

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CASE NO. A-11-636515-C
DEPT. NO. 30
DOCKET U

Electronically Filed
05/04/2014 06:09:18 PM


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

MARGARET G. SEASTRAND,)
)
Plaintiff,)
)
vs.)
)
RAYMOND RIAD KHOURY, DOES 1)
through 10; and ROE ENTITIES)
11 through 20, inclusive,)
)
Defendants.)
)

REPORTER'S TRANSCRIPT
OF
JURY TRIAL
BEFORE THE HONORABLE JERRY A. WIESE, II
DEPARTMENT XXX
DATED MONDAY, JULY 15, 2013

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
CA CSR #13529

1 APPEARANCES:

2 For the Plaintiff:

3 RICHARD HARRIS LAW FIRM
4 BY: BENJAMIN P. CLOWARD, ESQ.
5 BY: ALISON BRASIER, ESQ.
6 801 South Fourth Street
7 Las Vegas, Nevada 89101
8 (702) 444-4444
9 benjamin@richardharrilaw.com

7 For the Defendant:

8 HALL JAFFE & CLAYTON, LLP
9 BY: STEVEN T. JAFFE, ESQ.
10 BY: JACOB SMITH, ESQ.
11 7455 West Washington Avenue
12 Suite 460
13 Las Vegas, Nevada 89128
14 (702) 316-4111
15 sjaffe@lawhjc.com

16 * * * * *

1 LAS VEGAS, NEVADA, MONDAY, JULY 15, 2013;

2 9:01 A.M.

3

4 P R O C E E D I N G S

5 * * * * *

6

7 THE COURT: All right. Let's go on the
8 record, Case No. 636515, Margaret Seastrand versus
9 Raymond Khoury. Why don't you guys make your
10 appearances before we start for the record.

11 MR. CLOWARD: Benjamin Cloward and Allison
12 Brasier and Jonathan Hicks for the plaintiff.

13 MR. JAFFE: Good morning, Your Honor, Steven
14 Jaffe, Hall, Jaffe and Clayton, for Randy Khoury.

15 MR. SMITH: Jacob Smith from Hall, Jaffe and
16 Clayton also for Defendant Randy Khoury.

17 THE COURT: Okay. And you're Mr. Scott?

18 MR. SCOTT: Yes, Your Honor. Good morning.

19 THE COURT: Who's this behind you?

20 MR. JAFFE: Ray Khoury.

21 THE COURT: Mr. Khoury, good to have you.

22 And over on this side we have the plaintiff
23 also, Margaret Seastrand, right?

24 MR. CLOWARD: Correct.

25 THE COURT: Okay. Go ahead and sit. Before

1 we get started, I know we have motions to take care of.
2 Let me just talk to you first about the jury. Because
3 since I was gone last week, there were -- and I got a
4 letter from Mrs. Brasier with several people that had
5 been agreed to that we were going to release from the
6 jury. Let me just go through those to make sure
7 everybody still agrees to these.

8 MR. JAFFE: Sure.

9 THE COURT: Based on this letter, there was
10 an agreement to strike the following prospective
11 jurors: Badge No. 02-0042, Jennifer Genovese; 02-0118,
12 Brian Drohn; 02-0132, Keena House-Mitchell.

13 MR. CLOWARD: Can you slow down just one
14 moment? Thank you.

15 After Brian Drohn, who's the next one, Judge?

16 THE COURT: 02-0132, Keena House-Mitchell.
17 Next one is 02-0187, Raya Alsaiegh, something like
18 that.

19 MR. CLOWARD: Okay.

20 THE COURT: Next one is 02-0201, Maria
21 Gabriel; 02-0214, Jennifer Fitzpatrick; and 02-0223,
22 Richard Depaseo -- DePaso. That's my understanding
23 from this letter, that all the parties have agreed to
24 excuse these folks; is that right?

25 MR. JAFFE: Yes, sir.

1 MR. CLOWARD: Correct.

2 THE COURT: All right. Since I wasn't here
3 last week, they probably will all be here today. Let
4 me go through -- and I don't know if you guys were
5 provided with all of the other letters that we received
6 from people that had travel arrangements and stuff like
7 that.

8 MR. JAFFE: I don't believe we were, sir. I
9 know some did reference it in questionnaires that they
10 had certain travel arrangements planned, but...

11 THE COURT: I can make the letters available
12 to you. But let me go through the rest of the people
13 that I'm going to excuse because of travel
14 arrangements. Okay?

15 Badge No. 02-0032 is Ann-Jeanette Rodriguez
16 or Tucker; Badge No. 02-0007, Amy Iozzo. I apologize
17 if these aren't in order. Badge No. 02-0251, Michele
18 Caruso.

19 MR. JAFFE: I'm sorry. That number again,
20 sir?

21 THE COURT: 02-0251.

22 MR. JAFFE: Thank you.

23 THE COURT: Badge No. 02-0024, Carolyn
24 Rolins; 02-0019, Glynis Robson; 02-0026, Jesus Moreno.
25 They have all provided me with documentation of travel

1 arrangements during the time of our trial, so I'm not
2 going to screw up somebody else's vacation. So we're
3 going to excuse all of them as well.

4 Now, I have got two other individuals who
5 sent stuff in that wanted to be excused. One was Badge
6 No. 02-0076, Fidencio Chavez. This individual says
7 that they were terminated from employment at the end of
8 June, and struggling to make ends meet. They need to
9 be excused so they can find a job and be able to pay
10 their bills. I don't know about that. What do you
11 guys think? I mean, I think we're going to have a lot
12 of people that are going to say they have financial
13 struggles.

14 MR. JAFFE: Your Honor, if -- I guess my
15 feeling is -- well, obviously, we all feel for somebody
16 who's out of work and wants to work, if he had a job
17 that was lined up and he needed to start it, then it
18 was there, that's one thing. But I -- it's -- it's a
19 tough situation, sir.

20 THE COURT: I kind of feel the same way.

21 MR. CLOWARD: We agree.

22 THE COURT: And I think at least in doing
23 jury duty, they're making 40 bucks a day, so something.

24 The next one I have is from Barton Unger,
25 02-0006. This individual has a trip planned for

1 July 26th. I believe, is that -- isn't that Friday?

2 MR. CLOWARD: Your Honor, I'm fairly
3 confident we'll be done by then. I think you only gave
4 us nine days, so we have to be done by then.

5 MR. JAFFE: You gave us through the 25th.

6 THE COURT: I gave you through the 25th. So
7 I guess I'm just wondering how confident we are that
8 we're going to get done.

9 MR. CLOWARD: I think very confident, yeah.

10 MR. JAFFE: I'm cautiously optimistic.

11 THE COURT: Well, if we keep this individual,
12 and he ends up on the jury, he will not be here. I am
13 going to excuse him on the 26th, so ...

14 MR. JAFFE: We understand. And then
15 obviously we're going to have alternates so an
16 alternate would simply step in.

17 The other -- the other thing, sir, we can
18 agree, and I have no problem if, if we want to agree
19 right now, that if Mr. Unger is selected as a juror and
20 remains on, we can stipulate right now that he's an
21 alternate.

22 MR. CLOWARD: We -- I am fairly confident
23 we'll be done, Your Honor, by the 25th, so I don't
24 think it's going to be an issue.

25 THE COURT: Okay. Let's keep him for now.

1 And we'll just plan on being done by the 25th.

2 MR. JAFFE: Sounds great, sir.

3 THE COURT: I know Mr. Cloward has picked a
4 jury in here before and Mr. Eglet has. I have kind of
5 changed the way I like to pick a jury, so let me just
6 talk to you guys about that real quick.

7 They will be seated up here with the first
8 20. We have number one in the top right, goes one
9 through eight, right to left along the back row, nine
10 through 16 along the middle row right to left, and 17
11 through 20 on the front right to left. Okay?

12 If there are challenges for cause, I will ask
13 you to do them at the bench. I don't make you do them
14 in front of the jury and I would prefer to wait until
15 we have a group so that the individuals don't know what
16 they have to say to get out of jury duty. So I will
17 bring you up every so often to do challenges for cause
18 and we can argue about them at the bench. If we do a
19 challenge for cause, we excuse somebody, I bring
20 somebody from the back to fill that seat. Okay? We
21 don't move everybody around.

22 Once we get done with the challenges for
23 cause and both sides have passed the panel for cause, I
24 will -- we'll give you a form. You just pass it back
25 and forth and exercise your preemptory challenges.

1 What I would prefer to do, if everybody agrees, is I
2 would give you five preemptory challenges for each
3 side. You get four plus one for the alternate. What I
4 did in the last jury trial that we did, and I think it
5 worked out really well, was instead of randomly picking
6 the alternate jurors at the beginning, we picked them
7 at the end so nobody knew who the alternates were till
8 the very end. And I think that worked well. The
9 attorneys seemed to think it worked well. You folks
10 tell me what you think about that.

11 MR. JAFFE: I would prefer to know the
12 alternates up front, Your Honor, and pick them up
13 front.

14 THE COURT: Okay.

15 MR. CLOWARD: Yeah, Your Honor, we agree, and
16 we would prefer that they be the last two seats as well
17 in the jury box.

18 THE COURT: You like them to be the last two
19 seats?

20 MR. CLOWARD: Yeah, that way we know who they
21 are. Easier for us to remember, Judge.

22 MR. JAFFE: I don't have a problem if it's
23 going to be two randomly selected numbers up front,
24 last two seats are two that the Court designates. I
25 would just prefer that we know, as we're selecting the

1 jurors, who the alternates are. If it's going to be
2 the last two seats, then obviously then we know that
3 that last challenge is for one of those two seats.
4 It's got to be one of the --

5 THE COURT: Yeah, that's how we're going to
6 work it. If we're going to use the last two seats,
7 then, and we're not going to do it randomly, the way it
8 would work is you get four preemptory challenges for
9 the first eight and you get one for -- to use on the
10 last two.

11 MR. JAFFE: I also have no problem if you
12 just want to pick two numbers at random and then use
13 five challenges, and whoever the last -- whoever the
14 two that fall in those seats are so be it.

15 THE COURT: Well, these guys want to do last
16 two seats. Are you okay doing last two seats?

17 MR. JAFFE: I suppose.

18 THE COURT: Okay. So what we'll do is we'll
19 narrow it down to ten. I will seat 20, you'll each get
20 four preempts, or four preemptories for the regular
21 panel and two -- one each for the alternates, so we'll
22 narrow it down to 10. We'll have a jury of eight and
23 two alternates. I think the two will be enough for a
24 two-week trial. Anybody disagree with that?

25 MR. JAFFE: I think that should be fine.

1 MR. CLOWARD: We agree.

2 THE COURT: Any problem with the jury
3 selection process?

4 MR. JAFFE: The only question I have, Your
5 Honor, is this: As we're selecting jurors, do you
6 allow questioning at large of the venire -- of the 20
7 seated, or do you want us to go one at a time? Because
8 I know that some judges like it that way and it just
9 lengthens things out terribly.

10 THE COURT: You can talk to the whole panel.
11 I will ask a bunch of questions myself first, that
12 should narrow it down. You have your jury
13 questionnaires that have been completed, so hopefully
14 that will narrow it down.

15 MR. JAFFE: Your Honor --

16 THE COURT: My experience is that if the
17 jurors have already filled out a questionnaire, they
18 hope that the jury selection process goes pretty quick.
19 Because they've already given you a lot of -- a lot of
20 answers. So I'm going to encourage you to just try to
21 move it along quickly, and try not to reask any of the
22 questions that have already been asked in the
23 questionnaires. You can follow up on them, that's
24 fine. If you want to ask details, that's fine, but
25 let's not ask the same questions that have already been

1 answered. All right?

2 Let's talk about the stuff that we need to
3 take care of. We have a couple of motions.

4 MR. JAFFE: Your Honor, before we hear the
5 Plaintiffs' motions, I need to raise a procedural issue
6 related to them, and I need to make a procedural
7 objection before they're even heard substantively.

8 THE COURT: Okay.

9 MR. JAFFE: Your Honor, on July 3, we
10 appeared for a conference between counsel pursuant
11 Rule 2.67, and we did have that transcribed. And if
12 Your Honor would prefer, I would like to mark that
13 transcript as a Court exhibit. If I may approach.

14 THE COURT: Sure.

15 MR. JAFFE: And, Your Honor, what I would
16 like to do at this point is direct Your Honor's
17 attention to page 16 --

18 THE COURT: Hold on a second. Let her mark
19 it first.

20 MR. JAFFE: I apologize, Your Honor.

21 THE COURT: Okay.

22 MR. JAFFE: On page 16, at line 15, this is
23 now on July 3, basically -- the day before our four-day
24 holiday weekend. Mr. Cloward said, "I will let you
25 know we're going to file a motion to exclude the

1 photographs. It's a late motion. Whether he'll
2 entertain it or not is one thing, but I'm going to file
3 that motion so I won't at this time agree to stipulate
4 the photos in." And then, I asked him what the basis
5 for excluding them was. He said, "Well, we've just
6 thought about the issue a little more and think that
7 the biomechanical opinions, we're concerned whether or
8 not those are going to get in any way pursuant to
9 Hallmark." And I think obviously both parties would
10 lodge objections. Basically he's now going to be
11 filing a motion pursuant to Hallmark.

12 And, Your Honor, if we move to page 20 of the
13 transcript, at line 5, I asked him, "Why do you think
14 there's a Hallmark problem with any of these experts?"
15 Mr. Cloward said, "I think the fact that there could
16 have been more done to investigate, I think the fact
17 that neither men were able to examine the Honda prior
18 to being repaired creates a foundational issue for both
19 of their opinions." And then I said, down further,
20 "You mean inspected before the repairs were made?" And
21 he said, "Correct."

22 Then again on line 14 of the next page, sir,
23 I said, "Well, I mean, Ben, what's the excuse for not
24 having filed the motion, you know, timely with other
25 motions in limine when Judge already heard 20 of yours

1 and eight of ours?" Mr. Cloward said, "Sure, yeah.
2 Well, in preparing for the trial obviously you analyze
3 issues and get a little deeper in the analysis and in
4 discussing things with Allison, and I just think that
5 that's something that's kind of glaring for both of the
6 men, that they didn't, neither of them inspected her
7 vehicle before it was repaired, I think that's an
8 issue."

9 So the only issue that they raised by way of
10 what would be a 2.47 discussion, was that the experts
11 had not inspected the vehicles prior to the -- to their
12 report. They inspected -- inspected the plaintiff's
13 vehicle, rather, prior to the repair having been made.
14 Mr. Cloward then told me that he thought the motion was
15 going to be filed with the court on Wednesday, and we
16 were not provided at that time with a copy of the
17 motion.

18 On -- now I need to fast forward one week.
19 On Wednesday, July 10th, I called Mr. Cloward because
20 we still had not heard anything about these motions.
21 And I asked him, "What's going on with the motions?
22 When are we getting these, or has the judge agreed to
23 hear them?" And Mr. Cloward said that they had -- he
24 believed that they had gone down to the Court, either
25 that day or the day before and they were waiting for

1 Your Honor's chambers to decide if the motions were
2 going to be heard. I said, "When am I getting the
3 motions?" And again, he says, "Well, we don't know if
4 the Judge is going to be hearing them or not."

5 On Thursday, the 11th, now, so now we're
6 basically two days -- and that was the afternoon of
7 that Thursday, at 2:00 o'clock, Mr. Smith and
8 Mr. Cloward, and Mrs. Brasier met to go over which
9 jurors we wanted to eliminate based upon the
10 questionnaires as well as go over demonstratives for
11 openings. At that time Mr. Cloward advised Mr. Smith
12 that they had been advised by Your Honor's chambers
13 that the Court had agreed to hear the plaintiff's two
14 motions, which was now the first we had heard about it.
15 Mr. Smith got back to the office. It was around 4:30,
16 5:00 o'clock he told me this. So I called Mr. Cloward,
17 and said, "When are we getting these motions if the
18 Court has apparently agreed to hear them?"

19 And at that point I received at 6:30 an
20 e-mail -- and if I may again approach, Your Honor?

21 THE COURT: Uh-huh.

22 MR. JAFFE: An e-mail from Mr. Cloward, and I
23 ask this be marked as the next Court exhibit in line
24 saying, "Steve/Jake, sorry for the delay. It's
25 inexcusable. Here are the Word files. You are able to

1 read them." But what I got were two drafts, they were
2 unsigned. I didn't know what they were. So I'm still
3 waiting to get served with these motions.

4 On Friday now, this past Friday, the 12th,
5 the -- the judicial day before trial, I still had not
6 received the motions by 2:00 in the afternoon. So at
7 that time I wrote to Mr. Cloward. And if I may, Your
8 Honor, this is a letter dated July 12th from my office
9 to Mr. Cloward which was faxed to him at 2:00 -- fax
10 confirmation's at the back, faxed him at 2:10 in the
11 afternoon. And at that time I basically said, "I still
12 haven't received these motions." And we're now just
13 before the trial. You could have given copies to
14 Mr. Smith the day before when he was at your office,
15 and we could have had the motions, especially since you
16 knew that the Judge had signed them or was agreeing to
17 hear them, but you didn't even do that. So now we are
18 three judicial hours from trial, and I still don't even
19 have the motions.

20 So at that point, Your Honor, I called
21 chambers to find out if the motions were on calendar to
22 be heard since I hadn't received anything. I then
23 faxed a second letter to Mr. Cloward. I offer this as
24 the next Court exhibit, which was faxed to him at 2:34
25 in the afternoon, basically saying that I just found

1 out from the Judge's chambers that your motion was
2 signed the day before, but it was still sitting in your
3 out box for your runner to pick up. So a full day had
4 gone by from the Court signing this until the plaintiff
5 still hadn't even picked up the motion and we're now
6 two and a half judicial hours from trial.

7 We were finally served, and I have an
8 affidavit from my secretary, Your Honor, I will lodge
9 the original with the Court, at 2:34, Friday afternoon,
10 less than two and a half judicial hours before we were
11 in court.

12 Now, the motion that we were served with --
13 we were served with two motions. One was on the
14 photographs but the second was now no longer just a --
15 a motion against my expert for not having inspected the
16 vehicle before -- the plaintiff's vehicle before it was
17 repaired, but this was now a full and complete Hallmark
18 challenge, something which had not even been raised
19 before or discussed before. And, Your Honor, it's my
20 position that it is a violation of two -- of court
21 rules, as well as the -- a court order, if the court is
22 going to hear this motion at that time.

23 First, Rule 2.47 requires that before a
24 motion in limine is to be heard, it must be discussed.
25 All they discussed with us was a motion aimed at the

1 expert not being able to testify because they didn't
2 inspect the vehicles before a -- the repairs were made.
3 Now we've got a complete Hallmark challenge going well
4 beyond that, going into credentials, background, and a
5 variety of different things.

6 The second one is Rule -- and these are both
7 Eighth Judicial District court rules, of course. Rule
8 2.26 on shortening time, and it says, "In no event may
9 the notice of a hearing of a motion be shortened to
10 less than one full judicial day." Now, obviously the
11 Court didn't do that, but the plaintiff did. Because
12 what the Court rule also requires is that if a motion
13 to shorten time is granted, it must be served upon all
14 parties promptly and that is the court rule. And you
15 can't do it by mail. You can't do it by e-mail. You
16 can't do it by fax it. Must be served promptly. They
17 did not serve promptly.

18 When the motion was signed and in their box
19 on a Thursday, and as of Friday afternoon it still
20 wasn't even picked up, so a full day goes by when there
21 is slightly more than one full judicial day when the
22 Court agrees to hear this motion, and then they wasted
23 a full day of it. And they don't serve me with the
24 motion until 2:34 on Friday afternoon, the day before
25 the trial, two hours, 26 judicial minutes before the

1 trial starts.

2 Now, here's the real problem, Judge, it's --
3 to allow this to go forward is going to be a violation
4 of my client's due process rights, because we haven't
5 had a chance to brief this and deal with this. And
6 it's very clear that this is a brief that took quite
7 some time. If on July 3, they were ready to file this,
8 it means they were working on this brief for at least a
9 few days, probably at least a week. So two and a half
10 hours to put this brief together or two and a half
11 days, rather -- weeks, rather, I'm sorry, two and a
12 half weeks to put this brief together and they serve it
13 on me two and a half hours before there's a hearing?

14 And the problem is this: To oppose this
15 motion, I need to get affidavits from my expert. I
16 need to speak to my experts. My expert's in San
17 Antonio, so on Friday at 2:34 when I'm first served
18 with it, it's already 4:34 there on a Friday in the
19 summer. I can't reach him. And at that point I didn't
20 even realize, because it took a while before -- once I
21 got the motion until I read it and realized that this
22 was well beyond what was discussed.

23 So, Your Honor, at this point, it's our
24 position that to hear the motion would violate our due
25 process rights provided by Rule 2.47, Rule 2.26, and it

1 violates the Court order regarding filing motions in
2 limine which should have been done two months ago.
3 Because this is a Hallmark challenge against my expert,
4 who was disclosed a year ago, who was deposed in
5 January. And the plaintiffs filed a Hallmark challenge
6 timely against Dr. Schifini.

7 Now, we all know Hallmark and Hallmark is
8 probably the most significant case in auto litigation
9 that's come down out of the Supreme Court in many, many
10 years, probably going back to the Levine case. And
11 everybody who does any auto-related litigation knows
12 and is very familiar with Hallmark. But it's amazing
13 to me that they can file a Hallmark challenge which
14 deals with biomechanical engineers against a doctor on
15 time, but they can't file it against the biomechanical
16 engineer on time. They obviously know Hallmark. And
17 now to serve this on me at the last minute when I'm
18 prepping for trial with an opening, getting ready for
19 jurors, a lot of issues, when I can't possibly respond
20 to that voluminous a motion in time and to do it
21 effectively and to do it substantively, is such a
22 violation that we ask the Court to hold off on hearing
23 this motion.

24 I understand that a challenge can be raised
25 to the expert, and they can do it from the stand. We

1 can all do it -- we have all done it as trial lawyers.

2 But to do this now denies us the chance to brief this.

3 Dr. Smith is scheduled to testify a week from
4 tomorrow, the 23rd. Let's deal with it when he's ready
5 to testify so it at least gives us a chance to brief
6 this issue substantively on the merits so that my
7 client's due process rights are preserved.

8 MR. CLOWARD: Couple of things, Your Honor.

9 I do apologize to Mr. Jaffe. You know, I -- I
10 apologized to him in my e-mail. I said, you know, it's
11 inexcusable. Things happen. We were also prepping.
12 It wasn't an intentional delay.

13 Number one, a couple things that need to be
14 pointed out. Mr. Jaffe is somewhat misrepresenting the
15 record. And you can read the transcript of the 2.67.
16 I didn't tell him that the motion was done and ready to
17 be filed. I didn't say that. I said we hope to get it
18 filed today. I thought we were a little further in the
19 process. As it turns out, we weren't. That's why it
20 took us through the weekend to get it filed. And we
21 actually -- I believe we sent it down on Monday, and we
22 had problems getting the OST. I think the first time
23 we sent it down, my staff didn't include the OST. The
24 exact same thing happened to Mr. Jaffe's, one of their
25 motions, they forgot the OST so that wasn't signed, so

1 then it had to be resent, you know, with the OST, so
2 there was some issues. Issues that were innocent
3 issues, issues that happen to both Mr. Jaffe and
4 myself. There's nothing untoward about that. There's
5 nothing -- you know, I'm not trying to pull something
6 over on Mr. Jaffe.

7 Second, Your Honor, if you read the
8 transcript in the 2.67, Mr. Jaffe himself states and I
9 quote, or I paraphrase, I can't quote because I don't
10 have it in front of me, but Mr. Jaffe states, Yeah, I
11 have a pretty good idea of what that motion is going to
12 be. I know that. I kind of felt you might file
13 something like that or something along those lines, but
14 he says he has a pretty good idea. So for him to -- to
15 represent for the defense -- the defendant to represent
16 to the Court that, hey, this is a huge surprise, and
17 that, you know, that I'm somehow trying to pull a fast
18 one, that's just not an accurate representation. The
19 record doesn't bear that out.

20 Second, interestingly, in the transcript
21 there's one thing that Mr. Jaffe omits. Mr. Jaffe
22 omits the discussion of why I was filing it late. You
23 know, he says, Why didn't you file this at some point
24 before -- you know, during the process? And I said,
25 Well, you know, the more that I thought about it, both

1 of us have experts that are out of state. Mine's in
2 California. Yours is in Texas. These folks are going
3 to be flying in. So because a motion in limine is
4 interlocutory in nature, because the Court has a duty,
5 a gatekeeping duty, I would sure hate to fly Dr. Croft
6 in here and I'm sure, Mr. Jaffe, you would hate to fly
7 Dr. Smith up from Texas and then have a Hallmark
8 objection lodged on the record after they're flown in
9 and have the Court decide, you know what, there's not a
10 foundational basis for these opinions. So now we've
11 just incurred the cost of flying these folks up, paying
12 them their time, paying them their travel, paying them
13 their travel fees, whereas this is a motion that can be
14 filed, and albeit, I will admit, it's -- I could have
15 gotten it to him faster.

16 And I apologize for that, Mr. Jaffe. I
17 really sincerely do.

18 You know, and the other thing is during the
19 2.67 conference, Jake did not ask me about the motion.
20 He didn't say we didn't have any discussion. If he
21 would have said, Hey, what about this --

22 MR. JAFFE: The 2.67 conference?

23 MR. CLOWARD: The motion when he came
24 Thursday.

25 MR. JAFFE: Thursday afternoon.

1 MR. CLOWARD: Thursday afternoon. No
2 discussion was had. And so, you know, there's --
3 there's also a -- you know, it's, Hey, Mr. Cloward, you
4 didn't turn it over. You didn't turn it over. Well, I
5 wasn't asked to. The second I got the e-mail from
6 Mr. Jaffe, I sent him the e-mail with the Word copy.
7 It wasn't the signed copy, but it was the copy that was
8 sent to the Court, said, Well, hey, here you go.
9 Here's the Word copy. This is -- this is what the
10 motion will say. Yes, it's unsigned but it's the --
11 it's the exact motion that's going to be filed.

12 So those are -- those are the important
13 issues that I -- I think that -- that the Court should
14 consider, both of us are going to have to incur costs.

15 And the other thing to address it now versus
16 a week from now, we're going to give opening
17 statements, and opening statements are going to give a
18 forecast of what the evidence we think will be
19 presented. Obviously, the property damage, the
20 biomechanical opinions are the central issue in the
21 case. So if we give the jurors all of this
22 information, give them this forecast, give them this
23 play by play of what we think the evidence will show
24 and then a week from now the Court decides that neither
25 Dr. Croft nor Dr. Smith have the foundational basis to

1 make the opinions regarding the forces involved,
2 because the only car that really is important to
3 evaluate, the only forces in the accident are the
4 forces upon Mrs. Seastrand's car. That's it. It's
5 what were the forces to her car? That's it. And if
6 they can't make -- if due to foundation, if they can't
7 make that opinion, then everything that would be
8 forecasted in opening statement would be inappropriate
9 and improper.

10 And so that's why we feel that it's -- it's
11 important to have that discussion today. If Mr. Jaffe
12 wants to, you know, have it heard tomorrow before any
13 openings are given, that's fine with us. But I think
14 that before trial commences and evidence is presented
15 and openings are given, it is something that does need
16 to be addressed, because I do think there's a huge
17 foundational deficit.

18 THE COURT: Okay. Here's what we're going to
19 do, guys. The rule is actually pretty clear that I
20 can't hear a motion in limine without giving the other
21 side 24 hours, at least one-day judicial notice. So I
22 can't hear it today because the affidavit says it
23 wasn't served until 2:34 on Friday. And there's -- I
24 don't think you're disputing that that is when it was
25 actually served, so --

1 MR. CLOWARD: No.

2 THE COURT: -- I can't hear it today. What I
3 would like to do is just consider it -- I think it's an
4 EDCR2.27 trial brief. I will consider it a trial brief
5 and then if you want to oppose it or file your own
6 trial brief in that regard, you can.

7 MR. JAFFE: I will, sir.

8 THE COURT: It sounds to me like both of you
9 are a little bit concerned about whether or not your
10 biomechanical experts are going to be able to testify.
11 Maybe you can stipulate that neither of them are going
12 to testify. And make it easy on everybody, but...

13 MR. JAFFE: I'm not willing to stipulate to
14 that, sir.

15 THE COURT: Okay. We'll see what happens
16 then.

17 MR. JAFFE: We'll have to see what happens,
18 sir.

19 THE COURT: So as far as the plaintiffs'
20 motion in limine number, I guess I have -- I just have
21 two here. No. 2, to preclude defendants from raising a
22 minor, low-impact defense and to exclude evidence of
23 property damage. And then I have a motion in limine
24 No. 3 to exclude defendant's expert Harry Smith from
25 testifying at trial. I'm going to vacate both of those

1 because they weren't timely served.

2 MR. JAFFE: Thank you, sir.

3 MR. CLOWARD: Fair enough.

4 THE COURT: We'll consider them 7.27 trial
5 briefs. We still have defendant's motion for leave to
6 amend and motion in limine No. 9 to preclude plaintiff
7 from arguing when Defendant Khoury admitted liability
8 on order shortening time. I can tell you what my
9 inclination is on this, and then I will let you argue
10 if you want to.

11 Because of the fact that liability seems to
12 have been disputed all along even in light of
13 deposition and interrogatory answers and things like
14 that, I am inclined to allow you to amend the answer,
15 but not to limit what they can say about when that
16 happened, so...

17 MR. JAFFE: Your Honor, here's -- I need --

18 THE COURT: You may not want to amend the
19 answer in that regard.

20 MR. JAFFE: No, no, no. Because, I mean -- I
21 mean, the thing is this: I need to at least make a
22 statement for the Court to give you a proffer as to why
23 the amendment is late at this time. When the case was
24 first filed, without discussing what those are, there
25 was a policy limit demand made as soon as the case was

1 started. We wrote to plaintiff's counsel and said we
2 would like an extension on this, so that we can --
3 because there was some issues regarding some
4 preexisting medical conditions that we would need to
5 address and discuss. And we would like an opportunity
6 to address the policy -- the policy limit that --
7 demand at a later date. Counsel never responded. And
8 we didn't know if they were going to be taking the
9 position that the insurer was uncapped. If they were
10 not, we didn't know. And the problem I had at that
11 point is I could not admit my client into a potential
12 excess verdict.

13 Now we were served with an offer of judgment
14 by the plaintiffs at which time the insurer issued a
15 letter of protection saying that they're going to
16 protect my client for all damages that -- awarded in
17 any verdict irrespective of policy limits. Now that my
18 client had that protection, I could freely admit
19 liability, which is why we then filed this motion, sir.

20 So the problem is that it was not from some
21 sort of nefarious reason that we withheld admitting
22 liability, because if there was a protection or I knew
23 that this -- there was an opportunity to address those
24 limits issues again later on, we likely would have
25 admitted early on, but I couldn't because of that. I

1 could not admit my client into a potential situation of
2 an excess verdict, having not yet done any discovery to
3 know what the preexisting issues and injuries were.

4 So because of that, sir, that was the reason
5 why we did not admit liability earlier than this. Once
6 we got an offer of judgment again for those policy
7 limits and the insurer had an opportunity, the insurer
8 decided that they were going to protect Mr. Khoury.
9 Now I was free to admit.

10 So I believe it would be improper to allow
11 the plaintiffs to sit here and argue we're bad people
12 by stretching this out or pushing this out as long as
13 possible and making them do unnecessary or im- -- work
14 or whatever may have been just to push the plaintiff to
15 trial, for no reason other than, you know -- then, you
16 know -- then to do it. Because the only reason it was
17 done was because of that one particular issue.
18 Otherwise we would have admitted up front.

19 And I believe it would be an unfair
20 representation if counsel was going to impart some sort
21 of nefarious conduct on Mr. Khoury, on my -- on me,
22 Mr. Smith, or my office by doing it, and that's why I
23 believe that it would be appropriate to grant the order
24 and not allow them to imply anything sinister by the
25 timing related to the admission of liability, sir.

1 THE COURT: Do you want to talk?

2 MR. CLOWARD: Are you going to entertain
3 the -- I -- I felt like you made a ruling, and he was
4 making a record.

5 THE COURT: I said what I was inclined to do,
6 and I'm still inclined to do that. It seems to me
7 that -- I understand the basis -- the reason for it.
8 But I mean, the fact that there was a denial of
9 liability in the answer and then there was apparently
10 interrogatory answers where there was essentially
11 admission of fault, and there's deposition testimony
12 where there's essentially admission of fault, and it's
13 not until just before trial that you want to amend the
14 answer, I think that that -- I don't know how they want
15 to use that, but I'm going to let him use it. I will
16 allow you to amend the answer if you want to, but if
17 you don't want to based on that ruling, you don't have
18 to.

19 MR. JAFFE: No. We're -- we're going to file
20 our amended answer. We stand behind our willingness to
21 admit liability, and --

22 THE COURT: Okay. So the motion to amend is
23 granted. The motion in limine No. 9 is denied.

24 MR. JAFFE: Okay. Your Honor, the only thing
25 I need to be concerned about now is that I'm sort of in

1 a bit of a Catch-22, because --

2 THE COURT: You can't talk about insurance to
3 the jury.

4 MR. JAFFE: Exactly. And that's the only
5 reason why Mr. Khoury would -- in his answer did not
6 admit liability earlier and if he's asked, why didn't
7 you admit liability sooner, I mean, there's no honest
8 answer he can give without violating a court order.

9 THE COURT: Actually, he did admit it in his
10 deposition and his interrogatory answers.

11 MR. JAFFE: I agree. But in a pleading
12 format -- I mean, what it basically puts me in a
13 position of having to do, if this is going to be thrown
14 in my face, is to stand up in front of the jury and say
15 that we cleaned it up for technical reasons, having
16 already admitted in discovery, even though it was not
17 admitted initially in the pleading. And I mean, if I
18 do that, I am really not being wholly honest and I
19 don't want to be in that position, sir.

20 And -- and the question is, it leaves it out
21 there potentially as a prejudicial issue against either
22 me and my office, Mr. Khoury, or both, with no way to
23 answer it honestly and put it in front of the jury
24 without violating a court order.

25 THE COURT: Well, I'm not going to let you

1 talk about insurance, so -- I mean, I'm happy to
2 consider however else you want to try to explain it to
3 them.

4 MR. JAFFE: Okay.

5 THE COURT: So...

6 THE BAILIFF: Judge, excuse me. Do you want
7 me to go downstairs now?

8 THE COURT: Yeah. I sent Randy down to get
9 the get the jurors.

10 Does that take care of everything we have
11 before we start?

12 MR. JAFFE: Yes, sir. At least on our side.

13 MR. SMITH: Your Honor, I believe you wanted
14 jury instructions.

15 THE COURT: Do you have those for me?

16 MR. SMITH: Right now I do. I have the ones
17 that the parties stipulated to and then the defendant's
18 proposed.

19 MR. JAFFE: Your Honor, while Mr. Smith is
20 doing this, may I step outside for a minute and make a
21 brief phone call?

22 THE COURT: Yeah. It will probably take 10
23 or 15 minutes for the jurors to get up here.

24 Let's go off the record for a minute.

25 (Whereupon a short recess was taken.)

1 THE COURT: Which ones are no calls, no
2 shows?
3 MR. JAFFE: First one.
4 THE BAILIFF: First one is Juror 19, Glynis
5 Robson.
6 MR. JAFFE: That one has already been
7 excused.
8 THE COURT: Not yet, but --
9 MR. JAFFE: We were planning on being.
10 THE BAILIFF: No. 30, Jesse Slade.
11 THE COURT: Okay.
12 THE BAILIFF: No. 37, Maria Bonilla-Eisner.
13 THE COURT: Okay.
14 THE BAILIFF: 132, Keena Mitchell-House.
15 MR. EGLET: What was the last number? Sorry.
16 MR. JAFFE: 37.
17 THE COURT: 37 and then 132.
18 THE BAILIFF: 132, Keena Mitchell-House.
19 156, Madelin Rodriguez-Martin. And 223, Richard
20 DePaso.
21 MR. CLOWARD: 223, Richard, what was that
22 one?
23 THE BAILIFF: Richard DePaso.
24 MR. CLOWARD: DePaso.
25 THE COURT: It's about half of those are ones

1 we were going to excuse anyway.

2 THE BAILIFF: So it should be a total of six.

3 THE COURT: I'm not going to issue a bench
4 warrant for them. I think we bring them in. I will
5 excuse all the ones we're going to excuse right off the
6 bat and then I will go into my initial spiel.

7 Okay. Anybody else have anything that we
8 need to talk about before we start?

9 MR. JAFFE: Just waiting for them to come in.
10 What's the -- do we know what the Court's schedule is
11 going to be for the rest of the week?

12 THE COURT: That's a good question. Tuesday
13 and Thursday I have a morning calendar. I don't know
14 how bad it is yet. If it's a light calendar, I would
15 prefer to start in the morning, maybe 10:30 or 11:00
16 with the jury, maybe take a later lunch. So that's
17 kind of my plan on Tuesday and Thursday. Wednesday and
18 Friday we can start at 9:00 or 9:30, whatever you guys
19 prefer.

20 MR. JAFFE: In speaking with Mr. Cloward on
21 scheduling, originally he had indicated to me that he
22 was likely going to need to go into Monday of next week
23 as part of his case in chief, so I started scheduling,
24 and I scheduled basically two witnesses for that
25 afternoon, a police officer and my vocational expert.

1 When we did the 2.67, Mr. Cloward indicated that he
2 believes now he would be likely done by Friday.

3 MR. CLOWARD: We're going to use that as a
4 buffer.

5 MR. JAFFE: Right. There is a buffer, but we
6 received a phone call from the officer that next week
7 he has to be out of town on some training, so that if
8 we're going to call him, we need to call him this week
9 and if we can, we will figure out when that would be.

10 In addition, plaintiff has dropped their --
11 their vocational loss claim. And that the -- so my
12 expert who I was going to call on Monday is now
13 drastically reduced and all she's going to be talking
14 about is the smaller thing, the household services
15 issue. So what I'm going to be able to do is in all
16 likelihood -- I don't want to have to bring her in. If
17 they're not going to be calling a witness on Monday, I
18 would rather not bring her up from Tucson just to call
19 her to testify for one hour of court time when I can
20 squeeze her in Tuesday or Wednesday. And what it may
21 mean is next Monday we may have basically a free day
22 for the jurors and for the Court.

23 THE COURT: As long as you can guarantee that
24 we're going to be done by Thursday, that would probably
25 be okay.

1 MR. JAFFE: I have got all my witnesses
2 scheduled for Tuesday afternoon and then Wednesday. So
3 I can't imagine that we're not going to be done. And
4 then we would be able to settle jury instructions
5 Wednesday, sum it up Thursday, and send it to the jury.

6 THE COURT: Let me just tell you a couple of
7 ground rules that we kind of do in this department.
8 Because this is a reporting department not a recording
9 department, anything said at the bench is not recorded.
10 So if you need to make a record on that, I will give
11 you a chance at the next break, you can make a record
12 on whatever you wanted to that was said at the bench.
13 Okay? If you don't take that opportunity, it's on you.
14 Also, I would ask that you let the other side know at
15 least a day before who you are going to call the next
16 day.

17 MR. JAFFE: We have agreed on that.

18 THE COURT: Let's not have any surprises.

19 MR. JAFFE: We have both agreed that we'll
20 let each other know the next day who is planning on --
21 who is planned on the schedule to be called.

22 THE COURT: All right. Sounds good. Let's
23 bring the jury in. Let's get started.

24 THE BAILIFF: They may not even be up yet.
25 It takes them a few minutes to get up the elevators. I

1 will go and do a roll call.

2 THE COURT: Tell me when you're ready.

3 Actually there may not be seats for you there
4 either, because we got a larger group than normal.

5 Just so you guys know, Juror No. 17 is a
6 former client of mine.

7 MR. JAFFE: He mentioned that, and -- on his
8 form.

9 THE COURT: I don't know that it would affect
10 anything, but just so you know.

11 MR. JAFFE: I would hope they're all going to
12 believe the Judge.

13 MR. CLOWARD: When you are done with all of
14 your questions, I imagine it will take a bit, can we
15 take just a short bathroom break?

16 THE COURT: We'll see.

17 MR. CLOWARD: I remember. It just seems like
18 you took --

19 THE COURT: I take a while.

20 MR. CLOWARD: It took a while. I thought
21 Randy would bring them right in, otherwise I would have
22 gone.

23 THE BAILIFF: Ready when you are.

24 THE COURT: All right.

25 THE BAILIFF: All rise.

1 Right through here, sir.

2 (Whereupon jury panel entered the
3 courtroom.)

4 THE BAILIFF: Four people in the front come
5 right here, please. Folks, you can go ahead and have a
6 seat. Down here on the end. Thank you. Everybody in
7 the back, your order does not matter, just go ahead and
8 sit wherever you like to.

9 THE COURT: You're going to probably have to
10 put some of them on the other side too, Randy.

11 THE BAILIFF: (Complies.)

12 THE COURT: Go ahead and be seated, folks.
13 Good morning, ladies and gentlemen.

14 ALL JURORS: Good morning.

15 THE COURT: Welcome to Department 30. I
16 notice as everybody comes in, you don't know whether to
17 sit or stand. We always stand for the jurors as they
18 come in. That's a show of respect for you, because we
19 respect your time and the fact that you are here
20 serving jury duty even though you don't want to be. If
21 I was to come in after you were already here, Randy
22 would you have stand for me, but I'm always going to be
23 here before you come in. So come in, get comfortable,
24 sit down, and we'll sit after you all sit. Okay?

25 My name is Jerry Wiese. I'm the judge in

1 Department 30. I will introduce everybody else in a
2 few minutes. As you see, we have a pretty big group
3 here, and I know all of you folks filled out jury
4 questionnaires in advance. Because of the fact that
5 you filled out jury questionnaires in advance, we have
6 some information about you. We also -- I got lots of
7 letters from people asking to be excused for trips and
8 things like that, that you're -- that you may be
9 involved in. Some of you may not be excused, some of
10 you will be. And I apologize for having to have
11 everybody come in today. I was out of town last week
12 so I wasn't able to excuse anybody before today, so I
13 apologize for that.

14 But before we get started, I'm going to
15 excuse a bunch of you. Okay? So -- before we even
16 really get going. If I -- if I call your badge number
17 and your name, I'm going to ask you to stand, and just
18 kind of head back towards the door, and make sure we
19 have those of you that I have on my list first, before
20 I let you all go. Okay?

21 First person is Badge No. 02-0042, Jennifer
22 Genovese. Just hang out there by the door, ma'am.

23 02-0118, Brian Drohn. 02-0132, Keena
24 House-Mitchell. She's not here? Is she the one that
25 wasn't here? Okay.

1 02-0187, Raya Alsaiegh. I'm sure I butchered
2 that name, sorry.. 02-0201, Maria Gabriel. All right.
3 02-0214, Jennifer Fitzpatrick; 02-0223, Richard DePaso.
4 I think he's one that wasn't here also. Also, Badge
5 No. 02-0032, Ann-Jeanette Rodriguez [sic]. Badge
6 No. 02-0007, Amy Iozzo. Sorry if I am mispronouncing
7 names, folks.

8 Michele Caruso, Badge 251. Carolyn Rolins,
9 Badge 024. Okay. Glynis Robson, Badge 019. She was
10 not here. Jesus Moreno, Badge No. 026.

11 All right, folks. We appreciate your time
12 and your service. You're excused. I'm going to send
13 you back down to the third floor. Just let them know
14 you've been excused by Department 30. Thank you,
15 folks.

16 All right. Before we get started, I have got
17 three seats over here, so let's call the next three up.

18 THE CLERK: Ann-Jeanette Tucker, Badge 032.
19 Take seat number four.

20 THE COURT: Ms. Tucker?

21 MR. JAFFE: That was --

22 THE CLERK: 032 is excused?

23 THE COURT: Did I already excuse her?

24 MR. JAFFE: Yes, sir.

25 THE COURT: All right. Who's next?

1 THE CLERK: Okay. Patty Agnor, Badge 033,
2 please take seat number four.

3 THE COURT: Just so you folks know, we number
4 these really weird. It's one through eight on the back
5 row from my right to left. Nine through 16 is in the
6 middle row, so seat number four is in the back row,
7 ma'am.

8 THE CLERK: Gary Walker, Badge 034, please
9 take seat number 14.

10 THE COURT: Fifteen.

11 THE CLERK: Don't we have Glynis Robson gone?

12 THE COURT: Yeah, but somebody else is in
13 that seat.

14 THE CLERK: I have seat 14, Glynis Robson
15 just excused, so that's who, Gary Walker? Angela
16 Brown, 043, please take seat number 16.

17 THE COURT: It's actually 17.

18 THE CLERK: Please take seat number 17.
19 Dominika Procek --

20 THE COURT: That's all we need. We got 20
21 now.

22 THE CLERK: I have 18.

23 THE COURT: You can sit.

24 PROSPECTIVE JUROR NO. 044: Great.

25 THE COURT: That doesn't mean that you won't

1 come up in a few minutes, but ...

2 All right, folks. Let me introduce everybody
3 to you till I get started. You have all been summoned
4 here to Department 30 of the Eighth Judicial District
5 Court to serve on a jury. This is going to be a civil
6 trial. There's a difference between criminal and civil
7 trials. Criminal cases, if somebody was charged with a
8 crime and the district attorney's office brings the
9 case. Civil case is where one individual or entity
10 sues another individual or entity, usually for money,
11 and that's what you have been called here for is for a
12 civil case. It's a car accident case.

13 I am Jerry Wiese, and I'm the judge in
14 Department 30. I have been doing this for about two
15 and a half years. We have 32 district court
16 departments in the courthouse. We also have justice
17 court and municipal court in here. That's why it's
18 such a big building, but this is Department 30.

19 Just so you know who everybody is, right down
20 here in front of me is Kristy Clark. She's our court
21 reporter. She takes down everything that's said word
22 for word, by everybody that's talking, myself and you
23 folks, if you answer, and the attorneys. Everybody
24 that says everything or anything, she writes that down.
25 That's not a regular typewriter. It's a special

1 machine that she can take us all down really fast.

2 One thing that you need to be sure of is when
3 we're talking, you need to talk loud enough that she
4 can hear you. You can't talk over somebody else
5 because she can't record two people talking at the same
6 time.

7 Also, if I ask you to respond or if I ask a
8 question and somebody has a -- wants to give a
9 response, there's so many people in here, she doesn't
10 know all of your names, so you're going to have to tell
11 us what your badge number is and what your name is.
12 Okay? Your badge number we actually are only
13 interested in the last three numbers. Okay. So if you
14 have to give us a response, say, I'm so and so, badge
15 number, and you just give us the last three numbers,
16 and that way she'll know who it is that's responding to
17 any given question. During the trial Kristy may not be
18 here, it may be another court reporter that fills in
19 for her, but she's our regular reporter.

20 Over here to my left is Alice. Alice is our
21 court clerk. She is the one that keeps track of the
22 exhibits. She swears in the witnesses, she keeps me
23 organized, and she's quiet most of the time, but -- but
24 you will see her in here every day keeping track of
25 stuff.

1 You have met Randy. Randy is our marshal.
2 He will be the one that you have the most interaction
3 with during the course of the trial. During the course
4 of the trial, if you are picked on a jury or even if --
5 even during this time period that we're all here
6 together as potential jurors, if you see an attorney or
7 myself or any member of the court staff in the hallway,
8 in the elevator, or something like that, and they don't
9 say hi to you, they don't have a conversation with you,
10 even though you may want to talk to them, that's
11 because I have instructed them not to. That's an
12 ethical rule that they can't have communications with
13 you. It might make it look like there was some --
14 something improper going on. So it's not that they're
15 mean. It's not that they're not friendly. It's just
16 that they -- they can't talk to you in the elevators or
17 outside in the hallway, so don't be offended by that.

18 If you need to talk to anybody, it's going to
19 be through Randy, so get to know Randy. You can't talk
20 to him about the case, but you can talk to him about
21 anything else, and he's the one that you communicate
22 with to get to the Court.

23 I have a couple of externs over here from
24 UNLV. They're here getting credits for school and
25 learning. And I have got a couple of other court staff

1 that you may see come in and out during the course of
2 the trial. If so, we may introduce them at that time,
3 may not.

4 I'm going to have each of the attorneys
5 stand, if they would, one of the attorneys from each
6 side, and they're going to introduce themselves.
7 They're going to tell who the other attorneys are that
8 are at their firms. You have already seen these names
9 in the questionnaires, but pay attention to the names
10 anyway. They're going to tell you who they are.
11 They're going to introduce their clients to you.
12 They're going to tell you who the lawyers are at their
13 firm. And they're going to give you just -- I guess --
14 I will have you go through the witnesses again also,
15 tell us the witnesses that you are each going to call.
16 And then I like to have the attorneys give you just a
17 brief summary of what the case is about. When I say
18 brief, I am talking a couple of sentences. Okay?

19 So, Mr. Cloward, you want to go first?

20 MR. CLOWARD: Sure. Good morning. My name
21 is Ben Cloward. This is Allison Brasier, Jonathan
22 Hicks. They're both attorneys for my office, and my
23 client is Margie Seastrand. This is Mr. Robert Eglet.
24 He'll be assisting with the jury selection process.
25 Attorneys in our firm, there's -- there's several.

1 Mr. Richard Harris, Joshua Harris, Dan Martinez, Alison
2 Coombs, Bryan Boyack, Amy Yonesawa. Who am I
3 forgetting? Dan Laird, Brian Keith, Curtis Millington,
4 Lawrence Ruiz, Seth Little. And the doctors and the
5 witnesses that we will anticipate calling, they're
6 going to be several doctors, some expert witnesses,
7 Dr. Croft, Dr. Muir, Dr. Grover, Dr. Khavkin,
8 Dr. Belsky.

9 Then there's also going to be some what we
10 call percipient witnesses. Those will be coworkers,
11 families, friends, people who have known or associated
12 with Mrs. Seastrand. And then in addition to those
13 folks -- I think those will be all of the witnesses. I
14 think I have covered the witnesses.

15 It's an automobile accident, rear-end
16 accident, that resulted in my client requiring several
17 medical procedures including, but not limited to, a
18 neck and a low back surgery.

19 Thank you, Judge.

20 THE COURT: Okay. Go ahead.

21 MR. JAFFE: Thank you, Your Honor.

22 Good morning, ladies and gentlemen. My name
23 is Steve Jaffe. I'm a partner in the law firm Hall,
24 Jaffe & Clayton, a local firm. With me is Jake Smith,
25 who is an attorney in our firm. He'll be trying the

1 case with me. Also with me is Greg Scott. Greg is a
2 paralegal who works with me, who is much more
3 technically advanced than I could ever be, and he's
4 going to help me with a technical presentation.

5 Also, I would like to introduce Ray Khoury.
6 Ray is my client, and Ray will be here during the trial
7 as well.

8 Ray, why don't you turn around so everybody
9 gets a chance to see you.

10 In our firm, I have two partners, Michael
11 Hall and Riley Clayton, as well as three other
12 partners, James Harper, Michael Shannon, and Kevin
13 King. Other attorneys who work in my firm are Brie
14 Issurdutt, Jacob Lee, Jeremy Welland, Ashlie Surur,
15 Karen Bashor, Monte Hall -- and no, he will not make a
16 deal; he's heard all the jokes. Dana Krulewitz,
17 Michelle Schwarz, Paul Hoffmann, Chad Butterfield, and
18 Taylor Selim. I think that's all.

19 Witnesses that we will be calling during the
20 trial are, in addition to Mr. Khoury who will testify,
21 we're going to be calling Las Vegas Metropolitan Police
22 Department Todd Kahn. You may also hear from -- you
23 may hear from him. Other expert witnesses we will be
24 calling include one Pablo Villablanca, who is the chief
25 of neuroradiology at UCLA; Dr. Harry Smith, a

1 biomechanical engineer from San Antonio, and who is
2 also a radiologist; John Siegler, a physical medicine
3 specialist from Las Vegas; and Dr. Joseph Schifini, who
4 is a pain management specialist also from Las Vegas;
5 and Staci Schonbrun who is vocational expert. She's
6 based out of Tucson.

7 In this particular case, Mr. Khoury will
8 admit that he is responsible for having caused the
9 accident that we're here for. We are disputing that
10 the accident was of sufficient force in nature to have
11 produced the injuries and the need for the surgeries
12 that the plaintiff alleges that she -- well, that she
13 actually did have.

14 I believe that covers everything, Your Honor.

15 THE COURT: Thank you, Mr. Jaffe.

16 All right, folks. Next thing that we do is
17 we're going to start our jury selection process. In
18 order to do that, we do that under oath, because we
19 expect you all to tell the truth. So what I'm going to
20 do is, you know, before I swear you in, I'm going to
21 have our clerk do a roll call, make sure that we have
22 everybody here we're supposed to have and make sure
23 that there's not somebody here that's supposed to be in
24 a different department. So when she calls your name,
25 this is just like elementary school, say "here," raise

1 your hand, something that we can actually spot you
2 and -- and hear you. Okay?

3 And I will apologize in advance. We're both
4 going to screw up your names. Some of you have names
5 that are difficult. My name is Wiese. Everybody says
6 it Weiss. I'm used to it. I try to correct them the
7 first couple of times. Correct us as we get going and
8 we'll try to -- we'll try to get your names correct,
9 but the first time during the roll call, she's going to
10 get some wrong. Just bear with us.

11 THE CLERK: Mark Runz, Badge 01.

12 PROSPECTIVE JUROR NO. 001: Here.

13 THE CLERK: Tom Fitzgerald, Badge 03.

14 PROSPECTIVE JUROR NO. 003: Here.

15 THE CLERK: Barton Unger, Badge 06.

16 PROSPECTIVE JUROR NO. 006: Here.

17 THE CLERK: Margaret Vera, Badge 08.

18 PROSPECTIVE JUROR NO. 008: Here.

19 THE CLERK: Paul Jeung, Badge 09.

20 PROSPECTIVE JUROR NO. 009: Here.

21 THE CLERK: Jeaneen Johnson, Badge 10.

22 PROSPECTIVE JUROR NO. 010: Here.

23 THE CLERK: Gary Okamoto, Badge 11.

24 PROSPECTIVE JUROR NO. 011: Here.

25 THE CLERK: Chris Evans, Badge 12.

1 PROSPECTIVE JUROR NO. 012: Here.
2 THE CLERK: Marygrace Rendina, Badge 13.
3 PROSPECTIVE JUROR NO. 013: Here.
4 THE CLERK: Victor Madrigal, Badge 15.
5 PROSPECTIVE JUROR NO. 015: Here.
6 THE CLERK: Joey Bulosan, Badge 17.
7 PROSPECTIVE JUROR NO. 017: Here.
8 THE CLERK: Elizabeth Templeton, Badge 18.
9 PROSPECTIVE JUROR NO. 018: Here.
10 THE CLERK: Richard Moles, Badge 22.
11 PROSPECTIVE JUROR NO. 022: Here.
12 THE CLERK: Nicholas Karpenko, Badge 25.
13 PROSPECTIVE JUROR NO. 025: Here.
14 THE CLERK: Joseane Do-Prado, Badge 27.
15 PROSPECTIVE JUROR NO. 027: Here.
16 THE CLERK: Leticia Ong, Badge 28.
17 PROSPECTIVE JUROR NO. 028: Here.
18 THE CLERK: Thomas Payne, Badge 29.
19 PROSPECTIVE JUROR NO. 029: Here.
20 THE CLERK: Patty Agnor, Badge 33.
21 PROSPECTIVE JUROR NO. 033: Here.
22 THE CLERK: Gary Walker, Badge 34.
23 PROSPECTIVE JUROR NO. 034: Here.
24 THE CLERK: Angela Brown, Badge 43.
25 PROSPECTIVE JUROR NO. 043: Here.

1 THE CLERK: Dominika Procet, Badge 44.
2 PROSPECTIVE JUROR NO. 044: Here.
3 THE CLERK: Clifford Frazier, Badge 49.
4 PROSPECTIVE JUROR NO. 049: Here.
5 THE CLERK: Jonathan Daryanani, Badge 53.
6 PROSPECTIVE JUROR NO. 053: Here.
7 THE CLERK: Michael Saxton, Badge 56.
8 PROSPECTIVE JUROR NO. 056: Here.
9 THE CLERK: Vicky Ellen Herana, Badge 63.
10 PROSPECTIVE JUROR NO. 063: Here.
11 THE CLERK: Mark Duplay, Badge 64.
12 PROSPECTIVE JUROR NO. 064: Here.
13 THE CLERK: Helen Perrine, Badge 71.
14 PROSPECTIVE JUROR NO. 071: Here.
15 THE CLERK: Christina Essaqui, Badge 75.
16 PROSPECTIVE JUROR NO. 075: Here.
17 THE CLERK: Fidencio Chavez, Badge 76.
18 THE COURT: Fidencio Chavez?
19 THE CLERK: Sherronda Anderson, Badge 82.
20 PROSPECTIVE JUROR NO. 082: Here.
21 THE CLERK: Gina Arroyo, Badge 84.
22 PROSPECTIVE JUROR NO. 084: (Inaudible
23 response)
24 THE CLERK: Francisco Bangayan, Badge 85.
25 PROSPECTIVE JUROR NO. 085: Here.

1 THE CLERK: Joann Faulkner, Badge 100.
2 PROSPECTIVE JUROR NO. 100: Here.
3 THE CLERK: Garfield Miller, Badge 104.
4 PROSPECTIVE JUROR NO. 104: Here.
5 THE CLERK: Ann Boone, Badge 106.
6 PROSPECTIVE JUROR NO. 106: Here.
7 THE CLERK: Randall Jedinak, Badge 113.
8 PROSPECTIVE JUROR NO. 113: Here.
9 THE CLERK: Veronica Francisco, Badge 117.
10 PROSPECTIVE JUROR NO. 117: Here.
11 THE CLERK: Taylor Stueve, Badge 129.
12 PROSPECTIVE JUROR NO. 129: Here.
13 THE CLERK: Skye Curbelo, Badge 140.
14 PROSPECTIVE JUROR NO. 140: Here.
15 THE CLERK: Benjamin Jackson, Badge 165.
16 PROSPECTIVE JUROR NO. 165: Here.
17 THE CLERK: Robert Eisenstadt, Badge 182.
18 PROSPECTIVE JUROR NO. 182: Here.
19 THE CLERK: Raya Alsaiegh, Badge 187.
20 THE COURT: She's been excused.
21 THE CLERK: Ryan Brown, Badge 192.
22 PROSPECTIVE JUROR NO. 192: Here.
23 THE CLERK: Matthew Porcaro, Badge 193.
24 PROSPECTIVE JUROR NO. 193: Right here.
25 THE CLERK: David Hecht, Badge 202.

1 PROSPECTIVE JUROR NO. 202: Here.
2 THE CLERK: Britney Harris, Badge 210.
3 PROSPECTIVE JUROR NO. 210: Here.
4 THE CLERK: Stephanie Bass, Badge 213.
5 PROSPECTIVE JUROR NO. 213: Here.
6 THE CLERK: Trophy Mayor, Badge 221.
7 PROSPECTIVE JUROR NO. 221: Here.
8 THE CLERK: Brian Byrd, Badge 225.
9 PROSPECTIVE JUROR NO. 225: Here.
10 THE CLERK: Tuyen Avery, Badge 227.
11 PROSPECTIVE JUROR NO. 227: Here.
12 THE CLERK: Bonnie Goldberg, Badge 228.
13 PROSPECTIVE JUROR NO. 228: Here.
14 THE CLERK: Michaela Cowles, Badge 229.
15 PROSPECTIVE JUROR NO. 229: Here.
16 THE CLERK: Nancy Kohnke, Badge 240.
17 PROSPECTIVE JUROR NO. 240: Here.
18 THE CLERK: Charlie Brown, Badge 245.
19 PROSPECTIVE JUROR NO. 245: Here.
20 THE CLERK: And John Saccamano, Badge 249.
21 PROSPECTIVE JUROR NO. 249: Here.
22 MR. CLOWARD: Your Honor, may we approach
23 briefly?
24 THE COURT: Sure. Come on up.
25 /////

1 (Whereupon a brief discussion was
2 held at the bench.)

3 THE COURT: So, you folks have already had
4 the experience of hearing the white noise. During the
5 course of the trial, there will be many occasions when
6 the attorneys will have to come up and talk to me, and
7 we have to talk about something that you're not
8 supposed to hear. So I will turn on the white noise,
9 and that purpose of the white noise is to make it so
10 you can't hear. Don't try to listen. And, you know, I
11 know it's not a pleasant noise, but, you know, that's
12 why we do that and it -- it has a purpose, because
13 otherwise we would have to excuse all of you while we
14 have a little talk and then bring you all back in and
15 it's a lot faster if I just bring them up, I turn on
16 the white noise, and we do have a little conversation
17 up here, and then we get back to it and you can all
18 stay there.

19 So anyway, now what we're going to do is I'm
20 going to have the clerk swear you all in, so I'm going
21 to have everybody stand, please, and raise your right
22 hand.

23 THE CLERK: You do solemnly swear that you
24 will well and truly answer such questions that may be
25 put to you touching upon your qualifications as jurors

1 in the case at issue, so help you God.

2 ALL JURORS: I do.

3 THE COURT: Go ahead and be seated. Thank
4 you, folks.

5 What happens in jury selection is I'm going
6 to ask a bunch of questions first. I'm going to ask
7 some real general questions first, and then we'll get
8 more and more specific. Eventually I will turn it over
9 to the attorneys so they can ask you questions. I know
10 that you folks have all filled out jury questionnaires,
11 so that's going to help us a lot, and a lot of the
12 questions that would have been asked, you have already
13 answered so hopefully you won't hear those questions
14 again. But there probably will be some follow-up on
15 some of the questions you already answered, so just
16 bear with us.

17 This is a process that will probably take us,
18 I'm guessing, most of the day. I know you didn't want
19 to hear that, but that's the way it works.

20 First of all, to qualify to sit as a juror,
21 an individual has to be a citizen of the United States.
22 Is there anybody here in the panel who is not a citizen
23 of the United States, please raise your hand. Don't
24 see any hands.

25 Next one, in order to serve as a juror, an

1 individual cannot be a convicted felon whose rights
2 have not been restored. Is there anyone here in the
3 panel who is a convicted felon whose rights have not
4 been restored, raise your hand. I don't see any hands.

5 Let me explain to you before I go on why
6 you're separated. I have got 20 people over here.
7 This is the area that we call the box. Okay? And you
8 four in the front are not quite in the box yet, but you
9 might get there. This is our jury box. Okay? In a
10 civil case, we will have eight jurors and two
11 alternates. Okay. You won't know who the alternates
12 are till the very end of the trial, so sorry if you are
13 an alternate and you have to sit through the whole
14 trial and you don't get to deliberate, but we have to
15 make sure we have alternates just in case there's some
16 unforeseen circumstance.

17 What will happen is I'm going to ask
18 questions of primarily the box, okay, the 20 people
19 that are over here to my right. Everybody in the back
20 needs to listen to these questions, though, because
21 there will be challenges, and some of these people will
22 have to be excused. And some of you from the back will
23 come up and fill their spaces. So as that happens, we
24 would hope that we won't have to go back through all
25 the questions that have been asked all day with each of

1 you new jurors that come up and sit in the box. So
2 we're going you -- you know, we may ask you some of
3 those questions again, but primarily we're going to ask
4 you are, "You've heard all the questions that have been
5 asked, is there -- are there any of those questions
6 that you would need to respond to with an affirmative
7 response?" So listen carefully to the questions.

8 You people in the back don't fall asleep
9 thinking that you don't really have to pay attention,
10 because you're not up here, you're not directly being
11 asked the questions yet, because many of you will
12 probably be up here before the day's out. Okay?

13 Let me tell you, first of all, the attorneys
14 and I are all -- the purpose of jury selection is to
15 get a fair and impartial jury. There's been a lot of
16 news media recently about jury trials. You know, maybe
17 we think the jury did the wrong thing in a certain
18 case. Maybe we don't. It doesn't matter. The purpose
19 of being here today and for the next couple of weeks --
20 you know, this trial is supposed to last throughout the
21 25th, which is next Thursday. The purpose of this
22 trial is, and the purpose of jury selection is to try
23 to get a fair and unbiased jury. Understand that, or
24 we understand that some of the questions that are going
25 to be asked of you may seem a little personal to you

1 and you may not want to -- you may not be real excited
2 about offering information to us, especially in front
3 of all these other people. We're really not trying to
4 pry into your individual personal lives, but there are
5 certain things that are important for the parties and
6 the attorneys to know to make sure that we get a fair
7 and unbiased jury panel. Okay? And that's really all
8 we're looking for is somebody that can be fair.

9 Now, you are going to hear words like "bias"
10 and "prejudice." And most of the time we think of the
11 word "prejudice" as being a negative word, because if
12 you have a prejudice against a person or a race or
13 something like that, that's negative. You know, you
14 have bad feelings about somebody and you shouldn't.
15 Okay? Those kind of prejudices are bad, but the
16 prejudices and biases that we're talking about here in
17 court are not necessarily those kind of prejudices and
18 biases, but because of the way that we were all raised,
19 we were all born in different places and had different
20 upbringings. We had different family lives. We have
21 different kind of jobs. We have different financial
22 and economic backgrounds. Some of us went to college.
23 Some of us didn't. Because of our life experiences, we
24 all have different thoughts and feelings about
25 different issues. Okay. If I was to go through each

1 one of you and ask you how you felt about a car
2 accident, you would all have different feelings about
3 that, because some of you have been in car accidents
4 and others haven't. Some of you have family members
5 who were injured bad. Some of you were involved in
6 fender-benders where nobody was injured. You all have
7 different life experiences, and because of those life
8 experiences you-all have different feelings about
9 issues that are going to be important in this case.
10 Okay?

11 So the fact that you have a strong feeling
12 about something, don't feel bad about that. Okay?
13 That just means that you had a different life
14 experience than somebody else.

15 During the course of our jury selection, you
16 may be excused for cause because of a bias or prejudice
17 that you have. Don't feel bad about that. That
18 doesn't mean that you're a bad juror or you're a bad
19 person. It just means you may not be the perfect juror
20 for this case. Doesn't mean you wouldn't be the
21 perfect juror for the case right next door. Okay?

22 So what will happen, and I always tell people
23 this, don't answer the questions in a way that you
24 think will get you off jury duty. I know you're all
25 tempted to do that because you don't want to be here.

1 We understand you don't want to be here, but here's the
2 problem. If you answer the questions in a way to get
3 off this jury, it doesn't mean you're done with jury
4 service. It just means you go back down to the third
5 floor and they may send you up to the courtroom next
6 door. And some trials only last a couple of days, some
7 last a week, some last a couple of weeks, some last a
8 couple of months. The longest one I was involved in
9 went from November to February, so, you know, if you
10 want to answer the questions in a way that you think
11 might get you off this jury panel and you get stuck on
12 a jury that goes for three or four months, you might
13 get what you asked for.

14 So just be careful. Answer the questions
15 truthfully and honestly. Some of you will end up
16 staying. Some of you will end up going. And that's
17 just the way the system works and just kind of play
18 along. Okay? But answer the questions honestly and
19 truthfully about all your prejudices and biases so we
20 can try to get the best jury panel that we can.

21 Don't hide anything from us. You may during
22 the course of the jury selection process hear a
23 question and you will think, Well, you know, if that
24 guy had just asked that question a little bit
25 different, I would have had to answer, but because it

1 was asked the way it was, I don't really have to say
2 anything. If it's that close, please answer. Okay?
3 Give us the information. Err on the side of disclosure
4 on -- as opposed to, you know, trying to keep it to
5 yourself. If it's anything you think we want to know,
6 go ahead and offer it. All right? Try not to -- try
7 not to be secretive about something that you know is
8 going to be an issue or something that the attorneys or
9 myself want to hear.

10 I'm going to start with the general
11 examination of all the jurors here on my right. Like I
12 told you folks before in the back, please listen
13 because you're probably -- many of you are going to
14 have to answer these questions as well as we go along.
15 I talked to you before about challenges for cause, that
16 some of you might be challenged for cause. If you're
17 challenged for cause, I'm going to send you back down
18 to the third floor. They may send you somewhere else.

19 After we get to a certain point, the
20 attorneys are going to pass the panel for cause, which
21 means that all 20 people over here are -- don't have
22 the prejudices and biases that would affect their being
23 a juror on this case. Okay. That means you can all
24 sit as jurors on this case.

25 Once we get to that point then the attorneys

1 have a chance to do what's called preemptory challenges
2 and they get to challenge you for any reason or no
3 reason. They may not like the color of your shoes or
4 the color of your eyes. They may not like the way you
5 looked at them when you came in. You might have
6 answered a question they weren't comfortable with, but
7 it didn't rise to the level of a challenge for cause.
8 Each side gets a certain number of preemptory
9 challenges so that they get to boot some of you off for
10 any reason or no reason. Don't be offended if that
11 happens. That means you got out of jury duty. My
12 understanding is if you -- if you sit here and you get
13 excused, you have 18 months before you get called
14 again. So that's always good news, right? I don't
15 know that that applies if you're excused without
16 actually sitting on a jury or not. So I mean, I don't
17 know how jury services works on that. But I know if
18 you sit on a jury, you have at least 18 months.

19 Let me tell you, first of all, before I start
20 asking questions about jury duty in general, and I know
21 you folks are -- you don't want to be here. We
22 understand you don't want to be here. We understand
23 jury duty is a challenge for some of you. And let me
24 just tell you, you know, our forefathers hundreds of
25 years ago fought for our freedoms. Okay? You folks

1 all know about the Declaration of Independence and the
2 Constitution. You know the freedoms that the people
3 that came before us fought for and we still have people
4 today that are fighting for our freedoms. That's
5 important, and, you know, I'm a scout leader. I have
6 taught Boy Scouts and Cub Scouts. I'm a Cub Scout
7 leader right now, and one of the things that I always
8 emphasize with them is citizenship and duty and honor
9 and those kinds of things.

10 See this flag. This United States flag means
11 something. Okay? You folks are all citizens of the
12 United States. That means something. I can tell you I
13 went to a track meet with one of my kids a couple of
14 months ago at a high school. My kids -- this kid was
15 an elementary school kid, but they had a big track meet
16 at a high school, and the stands were full of people,
17 and the stadium was full of kids. And when they
18 announced that they were going to do a flag ceremony
19 and the color guard came out with the flags, and they
20 started marching down the -- through the field, I stood
21 up and put my hand over my heart. And you know what, I
22 was the only person in the whole place that stood up
23 and put my hand over my heart. And it wasn't until
24 that flag went all the way down the field, came through
25 the band, and they said, "Now we want everybody to join

1 us in the Pledge of Allegiance," that's when everybody
2 else stood up.

3 I got to tell you that citizenship in the
4 United States today doesn't mean what it used to mean
5 and that's a problem in my mind. You know, I think
6 it's important that you folks understand that what
7 you're doing here today is being good citizens. You're
8 doing your civic obligation to serve as jurors. And
9 while you may not like it, you may not enjoy this time,
10 hopefully at the end of the day, you know, whether you
11 serve as jurors or you don't serve as jurors, I am
12 hoping that you go home and feel like this was a good
13 experience. I don't want you to have to go home at the
14 end of the day and say -- you know, your kids or your
15 significant others come up and say, "How was your day?"
16 "I got out of the jury duty." "Well, how did that
17 happen?" "Well, I lied to the judge." Okay? That is
18 not the kind of message that we want to send to people.
19 We want to send the message that I was a good citizen.
20 I told the truth. I either got out of jury duty or I'm
21 sitting on a jury. Either way, you -- we want to send
22 a message to those people around us that we're good
23 citizens. Okay? We want everybody around us to be
24 good citizens.

25 Let me suggest to you folks, if you're -- if

1 you're somewhere where they're having a flag ceremony
2 and you see the flag coming, stand up and put your hand
3 over your heart because we belong to a country that
4 citizenship and honor and duty mean something.

5 When the -- when the founding fathers wrote
6 the Constitution, it starts out the preamble. Some of
7 you probably know this, some of you don't, but the
8 preamble of the Constitution says, "We, the People."
9 It's all about us. "We, the People of the United
10 States, in order to form a more perfect union," they
11 didn't say in order to form a perfect union. It's in
12 order to form a more perfect union because we were
13 tired of the tyranny we were having to undergo and live
14 under with the King of England. So they said we want
15 to do something to form a more perfect union.

16 What was the first thing they talked about
17 after that? To establish justice. That's what the
18 court system is about is justice. Okay? If somebody
19 feels like somebody did something wrong, then they can
20 bring a lawsuit. If somebody breaks the law, then they
21 get charged. Okay?

22 What the jury system is about, what the court
23 system is about, is justice. Okay? That's the first
24 thing, the most important thing to the founding
25 fathers, so just think about those things as we're

1 sitting here today. Tell the truth in response to the
2 questions. And -- and like I said, hopefully this will
3 be a good experience for you folks, whether you sit on
4 the jury or not. But I do appreciate all of your time,
5 and I know that you folks had to come down and fill out
6 a questionnaire on a separate day and then you had to
7 come back today and I apologize for the inconvenience
8 that that is, and I know it's an inconvenience, but --
9 but we need folks like you to serve on juries so that
10 justice can be done in our country. Okay?

11 There's juries just like this throughout this
12 building, throughout this state, and throughout our
13 country. There's lots of people serving jury duty
14 today, and you're all doing that because you're
15 citizens of the United States and because we need folks
16 like you to -- to make this process work. That's
17 enough of my soapbox.

18 Let me tell you about the schedule. As you
19 know, the case is scheduled to go through next
20 Thursday. This week -- I have a morning calendar where
21 I hear law and motion filed by different lawyers on
22 other cases. I do that on Tuesday and Thursday
23 mornings at 9:00, so Tuesdays and Thursdays we will
24 start a little bit later. Some days it may be 1:00,
25 but other days I'm going to try to get you started by

1 10:30 or 11:00, and try to give you the longest
2 possible day as we can. We will usually end by about
3 4:45.

4 Wednesdays and Fridays -- Monday, Wednesday,
5 and Friday we'll probably start at 9:00 or 9:30. We'll
6 take a break for lunch. We'll take another break in
7 the morning, another break in the afternoon for
8 probably about ten minutes each for those breaks and an
9 hour for lunch.

10 The reason I tell you that is because I know
11 some people have obligations with their kids in the
12 morning. They have to pick their kids up in the
13 evenings, you know, you may be a diabetic, and you need
14 to eat certain times during the day or you need to have
15 regular food. I will give you a chance to take breaks.
16 If anybody needs a break at any time and it's not a
17 scheduled break time, just raise your hand and tell me
18 you need your break or you can do this (indicating).
19 This is kind of the universal symbol for break. Okay?
20 Randy will see that if I don't see it, and we'll give
21 you a break. We're not here to make anybody
22 uncomfortable.

23 But that's our -- our case is scheduled to
24 last through next Thursday. I know that there was one
25 of you that submitted a letter to me about a trip that

1 was scheduled for next Friday, we're confident that the
2 case is going to be done so that the Friday trip next
3 week is not going to be an issue.

4 I know that there are events in some of your
5 lives that will make it difficult for you to serve jury
6 duty. Those of you that have already sent -- some
7 people sent in letters about trips and stuff they had
8 planned. I'm not here to ruin anybody's vacation. If
9 you are going to tell me you have a trip planned and
10 you can't provide me with a airplane ticket or show me
11 you really have a trip planned, I'm probably not going
12 to let you go, because I know you're just trying to get
13 out of jury duty.

14 Also, understand that we know that there's
15 people in the community that have financial
16 difficulties, especially in this time that our
17 community and our country's going through with the
18 economy. Unfortunately, and you can tell me about your
19 story, you can tell me about how this is going to be
20 hard for you to miss work for the next couple weeks and
21 I will listen to you. But I just need to let you know
22 that financial hardship is no longer really a basis for
23 excusal for -- from jury duty. If it was, the only
24 people we would have here would be retired people and
25 homeless people, and that's not a fair cross-section of

1 the community to have as jurors. So I'm happy to
2 listen to how you're going to miss out on money at
3 work, as long as you understand that that's probably
4 not going to get you excused. Okay?

5 If I ask a question, and it elicits a
6 response from you, like I told you, I need you to tell
7 me your name and the last three digits of your badge
8 number. Some of you will forget that, and I will have
9 to interrupt you and ask you what that is, but please
10 try to give me your name and badge number if you have a
11 response to a question.

12 First question: Is there -- is there anybody
13 who has difficulty understanding the English language?

14 THE COURT: Yes, ma'am. What's your name and
15 badge number?

16 PROSPECTIVE JUROR NO. 027: Joseane Do-Prado,
17 Badge No. 027.

18 THE COURT: Okay. And what's your -- what's
19 your native language?

20 PROSPECTIVE JUROR NO. 027: Portuguese.

21 THE COURT: How long have you been in the
22 United States?

23 PROSPECTIVE JUROR NO. 027: Seven years.

24 THE COURT: Okay. Do you work?

25 PROSPECTIVE JUROR NO. 027: No.

1 THE COURT: Okay. Do you have a difficult --
2 have you had difficulty understanding what I have said
3 so far?

4 PROSPECTIVE JUROR NO. 027: Yeah, a little
5 bit.

6 THE COURT: Some of it, yes; some of it, no?

7 PROSPECTIVE JUROR NO. 027: Yes, I understand
8 half.

9 THE COURT: Okay. Are there just certain
10 words that you don't understand?

11 PROSPECTIVE JUROR NO. 027: Yes.

12 THE COURT: Okay. You feel like it would be
13 difficult for you to sit through a trial and understand
14 what's going on?

15 PROSPECTIVE JUROR NO. 027: Yes. For trial,
16 yes.

17 THE COURT: Okay.

18 Anybody else over here in the box? I had a
19 hand in the back. What is your name and badge number,
20 ma'am? Stand up.

21 PROSPECTIVE JUROR NO. 221: Trophy Mayor,
22 Badge No. 221.

23 THE COURT: 221. What's your native
24 language, ma'am?

25 PROSPECTIVE JUROR NO. 221: Filipino, Tagalog.

1 THE COURT: Tagalog. How long have you been
2 in the United States?

3 PROSPECTIVE JUROR NO. 221: Eight years.

4 THE COURT: Do you work outside the home?

5 PROSPECTIVE JUROR NO. 221: As of now, I am
6 unemployed.

7 THE COURT: You're unemployed. Have you
8 worked outside the home?

9 PROSPECTIVE JUROR NO. 221: Yes.

10 THE COURT: Where have you worked?

11 PROSPECTIVE JUROR NO. 221: I work in
12 Japanese company.

13 THE COURT: I can't hear you.

14 PROSPECTIVE JUROR NO. 221: I work at Japanese
15 company.

16 THE COURT: A Japanese company?

17 PROSPECTIVE JUROR NO. 221: Yes.

18 THE COURT: Do you speak English there?

19 PROSPECTIVE JUROR NO. 221: A little bit.

20 THE COURT: Okay. Have you had a difficult
21 time understanding what I have said so far today?

22 PROSPECTIVE JUROR NO. 221: A little bit,
23 yeah.

24 THE COURT: Okay. All right. Thank you,
25 ma'am. It's Trophy Mayor?

1 PROSPECTIVE JUROR NO. 221: Yes.

2 THE COURT: Okay. Thank you.

3 Anybody else? Difficulty understanding the
4 English language? If you really have a difficulty, you
5 probably wouldn't have understood that question, so ...

6 All right. Are any of you acquainted with or
7 recognize any of the attorneys involved in the case?
8 Got a hand back there in the back. What's your name
9 and badge number, sir? Talk loud.

10 PROSPECTIVE JUROR NO. 049: Cliff Frasier,
11 049.

12 THE COURT: 049? Okay. Who do you know?

13 PROSPECTIVE JUROR NO. 221: Gabe Martinez.

14 THE COURT: You know Gabe Martinez? I don't
15 think Gabe Martinez's firm was involved in this case.

16 PROSPECTIVE JUROR NO. 221: I thought it was.
17 I apologize. I'm not trying to get out of it.

18 THE COURT: That's okay. I know Gabe
19 Martinez. He's not involved here.

20 PROSPECTIVE JUROR NO. 221: I thought I heard
21 his name.

22 THE COURT: Anybody else?

23 Name and badge number, ma'am.

24 PROSPECTIVE JUROR NO. 140: Skye Curbelo,
25 Badge No. 140.

1 THE COURT: Who do you know?

2 PROSPECTIVE JUROR NO. 140: The Harris Law
3 Firm.

4 THE COURT: Okay. Have they represented you
5 in the past?

6 PROSPECTIVE JUROR NO. 140: No. I used to
7 work for Desert Orthopaedic Center, so we had a lot of
8 cases that we dealt with their attorneys on.

9 THE COURT: Okay. I'm not going to ask you
10 if you had bad or good experiences with them. Do you
11 think that your experiences with them in the past would
12 affect your ability to be a fair and impartial juror in
13 this case?

14 PROSPECTIVE JUROR NO. 140: Yes.

15 THE COURT: So you think you would be a
16 better juror for a different case than this one; is
17 that what you're saying?

18 PROSPECTIVE JUROR NO. 140: I'm sorry. I
19 didn't understand what you said.

20 THE COURT: Do you think that it would make
21 it hard for you to be a fair juror in this case because
22 you had prior dealings with them?

23 PROSPECTIVE JUROR NO. 140: Oh, no. I didn't
24 deal with them personally. Just we got their cases and
25 I worked with the medical assistant.

1 THE COURT: So you have heard of them, you
2 know about their firm, but you don't think it would
3 affect your ability to be fair?

4 PROSPECTIVE JUROR NO. 140: No.

5 THE COURT: Okay. Anybody else know any of
6 the attorneys that have been named for you? Don't see
7 any other hands.

8 Are any of you acquainted with or recognize
9 the names of any of the witnesses who were identified
10 as people who were going to be testifying during the
11 trial?

12 Yes, sir. Name and badge number.

13 PROSPECTIVE JUROR NO. 006: Barton Unger,
14 No. 006. I was a patient for Matt Smith. I saw that
15 name on the witness list, for his physical therapy.

16 THE COURT: Okay. You were a patient of his?

17 PROSPECTIVE JUROR NO. 006: Yes, of his
18 facility.

19 THE COURT: Okay. How long ago was that?

20 PROSPECTIVE JUROR NO. 006: Last year.

21 THE COURT: Without telling me whether or not
22 it was a good or bad experience, do you think that your
23 experience with Matt Smith physical therapy would
24 affect your ability to be a fair and impartial during
25 the trial?

1 PROSPECTIVE JUROR NO. 006: No.

2 THE COURT: It's not going to cause you to
3 give more or less weight to somebody that testifies
4 from there?

5 PROSPECTIVE JUROR NO. 006: (Witness shakes
6 head.)

7 THE COURT: Okay.

8 Anybody else?

9 Yes, ma'am. Name and badge number.

10 PROSPECTIVE JUROR NO. 140: Skye Curbelo,
11 Badge 140. I know Dr. Grover and Dr. Schifini. Just
12 not personally, but we refer patients to them, and they
13 refer patients to us.

14 THE COURT: Grover and Schifini?

15 PROSPECTIVE JUROR NO. 140: Uh-huh.

16 THE COURT: Do you know either of them
17 personally?

18 PROSPECTIVE JUROR NO. 140: No, not
19 personally.

20 THE COURT: Have you met either of them
21 personally?

22 PROSPECTIVE JUROR NO. 140: I have met
23 Dr. Grover once at a social function that we were at.

24 THE COURT: The fact that you know of them,
25 is that going to be -- is that going to affect your

1 ability to be fair and impartial?

2 PROSPECTIVE JUROR NO. 140: It will not.

3 THE COURT: Okay. Thank you, ma'am.

4 Anybody else know any of the witnesses? I
5 don't see any other names or any other hands.

6 MR. CLOWARD: Your Honor, there was one --
7 one doctor I do recall we forgot to mention,
8 Dr. Jeffrey Gross. He will also be another one that I
9 just remembered.

10 THE COURT: Okay. With that addition, any
11 other hands? Anybody know Dr. Jeffrey Gross? I don't
12 see any other hands.

13 Okay. Thanks, folks. If I don't see your
14 hand, please tell me, say, "You didn't see my hand,
15 Judge, but I was waving a hand." Okay? Don't let me
16 ignore you.

17 Are any of you acquainted or recognize any of
18 the parties in the case? Either of the parties?

19 Yes, sir. Name and badge number.

20 PROSPECTIVE JUROR NO. 022: Richard Moles,
21 022.

22 THE COURT: And who do you recognize?

23 PROSPECTIVE JUROR NO. 022: Mr. Khoury and
24 myself worked for sister engineering companies about
25 ten years ago.

1 THE COURT: So you know him personally?

2 PROSPECTIVE JUROR NO. 022: I do.

3 THE COURT: Think that would affect your
4 ability to be fair and impartial juror in this case?

5 PROSPECTIVE JUROR NO. 022: I don't.

6 THE COURT: Really? All right. Okay. Thank
7 you, sir.

8 PROSPECTIVE JUROR NO. 022: Sure.

9 THE COURT: Did you -- you said you worked
10 for sister companies?

11 PROSPECTIVE JUROR NO. 022: Right.
12 Structure -- he worked for structural company and I am
13 a civil engineer.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 022: At times in the
16 same building. Often we were in separate buildings.

17 THE COURT: All right. Thanks.

18 Anybody else recognize or know either of the
19 parties? Don't see any other hands.

20 Are any of you in any way obligated to any of
21 the parties or any of the lawyers in the case? You owe
22 them anything? I don't see any hands.

23 Are any of them obligated in any way to you?
24 Don't see any hands.

25 Do any of you know any other member of the

1 jury panel? Sometimes we have juries come in and we
2 have jurors that know each other. Any of you know each
3 other? I don't see any hands.

4 Do any of you know either myself or any other
5 member of our Court staff? I know Mr. Bulosan does.
6 He's a former client of mine.

7 Is that going to affect your ability to be
8 fair and impartial in the trial?

9 PROSPECTIVE JUROR NO. 017: No.

10 THE BAILIFF: We need a break, Judge.

11 THE COURT: We need a break?

12 We need to take a break. If somebody is
13 going to leave, we got to all leave.

14 Give me one second. Anybody else, other than
15 Mr. Bulosan, know either myself or any other member of
16 the Court staff? I don't see any other hands.

17 All right. Let's go ahead and take a break
18 for a minute. Before we break, just so you guys know,
19 I have to read this admonition to you every time we
20 take a break. Basically the admonition says you can't
21 talk to anybody about the case. But listen to it
22 carefully. I will read it slowly the first time. As
23 we go through the trial, it will get faster and faster,
24 because you will get tired of hearing it, but I need to
25 make sure you understand the importance of it and you

1 listen to the words. Okay?

2 You're instructed not to talk with each other
3 or with anyone else, about any subject or issue
4 connected with this trial. You are not to read, watch,
5 or listen to any report of, or commentary on the trial
6 by any person connected with this case or by any medium
7 of information, including, without limitation,
8 newspaper, television, the Internet, or radio. You are
9 not to conduct any research on your own, which means
10 you cannot talk with others, Tweet others, text others,
11 Google issues, or conduct any other kind of book or
12 computer research with regard to any issue, party,
13 witness, or attorney, involved in this case. You're
14 not to form or express any opinion on any subject
15 connected with the case until the case is finally
16 submitted to you.

17 Go ahead and take a break, come back in about
18 ten minutes.

19 THE BAILIFF: All rise.

20 THE COURT: You folks in the box remember
21 where you're sitting, because I need you to sit in the
22 same place.

23 (Whereupon jury exited the courtroom.)

24 THE COURT: All right. We're outside the
25 presence of the jury. I have a concern about Mr. Moles

1 who previously worked with the defendant. He says that
2 he can be fair and impartial, but I usually find if
3 somebody knows, or -- knows one of the parties
4 personally, that's -- that's usually a problem. You
5 guys have a problem excusing him?

6 MR. JAFFE: I think we're just being
7 hypertechnical here, Judge. I'm joking. I'm joking.

8 THE COURT: What about the ones --

9 MR. CLOWARD: So, Your Honor, are you going
10 to excuse Mr. Moles then?

11 THE COURT: I think I have to.

12 MR. CLOWARD: Okay.

13 THE COURT: I think I'm going to excuse
14 Mr. Moles. And then I also had two people that said
15 they had a difficult time understanding the English
16 language.

17 MR. JAFFE: I think we have to let them both
18 go, Your Honor.

19 THE COURT: I don't know where I wrote it
20 down on the first one. Who was the first lady? There
21 was somebody over here.

22 MR. JAFFE: No. 18, Mrs. Do-Prado.

23 MR. CLOWARD: We would agree with that,
24 Judge.

25 THE COURT: Okay. Do-Prado is Badge No. 27,

1 right? She is sitting in seat No. 18 and then also,
2 Badge No. 221, Trophy Mayor. You okay letting both of
3 them go?

4 MR. CLOWARD: Yes, Your Honor.

5 MR. JAFFE: No problem, Your Honor.

6 THE COURT: So I will excuse them when we
7 come back.

8 All right. Let's go ahead and go off the
9 record, come back in a few minutes.

10 (Whereupon a short recess was taken.)

11 THE BAILIFF: All rise.

12 (Whereupon jury entered the courtroom.)

13 THE COURT: Go ahead and be seated. Welcome
14 back, folks. Back on the record in Case No. 636515.

15 Before we get going, we're going to thank and
16 excuse a couple of you. Richard Moles, Badge No. 022,
17 we're going to thank and excuse you. Badge 027,
18 Joseane Do-Prado, thank and excuse you. You guys can
19 go back down to the third floor, let them know you've
20 been excused by Department 30. Also, Trophy Mayor,
21 Badge 221. Thank you, ma'am.

22 All right. So I have got two seats.

23 THE CLERK: Dominika Procek, please take seat
24 No. 14, and Clifford Frazier, please take seat No. 18.

25 PROSPECTIVE JUROR NO. 044: That way or back?

1 THE COURT: You're in the middle row right
2 there.

3 Okay. See, I told you folks in the back
4 don't get too comfortable. See, people keep coming up.
5 It's going to keep happening during the day, so keep
6 paying attention.

7 All right. Ladies and gentlemen,
8 understanding that this case is going to last probably
9 through next Thursday, based on the schedule that I
10 gave you as far as when we'll start and stop each day,
11 is there anybody who feels that serving for that period
12 of time would present a physical or medical hardship?
13 Physical or medical hardship. Because of some physical
14 or medical condition you have.

15 PROSPECTIVE JUROR NO. 001: Not me, but my
16 wife. She has COPD.

17 THE COURT: Tell me your name and badge
18 number.

19 PROSPECTIVE JUROR NO. 001: Oh, I'm sorry.
20 Mark Runz, 001. She has COPD and the smoke from the
21 northwest has been bothering her quite a bit.

22 THE COURT: Do you stay home with her most of
23 the time?

24 PROSPECTIVE JUROR NO. 001: If I'm not at
25 work, yes.

1 THE COURT: Is she going to be able to get
2 along without you?

3 PROSPECTIVE JUROR NO. 001: Yeah, she's going
4 to the doctors right now as we speak. Yeah.

5 THE COURT: Okay. Tell me -- tell me how
6 serving on jury is going to make it difficult for her.

7 PROSPECTIVE JUROR NO. 001: Well, in case she
8 has to go to the hospital or something like that.
9 She's been in and out of hospitals for the last three
10 months, you know.

11 THE COURT: Hopefully that smoke --

12 PROSPECTIVE JUROR NO. 001: It was really
13 bad.

14 THE COURT: -- is going away.

15 PROSPECTIVE JUROR NO. 001: Yeah. It's
16 gotten better, yeah.

17 THE COURT: Anybody else, physical or medical
18 hardship? Mr. Bulosan.

19 PROSPECTIVE JUROR NO. 017: I have --
20 sometimes I have to go to the restroom. I can't stand
21 and sitting down certain period of time.

22 THE COURT: You ever need a break, just tell
23 us you need a break. We'll give you a break. Happy to
24 accommodate you there. Everybody else probably be
25 happy to take a break too whenever that happens, so ...

1 Anybody else? I don't see any other hands.

2 Is there anybody else that feels for some
3 other reason serving on a jury would present them with
4 a severe or undue hardship? Any other reason that --

5 PROSPECTIVE JUROR NO. 106: Sir.

6 THE COURT: -- that it's going to be a
7 hardship for you?

8 Tell me your name and badge number.

9 PROSPECTIVE JUROR NO. 106: My name is Ann
10 Boone, Badge 106. I don't know how severe, but I just
11 want to throw it out there. I didn't put anything.
12 I'm the sole caregiver for my two children, a
13 three-and-a-half-year-old and six-year-old. The
14 three-and-a-half-year-old has social anxieties, so we
15 can't have anybody else care for her other than a
16 grandparent or my husband. My husband is off today.
17 Tomorrow he has a subpoena. He works for Metro. He
18 has a subpoena for tomorrow. We don't know if it's
19 going or not until tonight, so he won't be able to
20 possibly care for her tomorrow. Then he works
21 Wednesday, Thursday, and Friday afternoons, and I am
22 having difficulties finding someone else to take care
23 for her.

24 THE COURT: Grandparents aren't in town?

25 PROSPECTIVE JUROR NO. 106: We do have

1 grandparents. They work as well. So it would be
2 possibly -- if I were to serve, and I totally
3 appreciate, you know, my civic duty. If I were to have
4 to serve, I would be asking other people to try to take
5 off of work, so I don't know how that works. I just
6 feel like I need to say that.

7 THE COURT: All right. Thank you, ma'am.

8 PROSPECTIVE JUROR NO. 106: Thank you so
9 much.

10 THE COURT: Anybody else?

11 Yes, sir. Name and badge number.

12 PROSPECTIVE JUROR NO. 009: Paul Jeung, Badge
13 No. 009. My wife just had our first child. She's two
14 months old now. My wife's going back to work. I work
15 overnight. She works during the day, so it would be
16 difficult to manage that time-wise as far as someone
17 being home with the baby during the day.

18 THE COURT: You work during the day?

19 PROSPECTIVE JUROR NO. 009: No, I work at
20 night and she works during the day.

21 THE COURT: So there's nobody home during the
22 day to take care of the two-month-old?

23 PROSPECTIVE JUROR NO. 009: It's supposed to
24 be me during the day. We switch off.

25 THE COURT: Anybody else? You have day care

1 or anything?

2 PROSPECTIVE JUROR NO. 009: We have day care
3 set up for a couple of days, but it wouldn't be every
4 day, because she works weekdays and has weekends off,
5 so it's kind of difficult. We have it set for about
6 two days a week when she goes back. She goes back this
7 Monday.

8 THE COURT: Okay. Thank you.

9 Anybody else? Yes, sir.

10 PROSPECTIVE JUROR NO. 006: Barton Unger, 006.
11 I'm the person that submitted the letter being out of
12 the country on the 15th, and I was just concerned if it
13 dragging any longer --

14 THE COURT: On the 26th?

15 PROSPECTIVE JUROR NO. 006: On the 26th,
16 correct. I'm sorry, the 26th. That it might interfere
17 with the paid trip so I just wanted to clarify that.

18 THE COURT: Put it this way: I will let you
19 leave. If the case goes too long, I'm going to let you
20 leave.

21 PROSPECTIVE JUROR NO. 006: All right.

22 THE COURT: But the attorneys have guaranteed
23 me that the case will be done by next Thursday.

24 PROSPECTIVE JUROR NO. 006: Sounds good.

25 THE COURT: So I'm not going to make you miss

1 your trip.

2 PROSPECTIVE JUROR NO. 006: Okay. Thank you.

3 THE COURT: Anybody else? I don't see any
4 other hands.

5 All right. I'm going to ask you some
6 case-specific questions. Actually, you know what,
7 these questions were all asked in the jury
8 questionnaire, so I may not ask these. I may just let
9 the attorneys follow up on them.

10 As a juror, you're going to be asked to
11 listen to witnesses, review evidence and make a
12 determination based on the facts. You are the finders
13 of fact. My job is to make sure that the trial is fair
14 and to instruct you on the law that you will apply to
15 the facts. Some of you may disagree with how some of
16 the laws are written. But it would be a violation of
17 your duty as jurors if you tried to render a verdict
18 based on what you thought the law should be as opposed
19 to what I told you the law was.

20 Do any of you feel that you would not be able
21 to follow the instructions of the Court on the law,
22 even if the instructions differ from your personal
23 opinions or conceptions of what the law ought to be?
24 So if you didn't agree with what I told you the law
25 was, how many of you would have a difficult time

1 applying the law that I told you. Anybody? Don't see
2 any hands.

3 Is there anybody who has such a sympathy,
4 prejudice or bias relating to age, religion, race,
5 gender, or national origin, that they feel would affect
6 their ability to be fair, open-minded, and impartial
7 jurors? I don't see any hands.

8 Are there any of you that believe for any
9 other reason it would be difficult for you to be a fair
10 and unbiased juror in this case? Still don't know
11 really anything about it other than the fact that it's
12 a car accident. Based upon what you know, anybody
13 think that they're going to have a hard time being
14 fair? I don't see any other hands.

15 All right. What I'm going to do now is I'm
16 just going to go with the 20 people over here in the
17 box. We're going to start with Juror No. 1, Mr. Runz.
18 I'm going to you ask a bunch of questions. As we get
19 about -- I'm going to ask everybody the same questions.
20 About four or five people in, you're going to remember
21 all the questions, and that's okay. You can just start
22 giving me the answers if you remember all the
23 questions, but I need you to make sure you give me your
24 badge number and your name. I'm going to ask you how
25 long you have lived in the Las Vegas area; what you do

1 for a living. If you retired, what did you do for a
2 living before you retired. Are you married or do you
3 have a significant other? And if so, what does that
4 person do for a living? If you have children, what are
5 their ages? Any of them are adults, what do they do
6 for work? Have you ever been a juror before? If so,
7 was it a civil or criminal case; did you reach a jury
8 verdict?

9 I know -- I think some of these, if not most
10 of them were in the jury questionnaire, but I'm going
11 to go through them again with you real quick because
12 it's not going to take long. Okay?

13 When we ask you about jury verdicts, we don't
14 want to know what the verdict was, just whether or not
15 you reached a verdict. And then I'm going to ask
16 whether or not you were the foreperson on the jury if
17 you served previously on a jury. Okay?

18 So Mr. Runz, first of all, name and badge
19 number.

20 PROSPECTIVE JUROR NO. 001: Mark Runz, 001.

21 THE COURT: How long in Las Vegas?

22 PROSPECTIVE JUROR NO. 001: 25 years.

23 THE COURT: What do you do for work?

24 PROSPECTIVE JUROR NO. 001: Poker room
25 supervisor.

1 THE COURT: Which casino?
2 PROSPECTIVE JUROR NO. 001: MGM Grand.
3 THE COURT: Okay. Are you married or
4 significant other?
5 PROSPECTIVE JUROR NO. 001: Married.
6 THE COURT: Okay. What does your spouse do?
7 PROSPECTIVE JUROR NO. 001: She's on
8 disability.
9 THE COURT: Did she work previously?
10 PROSPECTIVE JUROR NO. 001: Yes. She was a
11 lawyer and she was in charge of the human resources at
12 the Binion's Horseshoe a long time ago.
13 THE COURT: Did she ever work in private
14 practice?
15 PROSPECTIVE JUROR NO. 001: Not in this town.
16 THE COURT: Do you have any children that
17 work outside the home?
18 PROSPECTIVE JUROR NO. 001: No.
19 THE COURT: Okay. You ever served on a jury
20 before?
21 PROSPECTIVE JUROR NO. 001: No.
22 THE COURT: Thank you. Let's move on to
23 Mr. Fitzgerald.
24 PROSPECTIVE JUROR NO. 003: Yes, Your Honor.
25 THE COURT: Name and badge number, please.

1 PROSPECTIVE JUROR NO. 003: Last name is
2 Fitzgerald, Badge No. 003.
3 THE COURT: How long in Las Vegas?
4 PROSPECTIVE JUROR NO. 003: Since 2004.
5 THE COURT: Okay. So that's about --
6 PROSPECTIVE JUROR NO. 003: More or less nine
7 years.
8 THE COURT: -- nine years. What do you do
9 for work?
10 PROSPECTIVE JUROR NO. 003: I'm retired.
11 THE COURT: What did you do?
12 PROSPECTIVE JUROR NO. 003: I'm a certified
13 public accountant.
14 THE COURT: Are you married or have a
15 significant other?
16 PROSPECTIVE JUROR NO. 003: Single.
17 THE COURT: Do you have any children that
18 work outside the home?
19 PROSPECTIVE JUROR NO. 003: No, Your Honor.
20 THE COURT: Ever served on a jury before?
21 PROSPECTIVE JUROR NO. 003: I have never been
22 selected. No, sir.
23 THE COURT: Okay. Thank you. See how easy
24 this is?
25 Mr. Unger.

1 CASE NO. A636515
DOCKET U
2 DEPT 16

3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 * * * * *

7 MARGARET SEASTRAND,)
8)
9 PLAINTIFFS,)
VS.)
10 RAYMOND KHOURY.)
11 DEFENDANTS,)
12 -----)

13
14
15 REPORTER'S TRANSCRIPT

16 OF

17 MOTIONS IN LIMINE

18
19 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20 DISTRICT COURT JUDGE

21
22 DATED TUESDAY, JUNE 11, 2013

23
24 REPORTED BY: PEGGY ISOM, RMR, CCR 541
25

1 APPEARANCES:

2 For MARGARET SEASTRAND:

3 HARRIS LAW FIRM
4 BY: BENJAMIN CLOWARD, ESQ.
5 BY: ALISON BRASIER, ESQ.
6 801 SOUTH FOURTH STREET
7 LAS VEGAS, NV 89101
8 (702) 444-4444
9 (702) 444-4455
10 BENJAMIN@RICHARDHARRISLAW.COM

11 For RAYMOND KHOURY:

12 HALL, JAFFE & CLAYTON, LLP
13 BY: STEVEN T. JAFFE, ESQ.
14 BY: JACOB SMITH, ESQ.
15 7455 WEST WASHINGTON AVENUE
16 SUITE 460
17 LAS VEGAS, NV 89128
18 (702) 316-4111
19 (702) 316-4114 Fax
20 SJAFFE@LAWHJC.COM

21 * * * * *

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 11, 2013

2 10:38 A.M.

3 P R O C E E D I N G S

4 * * * * *

5
6 THE COURT: This is case No. 636515. Margaret
7 Seastrand versus Raymond Khoury, K-H-O-U-R-Y. Go ahead
8 and make your appearances.

9 MR. CLOWARD: Ben Cloward and Alison Brasier
10 for the plaintiff --

11 MR. JAFFE: Good morning, your Honor. Steven
12 Jaffe, Hall Jaffe and Clayton, for Defendant Raymond
13 Khoury.

14 MR. SMITH: Also Jacob Smith from Hall Jaffe
15 and Clayton for Defendant Raymond Khoury.

16 THE COURT: All right. I would propose that
17 we do these in the order that they are in the book, if
18 you guys are okay with that.

19 So we do Plaintiff's omnibus first.

20 MR. JAFFE: Okay, sir.

21 THE COURT: I think that actually might
22 resolve a couple of the defendant's motions as well as
23 we go through.

24 MR. JAFFE: Certainly some overlap.

25 MR. SMITH: Yeah, there's a lot of overlap in

10:39:07 1 there.

10:39:13 2 THE COURT: Let me just give you my --
10:39:14 3 whenever I'm ruling on motions in limine, I will tell
10:39:20 4 you that -- I'm ruling on the motions in limine today
10:39:23 5 based upon what was presented to me. Okay.

10:39:31 6 My experience is that during trial, evidence
10:39:33 7 comes in different than maybe how I read it or how I
10:39:37 8 anticipate it coming in. So if, during the course of
10:39:39 9 trial, something happens and you think I need to
10:39:41 10 readdress a motion in limine because of how the
10:39:43 11 evidence was presented, just bring it up in trial.

10:39:46 12 MR. JAFFE: Your Honor, I do appreciate that
10:39:47 13 because I think, you know, all of us know that the
10:39:50 14 whole litigation process right through trial is a very
10:39:53 15 fluid and dynamic process. And I think some issues
10:39:56 16 that we are going to be arguing about today will be
10:40:00 17 impacted by the evidence that will come out in trial.
10:40:02 18 So -- and quite candidly that was part of some
10:40:08 19 arguments that we did intend to make with respect to
10:40:11 20 some of these issues today.

10:40:13 21 THE COURT: I know.

10:40:13 22 MR. JAFFE: So thank you, sir.

10:40:14 23 THE COURT: I'm one of the judges that have
10:40:15 24 actually done this before.

10:40:17 25 MR. JAFFE: We appreciate that.

10:40:18 1 THE COURT: All right.

10:40:19 2 First one, Plaintiff's motion to exclude
10:40:22 3 hypothetical medical questions designed to confuse the
10:40:25 4 jury. We would like to keep track of these.

10:40:30 5 THE COURT CLERK: Yeah.

10:40:31 6 THE COURT: You got it? Okay.

10:40:34 7 The motion basically is about nonexistent
10:40:38 8 medical conditions, but in the opposition there, the
10:40:44 9 defense says, "There are these prior accidents," and I
10:40:47 10 understand from reading some of the other motions, that
10:40:50 11 these prior accidents were like 20 years ago, but they
10:40:53 12 were to similar body parts.

10:40:56 13 MR. CLOWARD: Yes, your Honor. That's
10:40:57 14 correct.

10:41:02 15 THE COURT: My inclination is to allow
10:41:05 16 hypothetical medical questions with regard to similar
10:41:09 17 body parts, things like that. I mean, I don't think
10:41:12 18 that they're going to intentionally ask questions to
10:41:15 19 confuse the jury. If they do, I would expect you to
10:41:19 20 object and I'll probably sustain the objection.

10:41:21 21 MR. CLOWARD: I guess the -- what we're trying
10:41:22 22 to prevent here are questions that are not based on any
10:41:26 23 fact, but are designed more to elicit an improper --
10:41:31 24 improper reference by the jury of something that does
10:41:38 25 not exist.

1 THE COURT: Well, I understand that in your
2 motion you put actually an example.

3 MR. CLOWARD: Yes.

4 THE COURT: And you said, "Suppose there is a
5 neck. This is a neck injury accident, happened in
6 2010. Suppose the plaintiff had no neck injuries prior
7 to our crash."

8 An impermissible hypothetical would be to ask
9 a doctor, "Tell us how the plaintiff's neck injury in
10 2003 affects her alleged neck injury from this case."

11 Or, "Doctor, were you aware of a prior neck
12 injury from 2003?"

13 Well, I agree that if there was no injury in
14 2003, those would be improper questions.

15 MR. CLOWARD: Sure.

16 THE COURT: The fact that there was or there
17 were prior accidents with allegedly prior neck
18 injuries, if they relate to those, even though they're
19 20 years ago, I mean, the doctors may get up and say it
20 doesn't have anything to do with it because it's 20
21 years ago. But I think that they're probably allowed
22 to ask that question.

23 MR. CLOWARD: Okay.

24 THE COURT: Right?

25 MR. CLOWARD: Well --

1 THE COURT: I mean, if it's a hypothetical
2 based upon no fact, I would agree with you. It's
3 probably improper.

4 MR. CLOWARD: But I guess that if the doctors
5 can testify -- if the doctors would testify that, to a
6 reasonable degree of medical probability, that the
7 accident 20 years prior would be relevant, then the
8 question should come in and would be allowed.

9 However, if the question is designed to create
10 in the minds of the jurors that there's some prior
11 accident that's important, but the doctor has no
12 ability to testify to a probability, that it has
13 anything to do with it, then I think it's
14 inappropriate.

15 Because you're allowing the doctor to discuss
16 something 20 years ago that has no -- no probability of
17 impacting the current state of her condition, but in
18 the minds of the jurors, they're thinking, "Oh, boy,
19 there's this accident 20 years ago. Boy, that must be
20 important if the doctor is being asked questions about
21 it."

22 When, in all reality, it -- the doctor has no
23 ability to state to a probability that it has an
24 effect.

25 Does that make sense?

10:43:38 1 THE COURT: Uh-huh.

10:43:39 2 MR. CLOWARD: I mean, so I would agree, it
10:43:40 3 would be -- it would be allowed if the doctors would
10:43:44 4 testify to a probability. But otherwise, it's just --
10:43:47 5 it's just raising a red flag that's prejudicial to
10:43:52 6 Ms. Seastrand by creating the inference that there's
10:43:55 7 some, you know, prior accident, that it is important
10:43:58 8 that has something to do with her current state. And
10:44:02 9 due to that, I think it would be inappropriate. And
10:44:04 10 that's what the motion is designed to prevent.

10:44:08 11 THE COURT: Okay.

10:44:08 12 MR. SMITH: Your Honor, I think you hit the
10:44:10 13 nail on the head.

10:44:12 14 Our opposition is essentially there are prior
10:44:15 15 incidents in this that relate to the same body parts
10:44:19 16 that she's alleged were injured in this accident. It's
10:44:22 17 not our intent to ask questions that are going to
10:44:24 18 confuse or mislead the jury. But we feel Mr. Khoury
10:44:29 19 has a right to show the jury the prior accidents and to
10:44:32 20 question the doctors what, if any, impact those prior
10:44:35 21 injuries would have had with respect to her injuries
10:44:38 22 sustained in this accident.

10:44:40 23 We can't -- I can't predict what the doctor is
10:44:42 24 going to say. And the doctor can certainly say those
10:44:45 25 aren't related at all, and the jury can take that into

10:44:48 1 their consideration.

10:44:49 2 Part of the problem here is that they're not
10:44:52 3 giving us specific examples of what they don't -- you
10:44:54 4 know, what prior injuries or what prior body parts that
10:44:57 5 are not nonexistent or what nonexistent prior injuries
10:45:01 6 they don't want us asking about. All we said is we
10:45:04 7 want the right to ask about prior injuries that, you
10:45:07 8 know, are existing or were existing at the time and
10:45:10 9 relate to the body injuries that were injured in this
10:45:13 10 accident.

10:45:14 11 MR. CLOWARD: Your Honor, if I may.

10:45:15 12 THE COURT: Sure.

10:45:16 13 MR. CLOWARD: Here's the thing: Not a single
10:45:18 14 expert or provider has testified that those have
10:45:21 15 anything to do with the current treatment.

10:45:23 16 THE COURT: Here's --

10:45:24 17 MR. CLOWARD: So.

10:45:24 18 THE COURT: -- the thing, Mr. Cloward, and I
10:45:28 19 know that this is going to come up for both sides, but
10:45:33 20 let's say that the question about the prior accidents
10:45:36 21 is not asked to determine whether or not those injuries
10:45:40 22 affected the ongoing complaints or the complaints
10:45:47 23 resulting in this case. Well, let's say the question
10:45:49 24 about the prior accidents is asked because your client
10:45:54 25 didn't tell her doctors that she had prior accidents.

1 And, I mean, I see that come up all the time
2 in cases to question, you know, the credibility of the
3 plaintiff, or her --

4 MR. CLOWARD: Sure.

5 THE COURT: -- her ability to recall her
6 history. Isn't this a case where your client is
7 claiming a head injury?

8 MR. CLOWARD: No.

9 THE COURT: Okay. I get them confused.

10 MR. CLOWARD: Neck and back.

11 THE COURT: So, I mean, sometimes it's
12 relevant for other issues as well. I think what my
13 preference would be in this case --

14 MR. CLOWARD: Sure.

15 THE COURT: -- is on this motion, I would
16 probably say that it's granted in part, denied in part.

17 It's granted in as much as I'm going to allow
18 hypothetical questions, but it's denied in as much as
19 you're asking those hypothetical questions in a way
20 that's going to confuse the jury.

21 MR. SMITH: Fair enough, your Honor. I think
22 this is one of those fluid situations that we talked
23 about to address, you know, that it's going to depend
24 on, you know, what type of --

25 THE COURT: Actually I said that backwards.

10:46:50 1 Hold on.

10:46:51 2 It's denied in as much as I'm going to allow
10:46:54 3 the hypothetical questions.

10:46:55 4 MR. CLOWARD: Sure.

10:46:56 5 THE COURT: But granted in as much as I don't
10:46:57 6 want the hypothetical questions to confuse the jury.

10:46:59 7 Right?

10:47:00 8 MR. SMITH: Yeah, I think that's correct.

10:47:02 9 MR. JAFFE: And that's how we took it.

10:47:03 10 THE COURT: Okay.

10:47:04 11 THE COURT CLERK: So granted as allowing or
10:47:05 12 denied as allowing the hypothetical?

10:47:07 13 THE COURT: I'm going to allow hypothetical
10:47:09 14 questions.

10:47:09 15 THE COURT CLERK: Okay.

10:47:11 16 THE COURT: I'm not going to allow them to
10:47:13 17 confuse the jury.

10:47:15 18 THE COURT CLERK: Okay.

10:47:17 19 THE COURT: Fair enough?

10:47:17 20 MR. CLOWARD: Fair enough, sir.

10:47:20 21 THE COURT: Okay.

10:47:20 22 No. 2: "Plaintiff is requesting that we
10:47:25 23 exclude suggesting to the jury that there might be
10:47:28 24 related medical records prior to the subject crash when
10:47:32 25 there are none. "

1 Now, if I understand this motion, Mr. Cloward,
2 this is because of the fact that the accidents were so
3 long ago that there are no records from those
4 accidents.

5 MR. CLOWARD: Yes. And well, not only that,
6 but oftentimes, I've had this in a couple of cases, I
7 don't have as many, I'm not as seasoned as Mr. Jaffe,
8 but I've seen defense arguments made in closing or, you
9 know, in cross-examination or something along those
10 lines of, "Well, you know, you -- we only have the
11 records that you provided us, right, Mr. So-and-so, or
12 right, you know, Doctor."

13 You know, it can be a question to the
14 plaintiff or it could be a question to the doctor.

15 "Now, Doctor, you were only provided records
16 that the plaintiff identified, correct."

17 And so the inference is, is that the plaintiff
18 is withholding information and that there is treatment
19 that exists but that it's not being turned over.
20 That's the inference that's created, and it's improper.

21 Ms. Seastrand has a duty and an obligation in
22 her written discovery as well as in her deposition to
23 tell the truth. It's done under penalty of perjury.

24 If she identifies as not treated within the
25 last 10 years or 5 years, and there are no records to

1 obtain, then any suggestion that they only have the
2 records that she provided, creating the inference that
3 there are other records out there but they just didn't
4 have the chance to review them, would be inappropriate.
5 And that's what that's designed to prevent.

6 THE COURT: Okay.

7 MR. JAFFE: Your Honor, I think that this is
8 an improper motion to be offering with such a broad
9 stroke because of the fact that --

10 THE COURT: You said that in response to all
11 of them.

12 MR. JAFFE: Well, that's right, because these
13 motions are very broad in general, and half of them are
14 just basically saying, "Let's enforce the rules of
15 evidence and let's enforce the rules of civil
16 procedure."

17 THE COURT: We're going to do that.

18 MR. JAFFE: And I'm all in favor of that.
19 That's perfect. But the point of this is you need to
20 give us something specific, what you're looking for in
21 these motions in limine. And this entire omnibus
22 motion is nothing but a broad-stroke application of law
23 rather than an attempt to exclude something specific.

24 Now, here's the problem, Judge: This lady was
25 treating medically within the years prior to this

10:49:55 1 accident, within the months prior to this accident.

10:49:59 2 And it's my belief that there are some of her doctors

10:50:02 3 who have not seen some pertinent medical records. And

10:50:06 4 to sanitize this trial by now trying to say, "Well,

10:50:09 5 guess what, you can't point out that they never see

10:50:13 6 these -- saw these records, and if -- I don't know

10:50:16 7 who -- who got records from who. I don't know where

10:50:20 8 they got them. I don't know how they got them."

10:50:22 9 While I may not necessarily sit up there and

10:50:24 10 say, "Isn't it true that Plaintiff's counsel never

10:50:28 11 provided you with these records," as opposed to saying,

10:50:30 12 "Isn't it true that you never saw these records." And

10:50:32 13 if he says, "Well, if I got the records from the

10:50:34 14 plaintiff, and if I didn't see them no, I didn't see

10:50:36 15 them," well, that is appropriate.

10:50:39 16 That goes to issues such as causation. It

10:50:43 17 goes to issues such as damages. It goes to issues such

10:50:46 18 as apportionment. It goes to issues as to what

10:50:51 19 injuries are truly there and the extent to which they

10:50:55 20 may have preexisted.

10:50:56 21 Now, the records are going to be offered. The

10:50:58 22 records are going to be in the case. If doctors

10:51:00 23 haven't seen it, oh, well, then they've got to live

10:51:03 24 with that.

10:51:04 25 THE COURT: You're not going to ask questions

1 about doctors about records that you don't know about,
2 right?

3 MR. JAFFE: Of course not.

4 THE COURT: I think -- I think that's what
5 he's trying to prevent.

6 MR. JAFFE: Well, I hope that's what it is,
7 but in Mr. Cloward's argument, he offered it in a much
8 broader sense than that. And that's why I have trouble
9 with motions in limine of this type, which are painted
10 with such a broad stroke.

11 If he's going to sit here and say that, "Yes,
12 the records I don't want Mr. Jaffe talking about are
13 the records we were never able to obtain from these
14 prior accidents that nobody has got," I agree with
15 that. Because if I don't have those records -- but I
16 think it's also fair to point out that we've got this
17 prior accident, we've got these injuries to the same
18 body part, and that nobody saw these records, and
19 because that applies --

20 THE COURT: They don't exist anymore.

21 MR. JAFFE: Well, either they don't exist
22 anymore or nobody was able to find them. I believe
23 that there was some issues about recollection regarding
24 who the treating doctors may very well have been,
25 which, you know, given the fact that these accidents

1 happened 20 years before, that's to some extent
2 understandable.

3 But to -- I think what needs to be -- the fair
4 application is that nobody may have seen them. And
5 with -- I think it's important for the jury to know
6 that, that the doctors would have liked to have seen
7 them. All of us would have. But given the time, and
8 the loss of --

9 THE COURT: You're not going to imply that
10 that's somehow the plaintiff's fault, that nobody gets
11 to see them, right?

12 MR. JAFFE: No. No. I'm not suggesting --

13 THE COURT: That's what he's concerned about.

14 MR. JAFFE: As long as that's the limitation,
15 that's fine. Because -- but if the way that argument
16 was just phrased, was seeming to include records that
17 we do have that doctors may not have seen or been
18 provided, or that experts may not have seen or been
19 provided, then that is fair game to point out.

20 THE COURT: I agree.

21 MR. JAFFE: Thank you.

22 MR. CLOWARD: One thing that I want to point
23 out is that the discussion of the prior treatment
24 almost created the inference -- and when I listened to
25 it, it created the inference that it was for neck and

1 back issues. That's what -- exactly what we're trying
2 to prevent from happening. The treatment that she had
3 prior to the crash had nothing to do with her neck and
4 back; had to do with chest pain.

5 So that right there is the type of -- the type
6 of thing we're trying to prevent is that, "Hey, look,
7 you know, she has an obligation to turn over
8 documents." We have to rely on what she gives us. And
9 unfortunately, you know, this is all we have. But, you
10 know what, there might be some more stuff out there.
11 There might be some other records out there that we
12 weren't provided.

13 That's what's inappropriate. Because she has
14 an obligation --

15 THE COURT: He already said he's not going to
16 talk about records he doesn't know about.

17 MR. CLOWARD: Well, I mean, if -- and if he's
18 not going to do that, then I -- I think that just needs
19 to be clear that, you know -- because that seems to
20 slip out in all the trials that I've had, that there's
21 always the argument --

22 THE COURT: Here's going to be the ruling.

23 MR. JAFFE: Your Honor, may I clarify one
24 point based on the more specifics that Mr. Cloward just
25 referenced?

10:54:25 1 THE COURT: Sure.

10:54:26 2 MR. JAFFE: They're -- they're trying to paint
10:54:28 3 as one incident that happened a few months before this
10:54:32 4 incident as a heart issue. My experts are talking
10:54:35 5 about it as a neck issue. And my experts have rendered
10:54:40 6 opinions to that effect. It's in the records, and
10:54:43 7 we're not agreeing that it is a cardiac issue.

10:54:47 8 THE COURT: Okay.

10:54:48 9 MR. JAFFE: So that's now getting to the heart
10:54:50 10 of really what I was concerned about and I think what
10:54:54 11 was the veiled reference in the initial argument made
10:54:58 12 by Plaintiff's counsel.

10:55:00 13 THE COURT: Okay. So the order is going to be
10:55:01 14 this: You can't talk about records -- you can't
10:55:04 15 suggest that there are records out there that nobody
10:55:06 16 knows about. Okay. You said you weren't going to do
10:55:11 17 that anyway.

10:55:12 18 MR. JAFFE: Right.

10:55:19 19 THE COURT: And so, I guess, in that -- the
10:55:22 20 motion is to preclude suggesting to the jury that there
10:55:25 21 might be related medical records prior to the subject
10:55:28 22 crash, when there are none. Well, if -- I don't want
10:55:32 23 you to make up arguments about records that don't
10:55:34 24 exist.

10:55:35 25 If there are records that exist, and your

1 experts are going to talk about them, the witnesses are
2 going to talk about them, we talk about them.

3 MR. JAFFE: Fair enough.

4 MR. CLOWARD: I think that's fair. Yeah.

5 THE COURT: These are easy.

6 MR. JAFFE: I agree, Judge.

7 THE COURT: No. 3: You want us to preclude
8 Defendant from referring to the case as an
9 attorney-driven litigation or medical-buildup case and
10 precluding any statements insinuating that Plaintiff
11 sought treatment at the direction of the attorneys or
12 because of this litigation.

13 Plaintiff says it's anticipated Defendant will
14 argued that Plaintiff's attorneys directed the medical
15 care and that Margie's physician performed unnecessary,
16 unwarranted, and non-indicated medical procedures.
17 Well, that's what their experts say, that the treatment
18 was unwarranted and did didn't have anything to do with
19 this accident.

20 So I think you're right. I think that's what
21 they're going to say because they have an expert report
22 that says that, which is Schifini that said that or
23 somebody else?

24 MR. SMITH: Siegler and Schifini both I think
25 make -- and Villablanca as well.

10:56:45 1 MR. CLOWARD: I mean, your Honor, Schifini --
10:56:47 2 if you get his reports --

10:56:49 3 THE COURT: I know there's more motions about
10:56:50 4 Schifini later on.

10:56:51 5 MR. CLOWARD: I've got about, you know, 50 of
10:56:53 6 his reports, and it's the same thing every single time.
10:56:56 7 Literally. I've got them. I'll produce them, if you
10:56:59 8 want.

10:56:59 9 She left the scene of the crash in an
10:57:03 10 ambulance, so obviously she was -- she was injured.
10:57:09 11 You know, they're -- they're trying to hire a doctor
10:57:12 12 saying, "Hey" -- or their doctor, Schifini, says that
10:57:16 13 it's all attorney driven, and he says that in every
10:57:19 14 single case.

10:57:20 15 So either she's going to the doctors and she's
10:57:23 16 complaining of subjective complaints that she is flat
10:57:25 17 out lying at the direction of her attorney. I mean,
10:57:28 18 that's -- that's really what the suggestion is, is that
10:57:32 19 I'm saying to her, "Hey, Margie, you've got to go and
10:57:36 20 you've got to tell Dr. So-and-so that you've got pain,
10:57:39 21 5 out of 10. You've got a complaint of neck pain.
10:57:42 22 You've got to write on this diagram the pain here and
10:57:45 23 the pain there. Even if it's not true, you've got to
10:57:47 24 tell the doctors that. Because, you know, we know that
10:57:50 25 you're not hurt, but we're just trying to build this

1 case up."

2 I mean, that's really what -- what it boils
3 down to. There's no evidence of that. Absolutely
4 none. There's no evidence that she wasn't actually
5 injured, that she didn't have subjective complaints.
6 When she was deposed, she testified that -- what her
7 complaints were. And so to try and create that
8 argument, there's no factual underpinning.

9 I've had a case that I've seen where, you
10 know, there was a note in there that said something
11 along the lines, you know, attorney called and told the
12 client to do X, Y, and Z, or something along those
13 lines. That's evidence of attorney-driven medical
14 care. You know, my understanding is there's none of
15 that in this case, and so it would be inappropriate to
16 allow that in.

17 MR. SMITH: Just to respond to that, your
18 Honor. That -- that's significantly beyond what their
19 motion, you know, is seeking to preclude. Their motion
20 seeks to preclude all references to this as
21 attorney-driven litigation or medical buildup.

22 In our opposition, we say we're not going to
23 refer to this as medical buildup or attorney driven.
24 But what we don't want this motion to do is to preclude
25 our experts from sharing their opinions, which are,

1 according to Dr. Ziegler and Dr. Schifini, some of the
2 treatment or the surgeries that she received were not
3 medically indicated, based on the prior diagnostics and
4 the pain management workup to that point.

5 So we're not going to refer to this as an
6 attorney-driven case. We're not going to refer to the
7 medical buildup. What we don't want is for our experts
8 to be precluded from sharing their opinions based on
9 the records and the information that they've reviewed.

10 THE COURT: So it sounds like -- sounds to me
11 like you're stipulating you're not going to refer to it
12 as attorney-driven litigation or medical buildup, but
13 you want your doctors to be able to talk about the fact
14 that their opinion is that the treatment wasn't
15 necessary.

16 MR. SMITH: Correct. If there's some note
17 somewhere that says, you know, an attorney was centered
18 to this decision, you know, they certainly can comment
19 on that. But otherwise we're not going to concoct
20 that.

21 THE COURT: Okay.

22 MR. SMITH: But we want to make sure that our
23 experts are able to share the opinions that, you
24 know -- that they have based on the medical evidence.

25 THE COURT: And their opinions aren't that

11:00:03 1 there was attorney-driven litigation. Their
11:00:05 2 opinions --

11:00:06 3 MR. SMITH: That's not an opinion I've seen.
11:00:07 4 Their opinions are that the surgeries that were
11:00:12 5 received were not medically indicated based upon the
11:00:15 6 treatment received prior to that.

11:00:16 7 Now, if they want to -- I mean, they're scared
11:00:19 8 that we're going to, you know, hop on that and say, you
11:00:22 9 know, "So this was attorney driven."

11:00:23 10 You know, the jury can infer what, you know,
11:00:25 11 they want to infer from the evidence. If the jury
11:00:28 12 finds that that is somehow attorney driven, that's up
11:00:31 13 to them. I'm not going to ask the question, you know,
11:00:32 14 "Was this attorney driven?"

11:00:35 15 THE COURT: Okay. So motion is granted.

11:00:38 16 MR. CLOWARD: Okay. But I wanted to make the
11:00:40 17 clarification that -- I think there's a difference. If
11:00:42 18 there's -- if there's an attorney referral, if it says
11:00:45 19 referred from Mr. Cloward or referred from Harris Law
11:00:47 20 Firm, that's different than -- and I think that there,
11:00:52 21 you know, they want to leave the door open to make this
11:00:55 22 argument down the road, and I want to make sure that
11:00:57 23 we're very clear going into it that that would be a
11:01:00 24 different type of an argument than an actual
11:01:03 25 attorney-driven argument.

1 Because attorneys refer clients to doctors all
2 the time. That doesn't mean that that -- that that's
3 attorney driven. And so, you know, they made the
4 caveat that, "Well, if there's a note somewhere that
5 says referred by, you know, Harris Law Firm, and we
6 want -- we want to be able to discuss that," I agree if
7 there's a note that says, "Hey, Harris Law Firm says to
8 do X, Y, and Z," that's more attorney driven. But if
9 it's just referred by, that wouldn't open the door.

10 I just want to make sure we're clear on that.

11 THE COURT: I think if there's a note that
12 said client was referred to somebody by Harris Law Firm
13 and they ask about that, I think they can ask about
14 that. I don't know that that necessarily implies
15 attorney-driven litigation either. Just means that the
16 client was referred by an attorney to a doctor.

17 MR. CLOWARD: Okay.

18 THE COURT: So the motion is granted because I
19 don't think there's an issue. They're not going to
20 talk about attorney-driven litigation or medical
21 buildup case, so it's granted. Easy.

22 No. 4: "Plaintiff wants to preclude reference
23 to Plaintiff's retention of counsel, when and why
24 Plaintiff retained counsel."

25 I have a note here: "Defendant does not

1 oppose, but this doesn't extend to all secondary gain
2 arguments."

3 I mean, secondary gain is a totally different
4 issue in my mind. So retention, when and why
5 Plaintiff's counsel was retained, motion is granted.

6 Fair enough?

7 MR. SMITH: Fair enough.

8 MR. CLOWARD: Yes.

9 THE COURT: No. 5: "Plaintiff wants to
10 preclude reference as to Plaintiff's counsel working
11 with Margie's treating physicians on other unrelated
12 cases. "

13 And I think the defense says that that raises
14 an issue of bias on the part of the doctor so they
15 should be able to allow that, they should be able to
16 ask about that.

17 You want to argue it, put it on the record?

18 MR. CLOWARD: No, your Honor. We would -- we
19 would rest on the brief.

20 THE COURT: Okay.

21 MR. CLOWARD: I mean, obviously, it's -- it
22 would be a both-way argument, so.

23 MR. JAFFE: And I agree because obviously
24 plaintiffs routinely ask experts hired by the defense
25 "How often have you worked with Mr. Jaffe or his law

1 firm, how many times have you testified," things of
2 that nature.

3 If doctors have referral relationships and
4 have done work with referrals from attorneys on the
5 plaintiff's side, I think it's just the flip side and
6 it's equally fair game.

7 THE COURT: I think it's relevant on both
8 sides.

9 MR. JAFFE: Thank you, sir.

10 THE COURT: Motion is denied.

11 MR. CLOWARD: Fair enough.

12 THE COURT: No. 6: Plaintiff wants to exclude
13 closing -- it says "Closing arguments must be limited
14 to evidence presented at trial."

15 I agree with that. I think it applies equally
16 to both sides. When you're arguing something in
17 closing, it definitely needs to be based upon the
18 evidence that was presented at trial. You can't make
19 stuff up.

20 MR. CLOWARD: Thank you.

21 THE COURT: Okay.

22 I would also just ask you, during opening
23 statements, that you limit your opening statements, not
24 to argument, but what you're going to present during
25 trial and make sure you're actually going to present

1 that evidence during trial.

2 Next one is No. 7.

3 THE COURT CLERK: No. 6.

4 THE COURT: No. 6 is granted as to both
5 parties.

6 No. 7. You want to exclude anything
7 suggesting abuse of narcotic pain medication when there
8 is none.

9 Now, I think from reading the motion that -- I
10 think, Mr. Cloward, your motion says your client was
11 prescribed some narcotic pain medications as part of
12 her treatment. You just don't want words like
13 "addiction" or things like that to be used to imply
14 that she's some kind of a druggie.

15 MR. CLOWARD: Essentially, or that the
16 inference be that, "Hey, she's only seeking this
17 treatment because she's hooked on pain meds. She
18 doesn't really need it, you know. She's, you know,
19 just wants the medications. That's why she's doing the
20 treatment."

21 There's no evidence of that. That's what
22 we're trying to prevent.

23 THE COURT: Okay.

24 MR. SMITH: And, your Honor, I think our
25 opposition says pretty much that. You know, we're not

1 going to use the "abuse" word or the "addiction" word.

2 But at the same time we can't be precluded from

3 introducing evidence that shows that she was prescribed

4 narcotic pain medication for prior injuries and that

5 she was prescribed narcotic pain medication for

6 injuries sustained in the subject accident.

7 THE COURT: I don't think he's trying to

8 exclude that.

9 MR. CLOWARD: No.

10 MR. SMITH: Fine.

11 THE COURT: Okay. So the motion as it's

12 phrased is going to be granted. I think you can get

13 into those things and that's not really going to be an

14 issue.

15 No. 8: "Allowing voir dire questioning

16 regarding tort reform exposures."

17 It's funny because sometimes you see these

18 questions that you want to allow that, sometimes you

19 don't want to allow that. Let me see.

20 The defendant's issue with this one, if I look

21 at page 12, says "While Plaintiff may be entitled to

22 question jurors to their exposure to and knowledge of

23 tort reform literature, the Court should also ensure

24 that such questioning should not go beyond the purpose

25 of voir dire and become an attempt to emphasize that

1 the defendants are covered by liability insurance."

2 I totally agree with that.

3 MR. CLOWARD: Yeah.

4 THE COURT: I think if we're going to ask
5 about tort reform, which I think is probably a valid
6 question of jurors, you can't use it to talk about
7 insurance, and you can't use it to imply that the
8 defendant has coverage.

9 MR. CLOWARD: We would absolutely agree.

10 MR. JAFFE: Well, your Honor, I also need to
11 point out, there was a fairly recent decision by the
12 Supreme Court, I want to say it was about two years
13 ago. I believe it's the Hardwick decision, and in that
14 the Supreme Court addressed generally that they do not
15 want jury selection to get into highly politicized and
16 politically-charged issues such as tort reform.

17 And that's the concern, is that what you're
18 really doing is trying to politicize the courtroom and
19 make general and broad charges as a means of trying to
20 impassion a jury over something that has no place
21 within this particular trial.

22 This is not a trial that should be about tort
23 reform. This is not a trial which should be about
24 insurance liability, obviously. But politicize the
25 issue such as tort reform have -- there's no reason to

1 bring it up. There is no basis for it because this is
2 a car accident. This is not a tort reform issue. And
3 to start trying to politicize it that way is exactly
4 what the Supreme Court does not want us doing
5 versus -- in voir dire.

6 So, your Honor, we believe that tort reform
7 shouldn't even be brought up. There's no reason to
8 bring it up in this case.

9 THE COURT: I think it's -- I think it's an
10 issue that probably should be addressed in every jury
11 trial, to determine whether or not a prospective juror
12 has biases either for or against tort reform issues, if
13 they think that -- I mean, I can tell you, in just
14 about every jury trial I've done, there's been at least
15 one or more potential jurors that say, "I don't like
16 the issue. I don't like awarding pain and suffering.
17 I don't like that idea. I don't like" -- or some
18 people think that every case should have a cap or no
19 case should have a cap.

20 I think -- I think those are issues that you
21 guys want to know. I think both sides want to know
22 those. So I'm going to allow those questions.

23 So voir dire questioning regarding tort
24 reform, I think it's important and I think it's
25 important for both sides. I understand the question

1 about politicizing trials and I think you can ask these
2 kind of questions in a way that doesn't get into the
3 politics. But just asks what the views are as it
4 relates to certain issues.

5 So I'm going to allow it. Motion is granted.

6
7 No. 9: "Allowing voir dire questioning
8 regarding verdict amounts."

9 Now, I think the judges here in the -- in this
10 building are split on this. I'll tell you, ordinarily
11 my preference is -- I think it's EDCR 7.70 says that
12 you can't ask jurors about what their verdict would be
13 based upon specific hypothetical facts.

14 And I agree with that. I'm going to enforce
15 that rule. But the way that I've seen it happen in
16 other trials where I think that it complies with the
17 rule is where an attorney asks the jury, "At this point
18 you don't know any facts, based upon the fact -- based
19 upon the situation where you don't know any facts at
20 all about this case, if we told you we were going to
21 ask at the end of trial for a number more than \$1
22 million, how many of you would have a problem with
23 that?"

24 Okay. And the fact -- and I think that that
25 complies with the rule because you're not basing that

1 question on specific hypothetical facts, which the rule
2 precludes.

3 And equally, I mean, you can ask the same
4 question with a zero, you know. "Based upon the fact
5 that none of you know anything about this case yet, how
6 many of you would have a problem with a zero."

7 I think those are appropriate questions
8 because they're not based upon specific facts.

9 Now, if you want to argue contrary, go ahead.

10 MR. JAFFE: Certainly, sir. I think the
11 minute you start putting any dollar figure out there,
12 you're inviting jurors to start commenting upon dollar
13 figures and then it becomes a slippery slope. Because
14 if a juror starts to, "Well, you know, I agree that a
15 million is a lot of money, but 5 million is too much
16 money." It's inviting, "Well, how about 10 million, 20
17 million, 50, 200 million, 500 million?"

18 And that's where it becomes a problem.
19 Because the minute you open up that door to allow a
20 dollar figure, you don't know what the people in the
21 box are going to say and it creates that slippery
22 slope. And it's inviting those issues. And it's
23 inviting those discussions.

24 And that's where Rule 7.70 becomes a big
25 concern. And that's exactly what I believe that local

1 rule is designed to prohibit. And especially because,
2 you know, who is to say what that initial figure is.

3 Mr. Cloward may say, "We're going to ask for 5
4 million or 3 million or 10 million." It still invites
5 a discussion about numbers. And that's where I believe
6 it is a problem. Again, to get back -- it's a slippery
7 slope and invites follow-ups, and it invites
8 discussions. And it goes well beyond at that point
9 what Rule 7.70 allows.

10 So we believe that there shouldn't be any
11 discussion.

12 THE COURT: I think if an attorney says I'm
13 going to ask for a specific number, it does violate the
14 rule. But I think if an attorney asks, "We're going to
15 ask for a number greater than \$1 million," or "We're
16 going to ask for a number greater than \$100 million," I
17 think -- I don't know that that's bad.

18 I agree with you that it invites the jury to
19 start talking about numbers, and sometimes that's a
20 good thing.

21 MR. JAFFE: I've never seen a situation where
22 it's a good thing, your Honor.

23 THE COURT: I think it can be. Because I
24 think we -- I think both parties have an obligation on
25 the part of your clients to weed out the jurors that

1 have preconceived biases and prejudices, and even -- if
2 those biases and prejudices are based upon numbers and
3 you have somebody that says, you know, "I don't care
4 what the facts are, there's no way I'm going to award
5 anybody over \$100,000," okay. Plaintiff needs to know
6 that.

7 And if you have -- equally on your side, if
8 you say "I don't care what the facts are, I think
9 Plaintiffs are entitled to money and I'm never going to
10 award anybody less than \$10,000 because, you know, the
11 complaints says in excess of \$10,000, I'm never going
12 to award anybody less than \$10,000." You need to know
13 that.

14 MR. JAFFE: Your Honor, but I think the
15 problem is, as much as I would like to know it, I think
16 that's exactly what Rule 7.70 says we cannot know.
17 That's my concern. And especially when it starts
18 inviting the follow ups or the discussion. I think all
19 of that is exactly what Rule 7.70 is designed to
20 prevent.

21 And I agree with you. I would love nothing
22 more than to have a juror sit there and say, you know,
23 "Mr. Jaffe, I'm pissed off about this system. I'm
24 upset about this, and I don't think anybody should be
25 allowed more than their medical bills, period. I don't

1 like pain and suffering awards. And if it is \$100,000
2 in medical bills, then I'm not going to award more than
3 that."

4 I would love nothing more than to hear that.
5 But, your Honor, under Rule 7.70, I'm not entitled to
6 hear that. And just as Mr. Cloward wants to hear them
7 say, "Boy, you know what, I'm really sick of the little
8 guy getting screwed and these insurance companies are
9 this and that and whatever," because it's inviting
10 those discussions, "and give them a million bucks.
11 Give him \$5 million. You put up the number you want,
12 and I'm going to vote for it."

13 That's exactly what Rule 7.70 says we can't
14 have, as much as Mr. Cloward would like to see it. So
15 that's why, your Honor, I suggest there should be no
16 discussion whatsoever about any dollar figures, because
17 it just invites trouble. And it's that slippery slope.
18 And it -- there's no good that's going to come from it,
19 other than to invite a violation of that rule.

20 THE COURT: No, I disagree.

21 I think 7.70 is specifically limited to
22 questions based upon specific hypothetical facts. And
23 as long as you don't use specifical hypothetical facts,
24 I think 7.70 doesn't restrict that. And I think that
25 that's important to allow you to use your challenge for

1 cause.

2 MR. JAFFE: Then, your Honor, may I ask for
3 clarification --

4 THE COURT: Sure.

5 MR. JAFFE: -- because again my concern is not
6 that -- well, my concern is the initial question. But
7 my greater concern is the follow up. I mean, how
8 far --

9 THE COURT: You can ask follow ups, as long as
10 it's not based upon specific hypothetical facts or
11 specific facts in this case.

12 MR. JAFFE: So if Plaintiff says, "Okay.
13 We're going to be asking for more than \$1 million at
14 the end of the day. How many people are offended by
15 that?" If he says, "What if I told you we're going to
16 ask for more than \$5 million, how many are going to be
17 offended by that?"

18 And 10 million. And keep pushing that
19 number Use one number.

20 MR. JAFFE: One number one time and that's it.

21 THE COURT: And then if somebody says, "Yeah,
22 that offends me." Then you can say "Why?"

23 And they'll tell you what their thoughts are.
24 You can follow-up on that but --

25 MR. JAFFE: But the follow-up can't be start

11:16:38 1 saying, "Okay. What if it was a half million or 2
11:16:40 2 million or 10 million?"

11:16:41 3 Just different numbers. Just the one time,
11:16:44 4 one number.

11:16:46 5 THE COURT: That's how I've seen it.

11:16:47 6 MR. JAFFE: Okay. Because that's --

11:16:48 7 THE COURT: We'll see how it plays out.

11:16:51 8 MR. JAFFE: Okay. That's fine, your Honor.
11:16:53 9 Because that's really -- that's my concern.

11:16:56 10 THE COURT: I think it's important to allow
11:16:57 11 people to question about verdict amounts because
11:17:02 12 honestly, Mr. Jaffe, I think it's going -- I think
11:17:05 13 allowing that question is going to allow you to
11:17:10 14 probably use challenges for cause that you wouldn't
11:17:12 15 otherwise have been able to use.

11:17:14 16 MR. JAFFE: The problem is that once certain
11:17:17 17 things are out, and it can potentially poison an entire
11:17:22 18 jury panel, then what it opens up is a challenge to the
11:17:27 19 entire panel, your Honor.

11:17:28 20 MR. CLOWARD: And there's plenty of studies.
11:17:30 21 I've read Mr. Eglet's numerous briefs on the issue.
11:17:35 22 That's --

11:17:35 23 THE COURT: Well, don't bring him up.

11:17:37 24 MR. CLOWARD: But that doesn't happen. You
11:17:40 25 don't publish -- you don't poison the well. People

11:17:43
11:17:46
11:17:49
11:17:51
11:17:51
11:17:52
11:17:54
11:17:59
11:17:59
11:18:02
11:18:06
11:18:10
11:18:19
11:18:21
11:18:23
11:18:26
11:18:36
11:18:39
11:18:47
11:18:52
11:18:54
11:18:58
11:19:03
11:19:04
11:19:07

1 come in with their preconceived ideas, and if I don't
2 like, you know, pie --

3 THE COURT: You already won. Sit down.

4 MR. CLOWARD: Thank you.

5 THE COURT: Motion is granted.

6 MR. CLOWARD: I just like to hear my own
7 voice, Judge. You know that from prior cases.

8 THE COURT: All right.

9 No. 10. You want to permit treating
10 physicians to testify as to causation, diagnosis,
11 prognosis, future treatment, and extent of the
12 disability without a formal expert report.

13 This is getting into the whole 16.1 changes.
14 You make a point saying "Expert reports are not
15 required by treating physicians." We know that.

16 And I think the defense's argument is they're
17 not identified as experts, should not be able to
18 testify beyond the scope of their clinical treatment.
19 I think defense cites to 16.1(a)(2)(a), talks about
20 disclosure of expert testimony.

21 And then you cite to Commissioner Beecroft and
22 Commissioner Bulla's recent discussion about the
23 amended rule. Right?

24 MR. JAFFE: Yes, sir.

25 THE COURT: This is kind of a squishy issue.

11:19:14 1 Go ahead, Mr. Cloward. Convince me.

11:19:16 2 MR. CLOWARD: Well, your Honor, I mean, this
11:19:18 3 is -- this is something that only recently became a
11:19:22 4 problem with the Ninth Circuit case. I believe it was
11:19:25 5 outs of the Arizona District, which went up to the
11:19:29 6 Ninth Circuit. And that was I believe a 2011 case.

11:19:33 7 Based on that case, in order to get the -- our
11:19:36 8 rules in harmony with the federal rules, the Supreme
11:19:40 9 Court was petitioned and 16.1(a)(2) was amended. And
11:19:46 10 the amendment was discussed by Commissioner Bulla,
11:19:48 11 Commissioner Beecroft at the NJA, I believe you were
11:19:53 12 there.

11:19:53 13 And the important addition to this rule is
11:19:58 14 that a treating physician can talk about those things
11:20:03 15 without a report. And not only can they talk about
11:20:07 16 their treatment, but they can also talk about things
11:20:10 17 outside of their treatment if it's in defense of their
11:20:13 18 own opinion.

11:20:14 19 So, for instance, if you have Dr. Muir who
11:20:17 20 does a surgery and Dr. Schifini says, "Well, you know
11:20:20 21 what, Dr. Muir, the surgery that you did or that you
11:20:23 22 provided was inappropriate because, you know, you
11:20:26 23 didn't have the patient do a successful course of
11:20:29 24 physical therapy. They didn't, you know -- they didn't
11:20:33 25 fail physical therapy."

1 Dr. Muir can then look at things outside of
2 his treatment in defense of the treatment he did. He
3 can look at the physical therapy. He can look at the
4 chiropractic. He can say, "Well, actually I disagree,
5 Mr. Jaffe, with Dr. Schifini because the patient went
6 and did this treatment, this treatment, this treatment,
7 didn't have any success. Based on the non-resolution
8 of the symptoms, they required to have a surgery."

9 That's the important part of the -- of the
10 additional amendment, is that doctors can look outside
11 and that the amendment specifically states, and I
12 brought the amendment, the order, the Supreme Court
13 order. It talks about how treating physicians can, and
14 the designation of, you know, making them an expert or
15 a non-expert, that just means are they an expert as
16 designated by 16.1 in the initial expert designation.
17 That doesn't mean they can't come in and give their
18 expert opinions regarding their care and treatment.

19 I mean, if you're to accept their argument,
20 then that would mean that you would have to designate
21 any and all treating providers in every single case in
22 Nevada. I mean, you have to designate them as an
23 expert pursuant to 16.1 in every single case.
24 Otherwise, they don't get to come in and tell the jury
25 about the treatment that they rendered. That just --

1 that wouldn't make any sense.

2 THE COURT: Okay.

3 MR. JAFFE: Your Honor, the change in the rule
4 is so that the doctors can come into court, talk about
5 their treatment, talk about their opinions related to
6 the treatment, and not have to write a report doing so.
7 It does not give them carte blanche to say anything and
8 everything about the case and about the plaintiff.

9 It doesn't give them the right to come in and
10 say Dr. Schifini is wrong about this. Dr. Villablanca
11 is wrong about this. Dr. So-and-so.

12 It gives them the right to talk about their
13 opinions and to defend their opinions as stated within
14 their clinical chart and in their records, and if they
15 were deposed in those depositions. But to then start
16 rebutting experts, that is -- the hired and retained
17 and designated experts, that is not within the rule.

18 THE COURT: That's actually a different
19 motion, isn't it?

20 MR. JAFFE: Pardon me?

21 THE COURT: I think that's actually a
22 different motion.

23 MR. JAFFE: And I think it kind of dovetails
24 in because -- and I think this is one of those that
25 sort of gets into that entire issue. And that is

1 another motion, your Honor, because that is one of the
2 motions that we've set.

3 But I think that by and large, that's exactly
4 what the plaintiff is looking for here, is the flip
5 side, to allow their doctors to come in and have carte
6 blanche without having written a report or given any
7 opinion in advance to the defense to say whatever they
8 want on the basis that they're a treating doctor. They
9 don't have to do it, and that they have the carte
10 blanche. And it's not what the Court rules say.

11 I mean, if we're going to read that much into
12 it, that would be a complete violation of our due
13 process rights, of not knowing what somebody was going
14 to say, state with an expert opinion behind it in
15 court, so that our experts and doctors would have had
16 an opportunity to rebut it and address it. That is not
17 a fair reading of that rule. And I have -- the rule is
18 stated.

19 Listen: We'll abide by it, but what it means
20 is that the doctors can come into court. They can talk
21 about their opinions, and their treatment, and their
22 prognostications as stated within their chart. But
23 they can't go beyond that. They can't start coming up
24 with new opinions that haven't been stated within their
25 chart.

1 If -- because there has to be some fair notice
2 to the other side about what's going to say. You can't
3 sit here and just put a doctor up as an ambush to say
4 whatever he wants, however he wants, whenever he wants,
5 whatever he wants about whoever he wants simply because
6 he's a treating expert. He's a treating doctor. He's
7 hands off. You can't apply that.

8 That's an unfair extrapolation of the rules
9 and an unfair expansion of the rule, and it certainly
10 is not a fair interpretation. It does -- and it
11 violates our client's due process rights. The doctors
12 don't have to write reports because their clinical
13 chart works in that place. That's what they need to be
14 held to.

15 MR. CLOWARD: To simplify this, I agree with
16 99 percent of what Mr. Jaffe just said. I don't think
17 that it would be appropriate for Dr. Muir to -- let's
18 just say you've got Dr. Muir and, you know, maybe
19 two -- let's say Dr. Muir does the neck and Dr. Kaffcan
20 does the back.

21 I don't think it's appropriate for Dr. Muir to
22 come in and comment on maybe their expert's criticisms
23 of Dr. Kaffcan. That would be inappropriate. That
24 would be unfair. That would not be contemplated by the
25 rules.

1 However, the rule specifically states that a
2 treating physician is allowed to discuss opinions in
3 defense of the treatment that he rendered. That's
4 the -- the rule is black and white. That's what it
5 says.

6 So they want to shackle Dr. Muir or Dr. -- or
7 the treating physicians in this case, they want to say,
8 "Hey, Dr. Muir, you did X, Y, Z. Schifini says you
9 shouldn't have done any of that treatment, but you know
10 what, you don't get to talk about why you did it and
11 defend your treatment. You just have to sit there and
12 take it. You just have to say that whatever Schifini
13 says is right, and you don't get to comment upon that."

14 That's just not true and that's not fair to
15 Dr. Muir. And that's specifically why it was amended
16 to say that they get to discuss other things in defense
17 of their treatment. And I agree that it's not fair to
18 allow a doctor to come up and talk about anything and
19 everything under the sun, to give Dr. Muir all the
20 records, or Dr. Kaffcan, whoever, all, the records and
21 say, "Hey, I want you to criticize this guy. I want
22 you to criticize this guy. I want you to criticize
23 this guy."

24 But if Schifini offers an opinion in criticism
25 of Dr. Muir as a treating physician, Dr. Muir

1 absolutely 100 percent gets to get up there and talk
2 about why that's wrong and why he gets to defend his
3 treatment. That's what the rule says.

4 THE COURT: Okay. Here's what we're going to
5 do: As it relates to this motion, I'm going to -- I'm
6 going to actually keep the comments about other experts
7 in the rebuttal issue for when we get to those specific
8 motions. Okay?

9 MR. CLOWARD: Okay.

10 THE COURT: As it relates to this one, my
11 ruling has always been a treating doctor can testify
12 about anything that's in his chart, anything that he
13 testified in deposition to, anything as it relates to
14 his care and treatment of the patient.

15 You can't give a treating doctor a stack of
16 records just before trial and tell him you want him to
17 testify about everybody else's care or treatment.
18 Okay? If the records are part of his file at the time
19 he was treating the patient, he can talk about them.
20 But you can't turn a treating doctor into an expert
21 without identifying him as an expert. Okay?

22 I think that addresses this motion.

23 Now, I know that we have other motions as it
24 relates to whether or not the treating doctors can act
25 as essentially a rebuttal expert to the other experts,

1 and I think we get to -- we'll get to those in a
2 minute.

3 MR. JAFFE: Yes, sir.

4 THE COURT: Fair enough?

5 So this one, as it relates to permitting the
6 treating doctors to testify as to causation, diagnosis,
7 prognosis, future treatment, extent of disability, if
8 that's part of their care and treatment of the patient,
9 if those are opinions that they formed during the care
10 and treatment of the patients, I'm going to allow that.
11 Okay. That is going to be granted.

12 Because whether you took their depositions or
13 not, if that was their opinion and that's part of their
14 care of the patient, that's their opinion. Whether
15 it's in their reports or not. Okay.

16 And it may not be in the report and you may
17 not have asked the question during deposition. If they
18 have the opinion and they say that they formed that
19 opinion during their care and treatment of the patient,
20 I'm going to allow it.

21 Fair enough?

22 MR. JAFFE: Yes, sir.

23 THE COURT: Okay. So that one is granted,
24 consistent with what I just told you.

25 Before we go on to the next one, do we have

1 detectives here that need to talk to me?

2 (Brief pause in proceedings)

3 THE COURT: All right. Let's go back on the
4 record. All right. So I think our next one is --
5 there's a lot of these. We at No. 11?

6 MR. JAFFE: Yes, sir.

7 THE COURT: "Precluding negative inference for
8 failing to call cumulative witnesses."

9 THE COURT CLERK: Omnibus motion.

10 THE COURT: What's that?

11 THE COURT CLERK: We're still on the omnibus
12 motion?

13 THE COURT: Yeah.

14 So basically, if I understand this correctly,
15 Mr. Cloward, you don't want the other side to be able
16 to say, "Even though the plaintiff called four of their
17 twelve witnesses, the fact that they didn't call the
18 other eight of their twelve treating doctors, that
19 means that they would have said something different"?

20 MR. CLOWARD: Exactly. Like, you know, are
21 they trying to hide something, why didn't they bring
22 all their doctors, that kind of a thing.

23 THE COURT: What's your argument, Mr. Jaffe?

24 MR. JAFFE: If you tell the jury they're going
25 to be calling certain witnesses and they don't, that's

1 fair game No. 1.

2 No. 2, there was an issue early on in this
3 case, your Honor, that was a concern then, and it
4 remains, I guess, to some extent a concern now. They
5 had initially designated 70 before-and-after witnesses.
6 And we sent them a letter basically saying, "Come on.
7 I mean, if you're planning on calling 70
8 before-and-after witnesses, one of two things is going
9 to happen. Either A, I'm going to depose all 70 and
10 I'm going to ask for fees and costs for each one that
11 you don't call. Or B, I'm going to have to move in
12 front of the discovery commissioner to limit you to the
13 ones."

14 They knocked it down to nine, nine or ten or
15 eleven, something like that. We went out and deposed
16 every single one of them. And now if they're going to,
17 you know, say, "Well, now we're only going to call
18 three or four, or whatever," given the fact that we
19 went out and deposed all those people based on their
20 representations, either that's going to have to be a
21 fair opportunity for me to comment upon that, or I'm
22 going to, you know, seek other relief later down the
23 line. I guess, by and large, it's going to come down
24 to who they tell the jury they're going to be calling
25 as witnesses at trial and who actually testifies.

11:36:31 1 THE COURT: I think if they say that they're
11:36:33 2 going to call somebody and they don't, I think that's a
11:36:35 3 fair comment.

11:36:36 4 If the fact is they've told you that they
11:36:38 5 anticipate that maybe they were going to call up to
11:36:40 6 these nine witnesses previously so you deposed them and
11:36:43 7 then they only call half of them at the time of trial,
11:36:47 8 I don't know that that is necessarily fair comment to
11:36:50 9 the jury. That would be more appropriate for a motion
11:36:53 10 for costs afterwards if you prevail or not.

11:36:56 11 MR. JAFFE: Thank you, your Honor.

11:36:56 12 THE COURT: Is that fair?

11:36:57 13 MR. CLOWARD: That's fair.

11:37:01 14 THE COURT: So including the negative
11:37:07 15 inference for failing to call witnesses, that's
11:37:10 16 granted.

11:37:12 17 No. 12: "Precluding reference to collateral
11:37:14 18 sources."

11:37:17 19 This one is actually easy for me, and I know
11:37:19 20 that there are other judges that rule differently. But
11:37:23 21 I'm going to preclude reference to all collateral
11:37:26 22 sources, and I include liens. I know that there's a
11:37:29 23 motion on liens, at least one or two motions on liens.
11:37:32 24 I look at liens as a collateral source. So I don't
11:37:36 25 allow that.

1 You can't talk about whether or not a doctor
2 treated somebody on a lien because if they didn't treat
3 them on a lien and they treated them under insurance,
4 we can't comment on that. So it's just -- it's not
5 fair to preclude a doctor from talking about the fact
6 that he is paid by insurance, but allow them to talk
7 about the fact that he wasn't paid because he was
8 treating on a lien.

9 I understand the counter-argument to that. It
10 does go to bias and prejudice and things like that.
11 And I think that that's a relevant issue, but I think
12 it's -- it's not fair to -- it's not fair to the
13 doctors to allow them to talk about one side and not
14 the other. And I think it is a collateral source
15 issue.

16 So based on the -- oh, what's the collateral
17 source case?

18 MR. CLOWARD: Proctor versus Castelletti.

19 THE COURT: Based on Proctor versus
20 Castelletti, I'm not going to allow it.

21 MR. JAFFE: Your Honor, at the time that our
22 two motions dealing with liens or a couple of motions
23 come up, can we just make a --

24 THE COURT: Sure.

25 MR. JAFFE: -- record at that time?

11:38:42 1 THE COURT: Absolutely.

11:38:43 2 MR. JAFFE: Thank you, sir.

11:38:44 3 THE COURT: But No. 12 is going to be granted.

11:38:50 4 No. 13: "Precluding Defendant from
11:38:53 5 referencing injuries or non-injuries from any
11:38:56 6 individuals involved in the crash other than Margie."

11:39:08 7 Let me see if I understand this motion
11:39:09 8 correctly. If you got several people in the accident,
11:39:12 9 Mr. Cloward, you don't want them to be able to say that
11:39:17 10 somebody else was injured or that somebody else wasn't
11:39:20 11 injured.

11:39:21 12 MR. CLOWARD: Well, to make the argument that,
11:39:22 13 "Hey, you know, the driver who hit her was not injured,
11:39:25 14 therefore, make the inference and take the logical leap
11:39:29 15 that this was a -- such a minor impact that nobody
11:39:32 16 could be injured, so she must be faking."

11:39:38 17 I mean, I think to take somebody else,
11:39:39 18 obviously people are built differently. If I'm in an
11:39:44 19 accident versus, you know, an 80-year-old person, I'm
11:39:48 20 going to have a lower likelihood that, you know, I'm
11:39:52 21 going to be injured than that person. And so I think
11:39:55 22 to make any sort of an argument based on another
11:39:59 23 individual not being injured would be inappropriate. I
11:40:01 24 think it needs to be case specific, fact specific,
11:40:04 25 based on Margie and Margie alone.

11:40:07 1 THE COURT: Okay.

11:40:08 2 MR. SMITH: And, your Honor, that's different
11:40:09 3 from what their motion says. Their motion doesn't
11:40:11 4 specifically address arguments only. It says preclude
11:40:14 5 any reference.

11:40:15 6 Now, Mr. Khoury was in the accident.
11:40:18 7 Mr. Khoury didn't sustain any injuries, and he's
11:40:20 8 testified in his deposition that he didn't sustain any
11:40:22 9 injuries. In order to defend his case, we need to be
11:40:26 10 able to share all of the evidence that has come to
11:40:30 11 light, that you know, that is not unduly prejudicial.

11:40:33 12 Mr. Khoury --

11:40:34 13 THE COURT: So you want to be able to talk
11:40:35 14 about the fact that your client wasn't hurt?

11:40:38 15 MR. SMITH: Exactly.

11:40:38 16 And the fact that he wasn't hurt doesn't
11:40:42 17 automatically create some reference or inference that,
11:40:45 18 you know, all people are created equal and the force
11:40:48 19 should have impacted him the exact same as it should
11:40:51 20 have impacted her. There's biomechanical experts who
11:40:53 21 are going to testify in this case, and they're going to
11:40:56 22 address all that.

11:40:57 23 But their motion seeks to preclude the very
11:40:59 24 fact that he was involved in this injury -- in this
11:41:02 25 incident and was not injured. And I think that goes

11:41:05 1 beyond what should be reasonably precluded.

11:41:07 2 THE COURT: Probably not really what you were
11:41:09 3 asking for.

11:41:09 4 MR. CLOWARD: Not necessarily. I just don't
11:41:11 5 understand the relevance at all to discuss whether or
11:41:15 6 not he was injured or not.

11:41:16 7 THE COURT: I think it's relevant.

11:41:17 8 MR. CLOWARD: To what though? I mean, what
11:41:19 9 does it go to?

11:41:21 10 THE COURT: Severity of the impact.

11:41:24 11 MR. CLOWARD: But then that cuts against the
11:41:27 12 whole argument of not being allowed to use his injury
11:41:33 13 as whether or not Margie would be injured. I mean,
11:41:35 14 there's also literature that says that a rear-end
11:41:38 15 impact, people in a rear-end type of collision are much
11:41:41 16 more susceptible and have a higher likelihood of injury
11:41:46 17 and risk than someone who's in a frontal impact.

11:41:50 18 So there's a lot of factors. Male versus
11:41:52 19 female. So she's got higher likelihood, higher
11:41:56 20 probably. So any discussion of "Hey, he's not injured
11:41:58 21 so she can't be injured," which would be inappropriate
11:42:01 22 or confuse the jury because it has nothing to do with
11:42:03 23 her specific -- her specific -- the facts surrounding
11:42:09 24 her injury.

11:42:09 25 If they want to get into it with their

1 biomechanics, that is fair game. But I don't think his
2 injury, the defendant's injury, has anything to do with
3 my client's injury. None at all.

4 THE COURT: Well, I -- here's the thing.
5 Because of the fact that we allow jurors to ask
6 questions, that's a question that I would ask if I was
7 a trier of fact, is, "Was your client injured?" I
8 think it's relevant. I think the jury is going to be
9 curious about it.

10 Their -- the defense is saying they're not
11 going to make the argument that, because our client
12 wasn't injured, your client couldn't have been injured.
13 They're not going to make that argument. They just
14 want to tell the jury that their client wasn't injured.
15 I think that's fair.

16 So 13 is denied.

17 14: "Excluding evidence of prior unrelated
18 injuries, conditions, or medical treatment."

19 I actually think this is pretty easy, too,
20 because I think the defense doesn't necessarily want to
21 talk about prior, unrelated injury conditions or
22 medical treatment. You want to talk about the ones you
23 think are related.

24 MR. JAFFE: There are certain co-morbidities,
25 though, that we do want to be able to bring up, your

1 Honor, because to the extent that any of those may deal
2 with life expectancy, if they're going to be putting in
3 a table and asking for a permanency award for the
4 remainder of her life, if it's 31.6 years or whatever,
5 I think I'm allowed to bring up other co-morbidities
6 that may exist that potentially do affect life
7 expectancy, such as blood pressure, such as diabetes,
8 such as heart conditions, such as cholesterol, whatever
9 it may very well be. And that's the case I believe
10 it's fair game for cross-examining doctors on that
11 topic and arguing on that topic.

12 MR. CLOWARD: Our only argument would be that
13 that would need to be tempered with a Hallmark type
14 analysis, that if they're going to discuss these
15 co-morbidities, that those co-morbidities actually be
16 proven and shown to cause a reduction in the life
17 expectancy. Otherwise, it's just -- you're just trying
18 to inflame -- you're trying to create an issue, "Hey,
19 look, Doctor, she's got these other issues."

20 I mean, some of these -- bunions,
21 miscarriages, hysterectomy. You know, those wouldn't
22 have anything to do with life expectancy, so I agree.
23 I think Mr. Jaffe's argument would be a good argument
24 to make. I think it's a fair argument to make.

25 But I think on the other hand, it would be

1 subject to a Hallmark qualification that if they're
2 going to argue that there would be a reduction in the
3 life expectancy, then there has got to be literature
4 rather than just Dr. So-and-so getting up there and
5 saying, "Well, you know what, she has got low blood
6 pressure so that means she's going to live five years
7 less."

8 I mean, you got to have some scientific basis,
9 some foundational argument behind raising those types
10 of questions to the doctors.

11 THE COURT: You okay with that? You're not
12 going to talk about any of those things without some
13 kind of foundation, right?

14 MR. JAFFE: Well, your Honor, I mean, things
15 such as bunion, miscarriage, sure, I agree that those
16 have nothing to do with the life expectancy. But
17 things such as cholesterol, blood pressure, things of
18 that nature, I mean, we don't know that. I mean --

19 THE COURT: You're going to have to put
20 somebody on that says what -- how that's going to
21 effect life expectancy though, or otherwise it's not
22 relevant.

23 MR. JAFFE: Can I cross-examine their doctors
24 in doing that?

25 THE COURT: If you can get it through their

11:45:41 1 doctors, I think that's fine.

11:45:41 2 MR. JAFFE: My point. Your Honor, listen.

11:45:43 3 THE COURT: You got to have it through
11:45:44 4 somebody that has a foundation for their opinion or
11:45:48 5 basis for what they're telling you.

11:45:50 6 MR. JAFFE: Okay. I will, I mean, things such
11:45:53 7 as, like I said, of course, miscarriages and bunions,
11:45:56 8 yeah, those don't effect life expectancy. I'm not
11:45:59 9 going to go into things like that. But there are
11:46:02 10 certain things. I mean, if she had been a smoker,
11:46:04 11 obviously you don't need to put a doctor up. Jurors
11:46:08 12 know that smoking effects life expectancy.

11:46:10 13 THE COURT: Yeah, but you don't know how much.

11:46:12 14 MR. JAFFE: Well, no. I understand that. But
11:46:13 15 the point is it's not necessarily as a so much -- as a
11:46:18 16 how much, or -- but when they're going to stand in
11:46:22 17 front of the jury and say, "We want 32 years' worth of
11:46:26 18 pain and suffering," because of her life expectancy,
11:46:28 19 it's fair -- it's equally fair game for me to say it's
11:46:31 20 not reasonable to award 32 years because she's got
11:46:35 21 co-morbidities that effect life expectancy, such as
11:46:37 22 cholesterol, blood pressure, et cetera.

11:46:40 23 THE COURT: I agree with you. But if you're
11:46:41 24 going to do that, you need to have -- you need to be
11:46:43 25 able to say it's not fair for them to say 32 years

1 because Dr. So-and-so said that smoking is going to
2 reduce that life expectancy by four and a half years.

3 MR. JAFFE: Well, that's just it, Judge. I'm
4 not necessarily saying that I have to -- I don't think
5 I have to put up an actual time reduction as opposed to
6 just simply arguing the merits of their argument, that
7 life expectancy is 30-some-odd years or whatever it may
8 very well be, if there are co-morbidities that do
9 effect life expectancy.

10 MR. CLOWARD: Your Honor, if I may, I think he
11 absolutely cannot do that. He absolutely cannot
12 because that's subject to a Hallmark qualification.
13 You as the gatekeeper need to make sure that the
14 doctors are basing their opinions on reasonable sound,
15 scientific methodology.

16 Doctors can't just get up there and say, "Hey,
17 you know what, she's got low blood -- high blood
18 pressure, so she's going to live five years less."

19 The other thing that Ms. Frasier just pointed
20 out, which is true, is that the life expectancy table
21 take into account all of these co-morbidities. They
22 don't just select, "Hey, here's the -- here's -- we're
23 basing the tables on healthy people." They take
24 everybody into account. It's based on the general
25 population, so the life expectancy tables already take

1 into account the co-morbidities that Counsel wants to
2 discuss.

3 MR. JAFFE: If that's an argument they need to
4 make, then they need to put up a doctor who's going to
5 say that, your Honor. Because if that's the case, I
6 should be able to question the doctor on those, on that
7 topic.

8 THE COURT: All right.

9 The motion says: "Excluding evidence of prior
10 unrelated injuries, conditions, or medical treatment."

11 I'm going to exclude evidence of prior
12 unrelated injuries, conditions, or medical treatment
13 because it's probably not relevant if it's unrelated.

14 It can be related if it's the same body part
15 or a similar body part that's in this accident, or I
16 think it could be arguably related if it relates to the
17 life expectancy issue.

18 So the motion is granted. I am going to
19 probably allow evidence as it relates to life
20 expectancy issue, but we're going to have to see how it
21 comes in and who's trying to bring it in through who.

22 MR. CLOWARD: Fair enough.

23 MR. JAFFE: Thank you, your Honor.

24 THE COURT: So 15 is "Precluding reference to
25 prior incidents."

1 Plaintiff's argument is that there's no
2 evidence that these prior incidents had any
3 relationship to the injuries that she suffered in this
4 accident. I understand there's, like, I think we're
5 primarily talking about these accidents that are 20
6 years ago. Right?

7 MR. CLOWARD: Correct.

8 THE COURT: And --

9 MR. CLOWARD: And one in 2004, '81, '85, and
10 2004.

11 THE COURT: And you want to keep any reference
12 to any of those accidents out all together?

13 MR. CLOWARD: Yeah. I mean, because none of
14 the doctors testified that -- none of them say, "Hey
15 look, you know, she's had these ongoing symptoms since
16 then."

17 So all that is going to do is create in the
18 minds of the jurors the thought that, "Hey, here's this
19 lady that has had these several prior incidents, so we
20 better give some weight to that." When, in reality,
21 there's absolutely no medical testimony or evidence or
22 opinions that they have any importance in the case, and
23 so it's just a red herring that Counsel would put up in
24 closing argument saying, "Hey, look, you know, you
25 can't overlook this -- these accidents," and that would

11:50:40 1 be prejudicial to Ms. Seastrand because none of the
11:50:45 2 doctors testified that they have anything to do with
11:50:47 3 anything.

11:50:48 4 THE COURT: Mr. Jaffe, do you have somebody
11:50:49 5 that says that they're relevant somehow.

11:50:52 6 MR. JAFFE: We've got our experts talking
11:50:53 7 about those prior accidents and injuries, your Honor.

11:50:55 8 THE COURT: Well, the fact that they talk
11:50:56 9 about them is one thing. Do they say that they have
11:50:59 10 any impact on the Plaintiff's condition?

11:51:02 11 MR. JAFFE: Yes. Listen, your Honor. In
11:51:09 12 fairness I'm not going to go beyond what my experts
11:51:12 13 have said.

11:51:12 14 THE COURT: I'm going to reserve this one.
11:51:14 15 We're going to see who testified to it and how it's
11:51:17 16 addressed.

11:51:26 17 MR. JAFFE: Thank you, sir.

11:51:26 18 THE COURT: I don't know how the evidence is
11:51:28 19 going to come in. You guys understand that you've been
11:51:30 20 living with this case for a long time and I only have
11:51:34 21 what I am looking at here. So we're going to have to
11:51:36 22 see how it plays out because I'm not sure about that
11:51:38 23 one.

11:51:39 24 No. 16: "Precluding the responding officer
11:51:42 25 from providing biomechanical opinions."

1 I understand the officer has -- did an
2 investigation and saw stuff, observed stuff. I think
3 that's admissible. What the doctors -- or what the
4 officer's conclusions are or his opinions based upon
5 maybe talking to the witnesses, I mean, usually the
6 part at the bottom of the accident report where it says
7 description of the accident and the cop writes in there
8 and or types in there how he believes the accident
9 happened, I usually exclude that because he wasn't
10 there to witness it usually. And I think his opinions
11 about what -- how something happened is not necessarily
12 helpful.

13 So as it relates to precluding the responding
14 officer from providing biomechanical opinions, I
15 understand that he -- officers are usually somewhat
16 trained, but their opinions, at least in this case, I
17 think -- what you -- what you want to preclude is him
18 saying injuries claimed by Seastrand are not consistent
19 with being caused during this collision.

20 MR. CLOWARD: Right.

21 THE COURT: Right?

22 And obviously the defense wants to get that
23 in.

24 MR. CLOWARD: Another thing, your Honor,
25 during his deposition, he said that he would defer to

11:53:14 1 accident reconstructionists.

11:53:18 2 THE COURT: Mr. Jaffe, tell me how come I
11:53:20 3 should let that in.

11:53:21 4 MR. JAFFE: I'm going to let Mr. Smith
11:53:23 5 convince you on this one.

11:53:25 6 THE COURT: All right.

11:53:25 7 MR. SMITH: Your Honor, the -- in his
11:53:26 8 deposition, Officer Kahn, I believe, testified that
11:53:28 9 these were his observations and impressions.

11:53:33 10 THE COURT: Well, observations are different
11:53:34 11 than impressions. Observations, I'm going to allow.

11:53:36 12 MR. SMITH: Okay. Well, I guess, getting to
11:53:39 13 that, then, he didn't observe the accident itself. But
11:53:43 14 at the same time, the evidence from the -- the -- he
11:53:47 15 procured on his investigation showed to him that it was
11:53:49 16 a low-impact collision. So is that an impression or is
11:53:54 17 that an observation? My position is that that's an
11:53:59 18 observation based on the evidence that he had.

11:54:03 19 Similarly, he's saying that this is a low
11:54:06 20 impact. I don't have any tire or skid marks. There's
11:54:09 21 very minimal damage to the cars, and this lady is
11:54:12 22 writhing in pain. Her injuries to me don't seem
11:54:15 23 consistent with what I'm observing was the accident
11:54:19 24 itself.

11:54:19 25 So, yes, I agree that there is a -- there's a

1 fine line between observations and impressions, but
2 those run together when, you know, what he can observe
3 doesn't correspondence with what he's seeing.

4 THE COURT: All right. Good try. Now, I'm
5 not buying it. I think the TAR 1 and TAR 2 classes
6 don't teach biomechanics. They don't necessarily teach
7 officers what forces are necessary for injury and
8 things like that, so.

9 MR. SMITH: Just to clarify, then, is he
10 precluded from testifying that in his opinion it was a
11 low impact based on the lack of tire marks and the
12 damage to the vehicles?

13 THE COURT: It's not what's before me, but I
14 would -- I would probably be inclined to allow an
15 opinion like that.

16 MR. SMITH: Fair enough. Thanks. Your Honor.

17 THE COURT: But as it relates to injury, I
18 would say no.

19 So No. 16 is granted.

20 THE COURT CLERK: 15 is ruling reserved?

21 THE COURT: 15 was reserved. 16 is granted.

22 17: "Preclude --"

23 MR. SMITH: 15 was reserved. 16 -- did I --

24 MR. JAFFE: 15 reserved; 16, granted.

25 MR. SMITH: I apologize, your Honor.

1 THE COURT: 17 is "Precluding of Margie's
2 prior civil lawsuit."

3 This is regarding an insurance claim made
4 after a theft at her business. I don't see any
5 relevance, so you guys are going to have to convince
6 me.

7 MR. SMITH: All right. The relevance is that
8 Jerry Busby is the attorney who represented her in that
9 case, and he's been identified as a plaintiff as a
10 potential before-and-after witness in this case. He
11 lives by her. He's her neighbor, interacts with her on
12 a weekly basis at church and what have you.

13 The relevancy that we see is this colors their
14 relationship. This shows the jury that, you know,
15 there is an existing relationship between them that
16 extends beyond just, you know, somebody I go to church
17 with. The jury can infer from that what they will, but
18 the fact that that relationship existed and that he's
19 her prior counsel testifying now on her behalf, we
20 believe is relevant to show his bias and the nature of
21 their relationship.

22 THE COURT: Well, how does that show bias and
23 the nature of their relationship more than the fact
24 that he's a neighbor and who knows her?

25 MR. SMITH: Maybe it doesn't. But he is both.

1 He's a neighbor who knows her, and he was their
2 attorney. He was somebody that she selected to
3 represent him and he worked on her behalf. There's a
4 relationship there that shows a bias.

5 THE COURT: All right.

6 MR. CLOWARD: The danger is that they get --
7 they get the bias about talking about them being
8 neighbors for 20 years, them being friends for 20
9 years, them knowing each other for 20 years. They get
10 the bias there. They don't need to bring in the
11 prejudice by showing the jury that here's this lady
12 who's filed another lawsuit, because the prejudice is,
13 "Oh, here we've got a plaintiff who is sue happy, who
14 is litigious and, you know, now she's filing another
15 lawsuit."

16 So they get the bias in another way. They
17 don't need to bring in the fact that Mr. Busby
18 represented her, because all that brings with it is
19 that is the prejudice. And we can't overcome that.

20 And that's why it's inappropriate.

21 THE COURT: You think that there's a prejudice
22 that comes from the fact that she filed a lawsuit?

23 MR. CLOWARD: Absolutely. I mean, I think our
24 society, yeah.

25 MR. SMITH: That's very easily clarified with

1 the question about the nature of the lawsuit. We're
2 not trying to imply that she is litigious and that
3 she's filing lawsuits left and right. We're trying to
4 expose the fact that this isn't just somebody who is a
5 neighbor. This is somebody who is a neighbor that she
6 trusts enough and that she confides in enough to retain
7 as her counsel.

8 There's more of a bias there than just being a
9 neighbor. A lot of neighbors hate each other. You
10 know, certainly this is a neighbor that she likes, but
11 it goes beyond that. We think that that is the bias
12 that should be seen.

13 THE COURT: Let me ask this: Could you get
14 the same information by simply asking her, "Haven't you
15 also retained Mr. Busby previously as your attorney for
16 some issue?"

17 MR. SMITH: Sure.

18 THE COURT: If she said yes, that establishes
19 the bias I think that you're looking for, but it
20 doesn't prejudice the plaintiff by talking about a
21 prior civil lawsuit. I mean, the jury could infer that
22 that was a -- that, you know, had to do with a will or
23 a trust or probate issue, or family law case.

24 MR. SMITH: Absolutely. We don't think the
25 nature of their -- you know, the case or anything like

1 that goes to the bias any more than just the fact that
2 she retained him as her counsel, so yes.

3 THE COURT: So not only is she a neighbor, but
4 she previously served as his attorney -- as her
5 attorney for some reason.

6 MR. CLOWARD: We think that would be a fair
7 compromise.

8 THE COURT: Okay. Let's do that then. Let's
9 say it's granted in part, denied in part. We're going
10 to allow a question of the witness as it relates to
11 Mr. Busby's previously being her attorney, but we're
12 not going to go into the specifics.

13 No. 18: "Precluding Defendant's medical
14 experts from referring to the crash as minor or making
15 reference to the property damage sustained by the
16 vehicles."

17 I guess this gets back to that question that
18 you asked me just a minute ago about whether or not I
19 was going to let the cop refer to it as minor, right?

20 MR. CLOWARD: Correct.

21 I guess, your Honor, if I just may, the danger
22 in allowing comments specifically by a doctor or a
23 police officer that they're going to get a heightened
24 credibility by the jury, but the fact of the matter is,
25 is that their opinion is nothing different than a lay

1 witness who witnessed it or who came up on it after and
2 said, "Yeah, I see the photograph there. I see the
3 photograph there. It must be a minor impact."

4 The analysis and the opinion is exactly the
5 same. It's unscientific. It's not based on any
6 credible information. It's just an opinion, but
7 because of who is giving it, the jurors take, you know,
8 they have a -- give it a higher weight. And that's
9 what's inappropriate.

10 THE COURT: So you think doctors shouldn't be
11 able to say the word "minor" as relating to the
12 accident, that should be reserved for an accident
13 reconstructionist?

14 MR. CLOWARD: Yeah. Because they don't know.
15 They didn't do any testing. The same thing with the
16 police officer saying it's low impact. Well, what do
17 you mean by low, and what tests did you do to determine
18 that?

19 I feel it's just unless there's actually a
20 scientific basis for them saying, it's just an opinion
21 that's unqualified, speculative, and self-serving,
22 and -- but it's going -- the danger is that the jury is
23 going to give it a higher weight based on whose giving
24 it.

25 THE COURT: I tend to agree with you as it

12:01:17 1 relates to doctors, but not necessarily the police
12:01:18 2 officer. Police officers do have training in
12:01:20 3 determining forces of impact and things like that.
12:01:23 4 They do the --

12:01:24 5 MR. CLOWARD: Sure.

12:01:24 6 THE COURT: -- TAR 1 and TAR 2 courses,
12:01:26 7 dealing with traffic accident reconstruction and forces
12:01:32 8 of impact. So I think a police officer probably is in
12:01:34 9 as good a position to talk about whether it was a minor
12:01:39 10 accident or not as maybe an accident reconstructionist
12:01:44 11 would be. But the doctors, I tend to agree with you.

12:01:48 12 What are you thinking?

12:01:49 13 MR. JAFFE: Here's my thoughts, Judge.

12:01:52 14 Experts are allowed to rely upon the opinions of other
12:01:55 15 experts, and since doctors on the defense sides are
12:01:58 16 going to be rendering causation opinions, if they're
12:02:03 17 relying on the characterization of the accident from
12:02:06 18 the forces and the analysis done by the biomechanical
12:02:09 19 engineer, they are allowed to take that into account.
12:02:13 20 And if my experts have seen my biomechanical engineer's
12:02:17 21 report that my biomechanical engineer calls it minor or
12:02:20 22 bump or insignificant, whatever it may very well be, my
12:02:24 23 experts are allowed to rely on that in helping to form
12:02:26 24 their causation opinions.

12:02:28 25 THE COURT: That's different than your people

1 offering the opinion that it's minor, though.

2 MR. JAFFE: I -- I guess I agree with that,

3 but the thing is, this seems to have been painted again

4 with a very broad stroke that they don't even want

5 doctors talking about it as minor. But if my doctor is

6 saying -- if I put a doctor on the stand who says,

7 "This is a very -- my opinion is this was a very minor

8 accident unlikely to have caused this trauma that the

9 plaintiff alleges," and then I go back and say, "Okay,

10 what makes you say -- what have you reviewed?"

11 "This is what I've reviewed. I've reviewed

12 this, this, this, and this."

13 "Okay. Now, you said it was minor. Where did

14 you get that from?"

15 "Well, there was a biomechanical analysis that

16 said it was really a minor accident. I've seen the

17 reports. I've seen the photographs. I've seen the

18 analysis. I've seen this and that. I'm relying on

19 that."

20 THE COURT: Okay.

21 MR. CLOWARD: Judge, here's the problem. I've

22 actually -- I'll pull up the transcript from the last

23 time a judge -- or Dr. Schifini was in your courtroom.

24 And I asked him specifically, "Hey, when you determine

25 whether someone is injured, do you consult with the

12:03:34 1 biomedical engineer?"

12:03:35 2 And he said, "No."

12:03:36 3 "When you were in medical school, when you
12:03:38 4 were determining causation, whether people were
12:03:41 5 injured, did you call up a biomechanical engineer to
12:03:44 6 determine whether there was enough forces or impact to
12:03:46 7 cause injury?"

12:03:48 8 "No."

12:03:48 9 "Okay. When you do your rounds at the
12:03:50 10 hospital, do you ever -- if somebody comes in, do you
12:03:53 11 have to go out and look at the vehicle to determine
12:03:55 12 whether or not they're injured?"

12:03:56 13 The answer is no every single time. So
12:03:59 14 they're trying to backdoor the information in and it's
12:04:03 15 really inappropriate, because all that it's trying to
12:04:06 16 do is to pound home the theme low impact, no injury.
12:04:11 17 Low impact, no injury.

12:04:13 18 And they're trying to backdoor it in through
12:04:15 19 the doctors by saying -- by creating a very thoughtful
12:04:20 20 way to get it in that, "Hey, I'm Dr. Schifini, and in
12:04:23 21 my analysis of determining whether or not Margie was
12:04:27 22 injured, yeah, you know what, I looked at the police
12:04:30 23 report and I looked at the property damage, and I
12:04:31 24 looked at these things, and it was important for me and
12:04:35 25 my opinion. It was a foundational element of my

12:04:37 1 opinion."

12:04:38 2 But that's just a creative way to get it in.
12:04:41 3 It's unfair. They don't do that in practice. They
12:04:43 4 don't -- if somebody comes to him and say, "Hey, I'm
12:04:46 5 injured," they don't go out and look at the property
12:04:48 6 damage. I mean, that's just not what they do. And
12:04:51 7 it's just trying to get it in the back door.

12:04:55 8 MR. JAFFE: I don't know what's wrong with me
12:04:56 9 pounding my argument, if that's my argument. That's
12:04:58 10 what the part -- that's part of advocacy, your Honor.
12:05:01 11 I kind of remember that in Advocacy 101.

12:05:04 12 THE COURT: Yeah. Doesn't seem fair, but I
12:05:10 13 think they can do it.

12:05:13 14 MR. JAFFE: Pardon me.

12:05:13 15 THE COURT: I think an expert can rely on that
12:05:16 16 stuff. I'm going to allow it. 18 is denied.

12:05:20 17 19: "Precluding Dr. Schifini from offering
12:05:26 18 testimony regarding alleged secondary gain by Margie."

12:05:30 19 Your argument is because he's not a
12:05:33 20 psychologist or psychiatrist, he can't talk about
12:05:35 21 secondary gain.

12:05:37 22 Don't all doctors talk about this?

12:05:38 23 MR. CLOWARD: Well, your Honor, specifically
12:05:41 24 with Dr. Schifini, he's woefully unqualified to give
12:05:46 25 this opinion. I have deposition after deposition, I

1 think before he's allowed to give any sort of a
2 testimony on malingering or secondary gain, there needs
3 to be voir dire outside the presence of the jury.

4 Because I have depositions recent of one or two years
5 ago where he says, "Yeah, I didn't -- I didn't know
6 until just recently what the definition of malingering
7 was. So I stopped putting it in my report."

8 "So you've been putting it in your report for
9 the past five years and you didn't even know the
10 definition?"

11 And it's the same thing with the secondary
12 gain. He's cut and pasted some information out of -- I
13 believe it's the DSM manual. And he basically says
14 that everybody needs -- I've got every single report.
15 He says the exact same thing in every single case. He
16 has no experience treating people for this.

17 And it's just -- it's just a way for him to
18 attack the credibility of Margie when there's no
19 scientific basis for him to do that. And that's where
20 it's inappropriate, is everything has to be tempered by
21 a Hallmark-type analysis. And, yeah, the doctors can
22 say that, but doctors can say whatever they want in
23 their depositions, in their reports, but when it comes
24 time to allowing that information to be presented to a
25 jury, that's what your Honor is for, to say, "Hey, you

1 know what, just because a doctor says it, doesn't mean
2 that that gets to the jury. Doesn't mean that just
3 because you put that in your report you get to get up
4 there and say that, you know, whatever you want."

5 And that's what we're asking for, is that
6 Dr. Schifini is unqualified to give these types of
7 opinions. He's not a psychiatrist. He doesn't treat
8 people for these things. And, you know, just because
9 he's a doctor doesn't mean he gets to say it.

10 THE COURT: Let's reserve it for trial. Let
11 me voir dire the doctor outside the presence before he
12 testifies.

13 MR. CLOWARD: That's fair.

14 MR. SMITH: Your Honor, just to address this
15 while we're talking about it. Dr. Schifini -- first of
16 all, the word "malingering" came up a couple of times.
17 Dr. Schifini has not testified that Ms. Seastrand is
18 malingering. That's not part of his testimony.

19 Dr. Schifini has testified that by definition
20 the fact this she is a litigant in a case involving
21 injuries sustained in this accident means that there's
22 a secondary gain motive. He's not -- he didn't expound
23 on -- you know, he even said, "I don't think she's
24 doing it intentionally, but by definition, if she's a
25 litigant, you know, there is a secondary gain motive."

1 That's his testimony.

2 Now they're trying to extrapolate that and say
3 he's going to come on the stand and he's going to say,
4 "She's a faker and she's a liar." But he says, "By
5 definition, that's there."

6 And then there's the fact that she minimized
7 her prior injury complaint to her doctors after the
8 accident. You know, there's some of her doctors that
9 she told those to, there's some of her doctors that she
10 didn't.

11 So I don't think Dr. Schifini can be precluded
12 from testifying as to what he observed in the medical
13 records and what are accepted medical definitions of
14 secondary gain.

15 THE COURT: You may be right. I would suggest
16 that you know exactly what questions are going to be
17 asked of him in this regard before he testifies so we
18 can do a quick little voir dire of him outside the
19 presence. And if he's not going to say that she's a
20 malingerer, then that takes way that issue.

21 Then if his opinions as far as secondary gain
22 are what you say they are, and that's all he's going to
23 testify to as far as secondary gain, it's going to
24 limit Mr. Cloward to what he can ask them about
25 secondary gain. But, I mean, based upon his request to

1 be able to voir dire him before he testifies about
2 these issues, I think that's a fair request.

3 And so let's -- we'll just reserve that for
4 now. You're going to have to remind me during trial
5 that we're going to voir dire him outside the presence.

6 MR. SMITH: We'll include it in the order,
7 your Honor.

8 MR. CLOWARD: We will, your Honor. I won't
9 forget.

10 THE COURT: I'll forget.

11 MR. CLOWARD: No. I said I won't forget,
12 Judge.

13 THE COURT CLERK: Voir dire outside.

14 THE COURT: We are going to voir dire him
15 outside the presence of the jury prior to his
16 testimony.

17 No. 20: "Precluding Dr. Schifini and
18 Dr. Ziegler from offering testimony regarding Margie's
19 spine surgeries."

20 Argument is that they are qualified to talk
21 about spine, the work up to spine surgeries so they
22 should be able to testify about the spine surgeries.
23 Plaintiffs argue -- Plaintiff's argument is the fact
24 that they do workup doesn't mean that he can testify
25 about whether or not she needed spine surgery or not.

1 I tend to agree that they can talk about their
2 workup, but whether or not spine surgery was necessary
3 or warranted, I don't think that's their expertise.
4 Convince me otherwise.

5 MR. JAFFE: Your Honor, obviously there's a
6 cross-over between medical disciplines. And simply
7 because a doctor may not be a spine surgeon does not
8 necessarily mean that they cannot testify as to whether
9 a spine surgery is reasonable or warranted under the
10 circumstances.

11 You're talking about two doctors who routinely
12 treat people with spinal injuries, some of whom get
13 referred for surgical consultations and surgeries, and
14 some of who get referred for consultations don't get
15 surgeries or never even get referred for consultations.
16 I think within their practice, their experience, and
17 certainly their own I -- I guess to some extent it's,
18 you know, their own personal anecdotal experiences,
19 they're entitled to testify as to what they reasonably
20 expect to be surgical and not surgical conditions. And
21 I think that's what we're basically looking for here.

22 THE COURT: I don't know. I'm not convinced.
23 I mean, I think you got to have a spine surgeon that
24 says whether or not spine surgery was reasonable.

25 I mean, you even used the word spine surgery

1 reasonable or warranted under the circumstances. I
2 mean, that that's the specific realm of a spine surgeon
3 in my mind. If they didn't have a spine surgeon that
4 was going to come in and say that spine surgery was
5 reasonable and necessary and related to this accident,
6 I wouldn't let the spine surgery in. I mean, they
7 can't bring a pain management guy to lay the foundation
8 for that surgery, so I'm -- I can't allow -- I can't
9 allow Ziegler and Schifini to talk about whether or not
10 the spine surgery was reasonable and necessary because
11 I wouldn't let them do it on the other side.

12 Do you have a spine surgeon?

13 MR. JAFFE: Not -- we're not calling one, sir.

14 THE COURT: I can't allow them to. I mean,
15 they can talk about their workup. But they can't talk
16 about whether or not the surgery itself was reasonable
17 or necessary or warranted under the circumstances.

18 So 20 is granted.

19 MR. SMITH: That's the end of Plaintiff's.

20 MR. JAFFE: That's the end of Plaintiff's,
21 your Honor.

22 THE COURT: That's the end of Plaintiff's.

23 Wow. All right.

24 Quarter after 12:00.

25 All right. Number -- I guess it's Defendant's

1 Motion in Limine No. 1 to limit physicians to opinions
2 stated in their clinical records, depositions, and/or
3 expert reports, if any.

4 MR. JAFFE: I think this pretty much dovetails
5 with the argument, the one that we've already argued,
6 your Honor.

7 THE COURT: Yeah. The note that I have on
8 here that I wrote to myself last night says "Allow the
9 treating doctors to testify regarding their opinions
10 and conclusions that are in their records and their
11 depositions and which they formed during their care and
12 treatment of the patient. Records that are included in
13 their charts, they can talk about for purposes of their
14 treatment of the patients."

15 I think I already ruled on that in response to
16 one of the plaintiff's.

17 MR. JAFFE: And I guess what we're looking for
18 is to say that's fine, your Honor, but that they
19 shouldn't be allowed to go beyond that, even with new
20 opinions that related to care, future prognostications,
21 things of that nature that are not included in your
22 chart. That's where the unfair surprise comes in.

23 THE COURT: The problem is, I mean, I agree
24 with you in a sense because I think the reason that we
25 allow experts, the reason that we allow treating

1 doctors to testify as experts without a report is
2 because they do have charts. And based on their
3 charts, we have some indication of what their opinions
4 are and what they're going to say.

5 MR. JAFFE: Right.

6 THE COURT: The fact that not every word that
7 they may say on the stand is included in their chart,
8 though, doesn't mean that they didn't form that opinion
9 during their care and treatment of the patient.

10 MR. JAFFE: And that's why we take their
11 depositions, sir, and the ones who we have deposed,
12 that's where it becomes an unfair surprise if they now
13 come in with something new. Because if we ask what are
14 your opinions, if we've asked do you have any opinions
15 regarding future care, necessity, limitations, things
16 of that nature, and they now come up with something
17 new, that is where there's an unfair surprise.

18 And at some point, Judge, I mean, there's got
19 to be a line drawn. It just can't be an open field for
20 them to just go traipsing through and say now I'm going
21 to say this, now I'm going to say that without some
22 advanced notice. Because when we've gone to the cost
23 of taking the deposition and when we've got orders in
24 place limiting the time when we can take those
25 depositions, and then if something new now comes to

12:15:42 1 their minds and say, "Oh, now I'm going to come in and
12:15:44 2 say this or I'm going to come in and say that," I mean,
12:15:47 3 at some point there's got to be a line drawn because
12:15:49 4 otherwise there's just a lack of fairness to the
12:15:52 5 defense.

12:15:52 6 You can't prepare for something that you don't
12:15:55 7 know is coming in when you've taken every possible
12:16:00 8 precaution. When you've gotten their chart, you've
12:16:02 9 gotten written answers to discovery, and when you've
12:16:05 10 taken their deposition. I can't go back and retake
12:16:08 11 every doctor's deposition again just before trial just
12:16:11 12 to verify that they haven't changed their opinions, and
12:16:13 13 that's --

12:16:15 14 THE COURT: If --

12:16:15 15 MR. JAFFE: -- an unfairness.

12:16:17 16 THE COURT: I don't know if the plaintiff is
12:16:18 17 still treating with any of these doctors or not. The
12:16:22 18 problem that you have is with somebody that continues
12:16:25 19 treatment. Because we can't -- we can't limit a doctor
12:16:28 20 and say, "Oh, well you can't testify about anything
12:16:31 21 that happened after your deposition six months ago,
12:16:34 22 even though you've been treating this patient on a
12:16:36 23 weekly basis since."

12:16:38 24 MR. JAFFE: And, your Honor, that's where
12:16:39 25 they've got an obligation to then give us some record.

1 They've got an obligation to supplement an answer to an
2 interrogatory. They've got to give us something so
3 it's just not an unfair surprise. Because, I mean,
4 we've deposed in this case Dr. Muir, Dr. Kaffcan,
5 Dr. Belsky, Dr. -- well, Gross was an expert -- a
6 treating -- an expert, not a treating.

7 THE COURT: Are these -- are the doctors all
8 still treating the patient on an ongoing basis?

9 MR. JAFFE: No.

10 MR. CLOWARD: No.

11 MR. JAFFE: No. But that's the point. The
12 ones who are, who have been deposed, I mean, they're --
13 we've got to have some notice when we've done
14 everything that we can possibly do to find out so that
15 we're prepared and not blindsided. And that's the
16 whole purpose of this, Judge, is that, I mean, there's
17 got to be a fundamental fairness to the defense in this
18 when they've taken the affirmative steps to do
19 everything possible.

20 THE COURT: We try to avoid trial by ambush.

21 MR. JAFFE: Right.

22 THE COURT: So I'm inclined to agree with
23 Mr. Jaffe to an extent, because I don't think it's fair
24 to have somebody come up with a whole bunch of new
25 opinions, after their deposition just before trial,

12:17:50 1 that he's not going to know about and you didn't tell
12:17:53 2 him about.

12:17:54 3 MR. CLOWARD: I completely agree. I actually
12:17:56 4 agree. I think that's the way that it should be.
12:17:57 5 Whenever this issue comes before a judge, I always just
12:18:01 6 say, "Hey, look. As a temper to the deposition
12:18:07 7 testimony and the medical records, the way that the
12:18:13 8 order should read is that the doctors are limited to
12:18:16 9 the opinions contained within the medical records and
12:18:21 10 depositions or reasonable inference therefrom."

12:18:25 11 Because the other thing is that Mr. Jaffe
12:18:28 12 realizes that sometimes depositions are limited.
12:18:30 13 They're only a hour long. And they're cut off. And
12:18:34 14 so, you know, maybe the doctor, if he would have had
12:18:36 15 more time, if there would have been more time to depose
12:18:39 16 him, he would have said, "Well, yeah, she needs this
12:18:42 17 treatment, that treatment, or the other."

12:18:43 18 But I can tell you we're not going to get to
12:18:45 19 trial and we're not going to have the doctors
12:18:48 20 testifying to a bunch of new treatment and a bunch of
12:18:50 21 new theories and a bunch of new -- you know, we're not
12:18:53 22 going to surprise them.

12:18:54 23 But I also don't want to have the doctors say
12:18:58 24 something like, for instance, "Yeah, you know, I think
12:19:01 25 Ms. Marjorie would maybe benefit for another course of

1 physical therapy," or something along those lines and
2 have Mr. Jaffe "Object, Your Honor. This is exactly
3 what we talked about during the motion in limine. This
4 wasn't in his opinion. This wasn't in his deposition.
5 So this is unfair surprise, trial by ambush."

6 I mean, I agree there's got to be a limit. If
7 Mr. Jaffe is diligent in going out and taking the
8 depositions, I understand that. But that needs to be
9 tempered. That needs to be tempered with the fact
10 that -- that not all opinions are expressed during
11 every single deposition --

12 THE COURT: Well, depends on what questions
13 were asked. Because if he asked a question about "Do
14 you have an opinion as to whether or not there's any
15 future treatment necessary," and the doctor says no and
16 then comes into trial and then says yes, I would tend
17 to say, you know, "Well, he's going to be held to his
18 deposition."

19 MR. CLOWARD: And I would disagree with that.
20 And I would agree with that. But I think if the doctor
21 makes some qualifying statement like, "Well, at this
22 time I think there needs to be X, Y, and Z, but there
23 might be other treatments," I don't think that that's,
24 you know, outside the scope.

25 And, you know, here's the thing: Counsel

1 seems upset, but we started off with two surgeries.
2 Ms. Seastrand needs to have a cervical surgery. She
3 needs to have a lumbar surgery, in addition to what
4 she's already had. As time has progressed those have
5 been dismissed.

6 And, you know, we've done supplements and
7 updates to the -- to the life care plan, and that just
8 shows the dynamic changing fluid doctor or fluid care
9 that somebody has as they continue to have treatment.
10 So he can't say, "Well, you know, we need to be able to
11 rely on the depositions," when the human body and
12 treatment continues and it progresses. That's why I
13 say I'm fine with that.

14 I think that that's fair to say limit it to
15 their opinions, in their records, their reports, their
16 deposition, and reasonable inferences therefrom. So if
17 the doctor said something that is completely
18 outrageous, that has never been discussed or even
19 thought about or complained, that is -- that is unfair.
20 That's trial by ambush. I agree that would not be
21 allowed.

22 But if it is something that's been
23 contemplated or should have been contemplated that
24 maybe the exact question wasn't asked, that should be
25 allowed.

12:21:17 1 THE COURT: Here's what I'm going to do. I'm
12:21:18 2 going to grant the motion. If there's a -- if there's
12:21:21 3 something that you think should have been that is a
12:21:23 4 reasonable inference that was raised by something that
12:21:26 5 the doctor said, and he makes an objection, you're
12:21:30 6 going to come up to the bench, we're going to talk
12:21:32 7 about it. And if it's something that I agree should --
12:21:36 8 is reasonably inferred from something that the doctor
12:21:38 9 said, we're going to allow it.

12:21:40 10 MR. CLOWARD: That's fair.

12:21:41 11 MR. JAFFE: Your Honor, what I'd also like to
12:21:42 12 put in the order then is that if any such reasonable
12:21:46 13 inferences, I'd like them brought out outside the
12:21:49 14 presence of the jury so that we can deal with it
12:21:51 15 beforehand. Because if Dr. Kaffcan gets on the stand
12:21:54 16 and says, "You know, with her pain and ongoing
12:21:58 17 problems, I think she's a reasonable candidate for a
12:22:01 18 stimulator down the line," well, ding ding ding. Good
12:22:04 19 luck unringing that bell.

12:22:07 20 And now I got to come up and argue that that's
12:22:09 21 not a reasonable inference and he's going to say,
12:22:11 22 "Well, it is because she's had ongoing pain and
12:22:13 23 problems and whatever."

12:22:14 24 We need to hear those things before.

12:22:16 25 THE COURT: If it's something -- if it's

1 something that you know, Mr. Cloward, before --

2 MR. CLOWARD: Absolutely.

3 THE COURT: -- the doctor testifies, make sure
4 he knows about it so we can talk about it outside the
5 presence beforehand.

6 MR. CLOWARD: Absolutely.

7 MR. JAFFE: Thank you, your Honor.

8 THE COURT: I would agree.

9 MR. CLOWARD: Nobody wants a mistrial. Nobody
10 wants those kinds of things. I agree.

11 THE COURT: Okay.

12 MR. CLOWARD: We can for sure do that.

13 THE COURT: All right. So the motion is
14 granted.

15 Number -- Defendant's motion No. 2 to preclude
16 any treating physician who did not provide an expert
17 report from improperly rebutting defense experts.

18 MR. JAFFE: Okay. Your Honor, this gets --

19 THE COURT: I think there's a couple of these
20 rebuttal motions, isn't there? Maybe I am wrong.

21 MR. JAFFE: No. 5 gets into --

22 MR. SMITH: Oh, yeah.

23 MR. JAFFE: -- A rebuttal issue, but it's a
24 slightly different one.

25 Here's the thing, Judge: I understand that a

1 doctor has the right to support his opinions, but when
2 a doctor is going to go so far as to say "I disagree
3 with the defense expert, I disagree with Dr. Schifini
4 or Dr. Ziegler, or whoever it may very well be, I
5 disagree with that," that is crossing the line into an
6 expert opinion that should have been disclosed.

7 Because what he's now doing is directly
8 rebutting a defense expert by name, by opinion, and
9 that's where it crosses over. When a doctor gets up
10 and then says, without naming the expert, "I disagree
11 with the opinion that this was preexisting and all she
12 suffered is a soft issue injury," that is rebutting an
13 expert opinion. And that is where that needs to have
14 been disclosed as an expert report.

15 Bear in mind, they had the plaintiff examined
16 by a doctor who did an IME to comment upon the defense
17 experts who is going to be testifying. And I want to
18 make sure also that we're not going into areas where
19 it's effectively going to be cumulative, where you're
20 going to have Dr. Muir and Dr. Kaffcan and Dr. Whoever
21 getting up and saying, "We disagree with Dr. Ziegler."
22 If they've hired Dr. Gross to do that, then let
23 Dr. Gross do that. Don't allow doctors to get up and
24 say, "I disagree with this, this, and this."

25 If they're going to sit up there and support

1 their treatment and their opinions, that's one thing.
2 To go the next step and cross that line and say,
3 "Dr. Ziegler on the defense is wrong, Dr. Schifini on
4 the defense is wrong, this opinion by a defense doctor
5 or somebody else is stated is wrong," that is now an
6 expert opinion that goes beyond their treatment and
7 their chart.

8 That's where I believe this motion is asking
9 for the relief, your Honor. We're asking that the
10 Court only allow them to testify to the parameters that
11 the Court has already stated, not go beyond that to
12 attack a defense expert or rebut a defense expert by
13 name or by his opinion.

14 THE COURT: Mr. Cloward, let me ask you a
15 question.

16 MR. CLOWARD: Sure.

17 THE COURT: Let's say as a plaintiffs' lawyer
18 you decided to be real tricky and you don't give your
19 treating doctors anything prior to their deposition, so
20 they treat the -- they treat the patient. They --
21 litigation is filed. The defense takes a deposition of
22 the doctors.

23 After the depositions are taken, then you give
24 your treating doctors the expert reports from the
25 defense. And you say, "We plan on asking you all kinds

1 of questions at the time of trial about these expert
2 opinions, about these expert reports, and you're going
3 to say all kinds of -- how you disagree with them."

4 MR. CLOWARD: Sure.

5 THE COURT: You don't name your doctors as
6 experts. They're just treating doctors.

7 MR. CLOWARD: Sure.

8 THE COURT: You don't tell the other side that
9 you plan on having them rebut these opinions. You just
10 do that.

11 Isn't that trial by ambush?

12 MR. CLOWARD: No.

13 THE COURT: Tell me why.

14 MR. CLOWARD: No. 1, I wouldn't do that. I
15 don't -- I don't -- you know, the rules allow you to do
16 certain things. That doesn't mean you do them. I
17 wouldn't do that. I hope that you know me well enough
18 to know that I won't do that, because I do think that
19 is trial by ambush. But I think that the rule
20 specifically contemplates that that type of a thing
21 will happen.

22 Specifically, that the amendment that the
23 drafters' note says, and I'll quote it for the record,
24 says, "A treating physician is not a retained expert
25 merely because the witness will opine about the

12:26:57 1 diagnosis, prognosis, or causation of the patient's
12:27:02 2 injuries," here's the important part, "or because the
12:27:05 3 witness reviews documents outside his or her medical
12:27:07 4 chart in the course of providing treatment or defending
12:27:11 5 that treatment."

12:27:12 6 So I think the rule contemplates that that
12:27:14 7 exact thing will happen, that the -- that the doctor
12:27:17 8 will -- I mean, the shoe can always be on the other
12:27:20 9 foot. Say the defense, for instance, they depose
12:27:25 10 Dr. Muir early on. They get Dr. Muir to say, "You
12:27:27 11 know, this is why I did what I did. I did it because
12:27:30 12 of this, this, this, and this."

12:27:32 13 Then they hire Dr. Duke. Dr. Duke reviews
12:27:36 14 Dr. Muir's deposition and says, "You know what,
12:27:38 15 Dr. Muir is wrong because of X, Y, and Z. Okay. He
12:27:45 16 shouldn't have done this surgery. He shouldn't have
12:27:47 17 done this. He shouldn't have done that."

12:27:49 18 So he's criticizing the treatment that
12:27:52 19 Dr. Muir performed.

12:27:53 20 So you mean to tell me that Dr. Muir can't
12:27:56 21 come at the time of trial and talk about why Dr. Duke
12:28:00 22 is wrong, and why his opinions, Dr. Muir's opinions are
12:28:05 23 actually correct? I mean, you know, either you're
12:28:09 24 going to have to have numerous depositions in every
12:28:12 25 single case or you're going to have to realize that at

1 some -- some times there is a certain element of
2 unfairness.

3 And it's the difference between, you know,
4 trial by ambush and just, hey, you know what, Dr. Muir
5 was deposed a year and a half ago. Dr. So-and-so were
6 all deposed months after that. Dr. Muir had an
7 opportunity to review that information and he reviewed
8 it. The difference is is that Dr. Muir, anticipating
9 Mr. Jaffe's argument -- trying to do two things at
10 once. Sorry, Judge.

11 But it's not unfair. What would be unfair
12 would be to allow or to preclude Dr. Muir from
13 defending his opinions, defending his treatment,
14 defending what he did.

15 Now, I agree with Mr. Jaffe that what would be
16 unfair and what would constitute trial by ambush is to
17 say, this example: Dr. Muir is deposed. He gives all
18 of his opinions. "I treated the person. I did X,Y,
19 and Z."

20 Dr. Duke is deposed. Dr. Duke also criticizes
21 Dr. Kaffcan, Dr. Muir, and let's say Dr. Roesler is
22 involved. Now what would be inappropriate is to have
23 Dr. Muir get up there and rebut every single one of
24 those opinions as it relates to Dr. Kaffcan,
25 Dr. Roesler, and his own treatment. That would be

12:29:37 1 unfair.

12:29:38 2 But Dr. Muir should have a right in every
12:29:40 3 single case to get up there and defend the opinions
12:29:44 4 that he's given, defend his treatment. And if that's
12:29:47 5 to talk about the criticism that Dr. Schifini or
12:29:51 6 whoever else has made, then that's -- it is what it is.

12:29:56 7 MR. JAFFE: Okay. First off, your Honor, he's
12:29:58 8 allowed to defend his opinions, and he's got certain
12:30:02 9 things behind him to do it: Medical training, medical
12:30:05 10 experience, medical knowledge. You can explain all
12:30:07 11 that to the jury through his medical knowledge,
12:30:10 12 training, experience. That is what is typically
12:30:14 13 allowed. To then sit here and say Dr. Schifini is
12:30:17 14 wrong about this having given us a report is going
12:30:20 15 beyond.

12:30:20 16 But here's the disconnect with that argument.
12:30:24 17 Dr. Belsky, who is a treating doctor, when she took
12:30:28 18 issue with one of the defense experts, wrote a report
12:30:32 19 rebutting him. Why is that necessary if that's not the
12:30:37 20 case?

12:30:39 21 So their own conduct through their own
12:30:41 22 treating doctor made an expert under that exact
12:30:46 23 circumstance in that one scenario, did exactly what
12:30:50 24 Mr. Cloward is arguing that they don't have to do.
12:30:55 25 That -- when Dr. Belsky writes that report, that is

12:30:58 1 fair. That's where she now can talk about those
12:31:02 2 opinions and directly rebut that expert because she has
12:31:05 3 been made a rebuttal expert on that point.

12:31:09 4 For Dr. Muir and Dr. Kaffcan to sit here and
12:31:13 5 start talking, and I don't know where Dr. Duke's name
12:31:15 6 came up because he's not in this case, but to sit here
12:31:21 7 and have them start criticizing other doctors,
12:31:24 8 especially since they've been deposed, and if memory
12:31:29 9 serves me correct, your Honor, you were quite prescient
12:31:36 10 because I don't believe they did see the reports of the
12:31:37 11 defense experts. But for them to get up there and
12:31:41 12 start talking about it when they haven't rendered an
12:31:43 13 opinion to that effect is crossing the line into expert
12:31:45 14 testimony, your Honor, and I don't believe that would
12:31:47 15 be fair.

12:31:48 16 MR. CLOWARD: Your Honor, may I add one more
12:31:50 17 thing?

12:31:50 18 THE COURT: No.

12:31:50 19 Here's the deal, guys. Mr. Jaffe, I -- I'm
12:31:58 20 going to deny the motion. I'm going to allow them to
12:32:02 21 talk about these things, and it's primarily because of
12:32:04 22 that last line of that section of the rule. It says
12:32:08 23 "Or to defend their opinions."

12:32:09 24 I don't like that line. I don't know that
12:32:15 25 that the Supreme Court or -- I guess it was the Supreme

1 Court thoroughly thought that out when they -- when we
2 adopted this new version of 16.1. But -- because I
3 think it opens us up to that scenario that I suggested.

4 MR. JAFFE: Your Honor, will I get to then, in
5 cross-examination, be allowed to raise the fact that
6 they have never in their chart or in any written format
7 or in a deposition contradicted those opinions
8 directly? I mean, I think that's fair
9 cross-examination and fair argument if that's the
10 interpretation of that rule.

11 THE COURT: I don't know why not.

12 MR. JAFFE: Thank you.

13 THE COURT: I mean, I think that's probably a
14 valid question to ask them, but -- if they didn't write
15 it down, somewhere. But I don't know that there's an
16 obligation for them to write it down somewhere, under
17 the rule. I don't know that there's an obligation
18 under the rule that they do a rebuttal report, even
19 though Dr. Belsky may have.

20 I don't know that there's an obligation under
21 the rule that these other doctors do. And I have a
22 rule -- I'm concerned with the language of the amended
23 rule because I think it opens us up to trial by ambush
24 in a way because doctors are going to be allowed to
25 offer opinions to defend their opinions, to defend

12:33:44 1 their conclusions, that doesn't necessarily have to be
12:33:48 2 disclosed prior to trial. I don't know that I like it,
12:33:50 3 but I think that's the way the rule is written, so I'm
12:33:53 4 going to allow it.

12:33:54 5 So your motion No. 2 is denied.

12:33:58 6 I don't know if you really care what I think
12:34:02 7 about the rule, but I figure I'd tell you.

12:34:05 8 MR. JAFFE: That's fine.

12:34:06 9 MR. SMITH: No. 3, your Honor.

12:34:07 10 THE COURT: No. 3 is to admit evidence of
12:34:10 11 medical liens. I already did that. You can make a
12:34:12 12 record if you want.

12:34:13 13 MR. SMITH: All right. Very briefly, your
12:34:14 14 Honor, because I know we're running long here.

12:34:16 15 There's a few reasons why Plaintiff -- why
12:34:19 16 evidence of medical liens needs to be admissible in
12:34:21 17 this case and in any personal injury case.

12:34:24 18 First of all, and I don't think this will be
12:34:25 19 the case here, but like you said, we never know what
12:34:27 20 comes out at trial. Sometimes it's a lot different
12:34:30 21 that what we found out through discovery. If, for any
12:34:34 22 reason, the plaintiff claimed that she couldn't get
12:34:35 23 some treatment or she couldn't -- because she couldn't
12:34:38 24 afford it or that some treatment was unavailable to her
12:34:40 25 because she couldn't afford it, particularly where she

1 was treated on liens, then we feel like, you know, the
2 liens in that situation would become admissible to
3 rebut that inference.

4 THE COURT: Might.

5 MR. SMITH: Secondly, liens show bias and
6 interest. Now I know the plaintiffs are going to ask
7 each one of Defendant's experts how much they were
8 retained for, how much they charge hourly, you know,
9 how much did you make on this case, and what have you.
10 A treating physician who is treating on a lien has
11 essentially garnered an interest in the case. They now
12 have an interest in this case and they're more likely
13 to get their money from this case if the plaintiff gets
14 a verdict in her favor. And the larger that verdict
15 is, the more likely they are to get the full amount of
16 their lien.

17 So that bias is something that we feel needs
18 to be -- it's fair game. Especially where they're
19 going to expose the bias of our experts who have been
20 retained on the defendant's behalf, that bias exists
21 then for the plaintiff's treating physician. So for
22 that reason we feel like the evidence of liens need to
23 be -- is admissible.

24 THE COURT: Well, let me just address that
25 real quick because the -- you're probably right. They

1 will ask about how much your experts are being paid,
2 how much they have been paid, but you're going to
3 probably ask the treating doctors and their experts the
4 same thing, which I think evens the playing field.

5 Because their experts aren't going to come for
6 free. They're going to be charged 5 or 10 grand a day.
7 Their experts have charged a whole bunch more than that
8 as well, I would assume so.

9 MR. SMITH: But the difference is that their
10 experts stands to make on top -- their treating
11 physicians stand to make on top of that what they're
12 being paid to come testify at trial an additional sum.
13 So that exposes a bias that goes beyond the bias that
14 our retained experts do. Because if we get a defense
15 verdict, our retained experts don't get any more money.
16 So there's an additional bias there.

17 THE COURT: I understand.

18 MR. SMITH: And then finally, in Lobato, which
19 is one of the governing cases we have in Nevada, it
20 says that the only restrictions on collateral source --
21 or excuse me, the only restrictions -- sorry.

22 "To show bias and interest, any facts which
23 might color a witness's testimony should be
24 admissible." And so like I said, I think that interest
25 that the physician -- treating physician has gained in

1 the case shows bias which color a witness's testimony.

2 And then Lobato specifically says "While the
3 Court generally has great deference to limit what
4 evidentiary information comes in, that deference for
5 the trial court is specifically narrowed where the
6 evidence shows bias."

7 And then it says "Then the Court should only
8 preclude it if it's repetitive, irrelevant, vague,
9 speculative, or harassment." Now, none of these
10 reasons are reasons why -- which we want to offer
11 evidence of the treatment on liens. We're not going
12 to, you know, repeatedly pound that in. I'm not going
13 to ask that same question to every doctor multiple
14 times, anything like that. It's relevant because it
15 shows their bias, you know.

16 So under Lobata we feel like liens and
17 information and evidence of liens should be admissible.

18 THE COURT: Okay. Because of the fact that I
19 think liens are collateral source, I have to weigh
20 the -- weigh and balance the Proctor versus Castelletti
21 decision against the Lobato decision to determine
22 whether or not I think that the bias in the value of
23 testimony regarding the bias outweighs the Castelletti
24 preclusion of all collateral sources. And I have to
25 come down on the side of Proctor and say that

1 collateral sources are inadmissible for any reason.

2 MR. SMITH: And just for the record, your
3 Honor, it's our position that a lien is not a
4 collateral source, because it's not --

5 THE COURT: I know.

6 MR. SMITH: -- it's not been paid. It's not,
7 you know, evidence of payment by, for example, a health
8 insurer. So we feel there's a distinction there that
9 needs to be recognized.

10 THE COURT: Okay. All right. Let's go on to
11 the next one.

12 Motion in Limine No. 4: "To limit Plaintiff's
13 presentation of past medical special damages at trial
14 to amounts actually paid by or on behalf of Plaintiff."

15 I see this as a collateral source issue also.

16 MR. JAFFE: Okay. Your Honor, and to address
17 that collateral source issue then, Defendant relies
18 heavily on -- I believe it's the Tri-County case.
19 First of all, the Tri-County case addresses this in a
20 worker's compensation setting, so it's different than a
21 personal injury setting. But one of the important
22 distinctions in that case -- and let me turn to it so I
23 can get the citation correct.

24 Because -- so Tri-County states "Because the
25 amount of worker's compensation payments actually paid

1 necessarily incorporates the written-down medical
2 expenses, it is not necessary to resolve whether the
3 collateral source rule applies to medical provider
4 discounts in other context. The Court leaves it open
5 for interpretation."

6 Plaintiff wants to rely and say their
7 interpretation applies in this context, where the Court
8 specifically says "We're not determining that here."
9 So just to assert our position on that, the plaintiff
10 has to establish, well, per the Nevada jury
11 instructions to recover medical special damages, the
12 plaintiff has to establish that they were the
13 reasonable value of those and that they were
14 necessarily incurred. And amounts which have been
15 billed which have not been paid have therefore not been
16 incurred, particularly where there's going to be or
17 there could be some sort of a lien reduction later on,
18 or also where a third party purchaser has come in and
19 purchased that lien for a lesser amount, that then
20 becomes the amount paid as opposed to the amount of the
21 original bill.

22 So the jury instruction requires that they be
23 necessary and that they be incurred. And where it's a
24 lien and it hasn't been paid, it hasn't been incurred,
25 and there's still the possibility that that has either

1 been reduced already by a lien or that will be reduced
2 in the future by a lien reduction.

3 Now, Plaintiff is going to argue that that,
4 you know, makes some sort of a windfall to the
5 defendant because if the plaintiff prevails -- sorry.

6 They're going to argue that there's a windfall
7 to us. That's not the case. If she prevails, even if
8 she's limited to the amounts that have been billed --
9 or excuse me, the amounts that have been paid,
10 Defendant is going to have to, you know, pay that
11 amount. There's no windfall. She's not going to be
12 made -- Defendant is not getting some sort of reduction
13 on the amount. The defendants are going to have to pay
14 the amount that has been paid on her behalf.

15 And my final point is that the Howell case,
16 it's not a controlling case. It's a California case.
17 But where we don't have a case particularly
18 specifically on point on this issue, and the Tri-County
19 case makes it clear that that's up for determination,
20 you know, we look to the California law.

21 And Howell, it states that "To award more to
22 the plaintiff is to place her in a better financial
23 position than before. To award more to the plaintiff
24 than has actually been billed" -- sorry -- "that has
25 actually been paid. It is to put her in a better

1 financial position than she would have been before the
2 action."

3 In fact, it actually results in a windfall to
4 her if she is allowed to stick this number up there,
5 which is just a number that's been written by the
6 doctor, but is not an amount that they're actually
7 expecting to be paid. Or in certain situations they
8 have already been paid less than that amount by a third
9 party purchaser.

10 So we feel like this is not a collateral
11 source. And that Tri-County has left that open to the
12 courts to, you know, ultimately they are going to have
13 to determine that issue, but it hasn't been determined
14 at this time.

15 THE COURT: All right. Here's my thoughts on
16 this, because -- and you may not care about what my
17 thoughts are.

18 But as far as billed versus incurred, I think
19 that -- I think the requirement in Nevada is that in
20 order to put the bills up in front of a jury, you have
21 to have somebody to testify that the amount that were
22 billed are reasonable and necessary, causally related
23 to the incident in question.

24 So if there's a doctor that testifies that the
25 bills that are incurred, the numbers on the billing

1 sheet are reasonable and necessary, I think that the
2 defendant's option at that point is to bring in
3 somebody that says no, they're not. If they're not
4 reasonable and necessary -- let's say a chiropractor
5 bills \$500 for a visit, and everybody agrees that's not
6 reasonable and necessary. Well, you're going to have
7 to bring somebody that says that's not reasonable and
8 necessary, and if you can convince the jury that the
9 bill should really be \$120 as opposed to the \$500 for a
10 visit, then the jury is only going to award \$120.

11 Now, that amount, that's the determination of
12 what's reasonable and necessary bill for the treatment.
13 I think the whole issue about what's paid, what's on a
14 lien, what's not on a lien, maybe if it was written
15 off, all of those things I think are collateral
16 sources.

17 And I think the Proctor versus Castelletti
18 case, and there's other cases, that basically say
19 collateral sources are not relevant for any purpose
20 because a negligent defendant is not entitled to get a
21 benefit from the fact that the plaintiff had insurance,
22 or that the plaintiff was able to get his bills
23 reduced, or the plaintiff was able to get a doctor to
24 write off bills. I mean, those are all collateral
25 sources in my mind that a negligent defendant shouldn't

12:44:52 1 be able to benefit from.

12:44:53 2 Now if the defendant is not negligent, you
12:44:55 3 don't have to worry about it, because, you know, then
12:44:58 4 the plaintiff isn't going to get a verdict. Then
12:45:01 5 you're not going to have to worry about a number
12:45:03 6 anyways. But if the defendant is determined to be
12:45:05 7 negligent by the jury, then that negligent defendant
12:45:08 8 should not be able to benefit from the fact that the
12:45:11 9 plaintiff had collateral sources, which either reduced
12:45:13 10 or eliminated or did whatever it did to the bills that
12:45:16 11 were otherwise determined to be reasonable and
12:45:18 12 necessary.

12:45:19 13 MR. SMITH: Okay. And just to note on that,
12:45:23 14 Proctor versus Castelletti says collateral sources of
12:45:25 15 payment, and -- where it's just a lien and there has
12:45:28 16 been no payment issued, you know, it's our position
12:45:31 17 that that is not a collateral source because the rule
12:45:34 18 specifically says collateral sources of payment. And,
12:45:37 19 you know, it's not something that has been paid. And
12:45:39 20 if it has been paid, and it's been paid for a lesser
12:45:42 21 amount, and there's another motion that will get into
12:45:46 22 us, is that not then the reasonable value of medical
12:45:49 23 expenses incurred? That will be addressed more fully
12:45:52 24 in our subsequent motion.

12:45:54 25 THE COURT: Okay. I understand the argument.

1 Motion in Limine No. 4 is going to be denied,
2 though, based on the collateral source issue we just
3 discussed.

4 All right. Let's move on to the next binder
5 now that it's a quarter to 1:00.

6 MR. JAFFE: We got four motions left.

7 THE COURT: Next one I have is Defendant's
8 Motion in Limine No. 5: "To preclude Plaintiff's
9 expert from commenting on, referencing to, or rebutting
10 any defense expert praiser to defense expert's
11 testimony."

12 MR. JAFFE: Basically, Judge --

13 THE COURT: You want him to recall their
14 people.

15 MR. JAFFE: Yes. If they're going to be
16 rebutting a defense opinion, and they were brought in
17 or wrote opinions as rebuttal opinions, then they need
18 to be presented as rebuttal, not as part of the case in
19 chief. Otherwise, what you've got is the plaintiff
20 telling the jury all these problems with my expert and
21 telling the problem -- everything -- the jury
22 everything that's wrong with my expert before the jury
23 has had an opportunity to even hear my expert and weigh
24 it themselves.

25 It's prejudicing unduly my case because it's

12:47:14 1 given certain experts the opportunity in rebuttal to
12:47:22 2 deprive the jury of the opportunity to weigh my
12:47:25 3 experts' opinion and testimony on its own without
12:47:28 4 having yet been colored by a plaintiff expert in
12:47:32 5 rebutting them before they've heard it.

12:47:35 6 I believe that it's a deprivation of my
12:47:37 7 client's due process rights because of the fact that
12:47:40 8 their expert then has not had an opportunity to be
12:47:42 9 heard and to speak on that topic, clear without the
12:47:48 10 jury having been colored before they testify. And
12:47:53 11 simply to say well, I'm not going to make, you know,
12:47:58 12 this expert testify twice, well, that was their choice.

12:48:02 13 If that's their choice is to have an expert
12:48:06 14 function in a rebuttal capacity, even if it's in a
12:48:10 15 direct and then in a rebuttal capacity, I think it's
12:48:12 16 completely unfair. And the jury needs to be allowed to
12:48:16 17 hear my side of the case, unbiased, unfettered without
12:48:21 18 having been colored by a plaintiff's expert testifying
12:48:25 19 and rebutting testimony that has not yet been
12:48:28 20 presented.

12:48:28 21 In -- otherwise, I'm not being an opportunity
12:48:31 22 to present a direct case. My direct case inherently
12:48:37 23 becomes a rebuttal and a defense of their opinions
12:48:42 24 before the jury has had the chance to give it fair
12:48:46 25 opportunity.

12:48:47 1 THE COURT: Let me ask you this, Mr. Jaffe.

12:48:48 2 MR. JAFFE: Yes, sir.

12:48:49 3 THE COURT: Let's assume for sake of argument
12:48:52 4 that you said this is a two-week trial. Let's say the
12:48:55 5 plaintiff plans on going the first week and you plan on
12:48:57 6 going the second week.

12:48:58 7 MR. JAFFE: Um-hum.

12:48:59 8 THE COURT: Let's assume that you have an
12:49:00 9 expert that is going to be out of the country the
12:49:03 10 second week so he has to testify Wednesday or Thursday
12:49:05 11 the first week. And just bear with me for a minute.

12:49:09 12 MR. JAFFE: Sure.

12:49:10 13 THE COURT: And then you come and you tell the
12:49:12 14 Court, "Your Honor, we have an expert that is going to
12:49:15 15 be out of the country the second week. We need to call
12:49:18 16 him out of order during the first week. I understand
12:49:20 17 it's going to be during the plaintiff's case in chief.
12:49:22 18 I understand the plaintiffs aren't going to have their
12:49:24 19 experts on until Thursday and Friday. We need to put
12:49:26 20 our expert on on a Wednesday."

12:49:29 21 MR. JAFFE: Um-hum.

12:49:29 22 THE COURT: And if Mr. Cloward objected to
12:49:31 23 that --

12:49:31 24 MR. JAFFE: Um-hum.

12:49:32 25 THE COURT: -- based upon your argument that

12:49:34 1 you've just made, I would have to exclude your witness
12:49:37 2 from testifying then and then he wouldn't be able to
12:49:39 3 testify at all because he wouldn't be here the second
12:49:42 4 week. Right?

12:49:43 5 MR. JAFFE: Well, two things on that, your
12:49:44 6 Honor, first off, if there is something along those
12:49:48 7 lines, I have no problem. And if they were going to
12:49:53 8 sit here and say this expert needs to testify, I can't
12:49:56 9 call him back because he's going to be out of the
12:49:58 10 country that week, that's a different story and that's
12:50:01 11 the courtesies that we extend each other as attorneys
12:50:05 12 during the course of a trial.

12:50:07 13 Second, there's other ways to do that. We --
12:50:09 14 if -- ironically, Dr. Duke's name was brought up
12:50:19 15 before. That happened to me where Dr. Duke, the court
12:50:23 16 trial schedule changed in the middle of trial, and the
12:50:27 17 day that Dr. Duke was scheduled to testify was a day
12:50:30 18 that the trial judge was no longer available because of
12:50:33 19 a personal circumstance that invaded that day, and we
12:50:37 20 said, fine, we'll go videotape the testimony that day.
12:50:40 21 If you know an expert is not going to be around in
12:50:42 22 advance and you can't work it into the schedule, for
12:50:46 23 whatever reason that may very well be, you know. If,
12:50:49 24 for example, I had an expert who can only testify on
12:50:53 25 the Wednesday of the first week, and Mr. Cloward said

12:50:56 1 to me, "I'd love to accommodate you, but here's the
12:51:00 2 problem: I've got two other experts who can only
12:51:02 3 testify that day. I can't see how we can get them in,"
12:51:04 4 then I got to videotape my testimony and present it to
12:51:07 5 the jury by videotape. That's how we do those things.

12:51:09 6 But when there's an extraordinary circumstance
12:51:11 7 that comes out for that, that is how we make that
12:51:14 8 accommodation. This is not an extraordinary
12:51:16 9 circumstance. If it is a extraordinary circumstance, I
12:51:19 10 will always accommodate an attorney, just the same as I
12:51:22 11 would expect to be accommodated back and have been
12:51:25 12 accommodated back.

12:51:26 13 But where it's not an extraordinary
12:51:28 14 circumstance, sir, that's where I believe that the
12:51:33 15 rebuttal testimony must be presented as rebuttal.

12:51:36 16 THE COURT: I guess the concern I have is with
12:51:38 17 the extra expense and the extra time that it would
12:51:42 18 cause, and that's what Mr. Cloward brings up in his
12:51:45 19 opposition. I mean, we all know when you call an
12:51:50 20 expert --

12:51:50 21 MR. JAFFE: Um-hum.

12:51:50 22 THE COURT: -- it's going to cost, depending
12:51:52 23 on the doctor, but most of the times you're spending
12:51:55 24 5,000 for a half day, 10,000 for a full day.

12:51:58 25 MR. JAFFE: Um-hum.

1 THE COURT: So if they have to bring somebody
2 for one day for their testimony and it cost them 5 or
3 10 grand, and then have to bring them back in rebuttal,
4 even if it's just for a half hour, they're going to end
5 up spending that 5 grand.

6 MR. JAFFE: Your Honor, and I can very well
7 assure -- feel very well assured that any plaintiff
8 would sit there and say that their client's rights
9 supersede my costs. Similarly, my client's rights
10 supersede their costs. That's my position.

11 THE COURT: Okay. You want to say anything,
12 Mr. Cloward?

13 MR. CLOWARD: Yes, I do. A couple of things.
14 No. 1, the question wasn't answered. The question was
15 if this situation took place, your expert had to show
16 up during the first week and Mr. Cloward objected, are
17 you saying that you're, you know, his client's due
18 process would be violated if I allowed that to happen.
19 And the answer wasn't -- there was no answer given.

20 Instead it was, you know, the conversation was
21 conflated and there was discussion about, you know,
22 courtesies that were given, and, well, it would be an
23 extraordinary circumstance. But the question that the
24 Court presented was, "Is it really a violation of due
25 process to allow an expert to testify out of turn?"

12:53:11 1 No. Absolutely not. And the purpose of
12:53:16 2 trial, and one of the overarching principles is the
12:53:20 3 right to a quick and speedy determination. And it
12:53:24 4 would be completely overburdensome to say, "Hey, these
12:53:28 5 rules are unflinching. It's going to be a violation of
12:53:31 6 his client's rights to allow these guys to give certain
12:53:36 7 testimony out of turn, force them to come back." If
12:53:39 8 you don't force them to come back, I mean, it just
12:53:42 9 seems it just seems really -- I don't -- I want to have
12:53:50 10 respect to Mr. Jaffe, but the argument is just really
12:53:53 11 nonsensical to me.

12:53:55 12 I mean, the other thing that I think is more
12:53:57 13 important that needs to be pointed out is that they're
12:54:02 14 giving opinions in defense of their treatment. And so
12:54:05 15 it's not like they're giving, you know, true rebuttal
12:54:09 16 opinions. All they're doing is saying, "Yeah, you know
12:54:12 17 what, I don't agree with Dr. Schifini because where he
12:54:15 18 says that I should have done this or this because of
12:54:17 19 this."

12:54:18 20 So it's not like you're hiring -- it's not --
12:54:21 21 I mean, you can't think of it the same thing. I could
12:54:24 22 see possibly if there's an argument to be made about
12:54:29 23 Ms. -- or Dr. Belsky that, you know, maybe there's an
12:54:32 24 argument that she would have to be called after, you
12:54:37 25 know, because she was designated as a true rebuttal

12:54:40 1 expert.

12:54:41 2 But in regard to Dr. Muir and Dr. Kaffcan, if
12:54:45 3 they give opinions in defense of their treatment, I
12:54:48 4 don't think you need to have them come back, you know,
12:54:50 5 a week later to say, "Oh, well you know, I heard
12:54:53 6 Dr. Schifini testified to X, Y, and Z. Well, let me
12:54:57 7 defend my treatment now a week later and tell you why I
12:55:00 8 think that that's not appropriate."

12:55:02 9 I just think that that would create a log jam
12:55:05 10 with the system, costs would go through the roof, and
12:55:08 11 it just would really be unfair to the plaintiffs.

12:55:10 12 THE COURT: Okay. Last word.

12:55:12 13 MR. JAFFE: Sure, your Honor.

12:55:15 14 Again, the question is what's paramount, costs
12:55:18 15 or rights. My client's rights are paramount. And I
12:55:22 16 believe they did answer your Honor's question, but if
12:55:24 17 Mr. Cloward is concerned that I didn't, I'll -- I will
12:55:27 18 answer it.

12:55:29 19 Your Honor, rights are more important than
12:55:33 20 costs. If there is an intervening event, like somebody
12:55:40 21 is scheduled to be out of the country, like somebody
12:55:43 22 has a family matter or an emergency or a wedding or a
12:55:46 23 graduation, or whatever it may very well be, that's
12:55:50 24 where we accommodate people out of order.

12:55:53 25 Otherwise, basically what Mr. Cloward is

1 saying is it's all right for me to come in and just
2 say, you know, I really think I would rather have the
3 jury hear from my expert before your doctor testifies,
4 so let me just do it for that reason. If there's a
5 compelling reason for it, that's -- then that's a
6 different story. Otherwise, the court rules lay out an
7 order of a trial: Direct case, defense case, rebuttal,
8 defense rebuttal. That's the order of it.

9 THE COURT: All right.

10 Based on NRS 50.115, which talks about
11 avoiding needless consumption of time and expenses, I
12 understand your client's rights, Mr. Jaffe, but I think
13 that I'm going to probably allow them to testify once
14 and then not have to call them back.

15 Was Dr. Belsky the only one that was
16 identified only as a rebuttal witness?

17 MR. CLOWARD: Correct.

18 MR. JAFFE: They also have Dr. Croft who did
19 give initial biomechanical and causation opinions, but
20 then wrote supplemental reports rebutting my expert's.
21 He's out of San Diego.

22 THE COURT: I would probably allow him to
23 testify once as well. I mean, if Dr. Belsky only did a
24 rebuttal report, I would say she probably has to be
25 called only in rebuttal.

12:57:28 1 MR. JAFFE: The same would also be true then
12:57:29 2 for Dr. Gross who wrote an initial report, then did a
12:57:33 3 second rebuttal report. He was hired solely as an
12:57:37 4 expert. He's not a treating doctor.

12:57:38 5 THE COURT: Was his initial report as an
12:57:40 6 initial expert?

12:57:41 7 MR. JAFFE: Initial expert report, and then a
12:57:43 8 second report as a rebuttal.

12:57:45 9 MR. CLOWARD: He was -- he was -- he was never
12:57:47 10 designated. He just did supplemental reports, not
12:57:50 11 necessarily -- they weren't designated as rebuttal. He
12:57:54 12 wasn't designated as a rebuttal expert.

12:57:56 13 THE COURT: I think, based on what I'm
12:57:57 14 hearing, I think Belsky is the only one that I'm going
12:57:59 15 to require it, can only testify after the defendant's
12:58:03 16 case.

12:58:03 17 MR. CLOWARD: Let me provide some clarity.
12:58:04 18 Because Dr. Belsky is a treating physician.

12:58:07 19 THE COURT: Oh.

12:58:08 20 MR. CLOWARD: So she just -- basically what
12:58:10 21 happened is Dr. Schifini wrote a report that criticized
12:58:14 22 her -- every single thing that she did, so she felt
12:58:18 23 compelled to --

12:58:18 24 THE COURT: So she's going to testify as a
12:58:20 25 treating doctor.

12:58:20 1 MR. CLOWARD: Yes. Exactly.

12:58:22 2 THE COURT: All right. I'm not going to make
12:58:24 3 these people come back and testify twice. I understand
12:58:27 4 the order that we're supposed to do things. And if --
12:58:30 5 if you feel that it's necessary that we instruct the
12:58:35 6 jury on how it should be done as opposed to the how it
12:58:41 7 is happening, I'll entertain that.

12:58:45 8 MR. JAFFE: Okay.

12:58:48 9 THE COURT: But Motion in Limine No. 5 is
12:58:51 10 going to be denied.

12:59:01 11 All right. No. 6 is defendant's motion in
12:59:02 12 limine "To preclude video and or animated depictions of
12:59:06 13 plaintiff's surgical procedures."

12:59:07 14 Are we actually talking about the actual
12:59:09 15 surgeries or are we talking about demonstrative video?
12:59:12 16 What are we talking about?

12:59:13 17 MR. SMITH: I believe demonstrative. I have
12:59:14 18 not been -- no actual surgical videos have been
12:59:18 19 disclosed to me, so I think we're talking purely here
12:59:21 20 about demonstrative, you know, videos of a similar
12:59:25 21 surgery.

12:59:26 22 THE COURT: Is it just demonstrative,
12:59:26 23 Mr. Cloward?

12:59:30 24 MR. CLOWARD: Correct, your Honor. Nothing --
12:59:31 25 no actual photographs of anybody, any blood or

12:59:34 1 anything.

12:59:34 2 THE COURT: You planning on using it during an
12:59:36 3 expert's testimony, or when are you planning on using
12:59:39 4 it?

12:59:40 5 MR. CLOWARD: During opening statements,
12:59:41 6 during direct examination of experts, and during
12:59:44 7 closing.

12:59:48 8 MR. SMITH: First of all, your Honor, we've
12:59:49 9 never -- we haven't seen it at this point, so I don't
12:59:51 10 know exactly what video we're talking about. I can
12:59:54 11 imagine, because I've seen similar videos before in
12:59:56 12 trials that I've done.

12:59:58 13 But our point on this, and this includes
13:00:01 14 animations as well, is that these are unfairly
13:00:05 15 prejudicial because they inflame the jury. You know,
13:00:07 16 the average the lay person who isn't used to seeing,
13:00:10 17 you know, blood, the amount of blood that comes with,
13:00:13 18 you know, any type of surgery, finds these type of
13:00:16 19 videotape shocking. You know, and that's their
13:00:19 20 intended purpose.

13:00:19 21 I know Plaintiff wants to claim that these are
13:00:22 22 to explain to the jury the processes and the surgery
13:00:26 23 that was undergone, but there are other was of doing
13:00:28 24 that that are less inflammatory. The doctors are going
13:00:31 25 to be able to testify. There's x-rays. You know,

13:00:33 1 there's photographs. They can use models. They can
13:00:35 2 use charts. All that can be explained very thoroughly
13:00:39 3 without depicting a gory image up there of the surgical
13:00:42 4 process and the blood and gore that comes with that.

13:00:45 5 MR. CLOWARD: Your Honor, we would agree. We
13:00:46 6 have no intention of showing any blood or gruesome
13:00:50 7 photographs. These are animations. They're cartoon
13:00:53 8 figures to explain to the jurors the procedures that
13:00:56 9 are performed.

13:00:59 10 MR. SMITH: And with respect to those, your
13:01:00 11 Honor, I mean, we haven't seen them, so I don't know
13:01:04 12 exactly, you know, what I'm speaking to on that. But
13:01:07 13 part of this is to address the -- or they're trying
13:01:11 14 show the jury, you know, the pain that the plaintiff
13:01:14 15 felt when they underwent these or, you know, the
13:01:17 16 extreme nature of this procedure. And that ignores the
13:01:19 17 factual that the plaintiff was under anesthesia. This
13:01:22 18 isn't something that she observed. This isn't
13:01:23 19 something that she felt.

13:01:24 20 If Plaintiff wants to explain to them how she
13:01:26 21 felt before and/or after the surgery, you know, she's
13:01:30 22 going to have the opportunity to do that in her
13:01:32 23 deposition. But to put this depiction up and try to,
13:01:35 24 you know, explain to the jury this is how Plaintiff
13:01:38 25 felt or this is, you know, imagine the terror or

13:01:42 1 undergoing this, you know, needle going into your back,
13:01:46 2 that's inflammatory.

13:01:47 3 The doctors are going to be able to explain
13:01:49 4 the procedures that they've undergone. There's ample
13:01:53 5 other ways to demonstrate the procedures that the
13:01:55 6 Plaintiff has undergone without showing some
13:01:57 7 inflammatory depiction, whether it's a real video or an
13:02:00 8 animation. You know, these inflame the jury. That's
13:02:03 9 why they are unfairly prejudicial.

13:02:05 10 THE COURT: I don't know that they necessarily
13:02:06 11 inflame the jury. I don't -- I haven't seen it either.
13:02:09 12 Because I haven't seen it, I'm not going to simply
13:02:14 13 preclude it today. I would like to see it or at
13:02:18 14 least -- Mr. Cloward, why don't you let the other side
13:02:21 15 see it before trial.

13:02:22 16 MR. CLOWARD: Absolutely.

13:02:23 17 THE COURT: And if it's -- here's the deal,
13:02:26 18 guys: As far as videos and stuff like that, I look at
13:02:29 19 it as any other demonstrative exhibit. It's not going
13:02:33 20 back to the jury. It's nothing that they're going to
13:02:35 21 use to try to explain.

13:02:36 22 It's just like if you were drawing a chart or
13:02:40 23 drawing a picture, or writing something during your
13:02:42 24 opening or closing on a board. As long as it's not
13:02:49 25 gory and bloody and nasty, I probably would allow it to

13:02:53 1 help explain. If, after you've seen it, it doesn't
13:02:58 2 look like it's going to be used to explain, it's going
13:03:00 3 to be used for some other reason, address it before we
13:03:03 4 start trial.

13:03:04 5 MR. SMITH: Fair enough.

13:03:04 6 I believe the parties, we have a stipulation
13:03:07 7 that we're disclosing all demonstrative a week prior to
13:03:09 8 prior.

13:03:10 9 THE COURT: So for now I'm going to deny it
13:03:12 10 because neither you nor I have seen it. I'm not going
13:03:16 11 to -- I'm not going to preclude some demonstrative
13:03:20 12 video or exhibit because we don't know yet even what it
13:03:24 13 looks like.

13:03:26 14 You folks are here for a settlement
13:03:27 15 conference? We're not ready for you yet. I'm still
13:03:29 16 doing my 9:00 o'clock calendar.

13:03:30 17 RIGHT 2*:

13:03:31 18 UNIDENTIFIED SPEAKER: Okay.

13:03:32 19 THE COURT: You're welcome to sit around.

13:03:36 20 Defendant's Motion No. 7: "To admit all
13:03:38 21 evidence of purchase of liens and evidence of the
13:03:41 22 amounts of which liens were purchased."

13:03:43 23 I think we've addressed already, haven't we?

13:03:45 24 MR. JAFFE: To some extent, your Honor, but
13:03:47 25 what I'd like to add is this: The amount that a lien

1 may have been purchased for, in other words, if the
2 plaintiff goes for treatment, a provider or a facility
3 liens the care, but then turns around and sells the
4 lien to another third party source, like Canyon
5 Medical, you see especially in all these involving the
6 surgery center that's involved here.

7 That's relevant because, let's say the surgery
8 center says that their bill is \$15,000. And they're
9 going to get up there and say, "Well that's a -- that's
10 usual and customary. It's fair. It's whatever may
11 very well be," whatever the verbiage that you're going
12 to use.

13 But if they turnaround and sell it for \$4,000
14 I should be allowed to raise the fact that they
15 accepted less from a private payer who's buying that
16 lien, to cross-examination them on whether what they're
17 saying about 15,000 is fair and reasonable. So if
18 they're going to accept 4- or 5- or 7-, or whatever it
19 may very well be, from a private payer, I believe is
20 proper impeachment testimony and proper impeachment
21 questioning.

22 THE COURT: Still collateral source.

23 MR. JAFFE: I know.

24 THE COURT: The reason they charge less or
25 that they sell it for less is because there is always

13:05:17 1 the risk that there's no recovery.

13:05:20 2 MR. JAFFE: Well, if that's the case, then
13:05:21 3 they can get up there and say that.

13:05:27 4 THE COURT: It's still a collateral source
13:05:27 5 I'll not going to allow it.

13:05:30 6 MR. JAFFE: Okay.

13:05:30 7 THE COURT: Motion No. 7 is denied. Sorry.
13:05:36 8 No. 8 is: "To preclude Plaintiff's expert
13:05:39 9 Terrance Dineen from testifying."

13:05:43 10 MR. JAFFE: Okay. Judge, there's two things
13:05:45 11 with respect to Mr. Dineen. First, he wrote two
13:05:49 12 reports predicated on the plaintiff getting future
13:05:54 13 surgeries that had long since been stipulated out.
13:05:59 14 What had happened was the plaintiff had hired
13:06:03 15 Dr. Jeffrey Gross, who wrote a report initially saying
13:06:08 16 the plaintiff was going to need another cervical
13:06:10 17 fusion, and was going to need another lumbar fusion,
13:06:13 18 and then was going to have X additional treatment and
13:06:17 19 costs, et cetera, et cetera.

13:06:19 20 Mr. Dineen formulated an opinion based upon
13:06:23 21 that. What then happened is that Dr. Gross wrote a
13:06:29 22 second opinion, a second report, taking one of the
13:06:32 23 surgeries out. But he said as to the other one it was
13:06:35 24 possible.

13:06:36 25 So we were -- we have filed a motion or were

1 ready to file a motion to exclude that testimony, given
2 the fact that there was not stated to a degree of
3 probability and what happened is we entered into a
4 stipulation now taking that second surgery out of the
5 case. So now both future spinal surgeries were gone.

6 Mr. Dineen was never provided with that.
7 Dr. -- Terrance Dineen rather was never provided with
8 that. Terrance Dineen still didn't know about it, even
9 though months and many months had gone by, by the time
10 I took his deposition. And when I went up to Reno and
11 I took his deposition, he was still standing on
12 opinions based upon Dr. Gross's first report of two
13 future surgeries that had no basis whatsoever in this
14 case, that were now out of the case both by Dr. Gross
15 and by the plaintiff's own admission and recognition
16 through a supplemental report and through that
17 stipulation. Dineen didn't know it. So now the whole
18 foundation for his opinions is completely shot.

19 On top of it, Terrance Dineen -- it's very
20 clear that his opinions were bought, and here's why.
21 The plaintiff owns a small business in which she
22 basically provides lessons, acting, singing, and
23 dancing lessons, for children.

24 There was originally a claim related to wages
25 that we've stipulated out of this case. But what

13:08:26 1 happened was of course the personal impact on her from
13:08:31 2 a loss remained.

13:08:34 3 Well, what Mr. Dineen said was, "I'm just
13:08:39 4 going to give her the median wage for producers in
13:08:42 5 Las Vegas based upon a study that was done."

13:08:47 6 And we've had several years of actuals that he
13:08:51 7 didn't take into account and decided to dismiss. So I
13:08:54 8 asked him, "If we had a guy who's producing shows on
13:08:59 9 the strip earning \$1 million or several hundred
13:09:03 10 thousand dollars a year," I forgot the exact figure
13:09:06 11 that I said, "and he's in an accident and can't work
13:09:09 12 anymore, are you going to be saying that his loss is
13:09:12 13 51,000 or whatever it is, that median number, a year?"

13:09:16 14 He said, "No."

13:09:17 15 "Why no?"

13:09:18 16 "Well, we've got his actual figures to work
13:09:20 17 off of."

13:09:21 18 So here's a guy who is deciding to change like
13:09:26 19 a chameleon to whatever best suits the purposes of
13:09:30 20 which he's been paid. Irrespective of a standard.

13:09:35 21 On top of it, we've got a guy who's basing
13:09:39 22 reports somewhere opinions about future limitations on
13:09:42 23 surgical recommendations that don't exist.

13:09:47 24 Now, what ends up happening is I also take
13:09:50 25 Dr. Gross's deposition and Dr. Gross of course hasn't

1 changed his opinion regarding the future care as it
2 relates to the surgeries, but because of the fact that
3 the surgeries are now out, what he did was he removed
4 certain other costs that were in his life care plan
5 that related to those two surgeries.

6 Now, Dineen comes in with a new report well
7 after he's been deposed and still doesn't really change
8 anything except for the fact that he's now
9 acknowledging that there's this change in Gross' report
10 and opinions.

11 Well, he still hasn't changed. And there is
12 now no foundation to exist. He does not pass the
13 Hallmark test because he has not issued report
14 reasonably relying on a foundation of evidence that
15 will be presented to the jury.

16 And for that reason, Mr. Dineen must be
17 stricken.

18 MR. CLOWARD: Your Honor, to say that
19 Mr. Dineen only relied on Dr. Gross's report would be
20 inaccurate. That was just one portion of the report.
21 That's why when Dr. -- or Mr. Dineen reviewed that
22 additional information, he said, "My opinion doesn't
23 change. The reason my opinion doesn't change is
24 because I relied on a wide variety of information,
25 including my personal examination and discussion and

13:11:27 1 interview with Margie Seastrand."

13:11:31 2 In fact this is quoting from their -- their
13:11:37 3 reply. This is page 4 of their reply, they're citing
13:11:42 4 Mr. Dineen's deposition. He says, "why are you" --
13:11:44 5 question, "Why are you using 45 percent functional
13:11:48 6 capacity on an ongoing basis?"

13:11:50 7 His answer is, "Because that's where we are
13:11:52 8 right now, you know, with the functional capacity
13:11:55 9 checklist, and we don't know what is going to happen in
13:11:57 10 the future, you know. But we do know at this point
13:12:00 11 that that's what -- that's what the data tells us, also
13:12:04 12 including the medical records my interview with her."

13:12:07 13 So he's using 45 percent based on his
13:12:12 14 analysis, based on his interview, based on the medical
13:12:15 15 records, based on where she was right then and there.

13:12:20 16 And that's why, when Dr. Gross supplemented
13:12:22 17 his opinion, saying, "Hey, she doesn't need these two
13:12:26 18 surgeries in the future," Mr. Dineen says, "Yeah, well,
13:12:29 19 that doesn't really change for me because I was basing
13:12:32 20 it on my interview and where she was when I met with
13:12:35 21 her, at 45 percent." And his opinion didn't change.

13:12:40 22 There was one other point that was made. I
13:12:44 23 can't remember what it was. But, you know, obviously
13:12:47 24 had he relied solely on Dr. Gross's report, I think
13:12:50 25 there might be some traction for the argument to be

1 being advanced by Mr. Jaffe, but that's just not the
2 case. He relied on a bunch of different things.
3 That's why his opinion didn't change.

4 MR. JAFFE: Here's the problem, Judge: All of
5 that information was known well in advance of his
6 deposition. I take his deposition. I lock him in.
7 Now all of a sudden because Gross writes a new report
8 six months after that deposition, acknowledging
9 basically just the reduction in the life care numbers
10 to reflect an opinion he stated well before Dineen was
11 deposed, that's not a basis for Dineen to now come in
12 with a new report. That's not newly disclosed or newly
13 learned or newly available information. All of that
14 information was available well in advance, months in
15 advance of Dineen's deposition.

16 That whole agreement, knocking out both
17 surgeries, was done in July, 2012. Dineen wasn't
18 deposed until four months later and he still didn't
19 know it. And he still to this day hasn't affected --
20 or rather amended that opinion to reflect the fact that
21 Gross has taken out those surgeries.

22 And, you know, I agree that there's a lot of
23 things that any expert is going to rely on, but in this
24 case he testified that he expressly relied on the Gross
25 reports. And when he expressly relies on reports that

13:14:17 1 have no foundation, because the expert and the attorney
13:14:20 2 have already knocked those out of the case months
13:14:23 3 before, there's no foundation for his opinion. And his
13:14:27 4 opinion is flawed.

13:14:29 5 It lacks foundation and evidence present in
13:14:32 6 the case. It was not present in the case when he was
13:14:35 7 deposed, yet he stood behind it. And he's sitting out
13:14:39 8 there on an island with no support. Either that or
13:14:41 9 he's sitting there hanging on a tree limb that is not
13:14:44 10 attached to anything anymore.

13:14:46 11 There's no foundation for it, anymore, Judge.
13:14:49 12 And we believe that Dineen needs to be stricken.

13:14:52 13 THE COURT: Here's what I'm going to do. At
13:14:54 14 this point, I'm not going to strike him because I want
13:14:56 15 to see if there's foundation other than Gross' report
13:14:59 16 for his testimony.

13:15:02 17 So I'm going to deny it at this point. Seems
13:15:05 18 likes most of the arguments that you've made,
13:15:07 19 Mr. Jaffe, I think go to weight as opposed to
13:15:10 20 admissibility. But there may be a foundational deficit
13:15:18 21 if his -- if his opinions are all based upon Gross'
13:15:22 22 report and Gross' report isn't there anymore.

13:15:25 23 Or if the opinion that he -- or the report
13:15:28 24 that he based his opinions on was completely changed.
13:15:31 25 Then I would -- I would tend to agree that there may be

1 a foundational element lacking. But I'm going to have
2 to kind of see what he says initially as far as the
3 foundation for his opinions.

4 MR. JAFFE: Then, your Honor, if that's the
5 case, I'm going to ask for a pretrial evidentiary
6 hearing on Dineen's foundation for his opinions so that
7 we can address this before we start a trial.

8 Here's the problem: Dineen talks about some
9 big numbers. And if the plaintiff is going to put
10 those up in an opening statement in front of a jury and
11 those may not be admitted because of a foundational
12 lapse with Terrance Dineen, those numbers can't be
13 unrun. And it's still out there.

14 You -- we all know, jurors write. And when
15 jurors start hearing evidence in the case, the first
16 thing they hear is a plaintiff's opening statement and
17 jurors are writing because they're taking everything
18 down.

19 So if that's the case, your Honor, I'm going
20 to ask that the Court hold an evidentiary hearing on
21 Dineen's foundation for testifying before trial starts.

22 MR. CLOWARD: Your Honor, I think we can
23 easily cure this by providing you with his deposition.
24 The portion of the deposition that I just read, he
25 indicated that he relied on other things other than

13:16:45 1 Dr. Gross's report. He said in -- I mean, in
13:16:48 2 deposition that I cited that they cited in their reply,
13:16:53 3 he indicated that he relied on other things.

13:16:56 4 So, I mean, it's as simple as a supplemental
13:16:59 5 brief. We can get you his report, get you the items
13:17:02 6 that he says that he relied on, get you his deposition.
13:17:05 7 And if you feel like there's a foundational deficit,
13:17:07 8 then we can revisit the issue. But I don't think we
13:17:11 9 need to have this evidentiary hearing.

13:17:14 10 THE COURT: Well, why don't we do this. Why
13:17:16 11 don't you give me whatever you think I need to look at.
13:17:21 12 And then maybe at the time of the calendar call, we can
13:17:24 13 talk about whether or not we need to do a hearing or
13:17:26 14 not.

13:17:26 15 MR. CLOWARD: That's fair.

13:17:27 16 MR. JAFFE: That's fine, your Honor. The one
13:17:28 17 thing I need to say, though, is this: Dineen wrote
13:17:31 18 that new report six months after my deposition. So the
13:17:35 19 deposition is not fully representative of the issues --

13:17:40 20 THE COURT: I understand.

13:17:40 21 MR. JAFFE: -- and that's why I believe at
13:17:42 22 this point the evidentiary hearing is necessary.

13:17:45 23 THE COURT: Well, why don't you give me the
13:17:47 24 original report, the deposition, the supplemental
13:17:49 25 report. Let me take a look at them.

13:17:54 1 MR. JAFFE: And the Gross reports?

13:17:56 2 THE COURT: That's fine.

13:17:57 3 MR. JAFFE: Okay. Do you want any briefing
13:17:59 4 with it?

13:17:59 5 THE COURT: Yeah. If you want additional
13:18:02 6 briefing, that's fine. Give me whatever you think I
13:18:04 7 need to look at.

13:18:06 8 MR. CLOWARD: Fair enough, Judge. Okay.
13:18:08 9 Thank you, your Honor.

13:18:11 10 THE COURT: I think that's the end of motions
13:18:12 11 in limine for today.

13:18:12 12 MR. JAFFE: It is, your Honor. Thank you very
13:18:14 13 much for your time and your indulgence.

13:18:16 14 MR. CLOWARD: Thank you, Judge.

13:18:20 15 THE COURT: Thanks, guys.

13:18:21 16 MR. CLOWARD: Thank you.

13:18:22 17 THE COURT CLERK: On --

13:18:23 18 MR. JAFFE: I'm sorry to delay your settlement
13:18:24 19 conference and everybody's lunch.

13:18:27 20 THE COURT: That's all right.

13:19:34 21 MR. JAFFE: There was quite a lot of
13:19:35 22 commentary from the bench. I want to make sure we
13:19:39 23 accurately reflect your rulings and your orders.

13:19:42 24 THE COURT: Thanks.

13:19:42 25 MR. JAFFE: Thanks.

1 THE COURT: Thanks, guys.

2
3
4 (The proceedings were concluded)

5
6
7 * * * * * * * *
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17 _____
18 PEGGY ISOM, RMR, CCR 541
19
20
21
22
23
24
25

\$	127/21	111/10 114/24
\$1 [4] 31/21 33/15 36/13 125/9	460 [1] 2/11	accommodated [2] 111/11 111/12
\$10,000 [3] 34/10 34/11 34/12	5	accommodation [1] 111/8
\$100 [1] 33/16	5,000 [1] 111/24	according [1] 22/1
\$100,000 [2] 34/5 35/1	50 [2] 20/5 32/17	account [5] 58/21 58/24 59/1 70/19 125/7
\$120 [2] 105/9 105/10	50.115 [1] 115/10	ACCURATE [1] 134/11
\$15,000 [1] 122/8	500 [1] 32/17	accurately [1] 132/23
\$4,000 [1] 122/13	51,000 [1] 125/13	acknowledging [2] 126/9 128/8
\$5 [2] 35/11 36/16	541 [2] 1/24 134/17	act [1] 45/24
\$5 million [1] 35/11	6	acting [1] 124/22
\$500 [2] 105/5 105/9	636515 [1] 3/6	action [1] 104/2
'	7	actual [6] 23/24 58/5 117/14 117/18 117/25 125/16
'81 [1] 60/9	7.70 [9] 31/11 32/24 33/9 34/16 34/19 35/5 35/13 35/21 35/24	actually [25] 3/21 4/24 6/2 10/25 21/4 26/25 40/4 41/18 41/21 45/6 48/25 49/19 54/19 55/15 69/19 71/22 84/3 92/23 101/14 101/25 103/24 103/25 104/3 104/6 117/14
'85 [1] 60/9	70 [3] 48/5 48/7 48/9 702 [4] 2/5 2/6 2/12 2/12 7455 [1] 2/10	actuals [1] 125/6
1	8	add [2] 95/16 121/25
10 [9] 12/25 20/21 32/16 33/4 36/18 37/2 38/9 99/6 112/3	80-year-old [1] 51/19	addiction [2] 27/13 28/1
10,000 [1] 111/24	801 [1] 2/4	addition [2] 39/13 86/3
100 percent [1] 45/1	89101 [1] 2/5	additional [6] 40/10 99/12 99/16 123/18 126/22 132/5
101 [1] 73/11	89128 [1] 2/11	address [10] 10/23 42/16 52/4 52/22 75/14 98/24 101/16 119/13 121/3 130/7
10:38 [1] 3/2	9	addressed [5] 29/14 30/10 61/16 106/23 121/23
11 [3] 1/22 3/1 47/5	99 percent [1] 43/16	addresses [2] 45/22 101/19
12 [3] 28/21 49/17 51/3	9:00 o'clock [1] 121/16	admissibility [1] 129/20
12:00 [1] 79/24	:	admissible [6] 62/3 97/16 98/2 98/23 99/24 100/17
13 [2] 51/4 54/16	:SS [1] 134/2	admission [1] 124/15
14 [1] 54/17	A	admit [2] 97/10 121/20
15 [5] 59/24 64/20 64/21 64/23 64/24	a -- that [1] 67/22	admitted [1] 130/11
15,000 [1] 122/17	A.M [1] 3/2	adopted [1] 96/2
16 [6] 1/2 61/24 64/19 64/21 64/23 64/24	A636515 [1] 1/1	advance [5] 42/7 110/22 128/5 128/14 128/15
16.1 [6] 38/13 38/19 39/9 40/16 40/23 96/2	abide [1] 42/19	advanced [2] 81/22 128/1
17 [2] 64/22 65/1	ability [4] 7/12 7/23 10/5 134/11	advocacy [2] 73/10 73/11
18 [2] 68/13 73/16	able [27] 15/13 15/22 22/13 22/23 24/6 25/15 25/15 37/15 38/17 47/15 51/9 52/10 52/13 54/25 57/25 59/6 69/11 77/1 77/22 86/10 105/22 105/23 106/1 106/8 110/2 118/25 120/3	affect [1] 55/6
19 [1] 73/17	about [144]	affected [2] 9/22 128/19
1:00 [1] 107/5	absolutely [13] 21/3 29/9 45/1 51/1 58/11 58/11 60/21 66/23 67/24 88/2 88/6 113/1 120/16	affects [1] 6/10
2	abuse [2] 27/7 28/1	affirmative [1] 83/18
20 [14] 5/11 6/19 6/20 7/7 7/16 7/19 16/1 32/16 60/5 66/8 66/8 66/9 77/17 79/18 200 [1] 32/17	accept [2] 40/19 122/18	afford [2] 97/24 97/25
2003 [3] 6/10 6/12 6/14	accepted [2] 76/13 122/15	after [19] 48/5 48/8 65/4 65/10 69/1 73/25 76/7 79/24 82/21 83/25 90/23 93/6 113/24 116/15 119/21 121/1 126/7 128/8 131/18
2004 [2] 60/9 60/10	accident [37] 6/5 7/7 7/11 7/19 8/7 8/16 8/22 9/10 14/1 14/1 15/17 19/19 28/6 30/2 51/8 51/19 52/6 59/15 60/4 62/6 62/7 62/8 63/1 63/13 63/23 69/12 69/12 70/7 70/10 70/10 70/17 71/8 71/16 75/21 76/8 79/5 125/11	afterwards [1] 49/10
2010 [1] 6/6	accidents [15] 5/9 5/11 6/17 8/19 9/20 9/24 9/25 12/2 12/4 15/14 15/25 60/5 60/12 60/25 61/7	again [5] 33/6 36/5 71/3 82/11 114/14
2011 [1] 39/6	accommodate [3] 111/1	against [3] 30/12 53/11 100/21
2012 [1] 128/17		ago [12] 5/11 6/19 6/21 7/16 7/19 12/3 29/13 60/6 68/18 74/5 82/21 93/5
2013 [2] 1/22 3/1		agree [40] 6/13 7/2 8/2 15/14 16/20 19/6 24/6 25/23 26/15 29/2 29/9 31/14 32/14 33/18 34/21 43/15 44/17 55/22 56/15 57/23 63/25 69/25 70/11 71/2 78/1 80/23
3		
30-some-odd [1] 58/7		
31.6 [1] 55/4		
316-4111 [1] 2/12		
316-4114 [1] 2/12		
32 [3] 57/17 57/20 57/25		
4		
4111 [1] 2/12		
4114 [1] 2/12		
444-4444 [1] 2/5		
444-4455 [1] 2/6		
4444 [1] 2/5		
4455 [1] 2/6		
45 percent [3] 127/5 127/13		

A		
agree... [14] 83/22 84/3 84/4 85/6 85/20 86/20 87/7 88/8 88/10 93/15 113/17 119/5 128/22 129/25 agreeing [1] 18/7 agreement [1] 128/16 agrees [1] 105/5 ahead [3] 3/7 32/9 39/1 ALISON [2] 2/4 3/9 all [86] 3/16 4/13 5/1 7/22 8/25 9/6 10/1 13/10 13/18 16/7 17/9 17/20 20/13 21/20 24/1 25/1 31/20 34/18 38/8 40/21 44/19 44/20 47/3 47/4 47/22 48/9 48/19 49/21 52/10 52/18 52/22 53/5 54/3 58/21 59/8 60/12 60/17 63/6 64/4 65/7 66/5 66/18 72/15 73/22 75/16 76/22 79/23 79/25 83/7 85/10 88/13 89/11 90/25 91/3 93/6 93/17 94/10 97/13 97/18 100/24 101/10 101/19 104/15 105/15 105/24 107/4 107/20 110/3 111/19 113/16 115/1 115/9 117/2 117/11 118/8 119/2 121/7 121/20 122/5 128/4 128/7 128/13 129/21 130/14 132/20 134/5 alleged [3] 6/10 8/16 73/18 allegedly [1] 6/17 alleges [1] 71/9 allow [48] 5/15 10/17 11/2 11/13 11/16 21/16 25/15 28/18 28/19 30/22 31/5 32/19 35/25 37/10 37/13 42/5 44/18 46/10 46/20 49/25 50/6 50/13 50/20 54/5 59/19 63/11 64/14 68/10 73/16 79/8 79/9 79/14 80/8 80/25 80/25 87/9 89/23 90/10 91/15 93/12 95/20 97/4 112/25 113/6 115/13 115/22 120/25 123/5 allow -- I [1] 79/8 allowed [22] 6/21 7/8 8/3 34/25 44/2 53/12 55/5 70/14 70/19 70/23 74/1 80/19 86/21 86/25 94/8 94/13 96/5 96/24 104/4 108/16 112/18 122/14 allowing [8] 7/15 11/11 11/12 28/15 31/7 37/13 68/22 74/24 allows [1] 33/9 almost [1] 16/24 alone [1] 51/25 along [5] 12/9 21/11 21/12 85/1 110/6 already [12] 17/15 38/3 58/25 80/5 80/15 86/4 90/11 97/11 103/1 104/8 121/23 129/2 also [18] 3/14 15/16 26/22 28/23 29/10 39/16 53/14 67/15 84/23 87/11 89/18 93/20 101/15 102/18 115/18 116/1 125/24 127/11 always [6] 17/21 45/11 84/5	92/8 111/10 122/25 am [3] 59/18 61/21 88/20 ambulance [1] 20/10 ambush [9] 43/3 83/20 85/5 86/20 91/11 91/19 93/4 93/16 96/23 amended [5] 38/23 39/9 44/15 96/22 128/20 amendment [5] 39/10 40/10 40/11 40/12 91/22 amount [15] 98/15 101/25 102/19 102/20 102/20 103/11 103/13 103/14 104/6 104/8 104/21 105/11 106/21 118/17 121/25 amounts [7] 31/8 37/11 101/14 102/14 103/8 103/9 121/22 ample [1] 120/4 analysis [8] 55/14 69/4 70/18 71/15 71/18 72/21 74/21 127/14 and/or [2] 80/2 119/21 anecdotal [1] 78/18 anesthesia [1] 119/17 animated [1] 117/12 animation [1] 120/8 animations [2] 118/14 119/7 another [11] 42/1 51/22 62/24 66/12 66/14 66/16 84/25 106/21 122/4 123/16 123/17 answer [7] 72/13 83/1 112/19 112/19 114/16 114/18 127/7 answered [1] 112/14 answers [1] 82/9 anticipate [2] 4/8 49/5 anticipated [1] 19/13 anticipating [1] 93/8 any [54] 5/22 8/20 13/1 19/10 31/18 31/19 32/11 33/10 35/16 40/7 40/21 41/1 42/6 44/9 51/5 51/22 52/5 52/7 52/8 53/20 55/1 56/12 60/2 60/11 60/12 60/22 61/10 63/20 65/4 68/1 69/5 69/15 74/1 80/3 81/14 82/17 85/14 87/12 88/16 96/6 97/17 97/21 99/15 99/22 101/1 105/19 107/10 112/7 117/25 118/18 119/6 120/19 128/23 132/3 anybody [5] 34/5 34/10 34/12 34/24 117/25 anymore [6] 15/20 15/22 125/12 129/10 129/11 129/22 anything [23] 6/20 7/13 9/15 19/18 27/6 32/5 41/7 44/18 45/12 45/12 45/13 54/2 55/22 61/2 61/3 67/25 82/20 90/19 100/14 112/11 118/1 126/8 129/10 anyway [1] 18/17 anyways [1] 106/6 apologize [1] 64/25 appearances [2] 2/1 3/8 application [2] 13/22 16/4 applies [4] 15/19 26/15 102/3 102/7	apply [1] 43/7 apportionment [1] 14/18 appreciate [2] 4/12 4/25 appropriate [6] 14/15 32/7 43/17 43/21 49/9 114/8 are [135] areas [1] 89/18 aren't [4] 8/25 22/25 99/5 109/18 arguably [1] 59/16 argue [7] 25/17 32/9 56/2 77/23 87/20 103/3 103/6 argued [2] 19/14 80/5 arguing [5] 4/16 26/16 55/11 58/6 94/24 argument [44] 15/7 16/15 17/21 18/11 21/8 23/22 23/24 23/25 25/22 26/24 38/16 40/19 47/23 50/9 51/12 51/22 53/12 54/11 54/13 55/12 55/23 55/23 55/24 56/9 58/6 59/3 60/1 60/24 73/9 73/9 73/19 77/20 77/23 80/5 93/9 94/16 96/9 106/25 109/3 109/25 113/10 113/22 113/24 127/25 arguments [7] 4/19 12/8 18/23 25/2 26/13 52/4 129/18 Arizona [1] 39/5 around [3] 110/21 121/19 122/3 as [154] ask [39] 5/18 6/8 6/22 8/17 9/7 14/25 23/13 24/13 24/13 25/16 25/24 26/22 29/4 31/1 31/12 31/21 32/3 33/3 33/13 33/15 33/16 36/2 36/9 36/16 48/10 54/5 54/6 67/13 76/24 81/13 90/14 96/14 98/6 99/1 99/3 100/13 109/1 130/5 130/20 asked [12] 7/20 9/21 9/24 46/17 68/18 71/24 76/17 81/14 85/13 85/13 86/24 125/8 asking [10] 9/6 10/19 36/13 53/3 55/3 67/14 75/5 90/8 90/9 90/25 asks [3] 31/3 31/17 33/14 assert [1] 102/9 assume [3] 99/8 109/3 109/8 assure [1] 112/7 assured [1] 112/7 at [67] 8/25 9/8 19/11 20/17 26/14 26/18 28/2 28/21 30/14 31/17 31/19 31/21 33/8 36/13 39/11 40/1 40/3 40/3 45/18 47/5 48/25 49/7 49/23 49/24 50/21 50/25 53/5 54/3 61/21 62/6 62/16 63/14 65/4 65/12 72/9 72/11 72/22 72/23 72/24 73/5 81/18 82/3 85/21 91/1 92/21 92/25 93/9 97/20 99/12 101/13 104/14 105/2 110/3 118/9 120/13 120/18 127/10 127/21 129/13 129/17 131/11 131/12 131/21 131/25 132/7 134/6 134/8

A		
<p>attached [1] 129/10 attack [2] 74/18 90/12 attempt [2] 13/23 28/25 attorney [32] 19/9 20/13 20/17 21/11 21/13 21/21 21/23 22/6 22/12 22/17 23/1 23/9 23/12 23/14 23/18 23/25 24/3 24/8 24/15 24/16 24/20 31/17 33/12 33/14 65/8 66/2 67/15 68/4 68/5 68/11 111/10 129/1 attorney-driven [9] 19/9 21/13 21/21 22/6 22/12 23/1 23/25 24/15 24/20 attorneys [5] 19/11 19/14 24/1 26/4 110/11 automatically [1] 52/17 available [3] 110/18 128/13 128/14 AVENUE [1] 2/10 average [1] 118/16 avoid [1] 83/20 avoiding [1] 115/11 award [9] 34/4 34/10 34/12 35/2 55/3 57/20 103/21 103/23 105/10 awarding [1] 30/16 awards [1] 35/1 aware [1] 6/11</p>	<p>become [2] 28/25 98/2 becomes [6] 32/13 32/18 32/24 81/12 102/20 108/23 Beecroft [2] 38/21 39/11 been [58] 15/24 16/17 16/18 30/14 37/15 42/24 45/11 54/12 57/10 61/19 65/9 71/3 74/8 82/22 83/12 84/15 86/5 86/18 86/22 86/23 87/3 89/6 89/14 95/3 95/8 98/19 99/2 101/6 102/14 102/15 102/15 102/24 102/24 103/1 103/8 103/9 103/14 103/24 103/25 104/1 104/5 104/8 104/13 106/16 106/19 106/20 106/20 108/4 108/10 108/18 108/19 111/11 117/18 117/18 122/1 123/13 125/20 126/7 before [36] 1/19 4/24 16/1 18/3 45/16 46/25 48/5 48/8 64/13 65/10 74/1 75/11 76/17 77/1 82/11 83/25 84/5 87/24 88/1 103/23 104/1 107/22 108/5 108/10 108/24 110/15 115/3 118/11 119/21 120/15 121/3 128/10 129/3 130/7 130/21 134/6 before-and-after [3] 48/5 48/8 65/10 BEFORE-ENTITLED [1] 134/6 beforehand [2] 87/15 88/5 behalf [5] 65/19 66/3 98/20 101/14 103/14 behind [4] 42/14 56/9 94/9 129/7 being [13] 7/20 12/19 51/23 53/12 62/19 66/7 66/8 67/8 68/11 99/1 99/12 108/21 128/1 belief [1] 14/2 believe [25] 15/22 29/13 30/6 32/25 33/5 33/10 39/4 39/6 39/11 55/9 63/8 65/20 74/13 90/8 95/10 95/14 101/18 108/6 111/14 114/16 117/17 121/6 122/19 129/12 131/21 believes [1] 62/8 bell [1] 87/19 Belsky [9] 83/5 94/17 94/25 96/19 113/23 115/15 115/23 116/14 116/18 Ben [1] 3/9 bench [2] 87/6 132/22 benefit [4] 84/25 105/21 106/1 106/8 BENJAMIN [2] 2/3 2/6 best [2] 125/19 134/11 better [3] 60/20 103/22 103/25 between [4] 64/1 65/15 78/6 93/3 beyond [14] 21/18 28/24 33/8 38/18 42/23 53/1 61/12 65/16 67/11 80/19 90/6 90/11 94/15 99/13 bias [25] 25/14 50/10 65/20 65/22 66/4 66/7 66/10 66/16 67/8 67/11 67/19 68/1 98/5 98/17 98/19 98/20 99/13</p>	<p>99/13 99/16 99/22 100/1 100/6 100/15 100/22 100/23 biases [3] 30/12 34/1 34/2 big [2] 32/24 130/9 bill [4] 102/21 105/9 105/12 122/8 billed [5] 102/15 103/8 103/24 104/18 104/22 billing [1] 104/25 bills [8] 34/25 35/2 104/20 104/25 105/5 105/22 105/24 106/10 binder [1] 107/4 biomechanical [9] 52/20 61/25 62/14 70/18 70/20 70/21 71/15 72/5 115/19 biomechanics [2] 54/1 64/6 biomedical [1] 72/1 black [1] 44/4 blanche [3] 41/7 42/6 42/10 blindsided [1] 83/15 blood [11] 55/7 56/5 56/17 57/22 58/17 58/17 117/25 118/17 118/17 119/4 119/6 bloody [1] 120/25 board [1] 120/24 body [9] 5/12 5/17 8/15 9/4 9/9 15/18 59/14 59/15 86/11 boils [1] 21/2 book [1] 3/17 both [13] 9/19 19/24 25/22 26/7 26/16 27/4 30/21 30/25 33/24 65/25 124/5 124/14 128/16 both-way [1] 25/22 bottom [1] 62/6 bought [1] 124/20 box [1] 32/21 boy [3] 7/18 7/19 35/7 BRASIER [2] 2/4 3/9 brief [3] 25/19 47/2 131/5 briefing [2] 132/3 132/6 briefly [1] 97/13 briefs [1] 37/21 bring [15] 4/11 30/1 30/8 37/23 47/21 54/25 55/5 59/21 66/10 66/17 79/7 105/2 105/7 112/1 112/3 brings [2] 66/18 111/18 broad [6] 13/8 13/13 13/22 15/10 29/19 71/4 broad-stroke [1] 13/22 broader [1] 15/8 brought [5] 30/7 40/12 87/13 107/16 110/14 bucks [1] 35/10 build [1] 20/25 building [1] 31/10 buildup [6] 19/9 21/21 21/23 22/7 22/12 24/21 built [1] 51/18 Bulla [1] 39/10 Bulla's [1] 38/22 bump [1] 70/22 bunch [6] 83/24 84/20 84/20 84/21 99/7 128/2 bunion [1] 56/15 bunions [2] 55/20 57/7 Busby [3] 65/8 66/17 67/15 Busby's [1] 68/11</p>
B		
<p>back [21] 10/10 17/1 17/4 33/6 43/20 47/3 68/17 71/9 73/7 82/10 110/9 111/11 111/12 112/3 113/7 113/8 114/4 115/14 117/3 120/1 120/20 back -- it's [1] 33/6 backdoor [2] 72/14 72/18 backwards [1] 10/25 bad [1] 33/17 balance [1] 100/20 based [45] 4/5 5/22 7/2 17/24 22/3 22/8 22/24 23/5 26/17 31/13 31/18 31/18 32/4 32/8 34/2 35/22 36/10 39/7 40/7 48/19 50/16 50/19 51/22 51/25 58/24 62/4 63/18 64/11 69/5 69/23 76/25 81/2 107/2 109/25 115/10 116/13 123/20 124/12 125/5 127/13 127/14 127/14 127/15 129/21 129/24 basically [12] 5/7 13/14 47/14 48/6 74/13 78/21 105/18 107/12 114/25 116/20 124/22 128/9 basing [5] 31/25 58/14 58/23 125/21 127/19 basis [12] 30/1 42/8 56/8 57/5 65/12 69/20 74/19 82/23 83/8 124/13 127/6 128/11 be [215] be -- is [1] 98/23 be -- it's [1] 98/18 bear [2] 89/15 109/11 became [1] 39/3 because [139]</p>		

B		
business [2]	65/4 124/21	
but [154]		
buying [2]	64/5 122/15	
C		
calendar [2]	121/16 131/12	
California [2]	103/16	
	103/20	
call [14]	47/8 47/17 48/11	
	48/17 49/2 49/5 49/7 49/15	
	72/5 109/15 110/9 111/19	
	115/14 131/12	
called [4]	21/11 47/16	
	113/24 115/25	
calling [4]	47/25 48/7	
	48/24 79/13	
calls [1]	70/21	
came [3]	69/1 75/16 95/6	
can [75]	7/5 8/24 8/25	
	12/13 22/18 23/10 24/13	
	28/12 30/13 31/1 32/3 33/23	
	36/9 36/22 36/24 37/17	
	39/14 39/15 39/16 40/1 40/3	
	40/3 40/4 40/10 40/13 41/4	
	42/20 42/20 45/11 45/19	
	45/24 50/23 56/23 56/25	
	59/14 64/2 65/17 73/13	
	73/15 74/21 74/22 76/11	
	76/18 76/24 77/24 78/1	
	79/15 80/13 81/24 83/14	
	84/18 87/14 88/4 88/12 92/8	
	94/10 95/1 97/11 101/23	
	105/8 110/24 111/2 111/3	
	112/6 116/15 118/10 119/1	
	119/1 119/2 123/3 130/7	
	130/22 131/5 131/8 131/12	
can't [46]	8/23 8/23 14/5	
	18/14 18/14 26/18 28/2 29/6	
	29/7 31/12 35/13 36/25	
	40/17 42/23 42/23 43/2 43/7	
	45/15 45/20 50/1 50/4 53/21	
	58/16 60/25 66/19 73/20	
	79/7 79/8 79/8 79/14 79/15	
	81/19 82/6 82/10 82/19	
	82/19 82/20 86/10 92/20	
	110/8 110/22 111/3 113/21	
	125/11 127/23 130/12	
candidate [1]	87/17	
candidly [1]	4/18	
cannot [4]	34/16 58/11	
	58/11 78/8	
Canyon [1]	122/4	
cap [2]	30/18 30/19	
capacity [4]	108/14 108/15	
	127/6 127/8	
car [1]	30/2	
cardiac [1]	18/7	
care [23]	19/15 21/14 34/3	
	34/8 40/18 45/14 45/17 46/8	
	46/9 46/14 46/19 80/11	
	80/20 81/9 81/15 86/7 86/8	
	97/6 104/16 122/3 126/1	
	126/4 128/9	
cars [1]	63/21	
carte [3]	41/7 42/5 42/9	
cartoon [1]	119/7	
case [89]	1/1 3/6 6/10 9/23	
	10/6 10/13 14/22 19/8 19/9	
	20/14 21/1 21/9 21/15 22/6	
	24/21 30/8 30/18 30/19	
	31/20 32/5 36/11 39/4 39/6	
	39/7 40/21 40/23 41/8 44/7	
	48/3 50/17 51/24 52/9 52/21	
	55/9 59/5 60/22 61/20 62/16	
	65/9 65/10 67/23 67/25	
	74/15 75/20 83/4 92/25 94/3	
	94/20 95/6 97/17 97/17	
	97/19 98/9 98/11 98/12	
	98/13 100/1 101/18 101/19	
	101/22 103/7 103/15 103/16	
	103/16 103/17 103/19 105/18	
	107/18 107/25 108/17 108/22	
	108/22 109/17 115/7 115/7	
	116/16 123/2 124/5 124/14	
	124/14 124/25 128/2 128/24	
	129/2 129/6 129/6 130/5	
	130/15 130/19	
cases [6]	10/2 12/6 25/12	
	38/7 99/19 105/18	
Castelletti [6]	50/18 50/20	
	100/20 100/23 105/17 106/14	
causally [1]	104/22	
causation [8]	14/16 38/10	
	46/6 70/16 70/24 72/4 92/1	
	115/19	
cause [5]	36/1 37/14 55/16	
	72/7 111/18	
caused [2]	62/19 71/8	
caveat [1]	24/4	
CCR [2]	1/24 134/17	
center [2]	122/6 122/8	
centered [1]	22/17	
certain [12]	31/4 37/16	
	47/25 54/24 57/10 91/16	
	93/1 94/8 104/7 108/1 113/6	
	126/4	
certainly [7]	3/24 8/24	
	22/18 32/10 43/9 67/10	
	78/17	
CERTIFICATE [1]	134/1	
CERTIFIED [1]	134/4	
CERTIFY [1]	134/5	
cervical [2]	86/2 123/16	
cetera [3]	57/22 123/19	
	123/19	
challenge [2]	35/25 37/18	
challenges [1]	37/14	
chameleon [1]	125/19	
chance [2]	13/4 108/24	
change [9]	41/3 125/18	
	126/7 126/9 126/23 126/23	
	127/19 127/21 128/3	
changed [5]	82/12 110/16	
	126/1 126/11 129/24	
changes [1]	38/13	
changing [1]	86/8	
characterization [1]	70/17	
charge [2]	98/8 122/24	
charged [3]	29/16 99/6 99/7	
charges [1]	29/19	
chart [12]	41/14 42/22	
	42/25 43/13 45/12 80/22	
	81/7 82/8 90/7 92/4 96/6	
	120/22	
charts [4]	80/13 81/2 81/3	
	119/2	
checklist [1]	127/9	
chest [1]	17/4	
chief [2]	107/19 109/17	
children [1]	124/23	
chiropractic [1]	40/4	
chiropractor [1]	105/4	
choice [2]	108/12 108/13	
cholesterol [3]	55/8 56/17	
	57/22	
church [2]	65/12 65/16	
Circuit [2]	39/4 39/6	
circumstance [7]	94/23	
	110/19 111/6 111/9 111/9	
	111/14 112/23	
circumstances [3]	78/10	
	79/1 79/17	
citation [1]	101/23	
cite [1]	38/21	
cited [2]	131/2 131/2	
cites [1]	38/19	
citing [1]	127/3	
civil [3]	13/15 65/2 67/21	
claim [3]	65/3 118/21	
	124/24	
claimed [2]	62/18 97/22	
claiming [1]	10/7	
clarification [2]	23/17	
	36/3	
clarified [1]	66/25	
clarify [2]	17/23 64/9	
clarity [1]	116/17	
CLARK [3]	1/5 134/3 134/14	
classes [1]	64/5	
CLAYTON [3]	2/9 3/12 3/15	
clear [6]	17/19 23/23 24/10	
	103/19 108/9 124/20	
client [11]	9/24 10/6 21/12	
	24/12 24/16 27/10 52/14	
	54/7 54/11 54/12 54/14	
client's [9]	43/11 54/3	
	108/7 112/8 112/9 112/17	
	113/6 114/15 115/12	
clients [2]	24/1 33/25	
clinical [4]	38/18 41/14	
	43/12 80/2	
closing [7]	12/8 26/13	
	26/13 26/17 60/24 118/7	
	120/24	
CLOWARD [26]	2/3 3/9 9/18	
	12/1 17/24 23/19 27/10 33/3	
	35/6 35/14 39/1 47/15 51/9	
	76/24 88/1 90/14 94/24	
	109/22 110/25 111/18 112/12	
	112/16 114/17 114/25 117/23	
	120/14	
Cloward's [1]	15/7	
co [8]	54/24 55/5 55/15	
	55/15 57/21 58/8 58/21 59/1	
co-morbidities [8]	54/24	
	55/5 55/15 55/15 57/21 58/8	
	58/21 59/1	
collateral [24]	49/17 49/21	
	49/24 50/14 50/16 99/20	
	100/19 100/24 101/1 101/4	
	101/15 101/17 102/3 104/10	
	105/15 105/19 105/24 106/9	
	106/14 106/17 106/18 107/2	
	122/22 123/4	
collision [3]	53/15 62/19	
	63/16	
color [2]	99/23 100/1	
colored [3]	108/4 108/10	
	108/18	

C		
colors [1] 65/13	consumption [1] 115/11	credible [1] 69/6
come [41] 4/17 7/8 9/19	contained [1] 84/9	criticism [2] 44/24 94/5
10/1 35/18 38/1 40/17 40/24	contemplated [3] 43/24	criticisms [1] 43/22
41/4 41/9 42/5 42/20 43/22	86/23 86/23	criticize [3] 44/21 44/22
44/18 48/6 48/23 50/23	contemplates [2] 91/20 92/6	44/22
52/10 61/19 63/2 76/3 79/4	context [2] 102/4 102/7	criticized [1] 116/21
81/13 81/16 82/1 82/2 83/24	continue [1] 86/9	criticizes [1] 93/20
87/6 87/20 92/21 99/5 99/12	continues [2] 82/18 86/12	criticizing [2] 92/18 95/7
100/25 102/18 109/13 113/7	contradicted [1] 96/7	Croft [1] 115/18
113/8 114/4 115/1 117/3	contrary [1] 32/9	cross [8] 12/9 55/10 56/23
128/11	controlling [1] 103/16	78/6 90/2 96/5 96/9 122/16
comes [16] 4/7 59/21 66/22	conversation [1] 112/20	cross-examination [4] 12/9
72/10 73/4 74/23 80/22	convince [5] 39/1 63/5 65/5	96/5 96/9 122/16
81/25 84/5 85/16 97/20	78/4 105/8	cross-examine [1] 56/23
100/4 111/7 118/17 119/4	convinced [1] 78/22	cross-examining [1] 55/10
126/6	cop [2] 62/7 68/19	cross-over [1] 78/6
coming [3] 4/8 42/23 82/7	correct [11] 5/14 11/8	crosses [1] 89/9
comment [8] 22/18 43/22	12/16 22/16 60/7 68/20	crossing [2] 89/5 95/13
44/13 48/21 49/3 49/8 50/4	92/23 95/9 101/23 115/17	cumulative [2] 47/8 89/19
89/16	117/24	cure [1] 130/23
commentary [1] 132/22	correctly [2] 47/14 51/8	curious [1] 54/9
commenting [2] 32/12 107/9	correspondence [1] 64/3	current [3] 7/17 8/8 9/15
comments [2] 45/6 68/22	cost [3] 81/22 111/22 112/2	customary [1] 122/10
commissioner [5] 38/21	costs [9] 48/10 49/10 112/9	cut [2] 74/12 84/13
38/22 39/10 39/11 48/12	112/10 114/10 114/14 114/20	cuts [1] 53/11
companies [1] 35/8	123/19 126/4	
compelled [1] 116/23	could [7] 12/14 51/16 59/16	D
compelling [1] 115/5	67/13 67/21 102/17 113/21	damage [5] 63/21 64/12
compensation [2] 101/20	couldn't [5] 54/12 97/22	68/15 72/23 73/6
101/25	97/23 97/23 97/25	damages [3] 14/17 101/13
complained [1] 86/19	counsel [12] 14/10 18/12	102/11
complaining [1] 20/16	24/23 24/24 25/5 25/10 59/1	dancing [1] 124/23
complaint [2] 20/21 76/7	60/23 65/19 67/7 68/2 85/25	danger [3] 66/6 68/21 69/22
complaints [6] 9/22 9/22	counter [1] 50/9	data [1] 127/11
20/16 21/5 21/7 34/11	counter-argument [1] 50/9	DATED [1] 1/22
complete [1] 42/12	country [4] 109/9 109/15	day [11] 36/14 99/6 110/17
completely [6] 84/3 86/17	110/10 114/21	110/17 110/19 110/20 111/3
108/16 113/4 124/18 129/24	COUNTY [8] 1/5 101/18	111/24 111/24 112/2 128/19
complies [2] 31/16 31/25	101/19 101/24 103/18 104/11	deal [4] 55/1 87/14 95/19
compromise [1] 68/7	134/3 134/14	120/17
concern [10] 29/17 32/25	couple [6] 3/22 12/6 50/22	dealing [2] 50/22 70/7
34/17 36/5 36/6 36/7 37/9	75/16 88/19 112/13	decided [2] 90/18 125/7
48/3 48/4 111/16	course [9] 4/8 15/3 39/23	deciding [1] 125/18
concerned [4] 16/13 18/10	57/7 84/25 92/4 110/12	decision [5] 22/18 29/11
96/22 114/17	125/1 125/25	29/13 100/21 100/21
concluded [1] 133/4	courses [1] 70/6	defend [11] 41/13 44/11
conclusions [3] 62/4 80/10	court [26] 1/4 1/20 28/23	45/2 52/9 94/3 94/4 94/8
97/1	29/12 29/14 30/4 39/9 40/12	95/23 96/25 96/25 114/7
concoct [1] 22/19	41/4 42/10 42/15 42/20	defendant [16] 3/12 3/15
condition [2] 7/17 61/10	90/10 90/11 95/25 96/1	19/8 19/13 24/25 29/8 51/4
conditions [7] 5/8 54/18	100/3 100/5 100/7 102/4	101/17 103/5 103/10 103/12
54/21 55/8 59/10 59/12	102/7 109/14 110/15 112/24	105/20 105/25 106/2 106/6
78/20	115/6 130/20	106/7
conduct [1] 94/21	courtesies [2] 110/11	defendant's [13] 3/22 28/20
conference [2] 121/15	112/22	54/2 68/13 79/25 88/15 98/7
132/19	courtroom [2] 29/18 71/23	98/20 105/2 107/7 116/15
confides [1] 67/6	courts [1] 104/12	117/11 121/20
conflated [1] 112/21	coverage [1] 29/8	defendants [3] 1/11 29/1
confuse [7] 5/3 5/19 8/18	covered [1] 29/1	103/13
10/20 11/6 11/17 53/22	crash [7] 6/7 11/24 17/3	defending [4] 92/4 93/13
confused [1] 10/9	18/22 20/9 51/6 68/14	93/13 93/14
consideration [1] 9/1	create [6] 7/9 21/7 52/17	defense [39] 5/9 12/8 25/13
consistent [3] 46/24 62/18	55/18 60/17 114/9	25/24 38/19 39/17 40/2 42/7
63/23	created [4] 12/20 16/24	44/3 44/16 54/10 54/20
constitute [1] 93/16	16/25 52/18	62/22 70/15 82/5 83/17
CONSTITUTES [1] 134/10	creates [1] 32/21	88/17 89/3 89/8 89/16 90/3
consult [1] 71/25	creating [3] 8/6 13/2 72/19	90/4 90/4 90/12 90/12 90/21
consultations [3] 78/13	creative [1] 73/2	90/25 92/9 94/18 95/11
78/14 78/15	credibility [3] 10/2 68/24	99/14 107/10 107/10 107/16
	74/18	108/23 113/14 114/3 115/7
		115/8

D		
defense's [1] 38/16	diagnostics [1] 22/3	dismissed [1] 86/5
defer [1] 62/25	diagram [1] 20/22	distinction [1] 101/8
deference [2] 100/3 100/4	did [32] 4/19 19/18 39/21	distinctions [1] 101/22
deficit [2] 129/20 131/7	40/2 40/6 44/8 44/10 62/1	DISTRICT [3] 1/4 1/20 39/5
definitely [1] 26/17	64/23 69/17 71/13 72/5	do [90] 3/17 3/19 4/12 5/19
definition [5] 74/6 74/10	88/16 89/16 92/11 92/11	6/20 7/13 8/8 9/15 13/17
75/19 75/24 76/5	92/11 93/14 93/18 94/23	16/17 17/3 17/4 17/18 18/16
definitions [1] 76/13	95/10 97/11 98/9 106/10	19/18 21/12 21/24 24/8
degree [2] 7/6 124/2	106/10 114/16 115/18 115/23	29/14 39/23 42/9 45/5 46/25
delay [1] 132/18	116/2 116/10 116/22 126/3	53/22 54/2 54/25 55/6 55/22
demonstrate [1] 120/5	didn't [33] 9/25 13/3 14/14	56/16 57/24 58/8 58/11
demonstrative [7] 117/15	14/14 19/18 21/5 39/23	60/17 61/2 61/4 61/9 67/22
117/17 117/20 117/22 120/19	39/24 39/24 40/7 47/17	68/8 69/15 69/16 69/17 70/2
121/7 121/11	47/21 50/2 52/7 52/8 63/13	70/4 71/25 72/9 72/10 72/10
denied [12] 10/16 10/18	69/15 74/5 74/5 74/9 75/22	72/16 73/3 73/6 73/13 74/19
11/2 11/12 26/10 54/16 68/9	76/10 79/3 81/8 84/1 96/14	76/18 77/24 79/11 79/12
73/16 97/5 107/1 117/10	114/17 124/8 124/17 125/7	81/2 81/14 83/14 83/18
123/7	127/21 128/3 128/18	85/13 87/1 88/12 89/22
deny [3] 95/20 121/9 129/17	Diego [1] 115/21	89/23 91/10 91/14 91/15
depend [1] 10/23	difference [4] 23/17 93/3	91/16 91/17 91/18 91/18
depending [1] 111/22	93/8 99/9	93/9 94/9 94/24 96/18 96/21
depends [1] 85/12	different [18] 4/7 23/20	99/14 110/13 111/5 112/13
depicting [1] 119/3	23/24 25/3 37/3 41/18 41/22	115/4 117/4 119/22 127/10
depiction [2] 119/23 120/7	47/19 52/2 63/10 68/25	129/13 131/10 131/13 132/3
depictions [1] 117/12	70/25 88/24 97/20 101/20	134/4
depose [3] 48/9 84/15 92/9	110/10 115/6 128/2	DOCKET [1] 1/1
deposed [17] 21/6 41/15	differently [2] 49/20 51/18	doctor [60] 6/9 6/11 7/11
48/15 48/19 49/6 81/11 83/4	diligent [1] 85/7	7/15 7/20 7/22 8/23 8/24
83/12 93/5 93/6 93/17 93/20	Dineen [21] 123/9 123/11	12/12 12/14 12/15 20/11
95/8 126/7 128/11 128/18	123/20 124/6 124/7 124/8	20/12 24/16 25/14 42/8 43/3
129/7	124/17 124/19 125/3 126/6	43/6 44/18 45/11 45/15
deposition [38] 12/22 45/13	126/16 126/19 126/21 127/18	45/20 50/1 50/5 55/19 57/11
46/17 52/8 62/25 63/8 73/25	128/10 128/11 128/17 129/12	59/4 59/6 68/22 71/5 71/6
73/25 81/23 82/10 82/11	130/8 130/12 131/17	75/1 75/9 75/11 78/7 82/19
82/21 83/25 84/6 85/4 85/11	Dineen -- it's [1] 124/19	84/14 85/15 85/20 86/8
85/18 86/16 90/19 90/21	Dineen's [4] 127/4 128/15	86/17 87/5 87/8 88/3 89/1
92/14 96/7 119/23 124/10	130/6 130/21	89/2 89/9 89/16 90/4 92/7
124/11 125/25 127/4 128/6	ding [3] 87/18 87/18 87/18	94/17 94/22 100/13 104/6
128/6 128/8 128/15 130/23	dire [12] 28/15 28/25 30/5	104/24 105/23 111/23 115/3
130/24 131/2 131/6 131/18	30/23 31/7 74/3 75/11 76/18	116/4 116/25
131/19 131/24	77/1 77/5 77/13 77/14	doctor's [1] 82/11
depositions [14] 41/15	direct [5] 108/15 108/22	doctors [69] 6/19 7/4 7/5
46/12 74/4 74/23 80/2 80/11	108/22 115/7 118/6	8/3 8/20 9/25 14/2 14/22
81/11 81/25 84/10 84/12	directed [1] 19/14	15/1 15/24 16/6 16/17 20/15
85/8 86/11 90/23 92/24	direction [3] 19/11 20/17	20/24 22/13 24/1 26/3 40/10
deprivation [1] 108/6	134/9	41/4 42/5 42/15 42/20 43/11
deprive [1] 108/2	directly [3] 89/7 95/2 96/8	45/24 46/6 47/18 47/22
DEPT [1] 1/2	disability [2] 38/12 46/7	50/13 55/10 56/10 56/23
description [1] 62/7	disagree [10] 35/20 40/4	57/1 58/14 58/16 60/14 61/2
designate [2] 40/20 40/22	85/19 89/2 89/3 89/5 89/10	62/3 69/10 70/1 70/11 70/15
designated [7] 40/16 41/17	89/21 89/24 91/3	71/5 72/19 73/22 74/21
48/5 113/25 116/10 116/11	disciplines [1] 78/6	74/22 76/7 76/8 76/9 78/11
116/12	disclosed [5] 89/6 89/14	80/9 81/1 82/17 83/7 84/8
designation [2] 40/14 40/16	97/2 117/19 128/12	84/19 84/23 89/23 90/19
designed [7] 5/3 5/23 7/9	disclosing [1] 121/7	90/22 90/24 91/5 91/6 95/7
8/10 13/5 33/1 34/19	disclosure [1] 38/20	96/21 96/24 99/3 118/24
detectives [1] 47/1	disconnect [1] 94/16	120/3
determination [3] 103/19	discounts [1] 102/4	documents [2] 17/8 92/3
105/11 113/3	discovery [4] 12/22 48/12	does [15] 5/24 7/25 24/25
determine [8] 9/21 30/11	82/9 97/21	30/4 33/13 39/20 41/7 43/10
69/17 71/24 72/6 72/11	discuss [7] 7/15 24/6 44/2	43/19 43/20 50/10 53/9
100/21 104/13	44/16 53/5 55/14 59/2	65/22 78/7 126/12
determined [3] 104/13 106/6	discussed [3] 39/10 86/18	doesn't [31] 6/20 17/16
106/11	107/3	24/2 25/1 27/18 31/2 35/24
determining [4] 70/3 72/4	discussion [9] 16/23 33/5	37/24 40/17 41/9 52/3 52/16
72/21 102/8	33/11 34/18 35/16 38/22	54/20 64/3 65/25 67/20
diabetes [1] 55/7	53/20 112/21 126/25	73/12 75/1 75/2 75/7 75/9
diagnosis [3] 38/10 46/6	discussions [3] 32/23 33/8	77/24 81/8 91/16 97/1 121/1
92/1	35/10	126/7 126/22 126/23 127/17
	dismiss [1] 125/7	127/19

JA 1059

E				
every... [9]	81/6 82/7	83/6 88/16 89/3 89/6 89/8	failing [2]	47/8 49/15
82/11 85/11 92/24 93/23		89/10 89/13 89/14 90/6	fair [55]	10/21 11/19 11/20
94/2 100/13 116/22		90/12 90/12 90/24 91/1 91/2	15/16 16/3 16/19 19/3 19/4	
everybody [4]	45/17 58/24	91/24 94/22 95/2 95/3 95/13	25/6 25/7 26/6 26/11 42/17	
74/14 105/5		107/9 107/10 107/20 107/22	43/1 43/10 44/14 44/17 46/4	
everybody's [1]	132/19	107/23 108/4 108/8 108/12	46/21 48/1 48/21 49/3 49/8	
everything [8]	41/8 44/19	108/13 108/18 109/9 109/14	49/12 49/13 50/5 50/12	
74/20 83/14 83/19 107/21		109/20 110/8 110/21 110/24	50/12 54/1 54/15 55/10	
107/22 130/17		111/20 112/15 112/25 114/1	55/24 57/19 57/19 57/25	
evidence [36]	4/6 4/11 4/17	115/3 116/4 116/6 116/7	59/22 64/16 68/6 73/12	
13/15 21/3 21/4 21/13 22/24		116/12 123/8 128/23 129/1	75/13 77/2 83/23 86/14	
23/11 26/14 26/18 27/1		expert's [4]	87/10 95/1 95/15 96/8 96/9	
27/21 28/3 52/10 54/17 59/9		115/20 118/3	98/18 108/24 121/5 122/10	
59/11 59/19 60/2 60/21		expertise [1]	122/17 131/15 132/8	
61/18 63/14 63/18 97/10		78/3	fairly [1]	29/11
97/16 98/22 100/6 100/11		experts [43]	fairness [3]	61/12 82/4
100/17 101/7 121/21 121/21		16/18 18/4	83/17	
126/14 129/5 130/15		18/5 19/1 19/17 21/25 22/7	faker [1]	76/4
evidentiary [5]	100/4 130/5	22/23 25/24 38/17 41/16	faking [1]	51/16
130/20 131/9 131/22		41/17 42/15 45/6 45/25	family [2]	67/23 114/22
exact [6]	52/19 74/15 86/24	52/20 61/6 61/12 68/14	far [7]	36/8 76/21 76/23
92/7 94/22 125/10		70/14 70/15 70/20 70/23	89/2 104/18 120/18 130/2	
exactly [16]	17/1 30/3	80/25 81/1 88/17 89/17 91/6	fault [1]	16/10
32/25 34/16 34/19 35/13		94/18 95/11 98/7 98/19 99/1	favor [2]	13/18 98/14
42/3 47/20 52/15 69/4 76/16		99/3 99/5 99/7 99/10 99/14	Fax [1]	2/12
85/2 94/23 117/1 118/10		99/15 108/1 109/19 111/2	federal [1]	39/8
119/12		118/6	feel [11]	8/18 69/19 98/1
examination [6]	12/9 96/5	experts' [1]	98/17 98/22 100/16 101/8	
96/9 118/6 122/16 126/25		108/3	104/10 112/7 117/5 131/7	
examine [1]	56/23	explain [9]	fees [1]	48/10
examined [1]	89/15	94/10 118/22	felt [5]	116/22 119/15
examining [1]	55/10	119/8 119/20 119/24 120/3	119/19 119/21 119/25	
example [4]	6/2 93/17 101/7	120/21 121/1 121/2	female [1]	53/19
110/24		explained [1]	few [2]	18/3 97/15
examples [1]	9/3	119/2	field [2]	81/19 99/4
except [1]	126/8	expose [2]	figure [5]	32/11 32/20 33/2
excess [1]	34/11	67/4 98/19	97/7 125/10	
exclude [10]	5/2 11/23	exposes [1]	figures [4]	32/13 35/16
13/23 26/12 27/6 28/8 59/11		99/13	119/8 125/16	
62/9 110/1 124/1		exposure [1]	file [2]	45/18 124/1
Excluding [2]	54/17 59/9	28/22	filed [4]	66/12 66/22 90/21
excuse [2]	99/21 103/9	exposures [1]	123/25	
exhibit [2]	120/19 121/12	28/16	filing [2]	66/14 67/3
exist [8]	5/25 15/20 15/21	expound [1]	final [1]	103/15
18/24 18/25 55/6 125/23		75/22	finally [1]	99/18
126/12		expressed [1]	financial [2]	103/22 104/1
existed [1]	65/18	85/10	find [2]	15/22 83/14
existing [3]	9/8 9/8 65/15	expressly [2]	finds [2]	23/12 118/18
exists [2]	12/19 98/20	128/24 128/25	fine [12]	16/15 28/10 37/8
expansion [1]	43/9	extend [2]	57/1 64/1 80/18 86/13 97/8	
expect [3]	5/19 78/20	25/1 110/11	110/20 131/16 132/2 132/6	
111/11		extends [1]	firm [6]	2/3 23/20 24/5
expectancy [18]	55/2 55/7	65/16	24/7 24/12 26/1	
55/17 55/22 56/3 56/16		extent [9]	first [16]	3/19 5/2 75/15
56/21 57/8 57/12 57/18		46/7 48/4 55/1 78/17 83/23	94/7 97/18 101/19 109/5	
57/21 58/2 58/7 58/9 58/20		121/24	109/11 109/16 110/6 110/25	
58/25 59/17 59/20		extra [2]	112/16 118/8 123/11 124/12	
expecting [1]	104/7	111/17 111/17	130/15	
expense [1]	111/17	extraordinary [5]	five [3]	56/6 58/18 74/9
expenses [3]	102/2 106/23	111/8 111/9 111/13 112/23	flag [1]	8/5
115/11		76/2	flat [1]	20/16
experience [5]	4/6 74/16	extrapolation [1]	flawed [1]	129/4
78/16 94/10 94/12		43/8	flip [2]	26/5 42/4
experiences [1]	78/18	extreme [1]	fluid [4]	4/15 10/22 86/8
expert [66]	9/14 19/21		86/8	
38/12 38/14 38/20 40/14		facility [1]	folks [1]	121/14
40/15 40/15 40/16 40/18		122/2	follow [6]	33/7 34/18 36/7
40/23 42/14 43/6 45/20		fact [46]	36/9 36/24 36/25	
45/21 45/25 73/15 80/3 83/5		5/23 6/16 7/2	follow-up [2]	36/24 36/25
		12/2 13/9 15/25 22/13 31/18	follow-ups [1]	33/7
		31/24 32/4 47/17 48/18 49/4		
		50/5 50/7 51/24 52/14 52/16		
		52/24 54/5 54/7 61/8 65/18		
		65/23 66/17 66/22 67/4 68/1		
		68/24 75/20 76/6 77/23 81/6		
		85/9 96/5 100/18 104/3		
		105/21 106/8 108/7 122/14		
		124/2 126/2 126/8 127/2		
		128/20		
		fact -- and [1]		
		31/24		
		fact -- based [1]		
		31/18		
		factors [1]		
		53/18		
		facts [13]		
		31/13 31/18		
		31/19 32/1 32/8 34/4 34/8		
		35/22 35/23 36/10 36/11		
		53/23 99/22		
		factual [2]		
		21/8 119/17		
		fail [1]		
		39/25		

F			
foot [1]	92/9		
force [3]	52/18 113/7 113/8		
forces [5]	64/7 70/3 70/7 70/18 72/6		
FOREGOING [1]	134/10		
forget [3]	77/9 77/10 77/11		
forgot [1]	125/10		
form [2]	70/23 81/8		
formal [1]	38/12		
format [1]	96/6		
formed [3]	46/9 46/18 80/11		
formulated [1]	123/20		
found [1]	97/21		
foundation [14]	56/13 57/4 79/7 124/18 126/12 126/14 129/1 129/3 129/5 129/11 129/15 130/3 130/6 130/21		
foundational [6]	56/9 72/25 129/20 130/1 130/11 131/7		
four [5]	47/16 48/18 58/2 107/6 128/18		
FOURTH [1]	2/4		
Frasier [1]	58/19		
free [1]	99/6		
Friday [1]	109/19		
friends [1]	66/8		
front [4]	48/12 57/17 104/20 130/10		
frontal [1]	53/17		
full [3]	98/15 111/24 134/10		
fully [2]	106/23 131/19		
function [1]	108/14		
functional [2]	127/5 127/8		
fundamental [1]	83/17		
funny [1]	28/17		
fusion [2]	123/17 123/17		
future [13]	38/11 46/7 80/20 81/15 85/15 103/2 123/12 124/5 124/13 125/22 126/1 127/10 127/18		
G			
gain [12]	25/1 25/3 73/18 73/21 74/2 74/12 75/22 75/25 76/14 76/21 76/23 76/25		
gained [1]	99/25		
game [7]	16/19 26/6 48/1 54/1 55/10 57/19 98/18		
garnered [1]	98/11		
gatekeeper [1]	58/13		
general [3]	13/13 29/19 58/24		
generally [2]	29/14 100/3		
get [60]	6/19 10/9 20/2 28/12 29/15 31/2 33/6 39/7 40/24 44/10 44/13 44/16 45/1 45/7 46/1 46/1 53/25 56/25 58/16 62/22 66/6 66/7 66/9 66/16 67/13 68/23 71/14 72/20 73/2 73/7 75/3 75/3 78/12 78/14 78/14 78/15 84/18 89/23 92/10 93/23 94/3 95/11 96/4 97/22 98/13 98/15 99/14 99/15 101/23 105/20 105/22 105/23 106/4 106/21 111/3 122/9 123/3 131/5 131/5 131/6		
gets [12]	16/10 41/25 45/1 45/2 68/17 75/2 75/9 87/15 88/18 88/21 89/9 98/13		
getting [8]	18/9 35/8 38/13 56/4 63/12 89/21 103/12 123/12		
give [27]	4/2 13/20 35/10 35/11 40/17 41/7 41/9 44/19 45/15 60/20 69/8 69/23 73/24 74/1 75/6 82/25 83/2 90/18 90/23 108/24 113/6 114/3 115/19 125/4 131/11 131/23 132/6		
given [10]	15/25 16/7 42/6 48/18 94/4 94/14 108/1 112/19 112/22 124/1		
gives [3]	17/8 41/12 93/17		
giving [5]	9/3 69/7 69/23 113/14 113/15		
go [28]	3/7 3/23 20/19 28/24 32/9 39/1 42/23 46/25 47/3 50/10 53/9 57/9 61/12 65/16 68/12 71/9 72/11 73/5 80/19 81/20 82/10 89/2 90/2 90/11 101/10 110/20 114/10 129/19		
goes [11]	14/16 14/17 14/17 14/18 33/8 52/25 67/11 68/1 90/6 99/13 122/2		
going [235]			
going -- I [1]	37/12		
gone [3]	81/22 124/5 124/9		
good [8]	3/11 33/20 33/22 35/18 55/23 64/4 70/9 87/18		
gore [1]	119/4		
gory [2]	119/3 120/25		
got [48]	5/6 14/7 14/8 14/8 14/13 14/23 15/14 15/16 15/17 20/5 20/7 20/19 20/20 20/20 20/21 20/22 20/23 43/18 51/8 53/19 55/19 56/3 56/5 56/8 57/3 57/20 58/17 61/6 66/13 74/14 78/23 81/18 81/23 82/3 82/25 83/1 83/2 83/13 83/17 85/6 87/20 94/8 107/6 107/19 111/2 111/4 125/16 125/21		
gotten [2]	82/8 82/9		
governing [1]	99/19		
graduation [1]	114/23		
grand [3]	99/6 112/3 112/5		
grant [1]	87/2		
granted [23]	10/16 10/17 11/5 11/11 23/15 24/18 24/21 25/5 27/4 28/12 31/5 38/5 46/11 46/23 49/16 51/3 59/18 64/19 64/21 64/24 68/9 79/18 88/14		
great [1]	100/3		
greater [3]	33/15 33/16 36/7		
Gross [13]	83/5 89/22 89/23 116/2 123/15 123/21 124/14 125/25 127/16 128/7 128/21 128/24 132/1		
Gross' [4]	126/9 129/15 129/21 129/22		
Gross's [5]	124/12 125/25 126/19 127/24 131/1		
gruesome [1]	119/6		
guess [15]	5/21 7/4 14/5 18/19 48/4 48/23 63/12 68/17 68/21 71/2 78/17 79/25 80/17 95/25 111/16 guy [8]	35/8 44/21 44/22 44/23 79/7 125/8 125/18 125/21	
guys [9]	3/18 30/21 61/19 65/5 95/19 113/6 120/18 132/15 133/1		
H			
had [39]	6/6 8/21 9/25 12/6 17/2 17/3 17/4 17/20 21/9 42/15 48/5 57/10 60/2 60/15 60/19 63/18 67/22 84/14 86/4 87/22 89/15 93/6 105/21 106/9 107/23 108/8 108/24 110/24 112/15 123/13 123/14 123/14 124/9 124/13 125/6 125/8 127/24 134/6 134/12		
half [7]	13/13 37/1 49/7 58/2 93/5 111/24 112/4		
HALL [3]	2/9 3/12 3/14		
Hallmark [5]	55/13 56/1 58/12 74/21 126/13		
Hallmark-type [1]	74/21		
hand [1]	55/25		
hands [1]	43/7		
hanging [1]	129/9		
happen [7]	31/15 37/24 48/9 91/21 92/7 112/18 127/9		
happened [12]	6/5 16/1 18/3 62/9 62/11 82/21 110/15 116/21 123/14 123/21 124/3 125/1		
happening [3]	17/2 117/7 125/24		
happens [1]	4/9		
happy [1]	66/13		
harassment [1]	100/9		
Hardwick [1]	29/13		
harmony [1]	39/8		
HARRIS [5]	2/3 23/19 24/5 24/7 24/12		
has [60]	7/11 7/12 7/16 7/22 7/23 8/8 8/19 9/14 12/21 15/14 17/7 17/13 29/8 29/20 30/12 43/1 45/11 52/10 53/22 54/2 56/3 56/5 57/4 60/19 62/1 74/16 74/20 75/17 75/19 86/4 86/9 86/18 89/1 90/11 94/6 95/2 98/10 99/25 100/3 102/10 102/12 102/18 102/25 103/14 103/24 103/24 104/11 106/15 106/19 106/20 107/23 108/8 108/19 108/24 109/10 114/22 115/24 120/6 126/13 128/21		
hasn't [6]	102/24 102/24 104/13 125/25 126/11 128/19		
hate [1]	67/9		
have [199]			
have -- there's [1]	29/25		
haven't [10]	14/23 42/24 67/14 82/12 95/12 118/9 119/11 120/11 120/12 121/23		
having [6]	42/6 91/9 94/14 108/4 108/10 108/18		
he [115]	14/13 15/7 17/15		

H		
he... [112] 17/16 20/13 36/15 40/2 40/2 40/3 40/4 43/4 43/4 43/4 43/5 43/5 44/3 45/2 45/12 45/19 45/19 50/6 50/7 50/7 52/8 52/16 52/24 53/6 58/10 58/11 62/8 62/9 62/15 62/25 62/25 63/13 63/14 63/18 64/2 64/9 65/10 65/25 66/1 66/2 66/3 72/2 73/20 74/5 74/13 74/15 74/15 75/7 75/9 75/11 75/22 75/23 76/4 76/12 76/17 76/24 77/1 77/24 84/14 84/16 85/13 86/10 87/5 88/4 92/15 92/16 92/17 93/7 93/14 93/17 109/10 110/2 110/3 113/17 116/3 116/9 116/9 116/9 116/10 116/11 123/11 123/23 124/11 125/6 125/14 126/3 126/3 126/11 126/12 126/13 126/22 127/4 127/24 128/2 128/10 128/18 128/19 128/24 128/24 128/25 129/6 129/7 129/23 129/24 130/2 130/24 130/25 131/1 131/3 131/3 131/6 131/6 he's [48] 15/5 15/11 16/13 17/15 17/17 28/7 43/6 43/6 43/6 52/7 53/20 63/19 64/3 65/9 65/11 65/18 65/24 66/1 73/19 73/24 74/1 74/12 75/7 75/9 75/22 76/3 76/3 76/19 76/22 84/1 85/17 87/21 89/7 92/18 94/4 94/7 94/8 95/6 110/9 115/21 116/4 125/11 125/20 126/7 126/8 127/13 129/7 129/9 head [2] 8/13 10/7 health [1] 101/7 healthy [1] 58/23 hear [9] 35/4 35/6 35/6 38/6 87/24 107/23 108/17 115/3 130/16 heard [3] 108/5 108/9 114/5 hearing [7] 116/14 130/6 130/15 130/20 131/9 131/13 131/22 heart [3] 18/4 18/9 55/8 heavily [1] 101/18 heightened [1] 68/23 held [2] 43/14 85/17 help [1] 121/1 helpful [1] 62/12 helping [1] 70/23 her [58] 6/10 7/17 8/8 8/21 9/25 10/3 10/5 10/5 12/22 12/22 14/2 17/3 20/17 20/19 21/6 27/12 51/13 52/20 53/23 53/23 53/24 55/4 57/18 63/22 65/4 65/8 65/11 65/11 65/11 65/19 65/19 65/24 66/1 66/3 66/18 67/7 67/14 68/2 68/4 68/11 76/7 76/7 76/8 76/9 87/16 92/3 97/24 98/14 103/14 103/22 103/25 104/4 116/22 119/22 125/1 125/4 127/12 127/21 here [24] 5/22 9/2 15/11 20/22 24/25 31/9 42/4 43/3	47/1 61/21 66/13 78/21 80/8 94/13 95/4 95/6 97/14 97/19 102/8 110/3 110/8 117/19 121/14 122/6 here's [26] 9/13 9/16 13/24 17/22 45/4 54/4 58/22 58/22 60/18 66/11 70/13 71/21 85/25 87/1 88/25 92/2 94/16 95/19 104/15 111/1 120/17 124/20 125/18 128/4 129/13 130/8 HEREBY [1] 134/5 HEREUNTO [1] 134/13 herring [1] 60/23 hey [23] 17/6 20/12 20/19 24/7 27/16 44/8 44/21 51/13 53/20 55/18 58/16 58/22 60/14 60/18 60/24 71/24 72/20 73/4 74/25 84/6 93/4 113/4 127/17 hide [1] 47/21 high [1] 58/17 higher [5] 53/16 53/19 53/19 69/8 69/23 highly [1] 29/15 him [30] 35/11 37/23 45/16 45/16 45/21 52/19 62/17 63/15 66/3 68/2 71/24 73/4 74/17 74/19 76/17 76/18 77/1 77/5 77/14 84/2 84/16 94/9 94/19 107/13 109/16 110/9 115/22 125/8 128/6 129/14 hire [2] 20/11 92/13 hired [5] 25/24 41/16 89/22 116/3 123/14 hiring [1] 113/20 his [72] 20/2 20/6 25/25 40/2 45/2 45/12 45/14 45/18 52/8 52/9 53/12 54/1 62/4 62/10 62/25 63/7 63/9 63/15 64/10 65/20 68/4 75/18 76/1 76/21 76/25 77/15 85/4 85/4 85/17 89/1 90/13 92/3 92/22 93/13 93/13 93/18 93/25 94/4 94/8 94/11 105/22 111/18 112/17 113/6 116/5 124/10 124/11 124/18 124/20 125/12 125/16 126/1 126/4 127/7 127/13 127/14 127/17 127/21 128/3 128/5 128/6 129/3 129/3 129/16 129/21 129/21 129/24 130/3 130/6 130/23 131/5 131/6 history [1] 10/6 hit [2] 8/12 51/13 hold [2] 11/1 130/20 home [1] 72/16 honestly [1] 37/12 Honor [83] 3/11 4/12 5/13 8/12 9/11 10/21 13/7 17/23 20/1 21/18 25/18 27/24 29/10 30/6 33/22 34/14 35/5 35/15 36/2 37/8 37/19 39/2 41/3 42/1 48/3 49/11 50/21 52/2 55/1 56/14 57/2 58/10 59/5 59/23 61/7 61/11 62/24 63/7 64/16 64/25 68/21 73/10 73/23 74/25 75/14 77/7 77/8 78/5 79/21 80/6	80/18 82/24 85/2 87/11 88/7 88/18 90/9 94/7 95/9 95/14 95/16 96/4 97/9 97/14 101/3 101/16 109/14 110/6 112/6 114/13 114/19 117/24 118/8 119/5 119/11 121/24 126/18 130/4 130/19 130/22 131/16 132/9 132/12 Honor's [1] 114/16 HONORABLE [1] 1/19 hooked [1] 27/17 hop [1] 23/8 hope [2] 15/6 91/17 hospital [1] 72/10 hour [2] 84/13 112/4 hourly [1] 98/8 how [41] 4/7 4/7 4/10 6/9 11/9 14/8 25/25 26/1 31/22 32/5 32/16 36/7 36/14 36/16 37/5 37/7 40/13 56/20 57/13 57/16 59/20 61/15 61/18 61/22 62/8 62/11 63/2 65/22 91/3 98/7 98/8 98/9 99/1 99/2 111/3 111/5 111/7 117/6 117/6 119/20 119/24 Howell [2] 103/15 103/21 however [3] 7/9 43/4 44/1 huh [1] 8/1 hum [5] 109/7 109/21 109/24 111/21 111/25 human [1] 86/11 hundred [1] 125/9 hurt [3] 20/25 52/14 52/16 hypothetical [15] 5/3 5/16 6/8 7/1 10/18 10/19 11/3 11/6 11/12 11/13 31/13 32/1 35/22 35/23 36/10 hysterectomy [1] 55/21
I		
I -- here's [1] 54/4 I -- I [3] 17/18 71/2 78/17 I -- I'm [1] 95/19 I'd [5] 87/11 87/13 97/7 111/1 121/25 I'll [9] 5/20 20/7 31/10 71/22 77/10 91/23 114/17 117/7 123/5 I'm [88] 4/3 4/4 4/23 10/17 11/2 11/13 11/16 12/7 13/18 16/12 20/19 23/13 30/22 31/5 31/14 33/12 34/4 34/9 34/11 34/23 34/23 35/2 35/5 35/7 35/12 45/5 45/5 46/10 46/20 48/9 48/10 48/11 48/21 49/21 50/20 51/18 51/19 51/20 55/5 57/8 58/3 59/11 61/12 61/14 61/22 63/4 63/11 63/23 64/4 71/18 72/20 73/4 73/16 78/22 79/8 81/20 81/21 82/1 82/2 83/22 86/13 87/1 87/1 95/19 95/20 96/22 97/3 100/12 108/11 108/21 115/13 116/13 116/14 117/2 119/12 120/12 121/9 121/10 121/11 121/15 125/3 129/13 129/14 129/17 130/1 130/5 130/19 132/18 I've [24] 12/6 12/8 17/20 20/5 20/7 21/9 21/9 23/3 30/14 31/15 33/21 37/5		

I		
I've... [12] 37/21 71/11 71/11 71/16 71/17 71/17 71/18 71/21 74/14 111/2 118/11 118/12 idea [1] 30/17 ideas [1] 38/1 identified [4] 12/16 38/17 65/9 115/16 identifies [1] 12/24 identifying [1] 45/21 if [197] if -- I [1] 18/22 if -- ironically [1] 110/14 ignores [1] 119/16 image [1] 119/3 imagine [2] 118/11 119/25 IME [1] 89/16 impact [17] 8/20 51/15 53/10 53/15 53/17 61/10 63/16 63/20 64/11 69/3 69/16 70/3 70/8 72/6 72/16 72/17 125/1 impacted [3] 4/17 52/19 52/20 impacting [1] 7/17 impassion [1] 29/20 impeachment [2] 122/20 122/20 impermissible [1] 6/8 implies [1] 24/14 imply [4] 16/9 27/13 29/7 67/2 importance [1] 60/22 important [15] 7/11 7/20 8/7 16/5 30/24 30/25 35/25 37/10 39/13 40/9 72/24 92/2 101/21 113/13 114/19 impression [1] 63/16 impressions [3] 63/9 63/11 64/1 improper [6] 5/23 5/24 6/14 7/3 12/20 13/8 improperly [1] 88/17 in [304] inaccurate [1] 126/20 inadmissible [1] 101/1 inappropriate [14] 7/14 8/9 13/4 17/13 21/15 39/22 43/23 51/23 53/21 66/20 69/9 72/15 74/20 93/22 incident [4] 18/3 18/4 52/25 104/23 incidents [4] 8/15 59/25 60/2 60/19 inclination [1] 5/15 inclined [2] 64/14 83/22 include [3] 16/16 49/22 77/6 included [3] 80/12 80/21 81/7 includes [1] 118/13 including [3] 49/14 126/25 127/12 incorporates [1] 102/1 incurred [7] 102/14 102/16 102/23 102/24 104/18 104/25 106/23 indicated [6] 19/16 22/3 23/5 130/25 131/3 134/7	indication [1] 81/3 individual [1] 51/23 individuals [1] 51/6 indulgence [1] 132/13 infer [4] 23/10 23/11 65/17 67/21 inference [15] 8/6 12/17 12/20 13/2 16/24 16/25 27/16 47/7 49/15 51/14 52/17 84/10 87/4 87/21 98/3 inferences [2] 86/16 87/13 inferred [1] 87/8 inflamm [4] 55/18 118/15 120/8 120/11 inflammatory [3] 118/24 120/2 120/7 information [15] 12/18 22/9 67/14 69/6 72/14 74/12 74/24 93/7 100/4 100/17 126/22 126/24 128/5 128/13 128/14 inherently [1] 108/22 initial [9] 18/11 33/2 36/6 40/16 115/19 116/2 116/5 116/6 116/7 initially [3] 48/5 123/15 130/2 injured [24] 8/16 9/9 20/10 21/5 51/10 51/11 51/13 51/16 51/21 51/23 52/25 53/6 53/13 53/20 53/21 54/7 54/12 54/12 54/14 71/25 72/5 72/12 72/22 73/5 injuries [27] 6/6 6/18 8/21 8/21 9/4 9/5 9/7 9/9 9/21 14/19 15/17 28/4 28/6 51/5 51/5 52/7 52/9 54/18 59/10 59/12 60/3 61/7 62/18 63/22 75/21 78/12 92/2 injury [23] 6/5 6/9 6/10 6/12 6/13 10/7 52/24 53/12 53/16 53/24 54/2 54/2 54/3 54/21 64/7 64/17 72/7 72/16 72/17 76/7 89/12 97/17 101/21 injury -- in [1] 52/24 insignificant [1] 70/22 insinuating [1] 19/10 instance [3] 39/19 84/24 92/9 Instead [1] 112/20 instruct [1] 117/5 instruction [1] 102/22 instructions [1] 102/11 insurance [8] 29/1 29/7 29/24 35/8 50/3 50/6 65/3 105/21 insurer [1] 101/8 intend [1] 4/19 intended [1] 118/20 intent [1] 8/17 intention [1] 119/6 intentionally [2] 5/18 75/24 interacts [1] 65/11 interest [5] 98/6 98/11 98/12 99/22 99/24 interpretation [4] 43/10 96/10 102/5 102/7 interrogatory [1] 83/2	intervening [1] 114/20 interview [4] 127/1 127/12 127/14 127/20 into [29] 8/25 23/23 28/13 29/15 31/2 38/13 41/4 41/25 42/11 42/20 45/20 53/25 57/9 58/21 58/24 59/1 68/12 70/19 85/16 88/21 89/5 89/18 95/13 106/21 110/22 120/1 124/3 125/7 134/8 introducing [1] 28/3 invaded [1] 110/19 investigation [2] 62/2 63/15 invite [1] 35/19 invites [5] 33/4 33/7 33/7 33/18 35/17 inviting [6] 32/12 32/16 32/22 32/23 34/18 35/9 involved [4] 51/6 52/24 93/22 122/6 involving [2] 75/20 122/5 ironically [1] 110/14 irrelevant [1] 100/8 Irrespective [1] 125/20 is [363] Is it [1] 112/24 island [1] 129/8 isn't [12] 10/6 14/10 14/12 41/19 67/4 88/20 91/11 106/4 118/16 119/18 119/18 129/22 ISOM [3] 1/24 134/4 134/17 issue [36] 18/4 18/5 18/7 24/19 25/4 25/14 28/14 28/20 29/25 30/2 30/10 30/16 37/21 38/25 41/25 45/7 48/2 50/11 50/15 55/18 59/17 59/20 67/16 67/23 76/20 84/5 88/23 89/12 94/18 101/15 101/17 103/18 104/13 105/13 107/2 131/8 issued [2] 106/16 126/13 issues [17] 4/15 4/20 10/12 14/16 14/17 14/17 14/18 15/23 17/1 29/16 30/12 30/20 31/4 32/22 55/19 77/2 131/19 it [291] it's [157] it's -- I [1] 30/9 items [1] 131/5 its [1] 108/3 itself [3] 63/13 63/24 79/16
J		
		JACOB [2] 2/10 3/14 JAFFE [26] 2/9 2/9 3/12 3/12 3/14 12/7 15/12 25/25 34/23 37/12 40/5 43/16 47/23 61/4 63/2 83/23 84/11 85/2 85/7 93/15 95/19 109/1 113/10 115/12 128/1 129/19 Jaffe's [2] 55/23 93/9 jam [1] 114/9 Jeffrey [1] 123/15 Jerry [1] 65/8 judge [22] 1/19 1/20 13/24 19/6 38/7 58/3 70/13 71/21 71/23 77/12 81/18 83/16

J		
judge... [10] 84/5 88/25 93/10 107/12 110/18 123/10 128/4 129/11 132/8 132/14	knowing [1] 128/16 know [208] knowing [2] 42/13 66/9 knowledge [3] 28/22 94/10 94/11 known [1] 128/5 knows [4] 18/16 65/24 66/1 88/4	life [22] 55/2 55/4 55/6 55/16 55/22 56/3 56/16 56/21 57/8 57/12 57/18 57/21 58/2 58/7 58/9 58/20 58/25 59/17 59/19 86/7 126/4 128/9 light [1] 52/11 like [52] 5/4 5/11 5/17 22/10 22/11 27/12 27/13 30/15 30/16 30/17 30/17 34/15 35/1 35/14 38/2 38/6 47/20 48/15 50/10 57/7 57/9 60/4 64/8 64/15 67/25 70/3 84/24 85/21 87/11 87/13 95/24 97/2 97/19 98/1 98/22 99/24 100/14 100/16 104/10 113/15 113/20 114/20 114/21 120/13 120/18 120/22 121/2 121/13 121/25 122/4 125/18 131/7 liked [1] 16/6 likelihood [3] 51/20 53/16 53/19 likely [2] 98/12 98/15 likes [2] 67/10 129/18 limb [1] 129/9 limine [14] 1/17 4/3 4/4 4/10 13/21 15/9 80/1 85/3 101/12 107/1 107/8 117/9 117/12 132/11 limit [9] 26/23 48/12 76/24 80/1 82/19 85/6 86/14 100/3 101/12 limitation [1] 16/14 limitations [2] 81/15 125/22 limited [5] 26/13 35/21 84/8 84/12 103/8 limiting [1] 81/24 line [10] 48/23 64/1 81/19 82/3 87/18 89/5 90/2 95/13 95/22 95/24 lines [5] 12/10 21/11 21/13 85/1 110/7 listen [3] 42/19 57/2 61/11 listened [1] 16/24 literally [1] 20/7 literature [3] 28/23 53/14 56/3 litigant [2] 75/20 75/25 litigation [9] 4/14 19/9 19/12 21/21 22/12 23/1 24/15 24/20 90/21 litigious [2] 66/14 67/2 little [2] 35/7 76/18 live [3] 14/23 56/6 58/18 lives [1] 65/11 living [1] 61/20 LLP [1] 2/9 Lobata [1] 100/16 Lobato [3] 99/18 100/2 100/21 local [1] 32/25 lock [1] 128/6 log [1] 114/9 logical [1] 51/14 long [9] 12/3 16/14 35/23 36/9 61/20 84/13 97/14 120/24 123/13 longer [1] 110/18
July [1] 128/17 JUNE [2] 1/22 3/1 juror [3] 30/11 32/14 34/22 jurors [16] 7/10 7/18 28/22 29/6 30/15 31/12 32/12 33/25 54/5 57/11 60/18 69/7 119/8 130/14 130/15 130/17 jury [66] 5/4 5/19 5/24 8/18 8/19 8/25 10/20 11/6 11/17 11/23 16/5 18/20 23/10 23/11 29/15 29/20 30/10 30/14 31/17 33/18 37/18 40/24 47/24 48/24 49/9 53/22 54/8 54/14 57/17 65/14 65/17 66/11 67/21 68/24 69/22 74/3 74/25 75/2 77/15 87/14 94/11 102/10 102/22 104/20 105/8 105/10 106/7 107/20 107/21 107/22 108/2 108/10 108/16 108/24 111/5 115/3 117/6 118/15 118/22 119/14 119/24 120/8 120/11 120/20 126/15 130/10 just [108] 4/2 4/11 8/4 8/5 13/3 13/14 16/16 17/18 17/24 20/25 21/17 24/9 24/10 24/15 26/5 26/22 27/12 27/19 30/13 31/3 35/6 35/17 37/3 37/3 38/6 40/15 40/25 43/3 43/16 43/18 44/11 44/12 44/14 45/16 46/24 50/4 50/23 53/4 54/13 55/17 55/17 56/4 58/3 58/6 58/16 58/19 58/22 60/23 64/9 65/16 67/4 67/8 68/1 68/18 68/21 69/6 69/19 69/20 73/2 73/6 73/7 74/6 74/17 74/17 75/1 75/2 75/8 75/14 77/3 81/19 81/20 82/4 82/11 82/11 83/3 83/25 84/5 86/7 91/6 91/9 93/4 98/24 101/2 102/9 104/5 106/13 106/15 107/2 109/11 110/1 111/10 112/4 113/8 113/9 113/10 114/9 114/11 115/1 115/4 116/10 116/20 117/22 120/22 125/3 126/20 128/1 128/9 130/24	L lack [2] 64/11 82/4 lacking [1] 130/1 lacks [1] 129/5 lady [4] 13/24 60/19 63/21 66/11 language [1] 96/22 lapse [1] 130/12 large [2] 42/3 48/23 larger [1] 98/14 LAS [4] 2/5 2/11 3/1 125/5 Las Vegas [1] 125/5 last [5] 12/25 71/22 80/8 95/22 114/12 later [6] 20/4 48/22 102/17 114/5 114/7 128/18 law [9] 2/3 13/22 23/19 24/5 24/7 24/12 25/25 67/23 103/20 LAWHJC.COM [1] 2/13 lawsuit [6] 65/2 66/12 66/15 66/22 67/1 67/21 lawsuits [1] 67/3 lawyer [1] 90/17 lay [4] 68/25 79/7 115/6 118/16 leap [1] 51/14 learned [1] 128/13 least [4] 30/14 49/23 62/16 120/14 leave [1] 23/21 leaves [1] 102/4 left [4] 20/9 67/3 104/11 107/6 less [9] 34/10 34/12 56/7 58/18 104/8 118/24 122/15 122/24 122/25 lesser [2] 102/19 106/20 lessons [2] 124/22 124/23 let [20] 4/2 28/19 51/7 63/3 63/4 67/13 68/19 75/10 79/6 79/11 89/22 90/14 98/24 101/22 109/1 114/6 115/4 116/17 120/14 131/25 let's [20] 9/20 9/23 13/14 13/15 43/17 43/19 47/3 68/8 68/8 75/10 77/3 90/17 93/21 101/10 105/4 107/4 109/3 109/4 109/8 122/7 letter [1] 48/6 liability [2] 29/1 29/24 liar [1] 76/4 lien [17] 50/2 50/3 50/8 98/10 98/16 101/3 102/17 102/19 102/24 103/1 103/2 105/14 105/14 106/15 121/25 122/4 122/16 liens [18] 49/22 49/23 49/23 49/24 50/22 97/11 97/16 98/1 98/2 98/5 98/22 100/11 100/16 100/17 100/19 121/21 121/22 122/3	
K		
K-H-O-U-R-Y [1] 3/7 Kaffcan [10] 43/19 43/23 44/20 83/4 87/15 89/20 93/21 93/24 95/4 114/2 Kahn [1] 63/8 keep [4] 5/4 36/18 45/6 60/11 KHOURY [9] 1/10 2/8 3/7 3/13 3/15 8/18 52/6 52/7 52/12 kind [8] 27/14 31/2 38/25 41/23 47/22 56/13 73/11 130/2 kinds [3] 88/10 90/25 91/3 knocked [2] 48/14 129/2		

L		maybe [14] 4/7 43/18 43/22 49/5 62/5 65/25 70/10 84/14 84/25 86/24 88/20 105/14 113/23 131/12 me [48] 4/2 4/5 22/10 28/19 36/22 39/1 41/20 47/1 48/21 49/19 51/7 57/19 63/2 63/22 64/13 65/6 67/13 68/18 72/24 73/8 73/14 75/11 77/4 78/4 90/14 91/13 91/17 92/20 95/9 98/24 99/21 101/22 103/9 109/1 109/11 110/15 111/1 113/11 114/6 115/1 115/4 116/17 117/19 127/19 131/11 131/23 131/25 132/6 mean [74] 5/17 6/19 7/1 8/2 10/1 10/11 17/17 20/1 20/17 21/2 23/7 24/2 25/3 25/21 30/13 32/3 36/7 39/2 40/17 40/19 40/20 40/22 42/11 48/7 51/17 53/8 53/13 55/20 56/8 56/14 56/18 56/18 57/6 57/10 60/13 62/5 66/23 67/21 69/17 73/6 75/1 75/2 75/9 76/25 77/24 78/8 78/23 78/25 79/2 79/6 79/14 80/23 81/8 81/18 82/2 83/3 83/12 83/16 85/6 91/16 92/8 92/20 92/23 96/8 96/13 105/24 111/19 113/8 113/12 113/21 115/23 119/11 131/1 131/4 means [7] 24/15 29/19 40/15 42/19 47/19 56/6 75/21 median [2] 125/4 125/13 medical [46] 5/3 5/8 5/16 7/6 11/24 14/3 18/21 19/9 19/14 19/16 21/13 21/21 21/23 22/7 22/12 22/24 24/20 34/25 35/2 54/18 54/22 59/10 59/12 60/21 68/13 72/3 76/12 76/13 78/6 84/7 84/9 92/3 94/9 94/9 94/10 94/11 97/11 97/16 101/13 102/1 102/3 102/11 106/22 122/5 127/12 127/14 medical-buildup [1] 19/9 medically [3] 13/25 22/3 23/5 medication [3] 27/7 28/4 28/5 medications [2] 27/11 27/19 meds [1] 27/17 memory [1] 95/8 merely [1] 91/25 merits [1] 58/6 met [1] 127/20 methodology [1] 58/15 middle [1] 110/16 might [9] 3/21 11/23 17/10 17/11 18/21 85/23 98/4 99/23 127/25 million [21] 31/22 32/15 32/15 32/16 32/17 32/17 32/17 33/4 33/4 33/4 33/15 33/16 35/10 35/11 36/13 36/16 36/18 37/1 37/2 37/2 125/9 mind [4] 25/4 79/3 89/15 105/25	minds [4] 7/10 7/18 60/18 82/1 minimal [1] 63/21 minimized [1] 76/6 minor [12] 51/15 68/14 68/19 69/3 69/11 70/9 70/21 71/1 71/5 71/7 71/13 71/16 minute [5] 32/11 32/19 46/2 68/18 109/11 miscarriage [1] 56/15 miscarriages [2] 55/21 57/7 mislead [1] 8/18 mistrial [1] 88/9 models [1] 119/1 money [5] 32/15 32/16 34/9 98/13 99/15 months [11] 14/1 18/3 82/21 93/6 124/9 124/9 128/8 128/14 128/18 129/2 131/18 morbidity [8] 54/24 55/5 55/15 55/15 57/21 58/8 58/21 59/1 more [30] 5/23 17/10 17/24 20/3 24/8 30/15 31/21 34/22 34/25 35/2 35/4 36/13 36/16 49/9 53/16 65/23 67/8 68/1 84/15 84/15 95/16 98/12 98/15 99/7 99/15 103/21 103/23 106/23 113/12 114/19 morning [1] 3/11 most [2] 111/23 129/18 motion [56] 4/10 5/2 5/7 6/2 8/10 10/15 12/1 13/8 13/22 18/20 21/19 21/19 21/24 23/15 24/18 25/5 26/10 27/9 27/10 28/11 31/5 38/5 41/19 41/22 42/1 45/5 45/22 47/9 47/12 49/9 49/23 51/7 52/3 52/3 52/23 59/9 59/18 80/1 85/3 87/2 88/13 88/15 90/8 95/20 97/5 101/12 106/21 106/24 107/1 107/8 117/9 117/11 121/20 123/7 123/25 124/1 motions [18] 1/17 3/22 4/3 4/4 5/10 13/13 13/21 15/9 20/3 42/2 45/8 45/23 49/23 50/22 50/22 88/20 107/6 132/10 motive [2] 75/22 75/25 move [2] 48/11 107/4 Mr [3] 15/12 34/23 37/21 Mr. [64] 8/18 9/18 12/1 12/7 12/11 15/7 17/24 23/19 25/25 27/10 33/3 35/6 35/14 37/12 39/1 40/5 43/16 47/15 47/23 51/9 52/6 52/7 52/12 55/23 61/4 63/2 63/4 66/17 67/15 68/11 76/24 83/23 84/11 85/2 85/7 88/1 90/14 93/9 93/15 94/24 95/19 109/1 109/22 110/25 111/18 112/12 112/16 113/10 114/17 114/25 115/12 117/23 120/14 123/11 123/20 124/6 125/3 126/16 126/19 126/21 127/4 127/18 128/1 129/19 Mr. Busby [2] 66/17 67/15 Mr. Busby's [1] 68/11 Mr. Cloward [24] 9/18 12/1
M			
made [12] 12/8 18/11 24/3 65/3 94/6 94/22 95/3 103/12 110/1 113/22 127/22 129/18 make [35] 3/8 4/19 7/25 18/23 19/25 22/22 23/16 23/21 23/22 24/10 26/18 26/25 29/19 38/14 41/1 50/23 51/12 51/14 51/22 54/11 54/13 55/24 55/24 58/13 59/4 88/3 89/18 97/11 98/9 99/10 99/11 108/11 111/7 117/2 132/22 makes [5] 71/10 85/21 87/5 103/4 103/19 making [2] 40/14 68/14 Male [1] 53/18 malingerer [1] 76/20 malinger [4] 74/2 74/6 75/16 75/18 management [2] 22/4 79/7 manual [1] 74/13 many [7] 12/7 26/1 31/22 32/6 36/14 36/16 124/9 MARGARET [3] 1/7 2/2 3/6 Margie [9] 20/19 51/6 51/25 51/25 53/13 72/21 73/18 74/18 127/1 Margie's [4] 19/15 25/11 65/1 77/18 Marjorie [1] 84/25 marks [2] 63/20 64/11 matter [3] 68/24 114/22 134/6 may [36] 6/19 9/11 14/9 14/20 15/24 16/4 16/17 16/18 17/23 28/21 33/3 36/2 46/16 46/16 55/1 55/6 55/9 58/7 58/10 68/21 70/22 76/15 78/7 81/7 89/4 95/16 96/19 104/16 110/23 114/23 122/1 122/10 122/19 129/20 129/25 130/11			

M		
Mr. Cloward... [22] 17/24 23/19 27/10 33/3 35/6 35/14 39/1 47/15 51/9 76/24 88/1 90/14 94/24 109/22 110/25 111/18 112/12 112/16 114/17 114/25 117/23 120/14	28/4 28/5 narrowed [1] 100/5 nasty [1] 120/25 nature [9] 26/2 56/18 65/20 65/23 67/1 67/25 80/21 81/16 119/16 necessarily [16] 14/9 24/14 49/8 53/4 54/20 57/15 58/4 62/11 64/6 70/1 78/8 97/1 102/1 102/14 116/11 120/10 necessary [19] 22/15 64/7 78/2 79/5 79/10 79/17 85/15 94/19 102/2 102/23 104/22 105/1 105/4 105/6 105/8 105/12 106/12 117/5 131/22 necessity [1] 81/15 neck [13] 6/5 6/5 6/6 6/9 6/10 6/11 6/17 10/10 16/25 17/3 18/5 20/21 43/19 need [32] 4/9 13/19 27/18 29/10 34/12 43/13 47/1 52/9 55/13 57/11 57/24 57/24 58/13 59/3 59/4 66/10 66/17 86/10 87/24 98/22 107/17 109/15 109/19 114/4 123/16 123/17 127/17 131/9 131/11 131/13 131/17 132/7 needed [1] 77/25 needle [1] 120/1 needless [1] 115/11 needs [21] 16/3 17/18 26/17 34/5 51/24 74/2 74/14 84/16 85/8 85/9 85/22 86/2 86/3 89/13 97/16 98/17 101/9 108/16 110/8 113/13 129/12 negative [2] 47/7 49/14 negligent [5] 105/20 105/25 106/2 106/7 106/7 neighbor [8] 65/11 65/24 66/1 67/5 67/5 67/9 67/10 68/3 neighbors [2] 66/8 67/9 neither [1] 121/10 NEVADA [8] 1/5 3/1 40/22 99/19 102/10 104/19 134/2 134/15 never [15] 14/5 14/10 14/12 15/13 33/21 34/9 34/11 78/15 86/18 96/6 97/19 116/9 118/9 124/6 124/7 new [14] 42/24 80/19 81/13 81/17 81/25 83/24 84/20 84/21 84/21 96/2 126/6 128/7 128/12 131/18 newly [3] 128/12 128/12 128/13 next [7] 27/2 46/25 47/4 90/2 101/11 107/4 107/7 night [1] 80/8 nine [3] 48/14 48/14 49/6 Ninth [2] 39/4 39/6 NJ A [1] 39/11 no [71] 1/1 3/6 6/6 6/13 7/2 7/11 7/16 7/16 7/22 10/8 11/22 12/3 12/25 14/14 16/12 16/12 21/3 21/4 21/8 25/18 27/2 27/21 28/9 29/20 29/25 30/1 30/7 30/18 34/4 35/15 35/18 35/20 57/14 60/1 60/21 61/24 64/18 72/2	72/8 72/13 72/16 72/17 74/16 74/18 77/11 77/17 83/9 83/10 83/11 85/15 91/12 95/18 103/11 105/3 106/16 110/7 110/18 112/19 113/1 117/18 117/25 119/6 123/1 124/13 125/14 125/15 126/12 129/1 129/3 129/8 129/11 No. [34] 19/7 24/22 25/9 26/12 27/3 27/4 27/6 28/15 31/7 38/9 47/5 48/1 48/2 49/17 51/3 51/4 64/19 68/13 80/1 88/15 88/21 91/14 97/5 97/9 97/10 101/12 107/1 107/8 112/14 117/9 117/11 121/20 123/7 123/8 No. 1 [4] 48/1 80/1 91/14 112/14 No. 10 [1] 38/9 No. 11 [1] 47/5 No. 12 [2] 49/17 51/3 No. 13 [1] 51/4 No. 16 [1] 64/19 No. 18 [1] 68/13 No. 2 [3] 48/2 88/15 97/5 No. 3 [3] 19/7 97/9 97/10 No. 4 [3] 24/22 101/12 107/1 No. 5 [4] 25/9 88/21 107/8 117/9 No. 6 [4] 26/12 27/3 27/4 117/11 No. 7 [3] 27/6 121/20 123/7 No. 8 [2] 28/15 123/8 No. 9 [1] 31/7 nobody [9] 15/14 15/18 15/22 16/4 16/10 18/15 51/15 88/9 88/9 non [4] 19/16 40/7 40/15 51/5 non-expert [1] 40/15 non-indicated [1] 19/16 non-injuries [1] 51/5 non-resolution [1] 40/7 none [11] 11/25 18/22 21/4 21/14 27/8 32/5 54/3 60/13 60/14 61/1 100/9 nonexistent [3] 5/7 9/5 9/5 nonsensical [1] 113/11 nor [1] 121/10 not [226] note [9] 21/10 22/16 24/4 24/7 24/11 24/25 80/7 91/23 106/13 NOTES [1] 134/8 nothing [9] 13/22 17/3 34/21 35/4 53/22 56/16 68/25 117/24 120/20 notice [3] 43/1 81/22 83/13 now [54] 12/1 12/15 13/24 14/4 14/21 18/9 23/7 27/9 31/9 32/9 45/23 48/4 48/16 48/17 52/6 64/4 65/19 66/14 71/13 76/2 77/4 81/12 81/16 81/20 81/21 81/25 82/1 87/20 89/7 90/5 93/15 93/22 95/1 98/6 98/11 100/9 103/3 105/11 106/2 107/5 114/7 121/9 124/4 124/5 124/14
N		
nail [1] 8/13 name [6] 89/8 90/13 91/5 95/5 110/14 134/14 naming [1] 89/10 narcotic [4] 27/7 27/11		

N		
now... [9] 124/17 125/24 126/3 126/6 126/8 126/12 127/8 128/7 128/11	72/9 88/11 88/18 92/15 94/7 100/18 101/10 101/16 106/13 106/25 112/11 114/12 117/8 121/18 123/6 123/10 132/3 132/8	opportunity [10] 42/16 48/21 93/7 107/23 108/1 108/2 108/8 108/21 108/25 119/22
NRS [1] 115/10	old [1] 51/19	oppose [1] 25/1
number [15] 31/21 33/13 33/15 33/16 35/11 36/19 36/19 36/20 37/4 79/25 88/15 104/4 104/5 106/5 125/13	omnibus [4] 3/19 13/21 47/9 47/11	opposed [6] 14/11 58/5 102/20 105/9 117/6 129/19
number Use [1] 36/19	on [172]	opposition [5] 5/8 8/14 21/22 27/25 111/19
numbers [8] 33/5 33/19 34/2 37/3 104/25 128/9 130/9 130/12	once [4] 37/16 93/10 115/13 115/23	option [1] 105/2
numerous [2] 37/21 92/24	one [56] 4/23 5/2 10/22 16/22 17/23 18/3 27/2 28/20 30/15 36/19 36/20 36/20 37/3 37/4 41/24 42/1 45/10 46/5 46/23 46/25 47/4 48/8 48/10 48/16 49/19 49/23 50/13 60/9 61/9 61/14 61/23 63/5 74/4 79/13 80/5 80/16 88/24 90/1 93/23 94/18 94/23 95/16 98/7 99/19 101/11 101/21 107/7 112/2 113/2 115/15 116/14 123/22 123/23 126/20 127/22 131/16	or [210]
NV [2] 2/5 2/11	ones [4] 48/13 54/22 81/11 83/12	order [15] 3/17 18/13 39/7 40/12 40/13 52/9 77/6 84/8 87/12 104/20 109/16 114/24 115/7 115/8 117/4
O	ongoing [6] 9/22 60/15 83/8 87/16 87/22 127/6	orders [2] 81/23 132/23
o'clock [1] 121/16	only [28] 12/5 12/10 12/15 13/1 27/16 39/3 39/15 48/17 49/7 52/4 55/12 61/20 68/3 84/13 90/10 99/20 99/21 100/7 105/10 110/24 111/2 115/15 115/16 115/23 115/25 116/14 116/15 126/19	ordinarily [1] 31/10
object [2] 5/20 85/2	open [6] 23/21 24/9 32/19 81/19 102/4 104/11	original [2] 102/21 131/24
objected [2] 109/22 112/16	opening [6] 26/22 26/23 118/5 120/24 130/10 130/16	originally [1] 124/24
objection [2] 5/20 87/5	opens [3] 37/18 96/3 96/23	other [52] 5/10 10/12 13/3 17/11 25/11 31/16 35/19 43/2 44/16 45/6 45/23 45/25 47/15 47/18 48/22 49/20 50/14 51/6 55/5 55/19 55/25 58/19 66/9 67/9 70/14 79/11 84/11 84/17 85/23 91/8 92/8 95/7 96/21 102/4 105/18 110/11 110/13 111/2 113/12 118/23 120/5 120/14 120/19 121/3 122/1 123/23 126/4 127/22 129/15 130/25 130/25 131/3
obligation [9] 12/21 17/7 17/14 33/24 82/25 83/1 96/16 96/17 96/20	opine [1] 91/25	otherwise [13] 8/4 22/19 37/15 40/24 55/17 56/21 78/4 82/4 106/11 107/19 108/21 114/25 115/6
observation [2] 63/17 63/18	opinion [48] 22/14 23/3 39/18 42/7 42/14 44/24 46/13 46/14 46/18 46/19 57/4 64/10 64/15 68/25 69/4 69/6 69/20 71/1 71/7 72/25 73/1 73/25 81/8 85/4 85/14 89/6 89/8 89/11 89/13 90/4 90/6 90/13 95/13 107/16 108/3 123/20 123/22 126/1 126/22 126/23 127/17 127/21 128/3 128/10 128/20 129/3 129/4 129/23	our [27] 6/7 8/14 8/17 21/22 21/25 22/7 22/22 27/24 39/7 42/12 42/15 43/11 47/4 50/21 54/11 55/12 61/6 66/23 98/19 99/14 99/15 101/3 102/9 106/16 106/24 109/20 118/13
observations [4] 63/9 63/10 63/11 64/1	opinions [70] 18/6 21/25 22/8 22/23 22/25 23/2 23/4 40/18 41/5 41/13 41/13 42/21 42/24 44/2 46/9 58/14 60/22 61/25 62/4 62/10 62/14 62/16 70/14 70/16 70/24 75/7 76/21 80/1 80/9 80/20 81/3 81/14 81/14 82/12 83/25 84/9 85/10 86/15 89/1 90/1 91/2 91/9 92/22 92/22 93/13 93/18 93/24 94/3 94/8 95/2 95/23 96/7 96/25 96/25 107/17 107/17 108/23 113/14 113/16 114/3 115/19 124/12 124/18 124/20 125/22 126/10 129/21 129/24 130/3 130/6	out [54] 4/17 13/3 14/5 15/16 16/19 16/23 17/10 17/11 17/20 18/15 20/17 20/21 29/11 32/11 33/25 37/7 37/17 48/15 48/19 58/20 60/12 61/22 72/11 73/5 74/12 83/14 85/7 87/13 96/1 97/20 97/21 109/9 109/15 109/16 110/9 111/7 112/25 113/7 113/13 114/21 114/24 115/6 115/21 123/13 123/23 124/4 124/14 124/25 126/3 128/16 128/21 129/2 129/7 130/13
observe [2] 63/13 64/2		outrageous [1] 86/18
observed [3] 62/2 76/12 119/18		outs [1] 39/5
observing [1] 63/23		outside [13] 39/17 40/1 40/10 74/3 75/11 76/18 77/5 77/13 77/15 85/24 87/13 88/4 92/3
obtain [2] 13/1 15/13		outweighs [1] 100/23
obviously [9] 20/10 25/21 25/23 29/24 51/18 57/11 62/22 78/5 127/23		over [6] 12/19 17/7 29/20 34/5 78/6 89/9
odd [1] 58/7		overarching [1] 113/2
of -- the [1] 17/5		overburdensome [1] 113/4
off [9] 34/23 43/7 84/13 86/1 94/7 105/15 105/24 110/6 125/17		overcome [1] 66/19
offended [2] 36/14 36/17		overlap [2] 3/24 3/25
offends [1] 36/22		
offer [2] 96/25 100/10		
offered [2] 14/21 15/7		
offering [4] 13/8 71/1 73/17 77/18		
offers [1] 44/24		
OFFICE [1] 134/14		
officer [8] 61/24 62/1 62/14 63/8 68/23 69/16 70/2 70/8		
officer's [1] 62/4		
officers [3] 62/15 64/7 70/2		
often [1] 25/25		
oftentimes [1] 12/6		
oh [9] 7/18 14/23 50/16 66/13 82/1 82/20 88/22 114/5 116/19		
okay [64] 3/18 3/20 4/5 5/6 6/23 8/11 10/9 11/10 11/15 11/18 11/21 13/6 18/8 18/13 18/16 22/21 23/15 23/16 24/17 25/20 26/21 27/23 28/11 31/24 34/5 36/12 37/1 37/6 37/8 41/2 45/4 45/8 45/9 45/18 45/21 46/11 46/15 46/23 52/1 56/11 57/6 63/12 68/8 71/9 71/13 71/20		

O	period [1] 34/25 perjury [1] 12/23 permanency [1] 55/3 permit [1] 38/9 permitting [1] 46/5 person [4] 51/19 51/21 93/18 118/16 personal [6] 78/18 97/17 101/21 110/19 125/1 126/25 pertinent [1] 14/3 petitioned [1] 39/9 photograph [2] 69/2 69/3 photographs [4] 71/17 117/25 119/1 119/7 phrased [2] 16/16 28/12 physical [4] 39/24 39/25 40/3 85/1 physician [11] 19/15 39/14 44/2 44/25 88/16 91/24 98/10 98/21 99/25 99/25 116/18 physicians [7] 25/11 38/10 38/15 40/13 44/7 80/1 99/11 picture [1] 120/23 pie [1] 38/2 pissed [1] 34/23 place [6] 29/20 43/13 81/24 103/22 112/15 134/7 plaintiff [58] 3/10 6/6 10/3 11/22 12/14 12/16 12/17 14/14 19/10 19/13 24/22 24/24 25/9 26/12 28/21 34/5 36/12 41/8 42/4 47/16 65/9 66/13 67/20 71/9 82/16 89/15 97/15 97/22 98/13 101/14 102/6 102/9 102/12 103/3 103/5 103/22 103/23 105/21 105/22 105/23 106/4 106/9 107/19 108/4 109/5 112/7 118/21 119/14 119/17 119/20 119/24 120/6 122/2 123/12 123/14 123/16 124/21 130/9 Plaintiff -- why [1] 97/15 plaintiff's [27] 3/19 5/2 6/9 14/10 16/10 18/12 19/14 24/23 25/5 25/10 26/5 60/1 61/10 77/23 79/19 79/20 79/22 80/16 98/21 101/12 107/8 108/18 109/17 117/13 123/8 124/15 130/16 plaintiffs [7] 1/8 25/24 34/9 77/23 98/6 109/18 114/11 plaintiffs' [1] 90/17 plan [5] 86/7 90/25 91/9 109/5 126/4 planning [3] 48/7 118/2 118/3 plans [1] 109/5 playing [1] 99/4 plays [2] 37/7 61/22 plenty [1] 37/20 point [27] 13/19 14/5 15/16 16/19 16/22 17/24 22/4 29/11 31/17 33/8 38/14 57/2 57/15 81/18 82/3 83/11 95/3 103/15 103/18 105/2 118/9 118/13 127/10 127/22 129/14 129/17 131/22	pointed [2] 58/19 113/13 poison [2] 37/17 37/25 police [6] 68/23 69/16 70/1 70/2 70/8 72/22 politically [1] 29/16 politically-charged [1] 29/16 politicize [3] 29/18 29/24 30/3 politicized [1] 29/15 politicizing [1] 31/1 politics [1] 31/3 population [1] 58/25 portion [2] 126/20 130/24 position [8] 63/17 70/9 101/3 102/9 103/23 104/1 106/16 112/10 possibility [1] 102/25 possible [3] 82/7 83/19 123/24 possibly [2] 83/14 113/22 potential [2] 30/15 65/10 potentially [2] 37/17 55/6 pound [2] 72/16 100/12 pounding [1] 73/9 practice [2] 73/3 78/16 praiser [1] 107/10 precaution [1] 82/8 preclude [21] 18/20 19/7 21/19 21/20 21/24 24/22 25/10 49/21 50/5 52/4 52/23 62/17 64/22 88/15 93/12 100/8 107/8 117/12 120/13 121/11 123/8 precluded [5] 22/8 28/2 53/1 64/10 76/11 precludes [1] 32/2 precluding [11] 19/10 47/7 49/17 51/4 59/24 61/24 62/13 65/1 68/13 73/17 77/17 preclusion [1] 100/24 preconceived [2] 34/1 38/1 predicated [1] 123/12 predict [1] 8/23 preexisted [1] 14/20 preexisting [1] 89/11 preference [2] 10/13 31/11 prejudice [6] 50/10 66/11 66/12 66/19 66/21 67/20 prejudices [2] 34/1 34/2 prejudicial [5] 8/5 52/11 61/1 118/15 120/9 prejudicing [1] 107/25 prepare [1] 82/6 prepared [1] 83/15 prescient [1] 95/9 prescribed [3] 27/11 28/3 28/5 presence [7] 74/3 75/11 76/19 77/5 77/15 87/14 88/5 present [6] 26/24 26/25 108/22 111/4 129/5 129/6 presentation [1] 101/13 presented [10] 4/5 4/11 26/14 26/18 74/24 107/18 108/20 111/15 112/24 126/15 pressure [5] 55/7 56/6 56/17 57/22 58/18 pretrial [1] 130/5
P	page [2] 28/21 127/3 paid [21] 50/6 50/7 99/1 99/2 99/12 101/6 101/14 101/25 102/15 102/20 102/24 103/9 103/14 103/25 104/7 104/8 105/13 106/19 106/20 106/20 125/20 pain [19] 17/4 20/20 20/21 20/22 20/23 22/4 27/7 27/11 27/17 28/4 28/5 30/16 35/1 57/18 63/22 79/7 87/16 87/22 119/14 paint [1] 18/2 painted [2] 15/9 71/3 panel [2] 37/18 37/19 parameters [1] 90/10 paramount [2] 114/14 114/15 Pardon [2] 41/20 73/14 part [22] 4/18 9/2 10/16 10/16 15/18 25/14 27/11 33/25 40/9 45/18 46/8 46/13 59/14 59/15 62/6 68/9 68/9 73/10 73/10 75/18 92/2 119/13 particular [1] 29/21 particularly [3] 97/25 102/16 103/17 parties [3] 27/5 33/24 121/6 parts [4] 5/12 5/17 8/15 9/4 party [3] 102/18 104/9 122/4 pass [1] 126/12 past [2] 74/9 101/13 pasted [1] 74/12 pat [1] 107/18 patient [12] 39/23 40/5 45/14 45/19 46/8 46/14 46/19 80/12 81/9 82/22 83/8 90/20 patient's [1] 92/1 patients [2] 46/10 80/14 pause [1] 47/2 pay [2] 103/10 103/13 payer [2] 122/15 122/19 payment [4] 101/7 106/15 106/16 106/18 payments [1] 101/25 PEGGY [3] 1/24 134/4 134/17 penalty [1] 12/23 people [19] 30/18 32/20 36/14 37/11 37/25 48/19 51/8 51/18 52/18 53/15 58/23 70/25 72/4 74/16 75/8 78/12 107/14 114/24 117/3 per [1] 102/10 percent [5] 43/16 45/1 127/5 127/13 127/21 perfect [1] 13/19 performed [3] 19/15 92/19 119/9	

P	<p>pretty [3] 27/25 54/19 80/4</p> <p>prevail [1] 49/10</p> <p>prevails [2] 103/5 103/7</p> <p>prevent [8] 5/22 8/10 13/5 15/5 17/2 17/6 27/22 34/20</p> <p>previously [4] 49/6 67/15 68/4 68/11</p> <p>primarily [2] 60/5 95/21</p> <p>principles [1] 113/2</p> <p>prior [48] 5/9 5/11 6/6 6/11 6/17 6/17 7/7 7/10 8/7 8/14 8/19 8/20 9/4 9/4 9/5 9/7 9/20 9/24 9/25 11/24 13/25 14/1 15/14 15/17 16/23 17/3 18/21 22/3 23/6 28/4 38/7 54/17 54/21 59/9 59/11 59/25 60/2 60/19 61/7 65/2 65/19 67/21 76/7 77/15 90/19 97/2 121/7 121/8</p> <p>private [2] 122/15 122/19</p> <p>probability [6] 7/6 7/12 7/16 7/23 8/4 124/3</p> <p>probably [20] 5/20 6/21 7/3 10/16 29/5 30/10 37/14 53/2 53/20 59/13 59/19 64/14 70/8 96/13 98/25 99/3 115/13 115/22 115/24 120/25</p> <p>probate [1] 67/23</p> <p>problem [17] 9/2 13/24 31/22 32/6 32/18 33/6 34/15 37/16 39/4 71/21 80/23 82/18 107/21 110/7 111/2 128/4 130/8</p> <p>problems [3] 87/17 87/23 107/20</p> <p>procedure [2] 13/16 119/16</p> <p>procedures [5] 19/16 117/13 119/8 120/4 120/5</p> <p>proceedings [4] 47/2 133/4 134/6 134/12</p> <p>process [8] 4/14 4/15 42/13 43/11 108/7 112/18 112/25 119/4</p> <p>processes [1] 118/22</p> <p>Proctor [6] 50/18 50/19 100/20 100/25 105/17 106/14</p> <p>procured [1] 63/15</p> <p>produce [1] 20/7</p> <p>producers [1] 125/4</p> <p>producing [1] 125/8</p> <p>prognosis [3] 38/11 46/7 92/1</p> <p>prognostications [2] 42/22 80/20</p> <p>progressed [1] 86/4</p> <p>progresses [1] 86/12</p> <p>prohibit [1] 33/1</p> <p>proper [2] 122/20 122/20</p> <p>property [3] 68/15 72/23 73/5</p> <p>propose [1] 3/16</p> <p>prospective [1] 30/11</p> <p>proven [1] 55/16</p> <p>provide [2] 88/16 116/17</p> <p>provided [10] 12/11 12/15 13/2 14/11 16/18 16/19 17/12 39/22 124/6 124/7</p> <p>provider [3] 9/14 102/3 122/2</p>	<p>providers [1] 40/21</p> <p>provides [1] 124/22</p> <p>providing [4] 61/25 62/14 92/4 130/23</p> <p>psychiatrist [2] 73/20 75/7</p> <p>psychologist [1] 73/20</p> <p>publish [1] 37/25</p> <p>pull [1] 71/22</p> <p>purchase [1] 121/21</p> <p>purchased [3] 102/19 121/22 122/1</p> <p>purchaser [2] 102/18 104/9</p> <p>purely [1] 117/19</p> <p>purpose [5] 28/24 83/16 105/19 113/1 118/20</p> <p>purposes [2] 80/13 125/19</p> <p>pursuant [1] 40/23</p> <p>pushing [1] 36/18</p> <p>put [17] 6/2 25/17 35/11 43/3 56/19 57/11 58/5 59/4 60/23 71/6 75/3 87/12 103/25 104/20 109/19 119/23 130/9</p> <p>putting [4] 32/11 55/2 74/7 74/8</p>	<p>realize [1] 92/25</p> <p>realizes [1] 84/12</p> <p>really [20] 18/10 20/18 21/2 27/18 28/13 29/18 35/7 37/9 53/2 71/16 72/15 97/6 105/9 112/24 113/9 113/10 114/11 115/2 126/7 127/19</p> <p>really -- I [1] 113/9</p> <p>realm [1] 79/2</p> <p>rear [2] 53/14 53/15</p> <p>rear-end [2] 53/14 53/15</p> <p>reason [15] 29/25 30/7 68/5 80/24 80/25 97/22 98/22 101/1 110/23 115/4 115/5 121/3 122/24 126/16 126/23</p> <p>reasonable [25] 7/6 57/20 58/14 78/9 78/24 79/1 79/5 79/10 79/16 84/10 86/16 87/4 87/12 87/17 87/21 102/13 104/22 105/1 105/4 105/6 105/7 105/12 106/11 106/22 122/17</p> <p>reasonably [4] 53/1 78/19 87/8 126/14</p> <p>reasons [3] 97/15 100/10 100/10</p> <p>rebut [6] 42/16 90/12 91/9 93/23 95/2 98/3</p> <p>rebuttal [26] 45/7 45/25 88/20 88/23 95/3 96/18 107/17 107/18 108/1 108/14 108/15 108/23 111/15 111/15 112/3 113/15 113/25 115/7 115/8 115/16 115/24 115/25 116/3 116/8 116/11 116/12</p> <p>rebutting [10] 41/16 88/17 89/8 89/12 94/19 107/9 107/16 108/5 108/19 115/20</p> <p>recall [2] 10/5 107/13</p> <p>received [3] 22/2 23/5 23/6</p> <p>recent [3] 29/11 38/22 74/4</p> <p>recently [2] 39/3 74/6</p> <p>recognition [1] 124/15</p> <p>recognized [1] 101/9</p> <p>recollection [1] 15/23</p> <p>recommendations [1] 125/23</p> <p>reconstruction [1] 70/7</p> <p>reconstructionist [2] 69/13 70/10</p> <p>reconstructionists [1] 63/1</p> <p>record [8] 25/17 47/4 50/25 82/25 91/23 97/12 101/2 134/11</p> <p>records [44] 11/24 12/3 12/11 12/15 12/25 13/2 13/3 14/3 14/6 14/7 14/11 14/12 14/13 14/21 14/22 15/1 15/12 15/13 15/15 15/18 16/16 17/11 17/16 18/6 18/14 18/15 18/21 18/23 18/25 22/9 41/14 44/20 44/20 45/16 45/18 76/13 80/2 80/10 80/12 84/7 84/9 86/15 127/12 127/15</p> <p>records -- you [1] 18/14</p> <p>recover [1] 102/11</p> <p>recovery [1] 123/1</p> <p>red [2] 8/5 60/23</p> <p>reduce [1] 58/2</p> <p>reduced [4] 103/1 103/1</p>
Q	<p>qualification [2] 56/1 58/12</p> <p>qualified [1] 77/20</p> <p>qualifying [1] 85/21</p> <p>quarter [2] 79/24 107/5</p> <p>question [36] 6/22 7/8 7/9 8/20 9/20 9/23 10/2 12/13 12/14 23/13 28/22 29/6 30/25 32/1 32/4 36/6 37/11 37/13 46/17 54/6 59/6 67/1 68/10 68/17 85/13 86/24 90/15 96/14 100/13 104/23 112/14 112/14 112/23 114/14 114/16 127/5</p> <p>questioning [5] 28/15 28/24 30/23 31/7 122/21</p> <p>questions [23] 5/3 5/16 5/18 5/22 6/14 7/20 8/17 10/18 10/19 11/3 11/6 11/14 14/25 28/18 30/22 31/2 32/7 35/22 54/6 56/10 76/16 85/12 91/1</p> <p>quick [3] 76/18 98/25 113/3</p> <p>quite [3] 4/18 95/9 132/21</p> <p>quote [1] 91/23</p> <p>quoting [1] 127/2</p>		
R	<p>raise [2] 96/5 122/14</p> <p>raised [1] 87/4</p> <p>raises [1] 25/13</p> <p>raising [2] 8/5 56/9</p> <p>rather [5] 13/23 56/4 115/2 124/7 128/20</p> <p>RAYMOND [5] 1/10 2/8 3/7 3/12 3/15</p> <p>rays [1] 118/25</p> <p>read [5] 4/7 37/21 42/11 84/8 130/24</p> <p>readdress [1] 4/10</p> <p>reading [3] 5/10 27/9 42/17</p> <p>ready [2] 121/15 124/1</p> <p>real [3] 90/18 98/25 120/7</p> <p>reality [2] 7/22 60/20</p>		

R		
<p>reduced... [2] 105/23 106/9 reduction [7] 55/16 56/2 58/5 102/17 103/2 103/12 128/9 refer [6] 21/23 22/5 22/6 22/11 24/1 68/19 reference [11] 5/24 18/11 24/22 25/10 49/17 49/21 52/5 52/17 59/24 60/11 68/15 referenced [1] 17/25 references [1] 21/20 referencing [2] 51/5 107/9 referral [2] 23/18 26/3 referrals [1] 26/4 referred [9] 23/19 23/19 24/5 24/9 24/12 24/16 78/13 78/14 78/15 referring [2] 19/8 68/14 reflect [3] 128/10 128/20 132/23 reform [10] 28/16 28/23 29/5 29/16 29/23 29/25 30/2 30/6 30/12 30/24 regard [3] 5/16 76/17 114/2 regarding [12] 15/23 28/16 30/23 31/8 40/18 65/3 73/18 77/18 80/9 81/15 100/23 126/1 relate [3] 6/18 8/15 9/9 related [12] 8/25 11/24 18/21 41/5 54/23 59/14 59/16 79/5 80/20 104/22 124/24 126/5 relates [14] 31/4 45/5 45/10 45/13 45/24 46/5 59/16 59/19 62/13 64/17 68/10 70/1 93/24 126/2 relating [1] 69/11 relationship [7] 60/3 65/14 65/15 65/18 65/21 65/23 66/4 relationships [1] 26/3 relevance [3] 53/5 65/5 65/7 relevancy [1] 65/13 relevant [13] 7/7 10/12 26/7 50/11 53/7 54/8 56/22 59/13 61/5 65/20 100/14 105/19 122/7 relied [8] 126/19 126/24 127/24 128/2 128/24 130/25 131/3 131/6 relief [2] 48/22 90/9 relies [2] 101/17 128/25 rely [7] 17/8 70/14 70/23 73/15 86/11 102/6 128/23 relying [3] 70/17 71/18 126/14 remainder [1] 55/4 remained [1] 125/2 remains [1] 48/4 remember [2] 73/11 127/23 remind [1] 77/4 removed [1] 126/3 rendered [4] 18/5 40/25 44/3 95/12 rendering [1] 70/16 Reno [1] 124/10</p>	<p>repeatedly [1] 100/12 repetitive [1] 100/8 reply [3] 127/3 127/3 131/2 report [48] 19/21 38/12 39/15 41/6 42/6 46/16 62/6 70/21 72/23 74/7 74/8 74/14 75/3 81/1 88/17 89/14 94/14 94/18 94/25 96/18 115/24 116/2 116/3 116/5 116/7 116/8 116/21 123/15 123/22 124/12 124/16 126/6 126/9 126/13 126/19 126/20 127/24 128/7 128/12 129/15 129/22 129/22 129/23 131/1 131/5 131/18 131/24 131/25 REPORTED [1] 1/24 REPORTER [1] 134/4 REPORTER'S [2] 1/15 134/1 reports [19] 20/2 20/6 38/14 43/12 46/15 71/17 74/23 80/3 86/15 90/24 91/2 95/10 115/20 116/10 123/12 125/22 128/25 128/25 132/1 represent [1] 66/3 representations [1] 48/20 representative [1] 131/19 represented [2] 65/8 66/18 request [2] 76/25 77/2 requesting [1] 11/22 require [1] 116/15 required [2] 38/15 40/8 requirement [1] 104/19 requires [1] 102/22 reserve [3] 61/14 75/10 77/3 reserved [5] 64/20 64/21 64/23 64/24 69/12 resolution [1] 40/7 resolve [2] 3/22 102/2 respect [5] 4/19 8/21 113/10 119/10 123/11 respond [1] 21/17 responding [2] 61/24 62/13 response [2] 13/10 80/15 rest [1] 25/19 restrict [1] 35/24 restrictions [2] 99/20 99/21 resulting [1] 9/23 results [1] 104/3 retain [1] 67/6 retained [10] 24/24 25/5 41/16 67/15 68/2 91/24 98/8 98/20 99/14 99/15 retake [1] 82/10 retention [2] 24/23 25/4 review [2] 13/4 93/7 reviewed [6] 22/9 71/10 71/11 71/11 93/7 126/21 reviews [2] 92/3 92/13 revisit [1] 131/8 RICHARDHARRISLAW.COM [1] 2/6 right [55] 3/16 4/14 5/1 6/24 8/19 9/7 11/7 12/11 12/12 13/12 15/2 16/11 17/5 18/18 19/20 38/8 38/23 41/9 41/12 44/13 47/3 47/4 56/13 59/8 60/6 62/20 62/21 63/6 64/4 65/7 66/5 67/3 68/19</p>	<p>76/15 79/23 79/25 81/5 83/21 88/13 89/1 94/2 97/13 98/25 101/10 104/15 107/4 110/4 113/3 115/1 115/9 117/2 117/11 127/8 127/15 132/20 rights [10] 42/13 43/11 108/7 112/8 112/9 113/6 114/15 114/15 114/19 115/12 risk [2] 53/17 123/1 RMR [2] 1/24 134/17 road [1] 23/22 Roesler [2] 93/21 93/25 roof [1] 114/10 rounds [1] 72/9 routinely [2] 25/24 78/11 rule [37] 31/15 31/17 31/25 32/1 32/24 33/1 33/9 33/14 34/16 34/19 35/5 35/13 35/19 38/23 39/13 41/3 41/17 42/17 42/17 43/9 44/1 44/4 45/3 49/20 91/19 92/6 95/22 96/10 96/17 96/18 96/21 96/22 96/23 97/3 97/7 102/3 106/17 rule -- I'm [1] 96/22 ruled [1] 80/15 rules [10] 13/14 13/15 39/8 39/8 42/10 43/8 43/25 91/15 113/5 115/6 ruling [5] 4/3 4/4 17/22 45/11 64/20 rulings [1] 132/23 run [1] 64/2 running [1] 97/14</p> <p>S</p> <p>said [38] 6/4 9/6 10/25 13/10 17/15 18/16 19/22 21/10 24/12 43/16 47/19 57/7 58/1 61/13 62/25 67/18 69/2 71/13 71/16 72/2 75/23 77/11 84/16 86/17 87/5 87/9 97/19 99/24 109/4 110/20 110/25 123/23 125/3 125/11 125/14 126/22 131/1 134/7 sake [1] 109/3 same [18] 8/15 15/17 20/6 28/2 32/3 52/19 59/14 63/14 67/14 69/5 69/15 74/11 74/15 99/4 100/13 111/10 113/21 116/1 San [1] 115/21 sanitize [1] 14/4 saw [4] 14/6 14/12 15/18 62/2 say [111] 6/19 8/24 8/24 9/20 9/23 10/16 14/4 14/10 15/11 19/17 19/21 21/22 23/8 29/12 30/15 32/21 33/2 33/3 34/8 34/22 35/7 36/22 40/4 41/7 41/10 42/7 42/10 42/14 43/2 43/3 43/18 43/19 44/7 44/12 44/16 44/21 46/18 47/16 48/17 49/1 51/9 57/17 57/19 57/25 57/25 58/16 59/5 60/14 61/9 64/18 68/9 69/11 71/9 71/10 73/4 74/22 74/22 74/25 75/4 75/9 76/2 76/3 76/19 76/22 79/4 80/18 81/4 81/7 81/20 81/21</p>

S		
say... [41] 81/21 82/1 82/2 82/2 82/20 84/6 84/23 85/17 86/10 86/13 86/14 87/21 89/2 89/24 90/2 90/17 90/25 91/3 92/9 92/10 93/17 93/21 94/13 100/25 102/6 105/4 105/18 108/11 109/4 110/8 112/8 112/11 113/4 114/5 115/2 115/24 122/7 122/9 123/3 126/18 131/17	seeing [2] 64/3 118/16 seek [1] 48/22 seeking [2] 21/19 27/16 seeks [2] 21/20 52/23 seem [2] 63/22 73/12 seeming [1] 16/16 seems [6] 17/19 71/3 86/1 113/9 113/9 129/17 seen [25] 12/8 14/3 14/23 16/4 16/6 16/17 16/18 21/9 23/3 31/15 33/21 37/5 67/12 70/20 71/16 71/17 71/17 71/18 118/9 118/11 119/11 120/11 120/12 121/1 121/10 select [1] 58/22 selected [1] 66/2 selection [1] 29/15 self [1] 69/21 self-serving [1] 69/21 sell [2] 122/13 122/25 sells [1] 122/3 sense [4] 7/25 15/8 41/1 80/24 sent [1] 48/6 served [1] 68/4 serves [1] 95/9 serving [1] 69/21 set [1] 42/2 setting [2] 101/20 101/21 settlement [2] 121/14 132/18 several [4] 51/8 60/19 125/6 125/9 Severity [1] 53/10 shackle [1] 44/6 share [2] 22/23 52/10 sharing [2] 21/25 22/8 she [66] 9/25 12/24 13/2 17/2 17/7 17/8 17/13 20/9 20/10 20/10 20/16 21/4 21/5 21/6 21/6 22/2 27/17 28/3 28/5 51/16 53/21 56/5 57/10 60/3 66/2 66/22 67/2 67/5 67/6 67/10 67/18 68/2 68/3 68/4 75/20 76/6 76/9 76/9 77/25 84/16 86/2 89/11 94/17 95/1 95/2 97/22 97/23 97/23 97/25 97/25 103/7 104/1 104/4 113/24 113/25 115/24 116/20 116/22 116/22 119/18 119/19 119/20 124/21 127/15 127/17 127/20 she's [29] 8/16 20/15 20/15 27/14 27/16 27/17 27/18 27/19 53/19 55/19 56/6 57/20 58/17 58/18 60/15 66/14 67/3 75/23 75/24 76/4 76/4 76/19 86/4 87/17 87/22 103/8 103/11 116/24 119/21 sheet [1] 105/1 shocking [1] 118/19 shoe [1] 92/8 SHORTHAND [1] 134/4 shot [1] 124/18 should [37] 7/8 25/15 25/15 28/23 28/24 29/22 29/23 30/10 30/18 30/19 34/24 35/15 38/17 52/19 52/19	53/1 59/6 63/3 67/12 69/12 77/22 84/4 84/8 86/23 86/24 87/3 87/7 89/6 94/2 99/23 100/7 100/17 105/9 106/8 113/18 117/6 122/14 shouldn't [9] 30/7 33/10 44/9 69/10 80/19 92/16 92/16 92/17 105/25 show [7] 8/19 65/20 65/22 98/5 99/22 112/15 119/14 showed [1] 63/15 showing [3] 66/11 119/6 120/6 shown [1] 55/16 shows [8] 28/3 65/14 66/4 86/8 100/1 100/6 100/15 125/8 sick [1] 35/7 side [12] 26/5 26/5 34/7 42/5 43/2 47/15 50/13 79/11 91/8 100/25 108/17 120/14 sides [6] 9/19 26/8 26/16 30/21 30/25 70/15 Siegler [1] 19/24 significantly [1] 21/18 similar [5] 5/12 5/16 59/15 117/20 118/11 Similarly [2] 63/19 112/9 simple [1] 131/4 simplify [1] 43/15 simply [6] 43/5 58/6 67/14 78/6 108/11 120/12 since [5] 60/15 70/15 82/23 95/8 123/13 singing [1] 124/22 single [14] 9/13 20/6 20/14 40/21 40/23 48/16 72/13 74/14 74/15 85/11 92/25 93/23 94/3 116/22 sir [15] 3/20 4/22 11/20 26/9 32/10 38/24 46/3 46/22 47/6 51/2 61/17 79/13 81/11 109/2 111/14 sit [13] 14/9 15/11 34/22 38/3 43/3 44/11 89/25 94/13 95/4 95/6 110/8 112/8 121/19 sitting [2] 129/7 129/9 situation [4] 31/19 33/21 98/2 112/15 situations [2] 10/22 104/7 six [3] 82/21 128/8 131/18 SJAFFE [1] 2/13 skid [1] 63/20 slightly [1] 88/24 slip [1] 17/20 slippery [4] 32/13 32/21 33/6 35/17 slope [4] 32/13 32/22 33/7 35/17 small [1] 124/21 SMITH [3] 2/10 3/14 63/4 smoker [1] 57/10 smoking [2] 57/12 58/1 so [159] society [1] 66/24 soft [1] 89/12 solely [2] 116/3 127/24 some [56] 3/24 4/15 4/18 4/20 5/10 7/10 8/7 14/2
saying [25] 13/14 14/11 20/12 20/19 37/1 38/14 48/6 54/10 56/5 58/4 60/24 62/18 63/19 69/16 69/20 71/6 72/19 89/21 112/17 113/16 115/1 122/17 123/15 125/12 127/17		
says [67] 5/9 14/13 19/13 19/22 20/12 20/13 22/17 23/18 24/5 24/7 24/7 25/13 26/13 27/10 27/25 28/21 31/11 33/12 34/3 34/11 34/16 35/13 36/12 36/15 36/21 39/20 44/5 44/8 44/13 45/3 52/3 52/4 53/14 56/20 59/9 61/5 62/6 71/6 74/5 74/13 74/15 75/1 76/4 78/24 80/8 85/15 85/16 87/16 89/10 91/23 91/24 92/14 95/22 99/20 100/2 100/7 102/8 105/3 105/7 106/14 106/18 113/18 122/8 127/4 127/18 130/2 131/6		
scared [1] 23/7		
scenario [2] 94/23 96/3		
scene [1] 20/9		
schedule [2] 110/16 110/22		
scheduled [2] 110/17 114/21		
Schifini [30] 19/22 19/24 20/1 20/4 20/12 22/1 39/20 40/5 41/10 44/8 44/12 44/24 71/23 72/20 73/17 73/24 75/6 75/15 75/17 75/19 76/11 77/17 79/9 89/3 90/3 94/5 94/13 113/17 114/6 116/21		
school [1] 72/3		
scientific [4] 56/8 58/15 69/20 74/19		
scope [2] 38/18 85/24		
screwed [1] 35/8		
seasoned [1] 12/7		
SEASTRAND [10] 1/7 2/2 3/7 8/6 12/21 61/1 62/18 75/17 86/2 127/1		
second [10] 109/6 109/10 109/15 110/3 110/13 116/3 116/8 123/22 123/22 124/4		
secondary [12] 25/1 25/3 73/18 73/21 74/2 74/11 75/22 75/25 76/14 76/21 76/23 76/25		
Secondly [1] 98/5		
section [1] 95/22		
see [26] 10/1 14/5 14/14 14/14 16/11 28/17 28/19 35/14 37/7 51/7 59/20 61/15 61/22 65/4 65/13 69/2 69/2 95/10 101/15 111/3 113/22		

S		
some... [48] 14/3 15/23 16/1 17/10 17/11 22/1 22/16 27/11 27/14 30/17 43/1 48/4 52/17 55/20 56/8 56/9 56/12 58/7 60/20 67/16 68/5 74/12 76/8 76/9 78/12 78/14 78/17 81/3 81/18 81/21 82/3 82/25 83/13 85/21 93/1 93/1 97/23 97/24 102/17 103/4 103/12 116/17 120/6 121/3 121/11 121/24 127/25 130/8	somebody [29] 19/23 24/12 34/3 36/21 42/13 49/2 50/2 51/10 51/10 51/17 56/20 57/4 61/4 65/16 66/2 67/4 67/5 72/10 73/4 82/18 83/24 86/9 90/5 104/21 105/3 105/7 112/1 114/20 114/21	somehow [3] 16/10 23/12 61/5
someone [2] 53/17 71/25	something [37] 4/9 5/24 7/16 8/8 12/9 13/20 13/23 21/10 21/12 26/16 29/20 39/3 47/19 47/21 48/15 62/11 81/13 81/16 81/25 82/6 83/2 84/24 85/1 86/17 86/22 87/3 87/4 87/7 87/8 87/25 88/1 98/17 106/19 110/6 119/18 119/19 120/23	sometimes [6] 10/11 28/17 28/18 33/19 84/12 97/20
somewhat [1] 62/15	somewhere [5] 22/17 24/4 96/15 96/16 125/22	sorry [6] 93/10 99/21 103/5 103/24 123/7 132/18
sort [6] 41/25 51/22 74/1 102/17 103/4 103/12	sought [1] 19/11	sound [1] 58/14
sounds [2] 22/10 22/10	source [15] 49/24 50/14 50/17 99/20 100/19 101/4 101/15 101/17 102/3 104/11 106/17 107/2 122/4 122/22 123/4	sources [10] 49/18 49/22 100/24 101/1 105/16 105/19 105/25 106/9 106/14 106/18
SOUTH [1] 2/4	speak [1] 108/9	speaking [1] 119/12
special [2] 101/13 102/11	specific [16] 9/3 13/20 13/23 31/13 32/1 32/8 33/13 35/22 36/10 36/11 45/7 51/24 51/24 53/23 53/23 79/2	specificical [1] 35/23
specifically [15] 35/21 40/11 44/1 44/15 52/4 68/22 71/24 73/23 91/20 91/22 100/2 100/5 102/8 103/18 106/18	specifics [2] 17/24 68/12	speculative [2] 69/21 100/9
speedy [1] 113/3	spending [2] 111/23 112/5	spinal [2] 78/12 124/5 spine [17] 77/19 77/21 77/21 77/22 77/25 78/2 78/7 78/9 78/23 78/24 78/25 79/2 79/3 79/4 79/6 79/10 79/12
split [1] 31/10	squishy [1] 38/25	stack [1] 45/15
stand [6] 57/16 71/6 76/3 81/7 87/15 99/11	standard [1] 125/20	standing [1] 124/11
stands [1] 99/10	start [13] 30/3 32/11 32/12 33/19 36/25 41/15 42/23 95/5 95/7 95/12 121/4 130/7 130/15	started [1] 86/1
starts [3] 32/14 34/17 130/21	state [6] 7/17 7/23 8/8 42/14 134/2 134/14	stated [9] 41/13 42/18 42/22 42/24 80/2 90/5 90/11 124/2 128/10
statement [3] 85/21 130/10 130/16	statements [4] 19/10 26/23 26/23 118/5	states [4] 40/11 44/1 101/24 103/21
STENOTYPE [2] 134/5 134/8	step [1] 90/2	steps [1] 83/18
STEVEN [2] 2/9 3/11	stick [1] 104/4	still [15] 33/4 47/11 82/17 83/8 102/25 121/15 122/22 123/4 124/8 124/11 126/7 126/11 128/18 128/19 130/13
stimulator [1] 87/18	stipulated [2] 123/13 124/25	stipulating [1] 22/11
stipulation [3] 121/6 124/4 124/17	stood [1] 129/7	stopped [1] 74/7
story [2] 110/10 115/6	STREET [1] 2/4	stricken [2] 126/17 129/12
strike [1] 129/14	strip [1] 125/9	stroke [4] 13/9 13/22 15/10 71/4
studies [1] 37/20	study [1] 125/5	stuff [6] 17/10 26/19 62/2 62/2 73/16 120/18
subject [5] 11/24 18/21 28/6 56/1 58/12	subjective [2] 20/16 21/5	SUBSCRIBED [1] 134/13
subsequent [1] 106/24	success [1] 40/7	successful [1] 39/23
such [18] 13/8 14/16 14/17 14/17 15/10 28/24 29/16 29/25 51/15 55/7 55/7 55/8 55/8 56/15 56/17 57/6 57/21	sudden [1] 128/7	sue [1] 66/13
suffered [2] 60/3 89/12	suffering [3] 30/16 35/1 57/18	suggest [3] 18/15 35/15 76/15
suggested [1] 96/3	suggesting [4] 11/23 16/12 18/20 27/7	suggestion [2] 13/1 20/18
SUITE [1] 2/11	suits [1] 125/19	sum [1] 99/12
sun [1] 44/19	supersede [2] 112/9 112/10	SUPERVISION [1] 134/9
supplement [1] 83/1	supplemental [5] 115/20 116/10 124/16 131/4 131/24	supplemented [1] 127/16
supplements [1] 86/6	support [3] 89/1 89/25 129/8	Suppose [2] 6/4 6/6
supposed [1] 117/4	Supreme [7] 29/12 29/14 30/4 39/8 40/12 95/25 95/25	sure [26] 6/15 9/12 10/4 10/14 11/4 18/1 22/22 23/22 24/10 26/25 36/4 50/24 56/15 58/13 61/22 67/17 70/5 88/3 88/12 89/18 90/16 91/4 91/7 109/12 114/13 132/22
surgeon [5] 78/7 78/23 79/2 79/3 79/12	surgeries [19] 22/2 23/4 77/19 77/21 77/22 78/13 78/15 86/1 117/15 123/13 123/23 124/5 124/13 126/2 126/3 126/5 127/18 128/17 128/21	surgery [23] 39/20 39/21 40/8 77/25 78/2 78/9 78/24 78/25 79/4 79/6 79/8 79/10 79/16 86/2 86/3 92/16 117/21 118/18 118/22 119/21 122/6 122/7 124/4
surgical [7] 78/13 78/20 78/20 117/13 117/18 119/3 125/23	surprise [6] 80/22 81/12 81/17 83/3 84/22 85/5	surrounding [1] 53/23
susceptible [1] 53/16	sustain [3] 5/20 52/7 52/8	sustained [4] 8/22 28/6 68/15 75/21
symptoms [2] 40/8 60/15	system [2] 34/23 114/10	T
table [2] 55/3 58/20	tables [2] 58/23 58/25	take [15] 8/25 44/12 51/14 51/17 58/21 58/23 58/25 69/7 70/19 81/10 81/24 125/7 125/24 128/6 131/25
taken [5] 82/7 82/10 83/18		

T		
taken... [2]	90/23 128/21	testing [1]
takes [2]	76/20 90/21	tests [1]
taking [5]	81/23 85/7	than [36]
	123/22 124/4 130/17	23/20 23/24 31/21 33/15
talk [44]	17/16 18/14 19/1	33/16 34/10 34/12 34/22
	19/2 19/2 22/13 24/20 29/6	34/25 35/2 35/4 35/19 36/13
	39/14 39/15 39/16 41/4 41/5	36/16 51/6 51/21 53/17 56/4
	41/12 42/20 44/10 44/18	63/11 65/23 67/8 68/1 68/25
	45/1 45/19 47/1 50/1 50/6	70/25 99/7 101/20 103/23
	50/13 52/13 54/21 54/22	103/24 104/1 104/8 114/19
	56/12 61/8 70/9 73/20 73/22	129/15 130/25
	77/20 78/1 79/9 79/15 79/15	thank [15]
	80/13 87/6 88/4 92/21 94/5	26/20 38/4 49/11 51/2 59/23
	95/1 95/21 131/13	61/17 88/7 96/12 132/9
talked [2]	10/22 85/3	132/12 132/14 132/16
talking [19]	15/12 18/4	Thanks [5]
	33/19 50/5 60/5 61/6 62/5	132/24 132/25 133/1
	66/7 67/20 71/5 75/15 78/11	that [941]
	95/5 95/12 117/14 117/15	that's [194]
	117/16 117/19 118/10	the -- our [1]
talks [4]	38/19 40/13	the -- the -- he [1]
	115/10 130/8	theft [1]
TAR [4]	64/5 64/5 70/6 70/6	their [135]
teach [2]	64/6 64/6	their -- their [1]
tell [23]	4/3 6/9 9/25	them [72]
	12/23 20/20 20/24 30/13	13/11 13/13 14/8 14/8 14/14
	31/10 36/23 40/24 45/16	14/15 15/22 16/4 16/7 16/11
	47/24 48/24 54/14 63/2 84/1	19/1 19/2 19/2 20/7 20/7
	84/18 91/8 91/13 92/20 97/7	23/13 35/6 35/10 40/14
	109/13 114/7	40/22 41/7 41/9 41/12 45/19
telling [3]	57/5 107/20	48/6 48/16 49/6 49/7 50/3
	107/21	50/3 50/6 50/13 51/9 57/25
tells [1]	127/11	60/14 61/9 65/15 66/7 66/8
temper [1]	84/6	66/9 69/20 76/24 79/11
tempered [4]	55/13 74/20	79/14 81/20 84/22 87/13
	85/9 85/9	90/10 91/3 91/9 91/16 95/7
ten [1]	48/14	95/11 95/20 96/14 96/16
tend [5]	69/25 70/11 78/1	108/5 111/3 112/2 112/3
	85/16 129/25	113/7 113/8 114/4 115/13
Terrance [5]	123/9 124/7	115/14 119/11 119/20 122/16
	124/8 124/19 130/12	131/25
terror [1]	119/25	theme [1]
test [1]	126/13	72/16
testified [13]	9/14 21/6	themselves [1]
	26/1 45/13 52/8 60/14 61/2	107/24
	61/15 63/8 75/17 75/19	then [77]
	114/6 128/24	7/7 7/13 13/1
testifies [7]	48/25 75/12	14/23 16/19 17/18 32/13
	76/17 77/1 88/3 104/24	35/2 36/2 36/21 36/22 37/18
	115/3	38/21 40/1 40/20 41/15 48/3
testify [36]	7/5 7/5 7/12	49/7 53/11 56/3 59/4 60/16
	8/4 38/10 38/18 45/11 45/17	63/13 64/9 68/8 71/9 76/6
	46/6 52/21 76/23 77/22	76/20 76/21 81/25 82/25
	77/24 78/8 78/19 80/9 81/1	85/16 85/16 87/12 89/10
	82/20 90/10 99/12 104/21	89/22 90/23 92/13 94/6
	108/10 108/12 109/10 110/3	94/13 96/4 98/1 98/21 99/18
	110/8 110/17 110/24 111/3	100/2 100/7 100/7 101/17
	112/25 115/13 115/23 116/15	102/19 105/10 106/3 106/4
	116/24 117/3 118/25	106/7 106/22 107/17 108/8
testifying [9]	64/10 65/19	108/15 109/13 110/2 110/2
	76/12 84/20 89/17 108/18	111/4 112/3 115/5 115/14
	110/2 123/9 130/21	115/20 116/1 116/2 116/7
testimony [25]	38/20 60/21	122/3 123/2 123/18 123/21
	73/18 74/2 75/18 76/1 77/16	127/15 129/25 130/4 131/8
	77/18 84/7 95/14 99/23	131/12
	100/1 100/23 107/11 108/3	theories [1]
	108/19 110/20 111/4 111/15	84/21
	112/2 113/7 118/3 122/20	therapy [4]
	124/1 129/16	40/3 85/1
		there [107]
		4/1 5/8 5/9 6/4
		6/13 6/16 6/16 8/14 11/23
		11/25 12/3 12/18 12/25 13/3
		13/3 14/2 14/9 14/19 15/23
		17/5 17/10 17/10 17/11
		17/11 18/15 18/15 18/20
		18/22 18/25 20/23 21/10
		21/10 23/1 23/20 27/7 29/11
		30/1 32/11 33/10 34/22
		35/15 39/12 43/1 44/11 45/1
		48/2 49/20 54/24 56/2 56/3
		56/4 57/9 58/8 58/16 62/7
		62/8 62/10 63/25 65/15 66/4
		66/10 67/8 69/2 69/3 71/15
		72/6 74/2 75/4 75/25 76/5
		84/15 85/22 85/22 88/20
		89/25 93/1 93/23 94/3 95/11
		99/16 101/8 102/17 104/4
		106/15 110/6 112/8 112/19
		112/21 114/20 118/23 119/3
		122/9 122/25 123/3 124/2
		124/24 126/11 127/15 127/22
		127/25 129/8 129/9 129/20
		129/22 129/25 130/13 132/21
		there's [84]
		3/25 7/10 7/19
		8/6 17/20 20/3 21/3 21/4
		21/8 21/14 22/16 23/17
		23/18 23/18 24/4 24/7 24/11
		24/19 27/21 29/25 30/7
		30/14 34/4 35/18 37/20 47/5
		49/22 52/20 53/14 53/18
		60/1 60/4 60/21 63/20 63/25
		66/3 66/21 67/8 69/19 74/18
		75/21 76/6 76/8 76/9 78/5
		81/17 81/18 82/3 82/4 83/16
		85/6 85/14 87/2 87/2 88/19
		96/15 96/17 96/20 97/15
		99/16 101/8 102/16 102/25
		103/6 103/11 104/24 105/18
		106/21 110/13 111/6 113/22
		113/23 115/4 118/25 119/1
		120/4 123/1 123/10 126/9
		128/22 129/3 129/11 129/15
		131/7
		THEREAFTER [1]
		134/7
		therefore [2]
		51/14 102/15
		therefrom [2]
		84/10 86/16
		these [56]
		3/17 4/20 5/4
		5/9 5/11 13/12 13/21 14/6
		14/6 14/11 14/12 15/13
		15/17 15/18 15/25 19/5
		28/17 31/1 35/8 47/5 49/6
		55/14 55/19 55/20 58/21
		60/2 60/5 60/15 60/19 60/25
		63/9 72/24 75/6 75/8 77/2
		82/17 83/7 88/19 91/1 91/2
		91/9 95/21 96/21 100/9
		107/20 113/4 113/6 117/3
		118/14 118/18 118/21 119/7
		119/15 120/8 122/5 127/17
		they [166]
		they'll [1]
		36/23
		they're [62]
		5/18 6/18 6/21
		7/18 9/2 18/2 18/2 19/21
		20/11 20/11 23/7 24/19 32/8
		38/16 42/8 47/24 48/16
		48/24 49/1 52/21 54/10
		54/13 55/2 55/14 56/1 57/5
		57/16 61/5 68/23 70/16
		72/12 72/14 72/18 76/2
		78/19 81/4 83/12 84/13
		84/13 89/25 91/6 98/12
		98/18 99/6 99/11 103/6
		104/6 105/3 105/3 107/15
		112/4 113/13 113/15 113/16

T		
they're... [8] 119/7 119/13 120/20 122/8 122/16 122/18 127/3 130/17	131/12 132/13 134/7 times [5] 26/1 75/16 93/1 100/14 111/23 TIMOTHY [1] 1/19 tire [2] 63/20 64/11 to -- I [1] 16/3 to -- it's [1] 50/12 today [5] 4/4 4/16 4/20 120/13 132/11 together [2] 60/12 64/2 told [6] 21/11 31/20 36/15 46/24 49/4 76/9 too [2] 32/15 54/19 took [7] 11/9 46/12 94/17 112/15 124/10 124/11 134/5 top [4] 99/10 99/11 124/19 125/21 topic [4] 55/11 55/11 59/7 108/9 tort [10] 28/16 28/23 29/5 29/16 29/22 29/25 30/2 30/6 30/12 30/23 totally [2] 25/3 29/2 track [1] 5/4 traction [1] 127/25 traffic [1] 70/7 trained [1] 62/16 training [3] 70/2 94/9 94/12 traipsing [1] 81/20 TRANSCRIBED [1] 134/8 transcript [3] 1/15 71/22 134/10 trauma [1] 71/8 treat [5] 50/2 75/7 78/12 90/20 90/20 treated [5] 12/24 50/2 50/3 93/18 98/1 treating [46] 13/25 15/24 25/11 38/9 38/15 39/14 40/13 40/21 42/8 43/6 43/6 44/2 44/7 44/25 45/11 45/15 45/19 45/20 45/24 46/6 47/18 50/8 74/16 80/9 80/25 82/17 82/22 83/6 83/6 83/8 88/16 90/19 90/24 91/6 91/24 94/17 94/22 98/10 98/10 98/21 99/3 99/10 99/25 116/4 116/18 116/25 treatment [68] 9/15 12/18 16/23 17/2 19/11 19/17 22/2 22/14 23/6 27/12 27/17 27/20 38/11 38/18 39/16 39/17 40/2 40/2 40/6 40/6 40/6 40/18 40/25 41/5 41/6 42/21 44/3 44/9 44/11 44/17 45/3 45/14 45/17 46/7 46/8 46/10 46/19 54/18 54/22 59/10 59/12 80/12 80/14 81/9 82/19 84/17 84/17 84/20 85/15 86/9 86/12 90/1 90/6 92/4 92/5 92/18 93/13 93/25 94/4 97/23 97/24 100/11 105/12 113/14 114/3 114/7 122/2 123/18 treatments [1] 85/23 tree [1] 129/9 Tri [5] 101/18 101/19 101/24 103/18 104/11 Tri-County [5] 101/18	101/19 101/24 103/18 104/11 trial [51] 4/6 4/9 4/11 4/14 4/17 14/4 26/14 26/18 26/25 27/1 29/21 29/22 29/23 30/11 30/14 31/21 45/16 48/25 49/7 75/10 77/4 82/11 83/20 83/25 84/19 85/5 85/16 86/20 91/1 91/11 91/19 92/21 93/4 93/16 96/23 97/2 97/20 99/12 100/5 101/13 109/4 110/12 110/16 110/16 110/18 113/2 115/7 120/15 121/4 130/7 130/21 trials [4] 17/20 31/1 31/16 118/12 tricky [1] 90/18 trier [1] 54/7 trouble [2] 15/8 35/17 true [9] 14/10 14/12 20/23 44/14 58/20 113/15 113/25 116/1 134/10 truly [1] 14/19 trust [1] 67/23 trusts [1] 67/6 truth [1] 12/23 try [5] 21/7 64/4 83/20 119/23 120/21 trying [26] 5/21 14/4 15/5 17/1 17/6 18/2 20/11 20/25 27/22 28/7 29/18 29/19 30/3 47/21 55/17 55/18 59/21 67/2 67/3 72/14 72/15 72/18 73/7 76/2 93/9 119/13 TUESDAY [2] 1/22 3/1 turn [5] 17/7 45/20 101/22 112/25 113/7 turnaround [1] 122/13 turned [1] 12/19 turns [1] 122/3 twelve [2] 47/17 47/18 twice [2] 108/12 117/3 two [17] 29/12 43/19 48/8 49/23 50/22 74/4 78/11 86/1 93/9 109/4 110/5 111/2 123/10 123/11 124/12 126/5 127/17 two-week [1] 109/4 type [11] 10/24 15/9 17/5 17/5 23/24 53/15 55/13 74/21 91/20 118/18 118/18 types [3] 56/9 62/8 75/6 TYPEWRITING [1] 134/8 typically [1] 94/12
think [184] think -- I [1] 33/17 think -- what [1] 62/17 thinking [2] 7/18 70/12 third [3] 102/18 104/8 122/4 this [211] thoroughly [2] 96/1 119/2 those [60] 6/14 6/18 8/20 8/24 9/14 9/21 10/19 10/22 12/3 12/9 15/15 21/12 28/13 30/20 30/22 30/22 32/7 32/22 32/23 34/2 35/10 39/14 41/15 41/24 45/7 46/1 46/9 48/19 55/1 55/15 55/21 56/9 56/12 56/15 57/8 59/6 60/12 61/7 64/2 76/9 81/24 85/1 86/4 87/24 88/10 93/24 95/1 96/7 102/13 105/15 105/24 110/6 111/5 119/10 126/5 128/21 129/2 130/10 130/11 130/12 though [12] 6/18 47/16 53/8 54/25 56/21 71/1 81/8 82/22 96/19 107/2 124/9 131/17 thought [3] 60/18 86/19 96/1 thoughtful [1] 72/19 thoughts [4] 36/23 70/13 104/15 104/17 thousand [1] 125/10 three [1] 48/18 through [13] 3/23 4/14 56/25 57/3 59/21 72/18 81/20 94/11 94/21 97/21 114/10 124/16 124/16 Thursday [2] 109/10 109/19 time [32] 9/8 10/1 16/7 20/6 24/2 28/2 36/20 37/3 45/18 49/7 50/21 50/25 58/5 61/20 63/14 71/23 72/13 74/24 81/24 84/15 84/15 85/22 86/4 91/1 92/21 104/14 111/17 115/11 124/9	Uh [1] 8/1 Uh-huh [1] 8/1 ultimately [1] 104/12 Um [5] 109/7 109/21 109/24 111/21 111/25 Um-hum [5] 109/7 109/21 109/24 111/21 111/25 unavailable [1] 97/24 unbiased [1] 108/17 under [14] 12/23 35/5 44/19 50/3 78/9 79/1 79/17 94/22 96/16 96/18 96/20 100/16 119/17 134/9 undergoing [1] 120/1 undergone [3] 118/23 120/4	

U	127/13	wants [17]
undergone... [1] 120/6	usual [1] 122/10	24/22 25/9 26/12
underpinning [1] 21/8	usually [4] 62/5 62/9 62/10	27/19 35/6 43/4 43/4 43/4
understand [22] 5/10 6/1	62/15	43/5 43/5 59/1 62/22 88/9
12/1 30/25 47/14 50/9 51/7	V	88/10 102/6 118/21 119/20
53/5 57/14 60/4 61/19 62/1	vague [1] 100/8	warranted [4] 78/3 78/9
62/15 85/8 88/25 99/17	valid [2] 29/5 96/14	79/1 79/17
106/25 109/16 109/18 115/12	value [3] 100/22 102/13	was [141]
117/3 131/20	106/22	was -- he [1] 116/9
understandable [1] 16/2	variety [1] 126/24	WASHINGTON [1] 2/10
understanding [1] 21/14	VEGAS [4] 2/5 2/11 3/1	wasn't [16] 21/4 22/14 50/7
underwent [1] 119/15	125/5	51/10 52/14 52/16 54/12
unduly [2] 52/11 107/25	vehicle [1] 72/11	54/14 62/9 85/4 85/4 86/24
unfair [16] 43/8 43/9 43/24	vehicles [2] 64/12 68/16	112/14 112/19 116/12 128/17
73/3 80/22 81/12 81/17 83/3	veiled [1] 18/11	wasn't -- there [1] 112/19
85/5 86/19 93/11 93/11	verbiage [1] 122/11	way [16] 10/19 16/15 25/22
93/16 94/1 108/16 114/11	verdict [7] 31/8 31/12	30/3 31/2 31/15 34/4 66/16
unfairly [2] 118/14 120/9	37/11 98/14 98/14 99/15	72/20 73/2 74/17 76/20 84/4
unfairness [2] 82/15 93/2	106/4	84/7 96/24 97/3
unfettered [1] 108/17	verify [1] 82/12	ways [2] 110/13 120/5
unflinching [1] 113/5	version [1] 96/2	we [144]
unfortunately [1] 17/9	versus [10] 3/7 30/5 50/18	we -- I [1] 33/24
unless [1] 69/19	50/19 51/19 53/18 100/20	we'll [6] 37/7 42/19 46/1
unlikely [1] 71/8	104/18 105/17 106/14	77/3 77/6 110/20
unnecessary [1] 19/15	versus -- in [1] 30/5	we're [56] 5/21 13/17 17/1
unqualified [3] 69/21 73/24	very [25] 4/14 13/13 15/24	17/6 18/7 20/25 21/22 22/5
75/6	23/23 52/23 55/9 58/8 63/21	22/6 22/19 23/8 23/23 24/10
unrelated [6] 25/11 54/17	66/25 70/22 71/4 71/7 71/7	27/22 27/25 29/4 33/3 33/14
54/21 59/10 59/12 59/13	72/19 89/4 97/13 110/23	33/15 36/13 36/15 42/11
unringing [1] 87/19	112/6 112/7 114/23 119/2	45/4 47/11 48/17 58/22
unrung [1] 130/13	122/11 122/19 124/19 132/12	59/20 60/4 61/15 61/21 67/1
unscientific [1] 69/5	video [5] 117/12 117/15	67/3 68/9 68/11 75/5 75/15
until [3] 74/6 109/19	118/10 120/7 121/12	77/5 78/21 79/13 80/17
128/18	videos [4] 117/18 117/20	83/15 84/18 84/19 84/21
unwarranted [2] 19/16 19/18	118/11 120/18	87/6 87/9 89/18 90/9 97/14
up [68] 4/11 6/19 9/19 10/1	videotape [4] 110/20 111/4	100/11 102/8 117/4 117/19
14/9 18/23 21/1 23/12 26/19	111/5 118/19	118/10 121/7 121/15
30/1 30/7 30/8 32/19 35/11	views [1] 31/3	we've [19] 15/16 15/17 42/2
36/7 36/24 36/25 37/18	Villablanca [2] 19/25 41/10	61/6 66/13 80/5 81/14 81/22
37/23 39/5 42/23 43/3 44/18	violate [1] 33/13	81/23 83/4 83/13 83/13 86/6
45/1 49/5 50/23 54/25 55/5	violated [1] 112/18	118/8 121/23 124/25 125/6
56/4 57/11 58/5 58/16 59/4	violates [1] 43/11	125/16 125/21
60/23 69/1 71/22 72/5 75/3	violation [4] 35/19 42/12	wedding [1] 114/22
75/16 77/21 81/16 83/24	112/24 113/5	Wednesday [3] 109/10 109/20
87/6 87/20 89/9 89/21 89/23	visit [2] 105/5 105/10	110/25
89/25 93/23 94/3 95/6 95/11	voice [1] 38/7	weed [1] 33/25
96/3 96/23 103/19 104/4	voir [12] 28/15 28/25 30/5	week [14] 109/4 109/5 109/6
104/20 110/14 111/18 112/5	30/23 31/7 74/3 75/11 76/18	109/10 109/11 109/15 109/16
112/16 119/3 119/23 122/9	77/1 77/5 77/13 77/14	110/4 110/10 110/25 112/16
123/3 124/10 125/24 130/10	vote [1] 35/12	114/5 114/7 121/7
updates [1] 86/7	W	weekly [2] 65/12 82/23
upon [24] 4/5 7/2 23/5	wage [1] 125/4	weigh [4] 100/19 100/20
26/17 31/13 31/18 31/19	wages [1] 124/24	107/23 108/2
32/4 32/8 32/12 34/2 35/22	want [64] 9/6 9/7 11/6	weight [4] 60/20 69/8 69/23
36/10 44/13 48/21 62/4	15/12 16/22 18/22 19/7 20/8	129/19
70/14 76/25 89/16 109/25	21/24 22/7 22/13 22/22 23/7	welcome [1] 121/19
123/20 124/12 125/5 129/21	23/11 23/21 23/22 24/6 24/6	well [90] 3/22 6/1 6/13
ups [3] 33/7 34/18 36/9	24/10 25/17 27/6 27/12	6/25 9/23 10/12 12/5 12/10
upset [2] 34/24 86/1	28/18 28/19 29/12 29/15	12/22 13/12 14/4 14/13
us [18] 4/13 6/9 9/3 9/6	30/4 30/21 30/21 32/9 35/11	14/15 14/23 15/6 15/21
12/11 13/20 16/7 17/8 19/7	38/9 42/8 44/6 44/7 44/21	15/24 17/17 18/22 19/17
30/4 82/25 83/2 94/14 96/3	44/21 44/22 45/16 47/15	19/25 24/4 29/10 32/14
96/23 103/7 106/22 127/11	51/9 52/13 53/25 54/14	32/16 33/8 36/6 37/23 37/25
use [13] 28/1 29/6 29/7	54/20 54/22 54/25 57/17	39/2 39/20 40/4 48/17 51/12
35/23 35/25 36/19 37/14	60/11 62/17 71/4 74/22 75/4	54/4 55/9 56/5 56/14 57/14
37/15 53/12 119/1 119/2	84/23 89/17 97/12 100/10	58/3 58/8 61/8 63/10 63/12
120/21 122/12	107/13 112/11 113/9 129/14	65/22 69/16 70/22 71/15
used [5] 27/13 78/25 118/16	132/3 132/5 132/22	73/23 82/20 83/5 84/16
121/2 121/3	wanted [1] 23/16	85/12 85/17 85/21 86/10
using [4] 118/2 118/3 127/5		87/18 87/22 89/4 91/17
		98/24 99/8 102/10 105/6

W		
well... [26] 108/11 108/12 110/5 110/23 112/6 112/7 112/22 114/5 114/6 114/23 115/23 118/14 122/9 122/11 122/19 123/2 125/3 125/16 126/6 126/11 127/18 128/5 128/10 128/14 131/10 131/23	102/14 102/15 104/5 106/9 115/10 121/22 124/21 125/20	works [1] 43/13
went [5] 39/5 40/5 48/15 48/19 124/10	while [4] 14/9 28/21 75/15 100/2	workup [4] 22/4 77/24 78/2 79/15
were [44] 5/11 5/12 6/11 6/17 8/16 9/8 9/9 12/2 12/15 15/13 21/7 22/2 23/4 23/5 31/20 39/11 41/15 49/5 53/2 63/9 72/3 72/4 72/4 85/13 93/5 95/9 98/7 102/12 102/13 104/21 106/11 107/16 110/7 112/22 120/22 121/22 123/25 123/25 124/5 124/14 124/20 126/4 133/4 134/8	white [1] 44/4	worry [2] 106/3 106/5
weren't [3] 17/12 18/16 116/11	who [42] 14/3 14/7 14/7 14/7 15/24 33/2 39/19 48/24 48/25 51/13 52/20 59/21 61/15 65/8 65/24 66/1 66/13 66/13 67/4 67/5 69/1 69/1 69/7 71/6 78/11 78/14 81/11 83/12 83/12 88/16 89/16 89/17 94/17 98/10 98/19 110/24 111/2 115/18 116/2 118/16 123/15 125/18	worth [1] 57/17
WEST [1] 2/10	who's [7] 53/17 59/4 59/21 66/12 122/15 125/8 125/21	would [102] 3/16 5/4 5/19 6/8 6/14 7/2 7/5 7/7 7/8 8/2 8/3 8/3 8/3 8/9 8/21 10/13 10/15 13/4 16/6 16/7 21/15 23/23 25/18 25/19 25/22 26/22 29/9 31/12 31/22 32/6 34/15 34/21 35/4 35/14 40/20 40/20 42/12 42/15 43/17 43/23 43/24 43/24 47/19 49/9 51/23 53/13 53/21 54/6 55/12 55/13 55/23 55/25 56/2 60/23 60/25 62/25 64/14 64/14 64/18 68/6 70/11 76/15 84/14 84/15 84/16 84/25 85/16 85/19 85/20 86/20 88/8 93/11 93/12 93/15 93/16 93/22 93/25 95/14 98/2 99/8 104/1 110/1 111/11 111/17 112/8 112/18 112/22 113/4 113/24 114/9 114/10 114/11 115/2 115/22 115/24 116/1 119/5 120/13 120/25 126/19 129/25 129/25
what [162]	whoever [5] 43/5 44/20 89/4 89/20 94/6	wouldn't [10] 24/9 37/14 41/1 55/21 79/6 79/11 91/14 91/17 110/2 110/3
what's [13] 17/13 43/2 47/10 47/23 50/16 64/13 69/9 73/8 105/12 105/13 105/13 105/14 114/14	whole [9] 4/14 38/13 53/12 83/16 83/24 99/7 105/13 124/17 128/16	Wow [1] 79/23
whatever [23] 35/9 42/7 43/4 43/5 44/12 48/18 55/4 55/8 58/7 70/22 74/22 75/4 87/23 106/10 110/23 114/23 122/10 122/11 122/18 125/13 125/19 131/11 132/6	whom [1] 78/12	write [7] 20/22 41/6 43/12 96/14 96/16 105/24 130/14
whatsoever [2] 35/16 124/13	whose [1] 69/23	writes [3] 62/7 94/25 128/7
when [47] 7/22 11/24 16/24 18/22 21/6 24/23 25/4 26/16 27/7 34/17 45/7 57/16 60/20 64/2 71/24 72/3 72/3 72/9 74/18 74/23 81/22 81/23 81/24 82/7 82/8 82/9 83/13 83/18 86/11 89/1 89/9 94/17 94/25 95/12 96/1 96/1 111/6 111/19 118/3 119/15 124/10 126/21 127/16 127/20 128/25 129/6 130/14	why [37] 15/8 24/23 25/4 27/19 35/15 36/22 44/10 44/15 45/2 45/2 47/21 66/20 81/10 86/12 91/13 92/11 92/21 92/22 94/19 96/11 97/15 97/15 100/10 114/7 120/9 120/14 124/20 125/15 126/21 127/4 127/5 127/16 128/3 131/10 131/10 131/21 131/23	writhing [1] 63/22
whenever [3] 4/3 43/4 84/5	wide [1] 126/24	writing [2] 120/23 130/17
where [42] 10/6 14/7 21/9 31/16 31/17 31/19 32/18 32/24 33/5 33/21 62/6 71/13 74/5 74/19 80/22 81/12 81/17 82/24 89/9 89/13 89/18 89/19 90/8 95/1 95/5 97/25 98/18 100/5 102/7 102/16 102/18 102/23 103/17 106/15 110/15 111/13 111/14 113/17 114/24 127/7 127/15 127/20	will [21] 4/3 4/16 4/17 19/13 57/6 65/17 67/22 77/8 91/21 91/25 92/7 92/8 96/4 97/18 99/1 103/1 106/21 106/23 111/10 114/17 126/15	written [8] 12/22 42/6 82/9 96/6 97/3 102/1 104/5 105/14
WHEREOF [1] 134/13	WILLIAMS [1] 1/19	written-down [1] 102/1
whether [27] 9/21 30/11 45/24 46/12 46/14 50/1 53/5 53/13 68/18 70/9 71/25 72/4 72/6 72/12 72/21 77/25 78/2 78/8 78/24 79/9 79/16 85/14 100/22 102/2 120/7 122/16 131/13	windfall [4] 103/4 103/6 103/11 104/3	wrong [12] 41/10 41/11 45/2 73/8 88/20 90/3 90/4 90/5 92/15 92/22 94/14 107/22
which [25] 14/19 15/9 15/25 19/22 21/25 29/5 29/23 32/1 39/5 53/21 58/20 80/11 99/4 99/18 99/22 100/1 100/10	withholding [1] 12/18	wrote [10] 80/8 94/18 107/17 115/20 116/2 116/21 123/11 123/15 123/21 131/17
	within [10] 12/24 13/25 14/1 29/21 41/13 41/17 42/22 42/24 78/16 84/9	X
	without [13] 38/12 39/15 42/6 45/21 56/12 81/1 81/21 89/10 108/3 108/9 108/17 119/3 120/6	X,Y [1] 93/18
	witness [9] 62/10 65/10 68/10 69/1 91/25 92/3 110/1 115/16 134/13	x-rays [1] 118/25
	witness's [2] 99/23 100/1	Y
	witnessed [1] 69/1	yeah [24] 3/25 5/5 11/8 19/4 29/3 36/21 47/13 57/8 57/13 60/13 66/24 69/2 69/14 72/22 73/12 74/5 74/21 80/7 84/16 84/24 88/22 113/16 127/18 132/5
	witnesses [10] 19/1 47/8 47/17 47/25 48/5 48/8 48/25 49/6 49/15 62/5	year [4] 51/19 93/5 125/10 125/13
	woefully [1] 73/24	years [25] 5/11 6/19 6/21 7/7 7/16 7/19 12/25 12/25 13/25 16/1 29/12 55/4 56/6 57/20 57/25 58/2 58/7 58/18 60/6 66/8 66/9 66/9 74/4 74/9 125/6
	won [1] 38/3	years' [1] 57/17
	won't [3] 77/8 77/11 91/18	yes [18] 5/13 6/3 12/5 15/11 25/8 38/24 46/3 46/22
	word [7] 28/1 28/1 69/11 75/16 78/25 81/6 114/12	
	words [2] 27/12 122/1	
	work [5] 26/4 77/21 110/22 125/11 125/16	
	worked [2] 25/25 66/3	
	worker's [2] 101/20 101/25	
	working [1] 25/10	

Y		
yes... [10] 47/6 61/11 63/25 67/18 68/2 85/16 107/15 109/2 112/13 117/1 yet [6] 32/5 108/4 108/19 121/12 121/15 129/7 you [406] You -- we [1] 130/14 you're [39] 7/15 10/19 13/20 14/25 16/9 19/20 20/25 22/11 22/11 26/16 26/24 26/25 29/17 31/25 32/12 40/19 48/7 55/17 55/18 56/11 56/19 57/23 67/19 77/4 78/11 87/5 89/19 91/2 92/23 92/25 98/25 99/2 105/6 106/5 111/23 112/17 113/20 121/19 122/11 you've [18] 20/19 20/20 20/20 20/21 20/22 20/23 43/18 61/19 74/8 82/7 82/8 82/8 82/9 82/22 107/19 110/1 121/1 129/18 your [128] 3/8 3/11 4/12 5/13 6/1 8/12 9/11 9/24 10/6 10/21 13/7 17/23 18/25 20/1 21/17 22/13 25/18 26/23 27/10 27/10 27/24 29/10 30/6 33/22 33/25 34/7 34/14 35/5 35/15 35/25 36/2 37/8 37/19 39/2 41/3 42/1 44/11 47/23 48/3 49/11 50/21 52/2 52/14 54/7 54/12 54/25 56/14 57/2 58/10 59/5 59/23 61/7 61/11 62/24 63/7 64/16 64/25 67/15 68/21 70/25 71/23 72/9 73/10 73/19 73/23 74/8 74/25 75/3 75/14 77/7 77/8 78/5 79/21 80/6 80/18 80/21 81/14 82/21 82/24 85/2 87/11 88/7 88/18 90/9 90/18 90/24 91/5 94/7 95/9 95/14 95/16 96/4 97/5 97/9 97/13 99/1 101/2 101/16 109/14 109/25 110/1 110/5 112/6 112/15 114/13 114/16 114/19 115/3 115/12 117/24 118/8 119/5 119/10 120/1 120/23 121/24 126/18 130/4 130/19 130/22 131/16 132/9 132/12 132/13 132/13 132/18 132/23 132/23		
Z		
zero [2] 32/4 32/6 Ziegler [6] 22/1 77/18 79/9 89/4 89/21 90/3		

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,

Appellant,

vs.

MARGARET SEASTRAND,

Respondent.

Supreme Court Case No. 64702

Supreme Court Case No. 65007
Electronically Filed
Nov 13 2014 08:12 a.m.

Supreme Court Case No. 65172
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County

The HONORABLE JERRY WEISE, District Court Judge

District Court Case No. A-11-636515-C

APPELLANT'S APPENDIX

VOLUME VI

STEVEN T. JAFFE, ESQ.

Nevada Bar No. 007035

JACOB S. SMITH, ESQ.

Nevada Bar No. 010231

HALL JAFFE & CLAYTON, LLP

7425 Peak Drive

Las Vegas, Nevada 89128

Attorneys for Appellant Raymond Riad Khoury

VOLUME INDEX

VOLUME VI

Exhibit 23 June 11, 2013, Reporter's Transcript of Motions JA 0919-1077
In Limine

Exhibit 24 July 15, 2013, Reporter's Transcript of Jury JA 1078-1168
Trial, (Day 1), pages 1-91