

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
, an infant by his mother
and natural guardian, MIRIAM ,
and MIRIAM , Individually,

Plaintiffs,

-against-

Index No.

MERCHANDISE CORP.,

Defendants.

-----X

April 19, 2004
11:30 a.m.

Continued Deposition of Plaintiff, MIRIAM
, taken by Defendants, pursuant to
order, at the offices of Herzfeld & Rubin, P.C.,
40 Wall Street, New York, New York, before
Roberta Caiola, a Shorthand Reporter and Notary
Public within and for the State of New York.

22

LEGALINK MANHATTAN (212) 557-7400

A P P E A R A N C E S :

041904ML

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BY: JONATHAN M. COOPER, ESQ.
Of Counsel

Also Present:

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1 IT IS HEREBY STIPULATED AND AGREED
2 by and among the attorneys for the
3 respective parties herein, that the
4 sealing, filing and certification of the
5 within deposition be waived; that the

6 within deposition may be signed and sworn
7 to before any officer authorized to
8 administer an oath, with the same force and
9 effect as if signed and sworn to before the
10 officer before whom said deposition is
11 taken.

12

13 IT IS FURTHER STIPULATED AND AGREED
14 that all objections, except as to form, are
15 reserved to the time of trial.

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1 M I R I A M

2 having been duly affirmed by the Notary
3 Public, (Roberta Caiola), was examined and
4 testified as follows:

5 EXAMINATION BY MR. COOPER:

6 Q. Good morning, Ms. . I'm
7 Jonathan Cooper and I represent in this
8 action that you have brought. I'm going to be

9 asking you some questions this morning and most
10 likely this afternoon. If there is anything that
11 I ask that you don't understand, please let me
12 know. As last time, any nods or gestures can't
13 be taken down by the court reporter, so I ask
14 that you keep all your answers verbal. I also
15 ask that you wait until I finish my question
16 before you answer because the court reporter
17 can't take down more than one of us talking at a
18 time; is that clear?

19 A. Yes.

20 Q. Did you review any documents in
21 preparation for your testimony here today?

22 A. I read through my interrogatories.

23 Q. Did you sign off on those?

24 A. No.

25 MR. COOPER: Counsel, I beve one

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1 Miriam
2 of the main purposes that we concluded last time
3 and didn't go into the incident was because we
4 were awaiting those interrogatory responses, I
5 think it was made rather clear from the record.
6 I am not going to go into any of the particulars
7 of the accident, I'm going to ask your client to
8 come back another day until we get those in
9 advance of the deposition. In fact, I beve
10 last time you did represent on the record that
11 you were going to do that and we still don't have

12 it. To the extent possible, I will try and cover
13 other material that I intended to ask that does
14 not bear on the incident itself and try and be as
15 fair and equitable that way.

16 MR. : I think probably you
17 could have saved a little bit of time, even more
18 so than just asking in blithe fashion, where
19 those interrogatories are. Ms. Simmons is
20 reviewing the document as we speak, as she had
21 already reviewed it with Ms. . Her
22 problem was there was a problem with the fax
23 machine in Mr. 's office, as we speak
24 it's here. I take exception to that statement
25 whether or not the interrogatory is signed

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1 Miriam
2 precludes you from making inquiries into the
3 accident.

4 MR. COOPER: Okay.

5 Q. I beve last time you testified
6 that you went to college and you actually got a
7 graduate degree in speech pathology, is that
8 correct?

9 A. Correct.

10 Q. At any point during any of your
11 schooling did you ever take any courses in
12 chemistry?

13 A. In high school.

14 Q. which high school is that?

15 A. Prospect Park.
16 Q. You took a regents in that?
17 A. I don't remember.
18 MR. : By the way, the
19 standing rule is if you don't remember just say I
20 don't remember.
21 A. I don't remember.
22 MR. : You can search your
23 memory if that will achieve anything, but don't
24 guess. If you don't remember just say I don't
25 remember.

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1 Miriam
2 A. I don't remember.
3 Q. You did graduate high school?
4 A. Yes.
5 Q. You got a diploma?
6 A. Yes.
7 Q. What year did you get that diploma?
8 A. 1996.
9 Q. Were you on any type of honor role,
10 dean's list or anything of that nature?
11 A. Yes.
12 Q. Back in November of 2001 and forward
13 did you have any type of domestic help?
14 A. No.
15 Q. Did you ever have a cleaning girl?
16 A. No. Now I do, currently I do.
17 Q. I'm limiting my question now to

18 December of 2001?
19 A. No.
20 Q. When did you first start using the
21 services of a cleaning girl?
22 A. When I moved into my present home.
23 Q. Back in November or December of
24 2001, who other than you ever cleaned your
25 kitchen?

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1 Miriam
2 A. Me.
3 Q. Just you?
4 A. Yes.
5 Q. Did anyone else ever come in to
6 clean your oven?
7 A. No.
8 Q. Did you have to make your oven
9 kosher for any type of holiday?
10 A. No.
11 Q. Not even for Passover?
12 A. No.
13 Q. Is that because you went away?
14 A. Yes.
15 Q. How often did you clean your oven
16 back in November, December, 2001?
17 A. I do not recall.
18 Q. Have you cleaned your oven at all
19 since December of 2001?
20 A. Yes.

21 Q. what have you used to clean your
22 oven since that time?
23 MR. : Objection. Over
24 objection answer the question.
25 A. Easy Off.

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1 Miriam
2 Q. Have you used any products other
3 than Easy Off to clean your oven since your son's
4 incident?
5 A. Not that I know of.
6 Q. Who purchased the Easy Off?
7 A. Probably my husband.
8 Q. Where did he purchase it?
9 A. I don't know.
10 Q. Where do you keep the Easy Off?
11 A. In a cabinet on the top, in a closet
12 on a high shelf.
13 Q. What else is kept in that closet, if
14 anything, in terms of cleaning products?
15 A. My other cleaning products.
16 Q. Such as what?
17 A. Windex, Pine-Sol, silver cleaner.
18 MR. : We're speaking
19 post-incident.
20 A. We're speaking presently.
21 MR. : Over objection, same
22 objection.
23 Q. He's saying you can answer the

24 question.

25 A. Maybe one or two other things,

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1 Miriam

2 Fantastic.

3 Q. Do you currently keep any cleaning
4 agents under your sink?

5 A. No.

6 Q. You mentioned before a locked
7 cabinet, now, how is that cabinet locked?

8 A. What are you referring to,
9 presently?

10 Q. Correct.

11 A. No, it's not locked, it's in a
12 cabinet with a door on a high shelf.

13 Q. In your current kitchen do you have
14 any cabinets in the kitchen area?

15 A. Yes.

16 Q. Are there any child safety locks on
17 any of those cabinets?

18 A. No.

19 Q. Back in December of 2001 did you
20 have any child safety locks in any of the
21 cabinets in your kitchen?

22 A. No.

23 Q. Had you ever heard of child safety
24 locks back in December of 2001?

25 A. Yes.

1 Miriam
2 Q. How much did they cost back in
3 December of 2001?
4 A. I don't know.
5 Q. Would you say more than \$5?
6 A. I don't know.
7 (*) Q. Is there any particular reason you
8 didn't have any child safety locks back in your
9 kitchen cabinets back in December of 2001?
10 MR. : Objection, don't answer
11 that.
12 MR. COOPER: On what basis?
13 MR. : You're calling for
14 speculation. If you have a specific question to
15 ask about.
16 MR. COOPER: I'm asking if there is
17 a particular reason, yes or no.
18 MR. : That's an improper
19 question, mark it for a ruling.
20 MR. COOPER: Under CPLR 3113C the
21 scope of a deposition is far broader than that
22 even allowed at trial.
23 MR. : Your question is vague,
24 ambiguous and calls for any type of speculation
25 as to 1,000 reasons why one might not have a

2 particular object. You have to lay a proper
3 foundation for it to be a proper question. In
4 other words, it's like a total fishing expedition
5 and stab in the dark.

6 MR. COOPER: We respectfully
7 disagree and mark that for a ruling.

8 MR. : Mark it for a ruling
9 and re-ask your question in a proper fashion.

10 MR. COOPER: I beve it was
11 proper, but I will move on.

12 MR. : I disagree.

13 Q. Your son , was he ever evaluated
14 for early intervention?

15 A. No.

16 Q. was he ever evaluated for special
17 services?

18 A. No.

19 Q. was he ever watched by a babysitter
20 other than by your sister, Risa?

21 A. Yes.

22 Q. Back in December of 2001?

23 A. No.

24 MR. : As a word of caution,
25 when he asks the questions sometimes give it a

1 Miriam
2 moment of thought. If he asks the question for
3 example was he ever watched, so unless you have
4 an immediate answer and you have no minutia of

5 doubt answer it right away, but take a moment to
6 think about your answer.

7 Q. Other than the interrogatories that
8 you mentioned earlier, did you review any
9 documents in preparation for your testimony here
10 today?

11 A. No.

12 MR. : Incidentally, I think
13 now the interrogatories are complete. Just
14 initial and sign the last page.

15 MR. MATERA: After she executes it I
16 can make copies of it.

17 (Plaintiff's responses to
18 interrogatories, marked Exhibit 2A for
19 identification.)

20 Q. Back in December of 2001 what type
21 of lock, if any, did you have on your front door?

22 A. A regular lock.

23 Q. A key lock or a combination lock or
24 both?

25 A. A combination lock.

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1 Miriam

2 Q. Who had the combination to that
3 lock?

4 A. Me, my husband, I don't know who
5 else.

6 Q. Any family members, friends?

7 A. Friends I don't think so, possibly

8 family members. I don't know now who would have
9 known it at that point.

10 Q. Did anyone come over to your house
11 to visit on a regular type of basis back in
12 December of 2001?

13 A. Regularly, no.

14 Q. On an irregular basis did anyone
15 come to visit you?

16 A. Yes.

17 Q. who?

18 A. My parents, my sister, my friends
19 came.

20 Q. which friends?

21 A. There was somebody that had a
22 daughter in my daughter's class, she came. which
23 friends, what do you mean?

24 Q. Names.

25 A. Somebody by the name of Frankel.

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1 Miriam

2 Q. What's Frankel's first name?

3 A. Divora.

4 Q. That's her married name I take it?

5 A. Um-hum.

6 Q. Anyone else?

7 A. I don't know.

8 Q. When was the last time that you had
9 used the product before your son's
10 incident?

- 11 A. I don't recall.
- 12 Q. Can you estimate whether it was a
13 week before, a month before or something else?
- 14 A. I don't recall.
- 15 Q. How many times had you used that
16 particular bottle before your son's incident?
- 17 A. I don't know.
- 18 Q. How much of the liquid in the
19 container was left at the time of your son's
20 incident?
- 21 A. There was a considerable amount
22 left.
- 23 Q. Would you say about half, three
24 quarters or something else?
- 25 A. More than half.

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- 1 Miriam
- 2 Q. At the last session of your
3 deposition on March 29, 2004 a container was
4 provided by your counsel which we marked as
5 Exhibit 1. The representation was made as to
6 whether this in fact was the bottle that was
7 involved in your son's incident. Is this the
8 bottle that was involved in your son's incident?
- 9 A. The one and only?
- 10 Q. Yes.
- 11 A. I don't know.
- 12 Q. Since the last session of your
13 deposition have you spoken to anyone, other than

14 your attorneys, regarding the whereabouts of the
15 bottle that was involved in this incident?

16 A. No.

17 Q. Since your last deposition have you
18 undertaken a search for the subject bottle that
19 was involved in this incident?

20 A. No.

21 MR. : By counsel, I think we
22 have said this off the record and that bottle in
23 fact was given to me by Mr. . We
24 beve that to be the bottle.

25 MR. COOPER: I didn't beve it was

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1 Miriam

2 made clear. It's your position that you beve
3 this is the bottle?

4 MR. : I beve that is the
5 bottle. My only hesitancy was because I had it
6 next to another bottle my wife had purchased,
7 that I beve is the bottle.

8 Q. Did you use any utensils when using
9 the product to clean your oven back in
10 2001 such as a sponge, a brush or anything of
11 that nature?

12 A. Yes.

13 Q. what did you use?

14 A. A sponge.

15 Q. Did you use a sponge of a particular
16 color or a particular type of sponge in

17 connection with your use of the product
18 back in 2001?

19 A. No.

20 Q. Where is the sponge that was last
21 used in connection with the product
22 before your son's accident in 2001?

23 A. I don't know.

24 Q. Have you seen that sponge since your
25 son's incident?

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1 Miriam

2 A. I don't recall. It's a sponge, it's
3 not my diamond ring.

4 Q. So you're saying it was discarded?

5 A. I don't know.

6 Q. Who other than you would have had
7 access to the sponge back in 2001?

8 A. Me and my husband.

9 Q. Back in 2001 how often did you use
10 sponges together with the product
11 before discarding it?

12 A. I don't know.

13 Q. Would it be one use, five uses, ten
14 uses?

15 A. I don't know. I know that I used a
16 sponge when I cleaned with the .

17 Q. You don't know whether you still
18 have that sponge or not?

19 A. I don't know, I don't want to assume

20 so.

21 Q. Do you have a receipt or any other
22 type of documentation reflecting when you
23 purchased the subject bottle?

24 A. No.

25 Q. Other than using a sponge, did you

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1 Miriam

2 use any other type of utensil in connection with
3 your use of the product?

4 A. I don't beve so, maybe some paper
5 towels.

6 Q. I assume you no longer have those
7 either?

8 A. No.

9 Q. I beve last time you testified
10 you also used rubber gloves when you cleaned with
11 the ?

12 A. Yes.

13 Q. Do you still have the gloves that
14 you used the last time you used the
15 product before your son's incident?

16 A. No.

17 Q. Those were discarded as well?

18 A. I would assume so.

19 Q. Those would have been discarded by
20 either you or your husband?

21 A. Yes.

22 Q. What product, if any, did you use to

23 clean your oven before you used ?

24 A. I don't recall.

25 Q. Did you ever clean your oven before

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1 Miriam

2 you used ?

3 A. Could you specify?

4 Q. At any point in time before your
5 son's incident did you ever use an oven cleaner,
6 whether in your house, your mother's house,
7 anyone else's house other than ?

8 A. Yes.

9 Q. What did you use?

10 A. Easy Off.

11 Q. Was it always the same container of
12 Easy Off that you used?

13 A. I don't know.

14 Q. Was it an aerosol or was it
15 something else?

16 A. Aerosol.

17 Q. Where did you use the Easy Off, in
18 whose house?

19 A. Mine.

20 Q. Did you ever use it in your mother's
21 house?

22 A. No.

23 Q. Where did you keep the Easy Off in
24 your house?

25 A. We're not being so clear because I

1 Miriam

2 lived in more than one house.

3 Q. In which house did you use the Easy
4 off?

5 A. I don't recall exactly, I really
6 don't. I know that I used another product
7 besides the to clean the oven. We
8 definitely have used Easy Off before, I currently
9 use Easy Off, I just don't know.

10 Q. Did you have any children at the
11 time that you used Easy Off?

12 A. I don't know.

13 Q. Was the Easy Off kept in an area in
14 the kitchen or was it kept out of the kitchen?

15 A. I don't know. I can answer for you
16 presently.

17 Q. Did the Easy Off have any type of
18 label on the container?

19 A. Yes.

20 Q. I'm talking about before your son's
21 incident. I'm going to try to limit it. Did the
22 label on the Easy Off container have a warning
23 caution, keep out of reach of children?

24 A. I would imagine so, but I don't
25 recall reading the label.

1 Miriam

2 Q. Did you consider it unsafe to get
3 the Easy Off aerosol on your skin?

4 A. Yes, I'm aware that Easy Off is very
5 dangerous.

6 Q. When you say that you are aware that
7 it's very dangerous, you were aware of that
8 before your son's incident?

9 A. Yes.

10 Q. When you say that you're aware it's
11 very dangerous, in what sense do you mean it
12 would be very dangerous?

13 A. I don't know, I know that it's
14 dangerous.

15 Q. Dangerous to get on your skin?

16 A. I never thought about how it was
17 dangerous, I just know that it's a dangerous
18 product. Just like I know that bleach is a
19 dangerous product, I know that Easy Off is a
20 dangerous product.

21 Q. So you're saying generically
22 dangerous?

23 A. Yes.

24 Q. Do you consider it dangerous to
25 swallow Easy Off?

1 Miriam

2 A. Yes.

3 Q. You would consider it dangerous to
4 get Easy Off in your eyes?

5 A. Yes.

6 Q. Would you consider it dangerous to
7 get Easy Off on your skin?

8 A. I'm not sure, I don't know.

9 Q. But you didn't consider to
10 be dangerous before your son's incident?

11 A. I did not consider it to be
12 dangerous.

13 Q. Is there anything with respect to
14 the labng that was on the product
15 that led you to the beve that it was not
16 dangerous before your son's incident?

17 A. All I know is that I had read it and
18 nothing stuck out in my mind that was unusual or
19 different than any other typical cleaning
20 product, like a windex or something like that.

21 Q. But you were using the
22 product for cleaning ovens just like you did Easy
23 off?

24 A. Yes.

25 Q. The "caution, keep out of reach of

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1 Miriam
2 children" label didn't lead you to beve that
3 the product was dangerous?

4 A. Not any more than like a windex,
5 that also says that.

6 Q. Does the windex have a black and
7 orange label, separate label that says caution,
8 keep out of reach of children?

9 A. I don't know.

10 Q. Does the windex contain any warning
11 to use only while wearing protective gloves?

12 A. I don't know.

13 Q. Do you know what the meaning of an
14 exclamation point is?

15 A. Yes.

16 Q. In terms of grammar?

17 A. Yes.

18 Q. What does it mean to you?

19 A. It means to pronounce something.

20 Q. Emphasize something?

21 A. Yes.

22 Q. If you saw an exclamation point,
23 would that draw your attention to it for
24 emphasis?

25 MR. : In general?

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1 Miriam

2 Q. In general?

3 A. In general, yes, while I was reading
4 it.

5 Q. Does the windex contain any warning
6 in case of contact with skin rinse with plenty of
7 water and seek medical attention?

8 A. I don't know.

9 Q. Did you ever get Windex on your
10 skin?

11 A. I don't know.

12 Q. Did you ever get Windex on 's
13 skin?

14 A. No.

15 Q. Other than the Easy Off that you
16 mentioned, what other household products do you
17 deem maintain are dangerous?

18 A. Bleach, Raid.

19 Q. Why do you deem Raid dangerous?

20 A. I don't know why, I just know that
21 it's dangerous.

22 Q. Dangerous in terms of what, getting
23 it on your skin?

24 A. Again, I don't know the specifics, I
25 just know that it's a dangerous product, it's

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1 Miriam

2 common knowledge.

3 Q. Would you consider a knife a
4 dangerous object?

5 MR. : Objection. I don't
6 think there is any reason to be facetious, I
7 think it's an improper question. You're asking
8 whether or not she has common knowledge as to the
9 danger a knife poses?

10 MR. COOPER: I'm not being facetious
11 in the slightest, counsel, I'm being quite

12 serious.

13 THE WITNESS: I think that's an
14 insult.

15 MR. : Just answer the
16 question, do you consider a knife dangerous?

17 A. Yes.

18 Q. Did you ever consider what would
19 happen if you got Raid on your skin?

20 A. I never thought about it.

21 Q. Did you ever consider what would
22 happen if you swallowed Raid?

23 A. Again, I never thought about the
24 specifics, I just know that it's dangerous.

25 Q. I will explain why any question

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1 Miriam

2 about the knife was not facetious and nor was it
3 meant to be insulting.

4 MR. : I don't think that's
5 necessary, unless there is another question.

6 MR. COOPER: There is another
7 question.

8 MR. : So you are now laying a
9 foundation for another question?

10 MR. COOPER: Yes.

11 Q. Notwithstanding that you deem a
12 knife dangerous, you also know that a knife can
13 be used for various functions such as to cut
14 food, correct?

15 A. Yes.

16 Q. I'm going back and I'm trying to ask
17 you in what context do you deem Raid dangerous?

18 MS. SIMMONS: I think she answered
19 that question, it was asked and answered.

20 MR. COOPER: How many people from
21 the plaintiff's side am I going to be getting
22 objections from?

23 MR. : I don't think it
24 matters, I would have made the same objection. I
25 was outside so I wasn't sure. I don't think

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1 Miriam

2 that's an issue.

3 Q. Did you ever consider Raid to be
4 dangerous in terms of getting it in your eyes?

5 A. I never thought about the specific
6 results of products, of what would happen with
7 products. I know that Raid is dangerous, you're
8 asking me to think about the specifics of what
9 would happen with each thing where it gets on
10 where, I can't tell you, I just know that it's
11 dangerous. It's not something I would want my
12 child handling.

13 Q. Is there anything different markedly
14 in terms of the labng that you would have on
15 the bleach product than you do on the
16 that would lead you to the beve that the
17 bleach is inherently more dangerous than well

18 Done?

19 MR. : Objection to the form
20 of the question, can you rephrase it.

21 MR. COOPER: No.

22 (Question read.)

23 MR. : That's a loaded
24 question, but over objection I will allow the
25 witness to answer it, if you can.

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1 Miriam

2 MR. WIENER: Note my objection to
3 the remarks about whether the question is loaded,
4 that's not a proper question and it tends to
5 coach the witness.

6 MR. : That's an objection to
7 form.

8 MR. WIENER: Loaded question.

9 MR. : It's more than just
10 loaded, it's convoluted, markedly, it has all
11 type of facets, it is not proper wording of the
12 question. There is no intent to coach. The
13 question is a repeat of questions that have
14 already been asked and answered several times, so
15 I can have any number of objections.

16 MR. WIENER: I'm trying to stay out
17 of it as much as I can. I just felt that that
18 particular comment called for me to say
19 something, you guys go ahead.

20 A. I beve that bleach has large

21 warnings on the bottle. I am familiar with
22 bleach, since I'm a child we have used it in the
23 house so I know that is a dangerous product, I
24 have always been told that. Along the same lines
25 it's common knowledge to me.

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1 Miriam

2 Q. Is there any difference in the
3 labng that you mentioned on the Raid product
4 as opposed to the product that would
5 lead you to the beve that the Raid is more
6 dangerous than the ?

7 A. I'm reiterating the same answer that
8 I gave for the bleach, the same answer applies.

9 Q. Bigger lettering?

10 A. I'm not sure about bigger lettering,
11 it's just something that I was very, very
12 familiar with and it's more common knowledge it's
13 a very well used product.

14 Q. Is there anything that could have
15 been contained on the product that
16 wasn't that would have made you aware that it was
17 a dangerous product for it to be handled by
18 children?

19 A. It's hard to answer that
20 retrospectively, but probably very big lettering.

21 Q. How big?

22 A. I don't know.

23 MR. : Counsel, here you're

24 calling for the witness to give you expert
25 opinion.

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1 Miriam

2 MR. COOPER: Not at all. I'm asking
3 her what would have made her aware, that's a
4 personal question.

5 MR. MATERA: That's relevant to her
6 warning claim.

7 Q. I'm still waiting for an answer on
8 the next question, how big?

9 A. I don't know.

10 Q. What should it have said?

11 A. Bigger than this.

12 MR. MATERA: Indicating Exhibit 1.

13 Q. Which label are you referring to?

14 A. I'm just looking at the words,
15 bigger than that.

16 Q. In terms of the "caution, keep out
17 of reach of children", how much bigger should it
18 have been; twice as big, three times as big?

19 A. Again, all products say to keep out
20 of reach of children.

21 Q. Move to strike the portion that's
22 not responsive. How much bigger would the
23 lettering have had to have been in order to make
24 you aware that it was dangerous?

25 A. I don't know how much bigger.

1 Miriam

2 Q. Is there something in terms of the
3 content of the warnings that should have been
4 different to make you aware that it was
5 dangerous?

6 A. Yes.

7 Q. What should it have said?

8 A. In my mind it's very dangerous, it
9 will give you results of things that would happen
10 if it does get on your skin or eyes or if you
11 swallow it.

12 Q. How big should that print have been?

13 A. I don't know.

14 MR. : I think you're missing
15 the point counselor, it's not just about the size
16 of the labng.

17 MR. COOPER: Counsel, please stop
18 right now because you're about to coach the
19 witness, I'm asking you to please stop.

20 MR. : Mr. Cooper, unless
21 you're a mind reader I disagree, she stated
22 common knowledge several times. You're asking
23 questions, you're trying to get answers to
24 questions that are a repeat of the same type of
25 thing, whether or not the size of the lettering I

1 Miriam

2 don't think is significant, it's all beside the
3 point. If you want to spend the rest of the
4 afternoon repeating this and going over the same
5 type of question over and over again that is your
6 choice, but she's not coming back for another
7 deposition.

8 MR. COOPER: We will see about that.

9 MR. : We will see about that

10 Q. Prior to your son's accident did he
11 ever open the kitchen cabinets before?

12 A. Yes.

13 Q. How many times?

14 A. I don't know.

15 Q. More than five?

16 A. I don't know.

17 Q. More than ten?

18 A. I don't know.

19 Q. More than 20?

20 A. I don't know.

21 Q. Did you ever consider obtaining
22 child safety locks?

23 A. No.

24 MR. : We have been through
25 this, haven't we?

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1 Miriam

2 MR. COOPER: I didn't ask that
3 question.

4 MR. : Didn't you ask the
Page 30

5 question why she didn't get the child safety
6 locks?

7 MR. COOPER: And you directed her
8 not to answer.

9 MR. : So now you're asking
10 the same question in a different form.

11 MR. COOPER: You objected to the
12 form so I asked it in a different form.

13 MR. MATERA: I beve you asked him
14 to ask it a different way.

15 MR. : The appropriate thing
16 to do at that time while we were on that subject.
17 I don't think it's fair to this witness, but over
18 objection please continue. In the future please
19 stay with a topic instead of hoping back and
20 forth.

21 MR. COOPER: Unfortunately my mind
22 is not as organized.

23 MR. : I think it is, you have
24 your questions there formatted. For purpose of
25 continuity let's stay with a topic until you

1 Miriam
2 exhaust it and then move on to something else,
3 it's not cross-examination.

4 MR. COOPER: which I'm entitled to
5 do at this deposition, if I wanted to anyway.

6 MR. : I disagree.

7 MR. COOPER: Let me direct you to
Page 31

8 CPLR 3113.

9 MR. : I don't want to be
10 reminded of what you think is the interpretation
11 of the CPLR. Let's do the deposition and stop
12 sparing like children.

13 Q. Did your windex container ever leak
14 before your son's accident?

15 A. I don't know.

16 Q. How about the Fantastic container?

17 A. I don't know.

18 Q. Back in December of 2001 did you
19 ever shop in ?

20 A. Yes.

21 Q. Did you ever see St. Moritz products
22 contained at ?

23 A. Yes.

24 Q. Where was it kept?

25 A. On a shelf.

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1 Miriam

2 Q. With what other products, if any?

3 A. Cleaning products.

4 Q. Such as what?

5 A. Any kind of cleaning products, I
6 don't know specifics.

7 Q. Bleach?

8 A. I don't know.

9 Q. Is it kept with Raid?

10 A. I don't know.

- 11 Q. Is it kept with Easy Off?
12 A. I don't know.
13 Q. Is it kept with any other products
14 you deem dangerous?
15 A. Not that I recall.
16 Q. Before your son's incident back in
17 2001 did you like the St. Moritz product?
18 A. Yes.
19 Q. You thought it worked well?
20 A. Yes.
21 Q. Did you feel it worked better or
22 worse or the same as Easy Off?
23 A. I never thought about it.
24 Q. Is there any particular reason that
25 you switched from using Easy Off to using the

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- 1 Miriam
2 product?
3 A. No particular reason.
4 Q. Can you please describe your exact
5 custom and practice of how you used the
6 product back in November and December of 2001?
7 A. I sprayed it on the oven and wiped
8 it off with the sponge.
9 Q. You say you sprayed it on the oven,
10 you took the container in your hand?
11 A. Yes.
12 Q. Did you have to twist any nozzle or
13 anything on the container in order to spray it?

14 A. I beve so.

15 Q. Did you use a wet sponge or a dry
16 sponge to wipe it off?

17 A. I don't know.

18 Q. How long did you use to let the
19 product sit on the oven surface before wiping it
20 off?

21 A. A couple of minutes.

22 Q. How do you know how much time to
23 allow to elapse before wiping it out of the oven?

24 A. It's common knowledge, it's just to
25 clean an oven, you put it on, wait a couple of

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1 Miriam

2 minutes and then wipe it.

3 Q. You don't wait an hour or two hours
4 or something like that?

5 A. I didn't.

6 Q. How long do you wait when you use
7 Easy Off before wiping it out of the oven?

8 A. The same thing.

9 Q. How did you know how to use the
10 product at all?

11 A. When I first used it I read
12 instructions.

13 Q. Did the instructions change over
14 time as you used the product?

15 A. Not that I know of.

16 Q. Did you ever check to see if the

17 instructions or warnings had changed from when
18 you first started using the product?

19 A. I don't know.

20 Q. When you were finished using the
21 product did you turn the nozzle in any way?

22 A. I would think so.

23 Q. What exactly would you do?

24 A. I would turn the nozzle to off.

25 Q. When you say the nozzle, you are

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1 Miriam

2 referring to the sprayer mechanism at the head of
3 the bottle?

4 A. Yes.

5 Q. You were always particular to make
6 sure that it was turned to the off position
7 before returning it to its storage?

8 A. I would think I would do it, I can't
9 be 100 percent certain.

10 Q. The last time that you used the
11 product before your son's incident, did you make
12 sure that the nozzle was turned to the off
13 position? By that I'm referring to the spray
14 mechanism at the head of the bottle before
15 turning it.

16 MR. : She just testified that
17 she can't recall.

18 MR. COOPER: That was the custom and
19 practice, I'm talking about the last time before

20 the incident.

21 MR. : That would be even less
22 likely for any type of recollection. I will
23 allow the witness to answer, it's the same
24 question.

25 A. Can you please repeat it.

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1 Miriam

2 Q. The last time that you used the
3 product before your son's incident, did you make
4 certain that the spray nozzle at the head of the
5 bottle was turned to the off position before
6 returning it to its storage location?

7 A. I don't remember, I can't be
8 certain.

9 Q. Prior to your son's incident, have
10 you ever heard of any other incidents of people
11 being injured by a product?

12 A. No.

13 Q. Subsequently, did you learn of any
14 incidents of people being injured by a
15 product?

16 A. Vague things, nothing specific.

17 Q. What did you hear?

18 A. I just heard that people were
19 injured.

20 Q. Did you ever make any complaints to
21 anybody, other than your attorney, about the well
22 Done product before your son's incident?

23 A. No.
24 Q. Showing you what has been previously
25 marked for identification as Exhibit 2 dated

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1 Miriam
2 March 29, 2004.
3 MR. : Where are you going
4 with this, counsel?
5 MR. COOPER: This was the previous
6 thing that you guys served.
7 MR. : Therefore? That's the
8 signed copy that's before you, that's the only
9 thing that's before you.
10 MR. COOPER: Are you going to tell
11 me I can't inquire as to any changes that were
12 made between the two documents?
13 MR. : Absolutely.
14 MR. COOPER: That's outrageous.
15 MR. : You think so?
16 MR. COOPER: Absolutely.
17 MR. : It's an unsigned
18 document.
19 MR. COOPER: You have no idea what
20 I'm going to do.
21 MR. : Any question you just
22 indicated any changes. Wasn't that what you just
23 said a moment ago?
24 MR. COOPER: That's where I was
25 going to go, but that wasn't my first question.

1 Miriam

2 MR. : That's where you're
3 going to go, I'm telling you you can't ask any
4 questions about any change. If you can show me
5 since you're so well versed in CPLR as to why
6 you're correct I will be glad to look at it.

7 MR. COOPER: I appreciate that.

8 Q. Showing you what was previously
9 marked for identification as Defendant's Exhibit
10 2 at your prior deposition dated March 29, 2004.
11 When is the first time that you saw this
12 document?

13 A. In my lawyer's house, it was that
14 Saturday night before we came.

15 Q. You had never seen that document
16 before then?

17 A. No.

18 Q. Have you seen this document since
19 that time and since your last deposition session
20 of March 29, 2004?

21 A. Yes.

22 Q. When did you last see it?

23 A. Today.

24 Q. You now have in front of you
25 Defendant's Exhibit 2A of today's date, can you

1 Miriam

2 please identify that document?

3 MR. : The document speaks for
4 itself, counselor.

5 MR. COOPER: Are you directing her
6 not to answer?

7 MR. : It's an unnecessary
8 question and the document speaks for itself.
9 That an improper question, but I will allow her
10 to answer. Read it for him.

11 A. "Plaintiff's responses to
12 interrogatories".

13 Q. When is the first time you saw this
14 document?

15 A. Saturday night before the
16 deposition.

17 Q. Are there any portions contained in
18 this document that are in your handwriting?

19 A. No.

20 Q. Is there any portion of this
21 document that contains your signature?

22 A. Yes.

23 Q. Where is that located?

24 A. In the last page, page number 16.

25 Q. Are your initials contained anywhere

1 Miriam

2 on this document?

- 3 A. Yes.
- 4 Q. Where?
- 5 A. Page number 3.
- 6 Q. That's in three different places?
- 7 A. Yes.
- 8 Q. In response to number 8?
- 9 A. Yes. Page number 4.
- 10 Q. That's at response 9C?
- 11 A. Yes. Page number 5.
- 12 Q. That's in response to 9E?
- 13 A. Yes. Page number 8.
- 14 Q. That's in response to two parts to
- 15 number 18?
- 16 A. Two parts?
- 17 Q. In other words in two places in
- 18 response number 18?
- 19 A. Yes. Page number 9.
- 20 Q. That's in response to number 22 in
- 21 two different places?
- 22 A. Yes. Page number 11 is answer to
- 23 number 31. Page number 15 answer to number 42.
- 24 Page number 16 answer to question 42.
- 25 (*) Q. Were these changes made to what was

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- 1 Miriam
- 2 originally designated as Defendant's Exhibit 2
- 3 dated March 29, 2004?
- 4 MR. : That's an improper
- 5 question, don't answer that.

6 MR. COOPER: Mark that for a ruling.

7 (*) Q. Who wrote the handwritten portions
8 of this document marked as Exhibit 2A of today's
9 date?

10 MR. : Same objection, don't
11 answer that.

12 MR. COOPER: She verified the
13 interrogatory, she can tell me who helped prepare
14 it.

15 MR. : I will allow it.

16 A. Linda Simmons.

17 MR. COOPER: Counsel, it occurs to
18 me, I don't see any verification of these
19 interrogatories, I just see a signature.

20 (Bill of particulars, marked
21 Exhibit 11 for identification.)

22 (Verified bill of particulars,
23 marked Exhibit 12 for identification.)

24 (Verified supplemental bill of
25 particulars, marked Exhibit 13 for

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1 Miriam

2 identification.)

3 Q. Showing you what has been marked for
4 identification as Defendants' 11 of today's date.
5 I will represent to you that it's plaintiff's
6 bill of particulars in response to the demand of
7 , dated November 26, 2002. Have you
8 ever seen this document before?

9 A. No.

10 Q. Showing you what has been marked for
11 identification as Defendants' Exhibit 12 dated
12 April 19, 2004, which is plaintiff's verified
13 bill of particulars in response to defendants'
14 demand for verified bill of particulars, dated
15 November 14, 2002. Have you ever seen this
16 document before?

17 A. No.

18 Q. Showing you what has been marked for
19 identification as Defendants' Exhibit 13 of
20 today's date, which is plaintiff's verified
21 supplemental bill of particulars dated May 21,
22 2003. Have you ever seen this document before
23 today?

24 A. No.

25 (Short recess taken.)

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1 Miriam

2 Q. We were just provided with a
3 document dated April 19, 2004, which purports to
4 be an individual verification of response to
5 interrogatories. Is that your signature on this
6 document, ma'am?

7 A. Yes.

8 Q. That's referring to plaintiff's
9 response to interrogatories marked as Exhibit 2A
10 of today's date?

11 A. Yes.

12 MR. : Do you have another
13 question, Mr. Cooper. I would appreciate it if
14 we moved it along a little more rapidly

15 MR. COOPER: When I think of a
16 question I'll ask it.

17 MR. : Do you want to break?

18 MR. COOPER: No.

19 Q. You testified that you read
20 Plaintiff's Exhibit 2 before today, correct?

21 A. Yes.

22 Q. In reading that document did you
23 deem any changes necessary to that?

24 A. Yes.

25 Q. Those changes are reflected in

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1 Miriam

2 Exhibit 2A?

3 A. Yes.

4 Q. Those are the changes that you
5 initialed, correct?

6 A. Yes.

7 MR. : We have been over this,
8 is there a question?

9 MR. COOPER: I just asked one.

10 MR. : I thought the record
11 was clear that those changes were made, you had
12 her go through each change and initial it. Is
13 there a new question, Mr. Cooper; if not, can we
14 move on to something else.

15 MR. COOPER: Let's go off the
16 record.
17 (Discussion off the record.)
18 Q. Other than the changes that were
19 initialed on Exhibit 2A, are there any other
20 changes that you deem necessary on this document?
21 A. No.
22 Q. With respect to your response in
23 Exhibit 2A of 8A, what material was the stretchy
24 that your son was wearing?
25 A. I don't know.

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1 Miriam
2 Q. In that response it says that your
3 son was holding the bottle of St. Moritz oven
4 cleaner, is that correct?
5 A. Yes.
6 Q. In which hand was he holding the
7 bottle?
8 A. I don't recall.
9 Q. Is he right-handed or left-handed?
10 A. Right-handed.
11 Q. At that point in time was the
12 container open or closed?
13 A. Closed.
14 Q. Was it all in one piece?
15 A. Yes.
16 Q. Was there any liquid dripping from
17 the container at that time?

18 A. I don't know.
19 Q. When you found your son on the
20 kitchen floor was there any liquid on the floor
21 in his immediate vicinity?
22 A. I don't recall.
23 Q. Why were you alarmed at the sight of
24 your son holding the bottle of St. Moritz oven
25 cleaner?

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1 Miriam
2 A. I realized right away it was a
3 cleaning product, it wasn't a bar of chocolate.
4 I am a cautious mother and I just became alarmed.
5 MR. COOPER: Move to strike the
6 portions that are not responsive.
7 Q. You were alarmed because the product
8 was dangerous?
9 A. I said already that was my initial
10 reaction and I became alarmed.
11 Q. Afterward you weren't alarmed?
12 A. What do you mean by afterward?
13 Q. It says that you immediately became
14 alarmed, did your alarm decrease when you saw
15 that it was a St. Moritz product?
16 A. I was just alarmed, that was my
17 reaction.
18 Q. What were you concerned about that
19 made you alarmed?
20 A. Just that he was holding the bottle.

21 Q. what was your frame of mind in terms
22 of what could happen that would make you alarmed,
23 what was your concern?

24 MR. : Asked and answered.

25 Q. Were you concerned for your child's

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1 Miriam

2 safety when seeing him with the St. Moritz oven
3 cleaner?

4 A. Yes.

5 Q. what in terms of his safety were you
6 concerned about?

7 A. Initially I don't know.

8 Q. were you concerned that he would
9 have gotten some of the product on his skin?

10 A. No.

11 Q. were you concerned that he had
12 swallowed some of the product?

13 A. No.

14 Q. were you concerned that he had
15 gotten some of the product in his eyes?

16 A. Yes.

17 Q. Did he in fact get any of the
18 product in his eyes?

19 A. No.

20 MR. : How do you know?

21 THE WITNESS: Because they told me.

22 MR. : That's why I said take
23 a moment before you answer.

24 Q. Did you see take the bottle of
25 St. Moritz out of the kitchen cabinet?

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1 Miriam

2 A. No.

3 Q. The next sentence says that you
4 called your sister Risi Brodie; is that Risi or
5 Risa?

6 A. Risa, we call her Risi.

7 Q. You asked her opinion of what to do
8 in terms of what?

9 A. The fact that I had found him
10 holding the bottle.

11 Q. What was your conversation with
12 Risa?

13 A. I said to her I found holding
14 the bottle, what do you think I should do.

15 Q. What did she say?

16 A. Call your pediatrician.

17 Q. Did you?

18 A. Yes.

19 Q. What did your pediatrician say?

20 A. Well, at that point because he had
21 been already screaming I started really getting
22 nervous, so I told him that it was possible that
23 maybe he got the product in his eyes, he told me
24 to flush his eyes.

25 Q. Did you check to see whether had

- 1 Miriam
- 2 gotten the product on any part of his body at
- 3 that time?
- 4 A. No.
- 5 Q. When is the first time, if at all,
- 6 that you checked to see whether got the
- 7 product on any other part of his body?
- 8 A. Only when we took off his stretchy.
- 9 Q. When did you take off his stretchy?
- 10 A. When I finished flushing his eyes we
- 11 were going to take him into the doctor's office,
- 12 I took off his stretchy then.
- 13 Q. How much time passed between when
- 14 you first saw holding the bottle of St.
- 15 Moritz until the time you removed his stretchy?
- 16 A. I don't know.
- 17 Q. Can you estimate please?
- 18 A. It was in between 10:15 and 10:30
- 19 because that's when the EMTs came, 10:30.
- 20 Q. About a 15 minute span?
- 21 A. I don't know exactly.
- 22 Q. More or less than five minutes?
- 23 A. More.
- 24 Q. More or less than ten minutes?
- 25 A. I don't know.

2 Q. How much time after you first walked
3 into the kitchen and saw holding the bottle
4 of St. Moritz did he first start screaming?

5 A. I don't know.

6 Q. More or less than five minutes?

7 A. Less.

8 Q. Why did you assume that had
9 possibly gotten the product in his eyes as
10 opposed to anywhere else on his body?

11 A. I guess that was my greatest fear of
12 a cleaning product getting in somebody's eyes.

13 Q. Why was that your greatest fear?

14 A. It just was, I don't know why.

15 Q. Were you concerned about blindness
16 or something else?

17 A. I wasn't thinking about the
18 specifics, I just know his eyes are very
19 delicate.

20 Q. How far was Dr. Chesir's office from
21 your home at that time?

22 A. Between a 10 and 15 minute drive.

23 Q. Your response later indicates that
24 you called your husband at the Yeshiva and
25 expressed your concern, is that correct?

1 Miriam

2 A. Yes.

3 Q. How did you reach your husband?

4 A. I called him on the telephone.

5 Q. On a cell phone?

6 A. No.

7 Q. There is a main line at the Yeshiva?

8 A. Yes.

9 Q. What was the sum and substance of
10 your conversation with your husband when you
11 called him at the Yeshiva?

12 A. I found holding a bottle of St.
13 Moritz oven cleaner and he was screaming
14 frantically and I called the doctor and he told
15 me to flush his eyes, maybe he got it in his
16 eyes. Please come home, I'm very nervous.

17 Q. How much time passed from that
18 conversation until the time he got home?

19 A. He left immediately and it took
20 between five and ten minutes to get to my house.

21 Q. How long did it take him that time?

22 A. I don't know exactly.

23 Q. At the time that your husband
24 arrived home who was present at your home at that
25 time?

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1 Miriam

2 A. Me and my husband and .

3 Q. Were any EMS personnel present or
4 Hatzolah personnel present?

5 A. No.

6 Q. Did EMS or Hatzolah ultimately
7 arrive in your home?

- 8 A. Yes.
- 9 Q. How long after you first found
10 holding the bottle of St. Moritz did they arrive
11 at your home?
- 12 A. Approximately 15 minutes later.
- 13 Q. Who took to the master bedroom?
- 14 A. Me.
- 15 Q. Did your husband also accompany you
16 when you did that?
- 17 A. Yes.
- 18 Q. Did you wait for your husband in the
19 kitchen until he arrived home?
- 20 A. Yes.
- 21 Q. What were you doing with regard to
22 the care of during that time that you were
23 waiting for your husband to come home?
- 24 A. Flushing his eyes with water.
- 25 Q. Anything else?

201

- 1 Miriam
- 2 A. No.
- 3 Q. Did your husband remove the stretchy
4 from ?
- 5 A. Yes.
- 6 Q. That was done in the master bedroom?
- 7 A. Yes.
- 8 Q. Why did you remove the stretchy?
- 9 A. Because it was wet.
- 10 Q. Where was it wet?

- 11 A. I don't remember, it was just wet.
12 Q. Do you still have the stretchy?
13 A. No.
14 Q. Was it discarded?
15 A. I don't know.
16 Q. When was the last time you saw the
17 stretchy?
18 A. I don't remember.
19 Q. Was it that day?
20 A. I don't know.
21 Q. Who would have had access to the
22 stretchy?
23 A. Me or my husband.
24 Q. Anyone else?
25 A. No.

202

- 1 Miriam
2 Q. Was the stretchy left behind when
3 was taken to the hospital?
4 A. I would imagine so, yes.
5 Q. Where was the bottle of
6 when you and your husband took into your
7 master bedroom?
8 A. In the kitchen.
9 Q. Where in the kitchen?
10 A. I don't know.
11 Q. Was it on the floor or on the
12 counter or somewhere else?
13 A. I really don't remember.

- 14 Q. When he picked up did he pick up
15 the bottle with him when he took him to flush his
16 eyes by the sink?
17 A. No.
18 Q. Who is the first EMT that arrived at
19 your house that morning?
20 A. His name was Mosha Braun.
21 Q. Did you know him before this
22 incident?
23 A. I knew of him.
24 Q. How did you know him?
25 A. From the community.

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- 1 Miriam
2 Q. Had you ever met him before?
3 A. I saw him.
4 MR. : What's the point of
5 that last question?
6 MR. COOPER: You'll understand
7 shortly.
8 Q. Is he married?
9 A. Yes.
10 Q. Are you friendly with his wife?
11 A. No.
12 Q. Is your husband friendly with him?
13 A. Yes.
14 Q. Does your husband know him from the
15 Yeshiva?
16 A. No.

17 Q. How does your husband know him?

18 A. From the community.

19 Q. Who are the other EMTs that you
20 would know personally that arrived at your house
21 that morning?

22 A. None.

23 Q. In response 9C it's handwritten, it
24 says "the warnings were nothing unusual from any
25 typical cleaning product." What's a typical

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1 Miriam

2 cleaning product?

3 A. Like a Windex or Fantastic.

4 Q. What's an atypical cleaning product?

5 A. Something that I would deem more
6 dangerous.

7 Q. Such as what?

8 A. Bleach.

9 Q. Anything else?

10 A. Raid.

11 Q. Anything else?

12 A. I don't know.

13 Q. What would make a warning unusual
14 for a typical cleaning product?

15 MR. : These questions have
16 been asked and answered, just because you're
17 doing them in interrogatories doesn't matter.
18 Asked and answered, move along.

19 MR. : It's now a quarter to
Page 54

20 2, we have agreed to adjourn for lunch.
21 (Short recess taken at 1:45.)
22
23
24
25

205

1 Miriam
2 A F T E R N O O N S E S S I O N
3 (Resumed 2:50 p.m.)
4 M I R I A M L I C H T E N S T E I N ,
5 resumed.
6 CONTINUED EXAMINATION
7 BY MR. COOPER:
8 (Record read.)
9 A. what would make a warning unusual
10 for a typical cleaning product?
11 Q. Yes.
12 A. what kind of product are we
13 referring to here?
14 Q. I was referring back to your answer
15 in 9C in the interrogatories.
16 A. what's the question?
17 (Question read.)
18 A. what I was saying here was that the
19 bottle of the St. Moritz to me had a regular
20 typical warning that would be on any kind of a
21 cleaning product, that's what I'm saying here in
22 this answer.

23 Q. what would that warning consist of?
24 A. Regular, keep out of reach of
25 children.

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1 Miriam

2 Q. Anything else?

3 A. whatever is written on a regular
4 bottle, nothing stands out in my mind.

5 Q. what would stand out in your mind?

6 A. If something would have severe
7 repercussions, if it got in your eyes or
8 swallowed or on your skin.

9 Q. Or if something said if it comes in
10 contact with your skin you should rinse in plain
11 water and seek medical attention?

12 A. That to me seems kind of vague.

13 Q. well what wouldn't be vague?

14 A. If it comes in contact with the skin
15 it will cause severe burns; if swallowed will be
16 fatal; if it gets in contact with eyes will cause
17 blindness.

18 Q. When you saw your son in the kitchen
19 holding the bottle of St. Moritz, was the bottle
20 being held upright, tilted in some fashion or
21 something else?

22 A. I don't recall exactly how it was
23 being held. I know it was being held.

24 Q. were his hands burned?

25 A. No.

1 Miriam

2 Q. Did your son's stretchy get wet as a
3 result of coming in contact with the
4 product?

5 A. In retrospect I beve so. At the
6 time I didn't notice it.

7 Q. How were you holding your son when
8 you were rinsing out his eyes by the sink?

9 A. I was just holding him.

10 Q. With how many hands were you holding
11 him?

12 A. With one hand and the other hand I
13 was flushing his eyes.

14 Q. Are you right-handed or left-handed?

15 A. I'm right-handed.

16 Q. Were you holding him with your left
17 hand under his arms?

18 A. I don't know which hand I was
19 holding him, but I was holding him under his
20 arms.

21 Q. Was any part of your hand coming in
22 contact with the lower portion of his body as you
23 were holding him by the sink?

24 A. I can't say for sure, but I don't
25 think so.

1 Miriam

2 Q. Did your clothes get wet from any of
3 the product as you were flushing your
4 son's eyes?

5 A. I don't beve so.

6 Q. Did any of the product get
7 on your hands as you were washing your son?

8 A. I don't beve so.

9 Q. At any point in time at or after the
10 time of your son's incident, I'm talking about
11 the immediate period of time thereafter, did any
12 of the product come in contact with
13 your skin?

14 A. I don't beve so.

15 Q. How did the product get onto your
16 son's stretchy?

17 A. I don't know.

18 Q. At the time of the incident did you
19 see any type of liquid residue on any portion of
20 the bottle?

21 A. I don't recall.

22 Q. Did you look at the bottle at that
23 time to see if there was any type of liquid
24 residue on the bottle?

25 A. I don't recall there being any

1 Miriam

2 liquid on the bottle, I really am not sure.

3 MR. : If you don't recall
4 don't guess.
5 A. I'm not guessing, I really don't
6 know.
7 Q. Prior to the incident have you seen
8 any containers in terms of a spray mechanism
9 similar to the St. Moritz product?
10 A. In terms of the spray?
11 Q. Yes.
12 A. Yes.
13 Q. What such products would those be?
14 A. Like Windex.
15 Q. Anything else?
16 A. Fantastic.
17 Q. Anything else?
18 A. I don't know, I'm sure there are
19 others.
20 Q. The spray portion of the head of the
21 bottle on the other products that you just
22 mentioned, was that any different than the spray
23 mechanism on this bottle of ?
24 A. It's similar, I don't know if it was
25 exactly the same.

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1 Miriam
2 Q. Did you use the spray mechanisms on
3 those bottles in the same fashion that you used
4 the spray mechanism on the St. Moritz bottle?
5 A. I sprayed, that's all you have to

6 do.

7 Q. I meant also in terms of opening and
8 closing?

9 A. Yes, because you just have to turn
10 them.

11 Q. Referring to the?

12 A. The nozzle.

13 Q. The nozzle, the on/off portion at
14 the top of the head?

15 A. Yes.

16 MR. : On the Windex and
17 Fantastic that you had or had used. With respect
18 to the Windex, did that have on its container any
19 warning or label that said caution, keep out of
20 reach of children or words to a similar effect?

21 THE WITNESS: You're asking me a
22 question about something I really don't remember
23 the specifics of. I'm sure I glanced at it, but
24 nothing stuck in my mind.

25 MR. : How about for the

211

1 Miriam

2 Fantastic?

3 THE WITNESS: It's the same thing.

4 MR. : Was Fantastic a
5 furniture cleaner or dust remover, is that what
6 you had it for?

7 THE WITNESS: To clean cabinets,
8 counter tops.

9 MR. : It's an all purpose
10 product, you can use it in your bathroom, on
11 plastic. I wouldn't use it for furniture, they
12 have Johnston's and others, Pledge.
13 MR. : Is it fair to say
14 that with respect to the Windex and Fantastic, as
15 you sit here today you do not recall whether
16 those containers had cautionary labels that said
17 keep out of reach of children; is that accurate?
18 THE WITNESS: I don't recall.
19 MR. : Thank you.
20 Q. I just want to backtrack for a
21 second. Do you have any type of diary or
22 something at home, a record of documenting 's
23 first steps, first words, things of that nature?
24 A. No.
25 Q. At some point in time did you ever

212

1 Miriam
2 and I'm talking about after the accident, did you
3 ever observe whether in fact there was any liquid
4 residue on the container?
5 A. Afterwards, I don't know.
6 Q. So what is the basis for your claim
7 that the container leaked from the cap
8 and/or nozzle?
9 A. Because how else did it get on his
10 legs, the product got on his legs.
11 Q. Did you notice whether the container

12 was bruised at all when you first brought it into
13 your house?

14 A. No, I didn't notice anything.

15 Q. Did you check whether it was bruised
16 at all?

17 A. No.

18 Q. Did you ever inspect the bottle to
19 make sure that all portions were securely
20 fastened?

21 A. No.

22 Q. Did anyone ever tell you that they
23 observed any liquid residue on the St. Moritz
24 bottle after the accident?

25 A. No.

213

1 Miriam

2 Q. Has anyone ever told you that they
3 observed St. Moritz bottles leaking after the
4 accident?

5 A. Afterwards, again, I don't have the
6 product in my house so I wouldn't know
7 personally, but when I was discussing how it
8 possibly could have leaked out of the bottle
9 because I just didn't know and I still don't
10 know, I wasn't there. When I was discussing this
11 aspect with my mother and she said oh, I have a
12 bottle, and she went downstairs. I had thought
13 maybe that cap loosens but it apparently does
14 not, it's sealed. She also was under the

15 assumption that hers loosened, but it obviously
16 does not because most bottles that are spray
17 bottles the cap twists off and apparently this
18 one doesn't. She took her bottle and she turned
19 it over and it just leaked out. She said to me
20 you won't beve this, I'm holding my bottle now
21 and turned it over and it's leaking out.

22 Q. Based on that, your assumption is
23 that the bottle also leaked with respect to your
24 son?

25 MR. : She already answered

214

1 Miriam
2 the question. You previously asked the question
3 before how do you know that the product leaked
4 and she answered that question.

5 MR. WIENER: I don't think so. She
6 responded, I don't know if she answered.

7 MR. : She answered, she said
8 otherwise how would it get on to his legs.

9 MR. COOPER: I'll move on, that's
10 fine.

11 Q. Are there any other instances that
12 you are aware of where the St. Moritz product
13 leaked from the bottle, other than with respect
14 to your son?

15 A. No.

16 Q. Did you ever see turn the St.
17 Moritz bottle over, in other words upside down?

- 18 A. when?
19 Q. At any point in time.
20 A. No.
21 Q. Did you ever turn the St. Moritz
22 bottle other than from an upward position?
23 A. Not that I recall.
24 Q. Not even when spraying your oven?
25 A. No.

215

- 1 Miriam
2 Q. When you cleaned out your oven did
3 you spray the top of the oven as well?
4 A. What do you mean?
5 Q. When you used the St. Moritz product
6 to clean your oven, did you also clean out the
7 interior of the oven, the upper surface of the
8 oven as well, the roof?
9 A. Possibly.
10 Q. When you did that, assuming you did
11 that, did you turn the bottle over so that way
12 the spray nozzle was facing upward?
13 A. I can't tell you exactly how I would
14 have held the bottle.
15 Q. Did you ever turn the bottle in any
16 direction other than directly upright in terms of
17 using it for cleaning, or even for storage or
18 anything else?
19 A. For storage, definitely not, I don't
20 recall if I ever held it sideways. I just don't

21 recall how exactly I held the bottle.
22 Q. When you kept the product,
23 I believe you testified you kept the
24 product beneath the sink in your kitchen,
25 correct?

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1 Miriam

2 A. Yes.

3 Q. And there were other products kept
4 there as well?

5 A. Yes.

6 Q. Was this kept in the front, behind
7 other products, to the side of the other products
8 or something else?

9 A. The products that I did keep beneath
10 the sink were all the way in the corner so you
11 didn't see them when you opened up the cabinet
12 door, they were in the corner, it was a corner
13 sink.

14 Q. Were there any other products that
15 were kept in front of the St. Moritz product?

16 A. I wouldn't know, they were just all
17 there together.

18 Q. Did you ever have to maneuver the
19 St. Moritz product at all to fit it back under
20 the sink for storage?

21 A. Maneuver it in which way?

22 Q. In other words, turning it sideways
23 or on any type of angle in order to place it

24 beneath the sink?

25 A. I wouldn't have to because there's

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1 Miriam

2 plenty of room there.

3 Q. But did you?

4 A. Not that I recall.

5 Q. In response to interrogatory No. 22,
6 you claim that "the subject product could leak
7 from the cap and/or nozzle even when not in use".
8 How would a product leak when not in use?

9 A. Here it's referring to when not
10 actually cleaning your oven.

11 MR. : I would like to take a
12 five-minute break.

13 MR. COOPER: Fine.

14 (Short recess taken.)

15 Q. In response to interrogatory number
16 31, you indicate that was confined to bed and
17 home following discharge for a period of time.
18 was he confined to bed and home intermittently,
19 was it for a specific period of time or something
20 else?

21 A. No, it was just immediately
22 following discharge because he was basically
23 immobile at that point, he wasn't able to move,
24 he was confined to the house or where we would
25 carry him.

1 Miriam

2 Q. Did you incur any out-of-pocket
3 expenses in connection with 's medical care?

4 A. Some of them, yes.

5 Q. How much money?

6 A. I really don't know.

7 Q. Were a substantial portion of his
8 expenses, his medical care covered by insurance?

9 A. Yes.

10 Q. Was that Blue Cross/Blue Shield?

11 A. Yes.

12 Q. Through whom was that insurance
13 procured, you or your husband?

14 A. My husband.

15 Q. Do you have records that would
16 reflect which medical expenses, if any, were
17 incurred by you out of pocket? By you I mean you
18 and your husband in connection with 's medical
19 care?

20 A. The only thing that we might have
21 still kept were, and I'm not sure about this,
22 were receipts for his pressure garments.

23 Q. Where were those prescriptions
24 filled?

25 A. In Staten Island.

1 Miriam

2 Q. At a particular pharmacy, store, a
3 surgical supply store or something else?

4 A. It's related to the hospital there.

5 Q. Staten Island University Hospital?

6 A. Yes, it's sort of like the physical
7 therapy portion of the hospital that measures the
8 garments.

9 Q. Were any other prescriptions or
10 anything else paid out of your own pocket in
11 terms of the co-pay or anything, anything of that
12 nature?

13 A. My husband is more into the money.
14 The silicon gel pads, they were not prescription.

15 MR. : We will try to provide
16 at some later date a supplement.

17 MR. COOPER: I appreciate that,
18 counselor.

19 Q. As you sit here today, does he have
20 any future doctor appointments scheduled in
21 connection with his medical care for the injuries
22 that you claim he sustained in this case?

23 A. Right now he doesn't.

24 Q. Does he have any future surgeries
25 planned?

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1 Miriam

2 A. Right now, no.

3 Q. Were you told he might require
4 future surgery?

5 A. It's possible.
6 Q. who told you that?
7 A. Dr. Finkelstein.
8 Q. Anyone else?
9 A. No.
10 Q. what did he tell you that surgery
11 might entail?
12 A. I really don't know.
13 Q. In several of the responses you
14 provided to interrogatories, a distinction is
15 apparently made between the cap and the nozzle.
16 what do you understand the cap to mean and what
17 do you understand the nozzle to mean?
18 A. The cap is that green striated part
19 and the nozzle is that.
20 Q. The nozzle is the green part --
21 MR. : Do you want to label
22 it?
23 MR. COOPER: I don't think that's a
24 good idea.
25 A. The nozzle is this part where the

221

1 Miriam
2 spray comes out of.
3 MR. : The one that turns that
4 has different labels.
5 A. The one that says "stop" on it.
6 Q. The four directional green knob
7 that's on Defendants' Exhibit 1?

- 8 A. Yes.
- 9 Q. From which the spray emanates?
- 10 A. Yes.
- 11 Q. Who went with you in the ambulance
- 12 to the hospital with ?
- 13 A. It was just me and my husband and
- 14 some of the EMTs.
- 15 Q. Who spoke to the EMTs?
- 16 A. Who spoke to them?
- 17 Q. When they first arrived at your
- 18 house and from there until they reached the
- 19 hospital?
- 20 A. Me and my husband.
- 21 Q. How many different EMTs did you
- 22 speak with?
- 23 A. I don't know.
- 24 Q. Was it more than one?
- 25 A. It's possible.

222

- 1 Miriam
- 2 Q. Was Mosha Braun one of them?
- 3 A. It's possible. Oh, yes, because he
- 4 came first.
- 5 Q. Did you ever indicate to any of the
- 6 EMT personnel that, by EMT I mean any emergency
- 7 personnel be it Hatzolah or any other type of
- 8 ambulance core, that your son's incident involved
- 9 the product?
- 10 A. Yes.

- 11 Q. What was the sum and substance of
12 that conversation?
- 13 A. When Hatzolah arrived at our house I
14 said the product burned 's legs.
- 15 Q. Anything else?
- 16 A. I said I don't know, did it get in
17 his eyes, was there anything swallowed; I was
18 nervous.
- 19 Q. When you left the kitchen to go to
20 the closet hall to get a box of Corn Flakes, did
21 you leave with any toys on the kitchen floor?
- 22 A. No.
- 23 Q. You just left him sitting?
- 24 A. Yes.
- 25 Q. Is the area of the kitchen where you

223

- 1 Miriam
- 2 left visible from the area where you were
3 retrieving the Corn Flakes?
- 4 A. No.
- 5 Q. How much time passed from when you
6 put down to go get the box of Corn Flakes
7 until you returned to the kitchen and finding
8 holding the bottle of ?
- 9 A. I think it was less than a minute.
- 10 Q. When was holding the bottle of
11 was he holding it up in the air or was
12 it on the floor or something else?
- 13 A. I don't know, I don't recall.

14 Q. Can you describe how was
15 sitting, was he sitting cross legged or something
16 else?

17 A. I just know he was sitting on the
18 floor.

19 Q. Was he able to stand at that point
20 in time?

21 A. Not alone.

22 Q. Only holding on to something or
23 someone?

24 A. He could have stood for a little
25 bit.

224

1 Miriam

2 Q. Did you use to visit your mother's
3 house with any type of frequency back in December
4 of 2001?

5 A. Yes.

6 Q. Did ever open any cabinets in
7 your mother's house?

8 A. It's very possible.

9 Q. Did you ever see him do that?

10 A. Not that I recall specifically.

11 Q. Did anyone ever tell you that they
12 had seen him do it?

13 A. No, not that I recall.

14 Q. Had you ever seen open cabinets
15 anywhere other than your home before this
16 incident?

17 A. Not that I specifically recall.

18 Q. Did your mother have child safety
19 locks in her home back in December of 2001?

20 A. No.

21 Q. Did anyone from your family have
22 child safety locks back in December of 2001?

23 A. That I don't know.

24 Q. Did any of your friends have child
25 safety locks in their homes back in December of

225

1 Miriam

2 2001?

3 A. I don't know.

4 Q. When the EMT personnel arrived at
5 your house did any of them ask you what was wrong
6 with ?

7 A. Yes.

8 Q. What did they ask you?

9 A. What happened.

10 Q. What did you tell them?

11 A. I found holding the bottle and
12 his skin got burned.

13 Q. Where were you having this
14 conversation with the EMT personnel?

15 A. In the kitchen.

16 Q. So after you had removed 's
17 stretchy in your master bedroom you brought him
18 back to the kitchen?

19 A. Yes.

20 Q. What were you doing with him in the
21 kitchen at the time the EMT personnel arrived?

22 A. Holding him.

23 Q. Were you flushing any part of his
24 body at that time?

25 A. No.

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1 Miriam

2 Q. How did you know his legs had been
3 burned?

4 A. I saw that they were charred black.

5 Q. Was any other portion of his body
6 burned to your understanding at that point in
7 time, other than his legs?

8 A. No.

9 Q. Did anyone tell you that they had
10 witnessed the product leaking on to
11 ?

12 A. No.

13 Q. Did anyone show the EMT personnel
14 the product while they were in your
15 house?

16 A. Yes.

17 Q. Who did?

18 A. Either me or my husband.

19 Q. Did any of the EMT personnel ask to
20 see that product?

21 A. Yes.

22 Q. Did anyone hand them that bottle?

23 A. Yes.
24 Q. who did?
25 A. My husband. Other than that I'm not

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1 Miriam
2 certain.
3 Q. Your husband?
4 A. My husband did, other than that I'm
5 not certain.
6 Q. Did the EMS personnel ask you to
7 take it with them to the hospital?
8 A. No.
9 Q. Did they ask you whether he had
10 ingested any of the product?
11 A. I actually asked them, they
12 confirmed that he did not.
13 Q. How did they confirm that?
14 A. They looked down his throat.
15 Q. Did they use any instruments to look
16 down his throat?
17 A. I don't know.
18 Q. Did your husband get any burns on
19 his hands following this incident?
20 A. No.
21 Q. Did he get any of the
22 product on any of his clothing immediately
23 following this incident?
24 A. I don't think so.
25 Q. what clothes were you wearing at the

1 Miriam
2 time of this incident?
3 A. Nothing unusual.
4 Q. I'm asking what specifically you
5 were wearing, what outfit, if appropriate?
6 A. I don't know, an everyday outfit.
7 Q. Do you still have that outfit?
8 A. I don't know because I don't
9 remember exactly what I was wearing.
10 Q. Have you ever brought any prior
11 lawsuits?
12 A. No.
13 Q. Has injured his legs at all
14 since this incident?
15 A. Nothing other than the usual
16 scrapes.
17 Q. How often does he get scraped?
18 A. Every so often when he falls down.
19 Q. Anything that he has been brought to
20 the doctor for?
21 A. No.
22 Q. Have you brought any other lawsuits
23 at all, other than this lawsuit?
24 A. No.
25 MR. COOPER: I'm going to check over

1 Miriam

2 my notes.

3 EXAMINATION BY

4 MR. WIENER:

5 Q. Good afternoon, Ms. .

6 My name is Joseph Wiener and I represent Wesley
7 Kosher in this lawsuit. You have heard of Wesley
8 Kosher?

9 A. Yes.

10 Q. What is ?

11 A. It's a supermarket.

12 Q. Is that up near where you live?

13 A. Yes.

14 Q. About how far is it from your house?

15 A. It's about a two minute drive.

16 Q. Do you know any of the owners of
17 ?

18 A. No.

19 Q. Do you know even their names?

20 A. No.

21 Q. Do you have a relationship with any
22 of the employees of , either
23 personal, business or otherwise?

24 A. No.

25 Q. Have you ever had conversations with

230

1 Miriam

2 any of the employees at ?

3 A. Nothing other than where is the
4 potato chips or something like that.

5 Q. Have you ever personally purchased
6 this product from ?

7 A. No, I don't beve so.

8 Q. Did you or your husband have the
9 receipt from when this product was purchased?

10 A. No.

11 Q. In general, how do you and your
12 husband pay for your purchases at ?

13 A. Usually a credit card.

14 Q. Does the credit card give you an
15 itemized list or is it just one total?

16 A. I think it's itemized.

17 MR. : On a credit card, not
18 unless it's American Express.

19 A. Not on the credit card portion
20 itself.

21 Q. I mean on your monthly statement?

22 A. No.

23 Q. Do you or your husband have a
24 practice of keeping the cash register receipts
25 from when you buy things at ?

231

1 Miriam

2 A. No.

3 Q. To your knowledge, did anybody from
4 ever make any representations about
5 this product to you or your husband?

6 A. No.

7 Q. You testified before about a
8 conversation with your mother who apparently also
9 had a bottle of this product with her at that
10 time, was that a telephone conversation?

11 A. It wasn't at that time, it was just
12 recently, since the last deposition. It was a
13 telephone conversation.

14 Q. Since the last deposition?

15 A. Yes.

16 Q. What is it exactly that you are
17 claiming that did wrong in this
18 case?

19 MR. : It has no legal effect.
20 He can ask it, you're not the attorney.

21 MR. WIENER: I understand she didn't
22 prepare the pleading. I'm asking her what she is
23 claiming that did wrong to her in
24 this case.

25 MR. : Answer as best that you

1 Miriam

2 can.

3 A. The fact that they had this product
4 on the shelf that was extremely toxic and looking
5 like it was in a regular kind of a windex bottle
6 in a store where many families shop that have
7 little children.

8 Q. Before this incident did you ever

9 make any complaints to with respect
10 to this product?

11 A. No.

12 MR. WIENER: I have no further
13 questions.

14 CONTINUED EXAMINATION

15 BY MR. :

16 Q. Mrs. , Howard ,
17 remember me, we spent an entire day together a
18 couple of weeks ago. When you came back and you
19 saw your son holding the container, was he
20 holding it with one hand or with two hands?

21 A. I don't recall.

22 Q. Again, you don't recall which hand?

23 A. Right.

24 Q. Had you fed your son breakfast that
25 day?

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1 Miriam

2 A. Yes, I would imagine so.

3 Q. I don't want you to imagine or to
4 guess. If you don't recall tell us you don't
5 recall?

6 A. My custom and habit was to feed him
7 before 10:15 breakfast.

8 Q. Ordinarily when would his next
9 feeding have been, according to your custom and
10 practice, back at the time of the incident?

11 A. Generally lunchtime.

- 12 Q. which in your household would have
13 been when?
- 14 A. Whenever lunchtime is, 12, when he
15 gets hungry.
- 16 Q. When was the last time he had
17 anything, as far as you know, anything to eat
18 prior to the incident?
- 19 A. I don't recall what he ate that day.
- 20 Q. I'm asking you when did he eat?
- 21 A. I don't recall exactly when he ate.
- 22 Q. What he ate before the incident
23 would have been his breakfast?
- 24 A. Probably.
- 25 Q. Did he walk around with any kind of

234

- 1 Miriam
- 2 sippy cup with milk or juice in it?
- 3 A. No.
- 4 Q. Did he have a sippy cup with him on
5 the kitchen floor when you left to get the Corn
6 Flakes?
- 7 A. No.
- 8 Q. He had no toys, correct?
- 9 A. Right.
- 10 Q. So he had nothing?
- 11 A. Correct.
- 12 Q. At the time of the incident your son
13 knew how to crawl?
- 14 A. Yes.

15 Q. Did you observe your son opening the
16 kitchen cabinets prior to the date of the
17 incident?

18 A. Yes.

19 Q. Once he opened the kitchen cabinets
20 that you observed, what did you observe him do
21 after that? In other words, did you observe him
22 put his arm inside or try to physically go into
23 the cabinet?

24 A. Usually he would just sit in front
25 of it and open it up.

235

1 Miriam

2 Q. Would he look at it like he was
3 looking at a TV set?

4 A. Take out a pot or a pan.

5 Q. So he would take something out?

6 A. Yes.

7 Q. Before you said the first person you
8 called was your sister, is that correct?

9 A. Correct.

10 Q. Before you called your sister and
11 after you returned from the pantry where the Corn
12 Flakes were, did you see your son rub his eyes?

13 A. No.

14 Q. Did you see his eyes tear?

15 A. No.

16 Q. Did his eyes look red?

17 A. Not that I recall.

18 Q. So you had no physical indication
19 that there was any injury to his eyes, is that
20 right?

21 A. Right.

22 Q. You just made that assumption based
23 upon what you assumed had occurred?

24 A. I said this previously when you
25 weren't here, that was my greatest fear of what

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1 Miriam

2 could have happened. I know eyes are very
3 sensitive, so that's what I was nervous about.

4 Q. Again, it wasn't based on any
5 physical evidence that you observed about your
6 son himself?

7 A. No.

8 Q. When your son was holding the
9 container how did the container get out of his
10 hands, did he drop it, did you pull it away from
11 him, what happened?

12 A. I don't know.

13 Q. At that time when you saw your son
14 holding the container with either or both hands,
15 did you see at that point any liquid on the floor
16 where your son was, either let's say if he was
17 sitting down between his legs or around him?

18 A. At that point I didn't notice
19 anything.

20 Q. Did you notice any liquid on the

21 floor at any point prior to when you turned on
22 the sink water to wash out his eyes?

23 A. No.

24 Q. Did you in fact turn the sink water
25 on to wash out his eyes?

237

1 Miriam

2 A. Yes.

3 Q. Was it the same sink under which the
4 was being stored?

5 A. No.

6 Q. You had two sinks?

7 A. Yes.

8 Q. Were they adjacent to each other,
9 next to each other?

10 A. They were pretty close to one
11 another.

12 Q. So it was the other sink that you
13 would use, correct?

14 A. Yes.

15 Q. When you lifted your son up was he
16 still holding the container as you were lifting
17 him?

18 A. I don't beve so.

19 Q. After you lifted your son up, when
20 is your next recollection of observing the
21 container of that's marked as Exhibit 1
22 today?

23 A. I don't know exactly when I saw it.

24 I know I saw it when my husband was holding it to
25 show it to the EMT.

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1 Miriam

2 Q. So your next recollection as you sit
3 here today is when the EMTs were in the house?

4 A. Yes.

5 Q. Did you call 911?

6 A. No.

7 Q. Do you know who did?

8 MR. : You are assuming
9 somebody did.

10 Q. Did you call Hatzolah?

11 A. No.

12 Q. Did Hatzolah have an emergency
13 number that was different than the traditional
14 911 emergency number?

15 A. Yes.

16 Q. Did you have that somewhere posted
17 in your house or do you know it from memory?

18 A. Yes.

19 Q. Which one?

20 A. It's on the phone.

21 Q. It's taped on the phone?

22 A. It's a sticker.

23 Q. So you don't recall whether you're
24 the one who made the call?

25 A. No, my husband was the one who made

1 Miriam

2 the call.

3 Q. How do you know he made the call,
4 you told him to or he told you?

5 A. It was common knowledge once we saw
6 his legs.

7 Q. I'm not asking you that. Was the
8 call made from your phone at home?

9 A. Yes.

10 Q. As opposed to someone outside the
11 home calling like your pediatrician or sister?

12 A. It was made from home.

13 Q. You waited to make that call until
14 after you saw the legs were burned, is that
15 correct?

16 A. Yes.

17 Q. Was your son at the time wearing a
18 diaper?

19 A. Yes.

20 Q. How much time elapsed from when you
21 returned to the kitchen or when you observed your
22 son holding the product until you
23 removed the stretchy?

24 A. I don't know exactly.

25 Q. Your best approximation, your best

1 Miriam

2 estimate?

3 A. We called the Hatzolah at 10:30,
4 this was around 10:15, so it was around 15
5 minutes.

6 Q. How much time elapsed from when you
7 saw your son holding the when you
8 noticed that his stretchy pants were wet?

9 A. We noticed that, I don't know
10 exactly the amount of time.

11 Q. Was it more than five minutes?

12 A. From when to when?

13 Q. From when you returned from getting
14 your box of Corn Flakes, you see your son holding
15 the container of . From that time until
16 you noticed that his stretchy pants are wet how
17 much time had passed?

18 A. I don't know exactly, but it was
19 less than 15 minutes, around 15 minutes.

20 Q. How much time elapsed from when you
21 first noticed your son holding the container of
22 until when your son begins to cry?

23 A. I don't know exactly, a few minutes.

24 Q. Do you have a cordless phone in the
25 kitchen?

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1 Miriam

2 A. Yes.

3 Q. Were you holding your son as you
4 were calling your sister?

5 A. Yes.

6 Q. Were you holding your son as you
7 were calling the pediatrician?

8 A. Yes.

9 Q. And when you were calling your
10 husband?

11 A. Yes.

12 Q. All that time you were holding your
13 son?

14 A. Yes.

15 Q. Is it your testimony that during
16 none of that period of time did you feel that the
17 stretchy pants were in any way wet?

18 A. I didn't notice it at that time.

19 Q. You didn't notice it. Did you feel
20 it?

21 A. I did not feel it at the time, not
22 that I recall.

23 Q. Did you look again at the floor area
24 around the sink during this 15 minute time that
25 elapsed from when you first noticed he was

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1 Miriam

2 holding the container until when the call is made
3 to Hatzolah, did you notice any liquid on the
4 kitchen floor?

5 A. I don't recall.

6 Q. Did water from the sink splash onto
7 the floor as you were cleaning your son's eyes?

8 A. I don't know.

9 Q. When you did use this container to
10 spray the oven, when the spray came out can you
11 tell us was it a clear liquid, was it colored in
12 any way?

13 A. It was clear-ish.

14 Q. Did it have an odor?

15 A. Yes.

16 Q. Can you describe the odor in words
17 in any way?

18 A. It wasn't a pleasant odor.

19 Q. Whatever that odor was, did you
20 smell that odor coming from your child when you
21 brought him to the sink to clean his eyes out?

22 A. I don't recall.

23 Q. Did you smell that odor coming from
24 his stretchy pants?

25 A. I don't recall.

243

1 Miriam

2 Q. Did you smell that odor on the
3 kitchen floor?

4 A. I don't recall if I smelled it.

5 Q. Did you use a particular type of
6 product to clean your floors at that time?

7 A. I could have used any number of
8 products.

9 Q. So there could have been more than
10 one product that you used to clean your floor?

11 A. Yes.
12 Q. Was it a name brand kind of thing?
13 A. Probably.
14 Q. You had Windex in your house at the
15 time of the incident?
16 A. I believe so.
17 Q. Do you know if Windex had a label on
18 it that said never spray on skin?
19 A. I don't know.
20 Q. Did you have Fantastic in your house
21 at the time of the incident?
22 A. I believe so.
23 Q. Do you know if Fantastic had wording
24 on its label that said never spray on skin?
25 A. I don't know. As I said before, the

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1 Miriam
2 exact wording is not something I really remember.
3 Q. Did Windex have any kind of either
4 word or symbol on it that said it was corrosive?
5 A. I don't know.
6 Q. The same question for Fantastic.
7 The Fantastic container that you had in your
8 house at the time of the incident, did it have
9 any symbol or word on its label that said it was
10 corrosive?
11 MR. : All these questions
12 have been asked and answered.
13 MR. : I didn't mean to

14 repeat. I may have some more, but in the
15 interest of getting this done quickly I will pass
16 the baton. I reserve my right after counsel.

17 CONTINUED EXAMINATION

18 BY MR. COOPER:

19 Q. At the time that you saw in the
20 kitchen sitting on the floor with the
21 product when you came back into the kitchen, was
22 there anything else lying on the floor at that
23 time?

24 A. No.

25 Q. The pipes that ran underneath the

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1 Miriam

2 sink from where you claim that removed the
3 product, hot water ran through those
4 pipes?

5 A. I would imagine so.

6 Q. Did you have a special hot water
7 spigot for instant hot water or something like
8 that?

9 A. No.

10 Q. Do you know what I'm talking about
11 when I say that?

12 MR. : How is this relevant,
13 Mr. Cooper?

14 MR. COOPER: I think it's extremely
15 relevant.

16 MR. : You're going to keep it
Page 91

17 a secret how it's relevant and I have to try to
18 figure it out?

19 MR. COOPER: You're a smart guy.

20 MR. : It's got some real
21 connection, it's for you to know and for me to
22 figure out.

23 Q. Did anyone ever represent to you
24 that was a safe product?

25 A. Versus unsafe?

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1 Miriam

2 Q. Versus dangerous?

3 A. Nobody ever represented to me
4 anything specifically about in regards
5 to its safety.

6 MR. : If a question calls for
7 a yes or no answer just give him that.

8 Q. Did you ever see any advertisements
9 for St. Moritz Oven Cleaner before the
10 incident?

11 A. No.

12 Q. Did you ever see any warranties with
13 respect to the St. Moritz cleaner?

14 A. No.

15 Q. Before you testified that you use
16 various things to clean your floors, did you ever
17 use ammonia?

18 A. No.

19 Q. Any cleaner that contained ammonia?

- 20 A. No, I don't think so.
21 Q. Did you ever use Pine-Sol?
22 A. Yes.
23 Q. Did you ever use Mr. Clean?
24 A. I don't know.
25 Q. Did you use to mop your kitchen

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- 1 Miriam
2 floor?
3 A. Yes.
4 Q. What other compounds would you use
5 to clean your floor?
6 A. Pine-Sol or Windex, I'm sorry
7 Fantastic.
8 Q. Did you have a specific mop that you
9 used?
10 A. No.
11 Q. What type of mop did you have?
12 A. A sponge mop.
13 Q. When was the last time you had
14 mopped your floor before your son's incident?
15 A. I don't know.
16 Q. Back in the summer of 2001 did you
17 mop your kitchen floor on any type of regular
18 basis?
19 A. Yes.
20 Q. How often?
21 A. I don't know exactly, probably like
22 every other day.

23 Q. At the time that you left on the
24 kitchen floor before going for the Corn Flakes,
25 was the kitchen floor wet or dry?

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1 Miriam

2 A. Dry.

3 Q. Had you mopped the kitchen floor
4 within three hours prior to the incident?

5 A. No.

6 Q. What day of the week did the
7 incident happen?

8 A. Monday.

9 Q. Had you eaten at all in the kitchen
10 over the previous weekend?

11 A. I would imagine so.

12 Q. Was there a custom and practice that
13 you had in terms of cleaning up from the weekend
14 on the sabbath in terms of the kitchen floor?

15 A. Not necessarily, it depended if it
16 was dirty or not.

17 Q. Do you consider Pine-Sol dangerous?

18 A. Toxic like this, no.

19 Q. Do you consider it dangerous?

20 A. I don't consider it toxic. That's
21 not to say I would want my child playing with it.

22 Q. Did you ever consider what would
23 happen if Pine-Sol got on your son's skin?

24 A. I never thought about it before.

25 Q. Is there anything distinct in terms

1 Miriam
2 of the labng of the Pine-Sol as opposed to the
3 St. Moritz?

4 A. Again, I don't recall anything
5 unusual about the labng of the Pine-Sol any
6 different than any regular cleaner.

7 Q. At question 40 of your response to
8 interrogatories, which is Exhibit 2A, you say
9 that you took standard procedures and precautions
10 when using the product. What were those standard
11 procedures and precautions?

12 A. As a general rule I would have shut
13 the nozzle to off. I can't say for certain that
14 it was off before this date, but generally I did.
15 Again, I kept the product that I deemed really
16 dangerous in a locked cabinet or high up on top
17 of the frige. So the products that I didn't
18 beve were really toxic were kept underneath
19 the sink all the way deep in a corner where I did
20 not think it was that easy to get to anyway.

21 Q. How far from the front of the
22 cabinet was the kept?

23 A. Again, it was like in the corner.
24 So it was sort of like you had to crawl almost
25 into the cabinet to get at it, you had to reach

1 Miriam

2 your hand around.

3 Q. How far?

4 A. I don't know.

5 Q. More than a foot?

6 A. I don't know.

7 Q. More than three feet?

8 MR. : You have to answer that

9 one, you can search your memory.

10 Q. Further down in that response you
11 just mentioned it earlier, you kept the other
12 products that you deem more dangerous such as the
13 Raid and the bleach in a locked laundry closet,
14 how was that closet locked?

15 A. It was locked with a turning lock.

16 Q. With a key?

17 A. No.

18 Q. What do you mean by turning lock?

19 A. It locks from the outside.

20 Q. Sort of like a dead bolt lock? I'm
21 not sure I understand, what do you mean by a
22 turning lock?

23 A. You just had to turn it to lock it.

24 Q. There was a little knob or handle
25 beneath the doorknob which you could turn, which

1 Miriam

2 would in turn cause a lock to move into the side

3 of the door into the door frame?

4 A. It was into the side of the door,
5 yes.

6 Q. That was at about the doorknob
7 level?

8 A. Yes.

9 Q. Which would be several feet off the
10 ground?

11 A. Yes.

12 Q. Returning to the pictures that we
13 identified last time as exhibits 4-A through C.
14 Turning to the picture that's been marked
15 previously as 4-A, is that the kitchen cabinet
16 that's ajar beneath which the was kept
17 before the incident?

18 A. Yes.

19 Q. With respect to that picture, you
20 said that the was kept inside and in
21 the corner, was that behind the portion of the
22 door which is obscured from view by virtue of the
23 door?

24 A. No, it was in there.

25 Q. To the left. In terms of looking

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1 Miriam

2 forward into the picture it would be to the left,
3 and that is beyond the view of the picture?

4 A. Yes.

5 Q. Approximately how high does the base

- 6 portion of the cabinet go from the floor up to
7 the top of the base part of the cabinet that's
8 depicted in 4-A, I'm referring to the area that's
9 slightly ajar before you go inside that cabinet?
- 10 A. I don't understand the question.
- 11 Q. That's fair enough, it was poorly
12 worded. In Exhibit 4-A, the door beneath the
13 sink which is opened also apparently depicts a
14 piece of wood which extends down to the floor.
- 15 A. Can you point to it. Yes.
- 16 Q. How high does that piece of wood
17 which extends from the bottom of the cabinet down
18 to the floor go, how long is that piece of wood?
- 19 A. This little piece?
- 20 Q. Yes.
- 21 A. I don't know.
- 22 Q. Can you give me a rough estimate?
- 23 A. How high it is?
- 24 Q. Yes, six inches, a foot?
- 25 A. Less than a foot, I don't know

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- 1 Miriam
2 exactly, a few inches.
- 3 Q. At that point in time did climb
4 stairs?
- 5 A. No.
- 6 MR. COOPER: I have nothing further
7 at this time.
- 8 MR. WIENER: I have a few follow-up

9 questions.

10 CONTINUED EXAMINATION

11 BY MR. WIENER:

12 Q. With respect to that photograph 4-A,
13 do you know when this photograph was taken?

14 A. I don't know.

15 Q. On the date of this accident were
16 there other products that were stored in that
17 cabinet along with the ?

18 A. Yes.

19 Q. What other products were there?

20 A. I had answered this already, it was
21 my typical products.

22 Q. Typical cleaning products?

23 A. Yes, that I did not deem were toxic.

24 Q. Do you know why there are no
25 products kept in the cabinet at the time this

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1 Miriam

2 photo was taken?

3 A. First of all I don't know that you
4 would have seen them from this picture because it
5 was all the way in the corner, so I can't tell
6 you for sure that there weren't on in there.

7 Q. On the date of this incident, if you
8 opened the cabinet as it's shown open in this
9 photograph, would you have seen other products in
10 there?

11 A. At the time of this incident?

- 12 Q. Yes.
- 13 A. Were there other products there?
- 14 Q. You already answered that. What I
15 would like to know is you see how the cabinet
16 door is opened in this picture and you can see
17 inside the cabinet. On the date of the incident,
18 if you open the cabinet as much as it's opened in
19 this picture would you see other products in the
20 cabinet?
- 21 A. Not unless you looked into the
22 cabinet.
- 23 Q. Do you know how deep this cabinet
24 is?
- 25 A. No.

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- 1 Miriam
- 2 Q. Does it go from somewhere near the
3 front of your sink all the way to the corner of
4 the room?
- 5 A. Yes.
- 6 Q. Do you know when the cabinet was
7 installed?
- 8 A. I don't know.
- 9 Q. It was there when you and your
10 husband moved in?
- 11 A. Yes.
- 12 Q. Were any changes made to the cabinet
13 from the time you and your husband moved in up
14 until the date of this incident?

15 A. No.

16 Q. Was there any kind of a latching
17 device that would keep this cabinet closed when
18 it was in the closed position?

19 A. No.

20 Q. There was no latch?

21 A. No.

22 Q. When you would close the cabinet up
23 to and including the date of the incident, would
24 the cabinet stay flush with the part that it
25 comes up against or would it hang open a little

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1 Miriam

2 bit or something else?

3 A. It would close regularly.

4 Q. Was there any kind of a spring
5 mechanism on the cabinet door that would keep it
6 closed if you weren't around?

7 A. No.

8 Q. Did you or your husband ever make
9 any complaints with respect to cabinet latches or
10 the conditions of this cabinet to your landlord
11 prior to and including the date of the incident?

12 A. No.

13 Q. Did you or your husband make any
14 changes or alterations to the product from the
15 time that you bought it up until the date of the
16 accident?

17 A. No.

18 Q. Was this a house or an apartment or
19 something else?

20 A. A little house.

21 Q. Were all the rooms on one floor?

22 A. Yes, all the rooms were on one
23 floor.

24 Q. When you rented this house did you
25 have any children at that time?

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1 Miriam

2 A. Yes.

3 Q. Who did you rent the house from?

4 A. Somebody by the name of Zachs.

5 Q. Did Mr. Zachs or Mr. and Mrs. Zachs
6 know that you had children?

7 A. Yes.

8 Q. And that you intended to be living
9 in the house with children?

10 A. Yes.

11 Q. The closet where you would keep the
12 household cleaners or the products that you
13 considered to be dangerous, what products did you
14 consider dangerous that you kept in that closet?

15 A. In that specific one it was only the
16 bleach.

17 Q. Did you have a washing machine?

18 A. Yes.

19 Q. Where was the washing machine?

20 A. In that closet, it was a closet with

21 the machine in it.

22 Q. There was a shelf above the machine
23 and that's where you keep the bleach?

24 A. It was just on the side.

25 Q. What else would you keep on that

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1 Miriam

2 shelf?

3 A. Detergent, fabric softener.

4 Q. Did you keep any drain cleaner in
5 the house?

6 A. No.

7 Q. You and your husband never had any
8 clogged drains from the time that you moved in up
9 until the date of the incident?

10 A. Not that I know of.

11 MR. WIENER: I have nothing further,
12 thank you.

13 CONTINUED EXAMINATION

14 BY MR. :

15 Q. The cabinet that is shown 4-A with
16 the open door, when you came back into the
17 kitchen from getting the box of Corn Flakes was
18 that cabinet door, the lower kitchen cabinet door
19 open?

20 A. Yes.

21 Q. Before you left to go get Corn
22 Flakes was that cabinet door closed?

23 A. I believe so.

24 Q. That particular cabinet in 4-A, had
25 your son ever opened that cabinet door by himself

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1 Miriam

2 at any time prior to the date of the incident?

3 A. I don't recall him opening that
4 specific one.

5 Q. How about the adjoining cabinets or
6 the adjacent ones, the ones near it?

7 A. One of them near it.

8 Q. Can you point to which one?

9 A. This one.

10 Q. Indicating as you're looking at the
11 photograph the cabinet to the left of the one
12 under the sink?

13 A. Yes.

14 Q. What do you keep in that cabinet?

15 A. It had some pots and pans.

16 Q. That's it?

17 A. Yes.

18 Q. Nothing else?

19 A. Bowls.

20 Q. Is this a tile floor?

21 A. It's actually linoleum.

22 Q. Do any of these photographs depict
23 where the Corn Flakes were kept that you were
24 going for just prior to the incident?

25 A. Yes, this cabinet, this closet.

1 Miriam
2 Q. Indicating photograph 4-C.
3 MR. : Aren't they all marked?
4 MR. : Yes, this is A, B
5 and C.
6 Q. Can you point again?
7 A. This closet.
8 Q. Is that the closet that's the center
9 photograph, it looks like the end of a hallway?
10 A. Yes.
11 Q. If you are facing that closet you
12 have your back towards the kitchen?
13 A. Yes.
14 Q. Is it your testimony ma'am that your
15 son opened the cabinet, crawled into the cabinet
16 and grabbed or took out of the cabinet a well
17 Done container that's marked today as Exhibit 1?
18 MR. : She said she didn't see
19 it. Do you want her to speculate?
20 A. I wasn't there.
21 Q. Did you see any trail of liquid
22 coming from the cabinet to where your son was
23 seated on the kitchen floor?
24 A. Not that I recall.
25 Q. Did you see any liquid inside the

2 cabinet on the floor?

3 A. Not that I recall.

4 Q. How far from the cabinet was your
5 son when you saw him holding the container with
6 the ?

7 A. It was a little bit away from him.

8 Q. A foot, two feet, a little less?

9 A. I don't know exactly, around two
10 feet.

11 Q. How far from the cabinet was your
12 son when you left the kitchen to get the Corn
13 Flakes?

14 A. He was more towards the middle of
15 the kitchen.

16 Q. When you came back he was closer
17 towards the cabinet?

18 A. Yes.

19 Q. After you saw your son, do you know
20 whether anyone ever checked whether there was
21 liquid from the container that was under the
22 kitchen cabinet?

23 A. I don't know.

24 Q. Or inside the kitchen cabinet?

25 A. I don't know, I don't think so.

1 Miriam

2 Q. The container that we have here
3 today appears to be empty, would you agree?

4 A. Yes.

5 Q. Do you know how it got empty?
6 A. That's the million dollar question.
7 Q. You may be right in more than one
8 way. So the answer is you don't know?
9 A. I don't know. I don't know that
10 that's the container either.
11 Q. You don't know whether it's the
12 container either, we have gone through that the
13 other day. Was there content in the St. Moritz
14 oven cleaner to your knowledge after
15 the incident?
16 A. I beve so.
17 Q. Do you know how much? In other
18 words, was it still a third full, a half full,
19 three quarters?
20 A. I don't know.
21 Q. You testified earlier about the
22 experience your mother had after your deposition
23 a few weeks ago, correct?
24 A. Yes.
25 Q. The container of that she

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1 Miriam
2 had which she experienced when turning it upside
3 down and it leaking, where is that container
4 right now?
5 MR. : Her mother's container?
6 MR. : Yes.
7 Q. Does she still have it, did you ask

8 her to keep it?

9 A. I didn't ask her to keep it.

10 Q. Did she tell you where it leaked
11 from? Did it leak from the cap, did it leak from
12 somewhere else, did she tell you that?

13 A. I asked her, she told me that it
14 leaked from the nozzle.

15 Q. Can you point with your fingers to
16 where you beve she told you it leaked from?

17 A. I really don't know because it was
18 on the telephone, I don't want to speculate.

19 Q. Did she use the word nozzle; did she
20 say honey, it's leaking from the nozzle or
21 daughter, it's leaking from the nozzle?

22 A. I don't recall exactly, but I know
23 she said that it was not leaking from here.

24 Q. Meaning not leaking from the cap?

25 A. Right.

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1 Miriam

2 Q. Did she tell you about the leakage,
3 the flow. In other words, was it drip by drip
4 leakage or was it more steady?

5 A. She said it was considerable.

6 Q. That was her word, considerable, or
7 your word?

8 A. I can't promise the word, that's
9 what I recall.

10 MR. WIENER: With respect to the
Page 108

11 laundry closet you kept bleach, you kept laundry
12 detergent and fabric softener there, correct?

13 THE WITNESS: Correct.

14 MR. WIENER: Is it fair to say that
15 the bleach was the only product that you
16 considered to be dangerous in that cabinet?

17 THE WITNESS: Yes

18 MR. WIENER: No further questions,
19 thank you.

20 (Time noted: 4:15 p.m.)

21

22 MIRIAM

23 subscribed and affirmed to before me
24 this day of , 2004.

25 _____

1 Miriam

2 I, Miriam , wish to make the
3 following changes, for the following reasons:

4

5 PAGE LINE

6 CHANGE:

7 REASON:

8 CHANGE:

9 REASON:

10 CHANGE:

11 REASON:

12 CHANGE:

13 REASON:

14 CHANGE:
15 REASON:
16 CHANGE:
17 REASON:

18 _____
19 MIRIAM

20
21 subscribed and sworn to before me
22 this day of 2004.

23
24 Notary Public
25

1 C E R T I F I C A T E
2 I, Roberta Caiola, a Shorthand
3 Reporter and Notary Public within and
4 for the State of New York, do hereby
5 certify:

6
7 That the statements, colloquy
8 and testimony contained herein is a
9 true record of the proceedings in
10 this matter.

11
12 I further certify that I am not
13 related to any of the parties
14 involved in this proceeding, and that
15 I am in no way interested in the
16 outcome of this matter.

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ROBERTA CAIOLA

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1 I N D E X

2 April 19, 2004

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14
15 (*) QUESTIONS DIRECTED NOT TO ANSWER

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