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DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET G. SEASTRAND,

Plaintiff,

v.

RAYMOND RIAD KHOURY; DOES I-X, and
ROE CORPORATIONS I-X, inclusive;

Defendants.

Case No. A636515

Dept. No. XXX

PLAINTIFFS' BENCH BRIEF
REGARDING THE ISSUE OF JURY
SELECTION

COME NOW PLAINTIFF, MARGARET SEASTRAND, by and through her attorney of
record BENJAMIN CLOWARD, ESQ., of the RICHARD HARRIS LAW FIRM and hereby files
her Trial Brief regarding the issue of Jury Selection.

I.

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II.

POINTS AND AUTHORITIESA. **PLAINTIFFS' COUNSEL HAS A SUBSTANTIVE RIGHT TO LIBERAL VOIR DIRE OF THE PROSPECTIVE JURORS IN ORDER TO GATHER INFORMATION TO INTELLIGENTLY EXERCISE PEREMPTORY CHALLENGES AS WELL AS FOR CAUSE CHALLENGES**

The purpose of voir dire is two-fold: First, to facilitate the identification and removal of potential jurors "who, because of bias or prejudice, cannot serve as fair and impartial jurors." *Silver State v. Shelley*, 105 Nev. 309, 774 P.2d 1044 (1989). Second, for trial counsel to gather information for an "intelligent exercise of peremptory challenges." *Whitlock v. Salmon*, 104 Nev. 24, 26, 752 P.2d 210 (1988); *See also Mu'Min v. Virginia*, 500 U.S. 415, 431 (U.S. 1991).

The Nevada Supreme Court has specifically held that an attorney has a substantive right to participate in voir dire. *Id.* at 26. In *Whitlock*, Appellants, Phyllis and J.T. Whitlock, brought an action against Donald Salmon, M.D. for injuries received by Mrs. Whitlock during surgery for removal of a brain tumor. *Id.* at 25. The Whitlock's counsel specifically requested permission of the trial judge to voir dire the jury. *Id.* However, voir dire was conducted exclusively by the judge. *Id.* The Supreme Court found the trial judge's failure to permit counsel to voir dire the jury to be reversible error. *Id.*

NRS 16.030(6) provides:

The judge shall conduct the initial examination of the prospective jurors and **the parties or their attorneys are entitled to conduct supplemental examinations which must not be unreasonably restricted.**

[Emphasis Added]. The Court in *Whitlock* held that "the statute confers a substantive right to reasonable participation in voir dire by counsel; and this court will not attempt to abridge or modify a substantive right." *Id.* at 26. In so holding, the Court explained:

1 Usually, trial counsel are more familiar with the facts and nuances of a case
2 and the personalities involved than the trial judge. Therefore, they are often
3 more able to probe delicate areas in which prejudice may exist or pursue
4 answers that reveal a possibility of prejudice. Moreover, while we do not
5 doubt the ability of trial judges to conduct voir dire, there is concern that on
6 occasion jurors may be less candid when responding with personal
7 disclosures to a presiding judicial officer. Finally, many trial attorneys
8 develop a sense of discernment from participation in voir dire that often
9 reveals favor or antagonism among prospective jurors. The likelihood of
10 perceiving such attitudes is greatly attenuated by a lack of dialogue between
11 counsel and the individuals who may ultimately judge the merits of the case.
12 In that regard, we expressly disapprove of any language or inferences in
13 *Frame* that tend to minify the importance of counsel's voir dire as a source of
14 enlightenment in the intelligent exercise of peremptory challenges.

15 *Id.* at 28.

16 The Supreme Court further explained the importance of trial counsel's substantive right to
17 participate in voir dire by emphasizing that this right was specifically safeguarded by the
18 legislature via a statutory enactment:

19 NRCP 47(a) contemplated a healthy respect on the part of trial judges for
20 appropriate supplemental participation by trial counsel in voir dire.
21 Historically, in most of Nevada's courts of general jurisdiction, counsel have
22 been accorded meaningful opportunities for involvement in the voir dire of
23 prospective jurors. The Legislature thus saw fit to enthrone the historical
24 practice selectively enjoyed by counsel in most trial procedures, in a
25 substantive enactment that vouchsafes the right to all counsel in every
26 department of our district courts. We accordingly view the statutory right
27 thus bestowed as an acceptable solidification of the basic intentment of
28 N.R.C.P. 47(a).

29 *Whitlock, supra*, at 26.

30 The constitutional guarantee of the right to be represented by counsel includes the right to
31 have counsel interrogate the members of the jury panel. *Whitlock, supra* at 26. "The importance
32 of a truly impartial jury, . . . is so basic to our notion of jurisprudence that its necessity has never
33 really been questioned in this country." *Id.* citing *United States v. Bear Runner*, 502 F.2d 908, 911
34 (8th Cir. 1974). Trial counsel's participation is integral to the preservation of this right. "The voir

1 dire process is designed to ensure -- to the fullest extent possible -- that an intelligent, alert and
2 impartial jury which will perform the important duty assigned to it by our judicial system is
3 obtained." *Id.*, citing *De La Rosa v. State*, 414 S.W.2d 668, 671 (Tex.Crim.App. 1967). "The
4 purpose of voir dire examination is to determine whether a prospective juror can and will render a
5 fair and impartial verdict on the evidence presented and apply the facts, as he or she finds them, to
6 the law given." *Id.*, citing *Oliver v. State*, 85 Nev. 418, 422, 456 P.2d 431, 434 (1969).

7 The Supreme Court noted, "one study suggests that the judge's presence evokes
8 considerable pressure among jurors toward conforming to a set of perceived judicial standards and
9 that this is minimized when an attorney conducts voir dire." *Whitlock*, at 28, citing Jones, Judge-
10 Versus Attorney-Conducted Voir Dire; and Empirical Investigation of Juror Candor, 11 Law and
11 Human Behavior 131, 143-44 (1987).

12 In the present case, the Plaintiffs have suffered severe life-altering injuries as a result of
13 Defendants' negligence and, as such, Plaintiffs will be requesting from the jury millions of dollars
14 to compensate them for their injuries, as well as millions of dollars in punitive damages.
15 Therefore, this counsel is entitled to conduct voir dire of the jury panel which should not be
16 unreasonably restricted. "The voir dire examination of jurors . . . [is] to enable counsel to exercise
17 intelligently the peremptory challenges allowed by the law." *State v. Brown*, 53 N.C. App. 82,
18 280 S.E. 2d 31, Cert Denied, 304 N.C. 197, 285 S.E. 2d 102 (1981). Therefore, the purpose of
19 voir dire is for counsel to gather information for peremptory as well as for cause challenges.
20 However, "[p]eremptory challenges are worthless if trial counsel is not afforded an opportunity to
21 gain the necessary information upon which to base such strikes." *Id.* at 27, citing *United States v.*
22 *Ible*, 630 F.2d 389, 395 (5th Cir. 1980).
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1 **B. ANY PROSPECTIVE JUROR WHOSE VIEWS MIGHT IMPAIR THEIR**
 2 **ABILITY TO BE FAIR AND IMPARTIAL IS DISQUALIFIED AS A MATTER OF**
 3 **LAW; THE PROSPECTIVE JUROR CANNOT BE REHABILITATED; THE**
 4 **PROSPECTIVE JUROR'S IMPAIRMENT DOES NOT NEED TO BE SHOWN**
 5 **WITH UNMISTAKABLE CLARITY; AND, ANY DOUBT MUST BE WEIGHED**
 6 **BY THE TRIAL JUDGE IN FAVOR OF DISQUALIFICATION**

7 The United States Supreme Court has recognized the fundamental importance of
 8 empanelling a fair and impartial jury, stating: "[i]t is difficult to conceive of a more effective
 9 obstruction to the judicial process than a juror who has prejudged the case." *In re Michael*, 326,
 10 U.S. 224, 228, (1945). On July 7, 2011, the Nevada Supreme Court reaffirmed that whether a
 11 juror should be removed for cause is based upon whether the panel member's views could
 12 substantially impair her performance of her duties as a juror in accordance with the Court's
 13 instructions. *Jitnan v. Oliver*, 2011 Nev. LEXIS 40, 127 Nev. Adv. Rep. 35 (Nev. July 7, 2011)
 14 (quoting *Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (quoting *Leonard v. State*,
 15 117 Nev. 53, 65, 17 P.3d 397, 405 (2001) (quoting *Wainwright v. Witt*, 496 U.S. 412, 424
 16 (1985))).

17 The United States Supreme Court in *Wainwright*, which the Nevada Supreme Court relied
 18 upon for its decisions cited above, held that prospective jurors must be excused if their views
 19 could substantially impair their ability to perform their function as jurors, and the impairment need
 20 not be shown with unmistakable clarity. The Supreme Court of Nevada has provided guidance for
 21 the District Court and trial counsel in determining whether a juror should be removed for cause.
 22 The Court explained, "[i]t is not enough to be able to point to detached language which, alone
 23 considered, would seem to meet the statute requirement, if, on construing the whole declaration
 24 together, it is apparent that the juror is not able to express an absolute belief that his opinion will
 25 not influence his verdict." *Thompson vs. State of Nevada*, 111 Nev. 439, 443, 894 P.2d 375, 377
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1 (1995), citing *Bryant v. State*, 72 Nev. 330, 305 P.2d 360 (1956). This rule was recently affirmed
2 by our Supreme Court, wherein the court stated: “[d]etached language considered alone is not
3 sufficient to establish that a juror can be fair when the juror’s declaration as a whole indicates that
4 she could not state unequivocally that a preconception would not influence her verdict.” *Jitnan*,
5 127 Nev. at 11 (quoting *Weber*, 121 Nev. at 581, 119 P.3d at 125)).

6 In *Jitnan*, a motor vehicle personal injury case, the Nevada Supreme Court found that the
7 district judge erred in failing to excuse a prospective juror for cause who “expressed an opinion of
8 bias against plaintiffs in personal injury actions because of his own prior experience with similar
9 lawsuits.” *Jitnan*, at 11. The prospective juror stated, among other things, that most claims were
10 frivolous and that injured plaintiffs should not be entitled to damages for pain and suffering.
11 *Jitnan*, at 4-8. The prospective juror stated that he did not know if he could not set his opinions
12 and impressions aside and assess the current case based on the evidence. *Id.*, at 11. The juror felt
13 a lot of lawsuits are frivolous, and this may influence his decision. *Id.* Defense counsel then tried
14 to “rehabilitate” the juror. *Id.* Although the prospective juror “retreated somewhat” from his
15 opinions, the Supreme Court noted that he “fell back on his previously stated preconceptions—
16 that many claims similar to *Jitnan*’s were illegitimate and that plaintiffs should not be entitled to
17 damages for pain and suffering.” *Id.* The Supreme Court indicated that the final two questions
18 answered by the prospective juror “were most indicative of the fact that he could not ‘lay aside his
19 impression or opinion and render a verdict based on the evidence’.” *Jitnan*, at 11. In response to
20 the last two questions, the prospective juror answered that he believed plaintiffs should not receive
21 damages for pain and suffering (although he had previously indicated the opposite when
22 questioned by defense counsel).

1 The Supreme Court held that despite the juror's "ever changing position when questioned
2 by counsel," the whole record showed that the panel member had a fixed opinion of bias against
3 plaintiffs in personal injury cases and his belief may substantially impair him from performing his
4 duties if seated as a juror, given the nature of the case. *Jitnan*, at 12. Thus, the *Jitnan* case is a
5 prime example that a prospective juror cannot be "rehabilitated" after the prospective juror
6 expresses views that could impair that juror's ability to serve. The fact that defense counsel in
7 *Jitnan*, in response to follow-up leading questions, was able to get the prospective juror to say that
8 the prospective juror could be fair and listen to the facts of this particular case, the Supreme Court
9 held that those inconsistent statements did not alter the jurors "fixed opinion" that plaintiffs should
10 not be entitled to pain and suffering and that most claims were frivolous. Thus, if Nevada Law
11 was not clear before *Jitnan*, Nevada law is now crystal clear that "detached language alone is not
12 sufficient to establish that a juror can be fair when the juror's declaration as a whole indicates that
13 she could not state unequivocally that a preconception would not influence her verdict." *Jitnan*, at
14 11.
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17 Despite finding that the District Court erred in refusing to excuse the prospective juror for
18 cause, the court did not reverse the judgment, holding that the jury that was ultimately empanelled
19 was fair. However, the court did find, nevertheless, that the District Judge did err in failing to
20 excuse the prospective juror for cause and held that "when the district court is faced with a
21 situation . . . [where] a prospective juror expresses [a] potentially disqualifying opinion or bias and
22 is then inconsistent in his or her responses regarding that preconceived opinion or bias—the
23 district court must set forth, on the record, the reasons for its grant or denial of a challenge for
24 cause." *Jitnan*, at 13.
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1 Consequently, the views expressed by a prospective juror, which evidence the juror's
2 partial beliefs cannot be subsequently obviated by a simple "yes" response to voir dire questions
3 such as "can you follow the law?" or "can you be fair and impartial?" Such questions are coercive
4 and, thus, gather no reliable information. In fact, these kinds of questions border on bullying.
5 They intimidate even self-assured jurors into giving false answers such as "yes, I can follow the
6 law" or "yes, I can be fair and impartial," which are insufficient under the law, if the court truly
7 wants to discover prospective jurors whose biases or prejudices may affect their ability to fairly
8 serve. Thus, if a juror expresses views during voir dire which might substantially impair the
9 performance of his or her duties as a juror the juror should be removed for cause, even if the juror
10 answers "yes" to the generic question, "can you follow the law?" Such "detached language,"
11 without more, should not allow an otherwise partial juror to remain on the panel. *Jitnan*, at 11.
12 Moreover, a juror's impairment does not need to be shown with "unmistakable clarity."
13 *Wainwright, supra*. Any doubt should be weighed in favor of being excused in order to remove
14 even the possibility of bias or prejudice infecting the deliberations. See *Walls v. Kim*, 549 S.E.2d
15 797, 250 Ga.App. 259 (Ga. 2001).
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18 The Nevada Supreme Court emphasized this point in *Thompson*, cited in *Jitnan*, and found
19 that, "...[s]imply because the district court was able to point to detached language that prospective
20 juror eighty-nine could be impartial does not eradicate the fact that he previously demonstrated
21 partial beliefs, capped by an unequivocal statement that [the Defendant] was guilty." *Thompson*,
22 *supra* at 443. The Court further explained: "It may be true that on examination [the prospective
23 juror's] answers tended to contradict his previous statements, but we believe that his very self-
24 contradictions do not increase his fitness as a juryman." *Id.* citing *Bryant*, 72 Nev. at 334. The
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1 *Thompson* court ultimately concluded that "... it was prejudicial error that [the] prospective juror
2 was not excused for cause." *Id.*

3 This principle is echoed in Courts throughout our country. Notably, the Georgia Court of
4 Appeals in *Walls, supra* discussed the fallacy of the "rehabilitation question" often relied upon by
5 judges to justify retention of biased jurors. The *Walls* Court discussed the fact that in too many
6 cases, judges confronted with clearly biased jurors use their significant discretion by asking a
7 version of the following question, which the *Walls* Court characterized as a "loaded question":
8

9 After you hear the evidence and my charge on the law, and considering the
10 oath you take as jurors, can you set aside your preconceptions and decide this
11 case solely on the evidence and the law?

12 *Id.* at 799. The *Walls* Court further explained, "[n]ot so remarkably, jurors confronted with this
13 question from the bench almost inevitably say, 'yes.'"

14 The *Walls* case is a classic example of a trial Judge's misuse of the "rehabilitation
15 question." The Georgia Court of Appeals found that the Judge erred in not dismissing the juror
16 for cause and reversed the judgment and remanded for a new trial. *Id.* The Court explained that
17 the mere fact the juror told the court she could decide the case on the law and facts did not
18 eliminate the reality of her potential bias. The Court further explained that a trial judge should err
19 on the side of caution by dismissing biased jurors, rather than trying to rehabilitate them, because
20 in reality, the judge is the only person in the courtroom whose primary concern, and primary duty,
21 is to ensure the selection of a fair and impartial jury. *Id.* at 799.
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23 A decision from the Supreme Court of Appeals of West Virginia is also illustrative of the
24 commonplace fallacy of a judge's attempt to rehabilitate jurors who already demonstrate potential
25 bias and prejudice. See *O'Dell v. Miller*, 565 S.E.2d 407, 211 W.Va. 285 (Va. 2002). The trial
26 judge refused to strike a prospective juror for cause who made statements that cast doubt on his
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1 ability to be fair and impartial, and the Plaintiff was forced to use a preemptory strike to remove
2 the challenged juror. *Id.*

3 The *O'Dell* Court reiterated what the *Walls* Court and what the majority of Courts have
4 stated, namely, that "[t]rial judges must resist the temptation to 'rehabilitate' prospective jurors
5 simply by asking the 'magic question' to which jurors respond by promising to be fair when all the
6 facts and circumstances show that the fairness of that juror could reasonably be questioned." *Id.* at
7 412. The court explained that "[o]nce a prospective juror has made a clear statement during *voir*
8 *dire* reflecting or indicating the presence of a disqualifying prejudice or bias, the prospective juror
9 is disqualified as a matter of law and cannot be rehabilitated by subsequent questioning, later
10 retractions, or promises to be fair." *Id.* The Court held that the trial court is required to consider
11 the totality of the circumstances and grounds relating to potential request to excuse a prospective
12 juror, rather than reliance upon a simple "yes" in response to the "magic question" from a judge in
13 an attempt to rehabilitate the juror. *Id.* at 413.
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1 **C. IN PERSONAL INJURY CASES THERE ARE A NUMBER OF COMMON**
2 **BIASES AND PREJUDICES, WHICH IMPAIR SOME PROSPECTIVE JURORS**
3 **ABILITY TO BE FAIR AND IMPARTIAL. THUS, COUNSEL MUST BE**
4 **PERMITTED TO EXPLORE THESE AREAS DURING VOIR DIRE**

5 There are a number of common troubling beliefs, or attitudes, held by prospective jurors in
6 personal injury cases which "substantially impair" their ability to follow the law. These beliefs
7 and attitudes must be discovered during voir dire to ensure a fair trial. Thus, there are specific
8 topics trial counsel must be permitted to openly discuss with the prospective jurors to ensure they
9 can follow the law. They include:

10 **1. Damages For Pain And Suffering and Loss of Enjoyment of Life**

11 The Nevada Supreme Court has made it clear that if the jury finds that Elizabeth Dees and
12 Kathryn Willis suffered injury as a legal cause of Defendants' negligence, they must award
13 damages for pain and suffering. *Shere v. Davis*, 95 Nev. 491 (1979); *Drummand v. Mid-West*
14 *Growers*, 91 Nev. 698 (1975). It is unquestionable that some people in our society today do not
15 believe in giving money for pain and suffering. In order for Plaintiffs to receive a fair trial counsel
16 must be permitted to assess this issue during voir dire. Any prospective juror who states they do
17 not believe in compensating personal injury victims for pain and suffering or loss of enjoyment of
18 life and would have trouble doing that if they were on the jury must be excused for cause.

19 **2. Personal Injury Lawsuits, Tort Reform And Damages Caps**

20 Tort reform and anti-lawsuit campaigns are part of our political and media driven climate.
21 There is no doubt that many people have very strong views on these subjects that may
22 substantially impair their ability to follow the law. Trial counsel must be permitted to address
23 these issues during jury selection.
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1 **3. Plaintiffs' Counsel Are Allowed To Ask The Venire Whether They Have Any**
2 **Biases Or Prejudices That Would Prevent Them From Returning A Multi-**
3 **Million Dollar Verdict in any Personal Injury Case Even If such a Verdict was**
4 **Justified by the Evidence**

5 Any method of questioning during voir dire is sufficient provided it is probative on the
6 issue of impartiality. *United States v. Brown*, 938 F.2d 1482, 1485 (1st Cir.), cert. denied, 116 L.
7 Ed. 2d 633, 112 S. Ct. 611 (1991); *Ristaino v. Ross*, 424 U.S. 589, 47 L. Ed. 2d 258, 96 S. Ct.
8 1017 (1976). See *Rosales-Lopez v. United States*, 451 U.S. 182, 189, 68 L. Ed. 2d 22, 101 S. Ct.
9 1629 (1991). In this regard, Plaintiffs' counsel are permitted to ask the venire questions relating to
10 whether the jurors have any biases or prejudices that would prevent them from returning a multi-
11 million dollar verdict in any personal injury case even if such a verdict was justified by the
12 evidence. Such questions specifically relate to the jurors' ability to be fair and impartial.

13 Further, these questions fully comply with EDCR 7.70(c) as they are NOT questions
14 which touch upon a verdict a jury would return based on hypothetical facts. Trial counsel will
15 NOT be posing questions such as: "If the evidence shows that this plaintiff has special damages of
16 two (2) millions dollars and general damages of two (2) million dollars would you be willing to
17 return a verdict of four (4) million dollars in this case if that is what the evidence shows?" Nor
18 does Plaintiffs' counsel expect that defense counsel will be posing questions such as "If the
19 evidence shows that Defendants did not cause Plaintiff's injury will you return a defense verdict?
20 Or, if the evidence shows that Plaintiffs' damages are only one hundred thousand (\$100,000.00)
21 dollars would you return that verdict?" However, trial counsel may ask the general question about
22 any kind of general personal injury case posed above just as defense counsel should be permitted
23 to ask prospective jurors if they have any biases or prejudices that would prevent them from
24 returning a defense verdict in any personal injury case.
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1 In *National Bank of Commerce v. HCA Health Services of Midwest, Inc.*, 304 Ark. 55, 59
2 (Ark. 1990), during voir dire, Plaintiff's counsel was allowed to ask the following question over
3 objection:

4 Do any of you have a feeling that you would not be able to award as much as
5 ten million dollars or in that neighborhood under any circumstances, no
6 matter what the proof has shown, no matter what the process of law is, does
7 anybody have any hesitation about awarding as much as ten million dollars if
8 you thought the evidence justified? This may be the most important question
9 that I will ask you and I would like to ask you the question individually...

10 Similarly, in *Gragg v. Neurological Associates*, 176 Ga. App. 516, 517 (Ga Ct. App.
11 1985), the trial judge permitted Plaintiff's counsel to ask the following question to the venire:

12 Assume that the evidence in this case justifies a very large verdict, say in
13 excess of a million dollars, just hypothetically. Would any of you have
14 difficulty in returning a verdict in that amount if the evidence justified it and
15 it was in accordance with the charge of the court, simply because it was so
16 much money?

17 The Georgia Court of Appeals affirmed the decision of the trial court and found that
18 questions relating to the juror's ability to award a large verdict if justified by the evidence was
19 relevant to the juror's ability to be fair and neutral *Id.* at 518.

20 Most notably, in *De Young v. Alpha Constr. Co.*, 186 Ill. App. 3d 758, 764-65, the court
21 took it upon itself to ask the venire whether they would be willing to award a verdict "in the
22 millions." The Illinois Court of Appeals specifically found that this was not an attempt to
23 indoctrinate the jury, that the Judge has discretion in determining what questions to pose to the
24 jury and that it is proper to inquire whether potential jurors have fixed ideas about awards of
25 specific sums of money. *Id.* citing *Kinsey v. Kolber*, 103 Ill. App. 3d 933, 431 N.E.2d 1316
26 (1982).
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1 Finally, consider *North Carolina Mut. Life Ins. Co. v. Holley*, 533 So. 2d 497, 506 (Ala
2 1987), in which a lone dissenting justice of the Supreme Court of Alabama thought the majority
3 should have addressed "the propriety of trial counsel's statement, in closing argument, that the
4 jurors' prior assurance, expressed on voir dire, that they would not be hesitant or reluctant to
5 return a one million dollar (\$1,000,000) verdict against an insurance company and its agent merely
6 because it was a large sum of money, mandated that the jury return a substantial verdict for the
7 plaintiff under the facts in this case." It is clear from reading the dissenting opinion, that the trial
8 Judge permitted plaintiff's counsel to specifically ask the jurors whether they would be hesitant or
9 reluctant to return a \$1 million verdict against an insurance company simply because it was a large
10 sum of money. The majority of the Supreme Court Justices found no issue with this question
11 posed to the venire.
12

13 Questions to the prospective jurors relating to whether they would be hesitant or reluctant
14 to award a multimillion dollar verdict in a personal injury case are extremely important to ferret
15 out potential juror bias. If a juror is unable to award a large sum of money simply because of the
16 juror's preconceived notions as to what would be an "unreasonable award," the juror would not be
17 able to be impartial. The jurisdictions that have addressed this issue hold that questions relating to
18 whether the jurors have any biases or prejudices that would prevent them from awarding millions
19 of dollars if justified by the evidence are related to the jurors' ability to be fair and impartial.
20 Further, if a prospective juror indicates that he/she cannot vote for a verdict in excess of a certain
21 sum of money, does not believe in pain and suffering damages, or believes there should be caps on
22 pain and suffering damages or jury verdicts, regardless of what the evidence shows, that
23 prospective juror must be excused for cause. This would be a clear indication of bias preventing
24 the juror from being fair and impartial in a case such as the one at bar.
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1 **4. Plaintiffs' Counsel Must be Permitted to Question the Prospective Jurors on**
 2 **the issue of Punitive Damages and Any Prospective Juror who is Not Willing to**
 3 **include Punitive Damages in a Verdict even if Justified by the Evidence Must**
 be Stricken for Cause

4 As this Court is aware, Plaintiffs have alleged punitive damages against the Defendants in
 5 this matter. As punitive damages are meant to deter or punish a tortfeasor for willful and wanton
 6 misconduct, it should come as no surprise that some prospective jurors may not be willing to
 7 award these types of damages despite any justification for such a verdict from the evidence. As
 8 such, Plaintiffs' counsel must be permitted to question the prospective jurors regarding punitive
 9 damages, and whether jurors would be willing to consider an award of punitive damages if such an
 10 award is justified based upon the evidence and the law, as instructed by the Court. *Fowler v. State*
 11 *Farm Fire & Cas. Co.*, 2008 U.S. Dist. LEXIS 63312 (S.D. Miss. July 25, 2008)(holding that
 12 while the district court bifurcated the trial into two phases—claims and relief for compensatory
 13 damages the claim for punitive damages—plaintiff was still permitted to question the prospective
 14 jurors as to punitive damages during *voir dire*).

15 While Nevada has never spoken directly on this issue, many other jurisdictions have held
 16 that “punitive damages” is a proper topic of discussion during jury selection. *See Brewer v. Wal-*
 17 *Mart Stores*, 87 F.3d 203 (7th Cir. Ind. 1996)(indicating that plaintiff’s counsel could have, and
 18 perhaps should have, questioned the prospective jurors on the topic of punitive damages in order
 19 to preserve their claim on appeal); *Payment v. State Farm Fire & Cas. Co.*, 2008 U.S. Dist.
 20 LEXIS 105589 (S.D. Miss. Dec. 18, 2008).

21 “Of course, Plaintiff will be allowed to address the prospect of punitive damages in voir
 22 dire. dire.”); *Schmermund v. Nationwide Mut. Ins. Co.*, 2008 U.S. Dist. LEXIS 98661 (S.D. Miss.
 23 Dec. 5, 2008)(“Plaintiffs will be allowed to address the issue of punitive/extra-contractual
 24 damages in voir dire subject to further direction from the Court”); *Ross v. Metro. Prop. & Cas.*
 25
 26
 27
 28

1 *Ins. Co.*, 2008 U.S. Dist. LEXIS 81114, 2-3 (S.D. Miss. Aug. 25, 2008)(holding that plaintiffs will
2 be allowed to address punitive damages in voir dire, and if the jury is allowed to consider punitive
3 damages after the coverage question is decided, all counsel will be able to make separate
4 statements on that issue); *Catalan v. RBC Mortg. Co.*, 2008 U.S. Dist. LEXIS 52065 (N.D. Ill.
5 July 8, 2008)(denying Defendants' motion to preclude, among other matters, *voir dire* questioning
6 of the prospective jury panel regarding punitive damages); *Rihn v. Jackson*, 2008 U.S. Dist.
7 LEXIS 21305 (E.D. Mo. Mar. 18, 2008)(allowing counsel to ask during *voir dire* "[i]s there
8 anyone on the panel who is so opposed to an award of punitive damages that you could not
9 consider evidence supporting punitive damages, or issue an award of punitive damages."); *Stokes*
10 *v. Xerox Corp.*, 2008 U.S. Dist. LEXIS 5805 (E.D. Mich. Jan. 28, 2008)(denying defendants'
11 Motion to preclude mention of punitive damages during *voir dire*, among other matters); *Negrete*
12 *v. Maloof Distrib., L.L.C.*, 2007 U.S. Dist. LEXIS 97769 (D.N.M. Dec. 1, 2007) (permitting the
13 question: Mr. Negrete is going to ask this jury to award punitive damages against Maloof to
14 punish for its wrongdoing in excess of a million dollars. Does anyone have a problem awarding
15 punitive damages if the evidence warrants awarding such money. Is there a ceiling or cap that you
16 would limit punitive damages to?"); *Cook v. Medical Sav. Ins. Co.*, 2006 U.S. Dist. LEXIS 27291
17 (W.D. Okla. Apr. 13, 2006)(permitting plaintiff to ask questions regarding punitive damages
18 during jury selection).

21 This topic of discussion has been upheld by Courts across the nation for over 100 years.
22 As the Supreme Court of Mississippi stated 104 years ago:

23
24 Parties to litigation have the right for their guidance in the exercise of their
25 peremptory challenges to ascertain the mental attitude occupied by the
26 individual jurors towards the vital question involved in the controversy. One
27 suing in damages, and predicated right of recovery on the theory that
28 the defendant is liable to the infliction of punitive damages, has the right
to ascertain by proper inquiries, not whether the juror will award

1 punitive damages under any given state of facts, but whether he is
2 opposed on principle to the awarding of punitive damages under any
3 state of facts. The same privilege upon the converse of the proposition
4 belongs to the defendant. He may in a proper way probe the mind of the juror
5 to enable him to determine advisedly his selection of the juror, to learn
6 whether he is prejudiced or biased in any way, or whether he will be guided
7 by the law announced by the court in assessing damages, should such be
8 legally allowable.

9 *Yazoo & M. V. R. Co. v. Roberts*, 88 Miss. 80, 84-85 (Miss. 1906);

10 The Appellate Court of Illinois affirmed the lower court's *voir dire* discussion of punitive
11 damages—the judge said: "[s]ometimes in the law there's a concept called punitive damages." He
12 described such damages as being "in the nature of punishment of a defendant." He also asked if
13 any prospective jurors opposed punitive damages to the extent that they could not award them
14 under any circumstances. *Gomez v. Finishing Co.*, 369 Ill. App. 3d 711, 714 (Ill. App. Ct. 1st Dist.
15 2006).

16 In denying a defendant's Motion to preclude *voir dire* questioning of punitive damages
17 another Court has reasoned:

18 The jury should be apprised from the onset of trial that plaintiffs are
19 seeking punitive damages. The Court will reference punitive damages in
20 voir dire as well as in the joint statement of the case. Moreover, the
21 parties may discuss punitive damages in opening statements. The jury
22 should not be in a vacuum and be placed in a position where it would
23 have to retroactively determine whether certain evidence is probative to
24 the issue of punitive damages. Certainly the jury would not be in a
25 position to process certain evidence that has no other relevance other
26 than as to the issue of punitive damages. However, the Court will apprise
27 the jury that the standard to recover punitive damages is greater than
28 that for non-punitive damages.

29 *Self v. Illinois Cent. R.R.*, 2000 U.S. Dist. LEXIS 224, 3-4 (E.D. La. Jan. 6, 2000). [Emphasis
30 Added].

Moreover, other Court's have upheld striking prospective jurors for their biases against punitive damages. In *Sealing Equip. Prods. Co. v. Velarde*, 644 So. 2d 904 (Ala. 1994), counsel asked the venire panel whether, if the evidence justified an award of punitive damages under Alabama law, any of them "just wouldn't feel comfortable" awarding punitive damages "regardless of what the facts were." The juror responded "I'm against punitive damages." See *Id.* The Supreme Court of Alabama held that it was not error for the juror to be stricken. *Id.*

It is well-established in Nevada that one must ensure that jurors can follow the law and perform their duty as jurors. See *Buchanan*, 483 U.S. at 415-16. *McConnell v. State*, 212 P.3d 307, 316 (Nev. 2009). In *McConnell*, a death penalty case, the Supreme Court of Nevada held:

This court and the United States Supreme Court have determined that death qualification of a jury is not an unconstitutional practice. See, e.g., *Buchanan v. Kentucky*, 483 U.S. 402, 416, 420, 107 S. Ct. 2906, 97 L. Ed. 2d 336 (1987); *Lockhart v. McCree*, 476 U.S. 162, 173, 106 S. Ct. 1758, 90 L. Ed. 2d 137 (1986); *Aesoph v. State*, 102 Nev. 316, 317-19, 721 P.2d 379, 380-81 (1986); *McKenna v. State*, 101 Nev. 338, 342-44, 705 P.2d 614, 617-18 (1985). Additionally, since McConnell's jury was chosen only for the penalty hearing, the jury was required to be death qualified to ensure that they could follow the law and perform their duty as jurors. See *Buchanan*, 483 U.S. at 415-16. [Emphasis Added]. *Id.*

The focus of jury selection in any type of case, be it a death penalty case or a punitive damages case, is selecting an unbiased and impartial jury who has no qualms with following the law. In a death penalty case, for instance, it is important, as the Supreme Court has indicated, for a jury to be "death qualified" meaning that they are capable of returning a verdict for the death penalty if the evidence justified such a verdict. As the law in Nevada recognizes death as a penalty for some heinous crimes, a jury must be capable of following the law and render a verdict consistent with it. Accordingly, *voir dire* examination is permitted on death penalty cases so that those prospective jurors opposed and incapable of following the law as to the death penalty can be

1 excused for cause to ensure a "death qualified" panel. This same reasoning applies to cases
2 involving claims for punitive damages, considering that Nevada law recognizes such a claim. In
3 order to "qualify" a jury as to punitive damages, Plaintiffs' counsel must be permitted to speak
4 with the venire regarding punitive damages claims to ferret out those who would harbor bias as to
5 these sorts of claims.

6 For Plaintiffs, it is imperative that the jurors who are selected to serve on this jury are
7 willing to follow the law as it relates to punitive damages. The only way this can be assured is for
8 Your Honor to permit *voir dire* questioning of this topic during jury selection. As is clear from the
9 shear volume of persuasive authority regarding the appropriateness of this type of questioning,
10 Plaintiffs' counsel must be permitted to question on this topic of discussion with the prospective
11 jurors so that any that are unwilling to follow the law as it pertains to punitive damages are
12 removed as jurors for cause.
13

14 **5. In Civil Cases Jurors Must Decide the Issues Based Upon A Preponderance of**
15 **the Evidence (More Likely than Not), and Not Impose A Higher Standard**
16

17 Many prospective jurors do not feel that a plaintiff's burden of proof should only be by a
18 preponderance (more likely than not) and feel that plaintiffs should be required to prove the
19 elements of their case by a higher standard of proof. Many prospective jurors believe that the
20 more likely than not standard is unfair to the Defendant. Many feel that they cannot make
21 decisions on that basis – and, possibly, that the Courts should not either. Therefore, trial counsel
22 must be able, during *voir dire*, to have any prospective jurors who cannot make their decisions as a
23 juror using the "more likely than not" standard excused for cause. These prospective jurors would
24 be "substantially impaired" from following the law.
25
26
27
28

III.

CONCLUSION

Voir dire is Plaintiffs' counsels' only opportunity to ask questions of the panel members to discover any potential bias or perception that could interfere with a panel member's ability to fairly evaluate the evidence and render a verdict according to the Court's instructions. Without sufficient time to discover the panel members' biases, voir dire is rendered meaningless.

RESPECTFULLY SUBMITTED, this 15th day of July, 2013.

RICHARD HARRIS LAW FIRM

/s/ Benjamin Cloward

BENJAMIN CLOWARD, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of RICHARD HARRIS LAW FIRM and that on the 15 day of July 2013 I caused the foregoing PLAINTIFF'S BENCH BRIEF REGARDING THE ISSUE OF JURY SELECTION to be served as follows:

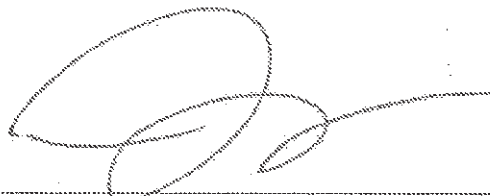
☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or


☒ by hand delivery

to the attorneys listed below:

Steven T. Jaffe, Esq.
Jacob S. Smith, Esq.
HALL JAFFE & CLAYTON, LLP.
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendant



An employee of the RICHARD HARRIS LAW FIRM

 RICHARD HARRIS
LAW FIRM

1 is --

2 MR. CLOWARD: It's just -- it's an example
3 of -- I mean, he rolled his -- I mean, what's -- so
4 what's the objection, Mr. Jaffe?

5 MR. JAFFE: This is irrelevant, and it's
6 now --

7 THE COURT: Ask a question.

8 MR. CLOWARD: Okay.

9 How do you explain when somebody -- you have
10 a rollover, same two people in the rollover, one person
11 lives, one person dies. Or like, Mr. Frazier, in your
12 instance, you have been rear-ended four times and you
13 weren't hurt, but Mr. Unger had kind of a minor event
14 and he's had long lasting. How do we explain that?

15 Somebody's got to have some ideas.

16 PROSPECTIVE JUROR NO. 049: Divine
17 intervention.

18 MR. CLOWARD: Divine intervention.

19 PROSPECTIVE JUROR NO. 008: I agree with that.

20 MR. CLOWARD: Ms. Vera? Okay.

21 PROSPECTIVE JUROR NO. 008: Unfortunately a
22 set of twins, a family went down to Florida, father and
23 the boy twin were sitting up front, dad was driving,
24 the girl twin, the mother, and her sister were asleep
25 in the back of the van. The girl twin died. How do we

1 know? We don't. I'm sorry.

2 THE COURT: At least, I'm not the only one
3 who got emotional today.

4 MR. CLOWARD: Yeah. Sometimes I think it
5 definitely is out of our hands.

6 Mr. Unger.

7 PROSPECTIVE JUROR NO. 006: Another example,
8 it just happened in St. George, Utah, about a month
9 ago, where a family driving in a motor home, and the
10 grandmother was driving the vehicle. I think she had
11 four or five of her family members in the back of it.
12 She lost control, went off the highway, through a
13 house, through another street, and stopped in another
14 house. And she and her husband were killed, but none
15 of the other kids were killed in the backseat. You
16 don't know how or why or when, or to what extent.

17 MR. CLOWARD: I heard about that.

18 You know, I'm a basketball fan and I remember
19 earlier this year there was a guy from Kansas State who
20 jumped, and it didn't seem like it was a
21 out-of-the-ordinary jump, didn't seem like there was
22 anything -- you know, there's thousands and thousands
23 of players throughout the nation, thousands and
24 thousands of jumps just like that, but in that
25 situation -- and I'm sure some of you have seen that.

1 Mr. Frazier, tell the jurors what happened
2 there.

3 PROSPECTIVE JUROR NO. 049: His knee just
4 snapped. His leg just snapped.

5 MR. CLOWARD: Broke right in half.

6 PROSPECTIVE JUROR NO. 049: Right in half,
7 and it was just a freak accident.

8 MR. CLOWARD: Probably the worst -- you know,
9 the worst sports injury, I think, that I have ever seen
10 anyway other than, you know, if somebody lost their
11 life.

12 But how do we explain those things other
13 than, you know, divine intervention? You think we're
14 all built kind of differently?

15 Mr. Jeung, okay.

16 Ms. Procek? Procek, "chek"?

17 PROSPECTIVE JUROR NO. 044: Procek.

18 MR. CLOWARD: Procek. Okay.

19 PROSPECTIVE JUROR NO. 044: Procek, 044. I
20 think it's the law of physics. It's, you know, how
21 big, how small are you, your physical condition, and
22 how you get hit. Because you can be wearing your seat
23 belt or not and then you get ejected from the vehicle
24 and you die. Or, you know, you're -- whoever's sitting
25 next to you, they get hit a different way, and

1 something -- you know, I don't know if they can get
2 hurt a different way just because of the different way
3 that they get hit, so -- and you're fine and you might
4 have not even been wearing your seat belt, so I think
5 it's the law of physics.

6 MR. CLOWARD: So just different -- maybe just
7 one little thing tweaked a little bit differently that
8 it makes all the difference?

9 PROSPECTIVE JUROR NO. 044: Yeah, absolutely.

10 MR. CLOWARD: Anybody agree with that or
11 disagree with that?

12 PROSPECTIVE JUROR NO. 033: I agree.

13 MR. CLOWARD: Anybody disagree with that?

14 Okay. Anyone here believe that in order to
15 have a -- you know, a serious or significant injury,
16 you have to have a serious or significant event? Like
17 you got to have a rollover?

18 Mrs. -- Mrs. Procek, tell me. You're nodding
19 your head or shaking your head.

20 PROSPECTIVE JUROR NO. 044: I don't think you
21 have to have a rollover to be hurt. You could have
22 just a minor accident and you could be -- you know,
23 like, okay. I just bought an SUV because it's much
24 safer than my 350Z that I had, but I still try to sit
25 far away from the steering wheel because I'm scared of

1 the airbag, that that's going to hurt me. And I'm
2 5'2", so a guy that's as big as you, you know, you
3 might take an accident a lot different than -- than I
4 would. I can get severely injured just because I'm
5 shorter and, you know, the -- I can get killed by the
6 bag, so ...

7 MR. CLOWARD: Sure. Like Mr. -- Mr. Frazier
8 looks like he's lifted lots of weights and he's, you
9 know, pretty strong -- pretty strong guy.

10 PROSPECTIVE JUROR NO. 044: Right.

11 MR. CLOWARD: He probably wouldn't have the
12 same risk factor or predisposition than maybe you
13 would. Do you agree with that?

14 PROSPECTIVE JUROR NO. 044: Correct, yeah.

15 MR. CLOWARD: Does anyone -- does anyone here
16 believe that or not believe that? Anyone not think
17 that? Anyone that thinks that, you know what, we're
18 all created in the image of God some -- you know, some
19 say, so that's what -- everyone's going to be hurt the
20 exact same and the same way every single time? Does
21 anyone have that belief?

22 Okay. Mr. Evans, what do you think?

23 PROSPECTIVE JUROR NO. 012: No.

24 MR. JAFFE: Your Honor, may we approach?

25 THE COURT: Okay.

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

3 THE COURT: Everybody okay right now or
4 anybody need a break right now? I don't see any hands.
5 Go for a little bit longer.

6 MR. CLOWARD: Thanks, Judge.

7 Just one -- these two pieces of paper are
8 getting the better of me. Just one -- one more
9 question and then we can move on to another section.

10 You know, some folks believe that in order to
11 have a significant injury you've got to have
12 significant damage. It's got to be a significant
13 collision with significant property damage. Other
14 folks believe that, you know what, our bodies are made
15 differently, different factors contribute, and so
16 there's really -- there's nothing about the damage in
17 the vehicle versus damage to the person. Who here
18 leans towards the -- in your mind, you've got to have
19 significant damage in order for there to be a
20 significant -- significant injury? And we're talking
21 property damage to a vehicle. Anyone have that belief?
22 Got to be somebody. Not one person.

23 PROSPECTIVE JUROR NO. 008: Margaret Vera,
24 008.

25 MR. CLOWARD: Ms. Vera, thank you for

1 sharing.

2 PROSPECTIVE JUROR NO. 008: Can you say it
3 differently, maybe a little more specific, and give us
4 a little bit more than that.

5 MR. CLOWARD: Sure. It was a bad question.

6 Who here believes that someone cannot have a
7 serious injury without significant property damage?
8 Anyone believe that?

9 MR. JAFFE: Judge, I have to -- to raise the
10 same objection.

11 THE COURT: Overruled.

12 MR. CLOWARD: Anyone have that belief? Got
13 to be -- nobody at all? Okay. Thank you very much. I
14 will move on.

15 Okay. The next thing that I want to talk
16 about, and I'm getting -- I'm really -- I know you guys
17 probably don't believe me, but I'm getting close to the
18 end here. So let me ask about personal injury cases
19 where money damages -- you know, money damages are
20 asked for. There's been a couple of folks, and it's
21 okay to have that feeling, have those beliefs, have
22 those core values. There's nothing wrong with that.
23 Some folks believe that, you know, pain and suffering
24 is just, you know, something that -- that they just
25 have a hard time with and that's fine. Nothing wrong

1 with that. Okay? Nothing wrong with -- with being --
2 having different views and beliefs and core values.

3 Who here has a hard time with, you know,
4 medical bills, that, you know, you feel like medical
5 bills are just not something that somebody should be
6 able to recover for? Anyone have that view? Anyone?

7 What about like lost wages or, you know, if
8 someone is no longer able to work or if their work was
9 reduced or something along those lines, does anyone
10 have a view one way or another about that specific
11 issue?

12 Mrs. Templeton, do you have a view one way or
13 another on that?

14 PROSPECTIVE JUROR NO. 018: As far as whether
15 they should receive it or not? Elizabeth Templeton,
16 018.

17 MR. CLOWARD: Sure. Like somebody brings a
18 lawsuit and one of the things that they're suing for is
19 like an economic type --

20 PROSPECTIVE JUROR NO. 018: Like recovery of
21 lost wages or -- or whatever the case is on that?

22 MR. CLOWARD: Sure. Something.

23 PROSPECTIVE JUROR NO. 018: I think they
24 should be awarded that, sure. It's not their fault
25 that they missed the work or they have had to leave for

1 therapy or just days off to recuperate, that type of
2 thing is what you are asking?

3 MR. CLOWARD: Sure.

4 PROSPECTIVE JUROR NO. 018: Sure. They
5 should get that.

6 MR. CLOWARD: Anyone have a problem with
7 that? Even if just it's a little bit of a problem.

8 Okay. Let me ask this question. What if --
9 what if there was a situation where -- you know, let's
10 say you had -- you had two -- you had -- you had some
11 high school kids they were playing -- they were horsing
12 around and one of the high school kids -- you know,
13 let's say he had -- does anyone know what hemophilia
14 is, like a person with hemophiliac? What is that,
15 somebody?

16 Sir, tell me what that is, Mr. Fitzgerald.

17 PROSPECTIVE JUROR NO. 003: Yeah, 003.
18 Basically if your blood will not clot, so literally
19 blood will run out of your body and you die.

20 MR. CLOWARD: You bleed to death really easy.

21 PROSPECTIVE JUROR NO. 003: Right.

22 MR. CLOWARD: So let's just say that you
23 had -- you had students and they were horsing around.
24 One of them had hemophilia and then the other one
25 didn't have anything, and the one -- the one student

1 pushes the one with no issues and he falls down and he
2 gets a crack. And then, you know, he has to go and get
3 some stitches. And the stitches, you know, to do that
4 it's only maybe \$2,000 to the emergency room.

5 Now, let's say across town in another high
6 school you have another situation, two kids that are
7 horsing around and one of them pushes the kid with
8 hemophiliac the same way. It's the exact same push.
9 He falls down and hits his head in the same spot, but
10 this time he has very serious -- very serious issues.
11 And, you know, he has to go to UMC trauma. He's in
12 there. He has to get transfusions. He has to get a
13 lot of treatment. And the medical bills are -- you
14 know, they're just really high. We're talking, you
15 know, he's in there for two or three months and it's
16 several -- you know, maybe even five or six or seven or
17 \$800,000 for the medical bills.

18 Do you think it's fair that in the one
19 situation where, you know, it's the same act, they're
20 both just horsing around, do you think it's fair that
21 in the one situation that the one kid has to pay for so
22 much more than the other kid because it's just -- it's
23 the same act? Who thinks that's unfair for him to --
24 the one kid to have to pay more?

25 Ms. Vera, tell me about that.

1 PROSPECTIVE JUROR NO. 008: 008. Which one?

2 The hemophiliac is the one you're saying?

3 MR. CLOWARD: The boy that pushed the
4 hemophiliac down, so because of his action the
5 hemophiliac, his bills were up here (indicating),
6 versus the kid across town at the other high school,
7 his bills were only down here (indicating) from the act
8 of pushing down.

9 PROSPECTIVE JUROR NO. 008: I don't think
10 it's a question of fairness. It's he's receiving the
11 medical attention and that's what it costs. If the
12 other boy is healthy, his blood clots, his only costs
13 \$2,000, I don't see where fairness plays into that. Is
14 it fair for the hemophiliac to have to live with that
15 his life?

16 MR. CLOWARD: Okay. Does anyone feel like
17 it's unfair in the second situation? Because, you
18 know, it's the same act. They're both just horsing
19 around, one pushes the one, the other pushes the other,
20 so one's not -- you know, didn't do it -- you know,
21 wasn't being mean, but the one boy, you know, he has to
22 pay a lot more. Anyone feel that's unfair? Mr. Evans.

23 PROSPECTIVE JUROR NO. 012: 012. I think --
24 now, I don't think it's unfair that he should -- his
25 medical bills shouldn't be paid for rather than the one

1 that's got a lesser bill. But I think the hemophiliac
2 boy should know -- he should know better than to be
3 horsing around in the first place. That's my opinion
4 on your scenario. He knows his medical condition. He
5 should point that out ahead of time, Look, we can't be
6 horsing around, I have a medical condition.

7 MR. CLOWARD: Sure.

8 PROSPECTIVE JUROR NO. 012: But, if he does
9 that and he gets hurt anyways then it doesn't matter.
10 A bill's a bill. And -- and at that point it's not his
11 fault anymore, and yeah, it should be taken care of.

12 MR. CLOWARD: Does anyone feel like in, you
13 know, the second case with the hemophiliac, that --
14 that the little -- the boy that pushed him down --
15 let's just say they weren't horsing around. Let's just
16 say in one situation the kid pushes him down. The
17 other situation the kid pushes him down. Do you think
18 the kid who caused the hemophiliac and his problems
19 should get some sort of a discount because, you know,
20 over --

21 Ms. -- Ms. Agnor, tell me, 033, you're
22 nodding, shaking your head.

23 PROSPECTIVE JUROR NO. 033: 033. It's an act
24 of kids horsing around. So kids do that all the time
25 and it's just unfortunate that that boy has the

1 hemophilia and the other boy didn't. But like
2 Mr. Evans was saying, a bill is a bill and it's got to
3 be paid one way or another.

4 So is this one suing for 2,000 and this one
5 suing for 500,000? They should both be compensated the
6 amount of the medical bills.

7 MR. CLOWARD: Okay. Mr. Fitzgerald, tell me,
8 what do you think about that?

9 PROSPECTIVE JUROR NO. 003: Well, I think
10 that -- any case, I think like all my fellow jurors
11 here say, needs to be decided on the merits, and not
12 every case that comes before us is going to be the
13 same. And like the judge is saying, we're here to do
14 justice. We're not here to, you know, gold brick or
15 anything like that. Use common sense.

16 MR. CLOWARD: Sure.

17 PROSPECTIVE JUROR NO. 003: We hope that
18 prevails, and -- and that's everything I am hearing
19 right up and down the front row, right up and down the
20 back row.

21 MR. CLOWARD: Thank you. I appreciate that.

22 PROSPECTIVE JUROR NO. 003: No. 003.

23 MR. CLOWARD: One more question then I will
24 move on. Is there anyone that thinks that -- that the
25 situation in the hemophiliac, that he should get a

1 discount? Anybody feel that way? Okay.

2 Okay. Now, I want to ask some questions
3 about -- you know, about sympathy and who here feels
4 like -- you know, let's say that this was -- this was a
5 case about, you know -- let's say this bottle was
6 filled with some diamonds. Okay? And the defendant
7 grabbed the bottle, threw it into Lake Mead, and the
8 diamonds went to the bottom of the -- of Lake Mead.
9 And experts were hired and it was determined that the
10 value was -- you know, let's say for the value of those
11 diamonds was \$2.5 million.

12 Mr. Frazier, you know, if you felt bad for
13 the person who threw the diamonds into Lake Mead, would
14 you -- if the value has been determined, you know, it
15 was determined, would you give less because you maybe
16 felt bad for one party or the other?

17 MR. JAFFE: Objection, Your Honor,
18 Rule 7.70C.

19 THE COURT: Sustained. Talking about a
20 specific hypothetical fact.

21 MR. JAFFE: Yes.

22 THE COURT: Try again.

23 MR. CLOWARD: Okay. In -- in a hypothetical
24 situation, do you think that sympathy should come into
25 play when making determinations about issues? I mean,

1 if you feel bad for one party or you like the other
2 party, do you think that you should, you know, award
3 less or enter less into the verdict form, or --

4 PROSPECTIVE JUROR NO. 049: I think sympathy
5 comes into all of our decisions. I don't know who
6 threw the bottle in the water, was it the plaintiff,
7 was it a friend? You just said somebody threw it in.
8 I don't know who threw it in.

9 THE COURT: We're not going to talk about the
10 bottle anymore anyway.

11 PROSPECTIVE JUROR NO. 049: Good. Because I
12 got lost on that, but the bottom line is I think in
13 every decision we make, we have sympathy for some
14 people, but I mean, even sympathy is limited.

15 MR. CLOWARD: Sure.

16 PROSPECTIVE JUROR NO. 049: So I guess that's
17 my answer. Yes, I would be sympathetic, but how
18 sympathetic, there would be a cutoff point.

19 MR. CLOWARD: Your Honor, I think --

20 THE COURT: Want to take a break?

21 MR. CLOWARD: Okay.

22 THE COURT: Probably a good time to take our
23 afternoon break and see if we can push through after
24 this.

25 Ladies and gentlemen, during our break you're

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

16 Let's take another ten minutes.

17 THE BAILIFF: All rise.

18 (Whereupon jury exited the courtroom.)

19 THE COURT: All right. We're outside the
20 presence of the jury. Does anybody need to make a
21 record?

22 MR. SMITH: Do you want to make a record?

23 MR. JAFFE: Yes, Your Honor. I believe that
24 when there were questions being asked before regarding
25 the intensity of impacts and how that may affect injury

1 as well as rollovers, people walking away, minor
2 accidents, people being seriously hurt, that was
3 indoctrinating the jury in contradiction to the Nevada
4 Supreme Court.

5 THE COURT: I disagree. I think it was okay.
6 That's why it was overruled. Anything else?

7 MR. JAFFE: Nothing, sir.

8 THE COURT: All right. Off the record.

9 (Whereupon a short recess was taken.)

10 THE COURT: Back on the record in Case
11 No. 636515. We're outside the presence of the jury.
12 Mr. Cloward is going to make a record on his challenges
13 for cause.

14 MR. CLOWARD: Okay. We already made the full
15 record on Mr. Frazier, he was the number one, 02-0049.
16 So we'll move to -- oh, yeah. There's also additional
17 reasons for him to be challenged for cause. In later
18 questioning -- yeah, in later questioning, he felt
19 like -- he felt like the majority of cases are going to
20 be frivolous cases. He felt like the fact that my
21 client had filed the lawsuit, that -- the fact that she
22 filed a lawsuit, it would probably be more likely that
23 it's going to be frivolous versus legitimate. He also
24 thinks that he's uncomfortable with someone of his
25 state of mind on the jury. He's had that belief. He's

1 felt that way. He felt like \$2 million was, you know,
2 out of the -- out of the -- you know, was outrageous
3 regardless of what the evidence showed.

4 He also talked about how he would not be a
5 good fit for this particular case on that particular
6 issue; that the parties would not have a fair fight,
7 because Mr. Khoury would start off in a position higher
8 or, you know, ahead of Mrs. Seastrand on that very
9 specific issue. He also talked about how --

10 MR. JAFFE: What specific issue, so I know
11 exactly what I'm questioning on? The \$2 million
12 demand?

13 MR. CLOWARD: Yes, the excessive amount.

14 Mr. Evans. And so the second cause challenge
15 would be Christopher Evans, and he is Badge
16 No. 02-0012. He was questioned about pain and
17 suffering. He expressed clear opinions, clear views,
18 clear beliefs about pain and suffering. He does not
19 agree with pain and suffering. He does not think that
20 pain and suffering justifies money at all. You know,
21 you should only have cause for -- for damages, lost
22 income, meds, things of that nature, property damage.
23 That's it.

24 Mr. Evans also indicated that he would not
25 feel comfortable with someone on -- with his frame of

1 mind sitting on the jury; that he wouldn't -- you know,
2 he wouldn't be able to -- that the parties wouldn't
3 have a fair fight, because ultimately Mr. Khoury would
4 start off in a position higher or in front of
5 Mrs. Seastrand on that very specific issue.

6 MR. JAFFE: Again, what specific issue is it?
7 The \$2 million?

8 MR. CLOWARD: So Mr. Evans was dealing with
9 the pain and suffering.

10 MR. JAFFE: Okay.

11 MR. CLOWARD: Additionally, that he said that
12 no one is going to change his mind, not Mr. Jaffe, not
13 Your Honor, not myself, not his neighbor. And he
14 agreed, or, you know, that he would not even be a good
15 fit for this specific case on that very -- you know, on
16 that issue, which is a significant issue in the case.

17 And then, let's see. The third cause
18 challenge is Mr. Gary Walker, and that's Badge
19 No. 02-0034, and -- yeah. In Mr. Walker's case, he was
20 the very first person that raised his hand. He said,
21 Hey, look, I think that that \$2 million, that's
22 outrageous. He said that lawsuits are wasting people's
23 time. Yeah. He actually said I'm wasting their time.
24 Additionally, he felt like that there's just no way
25 under any circumstance, under any factual, any

1 evidence, that he could award above \$2 million ever.

2 Mr. Walker said that, yeah, he's always felt
3 that way. Nothing that I -- I'm going to say is going
4 to change his mind. Nothing that Mr. Jaffe is going to
5 say is going to change his mind. Nothing that the
6 Court is going to say is going to change his mind.

7 And, Your Honor, if you remember, he's the
8 one that I said, Hey, you know, Mr. Walker, please just
9 level with me. You know, could you give us a fair
10 fight? And he said no, because he's already -- he's
11 already got views on that, on that issue.

12 THE COURT: I thought he was the one that you
13 tried to nail him down on that and he said that he
14 didn't know the facts of this case so he wouldn't be
15 able to tell you one way or another.

16 MR. CLOWARD: Yeah. He did at first and
17 then, if you remember, I went through the additional --
18 he was the first person that we talked to about the --
19 the amount. He was the first person. And then I went
20 and talked to the other ones and then came back to him.
21 And that's when he said, Yeah, you know what, I can't.
22 It's just ridiculous.

23 Yeah, he says, and we're going to quote,
24 "Client is not going to get a fair fight from him. He
25 cannot say that he would be fair." That's what --

1 specifically what he said. And I went back to him, and
2 I acknowledged that he did at first he said -- you
3 know, he was wishy-washy. But then when I went back to
4 him -- and let's see. Mr. Walker, which one is he? So
5 he's number three.

6 So the number fourth one is Mr. Runz. That's
7 Badge No. 02-0001, and Mr. Runz also was asked about
8 the amount of the award. He felt that -- that any
9 amount above -- you know, any amount is -- is going to
10 be ridiculous. The \$2 million is going to be
11 ridiculous. Yeah, he actually agreed that he had a
12 bias on that issue. He said flat out, "I have a bias
13 on that issue."

14 And not only that, but then he goes on to say
15 that he -- he couldn't -- he would be uncomfortable
16 with someone on his -- with his state of mind, No. 1.
17 He says he wouldn't be a good fit, and he says that
18 Mr. Khoury would start off ahead of Mrs. Seastrand on
19 that specific issue. And he also said that, you know,
20 he's held that belief for a long time. Nothing that I
21 say will change it. Nothing Mr. Jaffe says will change
22 it. Nothing the Court says will change it. Nothing
23 that his neighbor says will change it. That's just the
24 way he feels.

25 Now, the next one is number five, which is

1 Ms. Vera, Badge No. 20008, and Ms. Vera, the same
2 questions.

3 Sure. Ms. Vera was -- was -- this is on the
4 pain and suffering, Mr. Jaffe. Ms. Vera agreed with --
5 with Mr. Evans on the specific issue of pain and
6 suffering. She didn't believe in pain and suffering.
7 In award -- yeah, in awarding money for pain and
8 suffering, she just does not believe that that's
9 something that is even a compensable area of damage.
10 She says flat out that she agrees with Mr. Evans, that
11 she would feel uncomfortable with her, you know, having
12 her frame of mind, having someone on the jury. Not
13 only that, but she says that she's not going to change
14 her mind.

15 She says that the parties are not going to
16 have a fair fight, because Mr. Khoury is going to start
17 off ahead of Ms. Seastrand on that specific narrow
18 issue, and that, you know, nothing is going to change
19 her mind. I'm not going to change her mind. Mr. Jaffe
20 is not going to change her mind. The Court's not going
21 to change her mind. That's just the way she feels.

22 Next is number six, Leticia Ong, Badge
23 No. 02-0028. And this was dealing with the -- with the
24 2 million-dollar amount. Ms. Ong was -- was asked
25 about that and she says that it's outrageous. She says

1 that -- you know, that there's -- she would feel
2 uncomfortable having a jury or a juror with her frame
3 of mind on a case, hypothetical case, where she was the
4 plaintiff. She's felt that way for a long time. She
5 says that it's not going to be a fair fight, because
6 Mr. -- she actually, I believe, said that she also had
7 bias. And then additionally, she says that Mr. Khoury
8 is going to start off, you know, ahead of -- ahead of
9 Ms. Seastrand.

10 Again, she says she has felt that way for a
11 long time. That no one is going to change her mind.
12 I'm not going to change her mind. Mr. Jaffe is not
13 going to change her mind. Mr. -- or the judge -- Your
14 Honor is not going to change her mind.

15 Let's see. Jeung, Mr. Jeung, the gentleman
16 on the back row. What is his badge number? I can't
17 see him. Yeah, 02-0009. He also says he's
18 uncomfortable, you know, an amount above 2 million. He
19 would feel uncomfortable being a -- having a juror with
20 his frame of mind, his state of mind, his -- you know,
21 if he was a plaintiff. And that -- that the plaintiff
22 would not get a fair fight.

23 He also talked about how -- that no one is
24 going to change his mind. He has had that belief for a
25 long time. He carried that belief with him into the

1 court today. He didn't form it today. He has had it
2 for a long time. I'm not going to change it.
3 Mr. Jaffe is not going to change it. The Court is not
4 going to change it.

5 Additionally, he testified that they're not
6 going to have a fair fight; that Mr. Khoury is going to
7 start off ahead of Ms. Seastrand on that specific
8 issue.

9 Now, finally -- or not finally, the eighth is
10 Joey Bulosan, Badge No. 02-0017, and Mr. Bulosan, he
11 also felt like the 2 million was a problem. He put
12 that in his jury questionnaire, Judge --

13 MR. JAFFE: If you want Bulosan off, I will
14 stipulate to him. Okay?

15 MR. CLOWARD: Okay.

16 MR. JAFFE: I'm not -- I have no problem
17 with -- with throwing Bulosan off.

18 THE COURT: Okay.

19 MR. CLOWARD: Okay, Your Honor. The next
20 one --

21 MR. JAFFE: I'm not -- I'm not necessarily
22 saying that it's for any of the reasons you said, but
23 if you want Bulosan off, I will agree to Bulosan off.

24 THE COURT: It's just a stipulated strike.

25 MR. JAFFE: Yeah.

1 MR. CLOWARD: Number nine, Your Honor, ninth
2 cause challenge for plaintiff Margie Seastrand is Juror
3 Badge No. 02-0033, Patty J. Agnor. And there were a
4 lot of things Ms. Agnor had problems with. You know,
5 she says that, Hey, look, unless the plaintiff is
6 missing a limb, is completely disabled, there's no way
7 she could go to 2 million for anyone; that she felt
8 like 2 million is just outrageous, it's so much money.

9 Additionally, she feels like there's --
10 there's a source of intent or a -- a level of intent
11 that needs to be involved. She says, Look, only if
12 it's -- if it's on purpose -- yeah. If the -- if
13 the -- if the person hurt the other person on purpose,
14 that's what she would require.

15 Another thing is that she would -- she said
16 she would be uncomfortable with someone with her frame
17 of mind on this specific issue, you know, if she was a
18 plaintiff, serving on the -- on the jury. She also
19 felt like -- she said flat out that there wouldn't be a
20 fair fight because Mr. Khoury would start off ahead of
21 her, or ahead of Ms. Seastrand on that issue. And she
22 agreed that she would not be a good fit for this
23 particular jury on that specific issue.

24 And finally, you know, she said that she's
25 held these beliefs for a long time. Nothing that I'm

1 going to say is going to change that. Nothing
2 Mr. Jaffe's going to say is going to change that.
3 Nothing the Court is going to say is going to change
4 that. That's the way she feels, that's the way she --
5 you know, what -- what her core values and her beliefs
6 are regarding that.

7 THE COURT: I would suggest that since we're
8 going to let the defendant -- defense counsel try to
9 rehabilitate on the rest of these, if I excuse Bulosan
10 right now and we put someone else in his place, then
11 you're going to want to ask more questions of that
12 person before we move on, so.

13 MR. CLOWARD: Yeah.

14 THE COURT: Maybe we let the defense go, and
15 try to rehabilitate the ones that have been addressed
16 right now.

17 MR. JAFFE: Sure, Judge.

18 THE COURT: We'll go from there.

19 MR. CLOWARD: I think that's fair.

20 THE COURT: Everybody good with that?

21 All right. Those are your challenges for
22 cause so far?

23 MR. CLOWARD: Oh -- yes, Your Honor, that's
24 it.

25 THE COURT: Okay. So are we going to just

1 let Mr. Jaffe go next?

2 MR. EGLET: With those eight jurors on those
3 issues we just addressed.

4 MR. JAFFE: Yeah.

5 THE COURT: You good with that?

6 MR. JAFFE: Yes, sir.

7 THE COURT: See what you can do as far as
8 rehabilitating on these eight jurors.

9 MR. JAFFE: Sure.

10 THE COURT: And then we'll address whether or
11 not I'm going to grant the challenges for cause or not,
12 and maybe put new people up there. Let's see what
13 happens.

14 MR. JAFFE: Yes, sir.

15 THE COURT: Okay. Let's bring them back.

16 THE BAILIFF: All rise.

17 (Whereupon jury entered the courtroom.)

18 THE COURT: All right. Go ahead and be
19 seated. Welcome back, folks. We're back on the record
20 in Case No. 636515. I apologize for the delay. That's
21 going to happen a lot during the trial. I'm going tell
22 you ten minutes and it will end up being half an hour.
23 It just happens. Because sometimes there's things that
24 the attorneys and I have to discuss. It's not that
25 we're not working. We're trying to move things along

1 in a manner that will actually be better for you. You
2 just don't understand it and why that happens. But
3 trust me that we were in here working and we're trying
4 to move things along.

5 And at this point, the plaintiff is not
6 completed with their voir dire, but Mr. Jaffe's going
7 to ask some questions at this point. And we'll turn
8 the time over to him.

9 MR. JAFFE: Thank you, Your Honor.

10 Good afternoon. I'm just going to be asking
11 certain jurors questions following up on some issues
12 raised by Mr. Cloward earlier.

13 So, Ms. Agnor, if I can talk to you for a
14 couple of minutes.

15 PROSPECTIVE JUROR NO. 033: Okay.

16 MR. JAFFE: Now, I was a little confused
17 before, and I want to make sure that I understand one
18 thing correctly. When Mr. Cloward was asking you
19 questions about whether you would feel uncomfortable,
20 bothered, or could not accept a 2 million-dollar pain
21 and suffering request that they would be making. Okay?
22 Does that mean that you could never award pain and
23 suffering in a case if there was some that you found to
24 exist?

25 PROSPECTIVE JUROR NO. 033: Oh, no, no. I

1 think if someone deserves a reward -- not a reward, not
2 a reward, but --

3 MR. JAFFE: A verdict?

4 PROSPECTIVE JUROR NO. 033: Something --
5 right. Or even for pain and suffering, or missed work
6 compensation, medical bills, of course, they're
7 entitled to whatever their -- whatever they miss out
8 on.

9 MR. JAFFE: So when you were asked questions
10 about my client possibly being ahead or his client
11 being behind on a 2 million-dollar request, does that
12 mean that the plaintiff is ahead or behind on any
13 request for pain and suffering if they prove it to be
14 appropriate in the case?

15 In other words, if he -- let me ask it this
16 way. Judge Wiese at the end of the trial is going to
17 give every juror an instruction. He's going to read
18 instructions and tell you about how to view certain --
19 the evidence you have heard, how to structure your
20 award to -- to make your award, and what you can and
21 cannot award for, one of which being pain and
22 suffering.

23 First of all, will you follow the law that
24 Judge Wiese reads if you're selected as a juror?

25 PROSPECTIVE JUROR NO. 033: Yes. If that's

1 the law, you bet.

2 MR. JAFFE: Okay. And if pain and suffering
3 is allowed as a measure of damages, will you give the
4 plaintiff as equal a chance to prove her pain and
5 suffering claim, whether you want to believe \$2 million
6 or not, but will you still at least listen to the law,
7 and if you felt that pain and suffering was
8 appropriate, render what you would believe to be a fair
9 pain and suffering verdict consistent with the law?

10 PROSPECTIVE JUROR NO. 033: Of course.

11 MR. JAFFE: So you can follow the law on pain
12 and suffering?

13 PROSPECTIVE JUROR NO. 033: You bet.

14 MR. JAFFE: So it sounds to me like what
15 you're saying is, you can give a fair award on pain and
16 suffering, it's just if \$2 million is requested, you
17 may not necessarily feel comfortable with that number,
18 but you would give something -- a different number if
19 you felt it was fair?

20 PROSPECTIVE JUROR NO. 033: Right. Right. I
21 mean, if she's got \$2 million worth of medical bills --

22 MR. JAFFE: Different story.

23 PROSPECTIVE JUROR NO. 033: Different story.

24 MR. JAFFE: Different story.

25 So in other words, then, when it comes to

1 giving a pain and suffering award, you will follow the
2 law and give a number that you would feel would be
3 appropriate based upon the law and the facts and the
4 evidence and everything you hear in the trial.

5 PROSPECTIVE JUROR NO. 033: Of course.

6 MR. JAFFE: Okay. And are both sides on an
7 equal footing going into the start of the trial on what
8 any pain and suffering award could potentially be,
9 given the fact that you have heard nothing and seen
10 nothing in the case?

11 PROSPECTIVE JUROR NO. 033: I don't think so.

12 MR. JAFFE: No?

13 PROSPECTIVE JUROR NO. 033: I don't think so.

14 MR. JAFFE: Why is that?

15 PROSPECTIVE JUROR NO. 033: Because we don't
16 know where the pain and suffering's coming from.

17 MR. JAFFE: Okay. But that's part of the
18 proofs that you would hear.

19 PROSPECTIVE JUROR NO. 033: Right.

20 MR. JAFFE: So I guess my point is this:
21 Would you give plaintiff an equal chance to prove her
22 pain and suffering claim?

23 PROSPECTIVE JUROR NO. 033: Yes.

24 MR. JAFFE: Just as you will give Mr. Khoury
25 an equal chance to defend against the pain and

1 suffering claim?

2 PROSPECTIVE JUROR NO. 033: Right.

3 MR. JAFFE: So I guess going into the trial,
4 are each of them on a separate -- on an equal footing
5 given that you don't know anything yet?

6 PROSPECTIVE JUROR NO. 033: Right, yes.

7 MR. JAFFE: That's true?

8 PROSPECTIVE JUROR NO. 033: Yes.

9 MR. JAFFE: Okay. Now -- and when you were
10 asked questions about whether you would want to sit on
11 a jury, be a litigant with having a jury with your
12 whole frame of mind, were you answering that based upon
13 a 2 million pain and suffering claim, or the simple
14 fact of any pain and suffering claim or a personal
15 injury claim?

16 In other words, when you were asked that
17 question about, I am not feeling comfortable about
18 having a whole jury with your frame of mind, was that
19 because the 2 million-dollar pain and suffering claim
20 was thrown into the mix?

21 PROSPECTIVE JUROR NO. 033: I think so, yeah.

22 MR. JAFFE: Now, given how you said that you
23 would be a fair juror on pain and suffering, would you
24 feel comfortable having a jury made up entirely of your
25 frame of mind when it comes to obeying the law and

1 giving each side a fair shake when it comes to
2 deliberations?

3 PROSPECTIVE JUROR NO. 033: I think so.

4 MR. JAFFE: So you can be fair to both sides?

5 PROSPECTIVE JUROR NO. 033: I think so.

6 MR. JAFFE: Is that what you would want if
7 you were sitting at one of these tables and picking a
8 jury?

9 PROSPECTIVE JUROR NO. 033: To give me a fair
10 share, you bet.

11 MR. JAFFE: So in other words, you would feel
12 comfortable having jurors like yourself deliberating on
13 your case because they would be fair?

14 PROSPECTIVE JUROR NO. 033: Exactly. Because
15 that's what the law is.

16 MR. JAFFE: Thank you. That's all I wanted
17 to find out.

18 Now, Ms. Vera, do you agree with everything
19 Mrs. Agnor said or do you feel differently?

20 PROSPECTIVE JUROR NO. 008: I agree.

21 MR. JAFFE: You do. So, Ms. Vera, it sounds
22 to me like what you're saying, then, is that you can
23 award pain and suffering in a fair amount, consistent
24 with the law and consistent with the facts and evidence
25 if you're selected as a juror?

1 PROSPECTIVE JUROR NO. 008: Yes.

2 MR. JAFFE: Okay. And given that, would you
3 feel comfortable having eight jurors like yourselves
4 deliberating on your case if you were here knowing that
5 they would be fair and following the law?

6 PROSPECTIVE JUROR NO. 008: Yes.

7 MR. JAFFE: Okay. And are you -- are you --
8 do you feel that you can under no circumstances award
9 pain and suffering?

10 In other words, if -- if you heard evidence
11 that there was pain and suffering -- excuse me. If you
12 heard evidence that there was pain and suffering,
13 Judge Wiese reads the law regarding pain and suffering
14 and you are allowed to deliberate and consider that,
15 would you award what you felt would be a fair pain and
16 suffering award based upon the evidence and the law?

17 PROSPECTIVE JUROR NO. 008: Based upon what
18 they can prove?

19 MR. JAFFE: Yes.

20 PROSPECTIVE JUROR NO. 008: Yes.

21 MR. JAFFE: Okay. So you can listen to the
22 law and deliberate fairly on the evidence?

23 PROSPECTIVE JUROR NO. 008: Yes.

24 MR. JAFFE: But it's the simple fact that a
25 2 million-dollar figure was thrown out there --

1 PROSPECTIVE JUROR NO. 008: Yeah.

2 MR. JAFFE: -- that's what sort of kind of
3 allowed you?

4 PROSPECTIVE JUROR NO. 008: Yes. A red flag
5 went up.

6 MR. JAFFE: Okay. If there was a situation
7 where -- are you saying that you could envision
8 absolutely no situation whatsoever where there would
9 potentially be \$2 million in pain and suffering, or
10 would it have to be just in the overall scale of things
11 in your deliberations of a certain level of pain and
12 suffering that somebody would have to experience?

13 PROSPECTIVE JUROR NO. 008: Say that one more
14 time.

15 MR. JAFFE: Okay. I guess what I'm trying to
16 say is this.

17 PROSPECTIVE JUROR NO. 008: It's been a long
18 day.

19 MR. JAFFE: I know it has, and my mind is
20 numb too.

21 Ms. Vera, obviously, people are going to
22 experience different types of pain and suffering based
23 upon whatever sort of traumatic injury they have. I
24 mean, if you fall down and you break your leg and it
25 heals within six weeks, okay, that's one thing, if you

1 end up having surgery so on and so on and so on. The
2 longer and the more extensive, potentially the greater
3 the pain and suffering.

4 I guess what I'm saying is, in that whole
5 graduated scale as things keep moving up the line, you
6 do envision no possible circumstances of awarding
7 \$2 million?

8 PROSPECTIVE JUROR NO. 008: Uh --

9 MR. JAFFE: Or would it just have to be a
10 very supreme circumstance?

11 PROSPECTIVE JUROR NO. 008: Well, with the
12 pain, you know, there's -- okay. In my -- my small
13 mind --

14 MR. JAFFE: That's fine.

15 PROSPECTIVE JUROR NO. 008: -- pain is
16 associated with treatment. Okay? Suffering is
17 associated with treatment too. But it would -- it
18 would have to -- it would have to be based on the
19 amount of treatment they got for their suffering.

20 MR. JAFFE: Okay. So in other words, you
21 would fairly deliberate and determine what you feel is
22 a fair number, and you don't have any artificial limit
23 placed in your mind as to what it would be; it would
24 just depend on the circumstances?

25 PROSPECTIVE JUROR NO. 008: Yes.

1 MR. JAFFE: Thank you very much.

2 Mr. Evans, let me ask -- you heard me ask the
3 same things. Do you feel any differently from
4 Mrs. Agnor and Mrs. Evans -- or Ms. Vera?

5 PROSPECTIVE JUROR NO. 012: No.

6 MR. JAFFE: So do you feel that you could
7 award for pain and suffering if it was appropriate?

8 PROSPECTIVE JUROR NO. 012: No.

9 MR. JAFFE: Not at all?

10 PROSPECTIVE JUROR NO. 012: No.

11 MR. JAFFE: Under no circumstances could you
12 find pain and suffering to be an appropriate measure of
13 damages?

14 PROSPECTIVE JUROR NO. 012: No.

15 MR. JAFFE: Even if the law allowed it?

16 PROSPECTIVE JUROR NO. 012: Personally, no.

17 MR. JAFFE: Okay. That's just your feeling?

18 PROSPECTIVE JUROR NO. 012: That's just my
19 feeling, my opinion.

20 MR. JAFFE: Now, if Judge Wiese reads you the
21 law and the law says you're allowed to award for pain
22 and suffering, would you follow the law or at that
23 point --

24 PROSPECTIVE JUROR NO. 012: I would
25 definitely follow the law, so -- I definitely would

1 follow the law so it doesn't put me into contempt of
2 court, but it's not going to change my opinion on
3 whether somebody should be awarded pain and suffering.

4 MR. JAFFE: Okay. But that's just your
5 personal feeling that pain and suffering is -- is not
6 something you feel comfortable awarding?

7 PROSPECTIVE JUROR NO. 012: Yes.

8 MR. JAFFE: Whether somebody asks for it or
9 not?

10 PROSPECTIVE JUROR NO. 012: Correct.

11 MR. JAFFE: And I'm not certain you're saying
12 that the law requires that you must find pain and
13 suffering, but you will follow the law?

14 PROSPECTIVE JUROR NO. 012: Correct.

15 MR. JAFFE: Would you expect any different
16 from jurors if you were sitting at that table and you
17 were bringing the lawsuit?

18 PROSPECTIVE JUROR NO. 012: Nope.

19 MR. JAFFE: No?

20 PROSPECTIVE JUROR NO. 012: No.

21 MR. JAFFE: So then you --

22 PROSPECTIVE JUROR NO. 012: I was brought
23 up -- I was raised you work for your money, you earn
24 your money. If I get in an accident, and I need my
25 bills covered and everything taken care of that I lost

1 during the injury, yeah, I'd want that back.

2 MR. JAFFE: Okay. So then --

3 PROSPECTIVE JUROR NO. 012: I didn't ask for
4 that.

5 MR. JAFFE: Okay. My point, then, is that
6 you would feel comfortable having eight people feeling
7 the same as you judge your case because that's a
8 principle by which you would stand?

9 PROSPECTIVE JUROR NO. 012: Right. Now,
10 if -- if --

11 MR. JAFFE: You wouldn't expect different of
12 others?

13 PROSPECTIVE JUROR NO. 012: If I'm sitting in
14 her place and I'm no longer able to -- to earn my
15 living, this person took that from me, I want what I
16 would have made until I retired.

17 MR. JAFFE: Okay.

18 PROSPECTIVE JUROR NO. 012: Whether you deem
19 that pain and suffering, that's up to you. I don't
20 feel that's pain and suffering.

21 MR. JAFFE: Okay.

22 PROSPECTIVE JUROR NO. 012: So it's my
23 opinion.

24 MR. JAFFE: Thank you, sir.

25 Mr. Runz, how about you, sir, with -- with

1 what I asked Mrs. Agnor and Ms. Vera, do you agree with
2 that?

3 PROSPECTIVE JUROR NO. 001: Yes, I do.

4 MR. JAFFE: So do you believe that you could
5 award pain and suffering?

6 PROSPECTIVE JUROR NO. 001: I could. And if
7 the situation was extreme enough, yes.

8 MR. JAFFE: Okay. And if it was fair, would
9 you award what you would believe to be a fair amount
10 consistent with the law and the evidence that you have
11 heard and that law as told you by Judge Wiese?

12 PROSPECTIVE JUROR NO. 001: Yes. Fair is a
13 good word.

14 MR. JAFFE: That's all we want is fairness.
15 So what it sounds, again, just like I have
16 asked the others is, that 2 million-dollar figure sort
17 of kind of jolted you?

18 PROSPECTIVE JUROR NO. 001: Yes.

19 MR. JAFFE: But if -- if the law was that you
20 were not necessarily held to that, but you could award
21 what was in your mind a fair pain and suffering award,
22 that is something you could abide by?

23 PROSPECTIVE JUROR NO. 001: Yes.

24 MR. JAFFE: You feel comfortable with that?

25 PROSPECTIVE JUROR NO. 001: Yes.

1 MR. JAFFE: And if you were sitting at that
2 table and eight jurors were told in your case to do
3 that same thing, would you feel comfortable with those
4 eight same jurors having the same frame of mind as you
5 do right now deliberating on your case?

6 PROSPECTIVE JUROR NO. 001: Yes.

7 MR. JAFFE: Thank you very much, sir.

8 Ms. Ong, how about you? Anything different
9 or do you feel the same way as those others?

10 PROSPECTIVE JUROR NO. 028: I feel the same
11 way. Although I would say, seeing pain every day, I
12 don't think there's like a certain amount that would
13 take it away right there, but then there's relief. But
14 I think the amount that they have been asking is just
15 too much. I mean, whatever we decide, if ever, I will
16 go for that.

17 MR. JAFFE: Okay. But would you listen to
18 the facts to at least decide whether the 2 million is
19 justified?

20 PROSPECTIVE JUROR NO. 028: Yes, I would.

21 MR. JAFFE: And if it was justified and you
22 felt it was fair, would you award that?

23 PROSPECTIVE JUROR NO. 028: I would think
24 about it. Because for me, it's too much really.

25 MR. JAFFE: Okay. But if Judge Wiese reads

1 you the law and says to you you're allowed to award a
2 fair amount for pain and suffering, what you believe to
3 be is fair, can you do that?

4 PROSPECTIVE JUROR NO. 028: Yes.

5 MR. JAFFE: Can you follow the law?

6 PROSPECTIVE JUROR NO. 028: Yes.

7 MR. JAFFE: And you have no problem with a
8 pain and suffering award; it's the 2 million-dollar
9 figure that, again, jolted you?

10 PROSPECTIVE JUROR NO. 028: Uh-huh.

11 MR. JAFFE: Thank you very much, Ms. Ong.
12 Mr. Walker.

13 PROSPECTIVE JUROR NO. 034: Yes.

14 MR. JAFFE: Got to come back to you too.
15 Now, I think you made it very clear actually that you
16 were in no way prejudging any amount in this case; is
17 that right?

18 PROSPECTIVE JUROR NO. 034: Yes.

19 MR. JAFFE: That you're willing to give both
20 sides an equal and fair shake?

21 PROSPECTIVE JUROR NO. 034: Yes.

22 MR. JAFFE: Are you willing to listen to the
23 evidence and listen to it fairly and impartially?

24 PROSPECTIVE JUROR NO. 034: Yes.

25 MR. JAFFE: Are you willing to obey the law

1 that Judge Wiese reads and apply that law to the facts
2 as you see fit if you were selected as a juror?

3 PROSPECTIVE JUROR NO. 034: Yes.

4 MR. JAFFE: Sir, I know, again, you were
5 bothered by that 2 million-dollar figure or it sort of
6 startled you a bit, but can you award pain and
7 suffering if that is the law and there are facts to
8 support it and you believe it's fair?

9 PROSPECTIVE JUROR NO. 034: Yes.

10 MR. JAFFE: And can you award what you
11 believe to be a fair amount for pain and suffering if
12 you are selected as a juror?

13 PROSPECTIVE JUROR NO. 034: Yes.

14 MR. JAFFE: So you were bothered by the
15 2 million, not the concept of pain and suffering; is
16 that right?

17 PROSPECTIVE JUROR NO. 034: Because I believe
18 that an amount that large for an automobile accident is
19 frivolous, extremely frivolous.

20 MR. JAFFE: Okay. Will you give the
21 plaintiff a chance to prove her case for pain and
22 suffering and award what you -- and render an award
23 consistent with the facts and the law?

24 PROSPECTIVE JUROR NO. 034: Yes.

25 MR. JAFFE: And even if that includes a pain

1 and suffering award?

2 PROSPECTIVE JUROR NO. 034: That depends
3 on --

4 MR. JAFFE: Depends on the facts you hear?

5 PROSPECTIVE JUROR NO. 034: -- what the law
6 states, and what is -- right. Facts are given.

7 MR. JAFFE: So if that's the case, are both
8 sides equally placed in your mind going into everything
9 since you have heard nothing? Because I think that's
10 what you have pretty much said that --

11 PROSPECTIVE JUROR NO. 034: Right.

12 MR. JAFFE: You haven't prejudged anything,
13 right?

14 PROSPECTIVE JUROR NO. 034: I haven't yet.

15 MR. JAFFE: Ms. Ong, you haven't prejudged
16 anything, have you, about this case? Are both sides
17 equally set since you have heard no evidence or facts
18 in this case?

19 PROSPECTIVE JUROR NO. 028: So far.

20 MR. JAFFE: Pardon me?

21 PROSPECTIVE JUROR NO. 028: So far, yeah.

22 MR. JAFFE: Thank you.

23 Mr. Runz, are they equal in your mind?

24 PROSPECTIVE JUROR NO. 001: So far.

25 MR. JAFFE: Thank you.

1 Mr. Frazier, will you follow the law?

2 PROSPECTIVE JUROR NO. 049: Absolutely.

3 MR. JAFFE: Will you listen to the evidence
4 and deliberate on the evidence and apply that to the
5 law that Judge Wiese gives you?

6 PROSPECTIVE JUROR NO. 049: Yes.

7 MR. JAFFE: And if the law allowed for a pain
8 and suffering award, would you deliberate on -- on that
9 and render what you would feel to be a fair pain and
10 suffering award based upon the evidence you hear?

11 PROSPECTIVE JUROR NO. 049: Fair based on the
12 evidence, yes.

13 MR. JAFFE: So similar to the others, is it
14 the 2 million-dollar figure that when it was just
15 randomly thrown out that bothered you?

16 PROSPECTIVE JUROR NO. 049: Absolutely.

17 MR. JAFFE: But not the concept of pain and
18 suffering?

19 PROSPECTIVE JUROR NO. 049: No.

20 MR. JAFFE: So then, is the plaintiff and
21 Mr. Khoury, are they both in an equal position in your
22 mind as well at the start since you've heard no
23 evidence or facts?

24 PROSPECTIVE JUROR NO. 049: Correct.

25 MR. JAFFE: You will be able to fairly

1 deliberate on this case and give each one of them an
2 equal shot, the fair fight Mr. Cloward was talking
3 about, you will give both sides an equal chance to
4 prove their case in your mind?

5 PROSPECTIVE JUROR NO. 049: (Witness nods
6 head.)

7 MR. JAFFE: Thank you very much, sir.

8 Now, you had also made a comment that you
9 thought -- were concerned that the majority of cases
10 are frivolous. Do you remember that, sir?

11 PROSPECTIVE JUROR NO. 049: Yes, I do.

12 MR. JAFFE: Is this case a frivolous case?

13 PROSPECTIVE JUROR NO. 049: I haven't heard
14 it.

15 MR. JAFFE: That's exactly right. That's my
16 point. So you're not -- you haven't judged in your
17 mind that this is a frivolous case, have you?

18 PROSPECTIVE JUROR NO. 049: No. It's just,
19 you know, the dollar figure being thrown out there.

20 MR. JAFFE: It kind of put your radar -- got
21 on your radar scope?

22 PROSPECTIVE JUROR NO. 049: Yeah.

23 MR. JAFFE: Said, why someone is asking for
24 that much money?

25 PROSPECTIVE JUROR NO. 049: Right.

1 MR. JAFFE: But you haven't judged this as
2 frivolous or not?

3 PROSPECTIVE JUROR NO. 049: No.

4 MR. JAFFE: Will you have to hear the
5 evidence and the facts to make that determination in
6 your mind?

7 PROSPECTIVE JUROR NO. 049: To make it clear
8 cut, yes.

9 MR. JAFFE: One way or another?

10 PROSPECTIVE JUROR NO. 049: Right.

11 MR. JAFFE: Are both sides again equally
12 placed in your mind in that regard as well?

13 PROSPECTIVE JUROR NO. 049: Yeah. If we're
14 starting out a level ground.

15 MR. JAFFE: Yes.

16 PROSPECTIVE JUROR NO. 049: Not one already
17 has this?

18 MR. JAFFE: Yeah.

19 PROSPECTIVE JUROR NO. 049: Yeah, then
20 it's -- it's all fine in my mind.

21 MR. JAFFE: Thank you.

22 Last one, Mr. Jeung. I did pronounce it
23 right?

24 PROSPECTIVE JUROR NO. 009: It's Jeung, but
25 everyone says "Young." That's fine.

1 MR. JAFFE: That's fine. I want to make sure
2 nobody is going to be offended.

3 Sir, you have heard what I have asked these
4 other people as well.

5 PROSPECTIVE JUROR NO. 009: It's the way the
6 first question was worded by -- by him.

7 MR. JAFFE: Mr. Cloward?

8 PROSPECTIVE JUROR NO. 009: Yeah. It was --
9 it was very general, and he was saying hypothetically
10 if it was just \$2 million, how would you view that? So
11 obviously you're going to say, Whoa, that's a crazy
12 amount of money, so it's going to seem a little off.
13 So that's, I think, how most of us were answering the
14 question.

15 MR. JAFFE: That was kind of the way I took
16 it and that's why I wanted to clarify.

17 PROSPECTIVE JUROR NO. 009: Yeah.

18 MR. JAFFE: So, sir, in your mind, are you
19 saying that there is no such thing as a pain and
20 suffering award in any personal injury lawsuit?

21 PROSPECTIVE JUROR NO. 009: I think there has
22 to be some kind of proof, something on paper, whether
23 it be medical, something like that. Because I mean,
24 you heard the stories about buying houses and cars and
25 stuff like that. If that's where the money is being

1 spent, then obviously.

2 MR. JAFFE: And that's what I wanted to ask
3 you, sir, is this: You have heard me ask all these
4 other people the same question. Judge Wiese is going
5 to give you the law at the conclusion of the trial.
6 You're going to hear the evidence during the course of
7 the trial. Will you fairly deliberate on that
8 evidence, apply the law, and if you found it was
9 appropriate, award a fair pain and suffering amount to
10 the plaintiff?

11 PROSPECTIVE JUROR NO. 009: Yeah.

12 MR. JAFFE: So you don't have a problem with
13 the concept of pain and suffering; it's just the
14 \$2 million bothered you being thrown at you right out
15 of the box?

16 PROSPECTIVE JUROR NO. 009: Well, I mean, I
17 guess it's how you view pain and suffering. If it's
18 just like how someone lives, but if you have the proof,
19 whether it's the money that they lost from their job
20 not working, or disability or something like that, if
21 that's proven, I think I can go with that, but I think
22 if it's just because, you know --

23 MR. JAFFE: Well, okay. But excuse me. So
24 you would want to see facts and evidence to support
25 pain and suffering, right?

1 PROSPECTIVE JUROR NO. 009: Yeah.

2 MR. JAFFE: I mean, you would agree with me
3 that if somebody fell and broke their leg, they're
4 going to feel pain, right?

5 PROSPECTIVE JUROR NO. 009: Of course.

6 MR. JAFFE: And you wouldn't question that or
7 debate that point, would you?

8 PROSPECTIVE JUROR NO. 009: But I don't think
9 they should get compensated for the pain. As far as
10 like treatment and getting back to normal, getting back
11 on your feet, I completely agree with that, but ...

12 MR. JAFFE: Now, if Judge Wiese gives you the
13 law and says that people are entitled to recover for
14 pain and suffering as they see -- as is fair and
15 proven, at least in your mind, there is a measure -- a
16 way to measure pain and suffering for you to give such
17 an award; is that right?

18 PROSPECTIVE JUROR NO. 009: I don't know how
19 you would put a monetary amount on that.

20 MR. JAFFE: That's -- that's -- that's why
21 you are the jury and you get to figure that one out.
22 I'm just a lawyer and I get to tell you why. Okay.
23 And quite candidly, it's always an issue that comes up
24 in every case.

25 But you will hear evidence about what she

1 experienced, about medical treatment, claimed injuries.
2 Obviously there's a big dispute here, so I don't want
3 to sit here and say that all of it is guaranteed,
4 proven, given. It's going to be what you want to
5 accept and what you want to hear. But would you able
6 to follow the law as it applies to rendering an award
7 for pain and suffering based on the evidence you hear
8 if you feel it is appropriate?

9 PROSPECTIVE JUROR NO. 009: I would have to.

10 MR. JAFFE: You would?

11 PROSPECTIVE JUROR NO. 009: Yeah.

12 MR. JAFFE: Okay. And if that's the case,
13 are both sides equally placed at that starting line
14 since you have heard no evidence or facts at this point
15 in the case?

16 PROSPECTIVE JUROR NO. 009: I said the
17 opposite the first time, but I mean, it's because how
18 it was worded. But if you're playing from that side,
19 yeah.

20 MR. JAFFE: Because the first time you heard
21 it was when the \$2 million was thrown into it?

22 PROSPECTIVE JUROR NO. 009: Yeah. And that
23 was the only thing that was put in there. Nothing
24 else, so...

25 MR. JAFFE: Throw the \$2 million out, now all

1 of a sudden you're hearing about that there's a
2 lawsuit, there's claim for injuries, there's claim for
3 damages. In your mind, are both sides at an equal
4 position to prove their case having given you nothing
5 at that point?

6 PROSPECTIVE JUROR NO. 009: Yes, sir.

7 MR. JAFFE: Thank you.

8 If I could have the Court's indulgence for
9 one moment.

10 Your Honor, I have nothing further. Thank
11 you.

12 THE COURT: So do you want any more on those
13 eight, Mr. Cloward?

14 MR. CLOWARD: Yeah. May we approach?

15 THE COURT: Sure.

16 (Whereupon a brief discussion was
17 held at the bench.)

18 THE COURT: All right, folks. I'm going to
19 let a few of you go. Lucky. Let me get the names
20 right here.

21 Mr. Evans, Juror No. 009, we thank and excuse
22 you.

23 PROSPECTIVE JUROR NO. 012: Number what?

24 THE COURT: You're Juror No. 9. I don't know
25 what your badge number is. We're going to excuse you.

1 You can go back down to the third floor and let them
2 know you have been excused by Department 30. Thank you
3 for your time, sir.

4 THE CLERK: Badge number?

5 THE COURT: Badge 012.

6 Okay. You know what, let's bring the next --
7 bring the next juror up so we don't get confused about
8 the chair numbers. Who's next?

9 THE CLERK: Jonathan Daryanani, Badge 053.
10 Please take seat No. 9.

11 THE COURT: All right. The next one I'm
12 going to excuse is Mr. Walker.

13 PROSPECTIVE JUROR NO. 034: Yes, sir.

14 THE COURT: You're in seat No. 15. What's
15 your badge number?

16 PROSPECTIVE JUROR NO. 034: 034.

17 THE COURT: Badge No. 034. We're going to
18 thank and excuse you. We appreciate your time, sir.
19 Go back down to the third floor and let them know
20 you've been excused by Department 30.

21 PROSPECTIVE JUROR NO. 034: Yes, sir.

22 THE CLERK: Michael Saxton, please take seat
23 No. 15.

24 THE COURT: The next one we're going to
25 excuse is Mr. Jeung. Seat No. 6. What's your badge

1 number?

2 PROSPECTIVE JUROR NO. 009: No. 009.

3 THE COURT: No. 009. Mr. Jeung, thank you
4 for your time. We appreciate your service today.

5 THE CLERK: Vicky Ellen Herana, Badge
6 No. 063, please take seat 6.

7 THE COURT: And Mr. Bulosan. Mr. Bulosan, my
8 prior client, I hate to see him leave. We're going to
9 thank and excuse you, sir. Have a good day. We
10 appreciate your service. Go back down to the third
11 floor and let them know you've been excused by
12 Department 30.

13 THE CLERK: Mark Duplay, Badge No. 064,
14 please take seat 12.

15 THE COURT: See, I told you folks in the
16 back, you're never safe until it's over. So it's about
17 ten after 4:00. Mr. Cloward, you want to keep going?

18 MR. CLOWARD: Yes, Your Honor.

19 Your Honor, who was moved into seat No. 6 and
20 No. 9?

21 THE COURT: Seat No. 6 is Herana.
22 Mrs. Herana, am I saying that right?

23 PROSPECTIVE JUROR NO. 063: That's correct.

24 THE COURT: Seat No. 9 is Daryan?

25 PROSPECTIVE JUROR NO. 053: Daryanani.

1 THE COURT: Daryanani? You got those?

2 MR. CLOWARD: Yes, Your Honor. How long
3 would you like me to --

4 THE COURT: Let's keep going till about 4:45.

5 MR. JAFFE: Don't we have the Court's
6 questions for these?

7 THE COURT: Sure. Probably a good idea.

8 So for these four -- let's start with
9 Ms. Herana. Tell us your name and badge number, ma'am.

10 PROSPECTIVE JUROR NO. 063: Vicky Ellen
11 Herana, 063.

12 THE COURT: How long have you been in Vegas?

13 PROSPECTIVE JUROR NO. 063: A year and a
14 half.

15 THE COURT: That's not very long. Welcome.

16 PROSPECTIVE JUROR NO. 063: Thank you.

17 THE COURT: What do you do for a living?

18 PROSPECTIVE JUROR NO. 063: I'm retired.

19 THE COURT: What did you do?

20 PROSPECTIVE JUROR NO. 064: I used to work to
21 the federal government, Department of Defense, as a
22 compensation analyst.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 063: I'm divorced. I
25 have two adult children. My 38-year-old son works for

1 the Department of Defense and my 35-year-old daughter
2 works for the Department of Transportation.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 064: And there was
5 another. I have never been on a jury before. Is that
6 all the questions?

7 THE COURT: That's probably it.

8 PROSPECTIVE JUROR NO. 063: Is that it?

9 THE COURT: The other ones are about your
10 spouse, but you said --

11 PROSPECTIVE JUROR NO. 063: Well, he was the
12 United States Navy and then retired. He worked as a
13 civilian for the Navy.

14 THE COURT: Okay. Never been on a jury
15 before?

16 PROSPECTIVE JUROR NO. 063: Nope.

17 THE COURT: Thank you, ma'am.

18 Mr. Daryanani, how long in Vegas?

19 PROSPECTIVE JUROR NO. 053: Eight years.

20 THE COURT: Well, tell us your name and badge
21 number.

22 PROSPECTIVE JUROR NO. 053: Jonathan
23 Daryanani, Badge No. 053. I have been in Las Vegas for
24 eight years. I am a group reservations coordinator for
25 the Cosmopolitan. I have a girlfriend. She works as a

1 hostess at Rachel's Kitchen. I never served on a jury
2 and I have no kids.

3 THE COURT: Okay. Thank you.

4 Let's see. Mr. -- is it Duplay?

5 PROSPECTIVE JUROR NO. 064: Yeah.

6 THE COURT: Mr. Duplay, how long in Vegas?

7 Tell us your name and badge number, please.

8 PROSPECTIVE JUROR NO. 064: Mark Duplay, 064.

9 Been in Las Vegas for 15 years, director of financial
10 planning at New York New York. Single, no kids.

11 THE COURT: Ever served on a jury?

12 PROSPECTIVE JUROR NO. 064: I have not served
13 on a jury before.

14 THE COURT: All right. Thank you, sir.

15 Mr. Saxton.

16 PROSPECTIVE JUROR NO. 056: Michael Saxton,
17 056.

18 THE COURT: Mr. Saxton, how long in Vegas?

19 PROSPECTIVE JUROR NO. 056: 29 years.

20 THE COURT: That's a long time.

21 PROSPECTIVE JUROR NO. 056: Yeah.

22 THE COURT: What do you do for a living?

23 PROSPECTIVE JUROR NO. 056: I'm retired.

24 THE COURT: What did you do?

25 PROSPECTIVE JUROR NO. 056: IT manager for a

1 local architectural firm.

2 THE COURT: Do you have a spouse or
3 significant other?

4 PROSPECTIVE JUROR NO. 056: Yes, I'm married.

5 THE COURT: What does your spouse do?

6 PROSPECTIVE JUROR NO. 056: She's retired.

7 THE COURT: What did she do?

8 PROSPECTIVE JUROR NO. 056: Homemaker.

9 THE COURT: Okay. Do you have any adult
10 children?

11 PROSPECTIVE JUROR NO. 056: No.

12 THE COURT: You ever served on a jury?

13 PROSPECTIVE JUROR NO. 056: No.

14 THE COURT: You four that just joined the
15 jury panel, you have heard a lot of questions
16 previously. In response to all of those questions that
17 you heard previously, any of you have any information
18 that you want to share with us before the attorneys
19 come up and start asking more specific questions?

20 You know what the questions are going to be,
21 so anyone feel like you need to share something that's
22 relevant? No?

23 All right. Mr. Cloward, it's all yours.

24 MR. CLOWARD: Thank you.

25 Okay. Let me talk to the new folks and ask

1 you a couple of questions. And, you know, I just want
2 to -- want to say one thing, you know. I could judge a
3 pie contest. You know, I could do that. If that's
4 what the law said, you know, or whatever, I could do
5 that. Just like, you know, my mother-in-law that was
6 sued and has one view of a personal injury case, she
7 could sit on a jury. She could do that. She could
8 follow the law. But I know me personally, I couldn't
9 be fair judging a pie-baking contest knowing I don't
10 like cherry pie. And so, you know, that's what I want
11 to talk about is the difference between -- you know,
12 yeah, you can do what the law says, but are the
13 contestants in the pie-baking contest really going to
14 get a fair fight or, you know, are you going to have
15 some -- some views that you bring -- that you bring
16 with you?

17 Ms. Vera, you know, Mr. Jaffe asked you some
18 questions and, you know, earlier in the day you
19 indicated to me that, you know, you wouldn't feel
20 comfortable with someone like -- with your frame of
21 mind sitting on a jury knowing what you know and so
22 forth. And I know me, I wouldn't want someone with my
23 frame of mind in a pie-baking contest knowing what I
24 know. And there's a difference of following the law,
25 what the judge says you got to do versus, you know,

1 what my view might just be because of my -- my -- my
2 values might be -- it might color it a little bit and
3 the people might not have a fair shake.

4 And can you -- can you just level with me?
5 Can you, you know, be brutally honest on those issues?
6 Do you think that you have a little -- a difficult
7 time, based on the way that you feel on pain and
8 suffering and the amounts that we talked about, and you
9 think my client would start off just -- even if it's
10 ever so slightly in a different position than
11 Mr. Khoury?

12 MR. JAFFE: Your Honor, I have to object.
13 Rule 7.70A. This is about questions asked and
14 answered. We've already had a ruling.

15 THE COURT: I'm going to allow it.

16 MR. CLOWARD: I just want -- I want a fair
17 fight. That's it, you know.

18 PROSPECTIVE JUROR NO. 008: And -- and I want
19 to do my duty.

20 MR. CLOWARD: Sure.

21 PROSPECTIVE JUROR NO. 008: The way you asked
22 the question was based on feeling. The way the other
23 attorney asked was based on fact.

24 MR. CLOWARD: Sure.

25 PROSPECTIVE JUROR NO. 008: And evidence, and

1 proof, and if it sounds like I gave two different
2 answers, I apologize for that. But I asked -- I
3 answered your question the way you asked the question,
4 and I answered the other attorney's question the way he
5 asked it.

6 MR. CLOWARD: Sure, and I know -- I
7 appreciate that, and I think you've done a really nice
8 job telling us, you know, your views and the way you
9 feel about things and I appreciate -- I appreciate
10 that. Do you think that, you know, if -- if my
11 mother-in-law who was -- say, you know, she was sued,
12 do you think that if she was sitting on a jury, do you
13 think that maybe the way that she viewed like the
14 actual -- let's say, based on her experiences, she puts
15 on a pair of glasses and that's the way she views
16 certain things. And then my -- my Aunt Nancy or, you
17 know, my mother-in-law sees it is one way and my Aunt
18 Nancy, who is the store owner, you know, she sees facts
19 a different way based on her experience. It's okay,
20 because they both had different experiences. They
21 both -- you know, they both have different ways that
22 they see the same -- the same fact. And so the
23 question that I have is: Do you think that based on,
24 you know, your experiences and your values and your
25 beliefs that, you know, that might -- might color the

1 facts in a specific way that my client might not have
2 the same fair fight as Mr. Khoury? And, you know, it's
3 okay to have beliefs, it's okay, but I just want to
4 know if you think that your views -- you know, the
5 facts might be colored just a little bit based on your
6 beliefs and values?

7 MR. JAFFE: Your Honor, same objection.

8 PROSPECTIVE JUROR NO. 008: I don't know.

9 THE COURT: Overruled.

10 MR. CLOWARD: Sure. It's hard to know, isn't
11 it, until you hear the facts? That's the one
12 frustrating part about this is we can't tell you
13 anything about the case. You know, both Mr. Jaffe and
14 I would love to do that. Go ahead.

15 PROSPECTIVE JUROR NO. 008: Well, if you
16 can't tell us anything about the case, why was the
17 amount of money brought up?

18 MR. CLOWARD: Sure.

19 PROSPECTIVE JUROR NO. 008: Why was that even
20 said? And I think that's why I'm having trouble now.

21 MR. CLOWARD: How come you're -- why do you
22 feel that you're having trouble?

23 PROSPECTIVE JUROR NO. 008: I feel frustrated
24 right now.

25 MR. CLOWARD: Sure. I know this process is

1 frustrating. I'm sorry about that.

2 PROSPECTIVE JUROR NO. 008: And I feel like
3 I've already answered your questions. I feel like I'm
4 done.

5 MR. CLOWARD: Okay. I appreciate that.

6 PROSPECTIVE JUROR NO. 008: That's the way I
7 feel.

8 MR. CLOWARD: Thank you. And I'm sorry if I
9 have made you feel -- feel badly. I feel like you have
10 told me everything the way that you feel and I
11 appreciate that. And I'm sorry if you're frustrated
12 with me. Thank you for telling us how you feel.

13 PROSPECTIVE JUROR NO. 008: I'm being
14 brutally honest.

15 MR. CLOWARD: I really appreciate that. It's
16 important. It's important. I know it's important for
17 me and for Mr. Jaffe.

18 Mr. -- do you have a first name?

19 PROSPECTIVE JUROR NO. 053: Jonathan.

20 MR. CLOWARD: May I call you John?

21 PROSPECTIVE JUROR NO. 053: Yeah, no problem.

22 MR. CLOWARD: Okay. Your last name is kind
23 of -- it's not easy to read, so I will call you John.
24 Is that okay?

25 PROSPECTIVE JUROR NO. 053: No problem.

1 MR. CLOWARD: John, tell me your thoughts
2 from what you have heard, and -- and all of the things
3 that you have -- you have heard the other folks say,
4 tell me your thoughts.

5 PROSPECTIVE JUROR NO. 053: Well, I mean, I
6 know jurors are all selected to be fair, and we all
7 have our own opinions. You know, I'm a -- I'm a
8 dancer, and there's a bunch of competitions where they
9 have judges and there are all styles. One judge may
10 not like this style, but that's not fair. So they're
11 going to judge based on, you know, what is fair.

12 MR. CLOWARD: Sure.

13 PROSPECTIVE JUROR NO. 053: So I agree with
14 her as well, that \$2 million kind of like -- it's
15 making us biased, but we don't know what the exact
16 facts are, because it could be completely different
17 when we find out the facts. But I don't think it's
18 fair for us to be biased just because of a number
19 that's thrown out before the actual case is being
20 brought to us.

21 MR. CLOWARD: Okay. So kind of like in -- in
22 your line of work, there are certain judges who already
23 have kind of a different view on certain things?

24 PROSPECTIVE JUROR NO. 053: Yeah. Sort of
25 like all styles. You know, there's break dancing.

1 There's locking. There's all these types of dances and
2 each judge is specifically for -- like they're good at
3 that style, but they judge other styles. So it's not
4 fair for them just because, on their opinion, their
5 style is better than everyone else's. They can't be a
6 judge. That's why we're here and that's why I think
7 that our opinions are our opinions. We can't judge
8 other people, because they have their opinions.

9 MR. CLOWARD: Sure. Let me ask you this
10 question. And, you know, there are lots of different
11 cases, and -- and just because, you know, maybe someone
12 has a view on -- on one specific case, doesn't mean
13 that they're not a good fit for a totally different --
14 a different case.

15 Let me ask you this, though: Other than
16 break dancing, what's another popular kind of dance?

17 PROSPECTIVE JUROR NO. 053: I do
18 choreography, so I'm in the hip-hop crew locally.

19 MR. CLOWARD: So hip-hop and break dancing,
20 those would be two different types of dancing?

21 PROSPECTIVE JUROR NO. 053: Yeah.
22 Choreography, break dancing, locking, popping. Those
23 are all different types of dancing.

24 MR. CLOWARD: Which ones do you feel like you
25 like the best, your very favorite?

1 PROSPECTIVE JUROR NO. 053: Well, with
2 choreography all these styles are included. So I mean,
3 I started out doing popping, but as I went on to
4 experience other things, I liked -- started liking
5 more, so ...

6 MR. CLOWARD: Okay. When you talked about,
7 you know, some judges that you deal with in your
8 career, and your line of work, maybe they don't like a
9 specific style. Now, I think it would be possible for
10 them to judge. You know, let's say you had a hip-hop
11 dancer and then you had a break dancer. Do you agree
12 with me that, you know, they could judge that; they
13 could do the judging? Do you agree with that?

14 PROSPECTIVE JUROR NO. 053: Right. Because I
15 don't want them -- I'm not them. With me, I have my
16 own opinion but I'm not going to base that off what the
17 facts are.

18 MR. CLOWARD: Sure.

19 PROSPECTIVE JUROR NO. 053: So I don't know
20 about them, but I know what I know. And just because I
21 have my own opinion, I'm not going to be like: I'm --
22 this is wrong. I'm right; you're wrong.

23 MR. CLOWARD: Sure.

24 PROSPECTIVE JUROR NO. 053: Unless facts are
25 broughten to me, then I will be like: Okay, you know,

1 maybe my opinion wasn't right or maybe it was right.
2 But I don't know.

3 MR. CLOWARD: Sure. Are there folks that
4 only do, like, break dancing, that's all they do?

5 PROSPECTIVE JUROR NO. 053: Yeah.

6 MR. CLOWARD: So imagine that you had, you
7 know, a judge that all he did was break dancing and
8 that's all that -- you know, that they did, and then
9 there's a contest where break dancing and then ballroom
10 dancing is -- is -- and he's asked to, you know, to
11 judge those two contests. Do you think that even
12 though he could -- you know, he could judge them, he
13 could physically do it, he could go down there and he
14 could do it, do you think that he might have a little
15 bit of a bias toward, you know, the break dancing?

16 PROSPECTIVE JUROR NO. 053: Depends on that
17 person.

18 MR. CLOWARD: Do you think it's --

19 PROSPECTIVE JUROR NO. 053: Because like me,
20 where I'm going to be fair, if they're really good --
21 if the ballroom dancer is really good, I'm going to be
22 fair. You know, if that break dancer's really good,
23 I'm going to be fair.

24 MR. CLOWARD: Yeah.

25 PROSPECTIVE JUROR NO. 053: The fact is the

1 fact. If they have proven that they are good, then
2 yeah, of course. But I don't know that other person.
3 I don't know what they're going to do, but for me, fair
4 is fair.

5 MR. CLOWARD: Gotcha. How do you feel about
6 what's been said regarding the amounts, and, you know,
7 the pain and suffering, and things like that, how do
8 you feel about those things?

9 PROSPECTIVE JUROR NO. 053: When I first
10 heard the number, yeah, it was a little shocking.

11 MR. CLOWARD: Okay.

12 PROSPECTIVE JUROR NO. 053: As far as pain
13 and suffering, I guess -- I don't know if it's the same
14 kind of thing, but, you know, when you find something
15 in your food, there are people that like, you know
16 what, I'm going to bring it to the attention. I'm
17 going to get my bill taken care of.

18 MR. CLOWARD: Make a big deal out of it.

19 PROSPECTIVE JUROR NO. 053: Make a big deal
20 out of it, but in my opinion, I don't do that.

21 MR. CLOWARD: Okay.

22 PROSPECTIVE JUROR NO. 053: I mean, I may
23 bring it like, Hey, there was a hair in here, but
24 that's okay, don't worry about it. I'm not -- I'm not
25 trying to do it just so I can get a free meal.

1 MR. CLOWARD: You're not going to go out and
2 hire a lawyer and file a lawsuit?

3 PROSPECTIVE JUROR NO. 053: Yes, right,
4 right. And you got -- the 2 million was a big deal,
5 but for pain and suffering, as far as bills go, in the
6 long run, I believe that, you know, it wasn't their
7 fault, that they should get the amount that was
8 actually taken out from their life, and if it was life
9 changing, then yeah.

10 MR. CLOWARD: Is that just for bills, or is
11 that for, you know -- you know, pain and suffering you
12 can't -- you know, you can't push a button on somebody
13 and it print a receipt and says, Hey, this is -- this
14 is the amount. Mr. Jaffe alluded to that. That's
15 something we all struggle with. We wish there was a
16 computer program that we could plug it in and calculate
17 it, but it's so personal to each person that it's
18 really tough.

19 PROSPECTIVE JUROR NO. 053: Right.

20 MR. CLOWARD: And so --

21 PROSPECTIVE JUROR NO. 053: That's the hard
22 thing to judge.

23 MR. CLOWARD: Sure.

24 PROSPECTIVE JUROR NO. 053: That's why, I
25 guess, fact comes into play. I don't know how much

1 facts we can get to know how much they're going to
2 suffer in the long run.

3 MR. CLOWARD: Sure.

4 PROSPECTIVE JUROR NO. 053: So yeah, I'm not
5 quite sure.

6 MR. CLOWARD: Okay. And then, you know,
7 Mr. Evans who was sitting there before you, he just
8 said, Look, I can't award pain and suffering, because I
9 don't believe in it, and that's fine. He -- he's -- he
10 has different views and that's -- that's okay. That's
11 okay. Do you have -- would you share those same views
12 or --

13 PROSPECTIVE JUROR NO. 053: I can award pain
14 and suffering if it's fair.

15 MR. CLOWARD: Okay.

16 PROSPECTIVE JUROR NO. 053: But I don't know
17 what right now is fair in this case.

18 MR. CLOWARD: Sure. Because you don't know
19 the facts?

20 PROSPECTIVE JUROR NO. 053: Right.

21 MR. CLOWARD: That's right.

22 Okay. Let me think. How do you feel about
23 personal injury lawsuits in general?

24 PROSPECTIVE JUROR NO. 053: In general, I
25 mean, I don't really have a biased, you know, opinion

1 about it. If there's -- if people are trying to do it
2 just because they want money, or people are actually
3 doing it because they need or they got injured, yeah, I
4 don't really have a bias opinion about it.

5 MR. CLOWARD: And then the other question
6 was, if a -- let me go back. Oh, the -- do you have
7 any beliefs that in order for someone to have a
8 significant injury, you have also got to have a
9 significant crash, like a rollover, something like
10 that?

11 PROSPECTIVE JUROR NO. 053: No. So yeah, I
12 believe we all -- we are all different shapes and
13 sizes. I'm a skinny guy. I'm sure I can get -- I get
14 hurt real easily, but like, I can do the same thing as
15 some other person and I will get more hurt than them
16 just because they're bigger than me.

17 MR. CLOWARD: That's true. I'm bigger than
18 you, but I bet you could do about 15 times more
19 push-ups than me. I might get one if someone was
20 helping.

21 PROSPECTIVE JUROR NO. 053: Just depends on
22 the impact, I guess.

23 MR. CLOWARD: Thank you. Appreciate it.

24 Mr. -- is it Duplay?

25 PROSPECTIVE JUROR NO. 064: Yep.

1 MR. CLOWARD: Mr. Duplay, how are you today?

2 PROSPECTIVE JUROR NO. 064: Great.

3 MR. CLOWARD: Good. Can I talk to you a
4 little bit?

5 PROSPECTIVE JUROR NO. 064: Sure.

6 MR. CLOWARD: Mr. Duplay, you have been here.
7 We have been having this long discussion and I have
8 been droning on, and I'm trying to get through this.
9 Can you tell me, do you have any thoughts or -- you
10 know, when I first stood up here and I said, Hey, I
11 just want to be brutally honest, I want to be brutally
12 honest, my client is suing for millions of dollars.
13 And did you have any views one way or another? Did you
14 kind of like, Holy smokes, this lady, I am just wow?

15 PROSPECTIVE JUROR NO. 064: Honestly, you
16 know, I don't -- I don't disagree with the principle
17 behind it. But, you know, by trade, I'm an analyst,
18 and just the way that I think, I'm an analyst also.

19 MR. CLOWARD: What do you do?

20 PROSPECTIVE JUROR NO. 064: Financial
21 planning and analysis.

22 MR. CLOWARD: Oh, okay.

23 PROSPECTIVE JUROR NO. 064: But it's
24 difficult for me to really, you know, say one way or
25 another that I understand the big picture of what all

1 is going on. I mean, every -- just like at work, every
2 situation is unique and every situation is different,
3 so until you have all the information, it's hard to say
4 what's fair and what's not.

5 MR. CLOWARD: Sure.

6 PROSPECTIVE JUROR NO. 064: I don't -- I
7 don't disagree that pain and suffering is -- is a
8 possibility, yet in this, again as has been discussed
9 before, \$2 million may be the right number, but until
10 I -- until I see all that --

11 MR. CLOWARD: Information.

12 PROSPECTIVE JUROR NO. 064: Empirical data,
13 you know, it's hard for me to say one way or another
14 whether it's fair.

15 MR. CLOWARD: Okay. I appreciate that. So
16 you -- you would not be like maybe Mr. Evans, who -- he
17 just -- he just -- for whatever reason he -- you know,
18 that's his experience in life and that's fair, you
19 know, but he didn't believe in pain and suffering. Do
20 you feel like you're like him at all in that regard?

21 PROSPECTIVE JUROR NO. 064: No.

22 MR. CLOWARD: Thank you. And the \$2 million,
23 at first you're kind of shocked, but as you think about
24 it, you don't -- you know, you're not like, Well,
25 there's no way. There's not a ceiling -- I think it

1 was Mr. Walker, he just said, Hey, look, there's no way
2 I could ever get above that no matter what the facts
3 showed. Are you like that or not?

4 PROSPECTIVE JUROR NO. 064: Not at all, but I
5 will say that, that that's not the number that I would
6 start at, if that makes sense?

7 MR. CLOWARD: Yeah.

8 PROSPECTIVE JUROR NO. 064: So it's
9 definitely -- it is a really big number. So it
10 requires a lot of -- it requires a lot to get to that
11 number, but it's -- it's not something that I -- that I
12 find impossible.

13 MR. CLOWARD: Okay. Thank you. And then
14 regarding the automobile crashes and things like that,
15 are you someone who believes that in order to have a
16 significant or serious injury, you know, you've got to
17 also have a significant -- you know, like a rollover or
18 something like that?

19 PROSPECTIVE JUROR NO. 064: Not at all. I
20 have actually been in a rollover, and I was fine.

21 MR. CLOWARD: And you're still here.

22 PROSPECTIVE JUROR NO. 064: Yeah, I was
23 actually completely fine. But the car was done. I
24 climbed out a big hole in the roof, but when I -- yeah,
25 nothing happened so, you know, there's -- there are a

1 lot of factors that come into play, so certainly
2 anything -- anything could happen.

3 MR. CLOWARD: All right. Thank you.
4 Appreciate it.

5 Mr. Saxton, how are you today?

6 PROSPECTIVE JUROR NO. 056: Fine.

7 MR. CLOWARD: Or this afternoon? It's
8 getting kind of late in the afternoon. We've had a lot
9 of talking today about pain and suffering, about, you
10 know, the amount, \$2 million and so forth. Tell me
11 your thoughts about that.

12 PROSPECTIVE JUROR NO. 056: Well, I have
13 no -- no problem with the concept of pain and
14 suffering. And the dollar amount doesn't really bother
15 me if it's -- if it's warranted by the facts.

16 MR. CLOWARD: Okay. So you would want to --
17 you would evaluate the facts, and you don't have a
18 position one way or another like Mr. Evans or
19 Mr. Walker that, I just can't do pain and suffering or
20 I just can't do anything above 2 million?

21 PROSPECTIVE JUROR NO. 056: No. I don't have
22 a position.

23 MR. CLOWARD: Okay. Thank you. Can you tell
24 me what about the -- you know, the property damage you
25 feel that someone in order to have a significant injury

1 would need to have, you know, correlating significant
2 property damage?

3 PROSPECTIVE JUROR NO. 056: I don't think
4 it's really -- I don't think that the two are related.

5 MR. CLOWARD: Tell me why.

6 PROSPECTIVE JUROR NO. 056: Well just --
7 there's a -- I mean, you can have a very small
8 accident --

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 056 -- and have a, you
11 know, a mental trauma from it. I mean, it could affect
12 you greatly.

13 MR. CLOWARD: Sure. Okay. So you believe
14 that even in like a small accident or, you know, small
15 property damage that there could be a serious injury?

16 PROSPECTIVE JUROR NO. 056: Yes.

17 MR. CLOWARD: That's fair to say?

18 PROSPECTIVE JUROR NO. 056: I believe so.

19 MR. CLOWARD: Okay. Is there anybody that
20 disagrees with Mr. Saxton on that issue, on that very
21 specific issue?

22 Okay. Thank you.

23 Ms. Herana -- is it Mrs. or Ms.?

24 PROSPECTIVE JUROR NO. 063: I'm divorced, so
25 I guess it's "Ms."

1 MR. CLOWARD: Okay. What do you prefer to be
2 called?

3 PROSPECTIVE JUROR NO. 063: Vicky.

4 MR. CLOWARD: Vicky, tell me a little bit
5 about how you think.

6 PROSPECTIVE JUROR NO. 063: Well, when you
7 said in excess of two and a half million, I just
8 thought that was the number that was thrown out there,
9 but it wasn't the final result.

10 MR. CLOWARD: Sure.

11 PROSPECTIVE JUROR NO. 063: There's
12 information that has to be provided before the decision
13 can be made --

14 MR. CLOWARD: Sure.

15 PROSPECTIVE JUROR NO. 063: -- about anything
16 like that. As far as the correlation between injury
17 and accident, I don't think there's a direct
18 correlation.

19 MR. CLOWARD: Okay.

20 PROSPECTIVE JUROR NO. 063: There's too many
21 factors.

22 MR. CLOWARD: Okay. So you don't have an
23 opinion one way or another?

24 PROSPECTIVE JUROR NO. 063: No. I think pain
25 and suffering is something that's very difficult to put

1 a price tag on.

2 MR. CLOWARD: It is.

3 PROSPECTIVE JUROR NO. 063: Yeah. So, you
4 know, a lot of information is required.

5 MR. CLOWARD: Do you have any -- any views
6 or -- you know, Mr. Jaffe asked some questions about
7 could you do this or could you follow the law, could
8 you do this, and -- and that's one question, but
9 another question is, is do you have any views or
10 opinions like Mr. Evans or Mr. Walker? You know, they
11 just said flat out, Look, I don't believe in that
12 concept as a concept, and so I couldn't -- I couldn't
13 do that. Do you have any beliefs like that?

14 PROSPECTIVE JUROR NO. 063: No. When it
15 comes to frivolous lawsuits, the only ones we hear
16 about are the ones the media find interesting.

17 MR. CLOWARD: Yeah.

18 PROSPECTIVE JUROR NO. 063: And the majority
19 of those are frivolous, so there are valid lawsuits out
20 there.

21 MR. CLOWARD: Okay.

22 PROSPECTIVE JUROR NO. 063: It's just a
23 question of whether the information supports whatever
24 the -- the result, you know.

25 MR. CLOWARD: Yeah.

1 PROSPECTIVE JUROR NO. 063: Yeah.

2 MR. CLOWARD: Okay. I appreciate that.

3 Thanks.

4 Okay. You know, we have talked a little bit
5 about frivolous lawsuits and the impact those have on
6 society. I think everyone can agree that our
7 community -- you know, lawsuits involving thumbs being
8 put in chili and things like that, that's not good for
9 the community. So my question is this: Are there --
10 when there is a legitimate lawsuit, is there a danger
11 to the community of having a jury not enter into the
12 verdict form the full and fair amount for the harms and
13 losses caused by the defense or the defendant?

14 So, for instance, if -- if -- if the
15 defendant causes something -- you know, like in the
16 hemophiliac example, if the defendant does something
17 and -- and the jury in that case said, Well, you know
18 what, I feel bad for him, so I'm not going to -- I'm
19 not going to award the full amount of damages. Is
20 there a danger to our community for not doing that?

21 Mr. Frazier?

22 PROSPECTIVE JUROR NO. 049: Yeah. Absolutely
23 there's a danger. I guess, you know, and maybe it's
24 the whole media thing, but it seems to me that that
25 very rarely seems to come to light if it does happen.

1 MR. CLOWARD: What?

2 PROSPECTIVE JUROR NO. 049: To where a jury
3 doesn't, like, provide for pain and suffering in a
4 proper manner.

5 MR. CLOWARD: Why do you think -- why
6 wouldn't that come to light?

7 PROSPECTIVE JUROR NO. 049: That, I have no
8 answer for. I don't know.

9 MR. CLOWARD: Anyone else have thoughts on
10 that?

11 PROSPECTIVE JUROR NO. 049: You know, a
12 minute ago somebody said it doesn't sell newspapers,
13 but not many people buy the newspaper any more anyways,
14 so ...

15 MR. CLOWARD: You can see it online.

16 PROSPECTIVE JUROR NO. 049: So that's not a
17 solution.

18 MR. CLOWARD: Sure. Who agrees that there is
19 a danger to the community in a situation of not -- you
20 know, not -- not restoring the -- the plaintiff to the
21 position they were --

22 MR. JAFFE: Your Honor, I have an objection
23 that this is -- may we approach?

24 THE COURT: Sure.

25 /////

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

3 THE COURT: All right, folks. We're going to
4 go ahead and take our evening break. Sorry, folks.
5 I'm going to have to have everybody come back tomorrow
6 again. I know that doesn't make you happy. We were
7 hoping that we could get a jury picked today, but it's
8 just not going to happen. Tomorrow morning I have a
9 morning calendar at 9:00 o'clock, so we have to start a
10 little bit later, but I think it's going to be a quick
11 calendar, so I'm going to have everybody show up at
12 10:30 tomorrow. We'll go for an hour and a half
13 probably until lunch, and then, we'll get the jury
14 picked tomorrow. That's going to happen.

15 During our break tonight, you're instructed
16 not to talk with each other, or with anyone else, about
17 any subject or issue connected with this trial. You
18 are not to read, watch, or listen to any report of or
19 commentary on the trial by any person connected with
20 this case, or by any medium of information, including,
21 without limitation, newspaper, television, the
22 Internet, or radio. You are not to conduct any
23 research on your own, which means you cannot talk with
24 others, Tweet others, text others, Google issues, or
25 conduct any other kind of book or computer research

1 with regard to any issue, party, witness, or attorney,
2 involved in the case. You're not to form or express
3 any opinion on any subject connected with this trial
4 until the case is finally submitted to you.

5 That means don't talk with each other about
6 anything you have heard or seen. Don't talk with
7 anybody else, your family members or anything like
8 that. Just tell them the jury hasn't been picked yet.
9 You can't talk about it. You have to come back
10 tomorrow. You'll know by the end of the day tomorrow
11 whether you're on the jury or not.

12 You folks that are in the box, make sure you
13 remember where you are, so when you come back tomorrow
14 you can sit in the same seats. I didn't get to the
15 preliminary instructions that I usually talk to people
16 about, but if you want to bring drinks and stuff in
17 here, I'm fine with that. I want you to be
18 comfortable. That goes for everybody. Just don't
19 bring something that's going to make a mess, because we
20 try to -- I'm going to try to move this along as
21 quickly as we can to make sure we get you guys out of
22 here by next Thursday.

23 The problem is if you bring something, and
24 you spill it and you make a big mess, we have to --
25 it's going to cause a delay while we clean it up. So,

1 I mean, if you want to bring a little snack, I sit here
2 and munch on M&Ms and drink my Gatorade. It doesn't
3 make a mess. So as long as you can bring something
4 that doesn't make a mess, I'm fine with that. If it's
5 going to make a mess, don't bring it.

6 We will give you usually a break in the
7 morning, break in the afternoon, and a lunch break. Do
8 you have a question, sir?

9 PROSPECTIVE JUROR NO. 003: Are we to come
10 back directly to the court or should we go to the third
11 floor first?

12 THE COURT: You come directly to the court
13 back. You're going to meet me at the end of the
14 hallway.

15 I'm wrong. Since you're not impaneled yet,
16 you have to go to jury services and check in.

17 UNIDENTIFIED SPEAKER: What time, Your Honor?

18 THE COURT: A little before 10:30 you so can
19 be up here at 10:30.

20 THE BAILIFF: When you come into the
21 building, go to jury services, check in with them, and
22 then come on up. You don't need to wait down there.
23 You just need to check with them, tell them you are
24 coming up here because we're not finished selecting the
25 jury, and then just come up.

1 THE COURT: You have a question, ma'am?

2 PROSPECTIVE JUROR NO. 010: We get a work
3 excuse today?

4 THE COURT: How do you do work excuses,
5 Randy?

6 THE BAILIFF: I will discuss it with you
7 outside.

8 THE COURT: Randy knows the answer to more of
9 these questions than I do.

10 All right, folks. Thank you for your time.

11 Yes? Another question?

12 PROSPECTIVE JUROR NO. 006: Do we wear our
13 badges in for downstairs and up here?

14 THE COURT: You have to keep wearing those
15 until you get the new ones. See you tomorrow.

16 PROSPECTIVE JUROR NO. 015: I'm sorry, Judge.
17 Do we need to check out on the third floor?

18 THE COURT: Ask Randy.

19 Yes, ma'am.

20 PROSPECTIVE JUROR NO. 106: I haven't spoke
21 up earlier about my child care issues because I'm not
22 sure what I'm supposed to do.

23 THE COURT: What's your badge number, ma'am?

24 PROSPECTIVE JUROR NO. 106: It was 106, Ann
25 Boone.

1 THE COURT: I remember. I wrote it down.

2 PROSPECTIVE JUROR NO. 106: I wouldn't -- I
3 wouldn't say anything. It's just that my -- it's my
4 three and a half year old and she qualifies for special
5 education --

6 THE COURT: I understand.

7 PROSPECTIVE JUROR NO. 106: -- because of her
8 social anxieties and --

9 THE COURT: You're excused. Tell them on the
10 third floor that I excused you.

11 PROSPECTIVE JUROR NO. 106: Okay. I'm sorry.
12 I apologize.

13 THE COURT: You're fine. I'm sorry. Have a
14 good day, ma'am. Badge No. 106, Ann Boone.

15 (Whereupon the jury exited the courtroom.)

16 MR. CLOWARD: Briefly one thing on the
17 record, Your Honor. We would like to hand Mr. Jaffe
18 plaintiff's bench brief regarding the issue of jury
19 selection. Your Honor, may I provide with you a copy?

20 THE COURT: Sure. Come on up.

21 MR. CLOWARD: And this will be filed tonight.
22 Thank you.

23 THE COURT: Okay. We're outside the presence
24 of the jury. Pursuant to the Jitnan case, I have to
25 make a record on why I either granted or denied the

1 motions, challenges for cause. With regard to the
2 first challenge, which was Mr. Frazier, the challenge
3 for cause was denied based upon the fact that he said
4 that he was willing to follow the law, he was treating
5 both sides equal. And he previously had said that most
6 cases were frivolous, but he acknowledged he didn't
7 know if this case was frivolous because he didn't know
8 the facts yet. I got the impression from the
9 information overall that he was going to be fair and
10 impartial and listen to the facts before he made a
11 decision.

12 With regard to challenge number two, which
13 was Evans, Mr. Evans specifically said that he would --
14 he could not make an award for pain and suffering under
15 any circumstances, and based upon that, I granted the
16 challenge.

17 Number three challenge was Mr. Walker. I
18 granted this challenge based upon the fact that he said
19 that he was uncomfortable with the 2 million-dollar
20 suggested damages. He thought that amount was
21 ridiculous. He said that he would give both sides an
22 equal shake, but he said that the amount -- that an
23 amount that large meant to him that the case was
24 frivolous. The fact that he said that just -- just
25 requesting an amount that large meant to him that the

1 case was frivolous, I got the impression overall that
2 he was not going to be able to be fair; that he had a
3 bias that he wouldn't be able to overcome.

4 The fourth challenge was Mr. Runz, based on
5 the -- let's see. I -- I denied the challenge with
6 regard to Mr. Runz, because he said that he would be
7 willing to award pain and suffering if the -- if the
8 situation justified it. That's the only note I had
9 down, so that's why I denied the challenge on him.

10 On Ms. Vera, she said that -- I denied the
11 challenge on Ms. Vera. She said that she could award
12 pain and suffering consistent with the law. In
13 determining what was fair she would have to listen to
14 the facts, and any award she made would depend on the
15 circumstances. I did not feel that she was biased to
16 the extent that it justified a cause excusal.

17 Sixth challenge was Ms. Ong. She said that
18 she would listen to the facts, and if she believed that
19 a 2 million-dollar award was justified, she would
20 consider that. So even though she said initially she
21 thought the 2 million-dollar award was excessive, she
22 said she would consider it if the facts justified it,
23 so that's why the challenge was denied on Ms. Ong.

24 The seventh challenge was to Mr. Jeung. He
25 indicated initially he was uncomfortable with the

1 2 million-dollar award. He was uncomfortable with
2 himself on the jury. In Mr. Jaffe's attempt to
3 rehabilitate him, he indicated he would require proof
4 in order -- to award any type of pain and suffering,
5 and that he did not believe anybody should be
6 compensated for pain. Based upon that, I thought there
7 was a bias that justified a cause challenge, so we
8 excused Mr. Jeung.

9 The eighth challenge was to Mr. Bulosan and
10 the parties stipulated to strike Mr. Bulosan.

11 Ninth challenge was Ms. Agnor. She indicated
12 initially she was uncomfortable with the 2 million-
13 dollar award. She talked about the intent needed to be
14 involved. She would not want herself on a jury. And
15 she said initially that the defendant would start out
16 ahead. In response to Mr. Jaffe's questions she said
17 that she was willing to follow the law and give a fair
18 award for pain and suffering if the evidence justified
19 it. She said that the parties were starting at equal
20 places and she would be able to be fair to both sides.
21 I did not feel that there was a bias that affected her
22 ability to be fair and impartial in the case.

23 Anything else we need to put on the record
24 now?

25 MR. EGLET: Does the Court have any objection

1 to me making a record, Your Honor, as Mr. Cloward's
2 jury consultant in this case? I am a licensed attorney
3 here in Nevada.

4 THE COURT: I don't have a problem with it.
5 Mr. Jaffe, you have a problem with it?

6 MR. JAFFE: With Mr. Eglet making arguments
7 in the case?

8 THE COURT: Making the record as it relates
9 to the excusal of the jury challenges.

10 MR. JAFFE: Yes. He's not counsel of record
11 in the case.

12 MR. ADAMS: I can get an association over in
13 about five minutes, Your Honor.

14 MR. EGLET: I don't think it's necessary,
15 Your Honor. I mean, I could -- you know, I could --

16 THE COURT: I'm going to allow you to do it.
17 Go ahead.

18 MR. EGLET: Okay. Your Honor, I'm sure -- as
19 I know, the Court has read the Jitnan decision, which I
20 handled on appeal. I was not the counsel -- trial
21 counsel before. As a matter of fact, Mr. Jaffe was the
22 trial counsel below the defense counsel on the case
23 before. We tried to engage in the same rehabilitation
24 tactics he did here in this case, which the Nevada
25 Supreme Court found in Jitnan were insufficient in

1 Jitnan. Mr. Polsenberg actually handled the appeal.

2 And what the Jitnan court specifically says
3 is that when a jury, member of the jury makes
4 inconsistent statements, in other words, they say one
5 thing in response to the plaintiffs questioning them
6 and then turn around and say the opposite when the
7 defense counsel gets up and tries to rehabilitate them
8 using leading questions, that doesn't make them
9 nonbiased. That doesn't make them more appropriate and
10 qualified to sit as a person on the jury. It makes
11 them less qualified to sit as a person on the jury,
12 because they're making inconsistent statements based on
13 who's asking them the questions.

14 Mrs. Agnor stated -- on multiple occasions
15 she stated that she felt that \$2 million -- and
16 remember something, the question he posed wasn't just
17 for pain and suffering. It was 2 million -- his client
18 was going to ask for an amount in excess of \$2 million.
19 That wasn't focused just on pain and suffering as
20 Mr. Jaffe tried to imply and convince these jurors it
21 was when he got up and did his so-called
22 rehabilitation. It wasn't. He said, \$2 million,
23 period. That includes all types of damages.

24 And Ms. Agnor stated -- Mrs. Agnor -- Agnor,
25 excuse me, she's in seat -- I don't know what seat

1 she's in -- I think she's in seat 4 -- stated that it
2 is extremely excessive. That only maybe in a death
3 case would she think that that would be appropriate.
4 She stated that -- and I wrote these down, that -- she
5 stated that even if a person was never able to work
6 again, \$2 million would be too much, would be too
7 excessive. So she's talking about there -- she's not
8 even talking about pain and suffering. She's talking
9 about even if somebody lost complete hundred percent
10 their capacity to work, the \$2 million would be too
11 excessive in her mind. She's not even talking about
12 just caps on -- on pain and suffering. She's talking
13 about caps on special damages as well. That's what she
14 said. It will be in the record clearly, Judge.

15 Ms. Agnor also stated unless the plaintiff is
16 totally disabled or missing a limb -- this is her
17 words, not coming from Mr. Cloward, these came from her
18 lips. Unless the plaintiff is totally disabled or
19 missing a limb, she would -- could never go anywhere
20 near \$2 million. For anyone -- this is her words --
21 \$2 million is unfathomable. That's the word she used.
22 I wrote it down. Unfathomable. It's too much money,
23 that someone -- that anyone could be hurt in a motor
24 vehicle accident and deserve that kind of money is
25 unfathomable. That's what she said. Those weren't

1 Mr. Cloward's words. Those words came from her mouth.

2 She also said that she felt that she could
3 never award that kind of money unless somebody hurt the
4 person on purpose. She required there to be intent not
5 just mere negligence. Then when Mr. Cloward asked her
6 the hypothetical and said, I know you probably wouldn't
7 do this, but if you were injured and were a plaintiff
8 in a personal injury case and you knew that your
9 attorneys were going to be asking for millions of
10 dollars for you, do you think you would feel
11 comfortable with -- with somebody with your state of
12 mind sitting on your jury? There was no hesitation.
13 She said no. She said, Yes, I would be uncomfortable.
14 I would not want someone with my state of mind sitting
15 on my jury, Your Honor.

16 She also says that -- she agrees that because
17 of that, she is not the right fit for this type of
18 case. She agreed with that. She has stated that the
19 plaintiff and the defendant are not starting at the
20 same start line; that the defendants are starting ahead
21 of the plaintiff on the issue of damages; and that
22 these are long-held beliefs that nothing that anyone
23 said, including Your Honor, was going to change her
24 mind on this issue.

25 Now, the fact that Mr. Jaffe got her to get

1 up and say, Well, you'll follow the law the judge gives
2 you, won't you? That doesn't qualify her under the law
3 as an appropriate juror under Jitnan or any other cases
4 that Your Honor has seen in this brief multiple times
5 in the past. That is not the law. The fact that
6 somebody says, Oh, yes, if the judge tells me that --
7 that pain and suffering damages are appropriate, then I
8 will -- you know, I guess I will consider her --
9 consider them. Her inconsistent statements makes her
10 less qualified as a juror than they -- than more
11 qualified.

12 And the Supreme Court in the Jitnan case,
13 like both Ms. Vera and Mrs. Agna -- Agnor who stated
14 they had problems with punitive damages, that juror
15 stated that he did not believe in punitive damages as
16 well. Both of these women said that, that they had
17 problems and did not believe -- and Ms. Vera said she,
18 in fact, believed -- she felt exactly the same way
19 Mr. Evans did with respect to pain and suffering
20 damages. That's what she said, I feel exactly the way
21 Mr. Evans did -- does with respect to pain and
22 suffering damages.

23 In the Jitnan case that was exactly the
24 issue. That juror was challenged for cause. Judge
25 Vega allowed Mr. Jaffe to rehabilitate him, and he

1 changed his mind in rehabilitation. And then the
2 Supreme Court came back and says, Wait a minute, you
3 know. You can't have these inconsistent statements.
4 He never stated unconditionally, unqualifiedly that he
5 would be willing to award appropriate amount of pain
6 and suffering damages.

7 So Ms. Agnor and Ms. Vera both stated that
8 they -- it was clear from their testimony, when she
9 says, Well, they both said it was \$2 million we had a
10 problem with. Well, that is an indication that they
11 have a preconceived limit before this case even starts
12 of an amount of money they will not go over regardless
13 of what the evidence is.

14 Mr. Cloward asked them, verified with them,
15 regardless of what the evidence shows, \$2 million is
16 just not something you could get to? Ms. Agnor says
17 unfathomable. Ms. Vera says no way that she can get to
18 those kinds of damages, Judge.

19 So when you have jurors who are making these
20 kinds of statements, and then on so-called
21 rehabilitation they say, Well, I can follow the law and
22 if the judge says to me, I can -- I have to consider
23 pain and suffering damages. That doesn't change what
24 they said on their testimony under voir dire in
25 response to the plaintiff's questioning.

1 Now, specifically Ms. Vera says --
2 specifically she says, "I agree with Mr. Evans. There
3 should be no compensation for pain and suffering."
4 That's her exact quote of what came out of her mouth.
5 I wrote it down. She thinks of her sister who was in a
6 motor vehicle accident and she didn't ask for pain and
7 suffering and she is still out there working. She went
8 back to work. She didn't ask for any pain and
9 suffering. She doesn't believe in pain and suffering,
10 that pain and suffering should be an award in a
11 personal injury case.

12 She then says later that she shares the same
13 values and beliefs as Mr. Evans, that's what came out
14 of her mouth. He gives her the hypothetical about if
15 she was an injured party bringing a personal injury
16 case sitting in the seat of the plaintiff, would she
17 feel comfortable with someone with her state of mind
18 being a juror in her case. She says, No, I would not
19 feel comfortable with that at all.

20 She says that she's held these beliefs and
21 values for a long time. She didn't just come in here
22 today and state these things. That no one is going to
23 change her mind on this, not Mr. Cloward, Mr. Jaffe, or
24 Your Honor. And that this -- she agrees that she is
25 not a good fit for this type of case because of these

1 preconceptions she has about damages. And that the
2 parties are not starting on the same start line; that
3 the defendants are starting ahead of the plaintiffs
4 when it comes to the issue of damages, Your Honor.

5 So we will reserve our arguments on the other
6 ones we made motions on earlier, but with respect to
7 those two, with all due respect, Judge, it's not even a
8 close call when it comes to those women. They can't
9 come in and say later in response to a leading
10 question, Yes, I can be fair and impartial, when all
11 indications are from their testimony is, in fact, that
12 they cannot be fair and impartial when it comes to that
13 issue, at least when it comes to the issue of damages.

14 And remember, the United States Supreme Court
15 and this isn't just a -- this isn't just a Nevada
16 Supreme Court, this is the United States Supreme
17 Court -- has recognized that the fundamental importance
18 of impaneling a fair and impartial jury, stating, "It
19 is difficult to conceive of a more effective
20 obstruction to the judicial process than a juror who
21 has prejudged the case." These two jurors with respect
22 to the issue of damages have prejudged the case and
23 they have clearly indicated that they're not open to
24 the idea that this case could have a value in excess of
25 \$2 million.

1 The Nevada Supreme Court reaffirmed that
2 whether a juror should be removed for cause is based
3 upon whether the panel member's view could
4 substantially impair her performance of her duties as a
5 juror in accordance with the Court's instructions.
6 These two women have clearly indicated that they --
7 that their views could substantially impair their
8 performance.

9 And let me point out, Judge, no trial judge
10 has ever been reversed for excusing a juror for cause.
11 Ever. But many trial judges have been reversed for not
12 excusing a juror for cause and allowing that case to go
13 to trial when there's a potential that -- that these
14 views could substantially impair their abilities. And
15 therefore, the Court says the Court should err on the
16 side of caution and excuse someone who could
17 potentially -- whose views could potentially impair
18 their ability to serve as jurors and excuse them.

19 The Court also has held that the respective
20 jurors must be excused if their views could
21 substantially impair their ability to perform their
22 functions as jurors and that the impairment need not be
23 shown with unmistakable clarity. We don't have to show
24 this beyond a reasonable doubt, by clear and convincing
25 evidence, or even by a preponderance of the evidence.

1 If there's a chance that it could occur, and there's
2 clearly much more than a chance with these women, the
3 Court should excuse them. So that all parties make
4 sure there's actually a completely fair, impartial, and
5 unbiased jury before this case begins on all issues, on
6 all issues, including the issues of the amount of
7 damages.

8 As the Supreme Court stated, our Supreme
9 Court stated, in Thompson, it is not enough for the
10 Court or defense counsel to point to detached
11 language -- as I suggest Your Honor has done on some of
12 your rulings, specifically with these two women, to
13 point to detached language which alone considered would
14 seem to meet the statute requirement if on construing
15 the whole declaration together there's an appearance
16 that the juror is not able to express an absolute
17 belief that his or her opinions will not influence his
18 or her verdict.

19 That's the standard, Judge. Not if you can
20 pick out some language that Ms. Vera says, Well, I can
21 follow the law, or where Mrs. Agnor says, Well, I can
22 follow the law. That's not enough, Judge. Or that I
23 think I can be fair and impartial or I will consider
24 pain and suffering even if it's up to \$2 million.
25 That's not the law. You have to consider everything

1 they said together. And everything they said together
2 considered as a whole, this isn't even a close call,
3 Judge. This is reversible error, with all due respect,
4 to allow these two women to continue on this panel.

5 THE COURT: Let me ask you a question,
6 Mr. Eglet, because I think Ms. Vera made a good point
7 in response to one of the attorney's questions. She
8 said that -- that the distinction was feelings versus
9 facts. And she -- she made a point that -- I think it
10 was Mr. Cloward was asking her about feelings, and
11 Mr. Jaffe asked what was her response in regard to
12 facts, and were there facts that would justify her
13 giving an award and she said yes.

14 MR. EGLET: Feelings she said?

15 THE COURT: Yes.

16 MR. EGLET: Feelings are views, Judge. A
17 person's viewpoint, you can express it as a viewpoint
18 or how I feel about something, that's the same thing.
19 And the Supreme Court as specifically set state a panel
20 member's views could substantially impair her
21 performance or abilities as a juror.

22 Now, that's the same thing. Well, you want
23 to call them feelings. You want to call them points of
24 view. It's the same thing. What's the distinction?
25 There is no distinction. And that's why the -- that's

1 why the Court doesn't say facts. It says views. The
2 viewpoint of that person. That's why we do this.
3 That's why their viewpoints are important. That's why
4 we have people who just can't be fair and impartial,
5 because they have viewpoints.

6 Mr. Evans says he doesn't believe in pain and
7 suffering. Ms. Vera -- Ms. Vera said the same thing.
8 She said she agrees exactly with what Mr. Evans said.
9 That's what she said. Those words came out of her
10 mouth, Judge. Nowhere else.

11 And so when it's -- in this situation, you
12 can't just -- you can't -- and the Supreme Court has
13 said in Jitnan, it said this in the Thompson case which
14 you follow, and the Courts cited in this brief which I
15 have written in. I think you're right, basically this
16 brief was published in the NJA in sections over the
17 last several months. It cites to case law all over the
18 country which says the same thing. And it talks about
19 the fact in case after case and study after study,
20 that, in fact, judges intimidate these jurors when they
21 go to ask those questions. And I know you didn't do
22 that, but there's no difference when opposing counsel
23 gets up and says, Well, you're going to follow the law,
24 right?

25 I mean, of course people are going to say

1 they're going to follow the law. Nobody wants to sound
2 like they're not going to follow the law. Even
3 Mr. Evans said, Well, yeah, I will follow the law.
4 Remember when he said, I will follow the law because I
5 don't want to be held in contempt. That's how they all
6 feel. Anybody asks them, Are you going to follow the
7 law? Are you going to do what the judge tells you to
8 do? Or are you just going to ignore it and go
9 willy-nilly, do what you want?

10 Well, of course they're going to answer that
11 magic question that way, and that's what all the case
12 law says around that country is that they're all going
13 to say that. In New York they don't even allow the
14 judges to be in the room when jury selection goes on.
15 Did you know that? Because of that very issue. Only
16 the attorneys are permitted in jury selection. The
17 judges are not permitted, because they intimidate the
18 jurors.

19 So I'm not suggesting that you did that in
20 this case, Judge, but what my point is, is if you say
21 to anybody who's been -- taken an oath in a courtroom
22 with a bunch of strangers who they don't know for the
23 first time, and say, Well, you're going to follow the
24 law, like Mr. Jaffe did here, just like he did in the
25 Jitnan case, and when our Supreme Court found that

1 Judge Vega committed err by not dismissing that juror.

2 Now, since that case, Judge, the Supreme
3 Court has set forth a series of what we have to do. So
4 I'm going to tell you. Mr. Cloward, if this doesn't
5 change, will not pass this panel for cause, will refuse
6 to, Judge. That's what's going to happen, because
7 that's what the Supreme Court says he has to do in
8 Jitnan to preserve the record.

9 So he will be -- but this isn't even a close
10 call. So, Your Honor, I implore you to reconsider with
11 respect to these two jurors and we will -- I will look
12 at my notes and counsel will discuss this with
13 Mr. Cloward tonight and in the morning about the other
14 people he made motions on. But with respect to those
15 two, Your Honor, Ms. Vera and Mrs. Agnor, it's not even
16 a close call. It just isn't. Thank you.

17 THE COURT: All right. Do you want to say
18 anything?

19 MR. JAFFE: Couple of things, Your Honor.

20 First off, I'm not going to sit here and
21 debate counsel on the record and rulings and rulings
22 have been made. I'm presuming that the Court is not at
23 this point reversing its rulings. The record is what
24 it is. The problem was that the questions phrased by
25 Mr. Cloward were so vague and ambiguous in terms of

1 constantly saying, this issue, that issue, to the point
2 and it was impossible to follow back and forth what was
3 going on. There was even at some points when he was
4 making his argument on the challenges, he kept saying,
5 on this issue. I kept saying, What issue? What issue?
6 What are you talking about? The 2 million on this, the
7 pain and suffering. And it was -- it was very
8 confusing even for me.

9 Now, when the jurors were then -- when I
10 asked them a more pointed question, it was effectively
11 clarifying. It was just essentially what these two
12 jurors were -- the one lady, Ms. Vera, did say. And
13 they have made it very clear, they can follow the law.

14 But, Your Honor, there is no definite
15 standard. But to leave them with an impression that
16 it's 2 million or you can't follow the law, which is
17 essentially what counsel was doing, was very
18 disconcerting. It was very disingenuous. And that was
19 why a lot of these jurors had problems, and mistook
20 what was being asked of them. And I think that became
21 very clear when the jurors all said, no -- or several
22 of them said, we can award pain and suffering, we can
23 award what's fair, we can award it based upon the law
24 and the evidence presented. And we all know there is
25 no definite standard for what is pain and suffering and

1 damages. We leave that to the jurors to decide amongst
2 themselves. So that's effectively what they have all
3 said they are and can and will do.

4 This was not a matter of strong-arming people
5 as counsel, Mr. Eglet, would certainly have the Court
6 believe. And, Your Honor, I believe that we have acted
7 entirely consistent and properly with the law.

8 Now, with that having been said, we would
9 also object to the fact that the Court struck
10 Mr. Walker, Mr. Jeung, and -- Mr. Walker and Mr. Jeung.
11 I believe that they both said they could award pain and
12 suffering, they could award it fairly, at least as they
13 believe it to be fair. Again, since there is not a
14 definite standard, there can be no issue as it relates
15 to that. There's no mandate that you must award pain
16 and suffering. If the jurors don't feel that they want
17 to, they don't have to. That's not mandatory.

18 But the point is, Your Honor, they have no
19 definite standard, and that is our law, with Mr. Evans,
20 I agree, he was -- he was -- he was definitely --

21 THE COURT: You couldn't do anything with
22 Mr. Evans.

23 MR. JAFFE: No. He was dancing to his own
24 tune.

25 MR. EGLET: Case law in Nevada, Mr. --

1 Mr. Jaffe does not know the case law when it comes to
2 pain and suffering. The case law in Nevada is clear.
3 If a jury finds in favor of the plaintiff, finds they
4 were injured, finds their medicals -- awards medical
5 expenses for their injury, any medical expenses, they
6 cannot put zero in the verdict for pain and suffering.
7 And if the judge does not add and conduct additur, that
8 is reversible error. Pain and suffering is required
9 under Nevada law, the Drummond case, Judge, and you
10 know that. You practiced personal injury law for many
11 years. You know that. That is just a misstatement of
12 the law. Incorrect.

13 And that's what he was trying do with some of
14 these jurors up here. He was saying, Well, you know,
15 you'll get an instruction on this, but you don't
16 necessarily have to award pain and suffering. That's
17 not true. If they find in favor of the plaintiff and
18 award any medical expenses, pain and suffering damages
19 are required under Nevada law. That is the law.

20 And Mr. Jaffe can get up and try to suggest
21 that he was not strong-arming or not, you know, when he
22 says to people, the first question, You can follow the
23 law, right? And says that over and over, and whenever
24 somebody starts to say something that's a little bit
25 inconsistent with what he wants to hear and he

1 interrupts them and says, You can follow the law,
2 though? Yeah, but you can follow the law? And if the
3 judge tells you that, you know, pain and suffering
4 damages are something you should consider, you're going
5 to follow the law? Well, of course they're going to
6 say that. That doesn't change the circumstances and
7 that doesn't change the fact that, Your Honor, with all
8 due respect, what you did was you picked out some
9 phrases with these jurors that they might have said in
10 response to Mr. Jaffe's questions that were completely
11 inconsistent with what they said in response to
12 Mr. Cloward's questions.

13 Mr. Cloward's questions were not at all vague
14 and ambiguous. They were direct. They were pointed.
15 And these jurors who stated that they cannot fathom
16 damages of \$2 million or more in a motor vehicle
17 accident case, then they have a preconceived limit of
18 the amount they will go to before any evidence has been
19 presented in this case. And I have cited you case
20 after case after case in jurisdictions all over this
21 country who says, that, by itself, that one thing by
22 itself means that juror is not qualified to sit as a
23 juror in the case, Judge.

24 So again, I implore you to reconsider
25 Ms. Vera and Ms. Agnor and we'll make a record on the

1 other ones tomorrow morning, Judge.

2 THE COURT: All right. Thanks, guys. I will
3 look at the brief tonight. At this point I'm not going
4 to change anything, but I will read the brief.

5 MR. JAFFE: Thank you, sir.

6 THE COURT: 10:30 tomorrow? Are we going to
7 have to do some stuff outside the presence before we
8 bring in the jury?

9 MR. EGLET: Yes.

10 THE COURT: Why don't you folks come at
11 10:15.

12 MR. CLOWARD: Thanks, Judge.

13 THE COURT: Have a good day. Off the record.

14 (Thereupon, the proceedings
15 concluded at 5:18 p.m.)
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CERTIFICATE OF REPORTER

STATE OF NEVADA)
COUNTY OF CLARK) ss:

I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Monday, July 15, 2013, at 9:01 o'clock a.m.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcript is a complete, true and accurate
transcription of my said shorthand notes.

I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
5th day of May, 2014.


KRISTY L. CLARK, CCR #708

1 PROSPECTIVE JUROR NO. 006: Barton Unger,
2 006.

3 THE COURT: How long in Vegas?

4 PROSPECTIVE JUROR 006: Seventeen years.

5 THE COURT: What do you do for work?

6 PROSPECTIVE JUROR 006: I'm a business owner
7 in the valley here.

8 THE COURT: What business?

9 PROSPECTIVE JUROR 006: We are a
10 manufacturing company overseas.

11 THE COURT: Are you married or have a
12 significant other?

13 PROSPECTIVE JUROR 006: Married.

14 THE COURT: What does your spouse do?

15 PROSPECTIVE JUROR 006: Stays at home.

16 THE COURT: Has she ever worked outside the
17 home?

18 PROSPECTIVE JUROR 006: Yes, but not in
19 Las Vegas.

20 THE COURT: Okay. Any children that work
21 outside the home?

22 PROSPECTIVE JUROR 006: Twenty-four year old.

23 THE COURT: Son or daughter?

24 PROSPECTIVE JUROR 006: Son. And he works at
25 my company.

1 THE COURT: Okay. That's kind of nice to
2 have your son working with you.

3 PROSPECTIVE JUROR 006: Sometimes.

4 THE COURT: Ever served on a jury before.

5 PROSPECTIVE JUROR 006: No.

6 THE COURT: Okay. Thank you, Mr. Unger.
7 Is it Mrs. Agnor?

8 PROSPECTIVE JUROR NO. 033: Agnor.

9 THE COURT: Agnor.

10 PROSPECTIVE JUROR NO. 033: Uh-huh.

11 THE COURT: How long --

12 PROSPECTIVE JUROR NO. 033: Patty Agnor, 033.

13 THE COURT: Great. How long in Vegas?

14 PROSPECTIVE JUROR NO. 033: I have been here
15 11 years.

16 THE COURT: Do you work outside the home?

17 PROSPECTIVE JUROR AGNOR: I do. I'm a sales
18 rep for a souvenir company out of California. So I
19 sell souvenirs to all of the casinos, gift stores,
20 ABCs, Walgreens.

21 THE COURT: Great. Okay. Are you married or
22 have a significant other?

23 PROSPECTIVE JUROR NO. 033: I am married. My
24 husband is retired, and he works with me once in a
25 while.

1 THE COURT: What did he do before he retired?

2 PROSPECTIVE JUROR NO. 033: He was in
3 insurance.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 033: I have three
6 kids, but they don't live with me.

7 THE COURT: Okay. They work outside the
8 home, though?

9 PROSPECTIVE JUROR NO. 033: Yes.

10 THE COURT: What do they do?

11 PROSPECTIVE JUROR NO. 033: My oldest son is
12 going -- well, he's going to school. My second son is
13 a restaurant manager up in San Francisco. And my
14 daughter is -- runs a dental office.

15 THE COURT: Okay. Have you ever served on a
16 jury before?

17 PROSPECTIVE JUROR NO. 033: No. This is my
18 fourth time I have been here, but I have lucked out.

19 THE COURT: Maybe this is the lucky time.

20 PROSPECTIVE JUROR NO. 033: No.

21 THE COURT: Thank you, ma'am.

22 Is it Ms. Vera?

23 PROSPECTIVE JUROR NO. 008: Mrs. Margaret
24 Vera, Badge No. 008.

25 THE COURT: How long in Vegas?

1 PROSPECTIVE JUROR NO. 008: Nine years.

2 THE COURT: Married or significant other?

3 PROSPECTIVE JUROR NO. 008: Married.

4 THE COURT: Okay. What does your spouse do?

5 PROSPECTIVE JUROR NO. 008: He's a letter
6 carrier with the postal service.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR NO. 008: I'm a letter
9 carrier with the postal service.

10 THE COURT: That's convenient. Do you have
11 any children that work outside the home?

12 PROSPECTIVE JUROR NO. 008: I have three. I
13 have a son who's a medical assistant. He lives in
14 Washington. And I have another son in Phoenix, he's a
15 police officer. And I have a daughter who is
16 self-employed in the home.

17 THE COURT: She's self-employed doing what?

18 PROSPECTIVE JUROR NO. 008: She works -- she
19 sells supplements out of her home.

20 THE COURT: Okay. Have you ever served on a
21 jury before?

22 PROSPECTIVE JUROR NO. 008: No.

23 THE COURT: None of you have served on jury a
24 before?

25 PROSPECTIVE JUROR NO. 008: Fourth time, here

1 we go.

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

3 Is it Mr. Jeung?

4 PROSPECTIVE JUROR JEUNG: Paul Jeung, Badge

5 No. 009. Six years in Vegas. I work as a security

6 supervisor at the Marriott Grand Chateau. And I have a

7 wife and she works at Food and Beverage for the

8 Mandarin Oriental.

9 THE COURT: And you don't have any children
10 that work outside the home?

11 PROSPECTIVE JUROR NO. 009: Not yet.

12 THE COURT: You ever served on a jury before?

13 PROSPECTIVE JUROR NO. 009: No.

14 THE COURT: Okay. Thank you, sir.

15 Ms. Johnson?

16 PROSPECTIVE JUROR NO. 010: Jeaneen Johnson,
17 010. Fifteen years here. I am also a U.S. PO carrier,
18 my significant other works in gaming. I have never
19 served on a jury.

20 THE COURT: Do you have any grown kids?

21 PROSPECTIVE JUROR NO. 010: No.

22 THE COURT: Okay. Thank you.

23 Okay. How do I say your name, sir?

24 PROSPECTIVE JUROR NO. 011: Gary Okamoto.

25 THE COURT: Okamoto.

1 PROSPECTIVE JUROR OKAMOTO: Badge No. 11.

2 THE COURT: Okay, Mr. Okamoto. How long in
3 Vegas?

4 PROSPECTIVE JUROR NO. 011: 24 years.

5 THE COURT: What do you do for work?

6 PROSPECTIVE JUROR NO. 011: I am a waiter at
7 two different casinos: Venetian Hotel and Paris Hotel.

8 THE COURT: Okay. And do you have a wife or
9 significant other?

10 PROSPECTIVE JUROR NO. 011: I'm single.

11 THE COURT: Okay. Do you have any children
12 that work outside the home?

13 PROSPECTIVE JUROR NO. 011: No kids outside
14 the home.

15 THE COURT: You look pretty young to me.
16 Ever served on a jury before?

17 PROSPECTIVE JUROR NO. 011: No.

18 THE COURT: Okay. All right. Thank you,
19 sir. Let's go back over here. Mr. Evans.

20 PROSPECTIVE JUROR NO. 012: Chris Evans, 012.
21 I have been here for 15 years. I am divorced. I have
22 an eight-year-old son, and I'm a safety and risk
23 manager for an audio/visual company.

24 THE COURT: Okay. What does your ex-wife do?

25 PROSPECTIVE JUROR NO. 012: She is a property

1 manager.

2 THE COURT: You ever served on a jury before?

3 PROSPECTIVE JUROR NO. 012: No.

4 THE COURT: Thank you, sir.

5 Mrs. Rendina.

6 PROSPECTIVE JUROR NO. 013: Mary Grace
7 Rendina, Badge 013. I have lived here for 19 years.
8 I'm a lead lifeguard at the MGM, and I have never
9 served.

10 THE COURT: And you're young. Do you have a
11 spouse or significant other?

12 PROSPECTIVE JUROR NO. 013: (Witness shakes
13 head.)

14 THE COURT: No? Okay. Thank you, ma'am.

15 Mr. Madrigal.

16 PROSPECTIVE JUROR NO. 015: Victor Madrigal,
17 Badge No. 015. Own and operate a construction and
18 demolition company, and I'm married, have three
19 children, six, nine, and 14.

20 THE COURT: Okay. Does your wife work
21 outside the home?

22 PROSPECTIVE JUROR NO. 015: No, she doesn't.
23 She's a homemaker.

24 THE COURT: Have you ever served on a jury
25 before?

1 PROSPECTIVE JUROR NO. 015: No.

2 THE COURT: Okay. Thank you, sir.

3 Mr. Bulosan.

4 PROSPECTIVE JUROR NO. 017: My name is Joey
5 Bulosan, Badge No. 017, and I'm currently working at
6 Caesars Palace as a cook inside the --

7 THE COURT: Talk louder.

8 PROSPECTIVE JUROR NO. 017: Inside Italian
9 restaurant Rae's, been working there 16 years, and
10 married, two sons, one daughter. I served on jury, I
11 don't know what year, and we reached a verdict.

12 THE COURT: Was it a civil or criminal case?

13 PROSPECTIVE JUROR NO. 017: I think it was
14 civil.

15 THE COURT: Just one time?

16 PROSPECTIVE JUROR NO. 017: Yes.

17 THE COURT: Were you the jury foreperson?

18 PROSPECTIVE JUROR NO. 017: No, sir.

19 THE COURT: Okay. Thank you.

20 Mrs. Templeton.

21 PROSPECTIVE JUROR NO. 018: Elizabeth
22 Templeton, Badge No. 018. I have lived here 28 years.
23 I am a firm administrator for my husband and
24 mother-in-law's CPA firm. Two children, one that still
25 lives at home going to UNLV. The other is a son that

1 lives in Reno, works for a geology company.

2 THE COURT: You have --

3 PROSPECTIVE JUROR NO. 018: Served on a jury
4 before.

5 THE COURT: Okay. And did you -- was it a
6 civil or criminal case?

7 PROSPECTIVE JUROR NO. 018: Civil.

8 THE COURT: How long ago?

9 PROSPECTIVE JUROR NO. 018: Since I have been
10 in Vegas, so I don't know. Fifteen years maybe.

11 THE COURT: Did you reach a verdict?

12 PROSPECTIVE JUROR NO. 018: Yes.

13 THE COURT: And were you the foreman?

14 PROSPECTIVE JUROR NO. 018: No.

15 THE COURT: I don't know that you told us --
16 you're married?

17 PROSPECTIVE JUROR NO. 018: Yes.

18 THE COURT: What does your spouse do?

19 PROSPECTIVE JUROR NO. 018: He's a CPA.

20 THE COURT: Okay. I think you did say that.
21 Okay. All right. Thank you, ma'am.

22 I don't know how to say your last name.
23 Procek.

24 PROSPECTIVE JUROR NO. 044: Dominika Procek,
25 Badge 044. I'm an entertainer, and I have been here

1 for eight years. I am single, and I have no kids.

2 THE COURT: You ever served on a jury?

3 PROSPECTIVE JUROR NO. 044: No.

4 THE COURT: Okay. Thank you.

5 PROSPECTIVE JUROR NO. 044: Welcome.

6 THE COURT: How about Mr. Walker?

7 PROSPECTIVE JUROR NO. 034: Yes, sir. Badge
8 No. 034. Work for Clark County water reclamation as an
9 auto and equipment specialist. I've been in Las Vegas
10 for 23 years. My wife works for the Department of
11 Motor Vehicles. I have been on a jury before and we
12 did reach a verdict. Probably 11 years ago.

13 THE COURT: Was it a civil or criminal case?

14 PROSPECTIVE JUROR NO. 034: Criminal.

15 THE COURT: Were you the jury foreman?

16 PROSPECTIVE JUROR NO. 034: No, sir.

17 THE COURT: Okay. Thank you.

18 Mr. Karpenko?

19 PROSPECTIVE JUROR NO. 025: Yes, sir.

20 Nicholas Karpenko, Badge No. 025. Been in Las Vegas
21 for just under two years. I'm in the military.
22 Single, no kids, and I have never served on a jury.

23 THE COURT: Okay. Thank you.

24 Come back down here to the front.

25 Mrs. Brown.

1 PROSPECTIVE JUROR BROWN: Angela Brown, Badge
2 No. 043. I have been here for maybe 27 years. I work
3 for Capital One as a collector. My husband also works
4 for Capital One as an analyst. One kid out of -- that
5 works outside of the house. She works at the Polo
6 outlet and I have never served on a jury.

7 THE COURT: Okay. Thank you, ma'am.
8 Mr. Frazier.

9 PROSPECTIVE JUROR NO. 049: Excuse me. Cliff
10 Frazier, 049. Forgot the questions.

11 THE COURT: How long in Las Vegas?

12 PROSPECTIVE JUROR NO. 049: I have been here
13 40 years. I teach school. I'm getting married on the
14 27th of this month.

15 THE COURT: Congratulations.

16 PROSPECTIVE JUROR NO. 049: Thank you.

17 THE COURT: We'll be done.

18 PROSPECTIVE JUROR NO. 049: And my children
19 are all grown.

20 THE COURT: What do they do?

21 PROSPECTIVE JUROR NO. 049: One teaches
22 school, one works for a nonprofit, and one works as a
23 laborer.

24 THE COURT: Okay. Do you have a wife?

25 PROSPECTIVE JUROR NO. 049: I will soon.

1 THE COURT: Wife or significant other?

2 PROSPECTIVE JUROR NO. 049: I'm getting
3 married on the 27th.

4 THE COURT: Oh, you told me that. What does
5 your fiance do?

6 PROSPECTIVE JUROR NO. 049: She's retired.

7 THE COURT: What did she do?

8 PROSPECTIVE JUROR NO. 049: She worked for
9 Phoenix Public Schools as a social worker.

10 THE COURT: Okay. Did you tell me you have
11 been on a jury before?

12 PROSPECTIVE JUROR NO. 049: I never have
13 been, no.

14 THE COURT: Okay. Thank you, sir.
15 Ms. Ong.

16 PROSPECTIVE JUROR NO. 028: I'm Leticia Ong,
17 Badge 028. I'm a nurse and I have been in Vegas for
18 the last five years. Married, my husband is stay home
19 to help me take care of my dad, who is 83. He's had a
20 small stroke last year. And never served on jury,
21 never been a juror.

22 THE COURT: Okay. Do you have any grown
23 kids?

24 PROSPECTIVE JUROR NO. 028: No kids.

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

1 Mr. Payne.

2 PROSPECTIVE JUROR NO. 029: My name is Thomas
3 Payne, 029, and I don't remember all the questions. I
4 remember a few.

5 THE COURT: That's okay. How long in Vegas?

6 PROSPECTIVE JUROR NO. 029: Off and on since
7 '87.

8 THE COURT: Okay. What do you do for work?

9 PROSPECTIVE JUROR 029: Truck driver, lead
10 driver for Caesars Entertainment.

11 THE COURT: Do you have a spouse or
12 significant other?

13 PROSPECTIVE JUROR NO. 029: No, I have had
14 ex-spouses but no spouses.

15 THE COURT: Any grown kids?

16 PROSPECTIVE JUROR 029: Four grown.

17 THE COURT: What do they do?

18 PROSPECTIVE JUROR 029: Three unemployed and
19 one works at Home Depot.

20 THE COURT: All right. Ever served on a jury
21 before?

22 PROSPECTIVE JUROR NO. 029: No, sir.

23 THE COURT: Thank you.

24 We're to the point where I'm going to turn
25 you over to the attorneys. We're not going to have a

1 long time before lunch. I think we'll probably go
2 until about 12 o'clock and then I will give you an hour
3 for lunch, and we'll come back and keep going. Just so
4 you know, because I'm going to forget to tell you in 20
5 minutes, there's not a lot of options for lunch that
6 you can get to and back in an hour, but I am going to
7 tell you the ones I know of. Right downstairs there's
8 a sandwich shop, Capriotti's. You don't have to go out
9 the security and come back in, so a lot of people go
10 there. But because a lot of people go there, there's a
11 big group of people here, you probably have a little
12 bit of a wait. Right across the street there's a pizza
13 place called Anthony's. There's also right across the
14 street a place across called Courthouse Grille. About
15 a half a block away to the East there's a Quizno's and
16 another sandwich place called City Center Cafe. About
17 a block -- if you want to go about a block north,
18 there's a little place on the right side of the road
19 called Norah's. Is it closed down? It's closed, never
20 mind.

21 Those are kind of your options. I'm going to
22 give you an hour for lunch, but just try to be back in
23 time that we can get started again. I want to try to
24 make sure we get a jury before the end of the day.
25 Okay?

1 So right now I'm going to turn the time over
2 to the plaintiff's counsel. He's going to ask you some
3 questions. Just be honest, open, and answer his
4 questions truthfully. Okay.

5 MR. CLOWARD: Thank you, Judge.

6 I would say good morning, but we're afternoon
7 now. So I like to give a little bit of a roadmap of
8 this process. I know for me, when I know kind of where
9 I'm going and how I'm going to get there, I have a
10 little less anxiety about it. Some of you folks have
11 served on a jury. Some of you haven't. So I think
12 it's helpful for those who haven't to know a little bit
13 about the process. The judge talked about this is
14 called voir dire, or voir dire. Depending upon where
15 you live in the country you might say it a little bit
16 differently. Really what it means is jury selection.
17 And it comes from French and then Latin, which is to
18 see and to speak and to feel, and so it's a process
19 that we get to learn about you guys, and you guys get
20 to learn a little bit about us.

21 There are a couple of rules that we attorneys
22 have to follow. One of them is we can't discuss the
23 facts of the case. And so, if myself or Mr. Jaffe, we
24 get up here and we don't tell you anything about the
25 case, please don't hold it against us. Don't be

1 frustrated. That's just one of the rules we have to
2 follow as attorneys, and -- and so, you know, some of
3 you all might think toward the end: Well, they haven't
4 said anything about the facts of the case, how come?
5 That's one of the reasons.

6 So after this process we'll select ten of you
7 to sit on the jury and then we'll begin opening
8 statements and then opening statements progresses into
9 presentation of the evidence and then after
10 presentation of evidence, there's closing statements,
11 jury instructions, and then you go and deliberate.

12 Like the judge indicated, this process here
13 today, we'll probably hopefully be done today. If not,
14 I don't imagine it would go too much into tomorrow.
15 Hopefully we can resolve -- we can get through it
16 today.

17 With that introduction, the judge talked
18 about biases and prejudices and things like that, and
19 that's not a bad word in this -- here today. That's
20 not a bad word. It kind of has a negative connotation
21 outside, but it's not. And I like to share two stories
22 before I get started, just real short ones, about what
23 that -- that is, and -- and you learn one thing about
24 me. I don't like cherry pie. Now, you guys are
25 probably thinking: What the heck is he talking about

1 cherry pie in this case? Well, the question that I
2 have is: Do you think it would be fair for me if all
3 of you folks had entered into a -- you know, the Clark
4 County -- the Clark County Fair had a pie-baking
5 contest, and there were 100 applicants, but all of you
6 folks, you specialized in making cherry pie. Do you
7 think it would be fair for me to sit and judge the
8 pie-baking contest? Sir, what do you think about that?

9 PROSPECTIVE JUROR NO. 049: No.

10 COURT REPORTER: Do you have a badge number?

11 PROSPECTIVE JUROR 049: Oh, I'm sorry. 049.

12 MR. CLOWARD: Mr. Frazier, why wouldn't that
13 be fair?

14 PROSPECTIVE JUROR NO. 049: Because you
15 already have a predetermined idea that you don't like
16 something. So in my mind, you have already, to use
17 your term, prejudiced yourself against cherry pie.

18 MR. CLOWARD: Sure. Is there anything wrong
19 with me not like cherry pie?

20 PROSPECTIVE JUROR NO. 049: No.

21 MR. CLOWARD: Does anyone think, Hey, you
22 know what, that guy -- you know what I mean? We all
23 have our different views and our different opinions.
24 There's nothing bad about me, right, because I don't
25 like cherry pie?

1 PROSPECTIVE JUROR NO. 049: No.

2 MR. CLOWARD: What do you think -- what do
3 you think I should do in that situation if I was the
4 judge and I got there and I didn't know, you know, that
5 it was an open contest, I thought that maybe it was
6 just a cherry -- or a chocolate cake contest and I get
7 there and I'm the judge, and all of a sudden I see 20
8 or 30 cherry pies and I know for a fact, you know what,
9 I don't like cherry pie. I hate it. What should I do
10 about it?

11 Ma'am, what do you think I should do about
12 it?

13 PROSPECTIVE JUROR NO. 018: Just ask someone
14 else to be the judge for the pies.

15 MR. CLOWARD: And it's Mrs. Templeton, 018.

16 PROSPECTIVE JUROR 018: I'm sorry.

17 MR. CLOWARD: And I may look down at this
18 seating chart. The nice reporter, she has to type
19 everyone's name and the badge number, so I apologize if
20 I lose eye contact. I just want to make sure that the
21 record bears out, you know, who is -- who's giving the
22 comments. Would it be okay for me to sit and judge,
23 you know, like a cake -- chocolate cake contest?

24 Mrs. Templeton, what do you think?

25 PROSPECTIVE JUROR NO. 018: Sure, why not?

1 MR. CLOWARD: Because I don't have a view one
2 way or the other about chocolate cake. Right?

3 All right. Let me give you one more example
4 about this and then I will launch into the questions.
5 And -- and I hope this gives you guys kind of an idea
6 of why we're going to ask the questions today. But I
7 have two Nancys in my life. I have an Aunt Nancy, and
8 then I have a mother-in-law Nancy, and my Aunt Nancy
9 was a store owner, and a patron came into her store and
10 she slipped and fell and they injured themselves, and
11 they filed a lawsuit against my Aunt Nancy.

12 Now, my mother-in-law Nancy, she had a
13 different experience. She actually fell in a store and
14 she shattered her knee and she had to file a lawsuit,
15 and so she had a different experience with a
16 slip-and-fall-type case. Do you think -- who here
17 thinks that their opinions about, like, a slip-and-fall
18 case might be different? Who here thinks that their
19 experiences would be different? No hands.

20 Ma'am? Ms. Johnson, 010.

21 PROSPECTIVE JUROR NO. 010: Correct. They
22 were two separate incidents, so they probably have
23 different viewpoints on how they experienced it.

24 MR. CLOWARD: Is either one of those women,
25 do either them, are they bad people because they have a

1 different experience?

2 Sir, Mr. Madrigal, 015. You're shaking your
3 head. Tell me what you think.

4 PROSPECTIVE JUROR NO. 015: No, I don't think
5 it's they're bad people. It's just different
6 circumstances on what happened.

7 MR. CLOWARD: Sure. Does anyone think that
8 because they had a different view about, you know, a
9 slip-and-fall case, one has a positive view, one has a
10 negative view, does anyone think that that -- that one
11 person is -- is a bad person or one person is a good
12 person? Anybody feel that way?

13 I think we can all agree that, hey, you know
14 what, they had different experiences so, you know,
15 they're entitled to those thoughts and it doesn't make
16 either one a better person or a worst person. Does
17 everyone agree with that?

18 And that's -- sir?

19 PROSPECTIVE JUROR NO. 012: Yes, I agree with
20 that.

21 MR. CLOWARD: You agree with that? I
22 appreciate that.

23 COURT REPORTER: Name and badge number?

24 PROSPECTIVE JUROR NO. 012: Chris Evans, 012.

25 MR. CLOWARD: Thank you, Mr. Evans.

1 And that's just because they have had
2 different experiences, different life experiences, and
3 that's kind of -- you know, with that overview, I know
4 they're kind of corny examples, but they kind of
5 illustrate that -- that, you know, it's okay for people
6 to have different views. Nobody's going to be critical
7 of you guys if you express those views. Nobody's going
8 to say, Oh, my heavens, I can't believe he just said
9 that or she just said that. You know what, that's what
10 makes our community great is diversity. You know, we
11 all come from different places. We're raised
12 differently and -- and that's really the strength of
13 our community.

14 So two things I believe in: No. 1, a fair
15 fight, and No. 2, brutal honesty. And neither myself
16 nor Mr. Jaffe and his client, my client Ms. Seastrand,
17 none of the parties can have a fair fight unless
18 there's brutal honesty in this process right here
19 called jury selection. And so I ask each of you that
20 if it's uncomfortable, you know, I understand, but
21 please be brutally honest with the way that you feel.
22 I promise you nobody's going to -- nobody's going to be
23 critical or anything along those lines. We're all
24 experienced and -- and I appreciate that.

25 Can I get a commitment -- is there -- can

1 everybody raise their hand for me if you agree to just
2 be brutally honest and share the way you feel? Can I
3 get everybody to give me that commitment?

4 Thank you. Thank you very much. So I
5 believe in brutally honesty as well. I'm going to be
6 brutally honest with you folks right now. I'm going to
7 say something that's a little uncomfortable for me to
8 say. My client is suing for in excess of \$2 million,
9 and that's -- you know, that's -- that's what it is,
10 and I'm putting that out there. I'm just going to be
11 brutally honest about that. And I know that some of
12 you folks, you know, you had different views and
13 different beliefs in -- in the jury questionnaire, and
14 that's fine. But I want to talk about that right now.

15 So who here is a little uncomfortable, even
16 if it's just a little bit, with what I just said?

17 Sir, I appreciate it, thank you for talking
18 to me. Tell me a little bit about why you feel --

19 PROSPECTIVE JUROR NO. 034: I think it's
20 excessive.

21 THE COURT: Name and badge number.

22 PROSPECTIVE JUROR NO. 034: I'm sorry. Gary
23 Walker, Badge No. 34.

24 THE COURT: Thank you.

25 MR. CLOWARD: Mr. Walker, I appreciate it.

1 Tell me why you feel that way.

2 PROSPECTIVE JUROR NO. 034: We all pay
3 insurance. Everybody knows in Nevada we pay higher
4 rates than most people in the United States. If your
5 insurance doesn't cover everything that is incurred in
6 an accident, I just feel that it's -- it's too
7 excessive. I mean, you can't ask for a golden pot when
8 you haven't really earned it.

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 034: If there was a
11 death involved, possibly. But I don't know the case so
12 I really can't say.

13 MR. CLOWARD: Sure. Mr. Walker, I appreciate
14 that, I really do. And, you know, is there anyone else
15 that feels that way?

16 Mrs. Agnor.

17 PROSPECTIVE JUROR NO. 033: Patty Agnor, 033.

18 I think -- I agree. I think it's excessive
19 because I'm sure -- I can't remember his name. I'm
20 sure he didn't mean to do this. If it was -- if it was
21 a death, maybe it would be a little bit more to pay
22 that kind of money, but he -- I'm sure he didn't mean
23 to -- to cause the accident.

24 MR. CLOWARD: Sure. I appreciate that.

25 Sir. Tell me -- Mr. -- Mr. Evans, 012?

1 PROSPECTIVE JUROR NO. 012: Yes.

2 MR. CLOWARD: Tell me your thoughts.

3 PROSPECTIVE JUROR NO. 012: I'm just assuming
4 that most of that's pain and suffering, which I don't
5 agree such a big lump sum should be paid out for pain
6 and suffering. I think if you have to continue on in
7 life and perform your job you were doing before and you
8 cannot because of it, then yeah, maybe some pain and
9 suffering, but I think millions of dollars, I think, is
10 just unnecessary.

11 MR. CLOWARD: You have a hard time with that;
12 right?

13 PROSPECTIVE JUROR NO. 012: I do.

14 MR. CLOWARD: I appreciate that. I really
15 do. I saw some other hands. Let me -- let's go with
16 Ms. Ong, No. 28, and then I will come back to you
17 folks.

18 PROSPECTIVE JUROR NO. 028: I think it's a
19 bit excessive too, because's it's an accident. Nobody
20 intends to harm nobody, so that for me is too much.

21 MR. CLOWARD: Okay. So you would have a hard
22 time --

23 PROSPECTIVE JUROR NO. 028: Yes.

24 MR. CLOWARD: Okay. Mr. Unger, 006. Tell me
25 your thoughts.

1 PROSPECTIVE JUROR NO. 006: Well, I agree
2 with the people who have also spoken with similar. I
3 was in two car accidents, rear-ended both times, and
4 did not pursue legal action against the person.
5 Insurance covered some work that I needed for neck
6 help, but other than that, I didn't believe in pain and
7 suffering. I had employees who have been in car
8 accidents who have gone after a lot of money in
9 accidents, for pain and suffering, and for medical
10 expenses that I thought were at the time I couldn't
11 judge my employees, but I thought it was above and
12 beyond what the incident was.

13 MR. CLOWARD: Okay. Thank you, Mr. Unger.
14 Sir, Mr. Runz.

15 PROSPECTIVE JUROR NO. 001: 001.

16 MR. CLOWARD: Tell me your thoughts.

17 PROSPECTIVE JUROR NO. 001: I agree, without
18 knowing the facts of \$2 million just for a car accident
19 just seems excessive.

20 MR. CLOWARD: Seems excessive. You have a
21 hard time just with the thought of that?

22 PROSPECTIVE JUROR NO. 001: Yes.

23 MR. CLOWARD: Okay. I appreciate the
24 thoughts.

25 Mr. Bulosan, I believe in your -- in your

1 questionnaire you also indicated that you felt that
2 way. Can you tell me about that.

3 PROSPECTIVE JUROR NO. 017: Badge No. 17.

4 MR. CLOWARD: Okay.

5 PROSPECTIVE JUROR NO. 017: Well, I got
6 involved in a car accident, went to therapy, I also
7 went to a couple of doctors.

8 MR. CLOWARD: Okay.

9 PROSPECTIVE JUROR NO. 017: I think that
10 amount of money you are asking for is excessive too,
11 but mine had settled a little bit, but quite not too
12 high, and I think I agree with what they say.

13 MR. CLOWARD: So you would have a difficult
14 time just the amount \$2 million being --

15 PROSPECTIVE JUROR NO. 017: Yes.

16 MR. CLOWARD: It's just too much? You
17 wouldn't feel comfortable?

18 PROSPECTIVE JUROR NO. 017: Yes.

19 MR. CLOWARD: Okay. I appreciate it. Thank
20 you.

21 Who else? Who else agrees with these folks
22 that they have those feelings?

23 Mr. Young, tell me a little about it. 009.

24 PROSPECTIVE JUROR NO. 009: 009. I also agree
25 with Mr. Unger over there. My wife got into a car

1 accident pretty badly, and she hurt her back and her
2 neck, had to go to therapy about four or five months.
3 We didn't take any legal action against the person,
4 even though that person ended up running away or
5 whatever. But we just had just went after basically
6 the fees for therapy.

7 MR. CLOWARD: Okay.

8 PROSPECTIVE JUROR NO. 009: And nothing
9 beyond that.

10 MR. CLOWARD: I appreciate that. Is there a
11 reason -- tell me why, a little bit more about that.
12 Is there a reason why you didn't -- you didn't pursue
13 any more?

14 PROSPECTIVE JUROR NO. 009: Well, I mean,
15 after all the therapy, she was fine. So it's not like,
16 you know, her life was altered because of the accident.
17 Even though it wasn't her fault, even though he ran the
18 red light, you know, it is what it is.

19 MR. CLOWARD: Right. I appreciate that.

20 Mr. Unger, can you tell me a little bit more
21 about -- I think you mentioned something about, you
22 know, pain and suffering, you know, that you
23 specifically have a hard time with that issue itself.

24 PROSPECTIVE JUROR NO. 006: I'm not clear
25 what you're asking.

1 MR. CLOWARD: When I asked you the question
2 about the \$2 million being excessive, I think maybe --
3 maybe it was someone else, correct me if I'm wrong, but
4 I thought you said, I am assuming the majority of that
5 is pain and suffering -- oh, that was.

6 PROSPECTIVE JUROR NO. 002: That was me.

7 MR. CLOWARD: I'm so sorry.

8 PROSPECTIVE JUROR NO. 002: 002.

9 MR. CLOWARD: Thank you, Mr. Evans. Tell me
10 about that.

11 PROSPECTIVE JUROR NO. 002: I just think
12 that's -- for pain and suffering, I don't think pain
13 and suffering justifies money. I really don't.

14 MR. CLOWARD: At all?

15 PROSPECTIVE JUROR NO. 002: No, I don't.

16 MR. CLOWARD: I appreciate that. How come?

17 PROSPECTIVE JUROR NO. 002: I think a lawsuit
18 should be for -- for loss. Whatever damages to your
19 vehicle or to your health, whatever to your house,
20 whatever property's damaged, and medical bills and
21 whatever time lost from work, all that should be
22 covered, but I don't think it should go above and
23 beyond that. I don't think you should be an instant
24 millionaire.

25 MR. CLOWARD: Sure. And I appreciate that.

1 And, you know, some folks they -- I have heard a lot of
2 times when I have done this process, some folks say,
3 Hey, you know, money won't make the pain go away, and
4 in wrongful death cases, money won't make the person --
5 you know, it's not going to bring someone back. You
6 know, who here -- you know, who here agrees with
7 Mr. Evans that you just have a belief that someone
8 shouldn't get money for pain and suffering because it
9 doesn't change anything and people should only be able
10 to bring a suit for, you know, like medical bills or
11 property damage, things like that.

12 PROSPECTIVE JUROR NO. 002: Now, you
13 mentioned wrongful death. There's a death involved
14 that person will make a certain amount of money through
15 their lifetime to support their children, to everything
16 they're going to do in life. Now, in that case, I
17 think that should be compensated for, but pain and
18 suffering, no, that's different.

19 MR. CLOWARD: Sure. I appreciate that, no, I
20 do.

21 Who here -- who here shares the same feeling
22 or the same views as Mr. Evans that, you know, they
23 would have a hard time with pain and suffering, just
24 the concept of it? And keep in mind, you know, there's
25 no bad opinions, good opinions. We're just having a

1 discussion here. Who has those feelings?

2 Ma'am, Ms. Vera, 008, tell me your thoughts.

3 PROSPECTIVE JUROR NO. 008: I just -- I agree
4 that any losses that you suffered, medical bills,
5 property damage, pain and suffering, I don't think you
6 can -- I don't think you should put a value on it, so
7 that, you know, maybe you don't have to work anymore.

8 MR. CLOWARD: Sure. It's just too hard to
9 value? Anything else that you feel? And then we'll go
10 to Ms. Agnor.

11 PROSPECTIVE JUROR NO. 008: I just think of,
12 you know, my sister, she was in a car accident, guy ran
13 a light and hit her. She didn't get anything for pain
14 and suffering. She's 60 years old. She's still out
15 there working, and that's how I feel.

16 MR. CLOWARD: Sorry that she had that
17 experience.

18 Ms. Agnor, tell me -- tell me your thoughts.

19 PROSPECTIVE JUROR NO. 033: 033. I think
20 pain and suffering is -- there's a big difference. You
21 got pain and suffering on one hand clear to the other
22 end. I mean, clear to where you're disabled for pain
23 and suffering, so there's a big difference in how much
24 you're going to get from this end to a disability to
25 where you're not going to be able to work anymore.

1 MR. CLOWARD: Yeah.

2 PROSPECTIVE JUROR NO. 033: But even if you
3 can't work, \$2 million is a lot.

4 MR. CLOWARD: Just the amount of money being
5 asked for is just --

6 PROSPECTIVE JUROR NO. 033: It's
7 astronomical.

8 MR. CLOWARD: Astronomical. There's been
9 quite a bit of discussion on that -- on that, and --
10 and a lot of you folks have shared that opinion, and --
11 and I appreciate it.

12 Anyone else that I haven't talked to that
13 shares that feeling that, you know what, just,
14 Mr. Cloward, you saying your client is suing for
15 \$2 million, that bothers me, and -- and it is just too
16 much? Anyone else that shares that feeling?

17 Sir? Mr. Frazier.

18 PROSPECTIVE JUROR NO. 049: My ex-wife was
19 involved in an accident, and I think that's what we're
20 talking about is an accident, not something that's
21 intentional.

22 MR. CLOWARD: Sure.

23 PROSPECTIVE JUROR NO. 049: With the
24 resulting in a fatality, and our insurance company paid
25 the policy limits, and nothing else ever happened. And

1 I think that's why there are policy limits is to cover
2 what the insurance company says they're going to pay.
3 And although we can never judge pain and suffering, but
4 I guess the figure's a little exorbitant for me too.

5 MR. CLOWARD: A little bit difficult.

6 PROSPECTIVE JUROR NO. 049: Yes.

7 MR. CLOWARD: Anyone else feels that way that
8 just, you know, me being brutally honest about, you
9 know, what my client, she's going to sue -- you know,
10 she's suing for in excess of 2 million, that people
11 just -- they have a hard time with that and I do
12 appreciate it. I appreciate everybody's thoughts on
13 that. Anyone else?

14 Mrs. Brown, tell me your thoughts.

15 PROSPECTIVE JUROR NO. 043: I think that it
16 is a little excessive. I know my mom was in an
17 accident and she is disabled now because of that
18 accident years ago and I do feel like she should be
19 compensated for it, but I think it is a little
20 excessive.

21 MR. CLOWARD: A little too much. Okay.

22 Anybody else before we -- anyone? Okay.

23 THE COURT: Let's go ahead and take our break
24 now, Mr. Cloward.

25 MR. CLOWARD: Thanks, Judge.

1 THE COURT: Ladies and gentlemen, I'm going
2 to give you the admonition again. Like I told you,
3 those of you that get seated as jurors, you're going to
4 hear this a lot, every time we take a break.

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

20 Let's plan on coming back about five after
21 1:00. Randy will meet you in the hall.

22 THE BAILIFF: All rise.

23 (Whereupon jury exited the courtroom.)

24 THE COURT: We're outside the presence of the
25 jury. Anything we need to take up, gentlemen?

1 MR. JAFFE: One brief thing, Your Honor.
2 When we were arguing motions in limine, we were talking
3 about the whole concept of putting numbers out there.
4 Obviously I was very concerned about that slippery
5 slope, but now what this is now doing is getting into
6 another area, which is insurance. I think it's time to
7 tell these people that they're not to worry about or
8 consider insurance as part of this.

9 THE COURT: I think it was a response that
10 got into insurance. I don't think it was the question.

11 MR. JAFFE: I know, but the concept is now
12 being thrown out there and three of these potential
13 jurors have already addressed insurance and insurance
14 limits and things of that nature. I'm just concerned
15 if it starts getting any further along these lines,
16 we're going to need to admonish these people.

17 THE COURT: I mean, there's going to be an
18 instruction that they aren't to take that into
19 consideration, but...

20 MR. JAFFE: Okay. I guess we'll see how it
21 goes. I don't know where else Mr. Cloward is going
22 with this.

23 THE COURT: I think every trial that I have
24 done there has been some discussion among the jurors
25 about insurance. It's just something that always comes

1 up in response to questions in voir dire.

2 MR. JAFFE: Of course.

3 THE COURT: The fact that the jurors are
4 bringing it up is not a problem for me.

5 MR. CLOWARD: And I just briefly want to put
6 on the record that it was a response, as the Court
7 pointed out to a question, and I didn't follow up on
8 the question, so I just want to make sure the record is
9 clear on that.

10 MR. JAFFE: And I understand, but that's part
11 of this whole -- the whole slippery slope that we're
12 now encountering by bringing up the concept of numbers
13 in the first place and that's my whole point.

14 THE COURT: Okay.

15 MR. JAFFE: Thank you, sir.

16 THE COURT: See you back in an hour.

17 MR. CLOWARD: Thanks, Judge.

18 THE COURT: Off the record.

19 (Whereupon a lunch recess was taken.)

20 THE BAILIFF: All rise.

21 (Whereupon jury entered the courtroom.)

22 THE COURT: All right. Go ahead and be
23 seated.

24 Welcome back, folks. I hope you all found
25 something good to eat.

1 Back on the record in Case No. 636515. I
2 believe we were in the middle of Mr. Cloward's
3 questions, so we'll turn the time back over to him.

4 MR. CLOWARD: Thank you, Your Honor.

5 Mr. Evans, before the break, we had an
6 opportunity to talk to you about pain and suffering.
7 You indicated that you have fundamental core beliefs
8 and values that you -- you know, you just don't believe
9 in pain and suffering; is that fair?

10 PROSPECTIVE JUROR NO. 012: Yes, that's
11 pretty fair.

12 MR. CLOWARD: Or, you know, compensating
13 somebody for pain and suffering, money damages for pain
14 and suffering.

15 PROSPECTIVE JUROR NO. 012: I don't
16 necessarily think they shouldn't get anything for pain
17 and suffering, but I don't think it should be millions
18 of dollars.

19 MR. CLOWARD: Sure. And you have a hard
20 time, I guess, with just the -- with the general idea
21 of giving money for pain and suffering; is that fair?

22 PROSPECTIVE JUROR NO. 012: Yes, that's fair.

23 MR. CLOWARD: Okay. And, you know, I
24 appreciate that. And like I said earlier, this is
25 brutal honesty, no wrong answers, you know, just like

1 me with cherry pie or my Aunt Nancy or my mother-in-law
2 Nancy, we're all entitled to our own views and beliefs
3 and so forth. So you agree you've had this belief and
4 this value for a long time; you didn't just form it as
5 you walked into court today?

6 PROSPECTIVE JUROR NO. 012: I think the first
7 time I ever thought that's ridiculous was when
8 McDonald's was sued for the hot coffee.

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 012: That kind of
11 set -- set the stage for my belief on that.

12 MR. CLOWARD: Sure. And so then that -- I
13 believe that case was quite a while ago, so you have
14 had that belief for quite a while?

15 PROSPECTIVE JUROR NO. 012: Yeah, I think
16 people need to be accountable for their own actions,
17 and if you buy hot coffee you should know you're
18 getting hot coffee.

19 MR. CLOWARD: Sure. And I appreciate that.
20 And you know that's -- just like me with, with a pie
21 or, you know -- nobody did anything -- you know, my
22 wife's not going to say, Hey, Ben, please just like
23 cherry pie. I just feel that way about it. You agree
24 you have the feelings on pain and suffering that you
25 have.

1 PROSPECTIVE JUROR NO. 012: Yeah, I have the
2 same opinion on good drivers in Clark County. I
3 believe they're all crazy.

4 MR. CLOWARD: Sure.

5 PROSPECTIVE JUROR NO. 012: Except for me, of
6 course.

7 MR. CLOWARD: Yeah, that's what all of us
8 thought.

9 But, you know, nothing I'm going to say or
10 nothing Mr. Jaffe is going to say or your neighbor or
11 anybody, that anyone's going to say, is going to change
12 that core value and that belief that you have.

13 PROSPECTIVE JUROR NO. 012: Right.

14 MR. CLOWARD: Okay. And I appreciate that.

15 Let me ask you, you know, a question.
16 Supposing that, you know, there's a hypothetical --
17 hypothetical case, and you're -- you're actually
18 bringing the case, and you and your attorney -- I know
19 you have a hard time -- you do have a hard time with
20 pain and suffering, but assume for me that your
21 attorney and you are going to ask for a substantial
22 amount in the verdict for pain and suffering. You
23 agree with me that you would probably feel, or you
24 would feel uncomfortable having someone with your core
25 values, your beliefs, sit on your specific jury?

1 PROSPECTIVE JUROR NO. 012: Yes.

2 MR. CLOWARD: Okay. And I -- I appreciate
3 that.

4 PROSPECTIVE JUROR NO. 012: But I don't think
5 I would go that far personally.

6 MR. CLOWARD: You just wouldn't file --

7 PROSPECTIVE JUROR NO. 012: Somebody's got to
8 pay that money, and I don't deserve that money, I don't
9 feel I should get that money. Somebody's paying for
10 it.

11 MR. CLOWARD: Yeah. I appreciate that. But
12 you would -- you would have -- you would feel
13 uncomfortable having someone -- I mean, I know you
14 wouldn't file the lawsuit.

15 PROSPECTIVE JUROR NO. 012: If it was my
16 lawsuit, and I was getting a million dollars and I
17 thought it was okay to do that, I definitely wouldn't
18 want anybody with my beliefs on the panel.

19 MR. CLOWARD: Sure. And I appreciate that.
20 And again, this is brutal honesty and -- and, you know,
21 I really thank you for your opinions. And, again, you
22 know, we all have different views and that's okay.

23 You would agree that on this -- just this
24 very specific issue of pain and suffering, you are
25 probably not a right fit for this case knowing that my

1 client is going to ask for an amount above 2 million
2 for pain and suffering?

3 PROSPECTIVE JUROR NO. 012: If it's all pain
4 and suffering, yeah. No, I'm not the right person for
5 this panel.

6 MR. CLOWARD: Okay. I appreciate that.

7 And you would agree with me that on this just
8 this specific issue, the parties are -- are probably
9 not starting at a fair -- fair place? Mr. Khoury is
10 probably starting a little bit ahead of my client on
11 this, just this one issue. You agree with that, right?

12 PROSPECTIVE JUROR NO. 012: I don't know. I'm
13 not educated enough on this case, I don't think.

14 MR. CLOWARD: Sure. Well, I'm -- I'm talking
15 just about, you know, just about like if -- if the
16 issue of -- of pain and suffering and -- and, you know,
17 having to insert that amount into the verdict, your
18 core values and your beliefs that you -- that you hold
19 would favor Mr. Khoury just a little bit and so that
20 Mr. Khoury would start off just a little bit different.

21 PROSPECTIVE JUROR NO. 012: He would start.

22 MR. JAFFE: Your Honor, I have to object.
23 This is -- this is, you know, badgering the juror.
24 He's already answered the question.

25 THE COURT: Overruled.

1 PROSPECTIVE JUROR NO. 012: He's probably a
2 little ahead of the game.

3 MR. CLOWARD: Sure.

4 PROSPECTIVE JUROR NO. 012: If this jury was
5 full of me replicated all the way down, he would be
6 ahead of the game, I would say.

7 MR. CLOWARD: Sure. And I really do, I
8 appreciate that. And, again, you know, no -- no bad
9 answers, just, you know, that's the way it is. And --
10 and everybody is entitled to their own -- their own
11 beliefs.

12 Ms. Vera, I wanted to ask you, you also
13 indicated you -- you share the same view on pain and
14 suffering. You -- you have fundamental kinds of core
15 values, beliefs, regarding pain and suffering. You
16 agree with that?

17 PROSPECTIVE JUROR NO. 008: Uh-huh.

18 MR. CLOWARD: Is that a yes?

19 PROSPECTIVE JUROR NO. 008: Yes.

20 MR. CLOWARD: Okay. This nice reporter she
21 types everything down, so if I say, is that a yes or
22 no, I'm not trying to be rude or -- it's just so she
23 can get yes; otherwise, she'll type uh-huh or huh-uh.
24 But plus, she'll get mad at me if I don't do that,
25 so...

1 But regarding just this one narrow issue of
2 pain and suffering, you agree, like Mr. Evans, that,
3 you know, if you brought a case and you knew your
4 attorney was going to ask for pain and suffering, you
5 would feel uncomfortable having a juror with your same
6 frame of mind sitting on, you know, a case that you
7 were asking for that?

8 PROSPECTIVE JUROR NO. 008: Yes.

9 MR. CLOWARD: Okay. And that's just because
10 you have core beliefs and values that you have had for
11 a long time and that's just --

12 MR. JAFFE: Your Honor, may we approach?

13 THE COURT: Sure.

14 (Whereupon a brief discussion was
15 held at the bench.)

16 THE COURT: Go ahead.

17 MR. CLOWARD: Mrs. Vera, so back to, you
18 know, your beliefs and your opinions. Those are --
19 those are beliefs that you've had for prior to just
20 waking up today. You would agree?

21 PROSPECTIVE JUROR NO. 008: Yes.

22 MR. CLOWARD: You have had those for a long
23 time?

24 PROSPECTIVE JUROR NO. 008: Yes.

25 MR. CLOWARD: And, you know, nothing that I'm

1 going to say or nothing that Mr. Jaffe is going to say
2 or your neighbor is going to say is going to change the
3 way that you have those beliefs and those values,
4 right?

5 PROSPECTIVE JUROR NO. 008: Correct.

6 MR. CLOWARD: Okay. And let me just ask
7 the -- the -- the same question. Did I ask if you were
8 sitting on a hypothetical jury like Mr. Evans whether
9 you would feel comfortable with someone with your frame
10 of mind sitting on that jury?

11 PROSPECTIVE JUROR NO. 008: No, I would not
12 feel comfortable.

13 MR. CLOWARD: Okay. You would not feel
14 comfortable. And you -- you would agree with me that
15 just on this very narrow -- just on pain and suffering,
16 just on that issue alone, you -- you would not be a
17 good fit for this specific case, right?

18 PROSPECTIVE JUROR NO. 008: Correct.

19 MR. CLOWARD: Okay. And the parties on
20 that -- just that specific issue wouldn't have a fair
21 fight on just that specific issue? The defendant would
22 start just a little bit ahead of the plaintiff. You
23 agree with that, right?

24 PROSPECTIVE JUROR NO. 008: I agree.

25 MR. CLOWARD: All right. Thank you. I

1 appreciate it.

2 Mr. Walker, I forgot. Where is Mr. --

3 PROSPECTIVE JUROR NO. 034: Right here.

4 MR. CLOWARD: I'm sorry, Mr. Walker. I
5 changed my notes around and wrote some notes, and I'm
6 kind of going off them instead of my seating chart.

7 You talked about -- you were kind enough --
8 you were the first person when I asked, hey, you know,
9 if you knew my client was going to ask for, you know,
10 in excess of \$2 million whether you would feel
11 uncomfortable. You were kind enough before the break
12 and the first person to raise your hand and share those
13 opinions and those beliefs. And so I had some of the
14 same kind of questions for you regarding the amount of,
15 you know, \$2 million and so forth.

16 You know, on that very specific issue, assume
17 that you were -- you know, you brought a lawsuit. You
18 were injured, you hired an attorney, and the attorney,
19 you know, was -- was doing jury selection, kind of like
20 this, and you knew that there was someone that shared
21 your same core values and your same beliefs that was
22 sitting on the jury on that very specific issue of the
23 amount of money being asked. You would agree with me
24 that you would be uncomfortable having someone with
25 your same core values and beliefs on the jury?

1 PROSPECTIVE JUROR NO. 034: I don't have a
2 feeling one way or another. Doesn't matter to me what
3 somebody else thinks, because I myself have my own
4 thoughts, and I brought that to your attention. What
5 everybody else thinks doesn't really matter to me.

6 MR. CLOWARD: Sure. Would you agree with me
7 that -- that in that specific case, though, in the
8 specific situation with your core values and your
9 beliefs, that knowing that, you know, my client's going
10 to ask for an amount in excess of 2 million, that your
11 core values and your beliefs that my client would not
12 get a fair fight just on that very --

13 PROSPECTIVE JUROR NO. 034: I have no idea if
14 your client would get a fair fight or not. I could
15 just tell you what I feel about it.

16 MR. CLOWARD: Sure. Tell me a little more
17 about how you feel about it.

18 PROSPECTIVE JUROR NO. 034: Well, I think
19 it's -- I mean, in all honesty, I think you're wasting
20 people's times by going over what -- above what
21 insurance companies pay. I didn't see any limbs
22 missing from the person that was in here, that was your
23 client. I don't know what other kind of damage someone
24 might have. But personally, I think it's a waste of
25 people's time to ask for something above and beyond

1 what they have already received.

2 MR. CLOWARD: Okay. And assuming for --
3 assume with me for a moment that you can't consider
4 insurance, and you can't consider insurance at all.
5 Would you have a hard time even just little bit?

6 PROSPECTIVE JUROR NO. 034: I think I made
7 that clear already.

8 MR. CLOWARD: Okay. So you would have a hard
9 time inserting an amount above 2 million into the --

10 PROSPECTIVE JUROR NO. 034: I wouldn't even go
11 to 2 million.

12 MR. CLOWARD: What -- what amount, I guess,
13 is --

14 MR. JAFFE: Objection, Your Honor.
15 Objection, Your Honor. This is now asking for a
16 verdict based upon hypothetical facts. It's in
17 violation of Rule 7.70.

18 MR. CLOWARD: Your Honor, we -- we talked
19 about this.

20 THE COURT: It's not based on any
21 hypothetical facts. Let me just instruct you folks,
22 because it has come up with several different jurors.
23 The issue of insurance is not something you can
24 consider. Okay? Whether or not somebody was or was
25 not insured, you are going to get an instruction at the

1 very end. That's not something you can take into
2 consideration. That's not something you can talk about
3 in the deliberation room. It's not something you can
4 consider during the trial. You will get an instruction
5 in more detail on that later on, but just because it
6 keeps coming up, I figure I will tell you that now.

7 MR. CLOWARD: Thank you, Your Honor.

8 Mr. Walker, just one question. You would
9 agree with me that regardless of what the evidence is,
10 you personally would not be willing to insert an amount
11 above \$2 million into the verdict form; is that a fair
12 statement?

13 MR. JAFFE: Your Honor, again, I have to
14 object. Rule 7.70 prohibits questions touching on the
15 verdict a juror would return based upon hypothetical
16 facts.

17 THE COURT: We already discussed this in the
18 pretrial motion. It's overruled.

19 MR. CLOWARD: You agree that's a fair
20 statement?

21 PROSPECTIVE JUROR NO. 034: I -- I don't even
22 know what the statement is any more. I'm sorry.
23 It's --

24 MR. CLOWARD: That happens a lot. A lot of
25 things are lost in translation.

1 You would agree -- you have expressed -- you
2 were the first person to raise your hand on the
3 \$2 million. When I said that, you -- you know, you
4 raised your hand and I appreciated that, Mr. Walker. I
5 appreciated your brutal honesty, because I want to get
6 a fair fight.

7 The question is: You agree with me that you
8 would not award -- you would have a hard time -- you
9 would not award fundamentally an amount above
10 \$2 million regardless of what the evidence showed just
11 based on your beliefs and your core values?

12 PROSPECTIVE JUROR NO. 034: I can't even say.
13 It's -- it's -- is it -- I don't know that it's up to
14 me to award anybody anything. You're asking me
15 something that I don't have. I can't give somebody
16 \$2 million. You're asking me to make that judgment. I
17 don't know. I don't know the facts of the case. I
18 can't tell you what my answer's going to be on
19 Thursday.

20 MR. CLOWARD: Okay. I'm just trying to
21 follow up, because earlier you indicated that, you
22 know, you -- you would not be able to award an amount
23 above 2 million. When I said --

24 PROSPECTIVE JUROR NO. 034: I -- you're
25 asking for something that I can't answer. I don't

1 know. I just said I think it's a ridiculous amount
2 that you're asking for. That's all I said. That's the
3 only thing that I did say. I can't tell you whether I
4 would give that amount or not. I have no idea. I
5 don't know the facts of the case.

6 MR. CLOWARD: Okay. You agree you've felt
7 this way for a long time, you know, about the
8 amounts --

9 PROSPECTIVE JUROR NO. 034: Yes.

10 MR. CLOWARD: -- in other cases? That's not
11 something that you -- you formed as you walked in.

12 PROSPECTIVE JUROR NO. 034: No, it's not. I
13 have always felt like that.

14 MR. CLOWARD: Okay. I appreciate that.

15 Let me ask, Mrs. Agnor, you shared an opinion
16 earlier you would have a hard time awarding an amount
17 above \$2 million; is that correct?

18 PROSPECTIVE JUROR NO. 033: Correct.

19 MR. CLOWARD: Okay. And without knowing
20 anything about the facts of the case, you agree with me
21 that you would -- you would have a hard time, that
22 would be something that you would just -- due to your
23 fundamental beliefs, your core beliefs, you would have
24 a hard time doing; is that true?

25 PROSPECTIVE JUROR NO. 033: I think so,

1 unless that person was physically disabled or missing a
2 limb, or...

3 MR. CLOWARD: Sure. Sure.

4 PROSPECTIVE JUROR NO. 033: Couldn't go on
5 with life in a normal way.

6 MR. CLOWARD: Sure. And you saw my client in
7 the courtroom earlier, correct?

8 PROSPECTIVE JUROR NO. 033: Right.

9 MR. CLOWARD: Do you feel that you have
10 already made an opinion regarding her ability or
11 disability one way or another, and it would be hard for
12 you to award an amount above 2 million?

13 PROSPECTIVE JUROR NO. 033: I think I would
14 have a hard time awarding 2 million, but I didn't see
15 her stand. I didn't see her walk. I didn't -- you
16 know, there was no interaction or anything to see her,
17 how she can function. I don't know.

18 MR. CLOWARD: Okay. How long have you had
19 the belief that, you know, 2 million is just a number
20 that you kind of -- you know, would be difficult?

21 PROSPECTIVE JUROR NO. 033: Well, I think for
22 any of us \$2 million is kind of unfathomable. We can't
23 imagine that kind of money having, or just giving to
24 somebody. So to me, that is so much money, that
25 somebody that is hurt by an accident, which I'm sure he

1 didn't cause or create knowingly, but yeah, that would
2 be a lot of money to give to a woman.

3 MR. CLOWARD: I appreciate that. And knowing
4 that about yourself, you know, assume hypothetically,
5 you know, you were injured, and you brought a lawsuit
6 and your attorney was asking for an amount above
7 2 million or in excess of 2 million, knowing that about
8 you and your frame of mind, would you feel
9 uncomfortable having someone with your frame of mind
10 sit on the jury?

11 PROSPECTIVE JUROR NO. 033: I would.

12 MR. CLOWARD: You would?

13 PROSPECTIVE JUROR NO. 033: I would.

14 MR. CLOWARD: Okay. Thank you. And would
15 you --

16 PROSPECTIVE JUROR NO. 033: I would hope I
17 wouldn't be to the point to where I would ask for that
18 much money.

19 MR. CLOWARD: Sure. I appreciate that.

20 Would you agree with me that, you know, just
21 on this specific issue, just the amount that we have
22 talked about, just that specific issue, you would not
23 be a good fit for this particular case on just that
24 specific issue?

25 PROSPECTIVE JUROR NO. 033: Correct.

1 MR. CLOWARD: Okay. And you agree that the
2 parties wouldn't start on a fair -- or on -- not a
3 fair, but at a level field on that specific issue?

4 PROSPECTIVE JUROR NO. 033: Right.

5 MR. CLOWARD: And that's because you have
6 these beliefs and these core values, that you're fine
7 to have, but you've had those and you didn't form those
8 today, right?

9 PROSPECTIVE JUROR NO. 033: Right.

10 MR. CLOWARD: And nothing that I say or
11 Mr. Jaffe says or, you know, your neighbor says or a
12 fellow juror says is going to change your mind, right?

13 PROSPECTIVE JUROR NO. 033: I would doubt it.
14 But like was already brought up, we don't know what
15 happened. We don't know any of the situation that has
16 happened.

17 MR. CLOWARD: Sure. But just the
18 preliminary, you know, without knowing any of the
19 facts, it would be difficult for you and you wouldn't
20 want someone with your frame of mind on a hypothetical
21 jury if it was you who is the plaintiff, right?

22 PROSPECTIVE JUROR NO. 033: Right.

23 MR. CLOWARD: All right. I appreciate that.

24 Mr. Ong, or Ms. Ong, I'm sorry. My notes.
25 Ms. Ong, you also indicated you felt like, you know,

1 the amount is -- is just outrageous. It's too much.

2 You agree with that?

3 PROSPECTIVE JUROR NO. 028: Yes, I do.

4 MR. CLOWARD: And, you know, assuming the
5 same hypothetical, would -- you would feel
6 uncomfortable having someone with your core values and
7 your beliefs sitting on a jury if it was you as the
8 plaintiff, right?

9 PROSPECTIVE JUROR NO. 028: Yes.

10 MR. CLOWARD: All right. And, in fact, you
11 know, you would agree that just on -- and I'm
12 talking -- we're just talking about just this one
13 specific issue, you know. Remember, how I talked about
14 the pie baking and all, you know, versus the chocolate
15 cake, you know, where you might be on one issue versus
16 another issue, but I'm talking, you know, just this
17 specific issue of -- of, you know, in excess of
18 2 million, you would not be a right -- the right fit
19 for this specific case, right?

20 PROSPECTIVE JUROR NO. 028: I won't be, yeah,
21 because I will be biased evidently.

22 MR. CLOWARD: You know, I appreciate that.
23 And it's okay. Bias isn't a bad word. It's not a bad
24 word.

25 And you -- you've had these beliefs for a

1 long time? You didn't wake up --

2 PROSPECTIVE JUROR NO. 028: A long time. I
3 even put it in my questionnaire that I don't believe in
4 those class lawsuits because I think some of them are
5 just for making money.

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NO. 028: Because I work in
8 the healthcare field, which is -- it's like every move
9 you have to take, you have to be cautious because of
10 lawsuits.

11 MR. CLOWARD: Be really careful.

12 PROSPECTIVE JUROR NO. 028: Yeah. So that
13 you don't get to practice. Sometimes you forget what
14 you're supposed to do because you're scared to touch,
15 because they might be suing you.

16 MR. CLOWARD: I can definitely understand
17 that. My brother's a dentist and he -- he talks about
18 that.

19 PROSPECTIVE JUROR NO. 028: Yes, uh-huh.

20 MR. CLOWARD: I appreciate that. And nothing
21 that I'm going to say or, you know, Mr. Jaffe or even
22 the judge is going to say is going to change the way
23 that you view that? That's a belief you have had for a
24 long time, right?

25 PROSPECTIVE JUROR NO. 028: Yes.

1 MR. CLOWARD: Okay. Thank you very much.

2 Mr. Runz, you also indicated, you know, you
3 had a problem. It would be difficult. 2 million is
4 just too much money. You know, you agree with -- with
5 Ms. Ong and Mrs. Agnor that, you know, having someone
6 with your frame of mind, if it was -- hypothetically if
7 it was your case, if you were the plaintiff and you
8 were bringing a lawsuit, and you knew someone was on
9 there with -- with your state of mind, you would feel
10 uncomfortable having them on just -- and I'm just
11 talking about this one specific issue. Not the whole
12 thing, just this one specific issue. You agree that
13 you would feel uncomfortable having that person on your
14 jury?

15 PROSPECTIVE JUROR NO. 001: Not necessarily.
16 I would feel that -- you know, I would -- you know,
17 they would make the right decision at the end, you
18 know.

19 MR. CLOWARD: Sure. Do you think that they
20 might have a little bit of a bias, kind of like I have
21 a bias with cherry pie?

22 PROSPECTIVE JUROR NO. 001: Yes.

23 MR. CLOWARD: Okay. And you agree that you
24 would have a bias on just that one specific issue?

25 PROSPECTIVE JUROR NO. 001: Yes.

1 MR. CLOWARD: Okay. And so maybe, you know,
2 just on that one specific issue, you might not be the
3 right fit for this particular case, right?

4 PROSPECTIVE JUROR NO. 001: Right.

5 MR. CLOWARD: And you agree that on just --
6 and we're just talking just this one issue, just that
7 particular issue, the parties are not starting out at
8 the same place, right?

9 PROSPECTIVE JUROR NO. 001: Right.

10 MR. CLOWARD: Okay. And I appreciate that.
11 And you've felt this way for a long time, right?

12 PROSPECTIVE JUROR NO. 001: A long time.

13 MR. CLOWARD: Sure. And, you know, our
14 biases, our beliefs, our core values, the way that we
15 feel about things, you know, those don't happen
16 overnight. They happen, you know, over a long period
17 of time, and that's okay. That's what makes us human.
18 But you agree with me that nothing that I say, you
19 know, is going to change the way you feel, your -- your
20 values, your beliefs, right?

21 PROSPECTIVE JUROR NO. 001: That's correct.

22 MR. CLOWARD: Nothing Mr. Jaffe says is going
23 to change that, right?

24 PROSPECTIVE JUROR NO. 001: That's correct.

25 MR. CLOWARD: Okay. Nothing, in fact, that

1 even the judge or, you know, maybe your neighbor, or
2 your dad is going to say, or, you know, someone in --
3 your family member is going to say is going to change
4 the way you feel, right?

5 PROSPECTIVE JUROR NO. 001: Correct.

6 MR. CLOWARD: All right. Thank you.

7 Mr. Bulosan, and just on this -- this one
8 specific issue, just that the million -- you know, in
9 excess of 2 million, that's the only thing I'm asking,
10 you know, do you agree, you know, with Mr. Runz and
11 Mrs. Ong -- I never changed that in my outline --
12 Mrs. Ong and Mrs. Agnor that, you know, on just that
13 specific issue, you would feel -- you would also feel
14 uncomfortable -- if you were the plaintiff in this
15 hypothetical case and there was jurors that had your
16 same frame of mind, you would feel uncomfortable with
17 them on your jury?

18 PROSPECTIVE JUROR NO. 017: Yes.

19 MR. CLOWARD: You agree that just on that
20 one, just that one slender issue, you're not the right
21 fit for this particular case?

22 PROSPECTIVE JUROR NO. 017: Yes.

23 MR. CLOWARD: Okay. Is that a yes?

24 PROSPECTIVE JUROR NO. 017: Yes.

25 MR. CLOWARD: Okay. And you agree that just,

1 again, and we're just talking that specific issue, the
2 parties are not on the same -- you know, they don't
3 start in the same place; maybe the defendant starts
4 just a little bit ahead of the plaintiff?

5 PROSPECTIVE JUROR NO. 017: Yes.

6 MR. CLOWARD: Okay. And you've felt this way
7 for a long time, right?

8 PROSPECTIVE JUROR NO. 017: Yes.

9 MR. CLOWARD: I mean, you didn't -- you
10 didn't wake up today, get the jury summons and say,
11 Hey, you know what, I don't -- I'm going to form this
12 belief or this core value; this is something you felt
13 for a long time, right?

14 PROSPECTIVE JUROR NO. 017: I think so, yes.

15 MR. CLOWARD: Okay. And you agree that
16 nothing that I say or nothing that Mr. Jaffe says is
17 going to change the way you feel, right?

18 PROSPECTIVE JUROR NO. 017: Uh-huh, yes.

19 MR. CLOWARD: Okay. Thank you.

20 Mr. Jeung, on the same issue, do you agree
21 you would also feel uncomfortable having someone with
22 your frame of mind sit on a jury for that specific
23 issue of the amount; you'd feel uncomfortable, right?

24 PROSPECTIVE JUROR NO. 009: Yeah.

25 MR. CLOWARD: And you agree that, you know,

1 on just that specific narrow issue, you're not the
2 right fit for this particular case?

3 PROSPECTIVE JUROR NO. 009: No, I wouldn't
4 be.

5 MR. CLOWARD: Because you -- you have that
6 bias or that core belief, that value, and Mr. -- you
7 know, Mr. Khoury would start off in just a little bit
8 different place than my client, right?

9 PROSPECTIVE JUROR NO. 009: Correct.

10 MR. CLOWARD: And you've felt this way --

11 PROSPECTIVE JUROR NO. 009: A long time.

12 MR. CLOWARD: Long time. And nothing that I
13 say will change that, right?

14 PROSPECTIVE JUROR NO. 009: No, sir.

15 MR. CLOWARD: Nothing Mr. Jaffe says will
16 change that, right?

17 PROSPECTIVE JUROR NO. 009: No, sir.

18 MR. CLOWARD: Nothing the Judge says will
19 change that, right?

20 PROSPECTIVE JUROR NO. 009: (Witness shakes
21 head.)

22 MR. CLOWARD: Okay. Thank you.

23 Mr. Walker, on this issue, I just -- can I
24 level with you and just ask you, you know, based on
25 what you have told us about, you know, not the amount,

1 the award, 2 million, you would have a hard time with
2 that. You feel it's just way too much. I just want to
3 level with you. Is my client going to get a fair fight
4 on that specific issue?

5 PROSPECTIVE JUROR NO. 034: I can't answer
6 that. Are you talking about from me --

7 MR. CLOWARD: From you.

8 PROSPECTIVE JUROR NO. 034: From myself?

9 MR. CLOWARD: From you.

10 PROSPECTIVE JUROR NO. 034: Well, I think I
11 made myself clear when I said, I think it's ridiculous
12 that the amount you're asking for, so I can't see how I
13 can be fair and say, Oh, yeah, I'm just going to give
14 her whatever she wants.

15 MR. CLOWARD: I appreciate that. So on just
16 that specific issue my client would not get a fair
17 fight?

18 PROSPECTIVE JUROR NO. 034: That's all I know
19 about right now, so that's all I can say.

20 MR. CLOWARD: Okay. So I appreciate it.
21 Thank you.

22 Ms. Brown, in your -- the jury questionnaire
23 you -- you indicated, you know, that you -- you
24 wouldn't have a problem with the multimillion dollar,
25 or I think that the questionnaire said

1 multimillionaire, but today you kind of expressed a
2 little bit of maybe hesitancy. Can you tell me how you
3 feel?

4 PROSPECTIVE JUROR NO. 043: I think it would
5 depend on the extent of her injuries.

6 MR. CLOWARD: Okay.

7 PROSPECTIVE JUROR NO. 043: Like one of the
8 other ladies said, depends on if it's life changing, if
9 she's not able to get back to her life as she usually
10 would.

11 MR. CLOWARD: Sure.

12 PROSPECTIVE JUROR NO. 043: Now, if that was
13 the case, then I feel like she should get compensated.

14 MR. CLOWARD: So you don't agree with maybe
15 like Mr. Walker where just you -- you just kind of have
16 a feeling that, you know, that, amount is -- I think
17 Mr. Walker said it's just ridiculous. You don't feel
18 that way just on first blush?

19 PROSPECTIVE JUROR NO. 043: No.

20 MR. CLOWARD: Okay. Thank you.

21 Mr. Frazier, same thing. I think in your
22 questionnaire you said, you know, no, you wouldn't have
23 a problem, but then today, you know, you've talked a
24 little bit about -- you know, you've talked a little
25 bit -- I'm sorry. That maybe you wouldn't have a

1 problem. So are you -- are you more like Mr. Walker
2 where, you know what, you just have a problem with
3 2 million is just ridiculous, or are you more like
4 Mrs. Brown here? Can you tell me a little bit about
5 that.

6 PROSPECTIVE JUROR NO. 049: I think probably
7 when I went through that -- excuse me -- that
8 questionnaire, I went a little bit haphazardly.

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 049: You know, where
11 you kind of want to get it over with and I think that's
12 probably what I did. But I will say two things. I was
13 an expert witness for a case where the people were
14 asking for \$20 million, and I was supposed to be on the
15 plaintiff's side and I really had a hard time, like,
16 fulfilling my obligation with that, just based on that
17 figure. Because I figure after reading the case and
18 everything else, that it was way over the top. And I
19 think that a lot of times that is the case, that
20 there's a significant amount of money that's being
21 asked for that's over and above what actually the
22 defendant or the plaintiff needs or deserves.

23 MR. CLOWARD: Okay. Can I ask: What kind of
24 an expert are you?

25 PROSPECTIVE JUROR NO. 049: It was for a --

1 well, because I coach, it was a situation where some
2 coaches were being sued.

3 MR. CLOWARD: Got you. What do you coach?

4 PROSPECTIVE JUROR NO. 049: Football and
5 wrestling.

6 MR. CLOWARD: Cool. I did a little of both
7 in high school, but --

8 So let me just see if I understand. In that
9 case it was 20 million. You just felt like, holy
10 smokes, that's way out there, you know, and I can tell
11 you that's not -- what's in this case.

12 PROSPECTIVE JUROR NO. 049: Right.

13 MR. CLOWARD: But do you have a problem, you
14 know, with 2 million -- like, for instance, if you were
15 on a hypothetical juror -- jury, can you tell me a
16 little bit more, or if you were a hypothetical
17 plaintiff, and you had a lawsuit and you knew your
18 attorney was going to ask for -- for in excess of
19 2 million, would you feel comfortable knowing what you
20 know about -- about your opinions and your beliefs and
21 your core values, would you have a problem having that
22 person sit on your jury?

23 PROSPECTIVE JUROR NO. 049: I think I got
24 that twisted. I guess if I were -- if I were the
25 plaintiff?

1 MR. CLOWARD: If you were the plaintiff --

2 PROSPECTIVE JUROR NO. 049: I wouldn't ask for
3 that much money.

4 MR. CLOWARD: Okay.

5 PROSPECTIVE JUROR NO. 049: Period.

6 MR. CLOWARD: Just -- I know you wouldn't,
7 but just assume for me that you did, assume for me that
8 you did, and would you feel uncomfortable having a jury
9 with your frame of mind sit on the -- you know, on the
10 panel on that -- just that specific issue? Just, you
11 know, not talking about everything else but just that
12 one little issue, would you feel uncomfortable?

13 PROSPECTIVE JUROR NO. 049: Yeah.

14 MR. CLOWARD: Okay. I appreciate that. You
15 know, I do. I do. Thank you.

16 You agree in -- on that specific issue, you
17 would not be a good fit?

18 PROSPECTIVE JUROR NO. 049: I would not.

19 MR. CLOWARD: And the parties, you know,
20 they're not going to get a good or a fair fight on just
21 that issue? The defendant is going to start off just a
22 little bit ahead of the plaintiff?

23 PROSPECTIVE JUROR NO. 049: Absolutely.

24 MR. CLOWARD: Okay. Thank you. I appreciate
25 your -- your brutal honesty. And you've -- you've felt

1 that way; nothing that I say will change that, right?

2 PROSPECTIVE JUROR NO. 049: No.

3 MR. CLOWARD: Nothing that Mr. Jaffe says is
4 going to change that, right?

5 PROSPECTIVE JUROR NO. 049: Absolutely not.

6 MR. CLOWARD: Nothing that, you know, your
7 fiancée, correct -- congratulations by the way -- your
8 fiancée or Mr. -- or I mean, Mr. -- I'm sorry, Judge --
9 or the judge is going to say is going to change that,
10 right?

11 PROSPECTIVE JUROR NO. 049: No.

12 MR. CLOWARD: Okay. And that's just a core
13 value, core belief that you hold?

14 PROSPECTIVE JUROR NO. 049: Correct.

15 MR. CLOWARD: Thank you very much.

16 THE COURT: Somebody needs a break already?

17 MR. CLOWARD: I'm sorry, Judge. May we
18 approach briefly?

19 THE COURT: Sure.

20 MR. CLOWARD: I'm sorry, Judge.

21 (Whereupon a brief discussion was
22 held at the bench.)

23 THE COURT: All right, folks. Let's go ahead
24 and take a quick break.

25 During our break you're instructed not to

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

15 Let's take about ten minutes.

16 THE BAILIFF: All rise.

17 THE COURT: Everybody use the bathroom now so
18 we don't have to take another break.

19 (Whereupon jury exited the courtroom.)

20 THE COURT: All right. We're outside the
21 presence of the jury. You guys want to make a record
22 on -- Mr. Jaffe, did you want to make a record on that
23 part?

24 MR. JAFFE: Yeah, Your Honor, I would like
25 to. I believe that many of these questions are in

1 violation of Rule 7.70, especially Subsection C, which
2 are questions touching on the verdict a juror would
3 return when based upon hypothetical facts. And that --
4 that's what this whole line has been. Not when we were
5 arguing in limine about the whole prospect of how much
6 money is too much or a dollar figure, but what he's
7 asking is whether the jurors can return a verdict for
8 that pain and suffering amount that he's asking for,
9 and it's basically a hypothetical fact predicated upon
10 what they've not heard. All they have done is heard
11 what we've had to say about the case and seen his
12 client.

13 THE COURT: And I think that's why he got the
14 response he did from Mr. Walker, that he was unable to
15 tell him what he would do because he doesn't know the
16 facts of the case.

17 MR. JAFFE: I understand that, but the point
18 is counsel was -- was -- was asking questions in such a
19 way that were -- that was more indoctrinating than
20 anything else with respect to the case, not an
21 opportunity to learn what their feelings are. And,
22 Your Honor, I believe that that is in violation of *Land*
23 *versus State*, 251 P.3rd 700, 2011. It's a Nevada
24 Supreme Court case. And it says the purpose of voir
25 dire is to discover whether a juror will consider and

1 decide the facts impartially and conscientiously apply
2 the law as charged by the court, but that
3 indoctrination questions are not supposed to be brought
4 out. And that's also -- there's case law throughout
5 Nevada talking about that.

6 The whole purpose is -- the purpose of voir
7 dire, and this is now I'm looking at another case,
8 *Whitlock versus Salmon* 104 Nev. 24, purpose of voir
9 dire examination is to determine whether a prospective
10 juror can and will render a fair and impartial verdict
11 on the evidence presented and apply the facts as he or
12 she finds them to the law given. Your Honor, this is
13 going well beyond that. It's going to indoctrination.

14 MR. CLOWARD: Your Honor, if I may respond --

15 THE COURT: Sure.

16 MR. CLOWARD: -- briefly. It seems as though
17 we have a moving objection. First, it's a violation
18 for touching upon the facts. Second, it's a violation
19 for indoctrination. First, there was not a specific --
20 a single fact. Mr. Jaffe for the record did not
21 elucidate a single fact that was given by Mr. Cloward.
22 For me, during my voir dire, I did not ask the jurors
23 like, Hey, this is a personal injury case where my
24 client got this and this and this surgery, can you
25 award \$5 million? That's just not what happened. The

1 multimillion dollar was a question that Mr. Jaffe
2 stipulated to, which was in the jury questionnaire.
3 I'm entitled to follow up on that.

4 And the second part of the purpose of voir
5 dire from the case that was just cited by Mr. Jaffe,
6 the Whitlock v. Salmon is second for trial to gather
7 information for an intelligent exercise of preemptory
8 challenges. Nothing that I asked was in violation of
9 either the local rule cited by counsel or any of the
10 case authority.

11 And No. 3, the Lamb case is clearly factually
12 distinguishable. It dealt with a criminal case and has
13 nothing -- it's not applicable to this current
14 situation.

15 MR. JAFFE: Your Honor, first off, I did not
16 stipulate to the multimillion dollar verdict question.
17 The only reason we agreed to it going in there was
18 because the Court had already ruled on the motion in
19 limine, and we specifically stated that it was in no
20 way deemed a waiver of our objection to that line,
21 irrespective. That's No. 1.

22 No. 2, Your Honor, this -- I believe that
23 this is indoctrination, and whether the Lamb case does
24 or does not apply because it's a criminal case is
25 inconsequential because Lamb does discuss what is and

1 is not appropriate voir dire from a general
2 perspective.

3 So, Your Honor, I'm simply saying that I
4 believe these questions go well over the line. Thank
5 you.

6 THE COURT: Okay. You made your record. I
7 don't think they do. I don't think we're talking about
8 hypothetical facts, and I think that's what the
9 pretrial ruling was as well. I don't think that
10 there's been indoctrination. The questions -- some of
11 the questions that were recently asked were more
12 close-ended, but they were follow-ups from prior
13 questions that were more open-ended, where the jurors
14 did offer opinions based on a very general open-ended
15 question, so...

16 MR. JAFFE: And, Your Honor, I do have to add
17 in there, because I feel like many of those questions
18 were specifically phrased with counsel putting the
19 words into the jurors' mouths as to what their beliefs
20 were and as to what their core values were, et cetera,
21 rather than learning from the jurors their beliefs so
22 that we can make the intelligent voir dire decision,
23 which is exactly what the Nevada Supreme Court wants.

24 THE COURT: Okay.

25 MR. JAFFE: Thank you, Your Honor.

1 THE COURT: Do we want to make any other
2 record? Do you guys want to make your challenge for
3 cause? I'm going to let him --

4 MR. EGLET: No. I figured you would let him
5 ask questions, but we can go ahead and make them.

6 THE COURT: Sure.

7 MR. CLOWARD: And we're going to make them in
8 a very specific order as well. So the first -- the
9 first challenge for cause is Clifford Frazier, Juror
10 Badge No. 020049. And he says that he would need
11 significant -- he says that hypothetically he would be
12 a -- uncomfortable sitting on the jury if it was -- if
13 it was him. He also said he flat out would not be a
14 good fit on that specific issue. He also said that the
15 parties would not be at the same starting point, but
16 Mr. Khoury would be starting off a little bit ahead of
17 Ms. Seastrand on that very specific, narrow issue, and
18 that no one is going to change his view, not me, not
19 Mr. Jaffe, not the Court.

20 THE COURT: You got several of them to say
21 the same thing, so I guess my question is: Do you need
22 to make a record on it now, or should we wait until --
23 I mean, you're going to have to make the same record
24 later on, right?

25 MR. CLOWARD: Correct.

1 THE COURT: Let's wait until he asks his
2 questions and then make your motions. I'm guessing
3 that you're going to move to exclude more than that
4 just on cause. You're going to get to some other
5 issues.

6 MR. CLOWARD: My thought is just that if --
7 if -- they've already expressed views that are bias --

8 THE COURT: I know.

9 MR. CLOWARD: -- that rather than leave them
10 there, let some other folks come up so we can ask the
11 new --

12 THE COURT: If the Supreme Court had passed
13 that bill, then you would be right. But the -- or not
14 the Supreme Court, the legislature. If the legislature
15 had passed that bill that eliminated the ability of the
16 judge to look at any other information, you would be
17 right, but they didn't pass that one in session, so ...

18 MR. CLOWARD: But it's my understanding that
19 Jitnan allows for the Court to do that and look at that
20 information.

21 THE COURT: It does, and so does the article
22 that Mr. Eglet published in the -- in the magazine. I
23 read it, but -- but I'm going to -- I'm going to let
24 the other side get a chance.

25 MR. CLOWARD: Sure. Do you want me to tell

1 you who -- in the order that they are, who I would be
2 making the record on?

3 THE COURT: If you would like.

4 MR. CLOWARD: Okay. So the second would be
5 Christopher Evans, Badge No. 02-0012. The third would
6 be Gary Walker, Badge No. 02-0034. The fourth would be
7 Mark Runz, Badge No. 02-0001. The fifth is Margaret
8 Vera, Badge No. 02-0008. The sixth is Leticia Ong,
9 Badge No. 02-0028. The seventh is Paul Jeung, Badge
10 No. 02-0009. The eighth is Joey Bulosan, Badge
11 No. 02-0017. And the ninth is Ms. Patty Agnor, Badge
12 No. 02-0033, Your Honor.

13 THE COURT: Okay.

14 MR. JAFFE: Your Honor --

15 THE COURT: I think I'm still going to let
16 the defense question before I excuse anybody for cause
17 on that issue.

18 MR. JAFFE: So am I going to traverse now,
19 or --

20 THE COURT: No, I think we let the plaintiff
21 keep going.

22 MR. JAFFE: Okay.

23 THE COURT: Okay. Anything else?

24 MR. CLOWARD: No.

25 THE COURT: Let's take a break for a little.

1 Off the record.

2 (A short recess was taken.)

3 THE BAILIFF: All rise.

4 (Whereupon jury entered the courtroom.)

5 THE COURT: All right. Go ahead and be
6 seated, folks. Welcome back, ladies and gentlemen.

7 We're back on the record in Case No. 636515.

8 Go ahead, Mr. Cloward.

9 MR. CLOWARD: Thank you.

10 THE COURT: You may continue.

11 MR. CLOWARD: Thank you.

12 Before I -- you know, before I -- I move on,
13 I wanted to just give everyone one last opportunity if
14 they had an opinion or a view on the amount that we
15 talked about in excess of 2 million and then also pain
16 and suffering. Does anyone else have any views on
17 those that they didn't get to share that they'd care to
18 share?

19 Everyone okay? Okay. Thank you.

20 So along the lines of the next question I
21 want to ask you is who's heard the term, you know,
22 frivolous lawsuit, jackpot justice, things like that?

23 And, Mrs. Brown, you're smiling. Tell me --
24 tell me your thoughts.

25 PROSPECTIVE JUROR NO. 043: I think that

1 there are -- there are a lot of frivolous lawsuits.
2 And people who think that they can get rich quick
3 because of car accidents and things.

4 MR. CLOWARD: Sure. And use a lawsuit as a
5 way to -- I think someone said a golden parachute kind
6 of thing. You agree with that?

7 PROSPECTIVE JUROR NO. 049: Yes, absolutely.

8 MR. CLOWARD: Who -- who -- who else has
9 heard of some people -- some folks talked about the
10 McDonald's case. Raise your hand if you have talked or
11 if you have heard about that case. Anyone not heard of
12 that case? Okay.

13 What about, there was a case involving
14 Wendy's where, you know, someone said there was -- what
15 was that case about?

16 PROSPECTIVE JUROR NO. 043: The finger in
17 the -- I forget what the finger was in.

18 MR. CLOWARD: In the chili, yeah.

19 Who here agrees that there's just too many --
20 some folks think, you know, the way that our process or
21 our system is set up, there's just too many frivolous
22 lawsuits. It's just gotten out of hand, you know.

23 Okay. Raise your hand if everybody -- if you
24 feel like, you know what, it's just gotten out of hand.

25 Okay. Mr. Bulosan, you feel like it's gotten

1 out of hand?

2 Anyone feel like it's not gotten out of hand?

3 Mr. Karpenko?

4 PROSPECTIVE JUROR NO. 025: Yeah. It's
5 Nicholas Karpenko, 025.

6 MR. CLOWARD: You are in the military. Thank
7 you for your service. Tell me why you feel like you
8 don't share that same view or opinion.

9 PROSPECTIVE JUROR NO. 025: Well, you asked
10 the question, if there's too -- too many of these cases
11 in there. It made me think of, like, if there's
12 anybody who has a -- I guess a legitimate case that
13 isn't able to get their business taken care of. And if
14 they can do what they got to do, then that's why this
15 whole thing is here in the first place.

16 MR. CLOWARD: Okay. So you -- you feel like
17 that by -- let me see if I got you right. That, you
18 know, that when people do have a legitimate case, they
19 need to have a forum whereby they can bring and get --
20 take care of their issue; is that fair?

21 PROSPECTIVE JUROR NO. 025: That's fair.

22 MR. CLOWARD: Okay. Does anyone also share
23 that same view of Mr. Karpenko? Please talk to me.

24 Ms. Templeton, tell me your thoughts.

25 PROSPECTIVE JUROR NO. 018: Well, it's --

1 it's that's the system, and if you have a complaint or
2 a problem, then you bring it before the courts, and
3 that's how our system is set up, that you should be
4 able to do that.

5 I'm sorry. Elizabeth Templeton, 018.

6 MR. CLOWARD: Okay. Thank you.

7 Ms. Johnson, 010, tell me your thoughts.

8 PROSPECTIVE JUROR NO. 010: I believe the
9 media sensationalizes frivolous lawsuits and that's
10 what you hear about a lot, and you do not hear about
11 the rest of the lawsuits that are legitimate. So what
12 you are hearing, people who think their lawsuits are
13 out of control, it's because of the media
14 sensationalizing those cases that are.

15 MR. CLOWARD: Sure. Who agrees with that,
16 that just a general statement that, hey, you know what,
17 the media sensationalizes lawsuits like McDonald's, the
18 Wendy's one. I also heard about a dry cleaner, lawyers
19 suing for millions of dollars for something.

20 Mr. Evans, you raised your hand. Tell me
21 your thoughts.

22 PROSPECTIVE JUROR NO. 012: I think the media
23 overdoes everything, but I think there's a lot of
24 people out there that try to go after free money --

25 MR. CLOWARD: Sure.

1 PROSPECTIVE JUROR NO. 012 -- that don't
2 deserve it, and I think if -- if your case is just
3 totally ridiculous and seen in court, I think you
4 should get a fine for wasting our time. Absolutely.

5 MR. CLOWARD: Okay. I appreciate that.

6 Mr. Runz, you also raised your hand. Tell me
7 your thoughts.

8 PROSPECTIVE JUROR NO. 001: Yeah, the media
9 definitely influences you, you know.

10 MR. CLOWARD: Why do you think, Mr. Runz,
11 that the media only talks or -- you know, why do you
12 think there's a perception that the media only talks
13 about, like, the cases like McDonald's? You know, you
14 never hear in a case of, hey, someone filed a lawsuit
15 and the jury gave them zero.

16 PROSPECTIVE JUROR NO. 001: Yeah, because it
17 sells up newspapers or it's a story.

18 MR. CLOWARD: Would everyone agree with that?

19 Ms. Agnor, tell me, you know, do you agree
20 with that? Do you agree with the --

21 PROSPECTIVE JUROR NO. 033: Well, I think
22 it's not only the media. I think it's all of the
23 lawyer commercials that you see on TV.

24 MR. CLOWARD: Sure.

25 PROSPECTIVE JUROR NO. 033: Been in an

1 accident, call so and so, we can get you lots of money.

2 MR. CLOWARD: Sure.

3 PROSPECTIVE JUROR NO. 033: I think -- I
4 think a -- I think a lot -- I think a lot of it comes
5 from there, from the TV.

6 MR. CLOWARD: And our law firm does put ads
7 on TV. So we -- you know, we're guilty of that.

8 What are other things that maybe contribute
9 to that view of, you know, jackpot justice, a frivolous
10 lawsuit, you know, the media sensationalizing. You got
11 attorneys that are, you know, putting a bunch of ads on
12 TV, billboards on the side of the road, doing things
13 like that. What else do you think adds to that?

14 PROSPECTIVE JUROR NO. 033: Well, when I
15 first moved here somebody told me, when you're driving
16 down The Strip, don't drive in the inside lane or the
17 outside lane. Make sure you drive in the middle lane,
18 because people intentionally will walk in front of you
19 so they can gain some profit.

20 MR. CLOWARD: Okay. You feel like that in --
21 that even society has kind of gotten to a point where
22 they recognize that a lawsuit is a payday?

23 PROSPECTIVE JUROR NO. 033: Yeah, a payday.

24 MR. CLOWARD: Sure.

25 Mr. Unger, you're nodding in -- in agreement?

1 PROSPECTIVE JUROR NO. 006: In agreement.

2 MR. CLOWARD: Tell me your thoughts on that.

3 PROSPECTIVE JUROR NO. 006: Barton Unger,
4 006.

5 MR. CLOWARD: Thank you.

6 PROSPECTIVE JUROR NO. 006: I believe exactly
7 what she's saying, what you just -- how you just --
8 your analogy, that people have -- we have become such a
9 litigious society.

10 MR. CLOWARD: Sure.

11 PROSPECTIVE JUROR NO. 006: And we live in --
12 in an area where we pay extreme amounts for insurance.
13 I pay for an umbrella insurance policy to protect
14 myself against situations like this. I own a business.
15 I have to take out insurances for things I have never
16 even heard of before, like cyber-threat insurance for
17 my employees. I have to worry about one employee
18 talking about another employee, how that's going to
19 affect me as a business owner. So I see it and live it
20 every day from a standpoint of having to help -- trying
21 to protect myself and my business.

22 MR. CLOWARD: Yeah. Anything else?

23 PROSPECTIVE JUROR NO. 006: I --

24 MR. CLOWARD: I appreciate that.

25 Who here also kind of agrees that, you know,

1 society's gotten to a point where lawsuit equals
2 payout; lawsuit, you know, jackpot.

3 Mr. Frazier, tell me your thoughts on that.
4 Tell me how you feel.

5 PROSPECTIVE JUROR NO. 049: I just wanted to
6 commend the judge on his statement about America. I
7 think that somewhere along the line we have lost the
8 ability to really work hard for stuff, so instead of
9 working hard for stuff, we expect somebody to hand us
10 something. And if it means I'm going to slip in a
11 store and lay there and say I'm hurt, that's what I'm
12 going to do, because now I don't have to work, you
13 know. And it's just became -- it's become the norm
14 more than the exception.

15 MR. CLOWARD: Easier to -- to, you know, get
16 rear-ended or fall down in a store, get a bunch of
17 money, than, you know what, actually go out there and
18 work and save and invest.

19 PROSPECTIVE JUROR NO. 049: That's my
20 opinion.

21 MR. CLOWARD: Who -- who here agrees --
22 agrees with that? Tell me about that.

23 PROSPECTIVE JUROR NO. 043: I agree. I
24 think --

25 MR. CLOWARD: Ms. Brown, sorry.

1 PROSPECTIVE JUROR NO. 043: I agree that
2 people want the quick fix. We live in the microwave
3 society. I mean, just the other day somebody hit me
4 from behind and nothing happened. I mean, it didn't do
5 anything to my car, so I was -- the lady was really
6 apologetic, so I was like. It's fine.

7 MR. CLOWARD: Sure.

8 PROSPECTIVE JUROR NO. 043: She kept asking
9 me, Are you okay? Are you okay? And I'm like, It's
10 fine. I don't need your information, it's fine.

11 MR. CLOWARD: Sure. Okay. Anyone else have
12 a similar experience or similar view?

13 There were some other folks raising their
14 hand about lawsuit equals jackpot, lawsuit equals quick
15 buck. Who else here feels that way?

16 Mr. Madrigal, I haven't heard from you in a
17 while. Tell me, do you lean one way or the other?

18 PROSPECTIVE JUROR NO. 015: Well, I believe
19 there are a lot of frivolous lawsuits, but until you
20 hear the facts of the case, you can't really make a
21 decision. I'm just neutral. I like to -- I like to
22 weigh -- weigh the case and then -- and then make a
23 decision on that.

24 MR. CLOWARD: See from there.

25 PROSPECTIVE JUROR NO. 015: Exactly.

1 MR. CLOWARD: Ms. Rendina, you're nodding in
2 approval. Do you feel the same way?

3 PROSPECTIVE JUROR NO. 013: Yeah. I mean,
4 you can't judge. You can't say anything before you
5 know all the facts. And I feel like everyone is
6 allowed to come into court if they have any problems or
7 if something happened.

8 MR. CLOWARD: Okay. Anyone else care to
9 share some feelings on the jackpot justice, you know,
10 lawsuit equals lottery? You know, they want to voice
11 that opinion? Any other comments?

12 Let me ask this question. Who here believes
13 that the majority -- some folks believe that the
14 majority of lawsuits filed are somebody trying to get
15 rich quick, that involve personal injury, somebody out
16 to get a quick buck, somebody out to get the golden
17 parachute. Some folks believe that. Other folks
18 believe that the majority of the lawsuits are
19 legitimate, but there's sprinkled in there, there's the
20 jackpot justices and so forth. Which way do you lean,
21 sir?

22 PROSPECTIVE JUROR NO. 012: I think there are
23 a lot of lawsuits out there there aren't real. That
24 people are just trying to make a buck. That's what I
25 do for a living is manage for my company, and I see it

1 all the time.

2 MR. CLOWARD: Sure.

3 PROSPECTIVE JUROR NO. 012: We do public
4 events and it happens all the time.

5 MR. CLOWARD: So you feel like that the
6 majority of lawsuits probably fit into the first group
7 of folks that they're more, you know, jackpot justice,
8 frivolous, things like that; is that fair?

9 PROSPECTIVE JUROR NO. 012: I think that
10 more, yes, that I have experienced.

11 MR. CLOWARD: Sure. I appreciate that.

12 Who -- who else agrees that -- with
13 Mr. Evans, Badge No. 012? Who here agrees with
14 Mr. Evans that the majority of lawsuits are, you know
15 what, it's just frivolous, jackpot justice, oh, boy,
16 here we got another -- another case. Who here also
17 kind of believes that, that the majority of the cases.
18 Thank you for being brutally honest with me.

19 Mr. Frazier, you feel that way, the majority
20 of the cases are frivolous?

21 PROSPECTIVE JUROR NO. 049: Yeah, it seems
22 like everybody's always looking for a way to sue
23 somebody for something.

24 MR. CLOWARD: Sure.

25 PROSPECTIVE JUROR NO. 049: I mean, whether

1 it's big, small, or in between, they're looking for a
2 quick fix, you know. And Ms. Brown said that she was
3 rear-ended once before. I was rear-ended four times.

4 MR. CLOWARD: Wow.

5 PROSPECTIVE JUROR NO. 049: Nothing ever
6 happened.

7 MR. CLOWARD: Wow.

8 PROSPECTIVE JUROR NO. 049: One time I hit a
9 lady, I end up going to court for it.

10 MR. CLOWARD: Got that.

11 PROSPECTIVE JUROR NO. 049: It was the same
12 situation, a little smack on the behind, and she comes
13 out holding her neck and all this other stuff, and --
14 you know, zero speed means zero damage --

15 MR. CLOWARD: Sure.

16 PROSPECTIVE JUROR NO. 049 -- in my mind.

17 MR. CLOWARD: Sure. Who here agrees with
18 that, that, you know, zero speed equals zero damage,
19 and that, you know, fender benders that just people
20 are, you know, too quick to sue and that's part of the
21 reason? Would you all please raise your hand if you
22 feel that way?

23 Okay. Tell me -- tell me about that,
24 Mr. Evans.

25 PROSPECTIVE JUROR NO. 012: To an extent. I

1 mean, if there's damage, there's damage. But if you
2 get a little tap, say a 2-mile-an-hour bump from
3 behind, I find it pretty hard to justify that you got
4 whiplash or anything else that could happen at a higher
5 impact.

6 MR. CLOWARD: Sure. Who here also agrees
7 with Mr. Evans and Mr. Frazier?

8 Ms. Rendina, did you have your hand raised?

9 PROSPECTIVE JUROR NO. 013: Well, I'm kind of
10 on the fence about that.

11 MR. CLOWARD: Okay. Fair enough.

12 Mr. Runz, I saw your hand up. Tell me how
13 you feel.

14 PROSPECTIVE JUROR NO. 001: Well, even
15 through -- even though it's 2 miles an hour, a person
16 still can get hurt.

17 MR. CLOWARD: Okay.

18 PROSPECTIVE JUROR NO. 001: But -- but there
19 are way too many, you know, frivolous lawsuits out
20 there, I think.

21 MR. CLOWARD: Okay.

22 Ms. Vera, tell me your thoughts. Do you
23 think that, you know, people in these minor tap cases,
24 I think is what Mr. Evans said they are, they're just
25 out to get a buck, or do you agree maybe with Mr. Runz

1 that people do get hurt, but there are still a lot of
2 frivolous lawsuits? Which way do you -- how do you
3 feel about it?

4 PROSPECTIVE JUROR NO. 008: I just --
5 unfortunately, I know people that have done it. And,
6 you know, my exfather-in-law, you know, never got in a
7 car accident. That was the first thing he said is, Oh,
8 my neck, my back, you know.

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 008: Unfortunately, I
11 know -- I know people that have done it, and it's --
12 and it's wrong. And I just -- I think it's the amount
13 of lawsuits. I don't know if it's a majority, or what,
14 but it seems to be a lot.

15 MR. CLOWARD: Sure. So based on your
16 personal experience, you have seen people who have
17 taken advantage of the system?

18 PROSPECTIVE JUROR NO. 008: Yes.

19 MR. CLOWARD: Okay. Anyone else know someone
20 that, you know what, I kind of felt they took advantage
21 of the system?

22 Mr. Unger, tell me your experience.

23 PROSPECTIVE JUROR NO. 006: I had an employee
24 who was in a terrible car accident, and -- and she had
25 to go through neck and back surgery because of it. But

1 she also was suing for an exorbitant amount of money at
2 the time. And I don't know what she was awarded, but I
3 know after she was finished, she bought a new house, a
4 new car for her and her husband. There were expenses
5 that were beyond just pain, suffering, or medical
6 expenses. It was to change their way of life.

7 MR. CLOWARD: It was more of a windfall than,
8 hey, just balancing the harms and losses?

9 PROSPECTIVE JUROR NO. 006: Exactly.

10 MR. CLOWARD: Okay. You know, does anyone
11 know someone that, you know, they feel like they --
12 maybe it wasn't a serious, significant accident, but
13 maybe it was a smaller case like Mr. Runz, where they
14 actually were injured, and -- and it was legitimate. I
15 mean, you guys, are there legitimate cases throughout
16 too, or is it kind of like every single, you know, case
17 is -- is frivolous and someone's out looking for a
18 quick buck? Anyone know someone who was seriously hurt
19 in seemingly not a serious event?

20 PROSPECTIVE JUROR NO. 006: Myself. Barton
21 Unger, 006.

22 MR. CLOWARD: Tell me about that, Mr. Unger.

23 PROSPECTIVE JUROR NO. 006: I was in two car
24 accidents 20-plus years ago, rear-ended twice, and
25 today I suffer, I guess it's called spinal stenosis in

1 my upper vertebrae and face surgeries because of it.
2 But I didn't sue somebody from it. I was -- my car was
3 repaired. I got physical therapy from it at the time
4 years ago, and -- but the doctor had told me recently
5 that what I'm suffering now is probably because of the
6 trauma from the accident years ago.

7 MR. CLOWARD: Anyone else have an experience
8 like that or know someone who had an experience like
9 that?

10 Somebody's got to. Talk to me, please.
11 Brutal honesty, talk to me.

12 Mrs. Brown, tell me your experience.

13 PROSPECTIVE JUROR NO. 043: My mother, she
14 had an accident when she worked at McCarran, and she
15 actually to this day is still disabled and can't really
16 work, but I don't think she was really compensated
17 enough.

18 MR. CLOWARD: You didn't feel in that
19 specific case that there was -- there was enough to, or
20 to balance the harms and losses?

21 PROSPECTIVE JUROR NO. 043: Uh-huh.

22 MR. CLOWARD: Ms. -- I'm sorry,
23 Mrs. Templeton, tell me your experience.

24 PROSPECTIVE JUROR NO. 018: With --

25 MR. CLOWARD: I thought you raised your hand.

1 PROSPECTIVE JUROR NO. 018: I didn't, sorry.

2 MR. CLOWARD: Ms. Vera.

3 PROSPECTIVE JUROR NO. 008: Here's an example
4 I feel is using the system. My son-in-law's mother
5 legitimately was injured in her workplace. They
6 settled. She was awarded money. Then years later she
7 wanted a tummy tuck and liposuction, and I don't know
8 how she did it, but she got in an accident and it
9 didn't do any damage to her vehicle, but she was
10 awarded money and she got her liposuction and her tummy
11 tuck.

12 MR. CLOWARD: I'm not good with that. I
13 agree with you on that one, you know.

14 PROSPECTIVE JUROR NO. 008: She lives in
15 New Mexico and I live all the way over here, so it's
16 like I try to distance myself from people with morals
17 that are based on money.

18 MR. CLOWARD: I agree, that's a bad
19 situation.

20 Ms. Agnor, No. 033, tell me your thoughts.

21 PROSPECTIVE JUROR NO. 033: I was rear-ended
22 one time, and the person that rear-ended me did not
23 have insurance.

24 MR. CLOWARD: Okay.

25 PROSPECTIVE JUROR NO. 033: So immediately I

1 had a lawyer call me. And all we did -- I had to go to
2 a chiropractor and they did all kinds of adjustments
3 for quite a few months.

4 MR. CLOWARD: You had a lawyer call you?

5 PROSPECTIVE JUROR NO. 033: Yeah, the lawyer
6 called me. I think it was a matter of a friend called
7 the lawyer and then the lawyer called me. So we did --
8 I did get the lawyer but all the lawyer paid for was --
9 all we sued for was my treatments, and that's all we
10 got.

11 MR. CLOWARD: Okay. Okay. Yeah, they
12 shouldn't do that. That's against the rules to do
13 that.

14 But tell me -- so let me ask just a broad
15 question, just get a show of hands on who believes that
16 the majority -- so if there's two groups of folks, one
17 group that thinks that the majority of personal injury
18 cases, you know, slip and falls, injuries that happen
19 at work, you know, automobile crashes, that personal
20 injury case, the majority of them are frivolous, and
21 then -- so that's one group. And then the other group
22 is that -- you know, there's -- there's frivolous ones
23 out there, sure, but there's also legitimate ones, and
24 the majority of the cases are legitimate, but it's
25 sprinkled with, you know, some frivolous ones in there.

1 So who here by a raise of hands believes that
2 the majority of the cases these days is just about the
3 money, it's about the lawyers, jackpot justice? Who
4 here believes that the majority of the cases, they're
5 frivolous cases in a personal injury context?

6 Any other hands? Any other hands? I want to
7 make sure everyone has an opportunity to answer. Okay.

8 PROSPECTIVE JUROR NO. 012: Majority is a
9 tough word. 012. If I saw statistics, I could
10 honestly answer that.

11 MR. CLOWARD: I'm just -- I'm just --

12 PROSPECTIVE JUROR NO. 012: It would kind of
13 help.

14 MR. CLOWARD: I appreciate it, Mr. Evans.
15 I'm just asking based on beliefs, and -- and opinions
16 and the way that you view things. Like I can tell you
17 my -- my Aunt Nancy, she's the one that had the slip
18 and fall at her store. You know, she would -- she
19 would definitely fit into the -- into the first group,
20 because she thinks all lawsuits, Hey, I was sued
21 myself, I think all lawsuits are bad, and that's fine
22 for her to believe that. I love my Aunt Nancy.

23 My mother-in-law, she has a different
24 experience. And so, you know, because she had a
25 different experience, she had different views and

1 different beliefs. And so, that's all I'm trying to
2 get at is just maybe your first blush, do you think all
3 lawsuits are frivolous? Or first blush, you know what,
4 most of them are meritorious?

5 Same question, frivolous, who thinks
6 frivolous?

7 Same group of folks. Okay.

8 Let me ask just a question. You know, with
9 that -- with that belief or that view, that core value,
10 given that this is a personal injury case, will you
11 level with me and do you feel like because my client
12 filed the lawsuit, she maybe or she wouldn't start at
13 the same place as Mr. Khoury, just the fact that she's
14 filed the lawsuit?

15 PROSPECTIVE JUROR NO. 043: I don't think so.

16 MR. CLOWARD: You don't think so?

17 Mr. Frazier, what do you -- what do you think
18 on that, on just that one specific issue? That's just
19 a slender -- you know, the very slender -- you know, if
20 you feel like the majority of lawsuits are -- are --
21 frivolous, that, you know, maybe you -- you know, you
22 already feel that way, so the fact that she filed a
23 lawsuit, the fact that she's here, hers is probably
24 going to fall into that majority as well? Do you feel
25 that way? Mr. Frazier, do you feel --

1 PROSPECTIVE JUROR NO. 049: I just think it's
2 excessive, so I guess that's my best answer.

3 MR. CLOWARD: Excessive. Okay. Do you feel
4 like -- you know, earlier I talked about a fair fight.
5 That's important for us and for Mr. Khoury. Do you
6 feel like with that, just on that very slender issue,
7 the fact that my client filed a lawsuit and the way
8 that you feel, would you feel uncomfortable having
9 someone, if it was you, sit on your jury?

10 PROSPECTIVE JUROR NO. 049: Yes, because I
11 would feel they were biased already.

12 MR. CLOWARD: Would you feel that way if --
13 would you maybe feel uncomfortable having someone sit
14 on the jury, Mrs. Brown, if you were -- if you were
15 hurt and you had to file a lawsuit?

16 PROSPECTIVE JUROR NO. 043: No.

17 MR. CLOWARD: Okay. Thank you.

18 Was it Ms. Vera? Do you feel --

19 PROSPECTIVE JUROR NO. 008: Yes.

20 MR. CLOWARD: Would you feel uncomfortable
21 having someone with your frame of mind on just that
22 very specific issue on your jury?

23 PROSPECTIVE JUROR NO. 008: If -- I don't
24 know -- it just -- it just occurred to me that I don't
25 know if every person on the jury had that, yes, I would

1 be very uncomfortable. But if it's split or if it's
2 50/50 --

3 MR. CLOWARD: No. Assume that kind of like
4 in the pie-baking contest.

5 PROSPECTIVE JUROR NO. 008: Does everybody
6 have that on the jury?

7 MR. CLOWARD: Yeah. There's ten people --

8 PROSPECTIVE JUROR NO. 008: So everybody
9 feels that way?

10 MR. CLOWARD: Your exact mind frame, and so
11 you would feel uncomfortable?

12 PROSPECTIVE JUROR NO. 008: If everybody on
13 the jury felt that way.

14 MR. CLOWARD: Shared that same core value or
15 that same belief that you had; you agree that?

16 PROSPECTIVE JUROR NO. 008: Yes, if everyone
17 on the jury.

18 MR. CLOWARD: Okay. Mrs. Brown?

19 PROSPECTIVE JUROR NO. 043: I feel like she
20 said, if everybody on the jury, then, yeah, I would
21 feel uncomfortable.

22 MR. CLOWARD: Okay. Thank you.

23 And that's -- someone else raised their hand.
24 Was it Mr. Runz?

25 PROSPECTIVE JUROR NO. 001: Yeah.

1 MR. CLOWARD: Every other jury, they have the
2 same view that, you know what, a majority of lawsuits,
3 personal injury, they're frivolous.

4 PROSPECTIVE JUROR NO. 001: I agree. It
5 would have to be everybody.

6 MR. CLOWARD: But if everybody had your same
7 view you would feel uncomfortable having that person or
8 those jurors with that view on your panel?

9 PROSPECTIVE JUROR NO. 001: Yes.

10 MR. CLOWARD: Thank you. And you agree that
11 that -- you know, there are a lot of different --
12 different types of lawsuits. You know, there's
13 contract -- cases that are contract cases, patent
14 cases, trademark cases, you know, but this is a -- this
15 is a personal injury case. Do you agree with me that
16 just on that specific personal injury you are probably
17 not a good fit for this particular case?

18 PROSPECTIVE JUROR NO. 001: Yes.

19 MR. CLOWARD: Okay. And, Ms. Vera, you also
20 agree that this specific kind of a case, you are
21 probably not a good fit?

22 PROSPECTIVE JUROR NO. 008: Yeah. Just I
23 feel I'm not -- I'm not a good choice.

24 MR. CLOWARD: Okay. Thank you.

25 And, Ms. Brown, you agree with Ms. Vera and

1 Mr. Runz that for this specific kind of a case, a
2 personal injury case, you're -- you're not a good fit,
3 right?

4 PROSPECTIVE JUROR NO. 043: Yes.

5 MR. CLOWARD: And, Mr. Frazier, you also
6 agree that for this specific case you're not a good
7 fit, right?

8 PROSPECTIVE JUROR NO. 049: I do.

9 MR. CLOWARD: Okay. Thank you. Okay.

10 Let me ask -- I have an outline that I try to
11 remember rather than go over the outline. How do you
12 think that you tell whether it's a frivolous case or
13 whether it's a legitimate -- somebody said legitimate
14 case. Mr. Karpens -- Karpenko?

15 PROSPECTIVE JUROR NO. 025: Yes, sir.

16 MR. CLOWARD: Mr. Karpenko, you said that,
17 you know, cases, that some are legitimate and they need
18 to have a forum. Can you tell me, how do you think we
19 tell the difference between, Hey, this is someone --
20 this is jackpot justice going on here, you know, that's
21 what's going on here, versus, Hey, you know what, this
22 is legitimate one? How do you know?

23 PROSPECTIVE JUROR NO. 025: Nicholas
24 Karpenko, 025. I think something like that you don't
25 really know it until after you've heard all the facts.

1 You hear what people want, why they want it, and that's
2 when you make the decision whether or not to even think
3 it's legitimate.

4 At this point, you know, right now, without
5 knowing anything, I think you have to assume that both
6 sides are legitimate.

7 MR. CLOWARD: Okay.

8 PROSPECTIVE JUROR NO. 025: So to answer your
9 question, you don't know until you hear everything.

10 MR. CLOWARD: Gotcha. What kind of things,
11 you know -- you know -- you know, if you were on a
12 hypothetical jury, and, you know, the people they
13 brought the case, and -- and you had to determine, hey,
14 Is this a legitimate case or is this a frivolous --
15 this guy is getting jackpot justice; this is not
16 even -- you know, we should kick this out of the door.
17 What things are you going to be looking for to tell you
18 legitimate versus frivolous?

19 PROSPECTIVE JUROR NO. 025: Well, I think I
20 would look at the law, to see what it says, how it
21 applies to the two sides.

22 MR. CLOWARD: Sure.

23 PROSPECTIVE JUROR NO. 025: And then I would
24 look at -- going hypothetical, not knowing anything. I
25 guess, yeah, really all we have is just the law at that

1 point. I'm trying not to answer in a way that would,
2 you know, bring -- bring out something that somebody
3 has already said.

4 MR. CLOWARD: Feel free. I want to hear. I
5 want to know you too.

6 PROSPECTIVE JUROR NO. 025: At this point, I
7 would just base it on what the law says. If this
8 happens, you know, this is right, this is wrong and
9 just decide it from there.

10 MR. CLOWARD: Yeah. Okay. You know, I think
11 there are some case that you hear about and you're
12 like, Holy smokes, there's no question on that one.
13 The guy suing in New York for \$5 million or whatever it
14 was for a pair of suit pants got lost at the dry
15 cleaner, and that's -- there's -- that's a no-brainer.
16 That's -- that's clearly frivolous. So how do you --
17 you know, how do you sift through the -- you know, the
18 different ones?

19 Mr. Frazier, what do you think? What do you
20 think is important?

21 PROSPECTIVE JUROR NO. 049: Life change.

22 MR. CLOWARD: Okay.

23 PROSPECTIVE JUROR NO. 049: If someone has a
24 significant life change, does it alter their ability to
25 earn an income, you know, the same income. And by

1 being awarded this money, is it over and above what
2 they would have made over however long their -- however
3 long their injuries would have, like, held them back?

4 MR. CLOWARD: Sure. Okay.

5 PROSPECTIVE JUROR NO. 049: And then I think
6 you also have to tie in all the other things, attorney
7 fees and all that other stuff. You know, how much is
8 the victim actually going to receive --

9 MR. CLOWARD: Sure.

10 PROSPECTIVE JUROR NO. 049: -- to help their
11 life.

12 MR. CLOWARD: Okay. Anyone else have -- have
13 some views on how you would sift through, you know,
14 whether it's -- you know, it's a jackpot justice,
15 frivolous-type lawsuit versus a legitimate one?

16 PROSPECTIVE JUROR NO. 018: It seems to me
17 like if you would think of a frivolous lawsuit, it
18 would be the amount of money that they're asking for.
19 If they're asking for the exorbitant amount of money, I
20 would consider that a frivolous lawsuit right up front.

21 MR. CLOWARD: Gotcha.

22 PROSPECTIVE JUROR NO. 018: Rather than a
23 lesser amount and then you might think it's more legit,
24 because it's not going to change their lifestyle.
25 They're just going to try to get by.

1 MR. CLOWARD: Gotcha. So is it fair to say
2 that, you know, the fact that -- that my client has --
3 you know, that knowing that my client has sued for in
4 excess of 2 million, that just that -- that alone makes
5 you to -- makes you believe that it's -- it's a
6 frivolous lawsuit? Do you agree with that?

7 PROSPECTIVE JUROR NO. 018: Probably, because
8 that is a lot of money, but we don't know the case, so
9 --

10 MR. CLOWARD: Sure.

11 PROSPECTIVE JUROR NO. 018: -- we can't say.

12 MR. CLOWARD: But just on that very specific
13 issue, the very fact that the amount, you probably
14 think it's more frivolous than --

15 PROSPECTIVE JUROR NO. 018: Right.

16 MR. CLOWARD: And, Mr. Jeung, you also -- you
17 were kind of agreeing. You also share that view?

18 PROSPECTIVE JUROR NO. 009: Yeah, 009.
19 That's the first question you asked the first time
20 around about the excess of 2 million, but I'm also
21 agreeing with that guy over there, about there being
22 legitimate cases and also frivolous cases depending on
23 the facts.

24 MR. CLOWARD: Sure. Mr. Jeung, you know, how
25 would you -- if you were on the -- a hypothetical jury

1 in a personal injury type lawsuit where someone was
2 claiming to be injured, how would you go about
3 determining whether it was frivolous or whether it was
4 legitimate? What kind of things would you look for?

5 PROSPECTIVE JUROR NO. 009: Facts, evidence.

6 MR. CLOWARD: But what kind of -- yeah, what
7 kind of facts and evidence would you be interested in
8 hearing?

9 PROSPECTIVE JUROR NO. 009: Talk about the
10 2 million, stuff like that, so if we're talking about
11 surgery fees and that kind of stuff, then if that's all
12 taken into account, then I guess it would make sense.
13 But if we're just talking about pain and suffering and
14 what they can get with that money.

15 MR. CLOWARD: Okay. So you would maybe look
16 for medical bills, things like that?

17 PROSPECTIVE JUROR NO. 009: Yeah.

18 MR. CLOWARD: Okay. What are other things
19 that would be important in determining whether it's
20 frivolous or legitimate?

21 Mrs. Brown, what do you think?

22 PROSPECTIVE JUROR NO. 043: I would say how
23 they were medically before the accident.

24 MR. CLOWARD: So maybe what their playing
25 field is before, you know, their baseline before, and

1 their playing field after or their baseline after the
2 crash?

3 PROSPECTIVE JUROR NO. 043: Yes.

4 MR. CLOWARD: Or after the whatever --
5 whatever event.

6 Everyone -- everyone agree that that would be
7 important to know? You guys would all want to know,
8 you know, the playing field before and the playing
9 field after?

10 How would you -- how would you know, though?
11 You know, if the person -- you know, just -- if the
12 person just told you, Hey, this is how I was before and
13 after, how do you -- how do you determine, Hey, you
14 know what, this is -- this is frivolous versus this is
15 legitimate? How do you think you know, Mr. Evans?

16 PROSPECTIVE JUROR NO. 012: Well, the
17 indicator would be the type of -- the type of claim
18 that it is.

19 MR. CLOWARD: Okay.

20 PROSPECTIVE JUROR NO. 012: And, you know, if
21 it draws attention, then in my opinion it probably
22 isn't frivolous. But if it draws attention, then
23 that's what you want to look at and go a little further
24 into the details with it before you make an opinion.

25 MR. CLOWARD: Can you tell me, what do you

1 mean by "draws attention"?

2 PROSPECTIVE JUROR NO. 012: Just something
3 out of the ordinary that sounds ridiculous.

4 MR. CLOWARD: Can you give me an example?

5 PROSPECTIVE JUROR NO. 012: Like when you
6 burn yourself with coffee and you're trying to get
7 \$25 million.

8 MR. CLOWARD: Sure, yeah.

9 PROSPECTIVE JUROR NO. 012: I mean, that
10 sounds ridiculous.

11 MR. CLOWARD: Sure. Where you get your, you
12 know, brother-in-law's or whoever's thumb you put it in
13 a cup of coffee or chili and that kind of thing, right?

14 PROSPECTIVE JUROR NO. 012: Right. But see,
15 I wouldn't draw my opinion on that one until I knew for
16 a fact that's what happened.

17 MR. CLOWARD: Gotcha.

18 PROSPECTIVE JUROR NO. 012: You know, I'm not
19 going to automatically assume, well, somebody put that
20 thumb in there.

21 MR. CLOWARD: Sure.

22 PROSPECTIVE JUROR NO. 012: That's not as
23 easy to judge as somebody spilling coffee on their lap.

24 MR. CLOWARD: All over themselves, gotcha.

25 So what are other things that, you know,

1 would be important?

2 Mr. Unger, what would be important for you if
3 you were determining, hey, what's legitimate versus
4 frivolous, what are you looking for?

5 PROSPECTIVE JUROR NO. 006: I'm looking for
6 facts.

7 MR. CLOWARD: What kind of facts, though?
8 Can you tell me.

9 PROSPECTIVE JUROR NO. 006: Facts on the
10 case, facts on the accident, if there was an accident,
11 just the witnesses' testimonies, what they're going to
12 say what the person went through, what the person --
13 what suffering that they feel that the person did have.

14 MR. CLOWARD: So maybe people other than the
15 person who's injured, right?

16 PROSPECTIVE JUROR NO. 006: I would think the
17 more professional opinions.

18 MR. CLOWARD: So you would want to hear maybe
19 from more doctors?

20 PROSPECTIVE JUROR NO. 006: That would be
21 part of it, yes.

22 MR. CLOWARD: Or experts or whatever the case
23 was?

24 PROSPECTIVE JUROR NO. 006: Right.

25 MR. CLOWARD: Okay. Who -- who here has some

1 feelings on that or agrees or disagrees?

2 You were kind of nodding your head,
3 Mrs. Rendina. Do you agree with that?

4 PROSPECTIVE JUROR NO. 013: Yes. I think if
5 we have medical records to show how the person was
6 before the accident and how they are now. Because
7 sometimes if someone's in a certain shape and they get
8 hit, it gets worse, then you can kind of sift through
9 what's really true and what's not.

10 MR. CLOWARD: Gotcha. So maybe like using,
11 you know, the medical records to show a baseline as
12 well. Like the playing field, hey, here's the playing
13 field for the person, here's what -- you know, what the
14 records show was going on, and then the accident
15 happens or the event, slip and fall, whatever it is,
16 and then here's what the medical records show after; is
17 that fair?

18 PROSPECTIVE JUROR NO. 013: Yes.

19 MR. CLOWARD: Everyone agree that would be
20 important? Anyone agree that wouldn't be important?

21 Mr. Karpensky {sic}, what do you think about
22 that?

23 PROSPECTIVE JUROR NO. 025: Nicholas
24 Karpenko, 025.

25 MR. CLOWARD: I'm sorry, Karpenko. Sorry,

1 sorry.

2 PROSPECTIVE JUROR NO. 025: That's all right.
3 I think the idea that the playing field before and
4 after, it does make sense to me. I can see that, just
5 because if you're on -- if you're not able to do as
6 much as you could before an accident, I think that
7 would -- that could potentially have a long-term effect
8 on what you're able to bring in as far as money is
9 concerned, so if you're going to go the route of money,
10 I could see that as being a possibility. If you have
11 kids, you know, how well you can take care of your kids
12 would be a possibility there.

13 So the idea that you would be trying to get
14 something to compensate that makes sense. But I think
15 because you are the one asking for something, you would
16 have to be able to prove that this is -- this --
17 whatever it is, is really what you need.

18 MR. CLOWARD: Sure. You know, I think -- I
19 think -- you know, brutal honesty. Okay? I think, you
20 know, we can all make room for the possibility that
21 both parties are going to be a little bit -- you know,
22 have -- have their side of things, just because it
23 involves them, and -- and that's -- you know, that's
24 just human nature. We all agree that -- you know, that
25 that's just the way that it is. You agree with that?

1 PROSPECTIVE JUROR NO. 043: Uh-huh.

2 MR. CLOWARD: Okay. One second.

3 Your Honor, may I have the Court's indulgence
4 for just one moment?

5 THE COURT: Yep.

6 MR. CLOWARD: Okay. I wanted to move on now
7 to a different topic. And there's -- there's been some
8 discussion we're going to talk about, you know, crashes
9 that happen.

10 I think, Mr. Unger, you said you were
11 involved in a relatively minor crash, but you've had
12 some long-lasting effects from that.

13 And then I think you said you have been in
14 four crashes, you have been rear-ended four times, and
15 you -- you're not -- you weren't hurt, right?

16 PROSPECTIVE JUROR NO. 049: No.

17 MR. CLOWARD: So how do we explain -- you
18 know, has anyone heard of someone that was in, like,
19 just a massive rollover and they were okay, they walked
20 away from it? Anyone heard of that?

21 And then obviously we've unfortunately -- you
22 know, Mr. Hicks, my partner over there, when he was
23 about 17 he had a van full of 17 -- or I think 15, 15
24 kids.

25 MR. JAFFE: Objection, Your Honor. This

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 VII

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VOLUME VII

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|------------|---|--------------|
| Exhibit 25 | July 15, 2013, Reporter's Transcript of Jury Trial, (Day 1), pages 92-307 | JA 1169-1384 |
| Exhibit 26 | July 16, 2013, Plaintiffs Bench Brief Regarding The Issue Of Jury Selection | JA 1385-1407 |