

1 this level, that's going to cause a problem maybe down  
2 to right here. But the next level down, it's going to  
3 go all the way into your finger. The next level down,  
4 it's going to go all the way into your hand and your  
5 thumb. Same thing with the leg. The more that's  
6 involved, the lower it will go.

7           Okay. So that's what discogenic pain is.  
8 There's disc pain, so pain that can be caused from the  
9 actual disc itself. Then you can have what's called  
10 facet pain.

11           Now, the facet joints are these joints right  
12 back here. These are called facet joints. And you can  
13 have an irritation where that joint gets irritated and  
14 that can cause pain. Generally, when you have a facet  
15 pain, it's not the type that shoots down the arms or  
16 shoots down the legs.

17           Now, importantly -- so those are the two  
18 major classifications. Discogenic, facet. Within the  
19 discogenic type of pain, you can have a couple  
20 different things going on. Okay. That's where this  
21 comes in handy. Now, you can actually have a physical  
22 compression, all right, like the protrusion in the  
23 neck. Okay.

24           So imagine your garden hose. Doctors will  
25 tell you this. Imagine your garden hose. You turn the

1 water on and you kind of squeeze it. Okay. That's a  
2 compression. It's going to cause -- it's going to kink  
3 it. It's going to cause problems at the end of the  
4 garden hose. That's a compression of this nerve  
5 root -- or this type of nerve root that's that type  
6 of -- that's that kind of discogenic injury.

7           Then you can also have what's a called a  
8 chemical irritation of the nerve root and that's the  
9 internal disc disruption or the annular tearing. Now,  
10 that would be if you have your garden hose and you dump  
11 some acid in there. That acid is going to cause some  
12 problems at the other end of the hose. And the reason  
13 why that is is that you have your disc here. This is  
14 the annulus fibrosus. So you have these fibers. The  
15 outside of the disc is like a -- like a wicker basket.  
16 Think of it like that.

17           Now, this nerve root comes in. So this nerve  
18 root, like one of those things, it comes in here and  
19 off of the nerve root you have all of these fibers and  
20 they innervate into that fiber of the -- of the -- of  
21 the disc. Okay. So these nerve roots, they intertwine  
22 and what happens is if you have a chemical  
23 irritation -- so you have the inside of this that is  
24 disrupted. It pushes into this area. It causes this  
25 irritation.

1           So think of it like this: If I get -- if  
2 I've got a cut on my hand, okay, and I get my pencil or  
3 my pen and I push down like that, that's going to hurt.  
4 That's this type of an injury where it's actually a  
5 compression. Now, imagine that same cut. I get some  
6 lemon juice and I squeeze onto the cut. I get some  
7 salt. I pour onto the salt -- or onto the cut. That's  
8 going to irritate it. It's going to cause it to be  
9 painful. You cannot see this in an MRI. You just  
10 can't. And so the way that they diagnose that is a  
11 test called a discogram, and we'll talk about that in a  
12 minute.

13           So what caused all of Margie's pain and  
14 problems? Margie's doctors -- and let me introduce her  
15 doctors right now. This is Dr. Belsky. She's a pain  
16 medicine doctor kind of like Dr. Schifini.

17           This is Dr. Gross. He is a neuro spine  
18 surgeon.

19           This is Dr. Muir. He's an orthopedic spine  
20 surgeon.

21           This is Dr. Gene Khavkin. He's a neuro spine  
22 surgeon.

23           This is Dr. Jaswinder Grover. Dr. Jas  
24 Grover, he's an orthopedic spine surgeon. I want you  
25 to -- the evidence is going to show, keep in mind, a

1 spine surgeon, spine surgeon, spine surgeon, spine  
2 surgeon. Remember the cast of characters that  
3 Mr. Khoury hired? Not a single spine surgeon. So four  
4 spine surgeons, not one.

5 All the spine surgeons will agree that Margie  
6 is like an eggshell. She's fragile. She's older.  
7 She's not got the same resilience of, say, a  
8 20-year-old football player. That her pain began  
9 immediately after the accident so it's not like -- the  
10 doctors will tell you, hey, it's not like she goes home  
11 and thinks to herself, um, I just got rear-ended.  
12 Maybe I can -- maybe I can make something out of this.

13 She calls the ambulance from the scene.  
14 That's what the evidence will show. She's more  
15 susceptible to injury based on those risk factors: The  
16 age, being female gender, being unaware, the rear-end  
17 type of collision, those types of things. So it's more  
18 likely, more probable she has a higher probability.

19 Now, important, I'm going to talk to you  
20 about -- so all of her doctors will agree that her  
21 treatment was caused by the crash. So let me go over  
22 that treatment and this is a broad, broad stroke over  
23 the treatment. This is just the major stuff.

24 So May 2009 she has what's called a bilateral  
25 L5-L4 L5-S1 transforaminal epidural steroid injection



1 and a facet injection. So what the doctor does -- this  
2 hole here, this is called the foramen. Foramen in  
3 Latin means hole. So the doctor goes into that hole,  
4 puts the medication right next to the nerve root, the  
5 steroid to calm things down and to help the pain in  
6 that situation.

7           Now, the facet injection, the doctor puts the  
8 needle right next to this joint called the facet joint,  
9 places the medication in there, squirts it in there,  
10 and that causes the reduction. That's what these  
11 poster boards are for. You can see the doctor would go  
12 in here. This is the facet. And he puts it into this  
13 joint and that's to calm things down and then here this  
14 is the hole. This is the foramen. That's Latin for  
15 hole. Puts it in there, injects the medication next to  
16 that area to try and calm things down. That's the  
17 first procedure. I got to move through this.

18           The second procedure is a right side -- so  
19 that's in her lumbar spine. The first injection is in  
20 her lumbar spine, set of injections.

21           The second injection is into her neck for  
22 that protrusion. So it's the same thing into the neck.  
23 You go in through the foramen into that hole. You  
24 place the medication right next to the area that's  
25 irritated, try and calm it down. So you would

1 basically -- the doctor would come in through the  
2 foramen and he would put the medication right in this  
3 area where these issues are happening to try and calm  
4 that area down.

5           Next, she has this test because the  
6 doctors -- you'll hear them. They'll tell you, hey, we  
7 think that she had internal disc disruption. The only  
8 way to diagnose that -- you can't see it on an MRI so  
9 you have to do what's called a discogram. So the  
10 doctors will tell you they did the discogram. They'll  
11 explain what that is.

12           You go in there. You insert a needle into  
13 the disc. You pressurize the disc kind of like an  
14 inner tube. You pump it up just a little bit and you  
15 try -- it's one of the few tests in medicine that you  
16 actually try to re-create the patient's pain. You try  
17 to put them in pain to see is that what's causing it.  
18 Is this reflective of the pain that you feel on a  
19 day-to-day basis? So they go in and they do that to  
20 determine whether this has been disrupted. The doctors  
21 go in and they do do that.

22           They do it on three levels. They determine  
23 this is disrupted. This is disrupted -- excuse me.  
24 This is disrupted. This is disrupted. This one is  
25 okay.

1           So at the same time so to avoid having this  
2 traumatic experience again, once they do this  
3 procedure, Dr. Muir -- so Dr. Belsky does a discogram  
4 in the same surgery suite. Dr. Muir then does what's  
5 called a plasma disc decompression. And what that is  
6 is imagine you have the disc, okay, and you know that  
7 the disc is the jelly in the doughnut. There's some  
8 issues going on. So you put in a straw and you suck  
9 out some of that jelly to try and get the pressure to  
10 kind of try and reduce it down.

11           Now, that's not -- you know, they don't  
12 really use a straw. They use what's called a wand.  
13 They put the wand in there and the wand, it actually  
14 heats it up, super heats it and vaporizes the material  
15 to try and shrink the material to cause or to reduce  
16 some of that pressure. That's what the lumbar plasma  
17 disc decompression was.

18           You're going to hear sometimes that doesn't  
19 work. With every single procedure, sometimes it works;  
20 sometimes it doesn't. Unfortunately, for Margie that  
21 did not work and it actually increased the pain  
22 somewhat, which is a standard response to that type of  
23 test sometimes.

24           So she has another injection, calm the area  
25 down, and then she goes in and has a cervical disc

1 decompression surgery, and I'm going to show you what  
2 that is.

3           Okay. So the doctor cuts in. This is called  
4 the anterior approach. Anterior means the front.  
5 Posterior is in the rear. So the anterior approach.  
6 Now he gets these retractors and he retracts the skin.  
7 The doctors will tell you more about this. And then he  
8 goes in. He actually has to move all that stuff aside.  
9 This is the C5 level. This is the C6. This is the  
10 disc with the protrusion that's causing the issue.

11           So what they do -- see, you can see that you  
12 would have a problem back here. This is the spinal  
13 cord. These are the nerve roots. Okay. The nerve  
14 roots go out through this area called the foramen.  
15 That's what he talked about. This is the hole. That's  
16 where the problem would be and the way that you take  
17 care of that is you cut into that disc, you pull that  
18 disc out, and by pulling that disc out, you relieve the  
19 pressure on that nerve root. So this is what they  
20 would do. They would get this and they scoop it out.  
21 The doctors will go through this. They'll talk to you  
22 about it.

23           Now, this is -- this is called a rongeur.  
24 That's French. It means rodent. And that's because  
25 that tool is like the teeth of a rodent. It grabs the

1 material and it pulls it out, grabs the material, pulls  
2 it out. So they do that.

3           Now what they do, they have to smooth this  
4 surface. They smooth the surface in preparation to  
5 insert a graft. And so they'll put in a graft. I'm  
6 going a little faster than the animation here. So what  
7 this graft is, this graft is kind of like the glue.  
8 This here, this is the nails. Okay. When you build a  
9 cabinet, you put glue on it. Then you nail it  
10 together. The nails are to hold it while the glue  
11 takes and the glue sets. Same thing.

12           What they put in between there, that's  
13 actually bone. It can either be from a cadaver or it  
14 can be from the hip. They'll either transplant it --  
15 but either way the purpose of that is to have that bone  
16 grow into the level above and have the bone grow into  
17 the level below to stop that segment from moving.  
18 Because having the segment move is what causes the  
19 irritation.

20           Okay. So she has that surgery and now  
21 there's a lumbar inner body decompression and  
22 discectomy fusion at L4-5 and this is down the road.  
23 Let me show that.

24           Okay. So this is the lumbar. Again, this is  
25 anterior. There are different ways that you can do

1 these surgeries. This is called the anterior approach.  
2 So you go in from the front. Same thing. You bring  
3 the retractors. You pull it aside. Here you can see  
4 the muscle, the veins. The doctors work to pull that  
5 aside. This would be -- so your spine is all the way  
6 in the back here. They're going all the way in the  
7 back and you can see the vertebrae here, the vertebrae  
8 here, and the disc. So the doctor does the same thing,  
9 removes the disc, gets the spoon, pulls out the  
10 materials, gets the rongeurs. Here's the rongeur, the  
11 rat thing pulling the material out.

12           And then once they do that, they put this  
13 spacer in there to maintain the -- or to put the --  
14 because what happens is when you have the disc issues,  
15 the disc kind of goes down so you got to bring it back  
16 up to the natural height. And then once you do that,  
17 then you can put the grafting material in there and  
18 they use hammers to pound it in there, and the doctors  
19 will talk about that.

20           So after that happens -- and keep in mind  
21 this is just one level. She had two levels of that  
22 surgery done. So instead of doing just the one, they  
23 would -- the doctors -- the doctors did, the evidence  
24 will show, that the doctors they did do two levels  
25 while they were in there.

1           Okay. So this is where I want to talk next.  
2 Margie's past medical history. Okay. The doctors that  
3 Mr. Khoury hired, they're going to focus on this past  
4 medical history and they're going to say that it is  
5 super important. And what they will tell you is is  
6 that, hey, she had an auto accident. She had a  
7 rollover crash in 1981, okay, so you got to consider  
8 that.

9           But you'll hear from Margie and she'll tell  
10 you, yeah, in that rollover I was the passenger and I  
11 wasn't hurt. I went to the ER and the ER physicians  
12 checked me out, and then I went to a holistic doctor  
13 one or two times and then I didn't have any problems.  
14 I didn't make a claim. I didn't do anything like that.  
15 I didn't have any issues with it. That's in 1981 from  
16 a rollover where she's a passenger --

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

18           MR. CLOWARD: I'll move on.

19           MR. JAFFE: No, Your Honor.

20           THE COURT: Come on up.

21                       **(Whereupon, a brief discussion was**  
22                       **held at the bench.)**

23           MR. CLOWARD: Okay. So 1981 and then  
24 fast-forward a couple years later, 1985. She has  
25 another event. She's driving down the road. She's

1 stopped and all the sudden, a vehicle comes off -- a  
2 trailer comes off of the vehicle and smashes into hers.  
3 She'll admit she had neck and back problems from that.  
4 She'll admit that. She'll say that she got some  
5 treatment for that. But she'll say after about a year  
6 of treatment, I didn't go back, things resolved.  
7 You're going to hear about that but the defense doctors  
8 will emphasize these things and will emphasize --

9 MR. JAFFE: Argument, Your Honor.

10 MR. CLOWARD: This is what the evidence will  
11 show, Judge.

12 THE COURT: Overruled.

13 MR. CLOWARD: The evidence will show that  
14 Mr. Khoury's doctors focus on these things.

15 Another thing that the evidence will show  
16 they will focus on is this 2004 event. Okay. So  
17 Margie's putting some stuff in her vehicle and she  
18 lifts her head and hits her head on a hatchback and it  
19 causes her some headaches. She has to go to the  
20 hospital.

21 Keep in mind, what the evidence will show the  
22 primary purpose of the complaint at the hospital,  
23 primary purpose, is for this headache. Okay. Margie's  
24 doctors will talk to you and the evidence will show  
25 that there's a difference between an incidental finding



1 and a primary complaint. If you go to the doctor  
2 because you broke your leg and the doctor says, hey, by  
3 the way, you better get that mole checked out, it looks  
4 precancerous, you didn't go to the doctor for the mole  
5 and then have the doctor say, hey, let's check out that  
6 broken leg too. No. You went to the doctor for the  
7 broken leg, not the precancerous mole. A precancerous  
8 mole is an incidental finding. All right.

9           Margie tells her doctor -- tells the people  
10 at the Summerlin Hospital. Okay. She says, yeah, you  
11 know what, I had an accident in '85 and I had some neck  
12 injuries. I want you to be aware of my full history.  
13 She tells them about it. She tells them that I have  
14 intermittent neck and back pain. I don't treat for it  
15 but I have it. She tells them that.

16           Finally, she's helping -- the other thing  
17 that they will talk about she is at a church event.  
18 She's helping out and she's picking up some trash. She  
19 comes up and smacks her head on a towel dispenser and  
20 she starts to have the headaches again. She suffered  
21 from it for a couple of days -- I mean, you know, a  
22 couple months and that's going to be the focus. Okay.  
23 What brought her there, keep in mind what the evidence  
24 will show, what brought her there? Headaches. She  
25 didn't go because of, hey, I got neck pain, I got back

1 pain. She goes there, the evidence will show, because  
2 of a headache because she smacked her head. Incidental  
3 finding versus primary complaint. Very important.

4           Finally 2008. About eight or nine months  
5 before the crash. She starts to have chest pains. Has  
6 chest pains, has numbness and tingling down her arms,  
7 thinks she's having a heart attack, goes to the doctor.  
8 They do some stress testing on her. They do some heart  
9 testing thinking that maybe she has this cardiac event.  
10 The defense doctors will -- oh, and so to rule out that  
11 she has a spinal cord injury because numbness and  
12 tingling -- there's what's called a primary diagnosis  
13 and then a secondary diagnosis.

14           To rule out that this isn't a spine issue,  
15 they take a cervical x-ray. Keep in mind the reason  
16 she's there. Heart attack, thinks that's maybe what is  
17 going on. They take a cervical x-ray. So because of  
18 that the evidence will show that the doctors that  
19 Mr. Khoury hired, they'll use that to try and say, hey,  
20 all these issues with her neck and back, she's had them  
21 for her whole life, you know.

22           I got to -- I got to hurry here, though. So  
23 here's the doctors. This is what they're going to talk  
24 to you about. Margie will testify -- I'm going to move  
25 through this -- that after the accident no problems in

1 '81. '85 she treated for about a year. From '85 to  
2 2009 occasional headaches, occasional neck pain and  
3 stiffness, back pain and stiffness. Usually this is  
4 only when she has a rough night of sleep. This is the  
5 most important thing. From that time, '85 to 2009,  
6 during that 24-year history, not a single time did she  
7 go to the doctor complaining specifically for the  
8 primary complaint of neck or back pain. Not once.

9           Their doctors will say, well, maybe this or  
10 maybe that. Well, the fact of the matter is she went  
11 for everything else. She had four foot surgeries  
12 during that period of time. She had some issues, woman  
13 issues during that time. She had other issues during  
14 that time. So she's not just toughing it out for 24  
15 years. She's seeing doctors. They want you to focus  
16 on that.

17           So regarding the playing field, okay, what  
18 was Margie like before the accident happens? What is  
19 she like after? I -- we -- Margie -- the evidence will  
20 show all of these people will come in and they'll talk  
21 about the things that she's been through after the  
22 accident. And they'll also talk to you about how not  
23 once, not once did they see her complaining of neck  
24 pain or being unable to do things, having her  
25 activities of daily living restricted because of neck

1 and back pain. Not once.

2 And just to give you an idea of who these  
3 folks are, they're members of the community. Here  
4 we've got a lawyer, a defense lawyer, the evidence will  
5 show, just like Mr. Jaffe. This is his wife. Here's a  
6 kindergarten teacher. Here's a nurse. Here's a high  
7 schoolteacher. Here's another high schoolteacher.  
8 That's who these folks are. Members of the community.  
9 You'll hear from them. You'll hear from them. And I  
10 only put nine on there because that's all that would  
11 fit but there's more.

12 You're going to have to decide what her  
13 playing field was and you're going to have to compare  
14 it to these folks that Mr. Khoury hired and Mr. Jaffe.  
15 Compare it again. These folks to these folks.

16 So I'm getting -- I'm like right there so I  
17 got to go through this. This just demonstrates really  
18 quickly that between those major events, she had a  
19 whole bunch of other treatment. Okay. So it's not  
20 like she just had those nine events. This is all of  
21 these treatments. She had treatment after treatment  
22 after treatment after treatment, tests after tests  
23 after tests after tests. For three years this is the  
24 treatment. Imaging, surgical interventions.

25 Now, the evidence is going to show that all

1 of these surgeries that Margie had, the amount,  
2 \$433,000, \$433,000 to have a surgery at a facility like  
3 Summerlin Hospital, like St. Rose Hospital. Future  
4 damages. The evidence will show that she's going to  
5 have -- she's going to have a continued need. Just  
6 because the lawsuit ends doesn't mean that her problems  
7 are going to go away. The evidence will show and  
8 Dr. Gross will testify that she needs to have future  
9 care in the amount of \$252,000. That's what the  
10 evidence is going to show. Dr. Dinneen will talk  
11 about -- I'm like right there.

12 THE COURT: You're done.

13 MR. CLOWARD: So this is the total. This is  
14 just the hard medical expenses. I've got to be done.

15 The last thing I want to say as you keep in  
16 mind when you listen to the evidence, remember what we  
17 talked about when making decisions. And the purpose of  
18 trial is to find the truth. Thank you.

19 THE COURT: Thank you, Mr. Cloward.

20 Everybody okay for a little bit?

21 MR. JAFFE: Can we have a couple minutes so  
22 we can change things out?

23 THE COURT: Do you want to take a quick  
24 break? Let's make it a quick one. I'm going to give  
25 you just like five minutes. Let me read my admonition

1 to you.

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

17 Take five minutes.

18 THE BAILIFF: All rise.

19 THE COURT: Just so you folks know, we're  
20 probably going to go until about 5:30 tonight.

21 **(Whereupon, jury exits the courtroom.)**

22 THE COURT: We're outside the presence of the  
23 jury.

24 Did you want to make a record on anything,  
25 Mr. Jaffe?

1 MR. JAFFE: Yes, Your Honor.

2 THE COURT: Can you do it quick?

3 MR. JAFFE: Yes, sir. It's my position we're  
4 entitled to a mistrial. Mr. Cloward made a comment to  
5 the jury in his opening statement that she did not file  
6 a claim for the 1981 rollover and it was implying that  
7 there was a claim filed in this case. Well, a claim is  
8 uniquely an insurance term. And when he says, well,  
9 she didn't go and file a claim for that, the  
10 implication is that she did for this and that this is  
11 an insurance case, which is in direct violation of the  
12 law.

13 We've signed a stipulation which has been  
14 entered by the Court previously as an order that  
15 insurance is not to be mentioned. He has now violated  
16 that order. He has invoked insurance into this case.  
17 I'm asking for a mistrial, sir.

18 THE COURT: When you came up to the bench, I  
19 looked at the record. It looks like it was at 1550,  
20 the time. But you will hear from Margie and she will  
21 tell you that, yeah, in that rollover I was the  
22 passenger and I wasn't hurt. I went to the ER and the  
23 ER physicians checked me out, and then I went to a  
24 holistic doctor one or two times and then I didn't have  
25 any problems. I didn't make a claim. I didn't do

1 anything like that. I didn't have any issues with it.  
2 That's in 1981, a rollover, where she was the  
3 passenger.

4 He did mention the word claim one time. I  
5 didn't want to emphasize that to the jury because I  
6 thought that would just draw additional attention to  
7 it. The fact that it was mentioned once in passing I  
8 don't think it rises to the level of a mistrial that  
9 requires us to retry the case or pick a new jury. I  
10 don't know that they even appreciate the legal  
11 significance of the word claim but I understand your  
12 position.

13 MR. JAFFE: But especially when during voir  
14 dire when so many jurors were talking about insurance  
15 claims and insurance matters, especially early on in  
16 the voir dire, I think all it does is bring them right  
17 back to that and reemphasize that point and brings  
18 front and center that this is an insurance case.

19 Thank you, Your Honor.

20 THE COURT: I understand your position.  
21 Motion for mistrial is denied. I did tell Mr. Cloward  
22 to --

23 MR. CLOWARD: Poor choice of words.

24 THE COURT: It was a poor choice of words.  
25 He needed to stay away from that, those kind of terms,



1 and he did from then on, so.

2 MR. JAFFE: Your Honor, I would also like to  
3 ask that the parties lodge their PowerPoints, including  
4 all videos, particularly since there was an issue  
5 regarding the surgery video, as exhibits -- court  
6 exhibits so that it's preserved as part of the record.  
7 We will be happy to provide --

8 THE COURT: I would agree. I think that's a  
9 good idea.

10 MR. CLOWARD: That's fine.

11 MR. JAFFE: And also the poster boards. I  
12 would like to make sure that those get marked as  
13 exhibits and remain in the courtroom.

14 THE COURT: I'm not going to require that  
15 just because that takes up a lot of room in the vault  
16 and --

17 MR. JAFFE: Fair enough.

18 THE COURT: -- they're demonstrative.

19 MR. JAFFE: But I would like to -- then if  
20 counsel would give his word that they'll remain -- all  
21 of them will remain in the courtroom during the rest of  
22 the trial, I would like that.

23 MR. CLOWARD: Why?

24 MR. JAFFE: I will want to use a couple of  
25 those during the course of the trial.

1 MR. CLOWARD: They're mine.

2 MR. JAFFE: Two of them are from Dr. Croft.  
3 I want to use them with Dr. Croft.

4 MR. CLOWARD: Then get your own.

5 MR. JAFFE: Your Honor, he showed them to the  
6 jury as demonstrative exhibits. I'm asking that they  
7 be marked as exhibits for the Court.

8 MR. CLOWARD: Your Honor, I would be more  
9 than happy to let Mr. Jaffe use the exhibits if he'll  
10 pay half of the cost of preparation. More than happy  
11 to. Otherwise, my contention would be that it's work  
12 product and they're mine. My client paid for them.

13 MR. JAFFE: Then I would ask him to stipulate  
14 that two of these exhibits were prepared by Dr. Croft.  
15 They've got his copyright on them.

16 MR. CLOWARD: I don't have a problem with  
17 that. Not at all.

18 MR. JAFFE: Fair enough.

19 THE COURT: Okay. Take a break real quick.  
20 I'm going to give you an hour but let's be back in  
21 three minutes.

22 Off the record.

23 (Whereupon, a recess was taken.)

24 THE BAILIFF: All rise.

25 (Whereupon, jury enters the courtroom.)

1           THE COURT: Go ahead and be seated. Welcome  
2 back, folks. We are back on the record in Case No.  
3 636515.

4           Parties stipulate to the presence of the  
5 jury?

6           MR. JAFFE: Yes, sir.

7           MR. CLOWARD: Yes, Your Honor.

8           THE COURT: Mr. Jaffe, you may proceed.

9           MR. JAFFE: Thank you, Your Honor.

10          Good afternoon, ladies and gentlemen. I'm  
11 glad we're finally at the point where we can talk about  
12 this case.

13          Now, first off, I'd like to say in advance  
14 that my client and I, Mr. Smith, Greg, we thank you for  
15 the time that you're giving us and that you have given  
16 us so far and that you're about to give us because  
17 we're here because there's an issue and our system  
18 works because juries help us resolve those disputes.  
19 And there is a dispute here. It is not just one side.  
20 There are two sides just as in a coin and every other  
21 story. So we're going to talk about this case.

22          Now, this accident, it happened on March 13,  
23 2009. It happened during the midmorning, and it  
24 happened when Ray Khoury was stopped behind the  
25 plaintiff at a light. Both of them were turning right

1 on red and Ray mistakenly thought the plaintiff was  
2 turning and he let his foot off the brake and then he  
3 was focusing on traffic coming from the left. When Ray  
4 realized that she wasn't there, it was too late. Their  
5 cars contacted and he did strike the rear of her van.

6           The impact intensity was minimal and he's  
7 going to describe it as a little tap -- you'll hear  
8 from him -- and even the plaintiff described it as  
9 mild. You're going to hear that. There was an officer  
10 called to the scene who observed minor damage. And  
11 that's the accident.

12           Now, I would like to show you Ms. Seastrand's  
13 vehicle. This is her Honda Odyssey, her 2002 Honda  
14 Odyssey, and the damage was this pop in the bumper,  
15 this hole. And you're going to see -- give me the next  
16 one, Greg. It's a close-up -- a little cosmetic damage  
17 as well.

18           Next one. This is Ray Khoury's Infiniti.  
19 It's a 2007 QX56. And there's a little tow hook right  
20 there and that hook is what made the hole in the bumper  
21 because it actually sticks out a little from the  
22 bumper. Other than that, you see a little cosmetic  
23 damage around his car. That was the damage to Ray's  
24 car. Ray's car still is in that exact same condition  
25 today. So let's go to the next slide.

1           There are several undisputed facts in this  
2 lawsuit, ladies and gentlemen, and I'm going to tell  
3 you what is undisputed. First, that Ray Khoury tapped  
4 her in the back. Second, that Ray caused this  
5 accident. And third, that the plaintiff did nothing to  
6 cause this accident. All of this is undisputed -- that  
7 the vehicle sustained minimal or mild damage; that the  
8 accident was at a low impact or velocity. But that the  
9 effect of that impact is what is in dispute.

10           In addition what we're disputed -- what are  
11 not disputed facts are that -- give me the next one,  
12 Greg -- the plaintiff was injured in this accident.  
13 We're not saying she was not hurt in this accident. At  
14 no point have we said that and we are not saying that.  
15 The extent of the injuries that is in dispute and  
16 especially whether she actually needed the surgeries as  
17 a result of this.

18           The next undisputed fact is that the  
19 plaintiff did have prior neck problems, and we're going  
20 to give you the evidence. We're going to show you  
21 that. She had two significant injuries in the '80s  
22 that were talked about, and that four months before  
23 this accident she saw Dr. Behzad Kermani for what  
24 turned out to be neck problems and that's the heart  
25 issue that he talked about. I'm going to talk about

1 that in greater length, but as it turned out it was  
2 actually a neck issue.

3           The next undisputed fact is that the  
4 plaintiff admits having preexisting degenerated discs.  
5 Degeneration is a term for worn out, wear and tear.  
6 It's part of your arthritic process. It's the  
7 breakdown that we all go through. I'm going to talk  
8 about the spine and neck process in a minute.

9           The next undisputed fact is that the  
10 plaintiff also had a preexisting degeneration in her  
11 low back at the areas where she eventually had the  
12 surgery, and in the neck the degeneration was at the  
13 disc that was operated on.

14           There is a -- the plaintiff did have a  
15 single-level cervical fusion. That's not disputed.  
16 When we say cervical that refers to the neck. Your  
17 cervical spine is the -- is your neck. What the  
18 dispute, though, is whether it was due to this  
19 accident. We're going to talk about that some more.

20           The next undisputed fact is that the  
21 plaintiff had a two-level lumbar fusion. The lumbar is  
22 the term for your low back. Lumbar support in our  
23 seats -- that's your low back. So when we use that  
24 term, that's what we're talking about. She did have  
25 disc surgery, but, of course, what we're disputing is

1 whether this accident caused the need for that surgery,  
2 and you're going to hear medical evidence on that.

3           What's also undisputed is that the plaintiff  
4 is entitled to fair compensation for her injuries and  
5 damages. We're not disputing that. But what is fair  
6 is in dispute. Those are the issues, ladies and  
7 gentlemen.

8           So what is the dispute? Well, the first one  
9 is this: Was this accident of the type to produce  
10 forces sufficient to cause the injuries she's claiming,  
11 because it's not just a question of taking the property  
12 damage and equating it to the injuries. You've got to  
13 look at the forces imposed on the car and on the people  
14 to see if that is what was sufficient to produce the  
15 types of injuries that required the surgery and that's  
16 why we're here. So that's the first issue in dispute.

17           THE COURT: Hold on one second, Mr. Jaffe.

18           MR. JAFFE: Pardon me?

19           THE COURT: Can I get the attorneys to come  
20 up for one quick second.

21                           **(Whereupon, a brief discussion was**  
22                           **held at the bench.)**

23           MR. JAFFE: Thank you, Your Honor. May I  
24 continue?

25           THE COURT: You may continue.

1 MR. JAFFE: Thank you.

2 So the second is were they insufficient to  
3 produce the injury or were they as violent as the  
4 plaintiff is going to suggest to you and assert that  
5 they were?

6 The next issue that's in dispute is whether  
7 her spinal fusions were a product of her past, or did  
8 this mild tap cause the need for her surgeries.

9 The next issue in dispute was was her  
10 lifestyle minimally upset or was it completely altered.  
11 And then should the plaintiff be appropriately  
12 compensated with a multimillion dollar in the end or  
13 should she get a fair verdict?

14 Now, you're going to hear from Ray Khoury in  
15 this case and, you know, something was just made early  
16 on about the fact that in our answer we denied  
17 liability. I was hired to represent Ray in June 2011.  
18 We had to file a pleading called an answer. We filed  
19 the answer and we did deny liability in there. There's  
20 no dispute about that. But what you're going to hear  
21 is in that same year when discovery took place and we  
22 now started learning about the accident and everything,  
23 Ray admitted liability. He admitted in every answer  
24 that he did. He admitted in his deposition under oath  
25 he did, and at no time has he not. We then corrected,



1 this past week, our answer to reflect the fact that,  
2 consistent with what Ray has said all along, we are  
3 admitting liability. That's the issue. I'm not going  
4 beyond that. If they want to argue more, they can.

5           What's going -- what you're going to hear and  
6 what Ray is going to testify to is that he admits  
7 fault. He's admitted fault all along and continues to.  
8 That he was waiting to turn right on red behind the  
9 plaintiff; that he thought that the light turned green  
10 and he took his eye off the plaintiff; and that he  
11 looked left thinking she had turned. He took his foot  
12 off the brake and rolled into her.

13           We're a little too big to cover the screen.  
14 He never applied his gas. Keep going. He was moving  
15 slowly at no more than 5 to 10 miles per hour. He  
16 realized then that the plaintiff was still in front of  
17 him. So he tried to brake but he was unable to stop,  
18 and then he contacted her bumper with what he will  
19 describe as a little tap.

20           He got out of the car and inspected the  
21 vehicles and the damage and thought that they were very  
22 minimal so he approached the plaintiff to check to see  
23 if she was okay. She never said if she was hurt or  
24 not.

25           Metro -- the fire department and EMTs were

1 all called to the scene. We're not sure if it was by  
2 the plaintiff or by her husband, but she was then taken  
3 from the scene by ambulance. And Ray was concerned  
4 based upon the extent of the damages that why was she  
5 being taken from the scene by an ambulance and why was  
6 she complaining about how seriously she was hurt? So  
7 he decided to start -- take out his phone and take  
8 photos of the vehicles as proof of the damage and for  
9 his own peace of mind he's going to tell you. Like I  
10 said, his car has never been repaired and Ray was not  
11 hurt in this accident.

12           Plaintiff was taken to MountainView Hospital.  
13 And on that same day, March 13, 2009, she reported a  
14 low-velocity impact and mild damage. The medical  
15 records are not yet in evidence. We're going to move  
16 them into evidence. But it's indicated on there that  
17 she and her husband as historians reported a  
18 low-velocity impact which resulted in mild damage and  
19 that they estimated the speed of the other vehicle at  
20 10 miles per hour. That's what they reported to the  
21 emergency room on the day of the accident.

22           But then over time her version changed. And  
23 about a week later she -- in fact, it was just a week  
24 later she goes to see Dr. Benjamin Lurie, a  
25 chiropractor, and told him that she was pushed forward

1 more than a little and that she was moderately jolted  
2 and dazed as a result of this accident.

3 And a few months later she was referred to a  
4 Dr. Russell Shah, a local neurologist. On December 10,  
5 2009, he told -- she told him that she heard tires  
6 screeching while she was stopped; that she was suddenly  
7 rear-ended, jerked front to back; that it was a big  
8 jolt onto her car; that she was shaken up; and that  
9 she needed assistance from paramedics to exit the  
10 vehicle. And it's all on the record. You're going to  
11 see it from -- as time goes on.

12 But then she was deposed in this case. And a  
13 deposition is where the parties get the opportunity to  
14 bring in a court reporter and ask questions of the  
15 other parties and other witnesses, experts, doctors.  
16 And she came to my office and she was deposed. She was  
17 placed under oath. And the testimony can be used in  
18 court as well because a deposition testimony is the  
19 same as if you were testifying in court under oath.  
20 But we have the right, if we want, to videotape the  
21 depositions and we did so that we can actually show you  
22 the clip of her testimony. So this was the testimony  
23 that she gave in her deposition.

24 (Whereupon, video was played.)

25 So the evidence is going to show that from

1 when this first started out as a mild, low-velocity  
2 bump, it's now this moderate to heavy jolt where she's  
3 thrown and whipped forward and back. But then she also  
4 testified, despite the fact that she told Dr. Shah that  
5 she heard screeching tires while she was stopped, this  
6 is what she told me under oath.

7 (Whereupon, video was played.)

8 And that was her testimony under oath. She  
9 will also testify that she refused to roll the window  
10 down to speak to my client, mouthing to him, I'm sorry.  
11 I can't talk. I'm hurting. And then she called her  
12 husband who told her that if she was hurting, to call  
13 the police. The police came. She will testify that  
14 the officer was mean and rude to her, and that she told  
15 him, I don't care what you think. I am hurting really  
16 bad and I have got to get out of this pain. Take me to  
17 the hospital.

18 Now, she was taken from the scene by a  
19 stretcher. And that's why we now have to look at this  
20 accident and determine were the forces sufficient to  
21 have produced the response and the claim for the extent  
22 of the injuries that the plaintiff is alleging? And  
23 that's why we've hired these experts in this case.

24 Now, Mr. Cloward just talked to you about  
25 Dr. Croft and you're going to hear from him, but you're

1 also going to hear from Dr. Harry Smith. And Dr. Smith  
2 is going to explain to you why this accident could not  
3 have produced the forces necessary to, excuse me, to  
4 produce the claimed injuries and especially the need  
5 for the surgeries. Dr. Croft will certainly try to  
6 convince you otherwise but let me introduce you to  
7 Dr. Smith.

8 Dr. Smith is a -- he's a medical doctor and a  
9 Ph.D. He's an expert in biomechanical engineering. He  
10 is board-certified in radiology. He is board-certified  
11 in nuclear medicine. He is a medical doctor in the  
12 state of Texas.

13 He graduated from the University of Texas  
14 Medical School. He has a Ph.D. in nuclear engineering,  
15 a master's degree in civil engineering, and a  
16 bachelor's degree in civil engineering both from -- the  
17 last two are from Michigan State, the doctorate from  
18 Texas A&M. He is a diplomate of the American Board of  
19 Radiology. He's a diplomate of the American Board of  
20 Nuclear Medicine. He's a member of the Texas State  
21 Board of Medical Examiners. He's a retired lieutenant  
22 colonel from the U.S. Army Reserve.

23 He's authored about 50 publications and  
24 coauthored the two seminal articles on human  
25 biomechanical responses to low velocity rear-end

1 collisions that were published by the Society of  
2 Automotive Engineers, the premier society in the  
3 country for automotive engineering.

4 MR. CLOWARD: Your Honor, I'm just going to  
5 object. That's argumentative.

6 MR. JAFFE: He's going to testify to that.  
7 That's what the evidence will show, Your Honor.

8 THE COURT: We'll have to see. Overruled.

9 MR. JAFFE: Thank you, Your Honor.

10 You will hear that he conducts biomechanical  
11 studies for NASA and for the U.S. military. He's  
12 received numerous prestigious awards and honors.

13 And you're going to hear that Dr. Smith  
14 inspected both vehicles. He reviewed all relevant  
15 depositions and all medical records and all necessary  
16 legal documents. He calculated the forces which are --  
17 which would include the force transferred during the  
18 accident, the forces absorbed by the van -- because  
19 what happens is when there's an impact, there's a lot  
20 of force absorption built into the vehicle be it in the  
21 chassis, be it in the seats, be it in the supports, the  
22 bumpers, everything so that when you're hit, part of  
23 the vehicle absorbs the forces before it gets to the  
24 body.

25 And what Dr. Smith is going to tell you is

1 that the remaining forces experienced by the plaintiff  
2 were insufficient to have produced the physical  
3 response she's alleging. So he's going to tell you  
4 that when the plaintiff was in this accident, the  
5 resultant force to her was less than 3 Gs of force.  
6 And to put that into everyday experience, he will tell  
7 you that daily activities in all of our regular  
8 lifestyle produce forces on us anywhere from 1 to 8 Gs.

9           He's going to tell you that the accident  
10 produced a minor acceleration on her and that the  
11 forces were far below the threshold level for spinal  
12 injuries; that the imaging studies were inconsistent  
13 with the pattern of injury and as a board-certified  
14 radiologist he can look at those imaging studies; and  
15 that the accident did not cause her physical condition  
16 to the point that she needed surgery. Now, that's what  
17 Dr. Smith is going to testify to.

18           You're going to hear from the plaintiff's  
19 expert, Dr. Croft, who, by the way, was not hired in  
20 response to Dr. Smith but was hired at the same time  
21 and wrote his report concurrently so that both of them  
22 served their reports at the same time.

23           Now, Dr. Croft is a chiropractor and he has a  
24 bachelor's from Southern California University Health  
25 Science. That's a chiropractic school, by the way.

1 That's not USC, because some people do get the two  
2 confused. He has two master's degrees from the  
3 University of Bridgepoint and from Loma Linda. And he,  
4 in 2001, started an online program at Walden's school  
5 for epidemiological studies which he still hasn't  
6 completed 12 years later. And so he'll -- he lists on  
7 all of his documents that he's a candidate for a Ph.D.  
8 in that but he still hasn't finished it. He does not  
9 have any engineering degrees. He is licensed as a  
10 chiropractor in California.

11 He lists on his CV that in 1991 he got an  
12 Emmy nomination for *Whiplash* in the best performer  
13 category. I'm not sure what that means. But that he  
14 has hundreds of publications except mostly for  
15 chiropractic magazines and publications. Several of  
16 his books are written but they're published by the  
17 Spine Research Institute of San Diego which is  
18 something that he owns 100 percent so they're  
19 self-published. It's not like the Society of  
20 Automotive Engineers. And that he stopped doing crash  
21 testing seven years ago.

22 What he's going to tell you is that he did  
23 review some things as well except what he reviewed were  
24 the records only from after the accident. He looked at  
25 one medical record prior to the accident from



1 September 2004 at Summerlin Hospital, nothing else. He  
2 did inspect the vehicles and he performed a computer  
3 crash analysis.

4           What you're going to hear is that he  
5 inspected the vehicles at the exact same time as  
6 Dr. Smith. They both went together so that they could  
7 both see the vehicles at the exact same time and do  
8 whatever testing, measurements, photographs, whatever  
9 they needed to do to do their studies, and he was able  
10 to do his biomechanical study and analysis.

11           But what he did not review is also important.  
12 What Dr. Croft did not review is the remainder of the  
13 plaintiff's pre-accident records, any of the  
14 depositions, any expert reports except for Dr. Smith's,  
15 or any other legal documents from this lawsuit.

16           And what he's going to attempt to convince  
17 you of is that this accident produced, to the  
18 plaintiff's head, between 14.1 and 25.1 Gs. He's going  
19 to try to convince you that this accident produced  
20 between 18 and 19.5 Gs in the low back and that the  
21 surgeries were caused by the accident.

22           Now, Dr. Smith -- because the experts have  
23 an opportunity to then rebut each other and comment  
24 back about what they agree with, disagree with, and  
25 why. So Dr. Smith rebutted what Dr. Croft said, to

1 point out certain mistakes made by Dr. Croft.

2           For example, that he failed to follow the  
3 computer crash analysis guidelines and that by failing  
4 to do that, he produced an inordinately and drastically  
5 inflated force result.

6           Because what he's going to tell you about is  
7 that this particular program called PC-Crash or MADYMO  
8 has a default setting of a certain amount of time  
9 presuming that there's contact between the head or the  
10 body and the back of the vehicle as a result of the  
11 force. And the longer the amount of time, the less the  
12 force. The shorter the amount of time, the more force.  
13 And he put in, I believe it was, 13 milliseconds when  
14 the guidelines say that you're supposed to use between  
15 60 and 130 and that they suggest using 100  
16 milliseconds. Well, when you use the 13, that's why  
17 you get all of these excessive forces.

18           So what Dr. Smith is going to tell you is  
19 that the forces found by Dr. Croft to exist are as many  
20 as three times the forces experienced in recent plane  
21 crash experiments by occupants in a plane crash, and  
22 that he's going to analyze the videos of the crash, but  
23 that 25 Gs would have resulted in a broken driver's  
24 seat. And for 25 Gs to have occurred, she would have  
25 had to driven backwards into a cement wall at 55 miles

1 per hour. That's what it takes to produce the forces  
2 Dr. Croft found to exist because he failed to use the  
3 right settings.

4           He's also going to point to the fact that  
5 Dr. Croft failed to consider crash test data on Honda  
6 Odysseys. He's going to point to the fact that he  
7 misinterpreted radiologic analysis and that there are  
8 flawed assumptions regarding Ray Khoury's bumper  
9 producing unreasonably higher speed estimates.  
10 Dr. Smith will go through all of that with you and all  
11 of the flaws in Dr. Croft's analysis.

12           So what it comes down to is this: The burden  
13 of proof. And counsel talked to it. It's the scales  
14 of justice. It's the two plates standing there and  
15 we're going to suggest to you that when this is all  
16 said and done, ladies and gentlemen, after you've heard  
17 all the evidence, the plaintiff does not meet the  
18 burden of proof. They do not meet the burden of  
19 showing you that this accident could reasonably have  
20 caused the injuries that the plaintiff claims, that the  
21 evidence will show insufficient forces, and that they  
22 will show that her perceptions are unrealistic.

23           Now, I talked a little bit about the  
24 injuries. She was originally claiming headaches.  
25 Obviously that wasn't even discussed so we're not even

1 going to talk about that. That's out. We're talking  
2 about the neck and the low back, cervical and the  
3 lumbar spine.

4           Let me talk to you for a minute about the  
5 spine. The -- and counsel had his spine model. But  
6 the spine is a fascinating thing. It's our central  
7 nervous system. The way our central nervous system  
8 works is this: You've got two key elements, the brain  
9 and the spinal cord. And the spinal cord comes down  
10 from the brain and what it is is the spinal cord is a  
11 thick bundle of nerve roots that come out of our brain  
12 to go to the various different parts of our body. The  
13 purpose of nerve roots are to transmit information so  
14 that when you want to stomp your foot, your brain is  
15 sending communications through those nerves that  
16 control the foot to stomp the foot. That is a  
17 voluntary movement.

18           Involuntary responses are, for example, if  
19 you happen to put your hand on a hot stove and you  
20 don't realize it. What is actually happening is that  
21 the nerve roots in your hand are telling the brain I'm  
22 touching something hot. We're in danger. So that the  
23 signals transmit up your arm through the spinal cord to  
24 your brain all instantaneously and that's an  
25 involuntary response so that the brain removes the hand

1 from the hot stove.

2           Now, how does that all work? Well, the  
3 spinal cord comes down through the middle of our spine  
4 and surrounding that is a sac of -- sort of a sheath  
5 called the dura. And the dura is sort of a thick  
6 tissue and inside all of that is what's called  
7 cerebrospinal fluid.

8           So for anybody whose ever had a spinal tap,  
9 what's actually happening is they're actually  
10 puncturing your dura to withdraw spinal fluid that is a  
11 buffer and it protects the brain and the spinal cord  
12 and that's the -- that's what a spinal tap is. And  
13 that water content, that fluid actually acts as a  
14 buffer for the spinal cord to protect it. Our whole  
15 spine is built to protect that spinal cord and our  
16 central nervous system just as our skull is. Our skull  
17 is the thickest bone -- some of the thickest bone in  
18 the body to protect our central nervous system.

19           What happens is that at each different level  
20 all these vertebrae, a nerve root comes out at each  
21 side so that it will transmit -- it goes through a  
22 piece of the bone called the lateral recesses and  
23 there's like a groove in there and it goes out on each  
24 side through a hole called the neural foramen, and it  
25 then goes into the various parts of our body so we're

1 all hardwired the same way.

2           Typically what will happen is if you go to a  
3 doctor, sort of like Mr. Cloward suggested earlier, and  
4 complain, I've got numbness in my pinkey, they'll say  
5 okay, typically numbness is a neurologic response.  
6 Because what happens is this: When a nerve is  
7 compromised, it tells us -- it tells our brain I'm  
8 compromised. It's sort of like stepping on a garden  
9 hose so that the water isn't going out. It's pinched  
10 somewhere.

11           If anybody has ever woken up in the middle of  
12 the night with your arm asleep and you have that pins  
13 and needles feeling and the tingling, what's actually  
14 happening is you're sleeping in an uncomfortable  
15 position where your bone is pinching on the nerve, and  
16 the nerve is sending the image to the brain, move, I  
17 can't work. And it wakes you up and you move, shake  
18 your hand, 30 seconds later it clears up. You're fine.

19           So, for example, at all the different levels,  
20 and we have C1 through 8 -- through 7. We have seven  
21 vertebrae even though we actually have an eighth nerve  
22 root, and then you have T1 through 12. T for thoracic,  
23 C for cervical, T for thoracic and we have 12 and those  
24 are actually the vertebrae that are in our rib cage  
25 protecting the internal organs. And then you've got L1

1 down through L5 and then the S1 is the sacral, your  
2 pelvis.

3           So what happens is this: If say, for  
4 example, you've got numbness in your thumb, they're  
5 going to say, okay, that's something along the line of  
6 the C6 nerve root because C6 comes out and it goes  
7 through your bicep into your arm, down to the finger  
8 and your thumb and your finger. C7 controls these  
9 fingers and C8 from here.

10           So what will happen is we try to find out  
11 where and why you've got that symptom, why you've got  
12 that problem. Because it could very well be if you  
13 ever had carpal tunnel syndrome that actually the nerve  
14 is being pinched somewhere in your nerve. It could be  
15 ulnar neuropathy. It could be somewhere in your elbow.  
16 It could be somewhere up here, and they try to figure  
17 out where the problem is.

18           So then if it comes back to the spine, they  
19 look at a few things and there's a couple of ways you  
20 can look. You can look at what's called your facet  
21 joints, which are sort of like a knuckle joint and that  
22 is basically the joint that holds the vertebrae  
23 together to each other. It allows us to bend backwards  
24 and forwards, side to side. There are two in the back,  
25 one on each side, and at each vertebral level.

1           If it's the disc, that can be from a  
2 different series of issues because the disc, like  
3 Mr. Cloward said, is -- it's sort of like a stale jelly  
4 doughnut. Its got this thick gelatinous material  
5 inside called nucleus pulposus and it's surrounded by a  
6 thin fibrous layer called the annulus, and it's a whole  
7 series of different fibers. It's not just one piece of  
8 paper like you can shred and tear. So that sometimes  
9 if you've got tears in the disc, it's only partial like  
10 a few of the layers.

11           And that can happen a lot of different ways  
12 because what the whole purpose of the disc is is to  
13 protect the bones from collapsing in on each other.  
14 And when you bend your neck because the discs are  
15 actually in the front of your spine and the spine goes  
16 through the back -- the spinal cord goes through the  
17 back, when you bend your neck, you're actually  
18 compressing that disc, sort of like a squishy ball, and  
19 then when you move back into position, it releases and  
20 the disc returns to position.

21           The problem is all of us get old and as we  
22 get old, our discs start to dry out. They start to  
23 break down and it's part of the whole degenerative  
24 process. That is degeneration. And there's a lot of  
25 different ways you can find it.



1           For example, one of the ways is on an MRI.  
2 And Dr. Villablanca, when he's here, he's going to  
3 explain it to you. Because the way you can tell if a  
4 disc is breaking down is it starts showing dark. And  
5 what an MRI is is just a machine where it's just a  
6 magnet and it repositions all of your water content,  
7 measures it, and puts it back. And if it comes out  
8 dark, that means there's little water, light there's a  
9 lot of water. And when you look at an MRI and you see  
10 the discs that are dark, you know that they've lost  
11 their water content. They're drying out. That's a  
12 process called desiccation. What will happen is the  
13 disc will shrink.

14           So sometimes on an x-ray you can see  
15 degeneration in the form of the vertebrae actually  
16 collapsing and closer because there's less water  
17 content in the discs to keep the vertebrae apart. And  
18 that is why if you've ever heard of people saying that  
19 as they've gotten older they've lost an inch, an inch  
20 and a half in their height, what's happened is your  
21 vertebrae have dried out, the spaces have collapsed and  
22 all your disc space is where it's happened. Maybe an  
23 eighth of an inch, a sixteenth of an inch, a tiny  
24 amount so you've lost an inch in height over time just  
25 from that collapse. That's degeneration.

1 But there's another form as well and it's  
2 called an osteophyte. Osteophyte is a medical term for  
3 a bone spur. What will happen is the body as a  
4 response to the breakdown of the discs will form spurs  
5 to try and preserve that space. So when you see bone  
6 spurs or these osteophytes, that's a sign that there's  
7 a compromise to the disc, something is wrong with that  
8 disc. And that's the way we all work. That's all of  
9 our spines.

10 Now, this is the lumbar spine. It's the five  
11 bones with the discs there. This is the cervical  
12 spine. C1 and C2 is -- C1 is actually the base of the  
13 head. C2 -- it's actually kind of a different process  
14 than the rest. It's a male/female system so that your  
15 head sits on a post. That's how we rotate our heads.  
16 And it rotates -- it's called the odontoid process.  
17 All the rest are mobile for bending.

18 That's important and here's why: Now, the  
19 plaintiff had spinal injuries from a rollover in 1981  
20 when she went down an embankment and she will admit she  
21 injured her neck, her low back, and her midback.

22 She was in another 1985 head-on collision  
23 that injured her neck, midback, and low back. She  
24 admits that both accidents --

25 MR. CLOWARD: Your Honor, may we approach?

1 Take the slide down.

2                   **(Whereupon, a brief discussion was**  
3                   **held at the bench.)**

4           MR. JAFFE: We will produce evidence showing  
5 that she admitted that both accidents resulted in  
6 significant cervical spinal injury. We will produce  
7 evidence showing that she admits having prior cervical  
8 degenerative disc disease. And it's -- you will see it  
9 from a medical record at the hospital where she made  
10 that comment and that is important.

11               We will produce evidence showing she admitted  
12 ongoing head, neck, and low back pain intermittently  
13 prior to this accident. Two to three times per month,  
14 three to four times per month. You will see it in a  
15 record from Dr. Benjamin Lurie, who she saw one week  
16 after the accident where she told him she described  
17 having intermittent neck pain two to three times per  
18 month and low back pain, I'm sorry, one to two times  
19 per month.

20               She will -- we will produce evidence showing  
21 that she saw a doctor for what turned out to be  
22 cervical spine symptoms four months before the  
23 accident. And on October 27, 2008, she went to see  
24 Dr. Kermani. And in this medical record she reported  
25 numbness and tingling bilaterally down both arms and

1 the pain shooting down her left arm; however, she had  
2 no numbness bilaterally and that he ordered a cervical  
3 spine x-ray.

4           Now, she went in that day thinking she was  
5 having a heart problem but Dr. Kermani immediately  
6 eliminated the heart as the source of her symptoms  
7 because of the lack of cardiac symptoms that were  
8 present. So he turned to the next thing which was the  
9 neck. And like I mentioned to you, when the nerves are  
10 compromised at the -- in your neck, you can produce  
11 various symptoms going down. So, for example, one of  
12 them can be pain shooting down your arm to your  
13 fingers, it can be numbness, it can be tingling. These  
14 are all signs and they were there four months  
15 beforehand.

16           So he sent her for an x-ray which showed --  
17 and this is a typo on the report spondylotic. It  
18 should be spondylotic changes. Spondylotic is the  
19 medical term for degeneration. They found degenerative  
20 changes at C5-6. There was an osteophyte there  
21 indicating that there was a problem with the disc at  
22 C5-6. And that is the disc that Dr. Muir eventually  
23 operated on and fused. It was a problem disc four  
24 months before this accident producing symptoms. It was  
25 not a cardiac-related issue.

1           So Dr. Pablo Villablanca, part of this  
2 defense team -- well, let me tell you about Dr. Pablo  
3 Villablanca. Dr. Villablanca is a graduate of the  
4 University Minnesota Medical School after getting his  
5 bachelor's at UCLA. He then did an internship at UCLA.  
6 He then did a diagnostic radiology residency which is  
7 an important opportunity at UCLA, which is a four-year  
8 diagnostic radiology learning period. Then another  
9 three-year fellowship, which is very, very difficult to  
10 get at UCLA, in neuroradiology for three years.

11           Now, Dr. Villablanca is not just a  
12 neuroradiologist. He's what's called an interventional  
13 neuroradiologist. Dr. Villablanca -- let's go -- he is  
14 board-certified in neuroradiology from UCLA School of  
15 Medicine. He's the Chief of Diagnostic Neuroradiology  
16 at UCLA. He's the director of their interventional  
17 spine program, the medical director for their magnetic  
18 resonance imaging. He's a professor of radiology. He  
19 has been -- he's given over 100 professional lectures.

20           Next. He's received numerous fellowships,  
21 grants, and studies in everything from strokes to brain  
22 aneurysms, dementia, the spine and the central nervous  
23 system, memory.

24           He's been published nearly 200 times on the  
25 MRIs of the brain and the spine. Come on. He's got

1 several societies and committees. Give me more.

2           He reviewed all of her films. Now, as an  
3 interventional radiologist what that means is this: He  
4 doesn't just sit in a dark room looking at pictures all  
5 day long. He actually works with the patients. He  
6 actually performs procedures on them and meets with  
7 them and talks with them so that he can talk about  
8 their symptoms, their experiences, and correlate them  
9 with the films to say, does this match up. This is not  
10 just a radiologist. He is a very specialized  
11 radiologist and the chief of neuroradiology at UCLA  
12 Medical Center.

13           He will tell you that there was no change in  
14 the condition of her neck; that preexisting  
15 degeneration from what was there four months before was  
16 unchanged; that he reviewed the x-rays, which showed  
17 disc space narrowing because the disc was drying out so  
18 it was already collapsing; and that -- he'll tell you  
19 that takes years. That doesn't just take a week, a  
20 month, or an accident. That takes years.

21           And that he reviewed the MRI from three weeks  
22 after the accident. And that based on that MRI it  
23 showed disc, bone, and joint degeneration, wear and  
24 tear. He'll tell you that there was no compression on  
25 the spinal cord, which is what we're always concerned

1 about, because a spinal cord injury is always what you  
2 want to look for the most. He's going to show you that  
3 there was moderate degeneration at C5-6 and he's going  
4 to show you on the films. He's going to point it out  
5 to you so you can see it. And that the films failed to  
6 connect the surgery to the car accident.

7           Let's move to Dr. Siegler, another expert we  
8 hired. Well, Dr. Siegler is a local physician who  
9 spends the overwhelming majority of his time treating  
10 patients, not reviewing records and being a doctor who  
11 comes in to testify. He's a local treating doctor but  
12 he's board-certified. He's a physician called a  
13 physiatrist. A physiatrist is a doctor who specializes  
14 in physical medicine and rehabilitation. And that's  
15 what John Siegler is.

16           He went to Northern Western University, a  
17 very prestigious medical school; that he reviewed all  
18 the prior medical records. He focused on the 10/27/08  
19 incident, this treatment, and he -- the critical  
20 diagnostic findings; and that the initial cardiac  
21 concerns were eliminated by the treating doctor.

22           And what Dr. Siegler is also going to tell  
23 you is that the symptoms are most likely coming from a  
24 cervical disc process back in October 2008 emanating  
25 from C5-6 where she had her surgery; that there was

1 disc space narrowing; that there were osteophytes,  
2 these bone spurs; and that there was spondylosis  
3 degeneration that the radiologist found to exist back  
4 then; that there was an incomplete workup and there  
5 needed more investigation but none more was done.

6           John Siegler will also admit that the  
7 plaintiff was injured. He will say that she had an  
8 exacerbation of her cervical pain; that her  
9 chiropractic care was reasonable; and that her referral  
10 to pain management was reasonable up until that point  
11 because pain management -- pain management is actually  
12 two things. It's the ability to try and control the  
13 pain.

14           And if anybody has been to a pain management  
15 expert -- there's a number of them around town -- they  
16 try to control pain but they also try to diagnose pain  
17 and what's causing the pain and that there's a lot of  
18 ways to go about doing it. So they have a lot of  
19 injections available so you can try and make very  
20 pointed injections at the nerve roots and if the pain  
21 goes away, now you know you've got something there.

22           You can do it right into the facet joint,  
23 those little knuckle joint that connect the bone. If  
24 the pain goes away then, now you know that maybe the  
25 facets are producing the pain. You can do other types



1 of injections called an epidural. Anybody whose been  
2 through labor or a husband who has been through  
3 watching a wife in labor knows epidurals take away the  
4 pain. Because what an epidural does is it just coats  
5 the area with anesthetic to reduce the pain. That is  
6 a -- what's called a palliative treatment, not a  
7 diagnostic. Palliative meaning to remove the pain and  
8 try and just reduce the symptoms but it has no  
9 diagnostic value.

10 So she was referred for pain management and  
11 what Dr. Siegler is going to tell you that Dr. Belsky,  
12 who was the treating pain management doctor, performed  
13 more care than was reasonable; that -- and he's going  
14 to explain it. I got to move along here.

15 The plaintiff was treated by Dr. William  
16 Muir. That was her spine surgeon who operated on her  
17 neck. On January 25, 2010, he performed the  
18 single-level fusion and the plaintiff reported a  
19 90 percent overall improvement as a result of that  
20 surgery. Dr. Muir relates it to this accident but what  
21 Dr. Muir never reviewed is important because Dr. Muir  
22 never reviewed her deposition. He never reviewed the  
23 defense expert reports so he's not going to comment on  
24 those. He never reviewed the medical records predating  
25 the accident, especially the key ones from

1 October 2008. He never knew about those. He never saw  
2 those. And he agreed that the plaintiff had prior  
3 degeneration in her neck because the osteophytes and  
4 the dessication, all of that, took a long time.  
5 Dr. Muir will agree with all that even though he  
6 relates this disc problem to the accident. Dr. Muir  
7 never knew about October 2008.

8           So who knew about October 2008 and who  
9 didn't? Well, Dr. Smith knew about it, Dr. Villablanca  
10 did, Dr. Siegler did, Dr. Schifini did. Dr. Gross did  
11 but Dr. Gross wrote three reports in this case. He  
12 didn't know about it when he wrote his first report.  
13 He didn't know about it when he wrote his second  
14 report, but his third report rebutting one of our  
15 experts or a couple of our experts, now he finally got  
16 it. But who never got it? Dr. Muir, Dr. Croft,  
17 Dr. Khavkin, Dr. Belsky, and actually Dr. Grover never  
18 got it either. None of them knew about the  
19 October 2008 problem.

20           So, ladies and gentlemen, we're going to  
21 produce the evidence and argue to you that this  
22 cervical fusion had nothing to do with the accident.  
23 It was due to ongoing symptoms for several years and  
24 that there were increase in symptoms from C5-6 only  
25 four and a half months before the accident confirmed by

1 the x-ray and by the symptoms being consistent with a  
2 disc problem and the reports of degeneration to the  
3 emergency room.

4           Turning briefly to the low back,  
5 Dr. Villablanca will also tell you that he reviewed the  
6 plaintiff's films and all of her medical records. He  
7 reviewed the MRI three weeks after the accident and  
8 that the two discs showed early signs of degeneration  
9 on that MRI; that there were no disc herniations  
10 present; and that there was a repeat MRI on 10/13/09  
11 confirming the earlier one, but there were no further  
12 preoperative films.

13           Now, the plaintiff did have a discogram in  
14 the low back and counsel was talking about this with  
15 internal disc disruption. I will talk about internal  
16 disc disruption in a minute. But she never had a  
17 discogram on her neck. Never had one at all.

18           What internal disc disruption is, it's a very  
19 broad term to sort of -- as kind of a catchall  
20 explanation for something wrong with a disc. It can be  
21 anything from just due to wear and tear, cracks and  
22 breakdown of some of those fibers in the annulus, to a  
23 variety of different things.

24           Internal disc disruption cannot be clinically  
25 or in the office diagnosed. You need some sort of

1 confirmation. So the speculation is that there was an  
2 internal disc disruption, but I don't think anybody is  
3 going to really argue the fact there was a problem with  
4 the disc because of the fact that that osteophyte was  
5 there in October 2008 and the only reason that  
6 osteophyte would come about is because of breakdown in  
7 the disc shown four and a half months before this  
8 accident.

9           He's going to go through more on the low  
10 back, tell you that the indications of the need for  
11 surgery were not due to this accident. And  
12 Dr. Villablanca will go through those films and explain  
13 that to you.

14           Dr. Siegler, the physiatrist, will also --  
15 we're missing a line in there. There we go. That  
16 there was likely an increase in her prior back pain as  
17 a result of this accident but that Dr. Belsky's care  
18 was either unreasonable or problematic.

19           I'll explain why. She gave simultaneous  
20 epidural and facet injections and that's unacceptable  
21 and here's why. Those are the injections I was just  
22 talking about a moment ago. The epidural just covers  
23 the whole area with anesthetic. A facet injection is a  
24 diagnostic injection to specifically try and determine  
25 if the facets are a pain generator. And the problem is

1 that when you do them at the same time, all that  
2 medication, that anesthetic from the epidural, covers  
3 the whole area and it eliminates the diagnostic value  
4 of the facet injection so there's no need to do it for  
5 that diagnosis if you're going to cover the area with  
6 the epidural. So Dr. Siegler is going to tell you he's  
7 critical of that.

8           The second thing -- okay. Because the  
9 epidural -- okay. That's what I just said. There were  
10 also technical errors invalidating the discogram that  
11 was done. And the technical error is because she was  
12 given too much medication.

13           The whole point of a discogram is this: The  
14 theory behind a discogram is that they will inject dye  
15 into the discs. And it has to be done -- what they do  
16 is they put the patient out lightly so you can place  
17 the needles into the discs and then they hook up a  
18 machine to inject some dye into it and then they wake  
19 the patient up and ask does this represent the pain  
20 that you would normally experience? And if the patient  
21 says, yes, then theoretically that is a disc that is --  
22 it's a positive discogram saying that the person has a  
23 bad disc there and that's what's causing the pain. If  
24 they report different types of pain or no pain, then  
25 you've eliminated that disc as the source of the pain

1 you're normally experiencing, so that's how a discogram  
2 works.

3           The whole key to it is that you have to be  
4 awake for it. She was given so much medication, she  
5 was out cold. She was out cold for that procedure. So  
6 Dr. Siegler will explain that to you and explain how  
7 that discogram is problematic and that the technical  
8 errors invalidated it.

9           And the real problem is one of the procedures  
10 she had, this plasma disc decompression, it relies on a  
11 positive discogram. That is the basis for doing that  
12 procedure. So if the discogram is flawed, there's no  
13 reason to do that, but they still went ahead and did it  
14 anyway.

15           Now, Dr. Muir ordered the discogram. He then  
16 recommended the plasma disc decompression. That was  
17 performed on September 16, 2009. It actually ended up  
18 making the plaintiff worse so he then recommended a  
19 two-level fusion. We'll discuss Dr. Muir. You're  
20 going to hear that Dr. Muir does quite a lot of work  
21 for plaintiffs in town. He testifies for them  
22 regularly. He's testified recently for Mr. Cloward and  
23 Mr. Harris' office in another trial. He goes to dinner  
24 twice a month with Mr. Harris. There's quite a tie  
25 there.

1           So you're then going to hear about  
2 Dr. Khavkin, Dr. Yevgeniy Khavkin. The plaintiff  
3 wanted a second opinion so she went to see him, and he  
4 offered a less complex surgery because what Dr. Muir  
5 was talking about doing was putting a rod in her spine  
6 and she didn't like that idea, went for a second  
7 opinion. Dr. Khavkin offered her something less  
8 complex. That was performed on May 12, 2010.

9           But afterwards the plaintiff three months  
10 later reinjured her back and she reinjured it when she  
11 was trying to pick up a child. And five weeks later  
12 when she went back to see Dr. Khavkin, she was still  
13 complaining of pain in her lower back and over her  
14 buttocks so she now did something to bother that area.  
15 But she went back to him for that.

16           Now, since seeing Dr. Khavkin, in the last  
17 few years, she's only had to go back a few times. She  
18 went back for a follow-up January 14, 2011, but then  
19 there was a five-month gap without being seen, another  
20 six-month gap without being seen, a nine-month gap  
21 without being seen. She then went back a couple more  
22 times but those were for different reasons. Some new  
23 discs in the neck that had absolutely nothing to do  
24 with this accident. And then she was last seen, her  
25 last reported medical visit of any type was on

1 January 15, 2013. That was the last reported visit  
2 with any doctor.

3 Now, the plaintiff is going to bring in  
4 Dr. Jeffrey Gross.

5 Seven?

6 THE COURT: Six.

7 MR. JAFFE: Okay. Dr. Gross was hired. He  
8 wrote an expert report on August 7, 2012. He was hired  
9 by the plaintiff's attorney. He never treated the  
10 plaintiff. Before writing his report, he never met the  
11 plaintiff, the person he was hired on behalf of. Never  
12 even spoke to her. And the only prior record he was  
13 given by the plaintiff's attorney was from  
14 September 2014 [sic]. He wrote a report based on that  
15 saying that based on these selected records and films,  
16 having not seen her deposition that was taken three  
17 months before, that her back and neck surgery was  
18 related, recommended another surgery to the back and  
19 the neck and \$600,000 in future treatment.

20 Three weeks later he wrote a second report,  
21 having now met with the plaintiff and looking at more  
22 films, so he backed out the future surgeries. Now  
23 those were out of the picture. No more future  
24 surgeries.

25 He then wrote a third report September 29,



1 2012. Now he's finally seen all the records predating  
2 the accident and he's going to tell you that she needs  
3 27 physical therapy visits per year for the rest of her  
4 life totaling \$214,000 even though the plaintiff has  
5 not been to physical therapy in two and a half years,  
6 but he's going to tell you that she needs 27 visits a  
7 year that he wants us to pay for.

8           He's going to tell you that she needs \$60,000  
9 for medications for the rest of her life even though  
10 she has not received any medication since July 2011,  
11 two years, but she still wants \$60,000 for medications  
12 for the rest of her life.

13           9,900 for pain management medical visits for  
14 those pain medications even though she hasn't seen or  
15 gotten those medications in two years.

16           Now, you know what, I'm not going to bother  
17 talking about -- we may be calling Dr. Schifini.  
18 That's sort of a game-time decision. We need to see  
19 some of the evidence that's going to be coming in from  
20 plaintiff. And if so, we're going to call  
21 Dr. Schifini, and he will talk about the fact that she  
22 did have aggravations, symptoms, and other problems.  
23 It's not -- we're not guarantying that Dr. Schifini is  
24 calling. I want to see what their case is first.

25           Same with Staci Schonbrun. Staci Schonbrun

1 will potentially talk about the claim loss and  
2 household services. They're going to ask you for money  
3 for household services like cleaning, repairs,  
4 maintenance, things like that for the rest of her life  
5 claiming that because of this accident she can't do  
6 those things any more. If necessary, we're going to  
7 call Staci Schonbrun. Again, that's a game-time  
8 decision. We'll make that decision.

9           But ladies and gentlemen, what we're going to  
10 suggest to you at the end of this trial is that this  
11 accident did not produce the symptoms to cause these  
12 problems. They were caused by -- in the neck it's a  
13 preexisting problem that had been problematic for a  
14 while and in the low back, if she needed surgery, it  
15 had nothing to do with this because her films right  
16 after the accident do not show the type of pathology,  
17 the type of problems that would be suggestive of a  
18 surgery.

19           So, again, we admit that she was injured.  
20 We're going to suggest to you that they were sprains  
21 and strains and that that's what was consistent with  
22 the less than 3 Gs of forces in this mild impact.

23           Thank you for the time you're about to give  
24 us and I'll speak to you again at the conclusion when I  
25 do a summation.

1           THE COURT: All right. My understanding is  
2 that the plaintiff's have a witness who needs to go on  
3 today.

4           MR. CLOWARD: Yes, Your Honor. We're ready.

5           THE COURT: Everybody okay for a few more  
6 minutes?

7           Who's the plaintiff's first witness?

8           MR. CLOWARD: Plaintiff's first witness is  
9 Dr. Mark Ferdowsian.

10          THE COURT: Bring him in.

11          Doctor, if you come right up here on the  
12 witness stand right next to that chair. Remain  
13 standing, if you would, and raise your right hand,  
14 please.

15          THE CLERK: You do solemnly swear the  
16 testimony you're about to give in this action shall be  
17 the truth, the whole truth, and nothing but the truth,  
18 so help you God.

19          THE WITNESS: I do.

20          THE CLERK: Please be seated.

21          THE COURT: Go ahead and state and spell your  
22 name for the record, please.

23          THE WITNESS: It's Mehrdad Mark Ferdowsian.  
24 M-E-H-R-D-A-D M-A-R-K F-E-R-D-O-W-S-I-A-N.

25          THE COURT: Thank you. Try to speak right

1 into that microphone so everybody can hear you.

2 Go ahead.

3 MR. CLOWARD: Thank you.

4

5 DIRECT EXAMINATION

6 BY MR. CLOWARD:

7 Q. Hi, Dr. Ferdowsian. How are you today?

8 A. Good. Thank you.

9 Q. Could you tell the jurors a little bit about  
10 yourself beginning with, you know, you're a doctor. I  
11 understand. Tell them what kind of doctor, what you  
12 do, and a little bit of your training.

13 A. I'm a board-certified emergency room  
14 physician. I practiced in Henderson at the St. Roses  
15 for over ten years and also worked at the trauma  
16 center. So I'm emergency medicine and trauma trained  
17 and board-certified in emergency medicine.

18 Q. Did you also work at the MountainView  
19 Hospital as well?

20 A. I did. I worked part-time at some of the  
21 MountainView Hospital systems as well; which is where I  
22 took care of the patient.

23 Q. And you've had a chance to review the chart  
24 in this matter?

25 A. Yes. I've reviewed my chart, the nursing

1 chart, and also the EMS chart.

2 Q. Before we get to the actual chart, can you  
3 tell the jurors where were you trained at as a doctor?

4 A. I trained at Michigan State in the  
5 osteopathic program. I'm a DO, osteopathic medicine,  
6 and I graduated in 2001 and I've been in town since.

7 Q. DO is the same thing as an MD basically? A  
8 little bit different training?

9 A. I think that in the eye of the law we are  
10 seen as equal and accountable as equally. They are two  
11 different licenses. But they are -- the accountability  
12 is the same and the practice and management skills are  
13 expected to be the same.

14 Q. Sure. You prescribe medications, things of  
15 that nature?

16 A. That's correct.

17 Q. All right.

18 A. We're board-certified in our specialties and  
19 osteopaths are board-certified in almost all  
20 specialties. I think all specialties.

21 Q. Doctor, do you currently hold any board  
22 certifications?

23 A. I'm board-certified in emergency medicine.

24 Q. Can you tell the jurors what is that. What  
25 does that actually mean?

1       A.   Emergency medicine is a field that stabilizes  
2 and initially evaluates patients.  It's done in the  
3 first phase of whether it's trauma or disease and it's  
4 its own specialty.  It's a four-year residency program.  
5 It used to be where family practitioners or internal  
6 medicine physicians or general practitioners would  
7 rotate through the ERs and that's kind of been the  
8 past.  Now it's required to be a board specialty field,  
9 and the training is extensive, and it's a four-year  
10 program, and it's its own complete separate residency  
11 program and specialty.

12       Q.   Do you have a recollection of the visit with  
13 Ms. Seastrand, or did you see Ms. Seastrand at any  
14 point?

15       A.   I did take care of Ms. Seastrand, Margaret,  
16 and I did not have an independent recollection of the  
17 patient.  It was a few years ago and I see hundreds, if  
18 not more, thousands of patients per year.

19       Q.   Fair to say your recollection or your  
20 testimony would be based on the medical records and  
21 what you put in the medical records?

22       A.   That's correct.

23       Q.   Doctor, can you walk us a little bit through  
24 your treatment of Ms. Seastrand.  How did she even get  
25 to you?

1       A.   Ms. Seastrand was involved in a motor vehicle  
2 crash and she was brought in by an ambulance to the  
3 emergency department. She was brought in on a  
4 backboard with a cervical collar, and I was the  
5 treating physician, and that's how we met.

6       Q.   Can you tell the jurors if there is any sort  
7 of significance to a patient being brought in on a  
8 backboard with a cervical collar. Does that mean  
9 anything?

10       A.   Yes, it does. When I reviewed the chart, I  
11 think motor vehicle crashes are categorized into  
12 simple, complex -- and it really is irrelevant whether  
13 it was -- the mechanism and how it happened except  
14 for it's based on the amount of discomfort and the pain  
15 that the patient is in at the scene.

16               So, for instance, simple crashes can be  
17 evaluated and discharged at the scene and many patients  
18 just refuse to be transferred or don't get transferred  
19 to the emergency department. EMR, EMS will evaluate  
20 and determine if they're not significantly injured and  
21 will release them at the scene.

22               The second, I think, group of people --  
23 patients are evaluated and determined that they do have  
24 an injury and are brought in basically in a wheelchair  
25 or maybe walk in for some type of extremity trauma or

1 any other injuries to the chest or abdomen, but there's  
2 no -- there's no vertebral precautions, cervical or  
3 thoracic or lumbar precautions.

4 And the third category of patients are the  
5 ones that are -- that have a higher index of suspicion  
6 towards a spinal injury, and they're the ones that are  
7 placed on a backboard with collars, and they're the  
8 ones that are brought in for evaluation in that type of  
9 manner. So they're technically considered higher  
10 injuries or potential injuries that need to be  
11 evaluated by a physician.

12 Q. And generally speaking, when a determination  
13 is made as to whether it's, you know, minor injuries,  
14 as you classify it, moderate or potentially something  
15 more serious that needs a workup by a physician such as  
16 yourself, who makes that determination? Is that the  
17 EMTs at the time or -- do they evaluate the patients?

18 A. I think they do, yes. They're well trained  
19 in differentiating between minor injuries versus  
20 potentially more severe injuries that need to be  
21 evaluated in the hospital.

22 Q. And, Doctor, I think you said you had a  
23 chance to review the EMT records in this event.

24 Is that accurate?

25 A. I -- yes. Uh-huh.



1 Q. Can you tell the jurors did -- were there any  
2 findings of the EMTs that would suggest that this was  
3 classified as a more serious or severe injury?

4 MR. JAFFE: Objection, Your Honor. Calls for  
5 speculation. Also calls for expert testimony if he's  
6 going to be telling us what the EMTs thought. He has  
7 not written a report. If he's here to talk about his  
8 own treatment, that's fine -- his own records.

9 MR. CLOWARD: My response would be that he  
10 reviewed the records. He would review the records as  
11 they come in.

12 THE COURT: You need to rephrase the question  
13 because the way you asked it, it was asking for a  
14 conclusion of the EMTs as opposed to how he interpreted  
15 it.

16 MR. CLOWARD: Fair enough.

17 MR. JAFFE: Thank you, Your Honor.

18 MR. CLOWARD: Fair enough.

19 BY MR. CLOWARD:

20 Q. Doctor, do you in part of your treatment of  
21 patients, do you review the EMT records?

22 A. Typically I do.

23 Q. Can you tell the jurors why you do that.

24 A. There are several factors. There's vitals  
25 that are taken out in the field which are much

1 different from what we get so we want to know the  
2 difference of what they had as far as heart rate, blood  
3 pressure, initial evaluations out in the field versus  
4 follow-ups in the ER. And that transport can take up  
5 to half hour, 45 minutes, an hour.

6           So, for instance, if a heart rate is real  
7 fast in the field and it's slowed down considerably or  
8 if it's real slow in the field and it's sped up  
9 considerably in the hospital, then we want to know  
10 what's causing that so we're looking for bleeding.  
11 We're looking for worsening trauma. We're looking for  
12 measurements of pain. We're also taking history based  
13 on -- sometimes patients that are in too much pain to  
14 either cooperate or to be able to verbalize, so then we  
15 rely on the field and EMS to give us that history and  
16 mechanism of injury. And so they're basically our eyes  
17 and ears out in the field.

18           Q. And you use that information to evaluate the  
19 patient when you actually see them as the emergency  
20 room physician, true?

21           A. It's part of our initial evaluation, yes.  
22 It's -- it's accessible for us to look at and use, yes.

23           Q. Doctor, were there any findings -- EMT  
24 findings that you felt were significant in evaluation  
25 of Ms. Seastrand?

1           A.    Based on my recollection, I remember the  
2 heart rate was a little faster than you would expect in  
3 a 47-year-old which may indicate more pain or severe  
4 pain. Typically somebody in their 40s would have a  
5 heart rate in the 60s and she was, I think, over 80.

6           Then also the fact that they had to stabilize  
7 the neck and help her out of the car and put her on a  
8 backboard, I think that's important information to  
9 guide us as to further diagnostics and treatment.

10          Q.    Why is that -- why is that important?

11          A.    Again, back to what we talked about earlier.  
12 If she had just walked in and the paramedics had  
13 thought that there was minor injuries and maybe she  
14 just wanted to be evaluated, I think our index of  
15 suspicion is a little lower. However, if someone tries  
16 to get out of a car and they can't or they have to be  
17 assisted out of a car, then you think of more severe  
18 injuries.

19          Q.    Based on your evaluation of the EMT records,  
20 and you actually would have examined Ms. Seastrand,  
21 would you not?

22          A.    Personally, yes.

23          Q.    So you would have -- and just so that I  
24 understand -- you're an emergency room physician so  
25 people, they don't -- you get all sorts of people off

1 the street, right?

2 A. Yes..

3 Q. Like it can be an automobile accident. It  
4 can be someone falling down. It can be a sports  
5 injury. Pretty much you get all sorts of people that  
6 come in that are injured that go to the emergency room.

7 A. That's correct.

8 Q. Heart attacks, anything really.

9 A. That's correct. We do see a big range of  
10 disease and you name it, it does have an emergency  
11 whether it's neurological, orthopedic, cardiac, all of  
12 that -- dermatological. So every field of medicine has  
13 its emergencies and so we're -- our training is to  
14 recognize potential emergencies from every different  
15 field.

16 Q. Can you tell the jurors what were your  
17 findings when you evaluated Ms. Seastrand. Can you  
18 just explain for the jurors a little bit about that.  
19 And if you need to reference your records, they are in  
20 Tab --

21 A. That's okay. No.

22 Q. Have you had a chance to review those?

23 A. Yeah. I've reviewed them. There were a few  
24 factors. Number 1, back to this board and collar and  
25 the fact that I had kept the patient on the board and

1 collar, I think is indicative of the fact that we  
2 wanted to be sure that there was no spinal injury. So  
3 I was -- my differential included spinal injury.

4           When you reviewed the nurse's note, her pain  
5 level -- and that's kind of part of what they do is  
6 reassess and get pain levels. Pain level of 10 is  
7 childbirth. And she had a pain level of 8 out of 10.  
8 So I would say that's fairly significant.

9           Again, we went back to vitals and her vitals  
10 were -- her heart rate was fast. I think she was  
11 distressed and had a lot of discomfort and was  
12 verbalizing the pain, so based on my initial evaluation  
13 I was concerned that she may have some type of injury.

14           The second part of it is actual clinical  
15 evaluation so we partially take the cervical collar off  
16 and palpate the cervical spine, the neck.

17           Q. Doctor, real briefly, what is the --

18           A. Palpate the upper back, lower back.

19           Q. What does it mean to palpate? Can you  
20 explain?

21           A. We -- as a physician your initial evaluation  
22 is visual, so we just talked about that, which is  
23 looking at vitals, looking at nurse's notes and looking  
24 at the patient.

25           The second part is actually touching the

1 patient, looking to see if there's areas that are  
2 either bruised, areas that are deformed, areas that are  
3 uncomfortable to touch and then -- so that's the second  
4 phase was -- was to partially taking the collar off and  
5 palpating the -- or pushing on the neck, behind the  
6 neck, pushing on the upper back, lower back. And the  
7 things that you're looking for are tender spots.  
8 You're looking for spinal tender spots. You're looking  
9 for deformities of the spine, whether it's pushing  
10 forward or pushed back. You're looking for bruises.  
11 You're looking for irregularities.

12           And so based on reviewing the charts, the  
13 collar stayed on because she had severe neck  
14 tenderness. When I pushed on her neck, she had  
15 tenderness in several spots and I was concerned about  
16 that. We did help her off the backboard although there  
17 was some discussions on low back pain. I think those  
18 were more her complaints, and I don't recall but my  
19 notes did not indicate that she had severe tenderness  
20 with pushing of the lower back but she did have  
21 tenderness throughout the entire spine.

22           My concern on evaluation was the neck was  
23 very tender. But I didn't find -- I found tenderness  
24 in the lower spine but nothing that was -- indicated  
25 that I could not take her off the backboard. So we did

1 clear her clinically off the backboard and kept the  
2 collar on. And all that means is that I did not  
3 suspect -- and I guess that's really what you're trying  
4 to differentiate initially is if there could be a  
5 broken bone or if there could be just other injuries,  
6 soft tissue, muscle, and really that's why you palpate  
7 the spine or push on the spine is you're looking for  
8 point tenderness.

9           And she had point tenderness of her neck. I  
10 did not recall or document point tenderness of her low  
11 back except that there was mention of pain, and so she  
12 seemed to be tender throughout but it was mostly  
13 concentrated on the neck.

14           Q. Thank you, Doctor. One other thing I wanted  
15 to go back to was the fast heart rate. You indicated  
16 the heart rate seemed fast to you.

17           Is that accurate?

18           A. Yes.

19           Q. And what does that tell you about the  
20 situation? Is that -- let me just ask you: Can a  
21 patient exaggerate their heart rate?

22           A. No. No.

23           Q. That can't be -- someone can't lie to you  
24 about that?

25           MR. JAFFE: Objection. Leading.

1 THE COURT: Sustained.

2 MR. JAFFE: Thank you, Your Honor.

3 BY MR. CLOWARD:

4 Q. Were there any other specific findings with  
5 regard to your examination of Margie at the time that  
6 you recall based on --

7 A. I think that was it. I think that was the  
8 major. There are multiple indicators of pain: Fast  
9 heart rate, if patients are sweaty or diaphoretic,  
10 vomiting. You also worry about people that have  
11 questions that are repeated and one of the things  
12 that I -- I don't know if you want to get into it now,  
13 but I right off the bat ordered a CAT scan of her head  
14 as well. And I think it was because most of the pain  
15 was concentrated on the head and neck.

16 And so based on the fast heart rate, based on  
17 the fact that she was on a backboard, based on the fact  
18 that she had a collar with tenderness -- the collar is  
19 just a firm restraint of the neck -- I had right off  
20 the bat ordered x-rays and CAT scans. So to explain  
21 that -- and I'm basically going by my charts -- you  
22 have a much higher index of suspicion for injury if  
23 you're ordering the bigger tests.

24 In other words, as a doctor you have the  
25 choice to clinically evaluate a patient and decide, you



1 know, there's not significant injuries, there's no  
2 tenderness when you push on the spine, take the collar  
3 off and clinically clear a patient. That's one choice.

4           The second choice is to start with x-rays  
5 just to be sure that there's not any malalignment of  
6 the spine and/or other injuries that you're missing.  
7 And when you go to CAT scans, a CAT scan is a -- is  
8 kind of what we consider a big gun study. Your index  
9 of suspicion for injury is much higher if you're  
10 ordering studies right off the bat that are, like CAT  
11 scans, that are considered big gun studies.

12           I had ordered a CAT scan of the head and  
13 x-ray based on the fact that I was worried that the  
14 headache was out of proportion to the presentation.  
15 She had a significant headache and so those are the  
16 things that I noticed on my chart when I reviewed it.

17           Q.   Thank you, Doctor. Tell me do you order  
18 tests that you don't feel are medically necessary?

19           A.   I do not.

20           Q.   So the fact that you ordered a test suggests  
21 that you felt that it was appropriate to order that  
22 specific test?

23           A.   I do. You know, it's most -- a lot of  
24 physicians get callus to pain. I think that we're  
25 guilty of just years of treating patients and labeling

1 patients a lot of times, but I think it's critical and  
2 I treat and train a lot of providers as well to stay  
3 objective. And I -- one of the reasons -- questions  
4 you asked me is if I reviewed the EMS charts. I  
5 critically review them because there's information that  
6 are very helpful.

7           Some things can skew your opinions so it's  
8 critical to stay objective and do the studies that you  
9 think are necessary based on the level of discomfort,  
10 so that's how I've always practiced. That's been my  
11 practice is look at the chart, look at the EMS, review  
12 their report but think about an accident scene. They  
13 can't always have the right information. They may come  
14 back with different information that turns out not to  
15 be accurate. So we make our own judgments as  
16 physicians.

17       Q.    Thank you, Doctor. Did you make any  
18 diagnosis of Ms. Seastrand at the time when you  
19 evaluated her back in '09, March 13, '09?

20       A.    I believe it was neck pain, headache. I  
21 don't recall if I had an assessment of low back pain.  
22 I don't think I did. But it was in my chart that she  
23 did have low back pain and sometimes the complaints  
24 don't translate into assessments, but I was aware of  
25 the fact that she had lower back pain as well.

1 Q. And, Dr. Ferdowsian, did you prescribe any  
2 medications for Ms. Seastrand while under your care?

3 A. She had four milligrams of morphine with four  
4 milligrams of Zofran. Those are -- morphine is a  
5 strong narcotic and we use it typically for people that  
6 are in severe pain. Zofran is for nausea so the  
7 morphine doesn't make the patient nauseated and throw  
8 up. It does have that side effect. She did have a  
9 fairly strong narcotic pain medicine.

10 Q. Is that something you hand out to just  
11 whoever wants it?

12 A. No. No. It's based on level of distress.  
13 In fact, there's many other options.

14 Anti-inflammatories such as Toradol are typically  
15 lower -- used for lower pain levels. There are  
16 stronger ones. Morphine seems to be a fairly strong  
17 narcotic. It's not the strongest but it's up there.

18 Q. Doctor, did you when -- I'm assuming that you  
19 finished your evaluation and at some point  
20 Ms. Seastrand was discharged from your care?

21 A. Yes.

22 Q. From the ER of MountainView Hospital.

23 When you discharged her, did you prescribe  
24 any medications for her to take home and go have filled  
25 at home?

1           A.    She had the Lortab and Soma prescribed.  
2 Lortab is an oral narcotic pain medication and Soma is  
3 a muscle relaxer, and she had both of those  
4 prescriptions.

5           Q.    And is that something that you just give out  
6 just for anyone that wants it?

7           A.    No. No. Again, it's based on a pain level  
8 of 8 out of 10. It's based on reevaluations and  
9 talking to the patient, and she must have been still in  
10 pain on discharge and needed further pain treatment at  
11 home.

12          Q.    Now, obviously when patients come to you they  
13 arrive by ambulance or other means and they relay to  
14 you or the other professionals relay to you what  
15 happened.

16                   What is your understanding of the mechanism  
17 of injury in this situation?

18          A.    I believe she was rear-ended and she was a  
19 restrained driver. She was rear-ended. So the history  
20 is very important. I don't remember or recall if it  
21 was a high velocity or low velocity. I think it was  
22 actually low velocity, but she had some risk factors  
23 that kind of concerned me.

24                   One of which was prior trauma. There was  
25 also past medical history of degenerative spine disease

1 based on prior trauma which kind of sets you up to be  
2 more cautious because trauma is all based on mass and  
3 velocity and also based on the individual patient.

4           So the 20-year-old would do much better in a  
5 traumatic situation if they've never had spinal injury  
6 or prior trauma versus somebody that had had prior  
7 injuries and had degeneration of their spines so  
8 they're more prone to injuries. So that's, I think,  
9 one of the reasons I was more cautious with  
10 Ms. Seastrand.

11           Q. Thank you, Doctor. And can you state to a  
12 reasonable degree of medical probability whether or not  
13 Ms. Seastrand was injured as a result of the automobile  
14 collision for which you treated her for?

15           A. That's really not my specialty. I would  
16 think that it's unlikely that she was injured of any  
17 other reasons. She was --

18           MR. JAFFE: Objection, Your Honor.

19           THE WITNESS: -- rear-ended.

20           MR. JAFFE: Objection. If it's not his  
21 specialty, move to strike. No foundation. It's all  
22 speculation.

23           THE COURT: I think that he said that he  
24 can't state the opinion to the necessary standard, so  
25 let's move on.

1 MR. CLOWARD: Sure.

2 BY MR. CLOWARD:

3 Q. Doctor, is it your opinion that she was  
4 injured as a result of the collision for which she  
5 sought treatment from you?

6 A. Yes.

7 MR. JAFFE: Your Honor, it's the same. No  
8 foundation.

9 THE COURT: Sustained.

10 MR. JAFFE: Thank you.

11 BY MR. CLOWARD:

12 Q. Were you aware of any --

13 MR. JAFFE: Move to strike the last question  
14 and answer, Your Honor.

15 THE COURT: It will be stricken.

16 Folks, there's a certain standard that  
17 doctors have to state causation opinions to. He wasn't  
18 able to, so the last question and answer is stricken.

19 MR. JAFFE: Thank you, sir.

20 BY MR. CLOWARD:

21 Q. Doctor, are you aware of any other reason why  
22 Ms. Seastrand would have presented to the emergency  
23 room on March 13, 2009, other than the automobile crash  
24 that she was just in?

25 A. No.

1 MR. CLOWARD: No further questions.

2 THE COURT: Are you guys okay for a few  
3 minutes? I know that it's 5:30. I told you that you  
4 would be out of here at 5:30. I'm sorry. We have to  
5 give Mr. Jaffe a chance to cross-examine.

6 Go ahead.

7 MR. JAFFE: Your Honor, at this time move  
8 admission of Defense Exhibit D, which are the records  
9 from MountainView Hospital.

10 THE COURT: Any objection, Mr. Cloward?

11 MR. CLOWARD: Which one?

12 MR. JAFFE: Defense Exhibit D, records from  
13 MountainView Hospital.

14 MR. CLOWARD: Are you moving to have them  
15 admitted?

16 MR. JAFFE: Yes.

17 MR. CLOWARD: I would move to have our copy  
18 admitted.

19 MR. JAFFE: Your Honor, I'm -- it's my case  
20 now. I'm questioning. I'm moving admission of Defense  
21 Exhibit D.

22 THE COURT: Do you have a problem with D,  
23 Mr. Cloward?

24 MR. CLOWARD: I haven't had a chance to  
25 review his. The doctor has his in front of him. It's

1 the same records.

2 May we approach?

3 (Whereupon, a brief discussion was  
4 held at the bench.)

5 THE COURT: Any objection to Exhibit D,  
6 Mr. Cloward?

7 MR. CLOWARD: Objection withdrawn.

8 MR. JAFFE: Okay. So subject to our  
9 agreement sidebar.

10 THE COURT: Exhibit D will be admitted by  
11 stipulation.

12 (Defendant's Exhibit D was admitted)

13

14 CROSS-EXAMINATION

15 BY MR. JAFFE:

16 Q. It's Dr. Ferdowsian?

17 A. Yes.

18 Q. Thank you, sir. Dr. Ferdowsian, you would  
19 agree with me that as an emergency room physician, one  
20 of the most important things is, when you see a patient  
21 for the first time, to take a history; is that correct,  
22 sir?

23 A. Yes.

24 Q. History is very important for why the patient  
25 is there?



1 A. Yes.

2 Q. And especially as an emergency room physician  
3 it becomes very important because you need to have an  
4 idea what happened to the person, what their background  
5 is, and how to treat them and make them better; is that  
6 right, sir?

7 A. Yes.

8 Q. So history is an essential element of work in  
9 the emergency medicine field?

10 A. I would agree.

11 Q. Thank you.

12 MR. JAFFE: Your Honor, at this time --

13 BY MR. JAFFE:

14 Q. And, by the way, sir, in taking a history,  
15 especially since you're treating people who have some  
16 sort of acute symptom --

17 Meaning, it's fresh and it's new, correct?

18 Is that what acute means?

19 A. Yes.

20 Q. -- you first look to the patient as long as  
21 they're awake and capable of providing responses?

22 A. That's correct.

23 Q. And if there's other people who are with them  
24 who are capable of filling in the gaps and additional  
25 information, do you do so?

1 A. Yes.

2 MR. JAFFE: Your Honor, at this time since  
3 Defense Exhibit D is admitted in evidence, I would like  
4 to publish page 3 of that exhibit.

5 THE COURT: Any objection, Mr. Cloward?

6 MR. CLOWARD: Let me just review it.

7 No objection.

8 THE COURT: Go ahead.

9 MR. JAFFE: Can we put it up on the screen.

10 BY MR. JAFFE:

11 Q. And, Doctor, it will be on the screen in  
12 front of you to the left. Okay, sir?

13 A. Okay.

14 THE BAILIFF: Doctor, do you see an image on  
15 the screen there?

16 THE WITNESS: There is no image.

17 MR. JAFFE: The TV is plugged in. Is it just  
18 turned off?

19 THE COURT: It may just be off.

20 MR. JAFFE: There we go.

21 BY MR. JAFFE:

22 Q. Doctor, is this your emergency room record?

23 A. Yes.

24 Q. So this is what you would have dictated,  
25 correct, sir?

1           A.    Yes.

2           Q.    I would like to direct your attention to the  
3 top --

4           MR. JAFFE: And, Greg, if we can pull out the  
5 top two printed lines.

6 BY MR. JAFFE:

7           Q.    Time seen, 11:16 a.m; is that right, sir?

8           A.    I don't recall. I'm going by my  
9 recollection, and I would assume that's correct.

10          Q.    You certainly have no reason to dispute the  
11 authenticity and accuracy of this record?

12          A.    No, I don't.

13          Q.    And it says that the historian were the  
14 patient and spouse; is that right, sir?

15          A.    Yes.

16          MR. JAFFE: Now what I would like to do,  
17 Greg, is let's pull up the -- under the section  
18 designated History of Present Illness, can we pull up  
19 the first two paragraphs. Pull them out. Okay. Any  
20 chance we can narrow that down a little bit, Greg,  
21 because it's cutting off the screen a little bit?  
22 We're having a tough time. Let's see. It says, the  
23 accident involved -- well, I'll read from the page  
24 because we cut off there a little bit.

25

1 BY MR. JAFFE:

2 Q. It says, Two vehicles in a low impact  
3 velocity resulted in mild damage to the plaintiff's  
4 vehicle.

5 Is that what was reported, sir?

6 A. Which line are you reading?

7 MR. JAFFE: Greg, can you highlight those?

8 BY MR. JAFFE:

9 Q. Is that what you prepared?

10 A. Yes.

11 Q. And that's what was reported to you by the  
12 patient and/or her husband. The historians reported  
13 that to you, right?

14 A. The history of present illness is a -- is an  
15 amount of information that comes from the patient, the  
16 spouse, and any other information that I've gathered,  
17 whether it's EMS, which is the next line. So it comes  
18 from the initial body of information that's available  
19 to the physician. So it doesn't all have to come from  
20 the patient and spouse, but they're the people that  
21 verbalize what had happened to them and some of them  
22 may have come from, as seen on the next line, is EMS  
23 report reviewed. So it's a -- yeah.

24 Q. Right now I'm just talking about that line.

25 A. That line I have no idea whether it came from

1 the patient or not, but it is part of that history of  
2 present illness. It doesn't necessarily mean that it  
3 just came from the patient or spouse. It's my history  
4 of present illness.

5 Q. You didn't make it up out of thin air, right,  
6 sir?

7 A. No, I did not. What I'm explaining is that I  
8 could have looked at the EMS report and put that in or  
9 I could have asked the patient and put that in. So  
10 it's what I -- what was reported to me from the, like  
11 we said, reviewing the entire case. So --

12 Q. Sir, but --

13 A. So the --

14 Q. -- but the point is --

15 A. -- historian, patient and spouse is not  
16 related to the history of present illness. That's a  
17 second -- that's a separate line is what I'm trying to  
18 explain. The history of present illness has nothing to  
19 do with the patient and spouse.

20 Q. Not necessarily?

21 A. Not necessarily.

22 Q. It might. It might not. You would be  
23 speculating at this point?

24 A. That's correct. The history of present  
25 illness is my history of present illness. The

1 physician makes the history of present illness. The  
2 fact that arrived by ambulance and historian is patient  
3 and spouse doesn't make the history of present illness  
4 come from the patient and spouse.

5 Q. You didn't make it up. It was reported to  
6 you somehow and that's how it made it in your report,  
7 correct, sir?

8 A. Yes. Based on the --

9 Q. That's fine.

10 A. -- summary of all the information from the  
11 accident.

12 Q. Now, nurses also do triage assessments and  
13 that's part of the record; is that right?

14 A. Yes.

15 Q. Would you please take a look --

16 MR. JAFFE: Can we have page 6, Greg. And at  
17 the very bottom where it says Past Medical History, can  
18 we pull that out?

19 BY MR. JAFFE:

20 Q. Was that reported to you as well, sir?

21 A. Yes.

22 Q. That's where you said that she had  
23 degenerative disc disease; is that right?

24 A. That's right.

25 Q. And that's in the neck, right?

1           A.    Degenerative disc disease could be anywhere  
2 in the spine.

3           Q.    Right. But the point is that was what was  
4 reported to you, correct?

5           A.    Right.

6           Q.    Right after it said previous -- it said,  
7 "previous neck injury, degenerative disc disease,"  
8 right? Is that right?

9           A.    Yes.

10          Q.    She was being seen there for her neck; is  
11 that right?

12          A.    Yes.

13          Q.    Sir, would you please turn to page 4 of  
14 your --

15               MR. JAFFE: Well, let's pull up page 4, Greg.  
16 Can we pull up at the bottom where it says the clinical  
17 impression.

18 BY MR. JAFFE:

19          Q.    Since you weren't sure what your diagnosis  
20 was, sir, I want to show it to you. Let's pull up the  
21 clinical diagnosis.

22               Acute pain in the head and the neck and you  
23 diagnosed a cervical strain, correct, sir?

24          A.    Yes.

25          Q.    That's the diagnosis you made on that day?

1 A. That's correct.

2 Q. Do you commonly ask your patients about their  
3 past medical history?

4 A. Yes, I do.

5 Q. And do you expect them to be honest with you  
6 and tell you everything?

7 A. I would hope so, yes.

8 MR. JAFFE: Your Honor, D35 is admitted into  
9 evidence as part of this. I'd ask D35 be pulled up.

10 Greg, can we pull up the paragraph in the  
11 middle that says -- and this is from 2005 MountainView  
12 Hospital, sir -- the patient did not have headaches  
13 prior to September 2004. Please pull that paragraph  
14 out.

15 BY MR. JAFFE:

16 Q. Sir, do you see in this record where it's  
17 reported that in the past that she had had two episodes  
18 of significant cervical spine injury? Do you see that,  
19 sir?

20 A. I'm confused. Is this my record?

21 Q. No. This is another record from MountainView  
22 Hospital from 2005.

23 MR. CLOWARD: Your Honor, I will object as to  
24 foundation. It's not his record. How can he talk  
25 about it?



1           MR. JAFFE: It's in the MountainView records.  
2 It's admitted in evidence.

3           MR. CLOWARD: Your Honor, he doesn't have a  
4 foundation. What's the foundation to talk about these  
5 things? It's not his record.

6           THE COURT: Let's see what he's asked about  
7 it.

8 BY MR. JAFFE:

9           Q. All I want to find out is this: Did the  
10 patient tell you about two prior significant cervical  
11 spine injuries when you were there -- when she was  
12 there?

13          A. I don't recall.

14          Q. If she had, would you have put that in your  
15 note?

16          A. Not always. Most of the time. Not all the  
17 occurrences in the emergency room visit end up in the  
18 chart so --

19          Q. Given the fact -- I apologize, sir. I didn't  
20 mean to cut you off.

21          A. So you asked the question would it end up in  
22 the chart and it's likely that it would, but the  
23 records are -- don't necessarily always indicate  
24 all the -- all the occurrences in the emergency room  
25 visit.

1           For instance, the assessment, even though the  
2 initial part of that, the presentation, I had mentioned  
3 low back pain, I had not placed it in one of my  
4 assessments as low back pain. So when you think about  
5 a busy emergency department, not everything ends up as  
6 an assessment.

7           Q. I understand, sir. My point is this: If  
8 prior -- two prior significant episodes of cervical  
9 spine pain had been reported to you, would you have  
10 inquired further about that to consider how that may  
11 affect your treatment plan? It's fair to say you would  
12 have, right?

13          A. I think I would, yes. I would be more  
14 cautious as to exactly what we talked about,  
15 degenerative spine disease. And so then I would be  
16 more cautious as to make sure that the patient had some  
17 type of study to make sure that there's not been any  
18 further injury.

19          Q. Such as a spinal MRI or CT?

20          A. I don't think an MRI. CAT scans of the spine  
21 are more prevalent in the emergency department than  
22 MRIs, but.

23          Q. And you did not order a CT of the cervical  
24 spine, correct, sir?

25          A. There was no CT of the cervical spine.

1 Q. And, sir, you found no evidence of cord  
2 compromise?

3 A. I didn't do any studies to look for cord  
4 compromise, but there was no clinical evidence of cord  
5 compromise.

6 Q. And if there was clinical evidence of cord  
7 compromise, would you have either ordered further  
8 studies or admitted her into the hospital for greater  
9 care?

10 A. Yes.

11 Q. Possibly called in a spinal surgeon at that  
12 point?

13 A. Yes.

14 Q. Did you call in a spinal surgeon?

15 A. No.

16 Q. Was there any indication for calling in a  
17 spinal surgeon?

18 A. No.

19 Q. Sir, you would agree with me that pain is  
20 uniquely a subjective complaint?

21 A. For the most part. I think there's some  
22 objective findings, as we discussed earlier. Fast  
23 heart rate, diaphoresis.

24 Q. But my point is that, I mean, yeah, if I come  
25 in with a broken arm, you're going to look at it and

1 say it's broken and this guy is probably in pain,  
2 right? That's an indication of likely pain, right?

3 A. Right. But, I mean, like we talked about,  
4 fast heart rate, sweatiness, pressures that are high.

5 Q. Okay.

6 A. There are objective findings of pain as well.

7 Q. Are those uniquely findings of pain?

8 A. No.

9 Q. They're findings of anxiety?

10 A. They can be.

11 Q. Stress?

12 A. Yes.

13 Q. Several other unrelated things to pain,  
14 correct?

15 A. Yes.

16 Q. Those are general symptoms as opposed to  
17 specific symptoms unique to neck pain?

18 A. Absolutely, yes. Medicine is an art.

19 Q. Exactly.

20 A. You can't just relate high, fast heart rate  
21 necessarily just to pain. But if they're telling you  
22 that they are in pain and their heart rate is 89 or 90,  
23 then you would -- my practice is to believe the  
24 patient.

25 Q. And you believe the patient until proven

1 otherwise, correct?

2 A. Until you've proven otherwise.

3 Q. Would you agree with me that Lortab and Soma  
4 are mild medications relative to their field, to their  
5 categories? Mild pain reliever, mild muscle relaxers?

6 A. I don't think they're mild. I think they're  
7 medium. Medium.

8 Q. She was discharged?

9 A. Yes.

10 Q. About three hours after she was admitted?

11 A. That's approximately accurate.

12 Q. As a thorough physician, if you had any  
13 reason to believe that she was in danger, would you  
14 have discharged her?

15 A. No.

16 MR. JAFFE: Thank you. I have nothing  
17 further, Your Honor.

18 MR. CLOWARD: A couple of follow-ups.

19 THE COURT: Go ahead.

20 MR. CLOWARD: To save the Court some time,  
21 would you pull up 0010.

22 MR. SMITH: 00010.

23 MR. CLOWARD: The MountainView 0010.

24 MR. JAFFE: Yes. I think we have different  
25 Bates numbering from yours that's why.

1 THE COURT: Do you just want to use the ELMO,  
2 Mr. Cloward?

3 MR. JAFFE: Ben, let me just see what page  
4 you've got so I can --

5 MR. CLOWARD: It's the initial clinical  
6 report.

7 MR. JAFFE: 003. This one?

8 MR. CLOWARD: Yes. Can you highlight Past  
9 History for me, please.

10

11 REDIRECT EXAMINATION

12 BY MR. CLOWARD:

13 Q. Doctor, can you just read the highlighted  
14 portion? What does that say about the neck, the past  
15 history?

16 A. It's a little small on my screen, but I think  
17 it says previous neck injury, concussion times two, and  
18 degenerative disc disease.

19 Q. What was the first part one more time?  
20 Previous neck injury?

21 A. Previous neck injury.

22 Q. Okay.

23 A. Concussion times two.

24 MR. CLOWARD: And then if you go down further  
25 on the record, Risk Factors for Neck Injury, please,

1 Greg.

2 BY MR. CLOWARD:

3 Q. What's under Risk Factors for Neck Injury?

4 A. Prior neck injury.

5 Q. Where would you have gotten that information?

6 A. That most likely would have come from the  
7 patient.

8 Q. So you were informed of these -- you were  
9 shown some records from 2005 from MountainView  
10 Hospital, right?

11 A. Yes.

12 Q. So you were told by Ms. Seastrand about prior  
13 neck injuries, right?

14 MR. JAFFE: Objection. Leading.

15 THE COURT: Sustained.

16 MR. JAFFE: Thank you, Your Honor.

17 THE WITNESS: I'm not 100 percent. I mean,  
18 it was in my record.

19 MR. JAFFE: Your Honor, I think there's no  
20 question.

21 BY MR. CLOWARD:

22 Q. Were you told about prior injuries from  
23 Ms. Seastrand --

24 A. Yes.

25 Q. -- based on your records? Yes?

1 A. Yes. I knew of her prior injuries.

2 Q. And that was based on what she told you?

3 MR. JAFFE: Objection. Leading, Your Honor.

4 BY MR. CLOWARD:

5 Q. Was that based on what she told you?

6 A. Yes.

7 Q. Doctor, have your opinions today been stated  
8 to a reasonable degree of medical probability on a more  
9 likely than not standard?

10 A. Yes.

11 Q. Do you believe that it's more likely than  
12 not, just more likely than not, that Ms. Seastrand was  
13 injured as a result of the automobile crash that she --  
14 that you treated her for?

15 MR. JAFFE: Objection, Your Honor.  
16 Foundation. Same as before. It's been asked and  
17 answered and he didn't answer it before.

18 MR. CLOWARD: I didn't -- I've explained the  
19 standard. It's just more likely than not.

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

21 THE WITNESS: I think it was, yes. I think  
22 she would have gone home with no injuries if she had  
23 not been hit that day.

24 BY MR. CLOWARD:

25 Q. Any indication that this patient would



1 spontaneously break out into, you know, and have neck  
2 problems or back problems without this crash?

3 A. I think she would have gone home that day  
4 without injuries if she had not been hit.

5 Q. Doctor, do you treat people or cars?

6 A. I treat patients.

7 Q. Did you refer this patient, Ms. Seastrand,  
8 anywhere when you discharged her?

9 A. Yes.

10 Q. Where was that?

11 A. To an orthopedic surgeon.

12 Q. Why did you do that?

13 A. The initial evaluation concentrates on severe  
14 injuries in the emergency department, including  
15 subdural hematomas, which is strokes or bleeds in the  
16 brain, and fractures of the spine. And she didn't seem  
17 to have any broken bones or strokes as a result of the  
18 accident.

19 However, we do not necessarily concentrate on  
20 soft tissue injuries like disc herniations, such as  
21 muscle spasms, such as other injuries. That can be  
22 dealt with on an outpatient basis, especially if they  
23 don't have acute orthopedic emergencies. That doesn't  
24 mean they're not injured. That just means that they  
25 can be seen by an orthopedic surgeon who will then

1 order an MRI and decide if there's other diagnostics or  
2 treatments that are necessary outpatient.

3 Q. It just means that it's not life-threatening,  
4 that they don't need to be rushed into surgery, right?

5 A. That's correct.

6 Q. Doctor, a couple more questions and then I  
7 will be done.

8 Can you tell me how long have you treated  
9 emergency medicine?

10 A. I have been an ER doctor since 1998.

11 Q. Have you ever one time in the history of your  
12 career, have you ever one time said to a patient, hey,  
13 before I treat you, I need to go out and look at your  
14 car?

15 A. No.

16 Q. Have you ever one time in your history as an  
17 emergency room physician called up a biomechanical  
18 engineer to ask them if the person that you were  
19 evaluating was actually hurt?

20 A. No.

21 MR. CLOWARD: Thank you. No further  
22 questions.

23 THE COURT: Any more, Mr. Jaffe?

24 ///

25 ///

RECROSS-EXAMINATION

BY MR. JAFFE:

Q. What was her medical condition the day, the week, and the month before this accident?

A. Medical condition -- she had had prior neck injuries. She was seen as a result of the motor vehicle crash and she was in severe pain when I saw her, 8 out of 10 pain.

Q. I just asked you about the day, the week, and the month before. What was her medical condition the day before this accident?

A. The day before the accident?

Q. Yeah.

A. I'm not sure.

Q. What was it a week before?

A. I don't know.

Q. What about a month before?

A. Don't know.

Q. Do you know how many times she complained about neck problems or back problems during that week and month before?

A. I do not.

Q. All you know is what you saw on that day and you had nothing to compare it against, correct, sir?

A. That's correct.

1 MR. JAFFE: Thank you. I have nothing  
2 further.

3 THE COURT: Mr. Cloward.

4 MR. CLOWARD: Nothing further, Your Honor.

5 THE COURT: Ladies and gentlemen, this is  
6 your opportunity. Does anybody have any questions for  
7 this doctor? Raise your hand. I don't see any hands.

8 Thank you, Doctor. You're excused. Have a  
9 good evening.

10 THE WITNESS: Thank you.

11 THE COURT: All right, folks, sorry for  
12 keeping you so late. We're going to go ahead and take  
13 our evening break.

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

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

5 I think I told you that I have a long  
6 calendar in the morning so we're not going to start  
7 tomorrow until 1:00. So go ahead and eat lunch before  
8 you come because we won't take a lunch break.

9 Do you have a question, ma'am?

10 JUROR NO. 010: Johnson, 010. What do we do  
11 with these?

12 THE COURT: You're going to leave them right  
13 there on your seat and they'll be waiting for you  
14 tomorrow when you come back in.

15 JUROR NO. 5: One question. What time do you  
16 think we'll be done tomorrow?

17 THE COURT: I'm hoping that we'll be done  
18 before 5:00. We try to get done by 4:45. That's the  
19 plan. See you tomorrow, folks.

20 **(Whereupon, jury exits the courtroom.)**

21 THE COURT: We're outside the presence of the  
22 jury.

23 Anybody have anything we need to make a  
24 record on?

25 MR. JAFFE: No, I guess not. We made a

1 record earlier of one problem during plaintiff's  
2 opening. Nothing for the defense, sir.

3 MR. CLOWARD: Yes. The only record, Your  
4 Honor, was just that I'll review Defendant's Exhibit D  
5 just to make sure there's not -- I was just concerned  
6 about redactions and so forth.

7 MR. JAFFE: My paralegal went through it and  
8 she said that she got them all but, of course, is it  
9 possible something was missed. And, obviously, we  
10 agree that if for some reason something was missed, we  
11 have no problem redacting and modifying the record  
12 accordingly.

13 THE COURT: Just redact it before the jury  
14 sees it, before it goes back.

15 MR. JAFFE: Thank you, sir.

16 MR. CLOWARD: Thanks, Judge.

17 THE COURT: Thanks, guys.

18 Off the record.

19 (Thereupon, the proceedings  
20 adjourned at 6:02 p.m.)  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

I, Jennifer O'Neill, a duly commissioned  
Notary Public, Clark County, State of Nevada, do hereby  
certify: That I reported the proceedings commencing on  
Wednesday, July 17, 2013, at 9:45 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  
30th day of October, 2013.

  
JENNIFER O'NEILL, RPR, CCR #763

1 PROSPECTIVE JUROR NO. 063: Vicky Herana,  
2 063. When I was working as a compensation analyst for  
3 the Department of Defense, it was important that other  
4 people completed tasks so I could do my tasks.  
5 However, it was possible for me to go back and do their  
6 work so I could get my job done and I would.

7 MR. JAFFE: Okay. Mr. Daryanani, do you ever  
8 find situations where people above you are reluctant to  
9 hand work off to you or that you're reluctant to hand  
10 work off to others?

11 PROSPECTIVE JUROR NO. 053: Kind of, yes.  
12 Jonathan Daryanani, 053.

13 When I have my own work I want to make sure  
14 that it's completed and done right. I've had an  
15 incident where I've had to hand it off to someone else  
16 and it just got completely messed up. I don't know. I  
17 just feel more comfortable when I know that it's  
18 completed and done instead of I'm going to leave and  
19 just hand it off.

20 MR. JAFFE: It kind of loosens up the knot in  
21 your stomach?

22 PROSPECTIVE JUROR NO. 053: Just a little  
23 bit. When I'm not there, I'm like did it get done? Is  
24 it properly done?

25 MR. JAFFE: Okay. Ms. Templeton, how about



1 you? Do you have difficulty handing off work to  
2 others?

3 PROSPECTIVE JUROR NO. 018: Well, I  
4 personally don't. Elizabeth Templeton, 018. My  
5 husband and father-in-law have an accounting firm and  
6 there's just not enough hours in the day to prepare the  
7 number of tax returns that we're responsible for. So  
8 you do have to delegate to other CPAs to do that work  
9 and there's always that risk that something wasn't done  
10 quite correctly and if there's an audit involved and  
11 it's our error, we are responsible for that penalty and  
12 interest that would be assessed to the tax return.

13 MR. JAFFE: Do you trust that the others are  
14 going to do the job right, or do you have that kind of  
15 nagging concern that, well, if you haven't seen it that  
16 you're hoping everything has gotten done right?

17 PROSPECTIVE JUROR NO. 018: Well, they're  
18 reviewed but, obviously, you can't catch everything in  
19 a review so there's always that risk that something  
20 wasn't done quite like it should have been, but.

21 MR. JAFFE: Okay. Mr. Karpenko, how about  
22 you? In your job and in your life, do you find that  
23 you have a difficult time handing work to others, or do  
24 you have situations where others have a difficult time  
25 handing off to you?

1 PROSPECTIVE JUROR NO. 025: Nicholas  
2 Karpenko, 025. For my position what I do it's not  
3 really an issue. We have a -- the way we're organized,  
4 pretty much you have the bottom tier that do the  
5 majority of the grunt work. You have a few supervisors  
6 working up the chain and one guy at the top. So even  
7 though I have been in for seven and a half years, based  
8 on the nature of the job at that point you're still  
9 doing the bottom rung kind of stuff. So once you're  
10 trained to the standard, if you know how to do the job,  
11 somebody else does also. You just have to make sure  
12 you're verbal, you communicate, you handle the handoff,  
13 and after that you really don't worry about it because  
14 we trust the people we work with.

15 MR. JAFFE: Okay. Ms. Perrine, I haven't  
16 heard from you. I haven't had a chance to talk to you.

17 PROSPECTIVE JUROR NO. 071: Helen Perrine,  
18 071.

19 MR. JAFFE: Let me ask you a question. Three  
20 days Mr. Cloward and I have been standing up here and  
21 asking a lot of questions.

22 Has it gone through your mind thinking what  
23 are they asking me all this stuff for?

24 PROSPECTIVE JUROR NO. 071: No. I think it's  
25 good that you're asking the questions you're asking

1 because it gives you an idea of how people think and,  
2 like, a brief view into their opinions. Sure. I think  
3 it's necessary.

4 MR. JAFFE: So what do you like to do? What  
5 do you like to do for fun?

6 PROSPECTIVE JUROR NO. 071: I like to spend  
7 time with my kids, play volleyball. I'm a computer  
8 programmer so I like to do computer stuff, but.

9 MR. JAFFE: When you -- do you do programming  
10 on your own or do you work for a company?

11 PROSPECTIVE JUROR NO. 071: I work for a  
12 company.

13 MR. JAFFE: Do you have people below you and  
14 above you?

15 PROSPECTIVE JUROR NO. 071: We're really  
16 small so there's not really above. There's junior  
17 programmers and more middle programmers and there's  
18 senior.

19 MR. JAFFE: Where do you fall?

20 PROSPECTIVE JUROR NO. 071: I'm more middle.

21 MR. JAFFE: Are there times that you have to  
22 rely on junior programmers to do what they need to do?

23 PROSPECTIVE JUROR NO. 071: Absolutely.

24 MR. JAFFE: Do you trust that they're going  
25 to get it done, or do you have that nagging feeling

1 that you want to make sure it's done right?

2 PROSPECTIVE JUROR NO. 071: It depends on the  
3 person sometimes and I don't have a problem giving work  
4 to others. I think the hardest part for me at least in  
5 what I do is figuring out what I can give them rather  
6 than having a problem with giving it to them.

7 MR. JAFFE: Uh-huh. Okay. Have you ever --  
8 I'm sorry. How many children do you have?

9 PROSPECTIVE JUROR NO. 071: Two. Thirteen  
10 and twelve.

11 MR. JAFFE: Have you ever had -- that's too  
12 close in age. You've had to resolve disputes between  
13 them at least once.

14 PROSPECTIVE JUROR NO. 071: I don't know if  
15 they really have disputes. Maybe it's more bickering,  
16 I guess, but I like to tell them to try and resolve it  
17 themselves first. And I'll listen and if they still  
18 can't figure stuff out, then I'll ask them questions, I  
19 guess, and it depends on what it is.

20 MR. JAFFE: Okay. So try to resolve it first  
21 and then if it becomes necessary, that's when you'll  
22 make a decision?

23 PROSPECTIVE JUROR NO. 071: Yeah.

24 MR. JAFFE: Okay. May I have a moment, Your  
25 Honor?

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. JAFFE:

4 Q. Mr. Bangayan, I haven't heard from you  
5 either.

6 A. Francisco Bangayan, 085.

7 Q. Mr. Smith just reminded me about that. I'm  
8 going to try and look around and make sure I've talked  
9 to everybody.

10 Are you in any way concerned about the way  
11 your coworkers do their jobs sometimes?

12 A. Yes, I do.

13 Q. Do you have people who are below you and  
14 above you, or do you have some people who report to you  
15 or you're responsible to oversee?

16 A. Yes.

17 Q. When you oversee them, do you watch to make  
18 sure that they've done things right?

19 A. Of course.

20 Q. Are you concerned that they're going to do  
21 things right?

22 A. I do.

23 Q. When they do have to do things right and it's  
24 out there before you had to check it, do you ever  
25 have that knot in your stomach about whether it has

1 been done right or not?

2 A. Of course I have. I should ask them what's  
3 going on.

4 Q. How do you generally oversee the people who  
5 report to you? What types of things do you like to do?  
6 Is it watching what they do? Talking to them? Is it  
7 shadowing them?

8 A. I usually talk to them.

9 Q. Is it something that you do a lot during the  
10 day?

11 A. No.

12 Q. Do you like sports at all, sir?

13 A. Yes.

14 Q. What sport do you like?

15 A. Basketball.

16 Q. Basketball?

17 A. Yes.

18 Q. Are you, like I was discussing with  
19 Mr. Okamoto, are you in any way concerned about use of  
20 performance-enhancing drugs in sports?

21 A. Kind of, yeah.

22 Q. What do you think should be done about it?

23 A. Stop it.

24 Q. Do you think it can be stopped?

25 A. I don't think so.

1 Q. Any other sports you enjoy watching, sir?

2 A. I do.

3 Q. What other ones?

4 A. What other sports?

5 Q. Yes. What other sports do you enjoy  
6 watching?

7 A. Football.

8 Q. Were you concerned last year about the whole  
9 thing with the Saints and the bounties that they were  
10 putting out on players?

11 A. I'm not really -- I'm not really for  
12 football. I just watch it.

13 Q. Okay. You like to watch a couple of guys  
14 slamming into each other, huh.

15 A. Yeah.

16 Q. Okay. Have you ever -- well, let me ask you,  
17 sir: I know you're divorced. How many children do you  
18 have, sir?

19 A. Two.

20 Q. When you were married and one of your kids  
21 needed a hug, who did they run to: Your wife or you?

22 A. They run to me.

23 Q. They ran to you?

24 A. Yeah.

25

1 Q. Why you and not your wife?

2 A. Because we --

3 Q. Are you a big softy?

4 A. The mom -- the mom is, you know -- she's not  
5 really, you know -- just scolded them all the time.

6 Q. So you were the soft one.

7 A. Yeah, that's me.

8 Q. So when somebody wanted ice cream, they  
9 didn't bother asking mom. They would ask you first?

10 A. They asked me. That's right.

11 MR. JAFFE: One moment, Your Honor. Okay.

12 Your Honor, may we approach?

13 THE COURT: Yes.

14 **(Whereupon, a brief discussion was**  
15 **held at the bench.)**

16 THE COURT: All right, folks. Ms. Brown,  
17 what's your badge number?

18 PROSPECTIVE JUROR NO. 043: 043.

19 THE COURT: Ma'am, 043, we're going to thank  
20 and excuse you. Appreciate your time, ma'am.

21 PROSPECTIVE JUROR NO. 043: Thank you.

22 THE COURT: You have been here for three  
23 days. Thank you for being here three days. Go back  
24 down to the third floor and let them know that you have  
25 been excused by Department 30.



1 Do you know who our next juror is?

2 THE CLERK: Yes. Badge No. 113, Randall  
3 Jedinak.

4 THE COURT: Randall Jedinak. How do you say  
5 your last name?

6 PROSPECTIVE JUROR NO. 113: Jedinak.

7 THE COURT: Jedinak?

8 PROSPECTIVE JUROR NO. 113: Yes, sir.

9 THE COURT: Mr. Jedinak, tell us your name  
10 and badge number, if you would, please.

11 PROSPECTIVE JUROR NO. 113: Randall Jedinak,  
12 J-E-D-I-N-A-K, 113.

13 THE COURT: Mr. Jedinak, how long have you  
14 been in Las Vegas?

15 PROSPECTIVE JUROR NO. 113: Eight years.

16 THE COURT: What do you do for work?

17 PROSPECTIVE JUROR NO. 113: I'm a behavioral  
18 detection officer with the Transportation Security  
19 Agency.

20 THE COURT: And do you have a spouse or  
21 significant other?

22 PROSPECTIVE JUROR NO. 113: I'm divorced.  
23 She doesn't work. I have one son. He's a police  
24 officer in Los Angeles. I've never served on a jury.

25 THE COURT: Thank you, sir. You remembered

1 those questions.

2 Any of the other questions that you remember  
3 being asked in the last couple of days that you feel  
4 like you need to offer us any information about?

5 PROSPECTIVE JUROR NO. 113: Well, I have a  
6 skepticism about pain and suffering lawsuits, and I  
7 would have difficulty with a multi-million dollar  
8 settlement. However, if the plaintiff provided  
9 evidence to my satisfaction, I would not be opposed to  
10 a settlement of some type.

11 THE COURT: Okay. So I guess the question  
12 is: You're opposed -- you have a difficulty, I think  
13 you said, with a multi-million dollar settlement. We  
14 are just looking for jurors who are willing to be  
15 open-minded and listen to the evidence before making  
16 their decisions.

17 Are you able to do that?

18 PROSPECTIVE JUROR NO. 113: Yes, sir.

19 THE COURT: Okay. So whether it's a small  
20 number or a big number, you'll listen to the evidence  
21 before making up your mind; is that fair?

22 PROSPECTIVE JUROR NO. 113: Yes, sir.

23 THE COURT: Do you think you -- is there  
24 anything else about the things that you've heard about  
25 any of the questions or answers that makes you think

1 that you would have a difficult time being a fair and  
2 impartial juror in this case?

3 PROSPECTIVE JUROR NO. 113: No, sir.

4 THE COURT: Mr. Cloward, do you have some  
5 questions?

6 MR. CLOWARD: Yes, Your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. CLOWARD:

9 Q. Mr. Jedinak.

10 A. Yes.

11 Q. Is that how you pronounce it?

12 A. Yes.

13 Q. Is that what you prefer to be called?

14 A. Or Randall. It doesn't matter.

15 Q. May I call you Randall?

16 A. Sure.

17 Q. Randall, the questions that the Judge asked  
18 earlier, you indicated you had a problem with a  
19 multi-million dollar amount and, I think, you said pain  
20 and suffering you also have an issue with.

21 Can you tell me a little bit about that?

22 A. It just seems that there are a lot of  
23 lawsuits for pain and suffering. Some of them are  
24 frivolous as been discussed in this courtroom.

25 Q. Sure.

1           A.    So this would be a situation where I would  
2 have to hear the evidence before I would make a  
3 decision in this case.

4           Q.    Okay. Do you feel like -- is there already  
5 an amount that in your mind that you already could not  
6 go to? The fact that we've been talking about the  
7 amounts that we've been talking about, is that  
8 something that already before hearing any of the  
9 evidence you've already kind of got a prejudgment or  
10 preconceived idea on that?

11          A.    Counselor, I would have a great deal of  
12 difficulty, as I said, with a multi-million dollar  
13 settlement.

14          Q.    Sure. And I appreciate that. That's really  
15 regardless of what the evidence was. You would just  
16 have a great deal of difficulty with that no matter  
17 what, right?

18          A.    Yes, sir.

19          Q.    And is that just based on your core values  
20 and beliefs that the majority of lawsuits especially  
21 those where millions of dollars are being asked for,  
22 those are the kind of frivolous lawsuits, is that how  
23 you feel?

24          A.    Not necessarily that they're all frivolous  
25 but that the amount asked for is excessive.

1 Q. Okay. So fair to say that just the fact that  
2 the amount is out there, you've already got a  
3 preconceived idea that it's an excessive lawsuit? It's  
4 more likely a frivolous lawsuit; is that fair?

5 A. Not frivolous but excessive in the amount  
6 requested.

7 Q. Okay. I appreciate it. And knowing --  
8 knowing what we've discussed today, we haven't been  
9 able to talk about the facts, but you would agree with  
10 me that my client would not in a hypothetical case --  
11 well, first, let's start with a hypothetical case.

12 In a hypothetical case if you were a  
13 plaintiff and you were asking for an amount into the  
14 millions, you would have a hard time or you wouldn't  
15 want someone on your jury with your frame of mind; is  
16 that fair?

17 A. That's fair. Yes, sir.

18 Q. And you agree with me that my client, on that  
19 specific issue, would not get a fair fight, right?

20 A. You mean as far as trying to get the  
21 multi-million dollar settlement, or do you mean as far  
22 as listening to the evidence?

23 Q. Just as far as, you know, if you know that  
24 the amounts at issue, the fact that you have this -- I  
25 think you said you have a -- you already have a core

1 value and a core belief that \$2 million is excessive,  
2 you would have a very difficult time no matter what the  
3 evidence was, you would have a very difficult time  
4 entering that into the verdict, true?

5 A. Correct.

6 Q. Okay. And so knowing that my client --  
7 Mr. Jaffe said his client says that he is going to  
8 prove less than that. I'm saying that we'll prove more  
9 than that. Knowing that about you, that you have a  
10 difficult time with that amount, is it fair to say that  
11 Mr. Khoury is starting off a little bit ahead than  
12 Ms. Seastrand?

13 A. Well, Counselor, I would listen to the  
14 evidence but regardless of the outcome, I would have  
15 difficulty awarding a multi-million dollar settlement.  
16 If you feel that gives the defendant an advantage, then  
17 it does.

18 Q. Okay. I appreciate that. And, you know,  
19 sometimes I hate being a lawyer because you just have  
20 to keep asking questions and I don't mean to pester,  
21 and I'm just trying to find out for my client. So tell  
22 me a little bit about your feelings on pain and  
23 suffering.

24 A. I think it's hard to quantify pain and  
25 suffering, but I can't imagine pain and suffering that

1 would be worth multi-million dollars.

2 Q. Okay. You would need something very  
3 significant in order to award that amount; is that  
4 fair?

5 A. Yes.

6 Q. What would you consider something --

7 A. I can't even imagine.

8 MR. JAFFE: Objection, Your Honor. This is  
9 now going beyond what's permitted in the court.

10 THE COURT: I don't think so. Overruled.

11 BY MR. CLOWARD:

12 Q. Randall, it's fair to say that you can't  
13 imagine a set of facts that would warrant an award of  
14 multi-million dollars for pain and suffering, true?

15 A. Correct.

16 Q. Okay. Thank you, Randall. I appreciate  
17 that.

18 MR. CLOWARD: Your Honor, may we approach?

19 THE COURT: Come on up.

20 **(Whereupon, a brief discussion was**  
21 **held at the bench.)**

22 THE COURT: All right. We have to take a  
23 break, folks. Here's what we're going to do. Since  
24 we're so close to the lunch hour, I'm just going to go  
25 ahead and take a lunch break now. When we come back,

1 Mr. Jaffe has some questions for Mr. Jedinak, but we'll  
2 go ahead and take a lunch break. Everybody take a  
3 lunch break. We're close. All I can tell you is we're  
4 close. Just bear with us for a little bit longer.

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

20         I'm going to actually give you a little bit  
21 of extra time today because I have a lunch appointment  
22 so I'm going to have everybody come back at a quarter  
23 after one. So I'm going to give you about an hour and  
24 half today.

25         THE BAILIFF: All rise.



1                   (Whereupon, prospective jurors exit the  
2                   courtroom.)

3           THE COURT: We're outside the presence of the  
4 jury.

5           Anything we need to make a record on?

6           MR. JAFFE: I don't think so, Your Honor.

7           MR. CLOWARD: Just the sidebar. Our --

8           MR. EGLET: We don't need to make a record on  
9 that. You can do it later. The Judge will make the  
10 record. He can respond.

11           THE COURT: There's a challenge for cause on  
12 Mr. Jedinak but Mr. Jaffe wanted to ask him questions  
13 so let him ask him some questions first and then we'll  
14 decide.

15           MR. CLOWARD: Thanks, Judge.

16           MR. JAFFE: Thank you, sir.

17           THE COURT: Off the record.

18                   (Whereupon, a lunch recess was taken.)

19           THE COURT: Let's go back on the record.  
20 We're on the record in Case No. A636515. We're outside  
21 the presence of the jury.

22           My understanding is that the challenge to  
23 Juror No. 20, Ms. Brown -- is it Ms. Brown?

24           MR. JAFFE: It's No. 17. No. Ms. Brown is  
25 replacing him.

1 THE COURT: Mr. Jedinak.

2 MR. JAFFE: Yes.

3 THE COURT: Mr. Jedinak, Badge No. 113,  
4 correct?

5 MR. JAFFE: Yes, sir.

6 THE COURT: That the parties have agreed to  
7 excuse Mr. Jedinak by stipulation.

8 MR. JAFFE: Yes, sir. We're going -- well,  
9 we're going to waive our objection -- our objection to  
10 his being dismissed. We had objected to the challenge.

11 THE COURT: So you're going to withdraw your  
12 objection and we're going to excuse by stipulation,  
13 right?

14 MR. CLOWARD: Correct.

15 THE COURT: Let's bring the jury back. We'll  
16 excuse her and put a new one in there and let  
17 Mr. Cloward go with a new one.

18 THE BAILIFF: All rise.

19 **(Whereupon, prospective jurors enter the**  
20 **courtroom.)**

21 THE COURT: You folks know there's a water  
22 pitcher there in front of you with some cups if anybody  
23 needs a drink. Go ahead and be seated.

24 Welcome back, folks. We're back on the  
25 record in Case No. A636515. I hope you guys had a good

1 lunch.

2 At this point we're going to thank and excuse  
3 Mr. Jedinak, Badge No. 113. Appreciate your time, sir.

4 PROSPECTIVE JUROR NO. 113: Thank you.

5 THE COURT: Have a good day. Go back down to  
6 the third floor. Let them know you have been excused  
7 by Department 30. Thank you, sir.

8 Who's our next juror?

9 THE CLERK: Badge No. 117, Veronica  
10 Francisco.

11 THE COURT: Ms. Francisco, welcome. Glad to  
12 have you. Tell us your name and badge number, please.

13 PROSPECTIVE JUROR NO. 117: Veronica  
14 Francisco, Badge 117.

15 THE COURT: How long have you lived in  
16 Las Vegas, ma'am?

17 PROSPECTIVE JUROR NO. 117: Six years.

18 THE COURT: What do you do for work?

19 PROSPECTIVE JUROR NO. 117: Team leader for  
20 Jack In The Box. Been married. Three kids. My  
21 husband work as a security guard. My daughter work for  
22 CVS. My second one is medical billing and coding in  
23 Hawaii. My younger son work for Jack In The Box.

24 THE COURT: You seem very nervous. Don't be  
25 nervous. I'm a nice guy.

1 Have you ever served on a jury before?

2 PROSPECTIVE JUROR NO. 117: No.

3 THE COURT: Thank you, ma'am. In response to  
4 any of the questions that you've heard in the last  
5 three days, anything that you want to volunteer to us?  
6 Any information that you think we need to know?

7 PROSPECTIVE JUROR NO. 117: Yeah. I had an  
8 accident, car accident, 20 years ago.

9 THE COURT: Were you hurt?

10 PROSPECTIVE JUROR NO. 117: Yeah. Whiplash.

11 THE COURT: Did you heal? You recovered?

12 PROSPECTIVE JUROR NO. 117: Yes.

13 THE COURT: Okay. Anything about that  
14 experience that you think would make it difficult for  
15 you to be fair in this case?

16 PROSPECTIVE JUROR NO. 117: I don't think so.

17 THE COURT: Okay. Anything else that you  
18 want to tell us about?

19 PROSPECTIVE JUROR NO. 117: No.

20 THE COURT: All right. The attorneys are  
21 going to ask you questions. You know they're going to  
22 ask more questions.

23 Go ahead, Mr. Cloward.

24 MR. CLOWARD: Thank you.

25 THE COURT: He'll be nice to you too.

VOIR DIRE EXAMINATION

BY MR. CLOWARD:

Q. Hi, Ms. Francisco. How are you?

A. Hi. Good.

Q. Just a couple of other questions. We've had a lot of questions, discussion about certain topics and things. Anything about the topics, the amount of money, things that have been talked about been troubling to you or?

A. It's not troubling. I mean, troubled. The only thing is only now I found out that when you get a car accident that, I mean, for pain and suffering you can ask that amount. I mean, you know, that high.

Q. Sure. Do you have kind of an issue with that?

A. No.

Q. What do you think about pain and suffering? Just the concept generally.

A. To me pain and suffering is when a person when get hit and, you know, they -- just like it change their life because they suffering. I mean, they have pains that they have to deal with. Even though the accident has been happened a long time, it comes and go.

1 Q. Okay. Do you have any problems with the  
2 concept of inserting an amount of money into a verdict  
3 form for -- to compensate for pain and suffering?

4 A. No.

5 Q. Okay. Do the amounts that were discussed --  
6 say, there was a hypothetical case and you were the one  
7 that was injured and you knew that your attorney was  
8 going to be asking the jurors to insert an amount into  
9 a verdict into the millions.

10 Would you have a problem with having a juror  
11 of your same frame of mind sit on that panel?

12 A. No.

13 Q. Same thing. Mr. Khoury, he also wants to  
14 have a fair and impartial jury. You know, assuming  
15 that -- that you were -- you were the defendant and the  
16 plaintiff was asking for some money, and you were the  
17 juror and there was a juror that was on the panel with  
18 your same frame of mind, would you be able to award  
19 zero if that's what the evidence showed?

20 Would you have any issues with that?

21 A. I guess if that's what, I mean, the law says,  
22 then I agree with it.

23 Q. Okay. You don't think that just because  
24 Ms. Seastrand filed a lawsuit that she should be  
25 entitled to any sort of recovery without proving a

1 case, right?

2 A. Right. You have to wait until you hear  
3 everything. I mean, the facts before you can decide.

4 Q. And you're willing to be fair not only to  
5 Ms. Seastrand but you're also willing to be fair to  
6 Mr. Khoury, right?

7 A. Right.

8 Q. Okay. Do you have any -- is there  
9 anything -- we've been going at this for a long time  
10 and I just have a couple other follow-ups. But was  
11 there anything during the process that somebody said  
12 something and you thought to yourself, you know what, I  
13 want to talk about that? I wish I could raise my hand  
14 and tell them what I was thinking.

15 A. No.

16 Q. Okay. I appreciate it.

17 A. I'm just nervous because I'm not used to  
18 talking in front.

19 Q. Sure. That's understandable. Do you  
20 think -- do you have any ideas or beliefs about whether  
21 people can be injured if it's a serious crash versus  
22 whether it's a crash with, you know, that's not like a  
23 rollover-type crash? Do you have any beliefs one way  
24 or another about that?

25 A. No.

1 Q. Tell me about your crash.

2 A. I guess, I mean, even how careful the driver  
3 is but sometimes accidents do happen and you cannot  
4 blame the person. But if the person is injured, then  
5 they -- they -- I mean, they award compensation as  
6 long, I mean, you think that it's -- sorry.

7 THE COURT: You're doing just fine.

8 BY MR. CLOWARD:

9 Q. You're doing just fine.

10 Do you want a drink of water?

11 A. No. Thank you. As long -- I mean, to help  
12 the person start -- you know, just to help them pay the  
13 bills and whatever loss, then I agree. I mean, if the  
14 compensation is --

15 Q. Fair and reasonable?

16 A. Yeah.

17 Q. You don't have a problem with -- as long as  
18 it's fair?

19 A. Yeah.

20 Q. Okay. You would be okay if there was, you  
21 know, pain and suffering that was asked if it was  
22 shown? You would not have a problem with that, would  
23 you?

24 A. No.

25



1 MR. CLOWARD: Okay. And one more -- just one  
2 minute and I think I'll be done.

3 Your Honor, I would pass at this time.

4 THE COURT: Pass panel for cause?

5 MR. CLOWARD: Yes.

6 THE COURT: Okay. Mr. Jaffe.

7 MR. JAFFE: Thank you, Your Honor.

8 VOIR DIRE EXAMINATION

9 BY MR. JAFFE:

10 Q. Hi, Ms. Francisco.

11 A. Hi.

12 Q. Relax. It's okay. So tell me what you do as  
13 a team leader for Jack In The Box.

14 A. I work in a position as team leader.  
15 Sometimes I handle -- I handle employees. Like, I'm in  
16 charge with the business when I'm working. So I tell  
17 my employees what to do and I work what needed.

18 Q. Okay. Do you ever have to handle arguments  
19 between your employees?

20 A. Yeah.

21 Q. How do you go about -- how do you go about  
22 handling those? Do you try to decide who is right and  
23 who is wrong or do you try to --

24 A. No. You got to talk to -- to the parties  
25 involved and then if you cannot resolve it, then we go

1 to the higher -- I mean, because I'm lower management.  
2 And then if they cannot -- you cannot resolve their  
3 problems, then we talk with other managers.

4 Q. And then the other managers make a decision  
5 what to do?

6 A. Yeah.

7 Q. Do you like that system?

8 A. Yes.

9 Q. Do you find that it's helpful?

10 A. Yes. Because sometimes it needs different  
11 views of -- I mean, another person to see what is wrong  
12 and know what is going on. If you cannot decide at  
13 least somebody can help you out.

14 Q. How do you handle disputes with your  
15 children?

16 A. I don't know because I usually let my husband  
17 take -- I mean, do the disciplining.

18 Q. Okay. Okay. How about when one of your  
19 children needs a hug? Do they go to your husband or to  
20 you?

21 A. Oh, they come -- I mean, they come to me or  
22 to my husband.

23 Q. Yeah. Is he --

24 A. Sorry.

25

1 Q. Is he more the teddy bear?

2 A. I'm sorry?

3 Q. Is he more the teddy bear?

4 A. Yeah.

5 Q. Okay. Do you ever have to handle customer  
6 disputes? Like if a customer comes and says they just  
7 don't like the food that they got or they want their  
8 money back?

9 A. Yeah. What we do is we try to listen to what  
10 the customer said and if we cannot -- if they want a  
11 refund or if we try to replace their order, make it --  
12 I mean, you know, to make them come back again. And if  
13 they don't want it and they just want money, then we  
14 just give the money.

15 Q. Do you ever think that some customers are  
16 just trying to get a free meal out of it?

17 A. Yeah. Sometimes. But for Jack In The Box  
18 they say that customers always right so we don't want  
19 to do it -- so what they said we just give it.

20 Q. So even though the customer is always right,  
21 sometimes do you doubt that they're actually right?

22 A. Yes, but we cannot do anything.

23 Q. How often do you really find that you doubt  
24 that they're right rather than really believe that  
25 they're right?

1           A.    It's seldom because -- I mean, you can tell.  
2 When some people keep on coming back and they do the  
3 same excuses, then you know that they just getting free  
4 foods or trying to make money out of the company.

5           Q.    Does that bother you?

6           A.    Sometimes.

7           Q.    Why?

8           A.    Because, like, I'm working hard and then all  
9 these people that, you know, they just come and getting  
10 free food and you can't even have a free food. You  
11 work hard for your food.

12          Q.    There's no such thing as a free lunch, huh?

13          A.    Yeah.

14          Q.    Okay. Have you or anybody in your family  
15 served in the military?

16          A.    My brother.

17          Q.    What -- where in the military was he?

18          A.    He's retired Air Force.

19          Q.    Okay. And did your brother serve overseas?

20          A.    Yes.

21          Q.    And that was in the -- I mean, you've -- it  
22 sounds like English is not your native language.

23          A.    Yeah, not really. I mean, you know --

24          Q.    That's okay. What's your native language?

25          A.    Filipino.

1 Q. Tagalog?

2 A. Tagalog, yeah.

3 Q. Did your brother serve in the United States?

4 A. Yes.

5 Q. Okay. And do you know if he -- was he  
6 decorated or was he an officer?

7 A. He's an officer.

8 Q. What level of officer was he?

9 A. Major.

10 Q. Wow. When you -- have your kids ever gotten  
11 hurt playing sports or horsing around the house like  
12 everybody else's kids?

13 A. Yeah.

14 Q. Are you more the give them a hug kind or the  
15 rub some dirt on it and go back out and play?

16 A. No. I always hug them and, if possible, I  
17 don't want them to go play again.

18 Q. Okay. Have you ever had to serve as a  
19 caretaker for anybody?

20 A. My -- yeah, with my dad.

21 Q. Was your dad ill or was he hurt?

22 A. He's -- I mean, he's ill right now, so I just  
23 came back from the Philippines two months ago for  
24 helped him out.

25

1           Q.    So are other family members helping out as  
2 well?

3           A.    Yeah.  Financially, yeah.

4           Q.    So are you doing more than the others, less  
5 than the others, or the best you can?

6           A.    I do the best I can.

7           Q.    Only because English is not your native  
8 language, I just want to make sure.  Do you feel  
9 comfortable that you'll be able to understand  
10 everything in court that's said, or is there any  
11 concern in your mind that you would not be able to  
12 understand?

13          A.    I'm concerned because sometimes with the -- I  
14 mean, big words, sometimes I cannot understand what  
15 they mean.

16          Q.    Is it a matter of just not knowing what the  
17 word means?

18          A.    Yeah.

19          Q.    Okay.  Now, as a juror you will be able to  
20 ask questions.  So if somebody says something and  
21 you're not sure what they're asking you or if they say  
22 a word that you're not sure what it is, would you be  
23 afraid to write a question and ask them to explain what  
24 that word is or what it means especially when doctors  
25 are using medical terms?  That happens a lot.

1           Would you be willing to write that down and  
2 ask them to explain what that means if you're unsure?

3           A.    Yeah.

4           Q.    Okay. And can you listen to the law that  
5 Judge Wiese tells you and apply that fairly to the  
6 facts in the case?

7           A.    Yes.

8           Q.    Do you have any concerns that people come  
9 into court and even though they take an oath to tell  
10 the truth, they don't do that?

11          A.    Yes.

12          Q.    What are the circumstances under which you're  
13 concerned about that?

14          A.    I guess my concern really is, you know, I'm  
15 just -- I'm just -- I'm scared that I cannot -- sorry.

16          Q.    That's okay. You're doing fine.

17          A.    I can't express all the words I want to say,  
18 you know, in court.

19          Q.    Take your time. Take your time. What  
20 concerns would you have about somebody testifying and  
21 taking an oath to tell the truth but possibly not do  
22 it? What are the types of situations where you think  
23 that might occur?

24          A.    I don't know.

25

1 Q. If you're not sure, that's fine. It's sort  
2 of something you would have to listen to and see as you  
3 go along?

4 A. Uh-huh.

5 Q. Will you wait until you hear the whole case,  
6 including the evidence we put in, before you make a  
7 decision?

8 A. Yes.

9 Q. You're not the -- are you the kind of person  
10 who once you make up your mind, that's it. It's over.  
11 It's done and you're not willing to listen, or do you  
12 give both sides a chance to prove their case?

13 A. Can you repeat it?

14 Q. Sure. I just want to make sure. Will you  
15 wait to make a decision until you hear all of the  
16 evidence in the case because we go last. They go  
17 first. We want to make sure that you're going to give  
18 us an even -- an equal opportunity to prove our case.

19 A. Yes.

20 Q. Can you do that?

21 A. Yeah.

22 Q. Have you or any member of your family had any  
23 spinal surgery like to their neck or to their low back?

24 A. No.

25



1 Q. As a team manager are you ever concerned that  
2 the people working for you aren't doing their job  
3 right?

4 A. Sometimes.

5 Q. How do you go about making sure that they do  
6 their job right?

7 A. I -- I make sure that -- if I cannot -- can I  
8 say to them, then I just demonstrate it so that way  
9 they understand it better. That way the job -- I mean,  
10 all the job get done.

11 Q. If it's not done right, it falls on you from  
12 the upper level people, right?

13 A. Yes.

14 Q. So you want to make sure they do the job  
15 right.

16 A. Yes.

17 Q. Thank you for your time, Ms. Francisco. I  
18 appreciate it.

19 MR. JAFFE: Pass for cause, Your Honor.

20 THE COURT: All right, folks. Both parties  
21 have passed the panel for cause which means you folks  
22 in the back are probably safe. Don't leave yet,  
23 though. What we're going to do now is we're going to  
24 pass a sheet back and forth among the attorneys.  
25 Before we do that, I'm going to have you both come up

1 for just a second.

2                   **(Whereupon, a brief discussion was**  
3                   **held at the bench.)**

4           THE COURT: All right, folks. This is the  
5 time now that the attorneys get to exercise their  
6 peremptory challenges. These are the challenges I told  
7 you they don't really have to have good reasons for.  
8 They can use these challenges for any or no reason, and  
9 don't be offended if you're one of the people that gets  
10 off with that.

11           While they're doing this, I can sit here and  
12 we can all stare at them but that kind of seems like a  
13 waste of time to me so I'm going to go over what we  
14 call some preinstructions, things that I want you to  
15 know. It's not going to apply to those of you that get  
16 excused but it will apply to the people who end up  
17 staying.

18           As I told you before, we end up with a jury  
19 of eight. We will also have two alternates. You won't  
20 know who the alternates are. I have a secret alternate  
21 in here. Sometimes we randomly chose alternates. The  
22 alternates are chosen in a different way depending on  
23 the department. Everybody does it a little bit  
24 differently. Sometimes we pick the alternates at the  
25 end. Sometimes we pick them at the beginning.

1 Sometimes it's random. Sometimes the attorneys and the  
2 Court agree on who they're going to be. You're not  
3 going to know.

4           The reason you're not going to know who the  
5 alternates are is because we want everybody to pay  
6 attention the same. If you knew that it was the last  
7 two people -- if it was always the last two people that  
8 were picked, then those two people wouldn't pay  
9 attention because you knew you were going to be  
10 alternates. So it's not always the last two people and  
11 that's why I want to tell you that so everybody pays  
12 attention equally and we'll let you know at the very  
13 end who the alternates are.

14           I want to talk to you a little bit about just  
15 some instructions. I talked to you initially about  
16 places to go for lunch. I talked to you about bringing  
17 snacks in. Somebody already made a mess in here.  
18 Don't bring something that's going to make a mess.  
19 Okay.

20           If you need to take a break, raise your hand.  
21 Give me the break signal. If I don't see it, make sure  
22 Randy sees it. One of us will make sure that you get a  
23 break.

24           Those of you that end up on our jury are  
25 going to get a new jury badge. Instead of the ones

1 that you have now, you'll get a dark blue card/badge  
2 that says Juror Department 30. It's important that you  
3 wear those juror badges all the time. You folks have  
4 been doing good wearing the ones that you have now. If  
5 you get the new one, make sure you wear that all the  
6 time when you're in the building. I'll explain to you  
7 in just a minute why.

8           Just so you know, I know -- I've talked to  
9 jurors before and they wonder what is all this stuff  
10 that's up here on my desk. This is the one that I --  
11 this screen is the one that I use to push the button to  
12 make the white noise. It actually has a picture of me  
13 right now because there's these little cameras and  
14 whoever is talking, it focuses on them, but we don't  
15 really record in this department. We have a reporter  
16 so the recording doesn't really matter.

17           This screen -- I actually have -- I don't  
18 know if you folks can see it, my court reporter down  
19 here types all this stuff out and I can see it as she's  
20 doing that. So if you see me over here looking at this  
21 or watching this, it's just a way that I can keep track  
22 of what's going on there.

23           The other stuff up here is just junk and  
24 paperwork and exhibits. It's stuff like that you'll  
25 see me using during the course of the trial.

1           Every once in a while you might see me on my  
2 phone. It's because I sometimes will e-mail or text my  
3 JEA in the back or Randy about something that we need  
4 to take care of during the course of the trial. It  
5 doesn't mean I'm not paying attention. Okay.

6           What I'm going to say to you now is intended  
7 to serve as an introduction to the trial of the case.  
8 This binder right here is my civil bench book. This is  
9 my cheat sheet. It makes it so I don't forget to say  
10 something that I'm supposed to say at the beginning or  
11 the end of the trial. So if you see me look at this --  
12 you'll see me look at this all the time about the jury  
13 admonition. I kind of have it memorized but sometimes  
14 I'll look at that and that's why I read some of the  
15 stuff out of here for instructions just to make sure  
16 that I don't miss something. Okay.

17           I try to explain to you folks what's going on  
18 because I found that most jurors haven't done this  
19 before and you're kind of curious what is all this  
20 stuff up here on my desk and what is it the judge is  
21 looking at and why are you doing that. So I try to  
22 kind of explain to you what's going on. It's not a  
23 secret.

24           This is an introduction to the trial of the  
25 case. It is not a substitute for the detailed

1 instructions on the law that I will give to you at the  
2 close of the case and before you retire to consider  
3 your verdict.

4 Ladies and gentlemen, this is a civil case  
5 commenced by a plaintiff and against a defendant. The  
6 case is based on a complaint filed by the plaintiff to  
7 which the defendant has filed a response to which we  
8 call an answer.

9 You do not have any way of knowing what facts  
10 will be presented to you during this trial. No juror  
11 may discuss with any fellow juror any fact relating to  
12 this case of his or her own knowledge. If you discover  
13 during the trial or after the jury has retired that you  
14 or any other juror has personal knowledge about any  
15 fact of controversy in this case, you must disclose  
16 that to me in the absence of the other jurors.

17 That means if you learn during the course of  
18 the trial that you're acquainted with the facts of the  
19 case or with a witness and you have not previously told  
20 us of that relationship, you have to declare that fact  
21 to me. The way that you communicate with the Court is  
22 through our marshal, Randy. He's going to be present  
23 at all times during the trial. Whenever you're here  
24 and I'm here, Randy will be here.

25 During the course of the trial, the attorneys

1 for both sides, the defendant, and Court personnel,  
2 other than the bailiff, are not permitted to talk to  
3 you. It's not that we're antisocial. It's simply that  
4 we're all bound by ethics and law not to speak with you  
5 because to do so may contaminate your verdict. We're  
6 not even allowed to say hi to you if we pass you in the  
7 hall or if we're in the elevator together. If we  
8 ignore you, please don't be offended.

9 I talked to you about that before because  
10 usually we read this, if it's a one-day jury selection,  
11 we'll read this during the first day. It's been a  
12 three-day jury selection so I'm giving you these  
13 instructions on the third day. You folks are already  
14 probably familiar with all of this stuff as we go  
15 along, so.

16 While you're here in the courthouse, please  
17 wear your juror badges that identify you as jurors.  
18 During lunch breaks during the day, when you're in the  
19 elevators, walking around the hallways, or in and out  
20 of the courthouse, make sure that you're only talking  
21 with other jurors and not about the case.

22 So the reason that you have these juror  
23 badges is to identify you as jurors. And I'm assuming  
24 when you walked in each morning that you've been here,  
25 you noticed that some people have juror badges on and

1 others don't.

2           If you happen to have a conversation with  
3 somebody in the hallway while you're waiting to come  
4 into court and that person didn't have a juror badge  
5 on, whether you were talking about the case or not --  
6 if you were talking about the case, you'd really get in  
7 trouble, but let's say you were just talking about the  
8 baseball game you saw on TV last night. The problem  
9 would be if you didn't know who that person was, you  
10 come into trial and lo and behold the person that you  
11 were talking to in the hallway was the next witness and  
12 they come in and take the witness stand. And then you  
13 would have to tell us that I had a conversation with  
14 that individual in the hallway. It was just about  
15 baseball, but that causes a problem because now you  
16 have a relationship or you know you've had a discussion  
17 with a witness who is testifying in the trial and that  
18 may be a problem for us. That's why I tell you to  
19 always wear your juror badge and always just talk to  
20 other jurors about -- you can talk about baseball. You  
21 can talk about other things. Don't talk about the  
22 case. But as long as you're talking to another juror,  
23 we're sure that you're not talking to any witnesses.  
24 Okay.

25           If you recognize a witness or you become



1 familiar with the facts in the case when a witness is  
2 testifying, please make a little note on a jury pad.  
3 Once we get our actual jurors seated, you will each be  
4 given a notepad and pen and your juror badge. You need  
5 to make a little note on your jury pad that you  
6 recognize such and such witness, how it is that you  
7 recognize them, give that to Randy, and he'll give it  
8 to me.

9           The reason that's important is because  
10 sometimes you've seen and you've heard a list of the  
11 witnesses and things like that that are going to be  
12 testifying. But oftentimes you may not know somebody  
13 by name and they may come in and testify and you may  
14 realize that's the person that lives two doors down  
15 from you. You know them. You see them on a regular  
16 basis and you maybe have conversations with them but  
17 you just didn't know their name by maybe their last  
18 name. Maybe your kid's soccer coach or something like  
19 that that you only know him as coach and then you  
20 realize lo and behold that's the investigating police  
21 officer on the case. If you find out that you know a  
22 witness, you need to let me know that. Write that down  
23 on one of those little pieces of paper and give it to  
24 Randy and let me know that's happening.

25           Additionally, I have to tell you that you're

1 not to visit the scene of any of the acts or  
2 occurrences made mention of during the trial unless  
3 specifically told to do so by the Court. You're  
4 prohibited from doing any investigation with regard to  
5 this case or with regard to anyone having to do with  
6 this case on your own.

7           This seems like a simple instruction but it's  
8 so simple some people ignore it or sometimes overlook  
9 it. Maybe they don't understand it. That means if you  
10 hear something during the course of the trial and you  
11 think, well, I have a friend who's an absolute expert  
12 in that area, you can't go home and ask your friend, I  
13 heard this in trial today. Can you explain that to me?

14           The problem with that is, first of all, we  
15 don't have a way to determine the accuracy of what it  
16 is that you're hearing and, second of all, it would  
17 only be you hearing it, not the rest of the jurors.  
18 It's not that we don't want you to know everything that  
19 there is to know about the case, but we need to make  
20 sure that everybody hears the same evidence and that  
21 you're only judging this case based upon the evidence  
22 that you hear here in the courtroom.

23           You cannot get on the Internet and Google  
24 questions about anything to do with this trial. We  
25 had -- I'll be honest with you. We had that problem in

1 a prior case where we tried the case -- I don't  
2 remember how long it took but it took a little while --  
3 and the jurors went back in the jury deliberation room  
4 and they started Googling terms that they didn't  
5 understand. When we found out about that, it ended up  
6 being a mistrial. We had to do the whole trial over  
7 again. Okay. And that's why I try to make -- I try to  
8 emphasize that to you folks. You can't do any  
9 investigation on your own. Your decision and your  
10 deliberation has to be based solely on the evidence  
11 that you see and hear in the courtroom.

12           You're not to discuss with any other person  
13 any issue relating to the case either in person, by  
14 Facebook, Twitter, e-mail, texting, telephone or any  
15 other means of communication.

16           Other than bringing with you your everyday  
17 common sense you're limited to the documents in  
18 evidence which are presented to you during the trial.

19           The parties may sometimes present objections  
20 to some of the testimony or evidence. At times I may  
21 sustain objections or direct you to disregard certain  
22 testimony or exhibits. You must not consider any  
23 evidence to which an objection is sustained or which I  
24 have instructed you to disregard. It's the duty of the  
25 lawyers to object to evidence which they believe may

1 not be properly offered, and you should not be  
2 prejudiced in any way against a lawyer who makes an  
3 objection on behalf of the party that he or she  
4 represents.

5           Anything that you may have seen or heard  
6 outside the courtroom is not evidence and must also be  
7 disregarded.

8           Throughout the trial if you cannot hear a  
9 question asked by an attorney or an answer given by a  
10 witness, please raise your hand as an indication. If I  
11 don't see your hand up, please say, excuse me, I didn't  
12 hear that. We'll then make sure that the question and  
13 answer are repeated so that you can understand and hear  
14 everything that's said.

15           If you need to use the rest room or feel ill,  
16 please raise your hand and let me know. As I told you,  
17 we'll take breaks in the morning and in the afternoon.  
18 We take a lunch break. I want you to be comfortable so  
19 we talked about the drinks and things like that.

20           It's important that you make sure that you  
21 hear everything. I think the attorneys have both made  
22 a point of commenting on that. If anybody doesn't hear  
23 a witness's answer, you folks are the ones that are  
24 going to make the decisions in this case so it needs  
25 to -- you're the ones that need to hear it. If a

1 witness is talking too quiet and you can't hear them,  
2 let us know that.

3           If they're showing something up on the TV  
4 screen and the TV is set in such a way that you can't  
5 see it, let us know that. Don't be afraid to tell us  
6 that I can't see the TV, can you move it a different  
7 way. We would be happy to do that because we want you  
8 folks to be able to see and hear everything.

9           During the trial I may take notes of a  
10 witness's testimony. You're not to make any inference  
11 from that action. I'm required to prepare for legal  
12 arguments of counsel during the trial and for that  
13 reason I make take notes. You also can't make any  
14 inference from the fact that I may not be taking notes  
15 because sometimes I take notes to keep me awake.  
16 Sometimes I take notes because I think it's important.  
17 Sometimes I'm just up here doodling and coloring in the  
18 O's on the pages. I don't know if some of you do that,  
19 but if there's capital O's and zeros, I sometimes color  
20 those in to keep me busy. So don't infer anything from  
21 the fact that I might be taking notes or not taking  
22 notes. Okay?

23           If you wish, you may take notes during the  
24 course of the trial to remember what a witness might  
25 have said. If you do take notes, please keep them to

1 yourself until you and your fellow jurors go back to  
2 the jury room to decide the case.

3           With regard to notes, you should rely upon  
4 your own memory of what was said and not be overly  
5 influenced by the notes of other jurors when you go  
6 back to deliberate. Don't be so concerned with taking  
7 a note that you miss another question or answer asked  
8 of a witness.

9           And that's very important because sometimes  
10 people get so wrapped up in taking a note, you may be  
11 wanting to write down what the answer was to a prior  
12 question and you may miss the next question and answer  
13 which might have been even more important than the one  
14 that you're writing down. So it's fine to take notes  
15 but make sure that you're listening to every question  
16 and answer that's asked of a witness. Okay?

17           The case will proceed in the following  
18 manner: First, the plaintiff has the opportunity to  
19 make an opening statement outlining their case. After  
20 the plaintiff opens, the defendant has a right to make  
21 an opening statement, if they wish, or they may reserve  
22 their right to make an opening statement after the  
23 plaintiff puts on their evidence. Neither party is  
24 required to make an opening statement. I anticipate  
25 that they both will.

1           Opening statements are a synopsis or an  
2 overview of what the attorneys believe the testimony  
3 and evidence will be. Opening statements of attorneys  
4 are not evidence. After all, the attorneys are not  
5 witnesses to any of the facts in controversy in the  
6 case.

7           After the opening statements, the plaintiff  
8 will then introduce evidence and call witnesses. At  
9 the conclusion of the plaintiff's evidence, the defense  
10 has a right to introduce evidence if they so desire.  
11 After the defense rests, the plaintiff has a right to  
12 call rebuttal witnesses if they so choose.

13           At the conclusion of all of the evidence, I  
14 will instruct you on the law. You must not be  
15 concerned with the wisdom of any rule of law stated in  
16 these instructions or in the instructions that I will  
17 read to you at the conclusion of the evidence.

18           Regardless of any opinion that you may have  
19 as to what the law ought to be, it would be a violation  
20 of your oath to base a verdict upon any other view of  
21 the law than that given to you by the Court.

22           Please understand, folks, that the Court does  
23 not make up the law. The law in each state is created  
24 by the state legislature and sometimes by the Nevada  
25 Supreme Court.

1           After the instructions on the law are read to  
2 you, each party has the opportunity to argue orally in  
3 support of their case. This is called the closing  
4 arguments. What is said in closing arguments is not  
5 evidence. The arguments are designed to summarize and  
6 interpret the evidence for you and to show you how the  
7 evidence and the law relate to one another.

8           Since the plaintiff has the burden of proof,  
9 the plaintiff gets to argue to you twice at the end of  
10 the trial. The plaintiff will argue. The defense will  
11 argue, and the plaintiff has the opportunity to rebut  
12 the defense's argument.

13           After the attorneys have presented their  
14 arguments you will retire, select a foreperson, and  
15 deliberate to arrive at your verdict. Faithful  
16 performance by you of your duties is vital to the  
17 administration of justice. It is your duty to  
18 determine the facts and determine them from the  
19 evidence and the reasonable inferences arising from  
20 such evidence, and in so doing you must not indulge in  
21 guesswork or speculation.

22           The evidence which you are to consider  
23 consists of the testimony of witnesses and the exhibits  
24 admitted into evidence. The term witness means anyone  
25 who testifies in person or by way of a deposition and



1 it may include the parties to the lawsuit.

2 A deposition is simply an examination of a  
3 witness at a prior date under oath with the attorneys  
4 present where the testimony was taken down in written  
5 format and those written questions and answers may be  
6 read to you during the trial.

7 Admission of evidence in court is governed by  
8 rules of law. As I told you before, sometimes  
9 attorneys will make objections. It's my duty as the  
10 judge to rule on those objections and decide whether a  
11 certain question may be answered or whether certain  
12 evidence may be admitted. You're not to concern  
13 yourself with objections made by the attorneys or with  
14 the Court's reasons for its rulings.

15 You must not consider testimony or exhibits  
16 to which an objection has been sustained or which has  
17 been ordered stricken by the Court. Further, you must  
18 not consider anything which you may have seen or heard  
19 when the Court is not in session even if what you see  
20 or hear is said or done by one of the parties or by one  
21 of the witnesses. That means if you see or hear  
22 something that a party or witness does out in the  
23 hallway, you can't take that into consideration because  
24 it wasn't said or done here in the courtroom. Okay.

25 In every case there are two types of

1 evidence: Direct evidence and circumstantial evidence.  
2 Direct evidence is the testimony by a witness about  
3 what the person saw or heard or did. Circumstantial  
4 evidence is testimony or exhibits which are proof of a  
5 particular fact from which, if that fact is proven, you  
6 can infer the existence of a second fact.

7           If a witness decides -- here's an example.  
8 If a witness comes in and they testify that it's  
9 raining outside and they say it was raining, I saw it,  
10 that's direct evidence that it's raining. But if that  
11 same witness comes in and they don't say anything about  
12 rain but they come in and they have a wet umbrella and  
13 they lay that down by the front door and they're  
14 tracking water across the floor and they have wet shoes  
15 and their hair is wet, you might infer that it's  
16 raining out. What you see would be circumstantial  
17 evidence that it's raining. You may be wrong. It may  
18 have just been a sprinkler that went off in the  
19 hallway, but that's what circumstantial evidence is.  
20 And the -- and you're entitled to consider both of  
21 those.

22           No statement, ruling, remark, or facial  
23 expression which I may make during the course of the  
24 trial is intended to indicate my opinion as to what the  
25 facts are. I don't get to decide the facts. You are

1 the ones who determine the facts. In this  
2 determination you alone must decide upon the  
3 believability of the evidence and its weight and value.

4 In considering the weight and value of the  
5 testimony of any witness, you may take into  
6 consideration the appearance, attitude, and behavior of  
7 the witness; the interest of the witness in the outcome  
8 of the case; the relationship of the witness to any  
9 party to the case; the inclination of a witness to  
10 speak truthfully or not; the probability or  
11 improbability of the witness's statements; and all  
12 other facts and circumstances in evidence. Thus, you  
13 may give the testimony of any witness just such weight  
14 and value as you believe that witness is entitled to  
15 receive.

16 Let me again remind you that until the case  
17 is submitted to you, do not talk with each other about  
18 the case or about anyone who has to do with it until  
19 the end of the case when you go to the jury room to  
20 decide the verdict.

21 Do not let anyone else talk to you about the  
22 case or about anyone that has to do with the case. If  
23 someone should try to talk to you about this case while  
24 you're serving as a juror, please report that to me  
25 immediately through Randy.

1           You may need to tell your boss or your spouse  
2 or significant other what's going on, but all you can  
3 really tell them is that you have been chosen as a  
4 juror in a civil case; the judge has told you when the  
5 trial is going to end. You can tell them when the  
6 trial is expected to be concluded. You may also tell  
7 them that if the trial is over you may be back to work  
8 soon. I don't anticipate that happening. I think it's  
9 going to last through next Thursday. That's really all  
10 you can tell them until after you have been discharged  
11 as jurors.

12           Do not make up your mind about what the  
13 verdict should be until after you have gone to the jury  
14 room to decide the case and you and your fellow jurors  
15 have discussed all the evidence. It's important  
16 throughout the trial to keep an open mind. At the end  
17 of the trial you will have to make your decision based  
18 upon what you recall of the evidence. You will not  
19 have a written transcript to review. Even though we  
20 have a court reporter who takes down the testimony, it  
21 is not typed up into a readable format right away and  
22 it is difficult and time consuming for the reporter to  
23 locate and read back lengthy testimony. Therefore, I  
24 would urge you to pay close attention to the testimony  
25 and evidence as it's presented.

1           Before I go on, give me one minute here.

2           Come on up for a minute, Counsel.

3                   **(Whereupon, a brief discussion was**  
4                   **held at the bench.)**

5           THE COURT: All right, folks. As I call your  
6 name, I'm going to ask you to please stand up. I  
7 always do this different. Sometimes I call the people  
8 who are going to be the jurors and sometimes I call the  
9 people who are going to be excused. I don't know how  
10 you folks would prefer it so here's how I'm going to do  
11 it and I'll tell you afterwards which they are.

12           Ms. Faulkner, please stand up. Also  
13 Ms. Herana and Ms. Johnson, Mr. Daryanani,  
14 Mr. Madrigal, Ms. Templeton, Mr. Saxton, Mr. Karpenko,  
15 Ms. Perrine, and Mr. Payne, you folks are our jurors.  
16 So I'm now going to have you sit back down and I'll  
17 have everybody else stand up. Okay.

18           Take your stuff with you. Head towards the  
19 back door but don't leave yet. Just wait right there  
20 by the door for me for just a minute.

21           Counsel, the individuals that you have seated  
22 in the box is this the jury that you've picked?

23           MR. CLOWARD: Yes, Your Honor.

24           MR. JAFFE: Yes, it is, Your Honor.

25           THE COURT: Does either party wish to make a

1 J.E.B. versus Alabama or a Batson challenge?

2 MR. CLOWARD: None for the plaintiff.

3 MR. JAFFE: None for the defense, Your Honor.

4 THE COURT: Thank you, folks. All right.

5 Everybody who is not sitting over here in the box,  
6 you're thanked and excused with the Court's  
7 appreciation. Thank you for your time. Go back down  
8 to the third floor and let them know you've been  
9 excused by Department 30.

10 All right. Those of you that are left --  
11 Ms. Faulkner, I'm going to ask you to move over just  
12 one more, if you would, please.

13 Ms. Herana and Ms. Johnson, if you would come  
14 down and fill in those empty chairs.

15 Mr. Daryanani, I'm going to put you up there  
16 next to Ms. Johnson. No. Sit right back there where  
17 you were on the back row. I'm sorry. Mr. Daryanani,  
18 you're going to be next in Seat No. 4.

19 Mr. Madrigal, you're going to be on the back  
20 row on the -- next to Mr. Daryanani.

21 Ms. Templeton, if you would move over here in  
22 front of Ms. Faulkner.

23 If you gentlemen would move down and fill in  
24 those remaining seats. Perfect.

25 Ms. Perrine, you're going to move back and

1 you're going to sit next to Mr. Karpenko.

2 Mr. Payne, you're going to be Seat No. 10  
3 over there on the left end.

4 So the seat numbers and the juror numbers  
5 have now changed. You will now be considered Jurors  
6 No. 1 through 10. The back row is 1 through 5 from my  
7 right to my left. The middle row or the front row is 6  
8 through 10 from my right to my left. Okay. Does  
9 everybody know their juror number?

10 These are the seats that I'm going to ask you  
11 to come back and sit in for the remainder of the trial.  
12 This makes it so usually if they do something up here  
13 on the witness stand or with the TV, my experience is  
14 these seats make it so you see things the best. So  
15 those are the seats that we're going to leave you in  
16 for now.

17 Do you want to give them their stuff now?

18 THE BAILIFF: Their notepads, certainly.

19 THE COURT: Our clock is doing this thing  
20 again.

21 MR. EGLET: Your Honor, my work is done. May  
22 I be excused?

23 THE COURT: You may.

24 MR. EGLET: Thank you.

25 THE COURT: What I'm going to do is -- folks,

1 we're going to take a quick, little break. Do you  
2 folks need more than a quick break, Mr. Cloward?

3 MR. CLOWARD: I'm sorry?

4 THE COURT: Is a quick break enough?

5 MR. CLOWARD: Yes, please. About five to  
6 ten.

7 THE COURT: We're going to give you about a  
8 ten-minute break and then we'll bring you back and I'm  
9 going to give you a couple more instructions and then  
10 we're going to go into our opening statements.

11 During our break, you're instructed not to talk  
12 with each other or with anyone else about any subject  
13 or issue connected with the trial. You're not to read,  
14 watch, or listen to any report of or commentary on the  
15 trial by any person connected with the case or by any  
16 medium of information, including, without limitation,  
17 newspaper, television, the Internet, or radio. You're  
18 not to conduct any research on your own, which means  
19 you cannot talk with others, tweet others, text others,  
20 Google issues or conduct any other kind of book or  
21 computer research with regard to any issue, party,  
22 witness, or attorney involved in the case. You're not  
23 to form or express any opinion on any subject connected  
24 with the trial until the case is finally submitted to  
25 you.



1 Take about ten minutes.

2 THE BAILIFF: All rise.

3 (Whereupon, jury exits the courtroom.)

4 THE COURT: We're outside the presence of the  
5 jury. I know you had an issue that you wanted to take  
6 up before opening.

7 MR. CLOWARD: Yes, Your Honor. We have four  
8 issues.

9 THE COURT: Four issues? That's why I said  
10 do we just need a quick, little break.

11 MR. CLOWARD: Well, they're minor. I mean,  
12 they're minor. Number 1 -- well, they are.

13 MR. JAFFE: I thought you were going to talk  
14 about some of the ones we were talking about before.

15 MR. CLOWARD: I told you I was going to tell  
16 him about that.

17 THE COURT: Go ahead.

18 MR. JAFFE: Get ready for the minor ones.

19 MR. CLOWARD: We gave you the bench brief on  
20 the biomechanical opinions. We would just move --  
21 again, orally make another motion to exclude  
22 biomechanical engineers' opinions and the photographs  
23 based on foundational issues and the Hallmark issues.

24 Obviously, before we start opening  
25 statements, if we're going to be trumping out

1 photographs, if we're going to be trumping out  
2 discussions of what these folks are going to say or  
3 what they're not going to say, that would be something  
4 that would be important to address before -- before we  
5 open and say, hey, defense hired this doctor to say  
6 that there is -- this is low impact and I hired this  
7 person and then, you know, the day before they testify  
8 or moments before they testify, the Court excludes them  
9 pursuant to Hallmark. The cap of the toothpaste would  
10 have already been taken out of the toothpaste. The  
11 bell would have already been rung at that point.

12           We wanted to just reassert our motion to  
13 exclude those folks and the photographs based on the  
14 prejudicial effect, number 1, of the photographs.  
15 Number 2, the Hallmark issues.

16           Neither men actually inspected  
17 Ms. Seastrand's vehicle before it was repaired. Her  
18 vehicle is the only vehicle that is at issue right now.  
19 That's the issue. Were the forces upon her vehicle  
20 sufficient to cause injury? Neither men would have the  
21 basis to make that determination.

22           THE COURT: When you say neither, you're  
23 talking about your expert and the defense's expert?

24           MR. CLOWARD: Correct.

25           THE COURT: Tell me their names again.

1 MR. CLOWARD: Dr. Croft and Dr. Smith.

2 The vehicle was repaired, years went by, both  
3 of them were hired. They inspected Mr. Khoury's  
4 vehicle, but it's -- because he never repaired his  
5 vehicle. However, Ms. Seastrand's vehicle was already  
6 repaired. The -- so there's -- there was no inspection  
7 to that vehicle to determine what forces were  
8 sufficient to cause that damage. And because --  
9 because it's minor -- here's the problem. Because it's  
10 minor, you have a bumper support that's bent and you  
11 have a, you know, a brace that's -- that was cracked in  
12 half, there's no crush measurements that are able to be  
13 taken. So the analysis, the foundational analysis,  
14 upon which both men base their opinion is flawed.

15 THE COURT: Okay. Do you want to argue that  
16 one?

17 MR. JAFFE: Well, first off, Your Honor, you  
18 have given us an opportunity to prepare a brief. We do  
19 have a brief that we've been finalizing. I expect to  
20 file it and have it prepared for tomorrow morning  
21 because they were working on this thing for weeks  
22 before it was filed. We've had it for a few days and  
23 my office is putting the finishing touches on it today  
24 so that we have it to file tomorrow. And that was  
25 based upon the predication of a full Hallmark

1 challenge.

2           It's my understanding from the ruling the  
3 other day that since you're treating this as a Rule  
4 7.27 brief that this was going to be an issue that we  
5 would be addressing when the experts actually came in  
6 to testify. I think we're still ready to address it at  
7 that time so we can have our brief on file. I will  
8 tell you that I've got certain issues that I would  
9 like -- that I intend to raise in defense of that and  
10 that we are looking at.

11           Well, first, this is not an issue that just  
12 came up out of the blue. These experts were disclosed  
13 back in August 2012, so 11 months ago. My expert was  
14 deposed in January 2013. So they knew about this well  
15 in advance. There is no reason to have waited up until  
16 the trial to file this motion and to brief this at the  
17 extreme prejudice to the defense without having done  
18 this as a motion in limine.

19           Because the amazing thing is this: Hallmark  
20 is an expert case dealing with biomechanics. Yet they  
21 filed a Hallmark challenge on Dr. Schifini, the doctor,  
22 but didn't think to file it on the biomechanic. So to  
23 sit here and say, wow, you know, when you think about  
24 it, we've got this challenge against an expert, it  
25 makes no sense.

1           There is no legitimate reason for this delay  
2 other than to extremely and severely and unduly  
3 prejudice the defense because we've been preparing our  
4 defense. We've been getting ready. Had this been done  
5 back when we were supposed to and we could have briefed  
6 it and argued it all on the merits, all briefed, all  
7 with exhibits placed in front of Your Honor, including  
8 my engineer's credentials, then it would have been  
9 timely. To do this now while we're ready to start  
10 trial, if this is granted, I have no choice but to ask  
11 for a continuance so that we can restructure our  
12 defense. We've been -- this was never raised as an  
13 issue, so.

14           THE COURT: Here's the thing, I mean, whether  
15 it's raised as a motion in limine or not, it can always  
16 be raised at the time that the witness tries to  
17 testify.

18           MR. JAFFE: I realize that but the point is,  
19 Your Honor, the intentional delay is really an attempt  
20 either to sandbag so that we're put in a position of  
21 putting in front of the jury a defense that could not  
22 then be put forward or that should have been raised in  
23 limine.

24           We all know this should have been raised in  
25 limine. Why they chose not to do it, I don't know and

1 I don't care. They knew about it but the only effect  
2 of this is to hamper the defense, number 1.

3           Number 2, they've got an expert who wrote  
4 three reports covering 50 pages with his reconstruction  
5 and he was able to do a biomechanical analysis and  
6 reconstruction. So in order to believe the plaintiff's  
7 position, you either have to think that their expert is  
8 a complete boob who doesn't know what he's doing or  
9 they have to disavow themselves of their own expert to  
10 say he couldn't have done the work he said he did. So  
11 that makes no sense.

12           Number 3, Your Honor, these repairs were made  
13 19 months before the plaintiff filed a lawsuit. So if  
14 we're going to sit here and say that insurers have no  
15 choice but to start preserving this as evidence, it's  
16 going to mean one of three things has to happen.  
17 Either, No. 1, they're not going to pay a claim that  
18 they owe in which case they're inviting allegations  
19 against them for the Unfair Claims Practices Act.

20           Number 2, litigants are going to be forced to  
21 spend tens of thousands of dollars on cases that are  
22 not in suit, hiring experts on the off chance that some  
23 day they're going to be in front of a jury which makes  
24 no sense. Or, number 3, you have to run the risk that  
25 some day you're not going to be able to get your

1 evidence in front of the jury.

2 All of them lead to a complete unfairness.

3 All of them result in an unfairness. That's why, Your  
4 Honor, this issue does not go to the admissibility but  
5 it goes to the weight. Hallmark does not say you keep  
6 them out. They inspected the vehicles. They complied  
7 with what Hallmark said. They actually did look the  
8 vehicles over and both experts did it at the exact same  
9 time of both vehicles.

10 They -- Mr. Khoury's vehicle still has not  
11 been repaired and they were able to see it in its  
12 condition to at least get measurements of force. It  
13 doesn't make their testimony inadmissible. What it  
14 means is you can challenge it on the weight because  
15 that's not what Hallmark says.

16 If you look at the credentials -- and we've  
17 marked my expert's CV as an exhibit in our exhibit  
18 binder so you can see for yourself -- this is a man who  
19 is a board-certified radiologist who went to University  
20 of Texas Medical School. He's licensed to practice.  
21 He has done many studies on biomechanical analyses,  
22 including crash testing. The original studies that  
23 were done in the early 1990's with the lead author  
24 Whitman McConnell, Harry Smith was one of the coauthors  
25 on that, was involved in all of those studies.

1           He has been admitted to testify in dozens, if  
2 not more, jurisdictions throughout the country. He has  
3 read all the studies. He's read the books. He meets  
4 all the qualifications of an expert to testify as to  
5 his knowledge, experience, et cetera, as mandated by  
6 50.275, and his testimony will be beneficial to assist  
7 the jury.

8           These are the arguments that we would make  
9 off the top of my head because the rest are in our  
10 brief. The point is they have complied in every  
11 respect with Hallmark. This is a situation where the  
12 jury should be allowed to weigh the evidence. They can  
13 argue the fact that he did not see it before the  
14 vehicles were repaired but it was completely  
15 impossible.

16           To disallow that testimony under those  
17 circumstances because the only alternative would be to  
18 invite an Unfair Claims Practices Act challenge by not  
19 paying it or telling the plaintiff, guess what, here's  
20 your money but, no, you can't repair your vehicle until  
21 your two-year statute of limitation runs, it's  
22 ridiculous. Otherwise, we've got a spoliation issue  
23 back against the plaintiff. If it's going to be a --

24           THE COURT: Let me ask this: Mr. Cloward,  
25 when is your expert expected to testify?



1 MR. CLOWARD: Monday.

2 THE COURT: Okay. You said that you're going  
3 to have a brief to me tomorrow morning on this?

4 MR. JAFFE: We're putting the finishing  
5 touches on it today and I would expect to file it  
6 tomorrow morning, sir.

7 THE COURT: I will wait to read the defense's  
8 brief before I make a determination. I would suggest  
9 that maybe you folks might want to steer away from that  
10 issue during your openings because you don't know what  
11 the ruling is going to be, but you can do what you want  
12 to do.

13 MR. CLOWARD: I guess the concern that I have  
14 is that if I get up there and I don't say anything and  
15 then Mr. Jaffe gets up there and he spends the majority  
16 of his time talking about it, then it looks like I've  
17 tried to hide something from the jury. So if you're  
18 not willing to make the ruling -- and I understand -- I  
19 don't have a -- it is what it is, but I would prefer to  
20 just discuss it, go into it.

21 THE COURT: That's fine.

22 MR. CLOWARD: I do have -- Mr. Jaffe does  
23 have an issue with one of my demonstrative exhibits.

24 May I approach?

25 THE COURT: Sure.

1 MR. CLOWARD: This was referenced in  
2 Dr. Croft's --

3 MR. JAFFE: Hold on, Ben. So what are we  
4 doing with photographs?

5 MR. CLOWARD: Well, if he's -- if the judge  
6 is not willing to make a ruling right now, I'm going to  
7 go into it.

8 MR. JAFFE: So then we're agreeing that both  
9 sides can use the photographs in the opening statement,  
10 the actual photographs?

11 MR. CLOWARD: Correct. Unless your ruling is  
12 is that none of that comes in.

13 THE COURT: Regardless of what I decide on  
14 the biomechanical engineers, my inclination would be to  
15 allow the photographs in any way.

16 MR. JAFFE: Thank you, sir.

17 THE COURT: So I would prefer that you don't  
18 put anything in front of the jury until it's been  
19 admitted into evidence. If you want to stipulate to  
20 admit the photographs, that's fine. I don't like --  
21 demonstrative exhibits are one thing. But if you're  
22 going to put evidence in front of the jury, it should  
23 be admitted first.

24 MR. JAFFE: Okay. We've agreed that because  
25 we're both waiving foundation and authenticity on

1 medical records, knowing that they're going to be  
2 admitted, we're going to be using those in openings.

3 Am I correct, Ben?

4 MR. CLOWARD: No. Medical records, no. We  
5 have not agreed on that.

6 MR. JAFFE: I thought we agreed on that in  
7 2.67.

8 MR. CLOWARD: Absolutely not. As to  
9 authenticity but we have not agreed of what's coming  
10 in. Nobody moved to put anything in.

11 MR. JAFFE: I'll have to double check the  
12 2.67 but I thought we agreed on that.

13 MR. CLOWARD: Absolutely not. Absolutely  
14 not. I have not moved anything -- anything into  
15 evidence at this point. Nothing.

16 MR. JAFFE: Okay.

17 MR. CLOWARD: I haven't referenced a single  
18 medical record in my slides. Not one.

19 MR. JAFFE: Okay. I will have to double  
20 check because I believe that we had that agreement.

21 THE COURT: Are you folks -- if you're both  
22 going to use the photographs, is there a stipulation  
23 that the photographs are coming in?

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

25 MR. JAFFE: That's fair.

1 THE COURT: What exhibits are those so our  
2 clerk can keep track of that?

3 MR. JAFFE: It's --

4 MR. CLOWARD: Your Honor, may I approach with  
5 our --

6 THE COURT: Just a second.

7 MR. CLOWARD: Judge, can I walk around and  
8 grab some of these?

9 THE COURT: Yes.

10 MR. CLOWARD: Thanks.

11 Do you have any preference where I put this?

12 THE COURT: The TV?

13 MR. CLOWARD: Yes.

14 THE COURT: No. Are you going to use it  
15 during your opening?

16 MR. CLOWARD: Yes.

17 THE COURT: You can't take it further than  
18 that. The cord is not plugged into the ground.

19 MR. CLOWARD: Gotcha you.

20 THE COURT: The reason we do that is because  
21 once you plug it in, the cord stretches across the  
22 floor so you need to make sure nobody is tripping over  
23 it.

24 MR. CLOWARD: Can I plug this into the wall  
25 here?

1 THE COURT: No.

2 MR. CLOWARD: No? This is the --

3 THE COURT: One of them goes over there in  
4 the floor. I think it's that one.

5 MR. SMITH: The photographs have been marked  
6 as Defendant's Exhibits H and I.

7 THE COURT: So is there a stipulation to the  
8 admissibility of Defendant's Exhibits H and I?

9 MR. CLOWARD: Let me see those, Jake. I want  
10 the one that Mr. Khoury took on his cell phone as well.

11 MR. SMITH: What's that?

12 MR. CLOWARD: I would like the ones that  
13 Mr. Khoury --

14 MR. SMITH: That's H. I is the one from --

15 THE COURT: He's trying to plug the TV back  
16 in.

17 Is there a stipulation to Defense Exhibits H  
18 and I, which apparently are the photographs?

19 MR. CLOWARD: Let me see. Yes, Your Honor.  
20 Yes.

21 THE COURT: Exhibits H and I are admitted by  
22 stipulation.

23 (Defendant's Exhibits H and I were  
24 admitted.)

25 MR. CLOWARD: Your Honor, may we approach

1 with this demonstrative?

2 THE COURT: Sure.

3 MR. SMITH: Can I just file our trial brief?  
4 I want to serve it on the plaintiff and then serve it  
5 on the Court while we're on the record.

6 THE COURT: Sure. Which trial brief is this?

7 MR. JAFFE: It's the defendant trial brief on  
8 everything but the biomechanical issue, Your Honor.

9 THE COURT: This has got a lot of exhibits.

10 MR. JAFFE: It's almost all exhibits. It's  
11 our 7.27 brief but we've got -- the only thing that's  
12 going to be supplemented is the biomechanical because  
13 that was taking us much longer to finish.

14 THE COURT: Let's go off for a minute.

15 (Off-record discussion held.)

16 THE COURT: Let's go back on the record. So  
17 if I understand correctly, plaintiff wants to use a --  
18 is it an animation?

19 MR. CLOWARD: No. This is an actual crash  
20 test that Dr. Croft has performed. So he's done this.  
21 That's what I say it's demonstrative. He'll come in  
22 and say, look, ladies and gentlemen, I personally  
23 conducted over 100 crash tests. I have a crash  
24 institute. Here's a crash test for a rear-end impact  
25 at 5 miles an hour. This is what happens when you slow

1 it down. So Dr. Croft will talk about that. That's  
2 what's upsetting is that for counsel to act surprised,  
3 Dr. Croft talked about this exact video. He had still  
4 photographs of this video. So picture, picture,  
5 picture in his report. Not only in his report but he  
6 talked about it during the deposition. He said, yeah,  
7 this right here. This is why people get hurt and had  
8 discussion of it. So for counsel to claim that, you  
9 know, he hasn't had a fair opportunity, that's just --

10 THE COURT: How come you didn't produce the  
11 video?

12 MR. CLOWARD: He referenced it in his report  
13 in the deposition.

14 THE COURT: Okay. How come you didn't  
15 produce the video?

16 MR. CLOWARD: I think that it might have been  
17 produced. I can't say for certain one way or another.  
18 I don't want to make a representation to the Court that  
19 I don't know is accurate.

20 MR. JAFFE: Judge, we have checked all 16.1  
21 and pretrial 16.1 disclosures and it was never in  
22 there.

23 MR. CLOWARD: Additionally, it's a  
24 demonstrative exhibit. I'm not asking to have this as  
25 evidence. This is a demonstrative exhibit that

1 Dr. Croft will use to show to the jury what happens in  
2 a low-speed crash. I'm not going to move to include it  
3 into evidence. I'm not going to move it into evidence.  
4 I'm going to show Dr. Croft is going to explain this is  
5 why and this is how.

6 THE COURT: Is this a crash test that he did  
7 with vehicles similar to the vehicles in this case to  
8 demonstrate what would happen to the vehicles in this  
9 case?

10 MR. CLOWARD: The forces, yes. The forces  
11 involved, absolutely. Not the vehicle sizes but the  
12 forces involved, yes. The closing speed on this  
13 vehicle, I believe, is 6 miles an hour. The closing  
14 speed that Dr. -- their own doctor agrees is between 5  
15 to 10 miles an hour. So this is actually a  
16 representation of less than what an occupant such as  
17 Ms. Seastrand would have actually endured. So it's  
18 actually an under -- it's not --

19 THE COURT: I get it.

20 MR. CLOWARD: I mean, Judge, if you're not  
21 going to exclude the biomechanics and the photographs  
22 are coming in, I have to be able to explain to the  
23 jury. Otherwise, I'm dead in the water as soon as  
24 Mr. Jaffe puts up a picture of the photograph [sic].  
25 You know, if there's foundational issues on the



1 biomechanical opinions and he gets up there and gets to  
2 show this photograph and I can't explain to the jurors  
3 how people get injured in a low-speed impact, that's  
4 very significant and substantial.

5 THE COURT: I'm going to allow you to explain  
6 it, but I'm not going to allow you to use a video that  
7 wasn't produced.

8 MR. JAFFE: Thank you, Your Honor.

9 THE COURT: Sorry.

10 Are there other issues we need to address  
11 before openings?

12 MR. CLOWARD: Yes. Two other issues, Your  
13 Honor. There was a discovery issue that came to light  
14 just a day or two ago. Ms. Seastrand did not verify  
15 her interrogatories. And as a result, Mr. Jaffe  
16 subpoenaed Mr. Harris while he was sitting in the  
17 courtroom the other day and is going to have Mr. Harris  
18 attempt to come and testify as to the issue versus,  
19 hey, Ms. Seastrand, while you're on the stand, here's  
20 these interrogatories, let me talk to you about them,  
21 let's go over the interrogatories and -- I mean,  
22 really.

23 MR. JAFFE: You've got to give me 10.0 for  
24 creativity. Come on.

25 Judge, here's the thing: Sunday night we

1 couldn't find the signed verification so we sent an  
2 e-mail to Mr. Cloward saying can you send us a copy of  
3 the verification? Rick Harris signed the interrogatory  
4 answers. We can't find the verification. And the  
5 e-mail that we got was effectively go pound sand.  
6 Something to the effect that you had seven hours of  
7 deposing her. Too late to ask for this now.

8 MR. CLOWARD: Nine hours.

9 MR. JAFFE: It was only seven hours of  
10 deposition time.

11 THE COURT: I'm going to make this real easy.

12 MR. JAFFE: So Mr. Harris signed the answers.

13 THE COURT: I understand. Ms. Seastrand is  
14 here. Would she be willing to sign the verification?

15 MR. CLOWARD: I think he should just ask her  
16 on the stand.

17 THE COURT: Would she be willing to sign a  
18 verification?

19 MR. CLOWARD: I don't think that would be a  
20 problem. Here's the concern that I have. The concern  
21 that I have is that he may try and make an issue out of  
22 the fact that it's being signed now.

23 MR. JAFFE: Absolutely not. Will not  
24 whatsoever do that if she will verify right now. All  
25 she has to do is do it on the record and I'm good with

1 that. All I want is something in the record saying  
2 that I can rely on her answers to interrogatories as  
3 her answers. That's all.

4 THE COURT: Ms. Seastrand, have you read the  
5 answers to the interrogatories recently?

6 MS. SEASTRAND: I have to know what I'm  
7 talking about here. Interrogatories are what again  
8 exactly?

9 THE COURT: Written questions that were asked  
10 and you provided answers.

11 MS. SEASTRAND: And that was how many years  
12 ago?

13 THE COURT: Why doesn't somebody show her the  
14 interrogatories real quick.

15 MS. SEASTRAND: I'm so sorry.

16 THE COURT: That's okay.

17 MR. CLOWARD: Judge, to be honest, I don't  
18 even know if she was showed them. I honestly don't. I  
19 don't know. I didn't handle the case. Rick handled  
20 the case.

21 THE COURT: Here's the thing. I don't care.  
22 I don't know that Mr. Jaffe cares. As long as he can  
23 look at the answers and know that she verified that  
24 they're accurate answers so that he can use them to  
25 cross-examine and impeach her if he wants to.

1 MR. CLOWARD: I'm fine with that as long as  
2 we don't have to do that right this second. I mean, I  
3 would like to take her back to the office, have her  
4 review them.

5 MR. JAFFE: Send me an e-mail tonight saying  
6 that she verifies them and I'm good with that. I  
7 accept you on your word. I told Mr. Harris the other  
8 day when I subpoenaed him, I went up to him and I said,  
9 listen, Rick, I don't want to call you as a witness but  
10 here's the problem. I explained to him we sent the  
11 e-mail because we couldn't find the signed  
12 verification. I just want verification that your  
13 client is going to stand behind her answers. I said,  
14 just tell me that they're good, that she stands behind  
15 them, and it's good and I'm not calling you. I said,  
16 but as it stands right now, you're the only one whose  
17 signed them based on what I've got.

18 And she -- Mr. Harris did verify because he  
19 defended her deposition that she had read those  
20 interrogatory answers in advance of her deposition.  
21 And I can -- I've got the transcript to show, Your  
22 Honor.

23 THE COURT: I get it. I'm not worried about  
24 it. Let's do this: Let's work out the verification  
25 tonight.

1 MR. JAFFE: That's fine.

2 THE COURT: Just let me know what the status  
3 is tomorrow. Don't bring that up in your opening.

4 MR. JAFFE: Of course. I don't even plan on  
5 referencing them in my opening.

6 THE COURT: All right. What's the next  
7 issue?

8 MR. CLOWARD: The fourth issue, Your Honor --  
9 two other issues. I just want to make sure. There was  
10 a very clear ruling. Your Honor, you made a very  
11 crystal clear, absolutely no mistake about it, ruling  
12 that the police officer is not to give any -- any  
13 professional, personal, scientific opinions about  
14 whether or not Ms. Seastrand was injured due to  
15 property damage. Okay. There's no relevant reason to  
16 even bring the guy, the police officer, that wrote in  
17 his police report Ms. Seastrand's complaints are not  
18 consistent with the property damage and then he makes  
19 all these negative comments and --

20 THE COURT: I think I ruled that that wasn't  
21 coming in.

22 MR. CLOWARD: I agree. And so I want to make  
23 sure that on the record moments before opening is  
24 given, that -- that -- because Mr. Jaffe has indicated  
25 the first witness he said he was going to call is

1 Officer Todd Conn. Officer Todd Conn. That's what he  
2 told the jury earlier. He said the first witness I'm  
3 going to call is Officer Todd Conn. And, you know, at  
4 the 2.67 we had discussion. I said, Why are you even  
5 going to call this guy? Well, you know, I don't know.

6 So I want to make sure the record is crystal  
7 clear that you already ruled on that issue. That type  
8 of testimony would be inappropriate and, therefore, it  
9 would be inappropriate to bring it out into opening.

10 THE COURT: He can testify about what he  
11 observed but not about his conclusions or opinions.

12 MR. JAFFE: Judge, I'll say for the record I  
13 have every intention of abiding by the Court's order,  
14 number 1. Number 2, I told the jury he may testify.  
15 And, number 3, the reason I mentioned it first is  
16 because he was a lay witness and then I always do the  
17 lay witnesses and then the expert witnesses. That's  
18 just the method that -- with -- within which I work.

19 THE COURT: I think you told me this morning  
20 that you may not be calling him.

21 MR. JAFFE: I may not even be calling him.  
22 He's only available this week. If I need his  
23 testimony -- and I told Mr. Cloward this at lunch -- if  
24 I need his testimony, it's likely going to be that  
25 we'll just have to read a portion of his deposition

1 next week on those particular topics because he's going  
2 to be unavailable. But I need to see what the  
3 plaintiff is going to say first and Dr. Croft before I  
4 can make that decision.

5 THE COURT: That's fine.

6 MR. JAFFE: By the way, Judge, are we  
7 invoking the exclusionary rule as to all except the  
8 expert witnesses? I'm assuming we are.

9 THE COURT: Here's how it works in my  
10 department. If you invoke the exclusionary rule, it  
11 applies to everybody.

12 MR. JAFFE: Even experts?

13 THE COURT: Yes.

14 MR. JAFFE: Okay.

15 THE COURT: There's actually no case law or  
16 statute that excludes experts from the exclusionary  
17 rule. I know some departments allow that but in my  
18 department the exclusionary rule says it excludes all  
19 witnesses.

20 MR. JAFFE: I would have to go back and read  
21 it.

22 THE COURT: I have never found any case or  
23 any statute that allows for an exception for experts.

24 MR. JAFFE: Okay.

25 THE COURT: So is the exclusionary rule being

1 invoked?

2 MR. JAFFE: Do you want to invoke it?

3 MR. CLOWARD: Yes.

4 THE COURT: The exclusionary rule is invoked.

5 MR. CLOWARD: The fourth issue, Judge, fourth  
6 and final issue is Ms. Seastrand's daughter is a client  
7 of the Richard Harris law firm and she gave a  
8 testimonial. The testimony is on our website.  
9 Mr. Harris is, I believe, in the process of taking that  
10 down.

11 However, at one of the meetings that I had  
12 with Mr. Smith, Mr. Smith indicated that he recognized  
13 Ms. Seastrand's daughter as giving a testimonial for  
14 our website, and I think it would be inappropriate for  
15 any reason to reference that because it doesn't have  
16 anything to do with anything. It may create the  
17 inference for the jurors that the Seastrand family is  
18 litigious or something along those lines. There's  
19 really no reason to reference it. I want -- I just  
20 wanted to make a record on that issue. I wouldn't  
21 think that Mr. Jaffe would do something like that but I  
22 want to make a record on that.

23 THE COURT: I don't see how it's relevant.

24 MR. JAFFE: It goes to credibility. That's  
25 it.



1 THE COURT: Of who?

2 MR. JAFFE: Pardon?

3 THE COURT: Of who?

4 MR. JAFFE: That's true. The attorneys'  
5 credibility is not at issue so okay. We're good with  
6 it.

7 THE COURT: Okay. It's excluded.

8 MR. JAFFE: I'm not bringing it up.

9 MR. CLOWARD: Judge, one other thing.  
10 Dr. Ferdowsian, the ER doctor, he can only come today.  
11 I'm going to bust through closing -- or opening. I  
12 imagine Steve is going to hurry through. He'll only  
13 take 15 or 20 minutes.

14 MR. JAFFE: What are we talking about?

15 MR. CLOWARD: Dr. Ferdowsian. We wanted to  
16 put him on today. Could we stay late if we had to?

17 MR. JAFFE: How long is your opening going to  
18 be?

19 MR. CLOWARD: An hour. I'll get through it  
20 fast.

21 MR. JAFFE: It's a quarter of three now so  
22 it'll be a quarter to four.

23 THE COURT: Here's what we're going to do.  
24 As long as somebody is willing to pay the overtime.

25 MR. CLOWARD: Okay.

1           THE COURT: Put it on the record that you're  
2 willing to pay the overtime, we can stay past 4:45. I  
3 think it's only like 150 or 250 an hour total for all  
4 the court employees that have to stay. But I can stay  
5 a little bit late if you want to.

6           I think what I'll do is we'll take from  
7 whatever time you start your opening until 5:00. We'll  
8 divide it in half. Okay. Because I think it's only  
9 fair to give each side the equal opening time.

10          So if we're going to start openings at 3:00,  
11 then you each get an hour. We'll do openings until  
12 5:00, we'll put the doctor on, and we should be done by  
13 5:30, I would hope.

14          MR. CLOWARD: Yes. I hope so. He's short.  
15 There's like five pages of records. That's it. He's  
16 short.

17          THE COURT: Okay. So openings will be done  
18 by 5:00.

19          MR. CLOWARD: Yes.

20          THE COURT: All right.

21          MR. CLOWARD: I know you will cut me off.

22          THE COURT: I will.

23          MR. JAFFE: So one hour a piece on openings?

24          THE COURT: Yeah. Whatever time we start.

25 If we start right now, you would have a minute -- an

1 hour and five minutes.

2 Mr. Cloward, is your firm paying the  
3 overtime?

4 MR. CLOWARD: Yes, Your Honor, we will.

5 THE COURT: Is there anything else we need to  
6 take care of before we bring them back?

7 MR. CLOWARD: No, Judge.

8 THE COURT: Let's take a quick, little break.  
9 Off the record.

10 (Whereupon, a recess was taken.)

11 THE COURT: Are we ready?

12 Let's bring them back.

13 THE BAILIFF: All rise.

14 (Whereupon, jury enters the courtroom.)

15 THE COURT: Go ahead and be seated. Welcome  
16 back, folks. Back on the record in Case No. A636515.

17 Will the parties stipulate to the presence of  
18 the jury?

19 MR. CLOWARD: Yes, Your Honor.

20 MR. JAFFE: Yes, sir.

21 THE COURT: Ladies and gentlemen, there was  
22 one final instruction that I wanted to give to you  
23 before we move forward.

24 You are going to be given the opportunity to  
25 ask written questions of any of the witnesses called to

1 testify in this case. You are not encouraged to ask  
2 large numbers of questions because that is the primary  
3 responsibility of the attorneys.

4           Questions may be asked only in the following  
5 manner: After both lawyers have finished questioning a  
6 witness and only at that time if there are additional  
7 questions that you would like to ask of a witness, you  
8 should write your question down with your juror number  
9 on a full sheet of clean paper and raise your hand.  
10 That's why I told you what your juror numbers are.  
11 One through 5 on the back row. Six through 10 in the  
12 front row. Put it on a full sheet of clean paper.  
13 Don't tear a little corner off and write a question on  
14 it because each piece of paper becomes a Court exhibit  
15 so we need to make sure that it's on a clean sheet of  
16 paper with your juror number and the question that you  
17 want.

18           All questions from jurors must be factual in  
19 nature and designed to clarify information already  
20 presented. In addition, jurors must not place undue  
21 weight on the responses to their questions. The  
22 marshal will pick up your questions and give them to  
23 me. All questions must be directed to the witness, not  
24 to the lawyers and not to the Judge. After consulting  
25 with counsel, I will determine if your question is

1 legally proper. If I determine that your question may  
2 be properly asked, I will ask it. No adverse inference  
3 should be drawn against either side if the Court does  
4 not allow a particular question.

5 I want to emphasize that because what happens  
6 is sometimes you might ask a question and if I don't  
7 ask it, you may say, well, that's because one attorney  
8 or the other didn't want that question asked because  
9 they knew it would hurt their case. You can't infer  
10 that because most of the time both of the attorneys  
11 want the questions asked and if the question isn't  
12 asked, it's because I'm not allowing it based on a rule  
13 of evidence or something else that I don't think it's  
14 appropriate. So if you were to infer that it was one  
15 attorney or the other that didn't want that question  
16 asked, you're probably wrong and it would be an  
17 incorrect inference so don't do that. You can blame it  
18 on me. I'll take it and I'm not going to tell you why  
19 until maybe the case is over and you ask me. I might  
20 explain things to you then. During the course of the  
21 trial you can't be concerned with my rulings on  
22 anything. All right. But you can't make any inference  
23 from the fact that I don't ask a question.

24 The exclusionary rule has been invoked so  
25 anybody who is expected to be a witness needs to be

1 excluded. Other than that, I think we're to the point  
2 where we can begin our opening statements. I told you  
3 that we're going to have opening statements today. We  
4 actually may get to one witness so we're going to go  
5 forward.

6 It's 3:00, Mr. Cloward.

7 MR. CLOWARD: Thank you, Judge.

8 Good afternoon, everybody. Now is the time  
9 that we actually get to talk about the facts of the  
10 case. We've been waiting for three days.

11 THE COURT: Hold on a second. I'm sorry.

12 MR. CLOWARD: No problem.

13 THE COURT: I apologize.

14 MR. CLOWARD: No problem.

15 THE COURT: Before he starts -- I had  
16 everybody sworn in to tell the truth when you started  
17 getting asked questions as jurors. Now that you're  
18 actually jurors, I have to swear you in as jurors. I'm  
19 going to have everybody stand and raise your right  
20 hand, please. Sorry.

21 THE CLERK: You and each of you do solemnly  
22 swear that you will well and truly try the case at  
23 issue and a true verdict render according to the  
24 evidence, so help you God.

25 THE JURORS: I do.

1 THE CLERK: Thank you. Please be seated.

2 THE COURT: Thanks, folks.

3 Sorry, Mr. Cloward.

4 MR. CLOWARD: No problem, Judge.

5 So really this thing boils down to one thing,  
6 one thing that you guys will have to decide. One  
7 thing. And that one thing is whether Ms. Seastrand is  
8 a liar, a cheat, and a fraud like people in baseball --

9 MR. JAFFE: Objection. Argument, Your Honor.

10 MR. CLOWARD: -- who take steroids.

11 THE COURT: Pardon me?

12 MR. JAFFE: It's argument.

13 MR. CLOWARD: It's what the evidence will  
14 show.

15 THE COURT: Overruled.

16 MR. CLOWARD: What the evidence will show is  
17 that Mr. Khoury hired doctors to come into court and  
18 say that Ms. Seastrand has something called secondary  
19 gain, that all of her complaints are for this lawsuit,  
20 that she's not really hurt. That's what the evidence  
21 will show. Those are the folks that were hired by  
22 Mr. Khoury and Mr. Jaffe.

23 So why are we here? This issue of secondary  
24 gain. Is Margie a liar and a cheat and a fraud like  
25 those people who play baseball and take steroids?

1           A trial is to find the truth and restore the  
2 balances to the injured person. You will hear that  
3 this accident was not an accident. You will hear  
4 Mr. Khoury was driving east on Craig Road. He was  
5 approaching Rancho. There's a stoplight. As he pulls  
6 up to the stoplight, the cars in front of him are  
7 stopped. The vehicles are stopped so he stops. He  
8 sees that the vehicles are slowly progressing.

9           Here's the view as you approach Rancho on  
10 Craig. Here's the view of the vehicles traveling down  
11 Rancho. The vehicles are going to make a right-hand  
12 turn onto Rancho. Mr. Khoury is alone. As he stops,  
13 he believes that the cars are progressing, making the  
14 right-hand turn. As everyone knows, when there's a red  
15 light, you can still turn.

16           Mr. Khoury at the scene tells the police  
17 officers he thought the vehicles in front of him had  
18 moved. He's still looking left. He presses on the  
19 accelerator and runs into the back of Ms. Seastrand.  
20 Okay. Then at deposition he changes his story and he  
21 says, I'm still looking left but I just take my foot  
22 off of the brake a little bit and roll into her. He  
23 denies pushing on the gas.

24           At the scene of the crash you will hear  
25 Mr. Khoury admitted it's all his fault. It's all my



1 fault. This was before he knew that Margie was hurt.  
2 You will hear evidence that once he heard the  
3 ambulance, he began to build his defense.

4 MR. JAFFE: Objection. Argument, Your Honor.

5 MR. CLOWARD: That's what the evidence will  
6 show.

7 THE COURT: Overruled.

8 MR. CLOWARD: That's what the evidence will  
9 show. That's not argument. That's what the evidence  
10 will show.

11 And, in fact, this photograph here was taken  
12 by Mr. Khoury. He was asked, Why did you take this  
13 photograph? He says, Well, you know, when I heard the  
14 ambulance, I thought that I better start doing that.  
15 That's what he said in his deposition. That's what the  
16 evidence will show.

17 So before Margie has even been helped by the  
18 EMTs, Mr. Khoury, as he hears the ambulance, begins to  
19 make his defense. So that's in 2009.

20 Let's fast-forward to 2011. All right.  
21 Margie files a lawsuit. This is actually from the  
22 lawsuit. Margie says, as a result of defendant's  
23 conduct being negligent, you caused an accident. Right  
24 here defendant denies all allegations. So the  
25 defendant denies being negligent, causing the subject

1 motor vehicle accident. Two years later, when it's  
2 time to be accountable, the denial is made. So who's  
3 responsible? You will hear evidence that Mr. Khoury in  
4 his deposition says, I was responsible.

5 MR. JAFFE: Objection, Your Honor. He's  
6 showing a deposition. This is improper.

7 MR. CLOWARD: You're showing parts of ours.  
8 This is --

9 THE COURT: Hold on, guys. Come up here for  
10 a minute.

11 **(Whereupon, a brief discussion was**  
12 **held at the bench.)**

13 THE COURT: Overruled.

14 MR. CLOWARD: So let's go back to this  
15 important deposition testimony. Okay. He says, I am  
16 responsible for the damage but I can't tell what the  
17 damage should be. So then some additional questions  
18 are asked. Responsibility versus accountability,  
19 what's the difference? Additional questions are asked.

20 This slide should say Monday. For the first  
21 time on Monday, the first time officially on the  
22 record, Mr. Khoury officially admits that he's at fault  
23 for the first time. He changes -- keep in mind in  
24 2011, defendant denies all allegations. Now, this  
25 slide -- we thought we were going to open yesterday, so

1 this slide should say Monday for the first time  
2 defendant admits, admits that he negligently operated,  
3 admits the allegations. That's on Monday. 2009.  
4 Okay. 2009, it's my fault. 2011, when it's time to be  
5 accountable -- sorry. 2011, it's not my fault. On  
6 Monday, it's my fault. Okay. Responsibility versus  
7 accountability.

8           Here's an overview of Margie's treatment.  
9 She had two -- and I'm just going to tell you the first  
10 two, and then we'll get to all of the other ones. She  
11 had a cervical surgery. What's called an anterior  
12 cervical fusion and discectomy. That's where you go in  
13 through the neck, and I'll talk about that. She also  
14 had a lumbar fusion. We'll get into great detail about  
15 that.

16           So why are we here? Well, I'll tell you why  
17 we're here. Based on Mr. Khoury and Mr. Jaffe,  
18 Mr. Khoury's words, what the evidence will show. What  
19 the evidence will show is is that Mr. Khoury does feel  
20 that he's responsible but, you know what, it's just  
21 physical damage because he believes that it does not go  
22 beyond the damage to the cars. So he's responsible for  
23 the damage to the vehicles, but he's not responsible  
24 for the damage that was done to Ms. Seastrand because  
25 if I come in here and I show these photographs, these

1 jurors will believe that someone couldn't be hurt.

2 MR. JAFFE: Objection, Your Honor. Argument.

3 MR. CLOWARD: I'll move on.

4 THE COURT: Sustained.

5 MR. JAFFE: Thank you.

6 MR. CLOWARD: So now you know why we're here.

7 Mr. Khoury in his own words, the previous slide, says  
8 that the damage was minimal and he did not feel that  
9 the damage was significant enough for anyone to be  
10 hurt.

11 Here's the damage to her vehicle. This is  
12 the bumper support and this is important because you're  
13 going to hear testimony from the experts in the case.  
14 And the vehicles, you have a -- Ms. Seastrand, she's  
15 driving a 2004 Honda Odyssey. He's driving a 2007  
16 Infiniti SUV. So it's a minivan, SUV. The SUV has a  
17 trailer hitch. Solid metal, hooked to the bumper.  
18 That solid metal trailer hitch hits the back of her  
19 car.

20 Now, when you have something that's  
21 distributed like this -- and this is what the doctors  
22 will tell you. Dr. Croft, who I'll introduce in a  
23 minute, he'll tell you about this principle. Okay.  
24 When you have a flat surface, that's dissipated. Okay.  
25 It's absorbed. Okay. It's absorbed over the entirety.

1 So if you have two bumpers that make contact like this,  
2 it's dissipated versus if you have like a hammer and a  
3 nail, it doesn't take as much force to drive the nail  
4 in as if you had a nail that was this big. The doctors  
5 will tell you about that. They'll talk about the  
6 damage to the vehicle. And you can see specifically in  
7 this photograph where the trailer hitch or the tow  
8 hitch bent this -- this is solid metal. This is  
9 attached to her bumper.

10 Again, responsibility versus accountability.  
11 So in addition to building the defense at the scene by  
12 taking the photographs, a whole defense team is hired  
13 to come in here. Dr. Schifini, Dr. Villablanca. I'll  
14 get into them. These doctors will testify and it will  
15 be their defense that the impact is too small to hurt  
16 anyone, let alone Margie, number 1. Number 2, Margie  
17 is not being truthful. This is secondary gain concept.  
18 Number 3, Margie was already hurt. Okay.

19 So let's introduce the defense team. You'll  
20 hear from these folks. Dr. Harry Smith. He's from  
21 Texas.

22 Dr. Villablanca. He is from -- I have to be  
23 on time. We only have a little bit of time. So  
24 Villablanca, he's from California. Dr. Schifini, he's  
25 a local doctor. Dr. Schonbrun, Dr. Siegler, and then

1 Francis & Associates. The mysterious Francis &  
2 Associates. Private investigators hired to follow her  
3 around, to park out in front of her house, to follow  
4 her down to the grocery store and get footage of her,  
5 you know, at 8:00 in the morning when she's out in her  
6 pajamas talking to her neighbors.

7           You'll hear from these folks. That's who  
8 Mr. Khoury hired; Mr. Jaffe hired. So the defense  
9 team, very important. Not a single person that  
10 Mr. Khoury or Mr. Jaffe have hired, not one, has ever  
11 met her. Not one. Not only have they not met her,  
12 they've only reviewed her records. They've not done a  
13 physical examination and they point to inconsistencies  
14 in the record and will try to convince you that she  
15 lied to her medical providers or that she withheld  
16 things to her medical providers so that she can come in  
17 here to court and fool people. And if that -- and  
18 you're going to have to evaluate her. You're going to  
19 have to see her and make that determination.

20           So who is Harry Smith? You know what, let's  
21 talk about him. Most important I want to point out,  
22 he's not a surgeon. Not only is he not a surgeon but  
23 he spent his career testifying for the defense. He  
24 testifies for the defense and he's paid thousands and  
25 he flies all over doing it to save people like

1 Mr. Khoury from accountability. That's what he is.  
2 Brutal honesty. So the evidence will show he's never  
3 met Margie.

4 Joe Schifini, Dr. Schifini, my good friend.  
5 Dr. Schifini, same thing. He testifies for the  
6 defense. He's paid thousands. He's not a surgeon.  
7 Despite being here in Las Vegas having the opportunity,  
8 having Margie just live 20, 30 minutes away from his  
9 office, he never met her. He never examined her. He  
10 just looked at her records and he's the one that says  
11 she has secondary gain. Secondary gain.

12 Very important about the doctors that the  
13 defense has. The evidence is going to show you folks  
14 that they don't know her playing field. Okay. Her  
15 playing field of what her activities were before this  
16 accident, what her restrictions were, if any, before  
17 this accident. They don't know -- they don't know her  
18 baseline before the accident. Specifically, not a  
19 single provider is aware of a single visit, single  
20 visit, to a medical professional for treatment for neck  
21 or back complaints as being the primary visit. Okay.

22 So from 1985 to 2009 Margie never went to the  
23 doctor one time specifically complaining of, hey, I  
24 have neck pain; will you help me? Hey, I have back  
25 pain; will you help me?

1 Dr. Villablanca -- there's a theme here --  
2 testifying career for the defense, paid thousands for  
3 his opinions, flies all over. Importantly, he's a  
4 medical doctor but he's not a surgeon and he's never  
5 met Margie. Even though he's a doctor, he never met  
6 her. He never examined her. He doesn't know the  
7 baseline. He doesn't know the playing field. He  
8 doesn't know the before and the after. The evidence  
9 will show that.

10 Staci Schonbrun, same things. Same cast of  
11 characters. Not a surgeon. She's not a medical  
12 doctor, never met Margie, does not know what the  
13 playing field is before or after.

14 John Siegler. He's paid thousands by the  
15 defense. He's not a surgeon, never met Margie. Same  
16 thing. Doesn't know her playing field, doesn't know  
17 how she was before, doesn't know how she was after.  
18 He's never met her. How would he?

19 So the defense No. 1 that the property damage  
20 is too low to cause injury, let's talk about that  
21 defense because this is what the evidence will show.  
22 The evidence will show that Dr. Schifini, the same  
23 person that Mr. Khoury hired -- these aren't my folks.  
24 These are the guys that Mr. Khoury hired.

25 So Dr. Schifini's view of low property



1 damage, let's first talk about that. First off --  
2 first off, Dr. Schifini says, you know what, Margie was  
3 hurt. She was hurt from this crash but it's just  
4 something called soft tissue. That's it. Okay. He  
5 says -- he's previously testified -- this is  
6 Dr. Schifini. Okay. Dr. Schifini's own testimony,  
7 people can hurt themselves from this. Okay. When I  
8 asked him in another deposition, which we will go over  
9 with him, hey, Dr. Schifini, do you think that people  
10 cannot be hurt in a low-impact accident? Heavens, no.  
11 Heavens, no. Or a low-property damage accident.  
12 Heavens, no. People can get hurt from simple things  
13 like picking up a pencil.

14 Not only that he's testified that people get  
15 hurt in low-speed crashes -- so it doesn't have to be  
16 100 miles an hour. It doesn't have to be 50 miles an  
17 hour -- he said this is -- this is what he will say.  
18 He will testify to this. He will say knowing the speed  
19 of the vehicles at the time of the impact means nothing  
20 to him. Nothing. Because he has learned injuries can  
21 occur at any speed. That's what Dr. Schifini, the same  
22 doctor that Mr. Khoury hired, he agrees that property  
23 damage does not determine whether a person is injured,  
24 that he doesn't -- when he sees and evaluates patients,  
25 he doesn't say, hey, before I can evaluate you, I got

1 to go out and check your vehicle. He doesn't do that.  
2 He'll talk to you about that.

3           Whether it's minor property damage, someone  
4 can still be hurt. He also says you can have major PD.  
5 You can have a rollover and someone won't be hurt but  
6 you can also have a smaller impact with not a lot of  
7 property damage and you can have a significant injury.  
8 That's what Dr. Schifini will say.

9           Dr. Villablanca -- keep in mind, he says too  
10 small of an impact. No one can be hurt in this. It's  
11 impossible.

12           Dr. Siegler, the defense's other doctor that  
13 was hired -- keep in mind there are five experts that  
14 were hired. Five people to come in and say Margie is  
15 lying. She wasn't really hurt. Five people.

16           So their other expert, John Siegler -- this  
17 is their -- you know, all of their experts -- he agrees  
18 with Dr. Schifini and he's previously testified, and  
19 he'll testify here, that he's had his own clients that  
20 have had major injuries with minor property damage.  
21 Importantly, he will testify that he has never and will  
22 never diagnose or treat a patient without seeing them  
23 first, but that's what he did in this case. So  
24 Dr. Siegler's view of low PD is the same as  
25 Dr. Schifini. So is the property damage important?

1 You will have to evaluate.

2 I want the focus to be, and the evidence will  
3 show, Dr. Smith, focus on him. But also focus on the  
4 other people that Mr. Khoury hired, Dr. Schifini and  
5 Dr. Siegler.

6 So is property damage important? Dr. Croft,  
7 he was hired by Margie. I'll admit we paid him  
8 thousands of dollars. We're flying him in from  
9 California. I'm going to be brutally honest. We paid  
10 him because we wanted him to come and talk about the  
11 opinions of Dr. Smith.

12 Dr. Croft will tell you that he's personally  
13 conducted over 100 crash tests and that he's authored  
14 over 200 scientific articles on property damage,  
15 low-impact crashes where there's not a lot of  
16 significant damage, and he published a paper, a  
17 peer-reviewed article, that says that there's no  
18 correlation between property damage and injury.

19 The speed of the crash Mr. Khoury believes  
20 was 5 to 10 miles an hour. Dr. Croft estimates 9 to  
21 12. Dr. Smith says about 10. Dr. Croft will show you  
22 the how and the why people get injured.

23 Importantly, Dr. Croft has this thing, this  
24 poster board. I had so many of them out, I didn't put  
25 it out. This is the most important thing, known risk

1 factors. Okay. So Dr. Croft will come and he'll talk  
2 to you folks about the fact that risk factors such as  
3 age, gender, prior injuries, the type of collision, all  
4 of these things increased the risk of likelihood that  
5 someone would be injured.

6           So take, for instance, gender. Females have  
7 a two times higher incident of injury.

8           Age greater than 45 years, it's 1.5 times  
9 higher.

10           Unaware, so being unaware of the impact.  
11 You're not ready to brace, you're not ready to tighten  
12 your muscles to protect your spine, you're 15 times  
13 more likely to be injured. Okay.

14           And then, you know, out of position, head.  
15 So if you're not just like this so your head can go  
16 straight back into the headrest, which is what it's  
17 designed for, instead you're like this or even like  
18 this and going back, three to four times more likely.  
19 So there are all of these risk factors that Margie had  
20 that increase the likelihood that she'll be injured in  
21 a crash.

22           Now, this is important. Okay. This isn't  
23 the -- the gospel according to Dr. Art Croft. Okay.  
24 He bases all of his opinions on all of these studies.  
25 Study after study after study after study after study

1 after study after study. These are -- all of these are  
2 studies. Okay. Peer-reviewed studies. Peer-reviewed  
3 studies to talk about these concepts.

4 Let's go on to Margie's credibility and this  
5 issue of secondary gain. That's what it boils down to.  
6 That's the real issue. Dr. Schifini says this  
7 secondary gain thing is that it's a medical term that  
8 implies that if somebody has this they will try to do  
9 certain things to fool people. Okay. You'll do  
10 certain things to get attention. You'll do certain  
11 things to get drugs. You'll do certain things to get  
12 money from a lawsuit. You'll minimize and you'll  
13 withhold and you'll lie.

14 It's kind of -- you're going to have to  
15 evaluate the statements that Dr. Schifini makes,  
16 though, because he does say that she did get hurt but  
17 then he also says that she's got secondary gain. So  
18 you will have to evaluate Dr. Schifini.

19 Number 3, Dr. Villablanca. Dr. Villablanca  
20 is a radiologist. He is hired to come and testify that  
21 there is not a radiographic finding of trauma on the  
22 MRI. So what does that mean? Hey, when I look at this  
23 MRI, I can't see anything that suggests that this was  
24 caused by the crash so she's not hurt. That's what  
25 he's going to say. Okay. But the thing about that --

1 he'll also say, you know what, plus the findings on  
2 this MRI, they're insignificant. They're  
3 insignificant. These findings, they shouldn't be  
4 causing her pain. They shouldn't. They're just too  
5 minimal.

6           Before I get to my own witness, I want you to  
7 know what their witnesses are going to say. This is  
8 what the evidence will show, the guys that Mr. Khoury  
9 hired to come in and talk to you.

10           Dr. Schifini about this whole concept of an  
11 x-ray or an MRI showing whether or not something is  
12 traumatic. What is he going to say? He's previously  
13 testified that an MRI will only show trauma if it is  
14 serious.

15           Well, Dr. Schifini, what does it mean if it's  
16 serious? Well, that's if you've got a broken bone or  
17 if you've got blood. Well, Dr. Schifini, so does that  
18 mean that a disc injury or a facet injury might not  
19 show up on an MRI?

20           Dr. Schifini previously testified that, you  
21 know what, just because there's not trauma on the MRI,  
22 the x-ray, the CT scan, does not mean someone is not  
23 hurt. The interesting thing is when I asked  
24 Dr. Schifini these questions, it was for a case where  
25 he was the treating physician and the defendant in that

1 case hired a radiologist to come in and say there's not  
2 an acute finding on the MRI so your patient,  
3 Dr. Schifini, is not hurt. You know what he said? It  
4 doesn't matter because you're only going to see broken  
5 bone or blood.

6           He also says you don't have to have a huge  
7 problem on an MRI to cause a significant issue. When  
8 you do surgery in the neck, it's a very complex area.  
9 You know, if a doctor makes a little mistake, even a  
10 millimeter or two, someone could die. He'll talk to  
11 you about that.

12           What does Dr. Siegler say about this whole  
13 issue that, you know what, the MRI doesn't show  
14 anything, any traumatic event, or, you know, any blood  
15 or broken bone? Dr. Siegler agrees with Dr. Schifini  
16 that an MRI is only going to show it if it's blood or a  
17 broken bone. Just because it doesn't show up on the  
18 MRI does not mean a person is not hurt.

19           So are the MRIs the smoking gun? You know  
20 what Dr. Villablanca -- Dr. Villablanca, keep in mind  
21 you're going to have to consider what he says. You're  
22 going to have to consider what Schifini says. You're  
23 going to have to consider what John Siegler says.

24           So what were Margie's main injuries any way?  
25 Well, she had a C5-6 disc protrusion, a bone contusion

1 at C5-6, and an L4-5 annular tear protrusion and  
2 internal disc disruption.

3 Now, the main injury in the lumbar spine was  
4 this right here, internal disc disruption. There will  
5 not be a single doctor, not one, that says that you can  
6 see that on an MRI. It's impossible. Dr. Villablanca  
7 when he comes here, I'll ask him. You agree with me,  
8 Doctor, the only way to diagnose that is through a  
9 discogram? And he'll agree.

10 Dr. Schifini will agree. He's said it. It  
11 does not show up on an MRI. So keep that in mind when  
12 he testifies and says there's no evidence of trauma on  
13 this MRI. Keep that in mind.

14 So what are the injuries in the case? Let me  
15 give -- let's talk real quick about the spine, what it  
16 is. Okay. This is the spine here. And this is where  
17 I stop being so angry. Okay.

18 This here -- these are what are called nerve  
19 roots. These go into the spinal cord. These are all  
20 bones. These are called your vertebrae. When you feel  
21 back here and you feel that bone there, that bone is  
22 the lamina. That's this part of the -- of your  
23 spinal -- or of your vertebrae. Okay.

24 So the orientation of this is this would be  
25 like if I was straight like this. So when you turn it,



1 you're looking at it from a side view, so you would be  
2 looking at my spine like this.

3           Now, in between the vertebrae, you have  
4 vertebrae and the spine is basically you have this  
5 area. This is the cervical spine. This is the  
6 thoracic spine. This is the lumbar spine. So you have  
7 cervical, which is neck; thoracic, midback; lumbar, low  
8 back. And all of these vertebrae have numbers,  
9 designations like T1, T2, L1, L2, L3. So you count up.  
10 This would be the sacrum. This would be L5, L4, L3,  
11 L2, L1. So when someone says they have a L5-S1  
12 anterior, excuse me, annular tear that means that it's  
13 this last disc in between the L5 vertebra and the S1,  
14 which is the sacral right there.

15           So if somebody had, let's say, a C4-5 disc  
16 problem, you would look at the fourth vertebra here and  
17 the fifth vertebra and it's the disc in between. So  
18 that's what that means.

19           Now, when you're talking about the discs, the  
20 discs, it's like a jelly doughnut. Imagine each of  
21 those discs is a jelly doughnut and it's a shock  
22 absorber. As you go through life, it absorbs and when  
23 there's something that's traumatic, the jelly can be  
24 pushed out. The jelly can be disrupted inside and stay  
25 contained within the disc. The disc is made of two

1 major parts. The inside part is called the nucleus  
2 pulposus. That's like the jelly. The outside part is  
3 the annulus fibrosus. So that's like fibers on the  
4 outside. That's like the doughnut part of the disc.

5 Now, when you have an issue up here in this  
6 part of the spine that can cause issues down here, and  
7 the reason for that is simple. Your spinal cord is  
8 protected. It goes in the middle of this bony process  
9 here. It's protected. It goes down through the middle  
10 here and off of the spinal cord you have these nerve  
11 roots. That's what these things are. And they exit  
12 those areas and they go down to different parts of your  
13 body.

14 So this shows that if you have an issue right  
15 here, that's going to cause a signal to go up to your  
16 brain and a signal that's going to go down into your  
17 hands. Similarly, if you have a problem lower like  
18 here, one of these nerve roots are at issue, you're  
19 going to have issues that go down the legs.

20 Back in the day before they had x-rays and  
21 MRIs and things of that nature, the way they would  
22 diagnose -- and doctors will tell you this -- is that  
23 they would say, well, where are you hurt and what are  
24 your symptoms? You know, over time that became more  
25 refined. They knew that, hey, if you have an issue at

**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 08:13 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

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**APPELLANT'S APPENDIX**

**VOLUME IX**

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Exhibit 29    July 17, 2013, Reporter's Transcript of Jury    JA 1635-1848  
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