald testified and never once
14:02:27 15 did he even indicate that he's done any research,
14:02:30 16 published anything, done any clinical trials. And yet I
14:02:34 17 didn't have an objection to him as an expert witness,
14:02:37 18 obviously, because he's the state Medical Director.

14:02:40 19 But my client's expertise is specifically in the
14:02:43 20 area of data and analysis that Dr. McDonald relies upon,
14:02:49 21 not in his expert area of expertise but --

14:02:52 22 MS. WYRZYKOWSKI: Objection, your Honor. He
14:02:55 23 was qualified as an expert in infectious diseases.

14:02:57 24 THE COURT: This isn't about Dr. McDonald.

14:02:59 25 MR. PICCIRILLI: I'm sorry, your Honor.

14:02:59 1 THE COURT: Of course.

14:03:07 2 MS. WYRZYKOWSKI: The State made an objection,
14:03:09 3 your Honor, that's not a peer reviewed study, so it
14:03:12 4 hasn't gone through the rigorous process that published
14:03:12 5 studies have gone through. Specifically, the ones that
14:03:15 6 were entered into evidence under Dr. McDonald.

14:03:17 7 There is a peer review process to make sure that the
14:03:20 8 scientific standards that were used in any of these
14:03:23 9 individualized studies meets the rigors that are
14:03:25 10 necessary to publish an appropriate journal. That's what
14:03:25 11 the difference is.

14:03:28 12 It is not a peer reviewed study. It cannot be
14:03:31 13 printed in a medical journal until that's done, until his
14:03:35 14 testing modules are looked at by other members of the
14:03:37 15 field to determine whether or not the standards were
14:03:39 16 appropriately used.

14:03:40 17 As a result of that, that's why the State opined
14:03:42 18 that it should not come in as an exhibit.

14:03:45 19 MR. PICCIRILLI: Your Honor, the State has
14:03:48 20 relied on numerous non peer reviewed reports and studies

14:03:48 21 --

14:03:52 22 MS. WYRZYKOWSKI: Objection, your Honor.
14:03:53 23 Dr. McDonald testified, his portion of direct examination
14:03:58 24 that he relied upon was peer reviewed.

14:03:59 25 MR. PICCIRILLI: Not all of them.

14:03:59 1 THE COURT: It doesn't need to be peer reviewed
14:04:02 2 in order to be relevant. Although it may go to weight
14:04:05 3 later on. He did describe Exhibit 3 as the gold standard
14:04:11 4 for certain naval studies and Exhibit 3 is full.

14:04:17 5 MR. PICCIRILLI: Thank you, your Honor.

14:04:18 6 THE CLERK: Plaintiffs' 3 is full.

14:04:25 7 **(PLAINTIFFS' EXHIBIT 3 WAS MARKED FULL)**

14:04:25 8 Q Okay. Doctor, let's talk now about why we're here. I'm
14:04:30 9 going to show you Exhibit 4.

14:04:32 10 MS. WYRZYKOWSKI: Objection, your Honor. I
14:04:34 11 believe the last question from Mr. Piccirilli was with
14:04:36 12 respect to qualifying him as an expert.

14:04:37 13 THE COURT: He did, and then I went to the
14:04:40 14 exhibits.

14:04:41 15 MR. PICCIRILLI: I'm sorry. Inflated the two,
14:04:43 16 your Honor. I ask that the witness be qualified.

14:04:47 17 MS. WYRZYKOWSKI: Objection, your Honor. I
14:04:49 18 don't know what field he's being qualified at this point.

14:04:52 19 MR. PICCIRILLI: Clinical trials and
14:04:52 20 epidemiology.

14:04:59 21 THE COURT: What are clinical trials, sir?

14:04:59 22 THE WITNESS: So --

14:05:02 23 THE COURT: Actually, you referred earlier to
14:05:04 24 clinical medicine. I believe that's distinct from
14:05:07 25 internal medicine.

14:05:08 1 THE WITNESS: No, I was board in general
14:05:10 2 medicine.

14:05:10 3 THE COURT: Yes. Is clinical medicine
14:05:13 4 different?

14:05:13 5 THE WITNESS: Well, you can be an internist and
14:05:15 6 be of pure academics.

14:05:15 7 THE REPORTER: I'm sorry, can you repeat the
14:05:15 8 last part of your answer.

14:05:25 9 THE WITNESS: You can be an internist and never
14:05:28 10 see patients and never do even patient related research.
14:05:32 11 So when I use the modified clinical, I both saw patients
14:05:37 12 and did clinical patient research. That's what I meant.

14:05:42 13 THE COURT: What is clinical medical?

14:05:45 14 THE WITNESS: Clinical medicine is what we
14:05:46 15 would know as day-to-day patient medicine, seeing
14:05:49 16 patients and being involved with patients.

14:05:50 17 And then clinical research I would define it as
14:05:55 18 patient based research, so that you're not doing
14:05:58 19 laboratory research. You're not doing purely
14:06:00 20 epidemiologic research where you're not dealing with
14:06:04 21 patients at all.

14:06:05 22 So, for example, when I worked at the Framingham
14:06:07 23 Heart Study, as the public health service fellow, part of
14:06:10 24 our responsibility was to see the patients that were in
14:06:12 25 this observational study as if we were their physician

14:06:17 1 when they would come for their visits and do their yearly
14:06:21 2 exam, while we were collecting data. So to me that would
14:06:25 3 be clinical based research, as opposed to just other
14:06:30 4 people in the same building. We never saw the patients
14:06:32 5 and analyzed data.

14:06:36 6 THE COURT: And one can be certified in
14:06:39 7 clinical medicine? Is there a certification for that
14:06:44 8 that you know of, an AMA certification?

14:06:49 9 THE WITNESS: It's just clinical. I don't know
14:06:51 10 a speciality that's just called clinical medicine.
14:06:54 11 There's internal medicine, pediatric --

14:06:54 12 THE COURT: I obviously don't know either. I'm
14:06:56 13 just asking you.

14:06:57 14 THE WITNESS: No, I'm sorry.

14:06:58 15 THE COURT: How about clinical research, is
14:07:00 16 that a certification field?

14:07:05 17 THE WITNESS: Not as whole clinical research.
14:07:08 18 I mean it's based on your peer reviewed publications and
14:07:14 19 then that would qualify you as clinical researcher.

14:07:21 20 MS. WYRZYKOWSKI: Your Honor, the State would
14:07:22 21 just like to object and note that neither clinical
14:07:25 22 research nor clinical medicine is a subspecialty -- a
14:07:28 23 specialty field.

14:07:29 24 THE WITNESS: I didn't say it was.

14:07:29 25 MS. WYRZYKOWSKI: I just wanted to clarify.

14:07:33 1 THE COURT: I just wanted to find out whether
14:07:35 2 it is, that's why I asked. Mr. Piccirilli was trying to
14:07:45 3 qualify him in clinical research and epidemiology.

14:07:52 4 MR. PICCIRILLI: Yes, your Honor.

14:07:53 5 THE COURT: Epidemiology is a certification;
14:07:55 6 correct?

14:07:56 7 THE WITNESS: Yes, your Honor. You can get a
14:08:01 8 masters in epidemiology. You can get a Ph.D in
14:08:01 9 epidemiology.

14:08:06 10 THE COURT: Are you certified in epidemiology?

14:08:08 11 THE WITNESS: I got a masters in epidemiology
14:08:10 12 through Brown University.

14:08:12 13 THE COURT: But you're not certified; correct?

14:08:15 14 THE WITNESS: There's no specific
14:08:17 15 certification.

14:08:18 16 THE COURT: I don't know. I really don't know.

14:08:29 17 MS. WYRZYKOWSKI: Your Honor, may I be heard?

14:08:29 18 THE COURT: Yes.

14:08:32 19 MS. WYRZYKOWSKI: With respect to the clinical
14:08:33 20 research and clinical studies, the State would like to
14:08:36 21 note that Dr. Bostom has not done that, seeing patients
14:08:40 22 or treating patients with respect to COVID-19, and the
14:08:43 23 only research that we have about COVID-19 and Dr.
14:08:47 24 Bostom's work is with respect to a non peer reviewed
14:08:47 25 study.

14:08:51 1 THE COURT: Isn't that true about every doctor
14:08:52 2 in the United States in March of 2020?

14:08:55 3 MS. WYRZYKOWSKI: I'm sorry?

14:08:55 4 THE COURT: Isn't that true about every doctor
14:08:57 5 in the United States in March of 2020?

14:08:59 6 MS. WYRZYKOWSKI: I'm sorry, what?

14:09:00 7 THE COURT: That no one had any experience with
14:09:02 8 COVID-19?

14:09:02 9 MS. WYRZYKOWSKI: Yes, your Honor, but 18
14:09:04 10 months have passed since that time.

14:09:06 11 THE COURT: Right.

14:09:07 12 MS. WYRZYKOWSKI: And during that time studies
14:09:09 13 have been done with respect to COVID-19.

14:09:20 14 THE COURT: Do you want to voir dire him on his
14:09:35 15 qualifications for either of those specialties? You
14:09:37 16 don't have to. I'm just asking if you want to.

14:09:41 17 MS. WYRZYKOWSKI: Yes, your Honor. One moment, your
14:09:54 18 Honor, if I may.

14:09:58 19 THE COURT: Actually, if I can, sorry to
14:10:00 20 interrupt you again. You got a Masters in Science in
14:10:03 21 Epidemiology, after you already had a Masters in Science
14:10:07 22 in Physiology and a Doctor of Medicine; correct?

14:10:11 23 THE WITNESS: Yes.

14:10:13 24 THE COURT: What did that allow you to do?
14:10:13 25 Why?

14:10:17 1 THE WITNESS: Okay. So the Masters in
14:10:19 2 Epidemiology I still hold as allowing me to have better
14:10:25 3 skills in analyzing patients and community trial,
14:10:35 4 community observational study based information, based
14:10:39 5 data.

14:10:41 6 I was actually in the public health service and they
14:10:46 7 sponsored my masters, while I was working at the
14:10:52 8 Framingham Heart Study, which was set up as a field study
14:10:54 9 where patients came in and had been observed basically
14:10:58 10 since 1948, different groups of patients and their
14:11:01 11 offspring.

14:11:01 12 And so what the training that I got helped me do was
14:11:09 13 look at the data that were being generated in studies
14:11:13 14 like the Framingham Heart Study, a long-term
14:11:16 15 observational study of community members, and it was
14:11:20 16 primarily cardiovascular interoceptors.

14:11:46 17 THE COURT: Did you want to voir dire? I'm
14:11:48 18 sorry I cut you off.

14:11:49 19 MS. WYRZYKOWSKI: That's alright, your Honor.
14:11:49 20 Yes, very briefly.

14:11:50 21 **VOIR DIRE BY MS. WYRZYKOWSKI**

14:11:50 22 Q Doctor, you received your Master's Degree in Epidemiology
14:11:54 23 in 1999, awarded?

14:11:56 24 A Yes.

14:11:57 25 Q And upon receiving your Master's in Epidemiology, did you

14:12:00 1 do any residency with respect to that degree?

14:12:03 2 A I had already done all that work in Framingham. So in

14:12:07 3 other words, the course work was completed at Brown.

14:12:10 4 This was a technical glitch. The course work was

14:12:14 5 completed at Brown, while I was at the Framingham Heart

14:12:17 6 Study. I learned some years later --

14:12:20 7 MS. WYRZYKOWSKI: Excuse me. I move to strike,

14:12:21 8 your Honor. I asked a very targeted and specific

14:12:24 9 question. Have you ever done a residency with respect to

14:12:24 10 epidemiology?

14:12:26 11 A Yes, I did. The Framingham Heart Study.

14:12:28 12 Q Thank you. Doctor, did you an internship with respect

14:12:28 13 to --

14:12:31 14 THE COURT: Motion to strike is denied but go

14:12:33 15 ahead.

14:12:33 16 Q Did you do an internship with respect to epidemiology,

14:12:35 17 after you received your degree, did you do a residency or

14:12:39 18 internship with respect to epidemiology or any form of

14:12:42 19 preventative health medicine?

14:12:44 20 A It was done, it was done in the period when I was at the

14:12:48 21 Framingham Heart Study.

14:12:49 22 Q And what year, sir?

14:12:51 23 A Between 1992 and 1994-5.

14:12:54 24 Q So it was before you were awarded your degree in

14:12:56 25 epidemiology; correct?

14:12:57 1 A You didn't allow me to finish.

14:13:00 2 THE WITNESS: May I finish, your Honor? It
14:13:02 3 requires some explanation.

14:13:04 4 THE COURT: You can finish your answer.

14:13:05 5 A So, I completed all the course work. I did my thesis. I
14:13:08 6 actually published three papers on what I was doing at
14:13:12 7 the Framingham Heart Study, a respected peer reviewed
14:13:16 8 journal, including circulation and the Journal of Medical
14:13:19 9 Association.

14:13:19 10 What happened was there was a technical glitch where
14:13:22 11 the public health service had not paid the last feed or
14:13:27 12 something to Brown University, and I didn't learn about
14:13:30 13 this until some years later, and we, my wife and I wound
14:13:36 14 up paying the fees and they awarded the degree late. But
14:13:39 15 the course work had all been completed while at
14:13:42 16 Framingham.

14:13:42 17 Q So you completed a residency in epidemiology?

14:13:44 18 A It's not a residency.

14:13:46 19 Q Did you complete an internship in epidemiology?

14:13:47 20 A It's not an internship.

14:13:47 21 THE REPORTER: Did you complete an internship?

14:13:52 22 THE COURT: Wait for the question to answer.

14:13:55 23 She can only listen to one person at a time.

14:13:56 24 Q Have you completed a residency in public health?

14:14:00 25 A It's not called a residency in public health. It was a

14:14:05 1 masters in epidemiology where the fieldwork was done
14:14:08 2 through the public health service at the Framingham Heart
14:14:11 3 Study.

14:14:11 4 Q I understand, Doctor. I'm asking you if you've ever done
14:14:14 5 an internship for residency in preventative medicine?

14:14:18 6 A In preventative medicine?

14:14:18 7 Q Yes?

14:14:20 8 A Specifically no, no.

14:14:21 9 Q Have you ever done writings with respect to epidemiology?

14:14:24 10 A Most of the publications that I've written, which are
14:14:28 11 over 100, relate to epidemiologic research.

14:14:31 12 Q So your cardiovascular studies, your kidney disease
14:14:35 13 study, is a form of epidemiology?

14:14:37 14 A Epidemiology and clinical trials, yes, over 100.

14:14:45 15 MS. WYRZYKOWSKI: Your Honor, I understand the
14:14:48 16 Court's position, but if you look at his CV that is being
14:14:53 17 proffered, I think it's Exhibit 1. He has extensive
14:14:55 18 writing in renal, kidney, cardiovascular disease, but
14:14:58 19 nothing with respect to disease in public health, your
14:15:01 20 Honor, except for the one non peer reviewed.

14:15:04 21 I understand this likely will go but the State does
14:15:07 22 object to him being qualified as an expert in
14:15:07 23 cardiovascular disease.

14:15:10 24 THE COURT: And that goes to weight and not
14:15:12 25 qualification and the Court finds him to be qualified as

14:15:15 1 an expert in epidemiology.

14:15:18 2 MS. WYRZYKOWSKI: Thank you, your Honor.

14:15:27 3 THE COURT: How many clinical trials have you
14:15:29 4 participated in?

14:15:31 5 THE WITNESS: So there were a number, yes,
14:15:34 6 there were a number of small trials that lead up to the
14:15:38 7 large Tabor trial. I would say an involvement, I would
14:15:44 8 say probably in the neighborhood of 15 to 20.

14:15:47 9 THE COURT: And how many have you supervised,
14:15:50 10 been in charge of?

14:15:52 11 THE WITNESS: Probably about half of those.
14:15:58 12 And again, some were quite small but leading up to a very
14:16:02 13 large one that was completed, the Tabor trial.

14:16:41 14 THE COURT: The Court is having a hard time
14:16:43 15 with the clinical trials. From what I can tell it's
14:16:46 16 something that almost all doctors, either in medical
14:16:49 17 school or after medical school seem to participate in,
14:16:52 18 stay aware of and the like. I'm not sure that it's an
14:16:57 19 area of expertise, and the M.D. degree may cover all of
14:17:02 20 that, as well as his degree in epidemiology.

14:17:06 21 To say that he is an expert in clinical trials, I
14:17:15 22 don't know whether it's necessary, and I'll handle the
14:17:18 23 questions on a case by case basis to see whether or not
14:17:21 24 he's qualified to answer the question. I'm just not sure
14:17:25 25 that it's a special area of expertise at this point but

14:17:30 1 he is qualified as an expert in epidemiology.

14:17:33 2 MR. PICCIRILLI: Thank you, your Honor.

14:17:34 3 Q BY MR. PICCIRILLI: Doctor, as part of this case have you
14:17:50 4 reviewed the Governor's Executive Orders 2186 and 2187,
14:17:56 5 with regard to masking in schools?

14:17:57 6 A Yes, I have.

14:18:00 7 MR. PICCIRILLI: So I believe Exhibits 4 and 5,
14:18:06 8 your Honor, these were attached to both my complaint and
14:18:10 9 my brother's memo. I don't know that I have a lot of
14:18:14 10 extra exhibits.

14:18:19 11 THE CLERK: I'll take the Judge's copy.

14:18:19 12 (Document given to the Judge)

14:18:37 13 THE CLERK: Thank you.

14:18:38 14 Q MR. PICCIRILLI: Do you have those in front of you,
14:18:38 15 Doctor?

14:18:43 16 A Yes.

14:19:15 17 MS. WYRZYKOWSKI: Your Honor, the State has no
14:19:17 18 objection to these exhibits coming in as full.

14:19:20 19 THE COURT: I'm not sure whether they were
14:19:25 20 offered as full.

14:19:26 21 MR. PICCIRILLI: Yes, they are. I'm sorry,
14:19:27 22 your Honor. Yes, offered as full.

14:19:29 23 THE COURT: Are those the two executive orders?

14:19:31 24 MR. PICCIRILLI: Yes. Executive order 2186
14:19:34 25 would be Exhibit 4. Executive Order 2187 would be

14:19:39 1

Exhibit 5.

14:19:39 2

THE COURT: Without objection 4 and 5 are full

14:19:41 3

THE CLERK: Plaintiffs' 4 and 5 are full.

14:19:51 4

(PLAINTIFFS' EXHIBITS 4 and 5 WERE MARKED FULL)

14:19:51 5

Q So now, Doctor, have you prepared some documents, slides, in preparation of your testimony today?

14:20:05 6

14:20:08 7

A Yes, I have.

14:20:09 8

Q And these documents and slides that you prepared, what scientific methods and techniques did you rely upon in preparing these documents? What did you do?

14:20:16 9

14:20:19 10

14:20:21 11

A This is very -- these are very basic slides that have just used simple plots of data that are available through the Department of Health, and in particular Brown Department of Health. Actually, some of the same data that the defense showed last week, last Thursday I guess.

14:20:25 12

14:20:32 13

14:20:35 14

14:20:39 15

14:20:43 16

And then additional data that's also publically acceptable data that are simple plots from the Health and Human Services database.

14:20:47 17

14:20:51 18

14:20:53 19

Q And that's the federal government?

14:20:56 20

A Yes.

14:20:56 21

Q Okay. So the first of these exhibits, which would be Exhibit 6. So can you explain what this document presents?

14:21:01 22

14:21:23 23

14:21:23 24

A So what I did is I went through the Rhode Island Department of Health, in reference to the statement that

14:21:26 25

14:21:30 1 you can see in yellow from the Executive Order,
14:21:34 2 discussing how the Delta variant is more than twice as
14:21:39 3 contagious as recent variants and three to five times
14:21:42 4 more contagious than the original strain, which would be
14:21:45 5 the Wuhan strain, leading to a significant increase in
14:21:47 6 transmission, et cetera, et cetera.

14:21:48 7 And so what I did is I went to the Rhode Island
14:21:51 8 Department of Health website and looked -- took an
14:21:54 9 average of the two peak days from each of these waves. So
14:21:58 10 in other words from the original Wuhan wave, which had
14:22:03 11 two peak infection days in April.

14:22:06 12 Going next to the big spike that you see was mostly
14:22:14 13 Wuhan, maybe a little bit of Alpha coming in at that
14:22:17 14 point in December. That's the giant red spike again.

14:22:21 15 Again, the two highest rate days, per the Rhode
14:22:26 16 Island Department of Health website, and then in
14:22:29 17 September when Delta peaked same idea, take the two
14:22:34 18 highest days in terms of case loads, and just take the
14:22:38 19 simple average.

14:22:40 20 And what you can see is that, you know, regardless
14:22:45 21 of what is in the executive order and the prediction that
14:22:49 22 it made as it affected the community. The original Wuhan
14:22:57 23 strain had the same peak and peak days of infection. And
14:23:02 24 the Wuhan second wave, maybe somewhat tinged with Alpha
14:23:09 25 had a much, much higher peak, much, much higher peak then

14:23:13 1 the Delta wave that we recently experienced or still
14:23:18 2 experiencing to some extent.

14:23:19 3 Q Just to be clear for the record, what's the difference
14:23:22 4 between Wuhan, Alpha and Delta?

14:23:25 5 A Well, the Wuhan is considered the native strain that
14:23:32 6 emerged from China, however it emerged.

14:23:35 7 Alpha was primarily a concern, at least initially a
14:23:40 8 concern in the UK in the United Kingdom, and Delta
14:23:44 9 originally was picked up in India.

14:23:47 10 Q So would it be fair to say that Alpha is a strain of
14:23:53 11 Wuhan?

14:23:53 12 A Well, they're all related to the original strain.
14:23:57 13 They're are all offshoots, it's believed, of the original
14:24:02 14 Wuhan strain. The point of the slide though is that
14:24:05 15 where the rubber meets the roads where facts are on the
14:24:09 16 ground, there's no way you can say that the Delta is
14:24:12 17 causing more infection then we experienced in that huge
14:24:16 18 spike.

14:24:16 19 MS. WYRZYKOWSKI: Objection, your Honor.

14:24:19 20 THE COURT: What's the objection?

14:24:20 21 MS. WYRZYKOWSKI: Your Honor, that's a medical
14:24:24 22 legal conclusion that he is reaching with respect to
14:24:26 23 this. There is no way for the State to go back at this
14:24:28 24 point in time to review the data that was used to
14:24:31 25 accumulate this information. He didn't provide the

14:24:33 1 original documentation that was used to support this
14:24:36 2 document. We don't know what dates it was done. We
14:24:38 3 don't know what materials he got.

14:24:38 4 THE REPORTER: I'm sorry, could you please slow
14:24:38 5 down a little bit.

14:24:45 6 MS. WYRZYKOWSKI: We don't know where he
14:24:47 7 gathered the information from, other than apparently the
14:24:49 8 Rhode Island Department of Health. There's no way to
14:24:51 9 cross reference any of this information.

14:24:54 10 THE WITNESS: Can I explain?

14:24:55 11 THE COURT: If you're asking him the basis, you
14:24:58 12 can give the basis now. You're asking for the basis for
14:25:01 13 his conclusion?

14:25:02 14 MS. WYRZYKOWSKI: I wasn't going to do that now
14:25:06 15 but sure.

14:25:07 16 THE COURT: Or you can do it on cross, whatever
14:25:09 17 you want. But I don't see a need to strike that answer
14:25:11 18 or overrule it.

14:25:13 19 MS. WYRZYKOWSKI: The State will do it on
14:25:14 20 cross, your Honor. I wanted to point that out to the
14:25:17 21 court.

14:25:17 22 THE COURT: Okay. Thank you.

14:25:17 23 Q BY MR. PICCIRILLI: And again, Doctor, you referenced on
14:25:20 24 the bottom of the document exactly where you got the data
14:25:22 25 from, the link?

14:25:23 1 A Yes. It's from the Rhode Island Department of Health
14:25:25 2 website, you know, if we had graphics here I could show
14:25:30 3 you exactly how to get it. If you go to their Covid
14:25:35 4 dashboard it's called the Rhode Island COVID-19 Response
14:25:39 5 Data. Every day it's updated. And there's actually an
14:25:47 6 enormous Google spreadsheet at the bottom, and the raw
14:25:50 7 data are pulled from that spreadsheet.

14:25:53 8 And simply by looking at that spreadsheet you can
14:25:58 9 very easily see what were the highest infection days for
14:26:02 10 each of these periods, and I took just the two highest
14:26:07 11 days from each of these periods, took their average and
14:26:10 12 that's what this plot is, and it's all publically
14:26:13 13 available data as documented in the slide.

14:26:17 14 MR. PICCIRILLI: I would move this as a full
14:26:18 15 exhibit, your Honor.

14:26:19 16 MS. WYRZYKOWSKI: No objection.

14:26:23 17 THE COURT: This exhibit is full. I don't have
14:26:25 18 the number.

14:26:29 19 MR. PICCIRILLI: That should be 6, your Honor.

14:26:29 20 THE COURT: 6 is full.

14:26:31 21 THE CLERK: Exhibit 6 is full.

14:26:31 22 **(PLAINTIFFS' EXHIBIT 6 WAS MARKED FULL)**

14:26:35 23 MR. PICCIRILLI: And the next document would be
14:26:37 24 Exhibit 7.

14:26:48 25 Q And, Doctor, you're getting the original exhibit, just

14:26:51 1 try to keep them all in order. We don't want to have
14:26:54 2 exhibits go missing or misplaced.

14:26:56 3 A Okay.

14:26:56 4 Q Make sure they stay organized and in one location.

14:27:00 5 A Okay.

14:27:00 6 Q So, Doctor, in the Governor's Executive Order it stated
14:27:15 7 that the Rhode Island Department of Health modeling data
14:27:22 8 projects by the first few weeks of September that the
14:27:25 9 number of people in Rhode Island hospitals may exceed
14:27:29 10 hospital capacity, and an alternate hospital site in
14:27:32 11 Cranston will be reopened as soon as possible to deal
14:27:35 12 with the possible surge caused by the Delta variant;
14:27:38 13 correct?

14:27:38 14 A Correct.

14:27:39 15 Q That was in the executive order. Did you prepare the
14:27:42 16 slide in response to that statement in the executive
14:27:44 17 order?

14:27:44 18 A Yes.

14:27:45 19 Q Can you explain to us what this slide shows?

14:27:48 20 A Again, it's just a simple plot from the same source, from
14:27:52 21 the same Google document that's updated almost daily, and
14:27:57 22 it's simply plotting.

14:27:59 23 Now, there's a column that's provided in the Google
14:28:02 24 document, which is called the seven day average of Covid
14:28:06 25 tests, the positive cases.

14:28:08 1 And then there's also the three day average of
14:28:13 2 hospitalization. I use those two columns and here you
14:28:17 3 have a plot, and what you can see is that there are some
14:28:22 4 small ripples in the water but there's nothing that would
14:28:27 5 comport with the idea that the hospitals were going to be
14:28:31 6 overwhelmed, and I think just by eye you can see this,
14:28:38 7 that there's some little bits and starts, but certainly
14:28:44 8 there's nothing that would indicate that "by the first
14:28:49 9 few weeks of September the number of people in Rhode
14:28:52 10 Island hospitals may exceed hospital capacity."

14:28:55 11 MR. PICCIRILLI: I move that as a full exhibit,
14:28:56 12 your Honor.

14:28:56 13 THE COURT: Without objection 7 is full

14:29:01 14 THE CLERK: Plaintiffs' is 7 full.

14:29:05 15 **(PLAINTIFFS' EXHIBIT 7 WAS MARKED FULL)**

14:29:05 16 Q Doctor, I'll show you Exhibit 8. So, Doctor, during this
14:29:34 17 so-called current Delta wave that we're having, what's
14:29:39 18 been happening with pediatric hospitalizations rates for
14:29:45 19 confirmed COVID-19 cases?

14:29:47 20 A So here's what I did is I went to the Health and Human
14:29:53 21 Services website called COVID-19 Reported Patient Impact
14:29:57 22 and Hospital Capacity By State, and they have a daily
14:30:01 23 update. As a matter of fact, they update more than once
14:30:04 24 per day, and they break out what are called confirmed
14:30:11 25 pediatric Covid hospitalizations by state, nationally and

14:30:17 1 by state, and that simply means that the child tested
14:30:24 2 positive.

14:30:25 3 In other words, they may have been admitted for
14:30:27 4 something as unrelated as trauma, but they tested
14:30:31 5 positive. Be that as it may, that's the metric that they
14:30:35 6 use. And what you can see is that from August 1st
14:30:43 7 through yesterday, the average number of hospitalizations
14:30:49 8 was one per day. And that as a matter of fact just to
14:30:54 9 give an update, today, today, after I made this slide,
14:30:59 10 it's back down to 0, but he can see several days of 0
14:31:02 11 leading up to the 2 on October 4th.

14:31:07 12 But the point is that overall this is a very, very
14:31:11 13 low rate of hospitalizations. It includes the period
14:31:15 14 where schools reopened. And moreover, I referenced at
14:31:21 15 the bottom of the slide under A and B, two very important
14:31:27 16 peer reviewed publications and hospital pediatrics, where
14:31:31 17 they did medical record reviews of in patient pediatric
14:31:38 18 hospitalizations and found that there were over counted
14:31:40 19 by 40 to 45 percent. In other words, 40 to 45 percent of
14:31:45 20 the total so-called COVID-19 pediatric hospitalizations
14:31:50 21 were incidental. They were positive tests in the absence
14:31:54 22 of a clinical syndrome.

14:31:56 23 So if you were to further correct for that, you
14:32:00 24 would be averaging less than one bona fide pediatric
14:32:03 25 hospitalization per day.

14:32:04 1 Q Okay. Doctor, maybe now is a good time to clarify.
14:32:08 2 What's the difference of someone being in the hospital or
14:32:15 3 dying from Covid, because of Covid or with Covid?

14:32:21 4 A Well, we actually, we have a different paradigm for
14:32:29 5 Covid. You know, we -- it, it -- you can test positive
14:32:37 6 on admission, with or without a clinical syndrome that's
14:32:43 7 related to a pneumonia for example, or in the case of
14:32:48 8 pediatrics, the multi system inflammatory syndrome.

14:32:52 9 Again, you can literally test positive with a trauma
14:32:55 10 admission and you can be counted as a hospitalization.
14:32:59 11 And even, unfortunately, if you go to the CDC website,
14:33:04 12 there are -- not specifically for children but for all
14:33:08 13 ages. There are now some thousands of deaths that are
14:33:12 14 trauma deaths, which may very well have just been
14:33:17 15 incidental Covid positive, and this is going to require a
14:33:20 16 lot of sorting out.

14:33:21 17 But what has started to be done in, certainly in the
14:33:25 18 pediatric population, is that many of these
14:33:29 19 hospitalizations, and they turn into deaths,
14:33:32 20 unfortunately, if the child admitted dies, um, are
14:33:38 21 incidental Covid syndrome, and it really requires a lot
14:33:46 22 more sorting out. But what's been done so far is
14:33:49 23 concerning.

14:33:51 24 I'll also point out that the Morbidity Mortality
14:33:54 25 Weekly Reports for 2020 at least, analyzed death

14:34:00 1 certificates. And what they found is the pediatric range
14:34:04 2 was that 35 percent of the deaths that had been logged
14:34:09 3 into the CDC database, there was no causal pathway to a
14:34:09 4 pediatric death.

14:34:14 5 MS. WYRZYKOWSKI: Objection, your Honor.
14:34:15 6 Foundation.

14:34:16 7 THE COURT: Sustained.

14:34:16 8 Q Doctor, we'll get to that point at some point. With
14:34:21 9 regard to your background, Doctor, do you ever analyze
14:34:25 10 death certificates?

14:34:26 11 A I've analyzed many hundreds of death certificates.

14:34:29 12 Q How many?

14:34:29 13 A Hundreds.

14:34:30 14 Q Hundreds. And can you explain why you analyze these
14:34:35 15 death certificates? What does that help you with?

14:34:37 16 A So I did it originally during my training at the
14:34:41 17 Framingham study, where you have to determine whether
14:34:45 18 deaths that were assumed to be from cardiovascular
14:34:48 19 disease were truly from myocardial infarction heart
14:34:52 20 attack, strokes, congestive heart failure, et cetera.

14:34:56 21 I also did it very specifically for the Womens'
14:34:59 22 Health Initiative where we were looking at the very
14:35:03 23 narrow question of sudden cardiac death. But the
14:35:06 24 procedures are the same.

14:35:09 25 Q Before you get to that, Doctor? So, when you -- how does

14:35:14 1 a death certificate classify a death, the cause of death?
14:35:18 2 A So for a -- you have a part one and a part two. The
14:35:23 3 primary cause of death is supposed to have a logical
14:35:27 4 causal pathway. So, for example, for Covid it would be
14:35:33 5 something like COVID-19 infection, pneumonia, acute
14:35:40 6 respiratory distress syndrome and demise.

14:35:43 7 Now, if the person had diabetes that could be listed
14:35:48 8 in part two as a comorbidity, but clearly that's not the
14:35:53 9 requiem of the causal path.

14:35:55 10 Q Doctor, you did get a little afield of what this exhibit
14:36:02 11 is representing, so lets stick to this. Again, this is
14:36:05 12 just hospitalizations of pediatric hospitalizations in
14:36:08 13 Rhode Island over the last month and a half or so.

14:36:11 14 A With a positive test and that's basically all you know.
14:36:15 15 That's what -- when they say confirmed, that's what they
14:36:18 16 mean, they mean a positive test.

14:36:20 17 MS. WYRZYKOWSKI: Objection. Who is "they?"

14:36:22 18 THE WITNESS: The Health and Human Services.
14:36:24 19 That's their definition.

14:36:26 20 MR. PICCIRILLI: I move that as a full exhibit,
14:36:27 21 your Honor.

14:36:28 22 THE COURT: 8 is full.

14:36:31 23 THE CLERK: Plaintiffs' 8 full.

14:36:31 24 **(PLAINTIFFS' EXHIBIT 8 WAS MARKED FULL)**

14:36:36 25 MR. PICCIRILLI: Next exhibit is 9.

14:36:40 1 Q Again, in relation to Rhode Island hospitalizations, what
14:37:10 2 does this document reflect?

14:37:13 3 A So here I used the two data bases that I've been
14:37:18 4 describing. One from the Health and Human Services and
14:37:21 5 the other from the Rhode Island Department of Health.
14:37:25 6 And so what Health and Human Services does, that I
14:37:29 7 couldn't find anyway through Rhode Island Department of
14:37:32 8 Health, is they give the hospital bed capacity for the
14:37:36 9 State, and then they also quantify the hospital beds
14:37:40 10 filed over all without regard to particular diagnosis,
14:37:45 11 just the total bed filled relative to the capacity. And
14:37:49 12 you can see, even the hospital capacity fluctuates on the
14:37:53 13 basis, I guess of opening and closing areas, staffing, et
14:37:57 14 cetera.

14:37:58 15 So, again, reflecting -- and then the bottom, the
14:38:02 16 yellow, the yellow, the much smaller number, the yellow,
14:38:06 17 is going back and filling in those days with hospital
14:38:10 18 beds that were extensively for Covid through the Rhode
14:38:15 19 Island Department of Health.

14:38:16 20 And then it was the same phenomenon, you see no
14:38:21 21 evidence that since the executive order was issued that
14:38:25 22 that the hospitals were overwhelmed. There's a very,
14:38:29 23 very constant rate, very, very constant rate relationship
14:38:36 24 between the total hospital beds filled and the hospital
14:38:39 25 capacity and the hospital beds filled with Covid.

14:38:43 1 Q So, Doctor, would it be fair to say, for example, on the
14:38:50 2 top the State of Rhode Island has between 2,400 and 2,500
14:38:55 3 hospital beds?

14:38:55 4 A Exactly.

14:38:56 5 Q The green line shows that the last month and a half since
14:38:59 6 the executive order, hospitalizations look like they
14:39:03 7 range from around the high 2,200 to maybe a low of 19 or
14:39:08 8 just under 2,000?

14:39:09 9 A In that range, these are total hospital beds.

14:39:13 10 Q These are total?

14:39:14 11 A These are total hospital beds, regardless of diagnosis.

14:39:17 12 Q So, Doctor, let me ask you this, that seems like almost
14:39:22 13 85 percent of hospital beds are full, is that a bad
14:39:25 14 thing?

14:39:25 15 A According to health economists that I've read, and I'm
14:39:32 16 not a health economist.

14:39:34 17 MS. WYRZYKOWSKI: Objection, your Honor.
14:39:34 18 That's hearsay.

14:39:35 19 MR. PICCIRILLI: He's relying on his opinion
14:39:37 20 with regard to whether or not there's a crisis in
14:39:42 21 hospitalizations, based on the beds.

14:39:45 22 MS. WYRZYKOWSKI: But there's no foundation for
14:39:47 23 that at this point. He hasn't talked about an article
14:39:50 24 that he's read.

14:39:51 25 THE COURT: In your own opinion, when you said

14:39:53 1 it's a good thing or a bad thing, without relying upon
14:39:57 2 what you heard from others.

14:39:58 3 THE WITNESS: It's very consistent with
14:40:00 4 hospital bed occupancy that I'm familiar with from my
14:40:03 5 clinical years.

14:40:04 6 And, again, its -- I understand from people who
14:40:09 7 actually study the issue, the hospital economist, that
14:40:12 8 there's a sweet spot of around 85 percent.

14:40:16 9 MS. WYRZYKOWSKI: Objection, your Honor.

14:40:17 10 THE COURT: Sustained.

14:40:19 11 MR. PICCIRILLI: I move Exhibit 9 full.

14:40:22 12 THE COURT: 9 is full.

14:40:24 13 THE CLERK: Plaintiffs' 9 full.

14:40:40 14 **(PLAINTIFFS' EXHIBIT 9 WAS MARKED FULL)**

14:40:40 15 Q Exhibit 10. Again, Doctor, sticking with the issue of
14:41:14 16 hospitalizations and potential over capacity as
14:41:18 17 referenced in the executive order. What does this
14:41:21 18 document represent?

14:41:22 19 A So this is really the compliment to the previous slide
14:41:27 20 just expressing the percentage of total beds, and you can
14:41:33 21 -- total beds and then the percentage that are specific
14:41:36 22 COVID-19 patients that were hospitalized.

14:41:40 23 And what you can see again is that there's very
14:41:43 24 little variability. There's no evidence to support the
14:41:48 25 modeling hypothesis that the hospitals are going to be

14:41:52 1 overwhelmed, and I think, I think it's quite evident that
14:41:57 2 the occupancy rates are actually quite stable in terms of
14:42:01 3 total inpatient beds and beds occupied by Covid patients.

14:42:09 4 MR. PICCIRILLI: Move this at a full exhibit.

14:42:11 5 THE COURT: 10 is full.

14:42:13 6 THE CLERK: Plaintiffs' Exhibit 10 is full.

14:42:18 7 **(PLAINTIFFS' EXHIBIT 10 WAS MARKED FULL)**

14:42:20 8 MR. PICCIRILLI: Your Honor, I'm going to go a
14:42:22 9 little out of order, Exhibit 30.

14:42:42 10 THE CLERK: 30.

14:42:43 11 Q BY MR. PICCIRILLI: So, Doctor, before we get to Exhibit
14:42:54 12 30, just to clarify, the previous exhibit that we have
14:43:01 13 introduced, two or three, all are referencing this Rhode
14:43:06 14 Island Department of Health modeling data project;
14:43:09 15 correct?

14:43:09 16 A Yes.

14:43:10 17 Q Are you familiar with this modeling data project?

14:43:15 18 A The first time I became of aware of it was when I read
14:43:22 19 this Providence Journal op-ed by Edward Acorn and he
14:43:27 20 described it.

14:43:28 21 I had seen the projection, and that's what there's
14:43:32 22 an image of in the middle of the page. I had seen the
14:43:34 23 projections and I had been watching, you know, the daily
14:43:38 24 hospital census, which is public information, and they --
14:43:44 25 to put it mildly, they didn't jibe. But that was the

14:43:48 1 first time I learned about it was through the op-ed, and
14:43:52 2 what you can see is projections made --

14:43:52 3 MS. WYRZYKOWSKI: Objection.

14:43:57 4 THE WITNESS: On April 16 --

14:43:58 5 MS. WYRZYKOWSKI: Objection, your Honor.

14:43:58 6 THE COURT: What's your objection?

14:43:59 7 MS. WYRZYKOWSKI: Your Honor, this is a hearsay
14:44:00 8 document. It's from the Providence Journal. It's not
14:44:02 9 even from a state or federal agency, in terms of the data
14:44:05 10 set numbers that were used with respect to this.

14:44:08 11 THE COURT: Well, he shouldn't be reading from
14:44:09 12 it until it's a full exhibit. So if you proceed,
14:44:12 13 Mr. Piccirilli.

14:44:13 14 Q BY MR. PICCIRILLI: So, Doctor, when you say you became
14:44:17 15 familiar with an article in the newspaper regarding this
14:44:23 16 modeling project. What investigation of that modeling
14:44:27 17 project did you do after you read that article?

14:44:30 18 A Well, I should say before, before I saw the article I had
14:44:35 19 seen the projections. I don't know, can I talk about
14:44:39 20 this? I mean all this is, this image that's being shown
14:44:43 21 here, this was a projection that sat on the Rhode Island
14:44:46 22 Department of Health website for weeks.

14:44:48 23 MS. WYRZYKOWSKI: Objection, your Honor, as
14:44:50 24 previously stated until the exhibit is marked.

14:44:51 25 MR. PICCIRILLI: Well, your Honor, he's

14:44:53 1 testified that he goes to the Department of Health
14:44:55 2 website, all of these exhibits --

14:44:57 3 THE WITNESS: It says it on there.

14:44:58 4 MR. PICCIRILLI: Doctor, you have to wait.

14:45:00 5 MS. WYRZYKOWSKI: Sorry, you weren't done.

14:45:05 6 MR. PICCIRILLI: So, he's testifying that this
14:45:08 7 document, this chart that's here, was on the Department
14:45:13 8 of Health website, which he regularly visits and reviews
14:45:15 9 and obtains data from. I don't know if it's still up
14:45:18 10 there. It's probably been deleted by the Governor by
14:45:18 11 now --

14:45:21 12 MS. WYRZYKOWSKI: Objection, your Honor.

14:45:25 13 THE COURT: Okay. Let's slow it down a bit, I
14:45:29 14 take it what you're trying to put through is not the
14:45:31 15 words in it, or the dates on the bottom or the reference
14:45:35 16 to Google. You're only trying to put through the graph
14:45:40 17 itself, as prepared by the Department of Health?

14:45:42 18 MR. PICCIRILLI: Correct, your Honor.

14:45:44 19 THE COURT: Can we agree that that can be full?

14:45:47 20 MS. WYRZYKOWSKI: Do we have a date for that,
14:45:49 21 just that specific graph? I personally can't read it.

14:45:53 22 THE COURT: I think it's dated.

14:45:53 23 THE WITNESS: April 16th.

14:45:55 24 MR. PICCIRILLI: Of 2021.

14:45:57 25 THE WITNESS: 2020.

14:46:00 1 MS. WYRZYKOWSKI: Then if it was April 16,
14:46:02 2 2020, I cannot read it. That's over a year ago, and how
14:46:05 3 is that relevant to why we're here now and what happened
14:46:09 4 back on August 2021 and September 2021.

14:46:12 5 MR. PICCIRILLI: Because it's the same modeling
14:46:14 6 data that was used in April 2020, so it's grossly,
14:46:17 7 excessively --

14:46:19 8 MS. WYRZYKOWSKI: Objection, your Honor.

14:46:19 9 MR. PICCIRILLI: Could I --

14:46:21 10 MS. WYRZYKOWSKI: I did it again, I apologize.

14:46:22 11 THE COURT: He hasn't proved it. He is showing
14:46:24 12 what he's attempting to prove.

14:46:26 13 MR. PICCIRILLI: My proffer is that the witness
14:46:28 14 will be testifying that the modeling data was wrong in
14:46:32 15 2020 and it's wrong today too.

14:46:34 16 MS. WYRZYKOWSKI: You can't make that --
14:46:35 17 objection. You can't make that a punching mark. Just
14:46:37 18 because something may have been wrong in an editorial
14:46:40 19 does not mean it's wrong today as we stand here.

14:46:43 20 MR. PICCIRILLI: The assumption wasn't made in
14:46:45 21 the editorial, it was made on the state Department of
14:46:47 22 Health website where they said they were going to be
14:46:49 23 4,000 some odd deaths, 4,300 deaths, and it turns out
14:46:56 24 there were 357, ten times the scare mongering of people
14:46:56 25 dying.

14:47:05 1 MS. WYRZYKOWSKI: Objection.

14:47:08 2 MR. PICCIRILLI: And that model was grossly
14:47:10 3 wrong then and is grossly wrong now.

14:47:11 4 MS. WYRZYKOWSKI: Mr. Piccirilli is attempting
14:47:13 5 to testify on behalf of the witness.

14:47:14 6 THE COURT: No. He was trying to give me an
14:47:16 7 offer of proof --

14:47:25 8 MS. WYRZYKOWSKI: It's also possible --

14:47:25 9 THE REPORTER: I'm sorry.

14:47:26 10 THE COURT: That time you interrupted me.

14:47:26 11 MS. WYRZYKOWSKI: I apologize, your Honor.

14:47:27 12 THE COURT: I was trying to rule on your prior
14:47:30 13 objection. So Mr. Piccirilli is trying to make an offer
14:47:34 14 of proof. This exhibit, Exhibit 30 cannot come in. It
14:47:39 15 was a reprint of a Providence Journal editorial but I
14:47:44 16 understand you're not trying to get the editorial in,
14:47:47 17 you're trying to get the graph in, which might be able to
14:47:49 18 come in, but perhaps you can use that in testimony out of
14:47:54 19 him without necessarily putting a graph into evidence.

14:47:59 20 MR. PICCIRILLI: Understood, your Honor.

14:48:00 21 Q So, Doctor, you testified you're familiar with this
14:48:07 22 modeling data. You've been familiar with it since back
14:48:11 23 at least April of 2020, correct?

14:48:13 24 A Yes.

14:48:15 25 Q And based upon your review of the data, did you come to

14:48:18 1 an opinion as to how accurate that modeling data was back
14:48:22 2 in April of 2020?

14:48:23 3 A Oh --

14:48:24 4 MS. WYRZYKOWSKI: Objection, your Honor. Now
14:48:25 5 he's trying to qualify the statistician.

14:48:29 6 MR. PICCIRILLI: He's an epidemiologist, your
14:48:30 7 Honor.

14:48:30 8 THE WITNESS: No one has to be a statistician
14:48:33 9 to see this.

14:48:34 10 MR. PICCIRILLI: I'm sorry.

14:48:35 11 THE COURT: Thank you, Doctor. We don't need
14:48:38 12 you to weigh in on the objections. Thank you. The
14:48:42 13 objection is overruled.

14:48:45 14 THE WITNESS: Okay. I just want to make this
14:48:48 15 very clear. All this op-ed did --

14:48:53 16 Q Doctor, don't mention the op-ed, just talk about the
14:48:56 17 data.

14:48:57 18 A I saw, I saw, I saw a model, which looks amazingly this
14:49:02 19 one, that projected that there be would be 4,300 beds
14:49:06 20 occupied on April 27, and/or in the more conservative
14:49:12 21 estimate 2,250 beds occupied on May 3rd. When in fact,
14:49:17 22 going to the Rhode Island Department of Health database
14:49:21 23 for those specific dates, again, April 27, 357
14:49:27 24 hospitalizations not 4,300. May 3rd, 351
14:49:34 25 hospitalizations not 2,250.

14:49:37 1 And in fact, during the peak of the initial wave,
14:49:43 2 the Wuhan wave of the spring of 2020, on April 28, 2020
14:49:48 3 there was a total of 374 inpatients in Rhode Island.

14:49:52 4 So this to me says that something is grossly wrong
14:49:58 5 with the way the modeling was done in the spring. And in
14:50:03 6 looking at what was in the executive order, where the
14:50:07 7 hospitals were quote, going to be overrun just in the
14:50:10 8 last few weeks, we can see the same sort of, in my
14:50:15 9 opinion, gross inaccuracies.

14:50:16 10 Q Thank you.

14:50:18 11 MR. PICCIRILLI: Your Honor, I understand if
14:50:20 12 your Honor, this will not be admitted as an exhibit with
14:50:24 13 the limited purpose of presenting that data.

14:50:27 14 THE COURT: His testimony is coming in but
14:50:30 15 Exhibit 30 remains for identification.

14:50:31 16 MR. PICCIRILLI: Thank you, your Honor. The
14:50:36 17 next document is Exhibit 11, am I on the right one? Let
14:50:51 18 me just double check.

14:51:05 19 THE CLERK: Do you have a copy for the Judge,
14:51:07 20 counsel?

14:51:07 21 (Document given to the clerk)

14:51:07 22 Q MR. PICCIRILLI: Again, Doctor, we're still on the same
14:51:21 23 issue with regard to beds. What does this document
14:51:24 24 represent?

14:51:25 25 A So, again, this is a hybrid slide. I'm using in this

14:51:30 1 case ICU bed capacity and occupancies from the health and
14:51:36 2 human services website, and I'm merging that with ICU
14:51:42 3 beds occupied by Covid patients from the Rhode Island
14:51:45 4 Department of Health website, and you see the same
14:51:48 5 pattern as with the overall inpatient hospital bed
14:51:52 6 capacity occupancies and Covid occupancies, which again,
14:51:58 7 these being the executive order does not comport with the
14:52:03 8 idea that the hospitals were going to be overwhelmed by
14:52:07 9 early to mid-September.

14:52:09 10 Again you see, again, there's some permutations.
14:52:12 11 There's some fluctuation but it's pretty, it's pretty
14:52:16 12 level and certainly nothing that would comport with the
14:52:21 13 idea that the hospitals were going to exceed capacity.

14:52:25 14 MR. PICCIRILLI: Move that as a full exhibit.

14:52:28 15 THE COURT: Without objection, 11 is full.

14:52:31 16 THE CLERK: Plaintiffs' 11 is full.

14:52:31 17 **(PLAINTIFFS' EXHIBIT 11 WAS MARKED FULL)**

14:52:33 18 Q MR. PICCIRILLI: And Exhibit 12. Okay, Doctor, this is
14:52:55 19 the last slide in this topic. Could you just briefly
14:53:00 20 explain what this document represents?

14:53:01 21 A So, this is the compliment to the ICU capacity and
14:53:06 22 occupancy slide, which gave the raw numbers. This is
14:53:10 23 just expressing total ICU bed occupancy and ICU bed
14:53:15 24 occupancy by COVID-19 as a percentage.

14:53:18 25 And, again, you see minor fluctuations but nothing

14:53:24 1 that approaches overwhelming the capacity of the ICU and
14:53:30 2 and a significant proportion, I would say, but still
14:53:35 3 relatively modest of the ICU bed occupancy by COVID-19
14:53:40 4 beds. But nothing, again, that's particularly
14:53:45 5 disproportionate suggesting that all of sudden, you know,
14:53:47 6 Covid occupancy was going to overwhelm the capacity of
14:53:50 7 the ICU. It's just not there.

14:53:52 8 Q And again, Doctor, based upon your knowledge, skill,
14:54:00 9 experience, training and education, do you have an
14:54:02 10 opinion as to whether these percentage of ICU bed
14:54:08 11 occupancies is normal, traditional in a crisis situation?

14:54:16 12 A They look normal to me, maybe slightly high, but they
14:54:22 13 look normal to me. And again, this is how ICU in my
14:54:27 14 experience are run. They're run fairly close to
14:54:30 15 capacity.

14:54:32 16 MR. PICCIRILLI: Thank you. I move that as a
14:54:33 17 full exhibit, your Honor.

14:54:35 18 THE COURT: 12 is full.

14:54:37 19 THE CLERK: Plaintiffs' 12 is full.

14:54:37 20 **(PLAINTIFFS' EXHIBIT 12 WAS MARKED FULL) .**

14:54:55 21 Q Doctor, are you familiar with the phrase long Covid or
14:55:00 22 long pandemic syndrome?

14:55:02 23 A Yes, I am.

14:55:03 24 Q Can you describe what that is?

14:55:06 25 A It's essentially a syndrome where an adult or a child,

14:55:13 1 after having a bout of Covid, has lingering symptoms,
14:55:19 2 lingering consequences that extend beyond sort of an
14:55:26 3 acute recovery.

14:55:27 4 Q In the Governor's Executive Order, and the testimony you
14:55:39 5 heard from Dr. McDonald, did the issue of long Covid
14:55:44 6 become an additional basis that the State was using to
14:55:47 7 try to justify the emergency order?

14:55:49 8 A Yes.

14:55:50 9 MS. WYRZYKOWSKI: Objection.

14:55:53 10 THE COURT: What's the objection?

14:55:54 11 MS. WYRZYKOWSKI: Speculation at this point,
14:55:56 12 your Honor.

14:55:57 13 MR. PICCIRILLI: No, but that's -- okay. I
14:56:00 14 think he's just repeating the testimony that's already
14:56:03 15 been had. Dr. McDonald testified to that.

14:56:05 16 THE COURT: He's already answered. How do you
14:56:08 17 know that, sir?

14:56:08 18 Q How do you know --

14:56:08 19 A I'm sorry?

14:56:10 20 Q How do you know -- I'm sorry, your Honor.

14:56:13 21 THE COURT: How do you know they were using it
14:56:15 22 to justify?

14:56:18 23 THE WITNESS: I believe it was in the -- in
14:56:20 24 Dr. McDonald's affidavit. I don't think it was mentioned
14:56:25 25 specifically in the Executive Order.

14:56:27 1 Q But you saw it in Dr. McDonald's affidavit?

14:56:33 2 A That's my recollection, yes.

14:56:35 3 Q So now did you do any analysis yourself of what long
14:56:40 4 Covid is or long pandemic is?

14:56:43 5 A Yes, I've been reading preprints. That's most of the
14:56:48 6 literature about it, quite frankly. But then within the
14:56:53 7 past several weeks, a major review appeared in the
14:56:58 8 Pediatric Infectious Diseases Journal and it was quite
14:57:03 9 stunning. Because this group of senior or they were lead
14:57:09 10 by a senior pediatric infectious disease specialist, I
14:57:12 11 believe from Australia. They essentially concluded that
14:57:12 12 --

14:57:15 13 MS. WYRZYKOWSKI: Objection, your Honor, best
14:57:18 14 evidence rule. It's hearsay.

14:57:19 15 MR. PICCIRILLI: It's attached to the document.

14:57:22 16 THE WITNESS: Can I have it?

14:57:22 17 MR. PICCIRILLI: Yes.

14:57:23 18 THE COURT: We'll stop the answer and start
14:57:26 19 a new one.

14:57:27 20 MR. PICCIRILLI: I think this is Exhibit 13.

14:57:30 21 MS. WYRZYKOWSKI: Can you tell me the title,
14:57:33 22 please?

14:57:34 23 MR. PICCIRILLI: Pediatric Long Covid or long
14:57:37 24 pandemic syndrome. 13?

14:57:42 25 THE CLERK: Yes, Counsel, 13.

14:57:45 1 THE WITNESS: Right. So, so --

14:57:46 2 MR. PICCIRILLI: Your Honor, just to be clear.

14:57:48 3 Q Doctor, let's go through and identify the whole packet
14:57:51 4 first.

14:57:51 5 A Right. So the first page --

14:57:52 6 Q That's something you prepared?

14:57:53 7 A Yes, it is. The cover is what I prepared.

14:57:55 8 Q The second page?

14:57:57 9 A The second page as well.

14:57:58 10 Q And on your second page you reference certain articles,
14:58:06 11 medical articles?

14:58:07 12 A Actually on both pages. There's one reference on what
14:58:11 13 you handed me, it says Pediatric Long Covid or Long
14:58:15 14 Pandemic Syndrome, that's the top page.

14:58:17 15 The second page is about the multi-system
14:58:21 16 inflammatory syndrome and that has three additional
14:58:25 17 references.

14:58:25 18 Q Okay. And the articles that are attached to that
14:58:28 19 document?

14:58:28 20 A Yes.

14:58:29 21 Q What are those documents?

14:58:30 22 A So if we're going to match them up according to Pediatric
14:58:35 23 Long Covid, there's the review that's referenced and it
14:58:43 24 says, this is from pediatric infectious diseases. It's
14:58:48 25 called How Common is Long Covid in Children and

14:58:52 1 Adolescents?

14:58:53 2 And, again, what they did is they reviewed 14
14:58:57 3 studies of so-called pediatric long Covid syndrome, and
14:59:02 4 what they found was that it's quite striking. They found
14:59:07 5 first of all, that the evidence was very limited, and
14:59:10 6 that the studies were very -- themselves had significant
14:59:15 7 limitations --

14:59:16 8 MS. WYRZYKOWSKI: Objection, your Honor. It's
14:59:18 9 not a full exhibit for him to read from and if we're
14:59:21 10 going to read from the exhibit if I could direct --

14:59:23 11 THE COURT: Sustained.

14:59:25 12 Q Okay. So, Doctor, let's get back to identifying each of
14:59:28 13 the documents. So the first two pages you prepared?

14:59:31 14 A Yup.

14:59:31 15 Q The next article, I might have them out of order. You
14:59:35 16 referenced to how common is long Covid in children.
14:59:39 17 Should that be the next document?

14:59:40 18 A Yes, right. Exactly.

14:59:41 19 Q And the next one is Concurrent Respiratory Virus and
14:59:47 20 Kawasaki Disease?

14:59:47 21 A Yup.

14:59:47 22 Q And then the last one is JAMA article Characteristics and
14:59:54 23 overcomes of U.S. Children and Adolescents with MIS-C?

14:59:57 24 A Yup.

14:59:58 25 Q So, when you prepared these two pages, these are the

15:00:04 1 three articles that you were relying upon? Three of the
15:00:06 2 articles you were relying upon?

15:00:08 3 A Yes.

15:00:09 4 Q Okay. And, again, you formed your opinion based upon
15:00:17 5 your training, experience, knowledge, skill and education
15:00:28 6 in coming to the conclusions you list on pages one and
15:00:32 7 two; correct?

15:00:32 8 A Right. That basically --

15:00:34 9 Q What is that opinion?

15:00:35 10 A Yes, basically you could look at even test positivity.
15:00:40 11 In other words, you would think that the -- that only the
15:00:44 12 children that tested positive for long Covid would have
15:00:48 13 the long Covid syndrome, and low and behold it was quite
15:00:53 14 prevalent in children that didn't test positive. And the
15:00:59 15 authors concluded that some of this phenomenon maybe
15:01:03 16 related to the stresses of the pandemic itself, as
15:01:07 17 opposed to having some sort of long term, they call it
15:01:11 18 long term consequences of being, having a Covid infection
15:01:15 19 at one point.

15:01:16 20 Q Is there a specific page on the -- how common long Covid
15:01:24 21 is, an article that references that?

15:01:26 22 A Well, yeah, you could actually get it out of the
15:01:29 23 abstract.

15:01:30 24 Q Which is located where, on the top left?

15:01:33 25 A Yup.

15:01:33 1 Q Okay. The next reference talks about perspective on
15:01:44 2 COVID-19 associated MIS, based upon review from May of
15:01:50 3 2020, 140 cases. And you state a conclusion there, or
15:01:54 4 you cite a conclusion that's in the article; is that
15:01:56 5 correct?

15:01:56 6 A Yes. So the first reference is to the fact that this is
15:02:05 7 a very difficult diagnosis, and it's also associated with
15:02:12 8 many other respiratory viruses, including very common
15:02:15 9 respiratory viruses like Rhino virus, the most common
15:02:19 10 cold causing virus and other human corona viruses that
15:02:24 11 have been with us long before Covid that can cause common
15:02:27 12 cold syndrome.

15:02:30 13 So there's always that difficulty in piecing out all
15:02:32 14 these other competing possibilities. And the other
15:02:38 15 problem is that even in the series that, the larger
15:02:42 16 series that was published in the United States that was
15:02:45 17 recorded in JAMA

15:02:52 18 Q Which is that? Is that the last?

15:02:54 19 A That's the rather lengthy one. In the supplement, in the
15:02:58 20 supplement what I found was a table.

15:03:01 21 Q Can you reference the page of that, Doctor?

15:03:04 22 A Not off the top of my head. I don't have that.

15:03:23 23 THE COURT: We're in the third article now?

15:03:25 24 MR. PICCIRILLI: Correct, your Honor.

15:03:27 25 A Yes, so let's see. Okay. So if you go to, it's called

15:03:40 1 E Table 4. So you have to go past the references in this
15:03:44 2 giant article, and then it would be the first
15:03:47 3 supplementary table that's attached. It's called E Table
15:03:52 4 4, SARS through test results, etc.

15:03:56 5 Q Can you just count through the pages?

15:04:03 6 THE COURT: The page after 1087.

15:04:05 7 THE WITNESS: The page after 1087. Thank you,
15:04:08 8 your Honor. If you look down what struck me was that
15:04:12 9 only, if you look at the column that says MIS-C gives you
15:04:19 10 the number of 539. If you go down and look at the people
15:04:24 11 that were both PCR positive and then had positive
15:04:29 12 antibodies, that's only 31 percent of the sample.

15:04:33 13 And so there's, again to me, to me, it says that
15:04:39 14 there's a lot of murkiness about this diagnosis and that
15:04:45 15 that should be borne in mind when considering the whole
15:04:50 16 syndrome itself.

15:04:52 17 And then the other issue was that it still, thank
15:04:58 18 God can be treated aggressively, and is treated
15:05:01 19 aggressively without major mortality, and I think that's
15:05:06 20 an important, an important silver lining.

15:05:10 21 MR. PICCIRILLI: I move that as a full exhibit,
15:05:11 22 your Honor.

15:05:11 23 MS. WYRZYKOWSKI: Objection, your Honor. Only
15:05:13 24 with respect to -- I'm going to call this page one and
15:05:17 25 page two, and I'm just showing it to the Court, which is

15:05:20 1 the alleged summary of the articles. You have the
15:05:23 2 articles themselves. So these summaries would be hearsay
15:05:27 3 and be part of the best evidence rule.

15:05:29 4 I have no objection to the actual articles, the
15:05:31 5 three articles that were apart of Exhibit 13 coming in.

15:05:31 6 THE COURT: Mr. Piccirilli?

15:05:51 7 MR. PICCIRILLI: Your Honor, I think every
15:05:52 8 expert is allowed to hear summary and report based upon
15:05:58 9 their review of documentation in the ordinary course of
15:06:05 10 their, um, I mean there's Rule 703, summarizes to the
15:06:13 11 extent that it assists this Court in deciding,
15:06:18 12 understanding the issue.

15:06:30 13 THE COURT: Doctor, the conclusion, the
15:06:38 14 quotations that you wrote on the first page, the cover
15:06:41 15 page, that's contained in the article reference?

15:06:43 16 THE WITNESS: Yes, the one from pediatric long
15:06:46 17 Covid specifically.

15:06:47 18 THE COURT: And that's attached, right?

15:06:49 19 THE WITNESS: Yes.

15:06:49 20 THE COURT: Okay. The second page, I'm not
15:07:04 21 sure there's foundation as to what is it is,
15:07:06 22 Mr. Piccirilli.

15:07:08 23 MR. PICCIRILLI: The page that says "Pediatric
15:07:12 24 Multi-System Inflammatory Syndrome?"

15:07:15 25 THE COURT: Yes. Are those your conclusions,

15:07:17 1 Doctor, or those quotations? What is that?

15:07:19 2 THE WITNESS: So the first one is just my own
15:07:27 3 summary of what I gleaned from the article that's
15:07:32 4 referenced. So the fact that there were so many other
15:07:36 5 potential respiratory viruses that could cause the
15:07:39 6 syndrome. So that was my interpretation.

15:07:42 7 The second bullet includes a quote from a pre-print,
15:07:49 8 which is not in the packet, but it's a direct quote, and
15:07:55 9 it was just I felt, I felt that that was reassuring.

15:07:59 10 The third bullet is just what we walked through in
15:08:03 11 that table, and there was additional evidence in that
15:08:09 12 very long JAMA article that, and there was difficulty in
15:08:16 13 linking the deaths that were enumerated. If you go to
15:08:19 14 the very end of the packet, there were -- these were
15:08:22 15 deaths they were obviously having difficulty adjudicating
15:08:26 16 as to whether or not SARS-CoV-2 was the primary cause of
15:08:31 17 death. But that is my interpretation, your Honor.

15:08:42 18 THE COURT: On Exhibit 13, the cover page, may
15:08:45 19 stay a part of Exhibit 13. The three articles may stay
15:08:48 20 a part of Exhibit 13. Page 2 should be removed from
15:08:52 21 Exhibit 13 and labeled as 13A. 13A stays for
15:08:56 22 identification. 13 is full.

15:08:59 23 MR. PICCIRILLI: Thank you, your Honor.

15:08:59 24 **(PLAINTIFFS' EXHIBIT 13 WAS MARKED FULL)**

15:08:59 25 **(PLAINTIFFS' EXHIBIT 13A WAS MARKED FOR IDENTIFICATION)**

15:09:00 1 THE COURT: We'll take a short break, give me a
15:09:04 2 minute I need to organize. We need to organize so why
15:09:08 3 don't we do that, and I know you need to get ready for
15:09:12 4 your continued exam, Mr. Piccirilli, but at some point I
15:09:15 5 should -- we should talk about for five minutes about the
15:09:19 6 schedule during the break when you get a chance.

15:09:23 7 MR. PICCIRILLI: Yes, your Honor.

15:09:24 8 THE COURT: Thank you. So we'll take a break.
15:09:27 9 I'll see you in a moment.

15:09:27 10 THE SHERIFF: All rise. Court is in recess.

15:09:37 11 **(Break taken)**

15:30:54 12 THE COURT: Dr. Boston, please.

15:31:06 13 THE CLERK: I'd just like to remind the witness
15:31:08 14 that having been previously sworn in you are still under
15:31:11 15 oath. If you could just state your name again for the
15:31:11 16 record.

15:31:13 17 THE WITNESS: Dr. David Boston.

15:31:15 18 THE CLERK: Thank you. Counsel, I do have all
15:31:17 19 the exhibits still.

15:31:18 20 MR. PICCIRILLI: Thank you. If I can show the
15:31:21 21 witness Exhibit 14, please.

15:31:21 22 THE CLERK: 14.

15:31:45 23 Q Doctor, Exhibit 14, is this something that you prepared?

15:31:48 24 A Yes.

15:31:49 25 Q So, Doctor, based upon again your skill, knowledge

15:31:57 1 training, education, as well as your review of the data,
15:32:01 2 have you come to a conclusion as to whether or not there
15:32:04 3 has been any confirmed pediatric deaths in Rhode Island
15:32:10 4 where the primary cause of death was COVID-19?

15:32:14 5 A Yes.

15:32:14 6 Q And have there been any deaths?

15:32:17 7 MS. WYRZYKOWSKI: Objection, your Honor.
15:32:18 8 Foundation.

15:32:19 9 MR. PICCIRILLI: I'll ask him where he got his
15:32:23 10 information.

15:32:23 11 THE COURT: Withdrawn. Go ahead.

15:32:24 12 Q Doctor, what information did you access for yourself to
15:32:31 13 make that determination?

15:32:33 14 A Okay. So I access, the CDC tracks deaths across the
15:32:41 15 country, breaks them down by age and it includes state by
15:32:47 16 state. They have an entry that has zero deaths for Rhode
15:32:56 17 Island. But, moreover, I began attempting, I think it
15:33:02 18 was August 4th I wrote to the Rhode Island Department of
15:33:07 19 Health spokesperson, Mr. Joseph Winbelkin, to supply me
15:33:12 20 with information, which apparently was subsequently
15:33:16 21 released to WPRI because there was a news report that
15:33:20 22 came out already about six weeks after I put in my
15:33:24 23 request, about specifically primary caused pediatric
15:33:24 24 deaths in Rhode Island.

15:33:31 25 MS. WYRZYKOWSKI: Objection, your Honor.

15:33:33 1 THE COURT: So you were trying to get the
15:33:35 2 source and now you're saying the source is a news report.

15:33:39 3 THE WITNESS: I was denied the source.

15:33:41 4 THE COURT: Well, the question was, what is
15:33:43 5 your source?

15:33:44 6 THE WITNESS: Yes, the source. The source was
15:33:47 7 a report that the Rhode Island Department of Health gave
15:33:50 8 to WPRI in relation to this case, actually. Which said
15:33:55 9 that there were 0 primary caused COVID-19 deaths in the
15:33:59 10 report, in the report by WPRI.

15:33:59 11 MS. WYRZYKOWSKI: Objection, your Honor.

15:34:03 12 MR. PICCIRILLI: If I can follow-up, Judge.

15:34:06 13 THE COURT: Well, I didn't want to pass over
15:34:08 14 the objection. There was no conclusion in the objection,
15:34:11 15 in the testimony. It was only a source, am I right?

15:34:14 16 MS. WYRZYKOWSKI: That is how I interpreted it.
15:34:16 17 I objected in response to hearsay, which is not from the
15:34:21 18 Rhode Island Department of Health ordinary course of
15:34:23 19 business. It's from some third source. I don't remember
15:34:25 20 exactly what he said.

15:34:26 21 THE WITNESS: It was published in WPRI.

15:34:29 22 MS. WYRZYKOWSKI: WPRI.

15:34:32 23 THE WITNESS: According to the Department of
15:34:32 24 Health.

15:34:34 25 THE COURT: You're concerned about authenticity

15:34:36 1 but we'll see where Mr. Piccirilli goes.

15:34:39 2 MR. PICCIRILLI: If we can just mark for the
15:34:42 3 record Exhibit 18.

15:34:42 4 **(PLAINTIFFS' EXHIBIT 18 WAS MARKED FOR**
15:34:42 5 **IDENTIFICATION)**

15:35:03 6 Q Doctor, is this an article that you saw that you have
15:35:09 7 been referencing --

15:35:09 8 A Yes.

15:35:10 9 Q -- from Channel 12. Just to be clear, the article is
15:35:13 10 dated September 16th, and this appears to be an article
15:35:17 11 written in response to the filing of this lawsuit;
15:35:20 12 correct?

15:35:21 13 A Yes.

15:35:21 14 MS. WYRZYKOWSKI: Objection, your Honor.

15:35:23 15 MR. PICCIRILLI: It's forming the basis of --
15:35:25 16 your Honor, if I could proffer about how he gets --

15:35:30 17 THE COURT: The objection is overruled. Go
15:35:32 18 ahead.

15:35:32 19 Q So again there was a story that was published regarding
15:35:38 20 this lawsuit?

15:35:39 21 A Right.

15:35:40 22 Q Okay. Are you aware in that complaint that one of the
15:35:44 23 parents alleged that there had been no COVID-19 deaths in
15:35:47 24 Rhode Island. It's an allegation she makes in the
15:35:50 25 complaint; correct?

15:35:50 1 A Yes.

15:35:51 2 Q And there was an article in the paper where they claim
15:35:54 3 that was a false statement?

15:35:55 4 A And then they issued this correction.

15:35:58 5 Q And they issued a correction, and it was based upon
15:36:00 6 information provided to them by the Department of Health?

15:36:02 7 A That's what the article says.

15:36:03 8 Q And the information provided by the Department of Health,
15:36:06 9 there were three Covid deaths in Rhode Island, pediatric
15:36:10 10 deaths, but the primary cause was not --

15:36:12 11 MS. WYRZYKOWSKI: Objection, your Honor. Move
15:36:13 12 to strike. He's reading from a document that has not
15:36:16 13 been introduced into evidence, and the State renews its
15:36:20 14 objection with double hearsay with respect to the
15:36:21 15 article.

15:36:22 16 MR. PICCIRILLI: Your Honor, this is prefatory
15:36:24 17 of his conclusion as to --

15:36:25 18 THE COURT: Has the right to ask a question but
15:36:29 19 I think the objection is probably going to be sustained
15:36:32 20 but go ahead. You have a right to make a record. You
15:36:35 21 can ask it again.

15:36:36 22 Q So again, Doctor, not taking for the truth of the matter
15:36:42 23 of what was reported that there were zero Covid deaths as
15:36:46 24 a primary cause, but this article caused you to make some
15:36:50 25 further inquiry; correct?

15:36:51 1 A Well, as I mentioned, I had put in a request for exactly
15:36:54 2 this kind of information for both 2020 and 2021 to the
15:37:00 3 Department of Health spokesperson, Joseph Wendelken, and
15:37:05 4 it had -- this just served as a reminder that it had been
15:37:10 5 six weeks and I hadn't gotten a reply, and so I put in
15:37:15 6 the request again --

15:37:15 7 MS. WYRZYKOWSKI: Objection, your Honor, non
15:37:17 8 responsive.

15:37:18 9 THE COURT: Next question, please.

15:37:21 10 Q So, Doctor, after you saw that article you renewed your,
15:37:25 11 let's say by your testimony is correct, prior to this
15:37:28 12 article you made inquiries with the Department of Health
15:37:31 13 as to the number of pediatric Covid deaths?

15:37:34 14 A Yes, and heard nothing back.

15:37:37 15 Q After you saw that article did you renew your request?

15:37:40 16 A Yes.

15:37:40 17 Q And I am going to show you Exhibit 17. And, Doctor, this
15:38:05 18 is an e-mail chain that's actually reverse order. The
15:38:08 19 last page, is that where it starts, on Monday, October 4,
15:38:18 20 bottom of Page 3?

15:38:19 21 A Yes, this is the October 4th exchange.

15:38:22 22 Q Now in this e-mail, this is an e-mail from yourself to
15:38:29 23 Mr. Wendelken?

15:38:30 24 A Wendelken.

15:38:32 25 Q And, again, who is Wendelken?

15:38:34 1 A He, as far as I know, he's the spokesperson for the
15:38:37 2 Department of Health.

15:38:37 3 Q Have you had previous communications with him?

15:38:40 4 A Going back to August 4th, when I checked my e-mails.

15:38:44 5 Q Okay. And amongst other data what you were looking for
15:38:48 6 was, as you say, I need to know, and this is on the last
15:38:51 7 page: Indeed you, RIDH, gave more information to WPRI.

15:39:00 8 I'm sorry, going back to the bottom of Page 3. They have
15:39:05 9 been provided the mortality totals from 2020 and the
15:39:08 10 totals thus far 2021 that is caused from mortality and
15:39:13 11 not just Covid?

15:39:14 12 A Yes.

15:39:15 13 MS. WYRZYKOWSKI: Your Honor, objection. This
15:39:15 14 has not been marked as a full exhibit at this point in
15:39:17 15 time. And I also have concerns about them reaching out
15:39:17 16 to the Department of Health, which is actually a
15:39:20 17 defendant in this case.

15:39:22 18 THE COURT: It's not a full exhibit.
15:39:24 19 Sustained.

15:39:24 20 Q Doctor, is this an e-mail chain of communications between
15:39:30 21 yourself and the Department of Health?

15:39:31 22 A Yes.

15:39:31 23 Q And is this something that you do in the ordinary course
15:39:36 24 of your profession, inquire from the Department of Health
15:39:39 25 of certain information?

15:39:40 1 A Yeah.

15:39:41 2 Q And you've been doing that from before this lawsuit
15:39:44 3 began?

15:39:45 4 A Yes.

15:39:45 5 Q You said I think you testified it was on August 4?

15:39:48 6 A About this matter, yes, first e-mail was August 4.

15:39:52 7 Q And the information you were seeking from the Department
15:39:55 8 of Health, even before this lawsuit, was all cause and
15:39:58 9 mortality of all pediatrics deaths in Rhode Island,
15:40:03 10 correct, as one thing?

15:40:04 11 A And that would obviously include, you know, if they
15:40:08 12 weren't a Covid death, Covid deaths.

15:40:10 13 MR. PICCIRILLI: And specifically you, well, I
15:40:16 14 move this e-mail as authenticated by this witness. It's
15:40:18 15 all the e-mails between yourself and the Department of
15:40:18 16 Health.

15:40:18 17 MS. WYRZYKOWSKI: Objection, your Honor. They
15:40:24 18 are talking about something that occurred right before
15:40:24 19 this lawsuit began, an e-mail chain exchange that
15:40:29 20 happened, excuse me, after the lawsuit began. I have
15:40:31 21 October 4th, October 4th, October 4th and October 4th.

15:40:34 22 MR. PICCIRILLI: So the States' position, your
15:40:36 23 Honor, is that since I'm suing the Department of Health,
15:40:38 24 I'm prohibited from getting information from the
15:40:40 25 Department of Health? That seems extraordinary.

15:40:43 1 MS. WYRZYKOWSKI: Your Honor, we discussed this
15:40:44 2 matter loosely last Friday when they were trying to get
15:40:47 3 information, and we talked about having loose discovery
15:40:49 4 of some sort. You wouldn't ordinarily have him reach out
15:40:53 5 to the Department of Health to get that information.
15:40:54 6 They would likely go through someone like myself, who is
15:40:58 7 counsel of record.

15:40:58 8 Every single State employee, anyone sitting in this
15:41:02 9 room is entitled to representation from the AG's office.
15:41:03 10 That's the only point I'm trying to make. It seems like
15:41:06 11 it disturbs the rules of discovery if they deemed this in
15:41:09 12 this particular matter.

15:41:10 13 THE COURT: A little slower.

15:41:12 14 MS. WYRZYKOWSKI: More specifically, they were
15:41:12 15 talking about some exchange that occurred in August, and
15:41:15 16 this exchange occurred in October.

15:41:18 17 THE COURT: I'm not sure what the time has to
15:41:21 18 do with this. Its been authenticated. I'm not sure what
15:41:24 19 the probative value is and I'm particularly concerned
15:41:28 20 about the hearsay. Where were you, Mr. Piccirilli?

15:41:32 21 MR. PICCIRILLI: Again, your Honor, just trying
15:41:32 22 to get to the point where this witness is offering his
15:41:35 23 opinion that there have been no Covid pediatric deaths in
15:41:39 24 Rhode Island and how he came to that conclusion.

15:41:42 25 MS. WYRZYKOWSKI: And right now, your Honor,

15:41:43 1 the only way he's been able to come to that conclusion is
15:41:46 2 allegedly through an article from WPRI, not from direct
15:41:49 3 sources of information.

15:41:49 4 MR. PICCIRILLI: I haven't finished asking the
15:41:51 5 witness how he got to that conclusion. This is two. I
15:41:55 6 have three more exhibits after this, unfortunately.

15:41:57 7 THE COURT: Why don't you ask him where he got
15:41:59 8 it from? Go for it.

15:42:04 9 MR. PICCIRILLI: All right, Judge. I'll get
15:42:05 10 there. I think Exhibit 17 is appropriate. I would like
15:42:09 11 it as a full exhibit. It shows the effort that this
15:42:12 12 witness has to go through to try and get this information
15:42:16 13 from the State.

15:42:17 14 THE COURT: But where does that get you in the
15:42:20 15 whole suit? You're trying to get the one fact and I
15:42:22 16 can't use it to -- if it does contain a fact, I can't use
15:42:27 17 it for that because that would be hearsay. That would be
15:42:30 18 proving the point of the matter asserted.

15:42:31 19 MR. PICCIRILLI: Well, what this document
15:42:35 20 provides --

15:42:35 21 THE COURT: That document is already
15:42:38 22 substantiated in his testimony that he's gone through a
15:42:40 23 great deal to get information from the Department of
15:42:40 24 Health.

15:42:42 25 MR. PICCIRILLI: Okay. Let me do this.

15:42:45 1 MS. WYRZYKOWSKI: Your Honor, if I may be
15:42:47 2 heard? I just want to know that they were talking about
15:42:50 3 the length of the document to go through. This e-mail
15:42:51 4 chain started on October 4th, that was five days ago.

15:42:55 5 THE COURT: He already testified about the
15:42:57 6 length of time. He talked about writing to Mr. Wendelken
15:43:01 7 on August 4th.

15:43:05 8 MR. PICCIRILLI: Right. I didn't attach the
15:43:07 9 whole e-mail chain. I was trying to keep it somewhat
15:43:10 10 limited. I can certainly provide the e-mail chain. I'm
15:43:13 11 sure they can get it from their own client but I'll move
15:43:16 12 on, Judge.

15:43:17 13 THE COURT: Thank you.

15:43:18 14 MR. PICCIRILLI: Exhibit 22.

15:43:46 15 Q Doctor, where does Exhibit 22 come from? Where did you
15:43:49 16 access this?

15:43:50 17 A This is from the Rhode Island Department of Health
15:43:52 18 dashboard in Covid.

15:43:54 19 Q So this is from the Rhode Island Department of Health.
15:43:56 20 And can you explain what this document is?

15:44:01 21 A So it's just a simple bar graph showing where the fatal
15:44:06 22 event, at what ages for the fatal events have occurred.

15:44:10 23 And --

15:44:12 24 Q So, for example, from ages 0 to 4, according to the
15:44:15 25 Department of Health's own website, how many Covid deaths

15:44:20 1 in the age of 0 to 4 were there?

15:44:21 2 A It looks like a zero to me.

15:44:23 3 MS. WYRZYKOWSKI: Objection, your Honor.

15:44:24 4 There's just no date. There's no date, no time frame of
15:44:27 5 when this graph was created, what they're trying to use
15:44:30 6 it for. All I see is 2018, the American Community
15:44:30 7 Survey.

15:44:35 8 MR. PICCIRILLI: Fair enough.

15:44:35 9 Q Doctor, when did you access this document last?

15:44:38 10 A This morning.

15:44:39 11 Q This morning?

15:44:39 12 A Yes.

15:44:40 13 Q Okay.

15:44:41 14 MR. PICCIRILLI: Does that satisfy?

15:44:43 15 THE COURT: Can you read from it? It's not
15:44:45 16 full.

15:44:46 17 MS. WYRZYKOWSKI: Your Honor, at this point I'm
15:44:47 18 just trying to ascertain what years are at issue in this
15:44:51 19 graph.

15:44:51 20 THE COURT: I understand.

15:44:51 21 Q Doctor, COVID-19 fatality deaths, what timeframe does
15:44:56 22 this cover?

15:44:56 23 A The entire pandemic.

15:44:58 24 Q So from March of 2020 until the present?

15:45:01 25 A Essentially, yes.

15:45:01 1 Q And you testified you accessed this today?

15:45:03 2 A This morning.

15:45:04 3 Q This morning from the State Department of Health website?

15:45:07 4 A Yup.

15:45:07 5 MR. PICCIRILLI: I move it as a full exhibit.

15:45:09 6 THE COURT: 22 is full.

15:45:11 7 **(PLAINTIFFS' EXHIBIT 22 WAS MARKED FULL)**

15:45:11 8 Q Now, Doctor, how many Covid deaths, according to the
15:45:14 9 Department of Health, have there been for children ages 0
15:45:18 10 to 4?

15:45:18 11 A Zero.

15:45:19 12 Q Five to nine?

15:45:20 13 A Zero.

15:45:21 14 Q Ten to fourteen?

15:45:22 15 A Zero.

15:45:23 16 MS. WYRZYKOWSKI: Objection, your Honor.

15:45:24 17 Q 15 --

15:45:26 18 MS. WYRZYKOWSKI: Your Honor, please look at
15:45:27 19 note, the third note down, "Counts less than five are
15:45:30 20 displayed as zero." That's specifically in the graph
15:45:33 21 itself. That's the third note.

15:45:36 22 THE COURT: An excellent point for
15:45:36 23 cross-examination.

15:45:38 24 Q Fifteen to eighteen?

15:45:40 25 A Zero.

15:45:41 1 Q Eighteen to twenty-four?

15:45:43 2 A Zero.

15:45:45 3 Q Nineteen to twenty-four.

15:45:46 4 A Zero.

15:45:47 5 Q So from, according to the Rhode Island Department of
15:45:51 6 Health's own website, there have been zero Covid deaths
15:45:55 7 for anyone under the age of 25 in this state, during this
15:45:59 8 entire pandemic; is that correct, Doctor?

15:45:59 9 A That's what I read.

15:46:01 10 MS. WYRZYKOWSKI: Objection, your Honor.

15:46:02 11 That's a mischaracterization. There's originally a note
15:46:04 12 that explains that.

15:46:05 13 THE COURT: He doesn't know how he's going to
15:46:07 14 answer the question. It's a direct question to a
15:46:09 15 witness. It's fair. Overruled.

15:46:09 16 THE WITNESS: Should I answer?

15:46:13 17 THE COURT: If you remember the question.

15:46:14 18 THE WITNESS: Yes, I do. Yes. So, your Honor,
15:46:17 19 and the Court, I mean this is why I made my inquiry to
15:46:22 20 the State to the Department of Health spokesperson, to
15:46:24 21 get clarification. I'm not used to seeing, as an
15:46:29 22 epidemiologist, as a data analyst, I'm not used to seeing
15:46:34 23 displays like this which have, which have on the one hand
15:46:38 24 less than 5, on the other hand say 0. So I wanted to
15:46:42 25 reconcile that difference from the source.

15:46:44 1 Q Doctor --

15:46:46 2 THE WITNESS: I've been denied that
15:46:47 3 opportunity.

15:46:47 4 Q But again, if I can have the last question read back. I
15:46:51 5 just want to be clear about the last question.

15:46:51 6 (Record read)

15:47:20 7 MR. PICCIRILLI: Is that correct, Doctor?

15:47:21 8 A Yes, and it fits the context.

15:47:23 9 Q So let's go back to Exhibit 14.

15:47:26 10 A Yes.

15:47:27 11 Q So, again, when you prepared Exhibit 14, what information
15:47:35 12 and documentation did you rely upon in preparing this
15:47:38 13 document?

15:47:39 14 A Okay. Yes. So the American Academy of Pediatrics
15:47:49 15 indicated that seven other states in the U.S. have had
15:47:54 16 zero deaths throughout the entire course of the pandemic.
15:47:59 17 So that was the larger context in which I was trying to
15:48:02 18 obtain the specific information about Rhode Island.

15:48:07 19 And also there's data from AAP, American Academy of
15:48:12 20 Pediatrics that the infection fatality ratio, the number
15:48:18 21 of children getting infected relative to those who died
15:48:22 22 is 0.00 percent to 0.03 percent, which means there's a
15:48:28 23 survival rate of 99.97 percent after a COVID-19 infection
15:48:28 24 --

15:48:33 25 MS. WYRZYKOWSKI: Objection.

15:48:34 1 MR. PICCIRILLI: Doctor, you have to wait.

15:48:35 2 There's an objection.

15:48:36 3 THE COURT: Actually, he can finish his answer.

15:48:36 4 MR. PICCIRILLI: Okay. Go ahead, Doctor.

15:48:39 5 THE WITNESS: When I went to the CDC website,
15:48:41 6 which I mentioned earlier, it lists the same zero for
15:48:46 7 Covid deaths in Rhode Island. The larger context was
15:48:50 8 looking at -- and this is May, this is before the Delta
15:48:55 9 wave, was looking at 26.8 million Covid infections by the
15:48:59 10 CDC estimate. Looking at corrected COVID-19 deaths, and
15:49:05 11 I'll explain that, which gives a pediatric infection
15:49:08 12 fatality ratio of 0.0012 percent or a 99.998 survival
15:49:15 13 rate, and I know this is a long answer, but that's the
15:49:18 14 reason why I wanted specific clarification about --

15:49:22 15 Q Doctor, listen, we're not talking about the information.
15:49:26 16 I'm just asking you how you prepared this document, and
15:49:29 17 that information you got directly from the AAP website?

15:49:32 18 A Exactly. And the CDC.

15:49:35 19 THE COURT: The State's objection?

15:49:36 20 MS. WYRZYKOWSKI: Your Honor, the objection to
15:49:39 21 Number 14, it isn't an exhibit marked in full. It's a
15:49:41 22 summary. It's hearsay. And he read from the exhibit and
15:49:44 23 it wasn't marked in full. Again, hearsay.

15:49:46 24 MR. PICCIRILLI: I'll move it as a full
15:49:48 25 exhibit, your Honor.

15:49:48 1 MS. WYRZYKOWSKI: And the State objects because
15:49:50 2 it was out of proffer.

15:49:52 3 MR. PICCIRILLI: I'm sorry.

15:49:55 4 MS. WYRZYKOWSKI: It's hearsay. It's against
15:49:57 5 the evidence rules. He didn't provide that. It's a
15:50:00 6 snippet --

15:50:00 7 THE COURT: The two of you fighting doesn't
15:50:02 8 help.

15:50:02 9 MS. WYRZYKOWSKI: Sorry.

15:50:16 10 THE COURT: Rhode Island Rules of Evidence
15:50:18 11 1006 allows summaries of -- allows for summary for
15:50:23 12 contents of voluminous writing which cannot conveniently
15:50:27 13 be examined and may be presented in the form of a
15:50:30 14 summary.

15:50:32 15 But the original has got to be available for
15:50:35 16 examination or copying. But there are citations. It
15:50:49 17 seems to the Court that that's been done. 14 is full.

15:50:49 18 **(PLAINTIFFS' 14 WAS MARKED FULL)**

15:50:57 19 MR. PICCIRILLI: Thank you, your Honor.

15:50:58 20 THE WITNESS: May I just clarify, please? I
15:50:58 21 made a mistake.

15:50:58 22 MR. PICCIRILLI: No, there's no question
15:51:03 23 pending, Doctor. Doctor, just answer the questions.

15:51:04 24 Q So that was the top part of 14. The bottom part of 14
15:51:09 25 you also summarize some data from the -- it looks like

15:51:12 1 from the Rhode Island Department of Health website; is
15:51:15 2 that correct?

15:51:15 3 A Yes.

15:51:15 4 Q And what is that data that you summarize?

15:51:18 5 A There's an error, the citation should be Page 15. It's
15:51:21 6 not Page 14. I made a typographical error. But this is
15:51:25 7 a publication that was following up on H1N1 pediatric
15:51:33 8 COVID-19 pandemic flu and deaths during a 12 month period
15:51:38 9 in 2009-2010, and it showed that there were three
15:51:43 10 confirmed H1N1 pediatric COVID-19 deaths during that 12
15:51:48 11 month period.

15:51:49 12 And this reflects national statistics which show
15:51:55 13 that pediatric mortality risk occurring during that
15:51:59 14 pandemic was about six fold what we've seen relative to
15:52:02 15 Covid.

15:52:10 16 MR. PICCIRILLI: May I take a look at the
15:52:12 17 exhibit, please, I think 15.

15:52:21 18 THE CLERK: Handing the witness Plaintiffs'
15:52:27 19 Exhibit 15 for identification.

15:52:33 20 Q Again, Doctor, what does this document represent?

15:52:36 21 A Okay. So, this is a comparison based on annual events of
15:52:43 22 COVID-19 deaths in 2020. COVID-19 deaths in 2021 versus
15:52:50 23 both pandemic and seasonal flu in the years indicated.

15:52:55 24 If you go to the far right column under deaths,
15:52:59 25 you'll see two numbers for the COVID-19 deaths, and the

15:53:05 1 number to the right, after the slash line, is based on a
15:53:12 2 correction that I applied based on the reference from
15:53:20 3 Morbidity and Mortality Weekly Reports, which is the
15:53:23 4 table reproduced at the bottom, which shows you that
15:53:25 5 about 35 percent of the deaths had "No plausible chain of
15:53:30 6 events or significant contributing condition."

15:53:33 7 So as someone who has adjudicated death, that's not
15:53:36 8 a death. And the CDC and MMWR is basically acknowledging
15:53:43 9 that. So you can use that as a correction.

15:53:47 10 But even if you use the raw numbers, the 198 for
15:53:51 11 2020, the 280 for 2021, now you have to look at pandemic
15:53:58 12 flu deaths, all reported via CDC of 1282 in the pandemic
15:54:04 13 flu of 2009-10. Seasonal flu, 2012 to 13, 1161.
15:54:11 14 Seasonal flu, 2014 to 2015, 803. Seasonal flu, 2017 to
15:54:17 15 2018, 643. Seasonal flu, 2018 to 2019, 477. Seasonal
15:54:25 16 flu, 2019 to 2020, 434. Seasonal flu, 2010 to 2011, 352.

15:54:35 17 So clearly, whether it's seasonal flu in certain bad
15:54:40 18 years or certainly pandemic flu is contributing a
15:54:45 19 considerable excess of mortality relative to Covid deaths
15:54:49 20 in the pediatric age group.

15:54:51 21 Q So it would be fair to say that according to this chart
15:54:54 22 the seasonal flu has been ten times more deadly than
15:55:01 23 COVID-19 pandemic for pediatric patients?

15:55:05 24 A I wouldn't say its quite that high. I would say even in
15:55:09 25 the milder years listed here it can be, it can be, you

15:55:13 1 know, two fold, maybe up to about five fold. I would say
15:55:16 2 more like six fold when you compare it to pandemic flu.
15:55:20 3 It depends, again, you use the corrective values,
15:55:23 4 obviously it can get close to the numbers that you were
15:55:27 5 suggesting.

15:55:28 6 But if you use the raw numbers, it's still, there's
15:55:31 7 a gross excess of yearly deaths on the basis of influenza
15:55:37 8 relative to Covid in all these years.

15:55:40 9 Q Okay. Thank you, Doctor. Exhibit 16. Doctor, what does
15:56:04 10 this document represent?

15:56:06 11 A So, respiratory, pediatric respiratory syncytial virus is
15:56:13 12 particularly a concern in younger children, newborns up
15:56:16 13 to four years old. And what I'm citing here --

15:56:21 14 Q Before you go on, Doctor, what is RSV?

15:56:24 15 A It's a respiratory virus that is particularly lethal in
15:56:30 16 children.

15:56:30 17 Q Okay. How does that compare with, for example, a corona
15:56:34 18 virus?

15:56:34 19 A So that's what I was attempting to do. So I used
15:56:36 20 historical data for respiratory syncytial virus that were
15:56:41 21 published in JAMA. There's a caveat, look at the dates
15:56:41 22 --

15:56:46 23 MS. WYRZYKOWSKI: Objection, your Honor. We're
15:56:48 24 here because of the global pandemic, COVID-19, not
15:56:51 25 because of respiratory disease in children.

15:56:56 1 THE COURT: Overruled.

15:56:58 2 MR. PICCIRILLI: Ignore the objection, Doctor.
15:57:03 3 Finish your answer.

15:57:05 4 A Just to conceptualize so we can see this. We can see
15:57:10 5 this in CDC monitoring of RSV. There's been a huge out
15:57:15 6 of season spike in RSV over the summer, and that raised
15:57:22 7 alarm for me, and also confusion, because, you know, if
15:57:26 8 you're not -- could some of the hospitalizations and
15:57:30 9 deaths that we're hearing about related to Covid be
15:57:34 10 confused with RSV? So it may be curious about what the
15:57:38 11 relative mortality was.

15:57:40 12 So I used historical data for RSV, it is older data.
15:57:45 13 There's no question about that. It's a caveat. But I
15:57:49 14 looked at, again, CDC data, broken down specifically for
15:57:55 15 less than one to four year olds. I also applied that
15:57:59 16 correction that I mentioned previously. But even looking
15:58:02 17 at the raw numbers, so 77 for 2020, again, in the less
15:58:07 18 than one to four year old category, 87 so far in 2021.
15:58:13 19 You can see compared to historical data from RSV there's
15:58:19 20 -- in this age group RSV seems to be a lot more lethal.

15:58:24 21 MR. PICCIRILLI: Okay. Thank you. I don't
15:58:25 22 know if I moved that full. I do now, your Honor.

15:58:28 23 THE COURT: 16 is full.

15:58:30 24 **(PLAINTIFFS' EXHIBIT 16 WAS MARKED FULL)**

15:58:30 25 Q Exhibit, I think we skipped ahead now to 19. Doctor,

15:58:52 1 what is Exhibit 19?

15:58:53 2 A So if you go back, I'm looking at -- if you go back to
15:58:59 3 Exhibit 15, I extracted a table. I just wanted to give
15:59:04 4 the source for that table. It comes from this longer
15:59:08 5 death certificate review that was reported by MWR, and
15:59:13 6 the original can be found on Page 525, and it would just
15:59:21 7 really basically be the top row for the age group less
15:59:25 8 than 18. That's what I extract. I wanted to show that.

15:59:28 9 Q So Exhibit 19 is just the back up for Exhibit 15
15:59:34 10 essentially.

15:59:34 11 A Exactly. Exactly, yes.

15:59:37 12 Q And Exhibit 22.

15:59:45 13 THE COURT: We're almost done Mr. Piccirilli.

15:59:47 14 MR. PICCIRILLI: I understand.

15:59:53 15 Q BY MR. PICCIRILLI: Quickly, Doctor, can you just tell us
15:59:55 16 what this document is?

15:59:57 17 A Certainly. So I make everyone go backwards again. But
16:00:02 18 if you go back to Exhibit 14, at the bottom of the page,
16:00:12 19 in error citing the wrong page. I reported that there
16:00:19 20 were three confirmed H1N1 swine flu pediatric Covid
16:00:23 21 deaths in a twelve month period in 2009 and 2010. And
16:00:27 22 this is the page, it's actually Page 15, that came out of
16:00:31 23 that full document.

16:00:32 24 Q Okay. Doctor, so it's a back up for that?

16:00:35 25 A Right. Right. And by the way, this is the kind of

16:00:39 1 information I'm looking for vis-à-vis current times.

16:00:45 2 THE COURT: And with that I thank the attorneys
16:00:47 3 for their continued work on the case. I think we're
16:00:49 4 going to go to tomorrow at this point.

16:00:51 5 Tomorrow morning I believe we're going to start at
16:00:53 6 eleven o'clock or as soon as I can get to it. I
16:00:56 7 apologize but there are other things on the Court's
16:00:59 8 calendar that can't be helped.

16:01:04 9 Thursday afternoon I won't be able to do the hearing
16:01:08 10 and then we'll continue on Friday and see where we are
16:01:12 11 from there. Probably have the same hours that day,
16:01:16 12 eleven o'clock.

16:01:16 13 MR. PICCIRILLI: Thank you, your Honor.

16:01:17 14 THE COURT: Thank you all for your time and
16:01:19 15 patience and the Court is in recess.

16:01:19 16 THE SHERIFF: All rise.

16:01:19 17 **A-D-J-O-U-R-N-E-D**

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