CASE NO. A-11-636515-C

DEPT. NO. 30

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DISTRICT COURT

CLARK COUNTY, NEVADA

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MARGARET G. SEASTRAND,

Plaintiff,

vs.

RAYMOND RIAD KHOURY, DOES 1 through 10; and ROE ENTITIES 11 through 20, inclusive,

Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

A.M. SESSION

BEFORE THE HONORABLE JERRY A. WIESE, II

DEPARTMENT XXX

DATED FRIDAY, JULY 19, 2013

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

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LAS VEGAS, NEVADA, FRIDAY, JULY 19, 2013;
9:09 A.M.

P R O C E E D I N G S

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THE COURT: Bring them in. Ready to go.

THE BAILIFF: All rise.

(Whereupon jury entered the courtroom.)

THE COURT: Go ahead and be seated. Good morning, folks.

ALL JURORS: Good morning.

THE COURT: Welcome back. We're back on the record in Case No. 636515.

Parties stipulate to the presence of the jury?

MR. CLOWARD: Yes, Your Honor.

MR. JAFFE: Yes, Your Honor.

THE COURT: All right. It's Friday. We've got a long day. So we're going to get right into it. It's plaintiff's case still.

Mr. Cloward, who's your next witness?

MR. CLOWARD: Jeffrey Gross.

THE COURT: Doctor, if you come all the way up here.

THE WITNESS: Through here?
THE COURT: Yep.
THE WITNESS: Thank you.
THE COURT: Bring you all the way up on the stand. If you come up and stand next to the chairs and put your stuff down.
THE WITNESS: Thank you.
THE COURT: Remain standing and raise your right hand, please.
THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God.
THE WITNESS: I do.
THE CLERK: Please state your full name and spell it for the record, please.
THE WITNESS: Jeffrey David Gross, M.D., J-e-f-f-r-e-y D-a-v-i-d G-r-o-s-s.
THE CLERK: Thank you.
THE COURT: You can be seated. Thank you.
THE WITNESS: Thank you.
MR. CLOWARD: Thanks, Dr. Gross. I'm glad you got the memo about the coordination of suits here.

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DIRECT EXAMINATION

BY MR. CLOWARD:

Q. Doctor, before we start, I'd like to ask that all of your opinions today be given upon the standard more likely than not, to a reasonable degree of medical probability. And if you can't do that, state otherwise. Okay?

A. I understand. Thank you.

Q. Dr. Gross, would you take a moment to just explain to the jurors -- introduce yourself, explain a little bit about yourself, what you do for a living, things of that nature.

A. Sure. I am a neurological surgeon with a fellowship in spinal biomechanics. I practice medicine most of the workday and probably sometimes into the work night. I treat patients with neck and back problems, including injuries and other causes of disk problems, nerve problems, spinal cord problems. As a neurosurgeon, I also treat some head injuries, but my main focus and the part I love is treating spines. I enjoy that the most. And my background, training, and experience are in the area of the spine.

Q. Can you tell us a little bit about the background of training, and I'm assuming you're a doctor?

A. I'm a medical doctor.

Q. Tell us a little bit, you know, where you went to school, things like that.

A. Sure. I have an undergraduate degree in biochemistry from the University of California at Berkeley. I received my medical degree from the George Washington University School of Medicine in Washington DC.

I then did seven years of training after medical school. The first year is called the internship, and I did that in the surgical specialties at the University of California at Irvine in Orange County, California. I did the next four years also at UC Irvine Medical Center in neurological surgery where we treated brain and spine problems. The sixth of seven years was at the University of New Mexico in Albuquerque, New Mexico. And there I did a fellowship, a specialized year in treating spinal problems, specializing in biomechanics, using physics and physical principles to understand forces on the spine and how to use that information to plan the best treatment of the spine, particularly surgeries. The seventh year, I stayed at the University of New Mexico, and I did what's called a chief residency in neurosurgery.

And then I've been in practice starting in 1999 in Southern California, mainly Orange County. And I've been here practicing in the Las Vegas area for two and a quarter years in addition.

Q. Okay. And, Dr. Gross, you are licensed to practice, you say, here in Nevada for two years? Do you have privileges here in Nevada as well?

A. Yes. I'm licensed here and in California, and I have hospital privileges and do surgeries both here and in Southern California.

Q. Could you explain. What is -- what does it mean to have privileges at a hospital?

A. Well, every step in a doctor's career requires credentialing to make sure the doctor meets the standards. So a medical degree requires certain items. My board certification in neurological surgery requires a certain standard to be met, which I have. And then, when I apply to do surgeries at hospitals, I have to apply for privileges. So I have to submit applications, I have to submit my credentials, I have to fill out lots of papers, and usually a little fee. And they have to go through a due diligence process where they make sure I'm okay. So they check out my background and training, and then they grant privileges.

Q. And when you are granted privileges, is that for a very specific thing or, you know, once you get privileges at a hospital, can you go in and do anything you want there?

A. The privileges are specific. My privileges are typically for neurosurgery, to perform surgeries.

Q. Okay. So say, for instance, if someone had privileges to maybe do an injection, that doesn't mean that they could go in and do a complex spine surgery?

A. Correct.

Q. Okay.

A. We're usually limited to our field.

Q. Okay. Thank you.

Doctor, have you presented any lectures or anything like that regarding spine surgery?

A. I have.

Q. Okay. And have you published articles on spine surgery?

A. Yes. Quite a few.

Q. And have you published any chapters for medical textbooks?

A. Yes. I write chapters for textbooks, most recently is last year.

Q. Okay. Doctor, are you a member of any professional medical organizations?

A. I am.
Q. Can you tell the jurors just some of the main ones.
A. I'm a member of the North American Spine Society. I'm a member of the American Association of Neurological Surgeons. I'm a member of the Congress of Neurological Surgeons. I'm a member of the California Association of Neurological Surgeons. Those are the main ones that pertain to my field.
Q. Okay. Now, Doctor, you indicated that you also treat patients; is that true?
A. True.
Q. And in -- in the capacity that you're here for today, you were asked to give certain opinions as an expert witness, correct?
A. Yes.
Q. You also did examine Ms. Seastrand, though, is that --
A. I did.
Q. Okay. Can you tell us in your clinical practice, so when you're treating patients, what does that consist of? What do you do?
A. Well, patients come to -- find me or are referred to me for usually consultation for some problem typically. No one really sees me for a

checkup. Usually these patients have problems with the neck or back or both or perhaps other issues relating to nerves or the neurosurgery umbrella.

Q. Okay.

A. They come to see me. They fill out an intake form with some questions on it. They -- I take my own history. I sit in front of them and ask questions. Why are you here? What's wrong? What happened? And then that might make other questions depending on what the patient says. And we sort of sort things out. Ask them about their past, their past history, other medical issues, what have you.

Then I do a physical examination where I lay my hands on the patient, and we test the parts that are bothered. So if it's a neck condition, I test the neck and the head and the arms and the hands. If it's a low back condition, I'll check the back and the legs and what have you. And then if there are any films to be reviewed or tests to be reviewed, we would do it then.

And then given all that information, I put it together logically and come up with the best diagnoses that match or correlate to all the findings. Because the treatment recommendations I want to be proper and correct, rely on the proper diagnosis.

Q. Okay. A couple of things I wanted to follow

up on. Number 1, you said you do a physical examination.

What is the significance or importance, if any, of doing a physical examination, laying your hands on the patient?

A. Well, it's -- it's a chance for me to correlate what the patient says in the history or what other doctors may have said in the records. It's a chance for me to objectively look at motion and strength and correlate the symptoms.

Q. Okay. And, Doctor, you indicated that, you know, most people don't come to you for like a checkup.

Fair to say you're kind of further on down the road?

A. I'm further on down the road, perhaps near the end of the road.

Q. Sure. What are some -- some types of specialties that folks may have seen before they get actually to you?

A. Commonly people see a general medical doctor, maybe their primary medical doctor or perhaps an urgent care doctor. They may come through a chiropractic care and be referred by a chiropractor. Other common referral patterns come from pain management doctors who might be providing injections or medications, and

they're looking for perhaps a surgical opinion. And then sometimes I do second opinions for other surgeons who just want a fresh set of eyes on something.

Q. Okay. Now, it's correct that we asked you to address a couple of things in the evaluation of Ms. Seastrand.

A. Yes.

Q. One of those was causation.

A. Yes.

Q. And another was the future care needs or kind of a life-care plan for future treatment that could be forecasted for Ms. Seastrand.

A. Yes.

Q. Can you tell the jurors just briefly, what is a life-care plan and what does it mean to forecast future medical needs?

A. Well, this is an opportunity for me to look at the recommendations for treatment that someone would require, even if it's far after in the future. I look up their life expectancy from tables provided by our government. These are statistical tables based on someone's age and sex and race. And then from that, we can project, knowing the current costs of medical care, what that future cost would be.

So, in essence, a life-care plan is just a

future estimate of the medical charges I expect someone to incur based upon their problems they're still having.

Q. Okay. And before I forget, I understand that based on the statistical data, Ms. Seastrand is expected to live for another 32 years; is that accurate?

A. Based upon my plan which was done in 2012, I believe, yes.

Q. Okay. Would that have changed?

A. Well, it's --

Q. I guess it would be one year forward. Okay. Gotcha.

A. Right.

Q. Gotcha there. Okay. Thirty-one years.

Doctor, do you have any training in the field of radiology?

A. Well, my neurosurgery training requires radiological training. So without being a formal radiologist, my field is incredibly based upon me being able to read MRIs and X rays and what have you. So ultimately, I would say yes.

Q. What would be the difference between, say, yourself versus a radiologist? I don't understand the distinction.

A. Well, a radiologist is trained to review medical images and provide a report. As a surgeon, as a treating doctor, I not only know how to look at the films and interpret them, but I also apply the treatment based upon them, because certainly I wouldn't want to offer someone surgery if I couldn't understand the films myself. So I don't rely on radiologists as maybe some other doctors do. Very often I read my own films every time.

Plus, as a surgeon, I get to see the anatomy real and upclose in person. I get to touch the anatomy. I get to feel it. I know the texture of the tissues I see on an MRI. I know the moisture content based on what I see on an MRI. And every time I do surgery, having seen that patient's MRI beforehand, it improves and reeducates me as to what I'm seeing on those films. I get this ongoing and feedback of -- of seeing and feeling the tissue and then looking at the films and correlating that. Radiologists don't do surgeries, so they don't have that educational feedback.

Q. Okay. I appreciate that.

Yesterday Dr. Muir talked about how when he actually did his surgery and he visually inspected Ms. Seastrand's cervical area, he said he took down the

ligament, and behind it, there was some fragments that were not on the MRI. I don't understand that.

Can you -- can you tell us that --

MR. JAFFE: Your Honor --

BY MR. CLOWARD:

Q. -- talk to us about that.

MR. JAFFE: Objection. Are we getting into expert testimony now?

MR. CLOWARD: Your Honor, at this time, I would like to have the court recognize Dr. Gross as an expert in the field of neurosurgery, specifically neurospine surgery and neuroradiology as a neurosurgeon with a fellowship in spinal -- in biomechanics.

MR. JAFFE: Your Honor, I have an objection to two of those areas. If I may approach.

THE COURT: Come on up for a minute.

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

THE COURT: All right. Dr. Gross is going to be recognized as an expert in neurosurgery and neurological surgery of the spine.

MR. JAFFE: Your Honor, so for purposes of the record, my objection is sustained?

THE COURT: Sustained.

MR. JAFFE: Thank you, sir.

THE COURT: In part, I guess.

MR. JAFFE: Thank you.

BY MR. CLOWARD:

Q. Dr. Gross, when we -- when we talked about your -- your training, can you tell us about the training that you received in -- in the field of radiology.

A. Yes. Part of my neurosurgery residency required a three-month course or rotation through the neuroradiology department where all we did was read MRIs and X rays. The remainder of the six years and nine months of neurosurgery training dealt with treating patients. Every morning's rounds with professors would start at the MRI board to see what patients had MRIs or CAT scans or X rays the night before, because my field is imaging based in the modern era. So every day, as I have in practice, we look at films to see inside of people. So I have an imaging based training.

In addition, I went through a fellowship during my residency with Dr. William Bradley who is now the chairman of radiology at University of California San Diego Medical Center specializing in reading MRIs.

Q. Dr. Gross, let me ask you this question: When you're going in there doing the surgery and you're

being able to compare what's on the film versus what's actually going on in the actual patient, do radiologists come in and are they there with you?

A. Never.

Q. Okay. Let me just write that down.

Doctor, can you explain your role as an expert versus strictly a treating physician?

A. Sure. When I'm asked to be an expert, I'm usually not directly treating a patient. I'm asked to look at a case. I'm asked to review medical records. Sometimes examine the patient which would be the same type of history and examination that I would do with seeing a regular patient at my office.

What's different is I'm asked to give opinions such as opinions on causation and past treatment and future treatment as an expert that I'm not always asked to give when I'm just treating someone.

Q. Okay. And you did actually examine Ms. Seastrand.

A. I did.

Q. Was there a physician-patient relationship formed?

A. Yes.

Q. Okay. And, Doctor, when you review medical

records, are there sometimes inconsistencies?

A. Sometimes.

Q. During the course of opening and during the examination of Dr. Grover and Dr. Muir yesterday, there were some -- some medical records that were isolated, only one specific record over a period of 24 years, and the doctors were asked about those specific records.

Can you tell me, is that a fair approach?

MR. JAFFE: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

THE WITNESS: Well, I don't think it's fair, because I look at everything comprehensively. My job is to explain all the -- all of the facts, to give the best overall opinions in context. So if you take one or two elements out of context, that's an improper logic method to look at something.

BY MR. CLOWARD:

Q. So it's -- you're not getting a full picture if you're just cherrypicking one or two facts.

A. Correct.

Q. Okay. Now, regarding the inconsistencies that are sometimes found in medical records, is that common or uncommon? Does that happen or not?

A. Well, when one has a great many records,

they're not all going to agree 100 percent. Some doctors focus on some elements than others. Patients also vary in their pain from day to day or problems as what's worse on a given day. Patients also see certain doctors for one problem and other doctors for others. So I would think that there's always variation in the medical record.

Q. Okay. One specific -- before I get to that, let me lay some foundation.

You have in fact reviewed the medical bills and records from before and after the March 13, 2009, automobile crash, correct?

A. I have.

Q. Okay. So it's fair to say you have reviewed the medical records from Primary Care Consultants, Dr. Knauff, I believe?

A. Yes.

Q. And then also Dr. Lurie from Neck & Back Clinic; is that accurate?

A. Correct.

Q. Now, I'd like you to refer to those. It is in the binder or if you have them on your computer.

MR. CLOWARD: Mr. Jaffe, would you like to take a look at the witness's computer? He's going to be referencing electronic records.

MR. JAFFE: As long as I just know what's -- what he's referencing, that's -- that's all I ask.

MR. CLOWARD: Okay.

BY MR. CLOWARD:

Q. Doctor, if you would please turn to, I believe it is Plaintiff's Exhibit 8, and then also 9.

A. (Witness complies.) Okay.

Q. It's my understanding that on the same day, Ms. Seastrand -- Ms. Seastrand saw a doctor from Primary Care Consultants and she also saw a doctor from Neck & Back; is that accurate?

A. Yes.

Q. And she in fact filled out a pain diagram for Dr. Knauff with Primary Care Consultants; is that correct?

A. Yes.

Q. Before we move on to that, can you explain to the jurors, what is a pain diagram anyway?

A. A pain diagram is a -- a outline or picture of the body that a patient can circle or indicate where problems are or pain is.

Q. Okay. Now, I'm going to --

MR. CLOWARD: At this time, Your Honor, we'd like to move all of the medical records and bills into evidence as contained in exhibits, so --

MR. JAFFE: Okay. I don't --
MR. CLOWARD: -- it would be 5, 6, 7, 8. I mean, basically all of the billing records.
MR. JAFFE: Okay. Well, the MountainView records have already been moved into evidence because that's my Exhibit B. Judge, I'm not sure it's -- you know, just by saying all the records, it's a little --
MR. CLOWARD: Can I read off the specific exhibits, Judge?
MR. JAFFE: We may have to only because I don't see, like, for example, Radiology Specialists. Is that including the films themselves as well and Nevada Imaging Center's bills and records? I don't know. Are you including films?
MR. CLOWARD: You had a chance to look at them. If I can read -- I can -- I'll just -- for the record, Your Honor at this time, we'd like to move Plaintiff's Exhibit 5, MountainView Hospital bills and records. That's Mr. Jaffe's as well.
MR. JAFFE: Okay. Hold on, Your Honor. I mean, we've already --
THE COURT: Come up here for a minute, guys.
(Whereupon a brief discussion was held at the bench.)
THE COURT: All right. So my understanding

is that there's a stipulation to admit Exhibits 5 through 22?

MR. JAFFE: Right. And that includes the films from the various radiologic facilities.

MR. CLOWARD: And that's just subject to the Court's prior rulings on Social Security numbers, things of that nature.

THE COURT: Okay.

MR. CLOWARD: Okay.

THE COURT: Exhibits 5 through 22 will be admitted.

(Whereupon, Plaintiff's Exhibit 5 - 22 were admitted into evidence.)

MR. CLOWARD: Okay. Judge, at this time, may I publish an exhibit to the -- to the witness?

THE COURT: Yes.

BY MR. CLOWARD:

Q. So, again, the --

MR. CLOWARD: Do I need to -- can you switch me over?

THE BAILIFF: Television may have timed out.

BY MR. CLOWARD:

Q. Okay. So, Doctor, I see that the date of this record is March 20, 2009; is that correct?

A. Yes.

Q. This would have been a document that Ms. Seastrand would have filled out herself.
A. Yes, it would have been.
Q. Okay. I see that the lumbar area is circled by her; is that correct?
A. Yes, it is.
Q. I also see that other areas are also circled by Ms. Seastrand.
A. Agreed.
Q. Okay. This is -- and this is the Primary Care Consultant record, true?
A. Yes.
Q. Okay. Now, when you get the -- when you get the record from Dr. Knauff, it doesn't look like he mentions the lumbar area in his -- in his assessment; is that correct?
A. Correct.
Q. Okay. So that's not transferred from the pain diagram to his evaluation, correct?
A. Apparently it was not, correct.
Q. Okay. Now, I would like to have you reference Dr. Lurie's -- Dr. Lurie's record. And I believe this was on the same day.
A. It was.
Q. Okay. And now it looks like he talked about

thoracic, lumbosacral, and cervical. So that would have been consistent with her pain diagram.

A. Correct.

Q. So how do you explain -- I mean, you know, this would suggest that there's an inconsistency.

Does this -- how do you -- you know, Dr. Knauff puts one thing in his diagnosis, Dr. Lurie puts one thing in his diagnosis. Can you explain that for the jurors.

MR. JAFFE: Judge, this is an undisclosed opinion now. He's going into areas that he's not disclosed anything on. I'm going to object.

MR. CLOWARD: It's not an opinion. It's -- an explanation of how --

MR. JAFFE: Judge --

MR. CLOWARD: -- the records.

THE COURT: Come on up for a minute, guys.

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

THE COURT: Objection's overruled.

MR. CLOWARD: Thank you, Judge.

BY MR. CLOWARD:

Q. Dr. Gross, can you tell the jurors, what is inconsistencies -- you know, would that -- would that raise any red flags there, the difference between

Dr. Lurie's record and the record in Primary Care?

A. No.

Q. Okay. Would it raise any red flags that Ms. Seastrand in the document that she actually filled out circled the back, but then Dr. Knauff didn't put that in his record?

A. I don't think it's a red flag. I think it speaks that Dr. Lurie was much more thorough than Dr. Knauff.

Q. So there are times when maybe a patient tells a doctor -- or are there times when a patient tells a doctor one thing but the doctor writes down another?

MR. JAFFE: Objection, Your Honor. Speculation. Overbroad.

THE COURT: Based on his experience, I'm going to allow him to testify. Overruled.

THE WITNESS: Sometimes.

BY MR. CLOWARD:

Q. Okay. Thank you.

Okay. Doctor, can you tell the jurors, can you tell us what you did, what things you did in this case to formulate the opinions that you have. I'm assuming you've made some opinions.

A. Yes.

Q. Can you tell the jurors what processes that

you go through to formulate those.

A. Well, in this case, I was given records to review first and I believe some films. Let me verify. Yes, I had records and films last July. So I reviewed all of those materials and rendered some initial opinions. And at that time I said I would like to examine Ms. Seastrand, and if I were to have to modify my opinions, since they were only based on the records and films at that time, I would.

Then subsequently, I had the opportunity to take my own history and examine Ms. Seastrand personally, and that was in August. So little over a month after I reviewed all the materials, I met with her and did my own doctor's evaluation. And I modified my opinions at that time.

Q. Okay. So you -- just let me see if I -- make sure I get this -- understand this. You review records first, correct, in this case?

A. In this case.

Q. Okay. And you write some opinions.

A. I did.

Q. You say, I reserve the right to change the opinions based on additional information.

A. Correct.

Q. And then you actually see Ms. Seastrand.

A. I did.
Q. And did you actually change your opinions?
A. I did.
Q. Okay. What was your initial opinion in your first report as to the future care needs that Ms. Seastrand would require?
A. Well, the main thing I ended up changing was that when I reviewed the initial records and films, the records indicated she was still struggling with low back trouble after her low back fusion surgery.
Q. Okay.
A. And having looked at the CAT scans and seeing the fusion was not mature and the hardware was displaced, I felt she would need an additional surgery to repair that.
Q. Okay.
A. That was also in concert with the opinions of the treating doctors at the time that is in the records.
Q. Okay.
A. Then when I later saw her in August of 2012, given that the records I had initially ended in November of 2011, she came to me and reported that she had slowly made some improvements in her lower back. So I pulled away my opinion that she would need a

future low back surgery.

Q. Okay. What was the -- what was the first -- what was the cost that -- for the first plan that you created?

A. The complete medical future life-care plan, the total cost estimate was $606,325.02.

Q. Okay. And that was based on just your review of the records not your review of Ms. Seastrand.

A. The records and the films --

Q. Okay. Yes.

A. -- but not my examination and my own history of Ms. Seastrand.

Q. Okay. So 606 just based on the records?

A. Correct.

Q. And then you see Ms. Seastrand, and you actually reduce the number?

A. I do.

Q. Okay. What is -- what was the number reduced down to? We can get to the exact number in a moment.

A. Thank you. I have it. Just looking for it.

Q. Fair to say it was several hundred thousand dollars less?

A. Yeah, it was less than 300,000. I'm looking for the number.

Q. So I have a question: Margie told you that

she was doing well when she saw you?

A. She was improving.

Q. She was improving. Now, you're aware that Dr. Schifini has suggested that Margie has something called secondary gain.

A. I saw that.

Q. Whereby, you know, that would suggest or imply that, you know, she is exaggerating her symptoms for financial gain in this lawsuit.

A. That's his idea.

Q. Okay. And let me ask a question: Would you expect someone with this term financial -- "secondary gain," you know, this exaggeration, would you expect them to report to you that they were doing better or improving?

MR. JAFFE: Objection, Your Honor. This is I believe an undisclosed opinion now.

MR. CLOWARD: I don't think it is, Judge.

MR. JAFFE: Let me double check.

THE COURT: Come up, guys.

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

THE COURT: Objection's overruled.

Doctor, the question is: Let me ask you a question: Would you expect someone with this term

"secondary gain," you know, this exaggeration, would you expect them to report to you that they were doing better or improving?

THE WITNESS: The answer's no.

BY MR. CLOWARD:

Q. Why not?

A. People who exhibit secondary gain tend to amplify, exaggerate pain. Those patients complain of more pain or worsened pain. Ms. -- Ms. Seastrand complained of improvement. So the improvement doesn't go along with any support for the -- the doctor's opinion on secondary gain being in play here.

Q. Okay. And, Doctor, can we talk about, you reviewed some medical records not only for -- not only for the treatment for the -- after the crash, but you also reviewed records that predated the automobile crash; is that correct?

A. Yes.

Q. In your review of the records from before the automobile crash, were there any records that suggested that Ms. Seastrand received treatment for the primary purpose, so her chief complaint is that she's going to the doctor for neck or low back pain or problems?

A. No.

Q. Now, I understand that -- or you're aware of

an automobile crash in 199 -- 1981.

A. Correct.

Q. You're also aware of a automobile crash in 1985.

A. Yes.

Q. Okay. And it's my understanding she did have some treatment for those events.

A. She did.

Q. But we don't -- nobody has those records due to the time.

A. I haven't seen the records.

Q. Okay. But from 1985 to 2009, are you aware of any records that Ms. Seastrand treated for primary complaint, chief complaint of neck or low back?

A. No.

Q. Okay. Now, Doctor, did you review a record from a physician by the name of Dr. Kermani?

A. I did.

Q. Okay.

MR. CLOWARD: We'd like to publish that to the jurors. And, Mr. Jaffe, this is your Exhibit J.

MR. JAFFE: Uh-huh.

MR. CLOWARD: We'd like to move at this time to have this entered into evidence.

MR. JAFFE: No objection, Your Honor.

THE COURT: Exhibit J will be admitted.

(Whereupon, Defendant's Exhibit J was admitted into evidence.)

BY MR. CLOWARD:

Q. Okay. Do you recognize this record, Doctor?

A. I do.

Q. And this is Dr. Kermani's record?

A. Yes.

Q. Okay. Can you tell us a little bit, just your review of this record. What is this -- what does this suggest that is going on during this visit back on October 27th, 2008?

A. Well, subjective complaints include the chest pain for a few days associated with numbness and tingling in both arms and some pain shooting down the left arm. She had some recent foot surgery and started exercising again, and doctor found it interesting that the exercise actually helped the chest pain. And then there's a discussion of quite a bit of stress from the job, recent business venture which is stressful. So the assessment was: Atypical chest pain, numbness, meaning the arms.

Q. Sure.

A. And the patient was given anti-inflammatory medications, which is abbreviated here as NsAID, small

"s." And then a chest x-ray, an EKG and cardiology physician were recommended to evaluated the heart, to make sure this wasn't a heart issue or was. And then regarding the anxiety, a little bit of medication was given to help with the anxiety and stress. And then it looks like there's some discussion of female areas and thyroid.

Q. Okay. Doctor, can you tell me in this objective portion, was there any -- any part in there where you could see that Ms. Seastrand complained of neck or low back pain?

A. I don't see any reference to the neck or back in the complaints.

Q. Okay. Now, Doctor, one thing that Mr. Jaffe pointed out in opening statement was that you did not receive this record until your -- I believe your third supplement; is that correct? You provided an initial report and then a couple supplements.

A. I did.

Q. So you had already formed your opinions prior to receiving this medical record.

MR. JAFFE: Objection. Leading.

MR. CLOWARD: Had you --

THE COURT: Sustained.

MR. CLOWARD: Sorry, Judge.

BY MR. CLOWARD:

Q. Had you formed your opinions prior to receiving this medical record?

A. Well, I provided initial opinions, and --

Q. Okay.

A. -- when new information comes, they are updated if updating is required. Every -- with each new piece of information.

Q. Okay. When you received this medical record, did that alter or change your opinions that you had rendered?

A. No.

Q. Okay. Why wouldn't -- because, you know, it does -- right here it says, We will obtain C-spine X rays. So I mean, shouldn't that be very significant that we should -- you know, that should -- why wouldn't that change your opinion?

A. Well, Dr. Kermani is just making -- trying to find out what's causing some of the symptoms. He's being thorough and dutiful given there are arm symptoms. But there's no evidence of a neck problem there.

Q. Doctor, can you explain to the jurors the difference between a primary diagnosis and a differential diagnose -- or differential diagnosis?

A. Yes. A primary diagnosis is the main problem, the top diagnosis, the reason someone is being seen. A differential diagnosis is a list of possibilities. That means the doctor's not sure exactly with certainty what the problem is, so we make a list of possibilities, and then we narrow down that list by getting tests.

Q. Okay. So it's fair to say that a chief or primary complaint or primary diagnosis is what is more probable, but a differential diagnosis, secondary diagnosis tertiary or third diagnosis, those are just possibilities?

MR. JAFFE: Objection. Leading, Your Honor.

THE COURT: Sustained.

BY MR. CLOWARD:

Q. Doctor, can you explain the probability versus possibility a little more.

A. Yes. With medical probability, that means more likely than not in regards to diagnosis, the stated primary diagnosis is the main problem. But doctors try to be thoughtful and include the possibilities that could also exist even if they're less common. And that's where the differential diagnosis. Differential diagnosis is the list of additional possibilities.

Q. Okay. Now, Doctor, can you also explain is -- is that the same -- is that the same concept as chief complaint versus incidental finding?

A. Yes.

Q. And would that be -- would an example of that be, say, you know, a patient had a knee problem, and they go to the orthopod and the orthopod points out they have a mole on their face and says, hey, you might want to -- you might want to get the mole checked out?

MR. JAFFE: Objection. Leading, Your Honor.

MR. CLOWARD: I'm asking if that example is similar.

THE COURT: Overruled.

THE WITNESS: Yes. The knee would be the primary, chief complaint and primary diagnosis. And the mole would be an incidental finding and something to be dealt with by someone else later.

BY MR. CLOWARD:

Q. Okay. The mole wouldn't necessarily be a diagnosis. That would just be something that's put into the record, right?

A. Correct.

Q. So there's a subtle difference between primary diagnosis, differential diagnosis, and then primary diagnosis and just an incidental finding.

A. Correct.
Q. Okay. Now, so the primary -- what was the primary complaint, one more time, on this visit?
A. Atypical chest pain -- well, the complaint was chest pain. The doctor refers to it as atypical because it wasn't worse with exertion. It was better with exercise.
Q. Okay. Now, did -- can you tell the jurors -- can you tell us, did -- did Dr. Kermani order any testing or anything at that time?
A. Yes. He ordered various tests in addition to the couple different medications, tests for the heart and chest, and a neck X ray.
Q. Okay. Now, I'm going to show Mr. Jaffe's J0008. Okay. It appears as though --
Well, Doctor, what is this record here? What would this suggest that's going on here?
A. This is the -- the middle of the page is the physical examination. The top of the page is just some basic intake information and the reason for the visit.
Q. When you say "physical examination," is that -- is that like where the doctor puts his hands on the patient?
A. Yes.
Q. Okay. What was the finding for the neck?

A. The neck has a checkmark under normal.
Q. That's that right there?
A. Yes.
Q. Okay. What -- what further testing did Dr. Kermani order other than the cervical X ray which we will talk about in a minute? What other things did he order?
A. Well, there was some heart testing, I believe, some blood tests. The heart test is called a stress test.
Q. What is that?
A. Well, standard stress test is a patient's hooked up to an EKG, and they're usually asked to go on a treadmill. And during their exercise, we're looking at the EKG tracings to see if when stressing out the heart it might show some signs of difficulty. And also they test vital signs like blood pressure at the same time.
Q. Okay. Do you know the date of when that test was performed?
A. Yes.
Q. What was the date of that, Doctor?
A. December 15th, 2008.
Q. Okay. What was the result?
A. The stress test was positive for exercise

induced myocardial ischemia, meaning it was abnormal, and that when Ms. Seastrand exercised, her heart wasn't getting enough blood flow to the heart muscle.

Q. Okay. Now, so the initial visit with Dr. Kermani was October 27th, 2008, correct?

A. Correct.

Q. That stress test was on December 15, 2008, correct?

A. Yes.

Q. Okay. Between that window of time that -- you know, that window of time, other than the single cervical X ray, was there any other testing that was directed to the neck or the low back?

A. No.

Q. Okay. So Dr. Kermani didn't refer Ms. Seastrand to a physical therapist.

A. No.

Q. Dr. Kermani didn't refer Ms. Seastrand for an MRI of the neck.

A. He did not.

Q. Dr. Kermani didn't refer Ms. Seastrand for chiropractic care.

A. He did not.

Q. Dr. Kermani did not refer Ms. Seastrand to an orthopedic surgeon.

A. He did not.
Q. A neurospine surgeon.
A. He did not.
Q. Okay. Other than that one cervical X ray, that was the only -- the only thing related to the neck?
A. Correct.
Q. And there was nothing related to the lumbar?
A. Correct.
Q. If a patient presents with chest pain and numbness and tingling in the arms, why would a doctor even consider a cervical X ray, or why would -- or why would -- I think you said something about being careful?
A. Well, in the differential diagnosis, meaning the possibilities, arm tingling and numbness and pain even can arise of the neck. It can come from the neck. So an X ray would be a reasonable thing to rule out a neck problem.
Q. Okay. And, Doctor, can you explain to the jurors what the findings of that X ray were?
A. Yes. My recollection is it was normal. And may I take a quick look at my notes?
Q. Yes, please do.
A. There was some age-related change to the

spine to a mild degree at C5-6, which is one of the segments of the neck. And a mild rightward flexion of the spine, meaning the posture was slightly to the right, that the radiologist thought that was compatible with muscle spasm.

Q. Okay. Doctor, let me ask a question: So based on those findings of the X ray -- well, first off, are those findings abnormal for someone who at the time would have been Ms. Seastrand's age and her gender?

A. No, not at all.

Q. So let me ask a question: More probable that those findings were -- that the numbness and tingling was coming from the neck or more probable that it was from the heart event for which she had a positive stress test?

MR. JAFFE: Objection -- objection, Your Honor. Two areas. Number 1, this is an undisclosed opinion. Number 2, it's getting into an area beyond his expertise.

MR. CLOWARD: Judge, may we approach.

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

THE COURT: All right. The objection's overruled. I'm going to reask the question. So it

says: Let me ask a question: Is it more probable those findings were -- of the numbness and tingling were coming from the neck or more probable it was from the heart event for which she had a positive stress test?

THE WITNESS: Thank you. It is more probable that the arm symptoms are unrelated to the neck and more likely related to the heart or anxiety or both.

MR. CLOWARD: Thank you.

THE COURT: All right. Folks, we're going to take a quick break. It's about 10:30. We'll give you a little break this morning.

JUROR: Yes. Thank you.

THE COURT: During our break, you're instructed not to talk with each other or with anyone else, about any subject or issue connected with this trial. You are not to read, watch, or listen to any report of or commentary on the trial by any person connected with this case or by any medium of information, including, without limitation, newspapers, television, the Internet, or radio. You are not to conduct any research on your own, which means you cannot talk with others, Tweet others, text others, Google issues, or conduct any other kind of book or computer research with regard to any issue, party,

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

Take about 15 minutes.

THE BAILIFF: All rise.

(Whereupon jury exited the courtroom.)

THE COURT: I'm going to excuse you too, Doctor.

All right. We're outside the presence of the jury. Mr. Jaffe, go ahead.

MR. JAFFE: Your Honor, at this time, I would like to make a record regarding the three issues that have been discussed at sidebar this morning. Most prominently, the most recent one where Dr. Gross just before this break was allowed to express an opinion as to the cause of the plaintiff's symptoms and treatment in October through December 2008. My opinion is twofold: No. 1, it is an undisclosed opinion; No. 2, it goes into areas beyond his expertise.

With respect to the expertise issue, he just testified that it related to the heart, and he's not here as a cardiologist. He has not been offered as a cardiologist. He is not testifying as a cardiologist. He's not an expert in cardiology. He's not trained as

a cardiologist. He has no background or experience in cardiology. And I believe it's entirely inappropriate for him to give what was now undeniably a cardiologic opinion.

Second, he just was allowed to testify regarding the causation for treatment in late 2008 that has never been disclosed. And, Your Honor, I would like leave to make court -- as Court exhibits all three of Dr. Gross's records -- or reports rather from August 7, 2012; August 28th, 2012; and the third from September 29, 2012.

THE COURT: You can make them Court exhibits. That's fine.

MR. JAFFE: I'm going to have clean copies brought in, because the only copy I've got is one that I've got marked up.

In his third report, the -- the September 2012 report, that is the first time he saw these October and December 2008 records. He had already rendered a causation opinion regarding this accident. But at no time did he ever render a causation opinion, even in that third report, regarding the need for the plaintiff to have been seen for that treatment to exclude it as an issue related to the 2009 motor vehicle accident.

All he said in that report by way of his opinions was, Discussion. I review -- in review of these additional records, I have identified areas of disagreement with defense participants. I have provided the reasons and basis for my disagreement and my opinions being supported by the medical facts, medical knowledge, and applied clinical logic. My opinions are given within a reasonable degree of medical probability.

In that report, he does not discuss the causation for why the plaintiff was seen in late 2008. It is different for him to defend his opinion than to go beyond that and give an affirmative opinion in a completely new medical area, that is, that late 2008 treatment.

My experts did address it in their reports. My experts did put it in their opinions. Dr. Gross did not. And he was now allowed to give a completely new opinion simply because Mr. Cloward saw that I'm making a point of this in my opening, and he's got no expert who's discussed it. His experts have never seen this report or these records other than Dr. Gross having seen it in time for his third report, and now he was allowed to give a new opinion. I believe that was entirely improper.

The second objection I have is that he was allowed to offer opinions regarding secondary gain against Dr. Schifini. As the record will show and the reports will show, the only time he addressed Dr. Schifini was in his third report. There was nothing in there disputing Dr. Schifini's opinion regarding secondary gain.

The third is he was allowed to offer comparisons of records to offer explanations for discrepancies between un -- between providers' records. Again, that's also an undisclosed opinion, and that is directly in response to what was put in our opening that counsel had not obviously previously anticipated to have obtained in a report.

They've had the opportunity to depose all my doctors and all of my experts, and they took that opportunity. It was done months and months and months ago. They never sought to amend and supplement with those additional opinions, and I believe it was improper to allow Dr. Gross to testify on each of those three areas, sir.

THE COURT: Great. Want to make a record?

MR. CLOWARD: Just that, No. 1, the -- not a single opinion that Dr. Gross has rendered has changed from his initial report, his first supplement, his

second supplement, or his third supplement. The defense points out that somehow Dr. Gross is making a cardiological opinion. However, the reverse analysis for his experts would be the exact same. They ruled out that this had anything to do with the neck or with the heart and say that it dealt with her neck.

In fact, Mr. Jaffe, in opening statement, represented to the jurors -- which was inaccurate, represented to the jurors that this heart issue turned out to be a neck issue. There's no evidence of that. None.

The fact that Dr. Gross reviewed this record, he says that his opinions -- it's unchanged. He was offered for causation. He reviewed the record. It didn't change his opinions. So it's not a new opinion. It's not an unfair surprise.

What were the other two things? What were the other two issues, Mr. Jaffe?

THE COURT: Discussion regarding discrepancy in the records and Dr. Schifini's secondary gain issue.

MR. CLOWARD: Yeah. Dr. Schifini's report was referenced in Dr. Gross's third supplement. As a rendered -- as a -- an expert who is rendering a -- a -- an opinion on causation, Dr. Gross himself would have to consider secondary gain, so we -- I don't feel

like the -- like the testimony that he gave was inappropriate or was unfair to Mr. Jaffe because he referenced Dr. Schifini's report. And No. 2, he has his own individual basis, his own individual opinion. And my specific question was, Dr. Gross, would it be unexpected for you to see a patient do X, Y, Z, what Ms. Seastrand did. I didn't say what are your criticisms of Dr. Schifini when it comes to this issue. I said based on your review, would that raise any red flags.

Nothing further, Judge.

MR. JAFFE: In response, sir, first off, on the Dr. Schifini issue, the problem is counsel asked a question immediately leading up to it directing him to Dr. Schifini and referencing Dr. Schifini's report and opinions. And simply because he looked at Dr. Schifini's report doesn't necessarily mean that he's got carte blanche to say anything and everything that he wants about it. And there's an obligation to still disclose the opinions.

But what I indicated at sidebar is that in his third report, Dr. Gross spent three full pages talking about Dr. Schifini's report and still didn't raise an issue criticizing Dr. Schifini's secondary gain opinion. So, Your Honor, I think that that's the

problem there.

With respect to Dr. Gross on this most recent issue, talking about the cardiology, I did reference that in my opening because my doctors have talked about that. It doesn't mean that he gets now the opportunity to raise new opinions that have never been disclosed simply because he wants to rebut them. My opinion -- or my statements were based upon opinions given by my doctors a year ago. They were disclosed. They were known. He could have rebutted them. He could have done something about it, but he chose not to. It doesn't mean that now, in the middle of trial, he gets to ambush me with a new opinion that has not previously been disclosed because that's exactly what happened.

And while it -- to couch it as saying it goes to his causation opinion, that's not true. He gave a causation opinion on the 2009 accident and the treatment needed by it. He never wrote an opinion excluding 2008 much less going beyond that to say what 2008 did actually represent or what was the cause of the 2008 symptoms and conditions. And that's where it crossed the line by going into those new causation opinions, going beyond what was disclosed and allowing Dr. Gross to get up there and blather on about anything and everything that he wants simply under the guise of,

well, he's given a causation opinion before. It's a different causation opinion on a different area on a different topic and on different treatment.

THE COURT: All right. Here's the deal, guys: As far as the discussion regarding the discrepancies in the records and with regard to Dr. Gross's discussion regarding the -- the 2008 records, I think that those are causation opinions. If the doctor talked about causation in his report, he's been identified as a causation expert, the statute -- or the rules and the notes to the rules talk about the fact that even a treating physician can come in and say something at trial to defend their opinions that hasn't even been disclosed before. I think that has to apply to experts as well, if it's to defend his opinions. And then, I think that's what he was doing. I don't think it changed his opinions that -- that previously have been disclosed. I think it's related to the original causation opinion that he authored, and that's why I overruled the objection.

Now, with regard to Dr. Schifini and the testimony with regard to Dr. Schifini's opinion regarding secondary gain, if you recall, when you came up to the bench, I allowed the question regarding secondary gain because in reviewing the specific

question that was asked, yes, he had previously addressed Dr. Schifini's report. But the question that was asked about Dr. Gross's secondary gain opinion did not specifically reference Dr. Schifini's report and didn't ask him to comment on Dr. Schifini's report or any criticisms with him.

Now, that being said, when Dr. Gross answered the question, he did specifically criticize Dr. Schifini's opinion regarding secondary gain, and I expected an objection and a motion to strike. But I didn't hear it at that point.

MR. JAFFE: Well, because at this point, Your Honor, I mean, quite honestly, I thought it was already consistent with exactly what Mr. Cloward had already asked him. You can't unring the bell. I expected that was coming and, quite frankly, I mean, at that point, why -- why highlight it even more at that point? I had already raised my objection. I expected that's where he was going because he did not give an opinion in any of his reports specifically addressing secondary gain.

Your Honor will see in the third report, it says nothing whatsoever other than listing out a whole bunch more records that he's looked at, commenting upon individually the expert depositions -- or rather reports.

THE COURT: I get it. You don't have to argue anymore.

MR. JAFFE: No. I apologize, sir. I wasn't intending to do that.

THE COURT: Do me a favor, guys. When you come up for a -- bar conferences, keep them quick, don't interrupt each other, talk to me not each other.

MR. CLOWARD: Okay.

THE COURT: I think that will make it go a little bit faster throughout the trial.

MR. JAFFE: That's what I'm trying to do, sir.

THE COURT: Thanks, guys. Anything else?

MR. JAFFE: Well, the only thing is -- I mean, obviously, Your Honor, yesterday we provided you with our brief for the biomechanical issue.

THE COURT: I'm going to allow both biomechanical experts to testify. I think it goes to a weight not admissibility.

MR. JAFFE: Thank you, sir.

THE COURT: I think both of the biomechanical experts offered their testimonies -- if you look back at the Chote and the Levine cases, they talk about the fact that biomechanical experts can't offer speed testimony and things like that based solely upon their

review of photographs. In looking at the reports of both experts, they reviewed on -- they reviewed substantially more evidence than the experts did in the Chote and the Levine cases. I think that based on the Hallmark challenge, that both of the experts I think are qualified in their areas, both of them would provide assistance to the jury, and both of them I think have -- have limited their opinions to their areas of expertise.

So I'm going to allow both to testify. You can cross-examine them, and you can challenge each other's expert, but I think it goes to weight not admissibility.

MR. JAFFE: Thank you, sir.

MR. CLOWARD: Fair enough, Judge.

THE COURT: Anything else?

MR. JAFFE: That's it.

THE COURT: All right. Let's take a break for a minute. Off the record. I gave the jury 15 minutes, the 15 minutes is up. So you guys go real quick and use the restroom so we can get back.

(Whereupon a short recess was taken.)

THE BAILIFF: All rise.

(Whereupon jury entered the courtroom.)

THE COURT: Go ahead and be seated. Welcome

back, folks. Sorry for the delay. Back on the record in Case 636515.

Parties stipulate to the presence of the jury?

MR. JAFFE: Yes, sir.

MR. CLOWARD: Yes, Your Honor.

THE COURT: Go ahead, Mr. Cloward.

Just be reminded, Doctor, you're still under oath.

THE WITNESS: Thank you, Your Honor.

BY MR. CLOWARD:

Q. Okay. Now, Doctor, after the -- the December 15th, 2008, record where Ms. Seastrand received the stress test, were there any other treatments that you're aware of for that heart event?

Let me ask it -- I'll withdraw that question. Let me ask you a different question.

From October 27th, 2008, until the time of the accident, March 13th, 2009, other than that single X ray, were there any other records for Ms. Seastrand's neck or lumbar spine?

A. No.

Q. Okay. Can you tell the jurors, what did Margie tell you about the -- the crash?

A. Sure. I'll read from my initial report where

I met with her, which was my second document dated 8/28/12. She told me that she was stopped as the driver of a 2002 Honda Odyssey minivan, wearing her seat belt, at a red light on a surface street. She was rear ended by an SUV without warning. She did not hear a screech. She thinks she was looking left at the time. There was no secondary impact, meaning her vehicle wasn't pushed into another vehicle.

Q. Okay. Now, did -- did she tell you anything about a history of prior crashes?

A. Yes.

Q. And what was that?

A. From the same document, I documented that she had an accident at age 5 or 6 without injury. She had another traffic collision without injury at age 16. She was in a rollover accident in college in 1981. She had neck pain and right knee pain. She was seen at a hospital. She was treated by a naturalist and her pain resolved within a few weeks.

Q. Okay.

A. And lastly, in 1985 -- not lastly, but in 1985, she was in another accident and had some neck pain. She had some physical therapy, and her pain resolved. And then she had -- she was in another accident without injury when her son was driving about

eight years prior to our visit --

Q. Okay.

A. -- which would be about 2004.

Q. Okay. Now, Doctor, are there certain things that make people more susceptible to injury?

A. Yes.

Q. Can you tell us a little bit, what are things that make folks more susceptible to injury?

A. Well, as it pertains to the spine --

Q. Yeah, that's what I mean. Sorry. Thank you.

A. Sure. Well, first, the most common thing would be age-related change.

Q. Okay.

A. If someone had bone spurs and age-related changes that are quite common, that could narrow the spinal canal and narrow the area where the nerves travel making it more easy to get injured.

Second, people can be born with a narrower spinal canal where the nerves and spinal cord travel. They are more susceptible to injury.

Third and final would be someone who has had prior surgery and/or a prior weakening of the spine from a surgery or some type of approach. That would render someone more susceptible to injury.

Q. Okay. And being more susceptible means it's

more likely that in an event they would sustain injury than someone who didn't have those additional issues?

A. Correct.

Q. Would it be fair, like an example of that would be, say, if I were to have a tackle football game with, you know, my grandfather who's 85 years old, I am probably not going to be injured as quickly as he would?

A. True.

Q. Okay. Similarly, if I have a tackle football game with my 15-year-old nephew --

MR. JAFFE: Objection. This is leading, Your Honor.

MR. CLOWARD: It's an example to help.

MR. JAFFE: I think the doctor's supposed to be testifying not counsel.

THE COURT: I don't know if it's leading yet because he hasn't asked a question yet.

MR. CLOWARD: What was the last part?

THE COURT: You started talking about your 15-year-old nephew.

BY MR. CLOWARD:

Q. Okay. In the latter scenario, I would likely be more likely -- I would be more likely to sustain an injury than the 15 year old.

A. Correct.
Q. Okay. Doctor, can you tell us, did Margie, in particular, have things that would make her more likely to be injured?
A. Yes.
Q. Okay. And those things are the age you talked about?
A. Well, the age-related changes, specifically at C5-6 in her neck.
Q. Okay. And then the degeneration and --
A. That is the age-related degeneration. It's one and the same.
Q. Okay. So is it fair to say somebody without those would maybe not have had the same response?
A. Well, someone without those changes in her anatomy before an injury would be less likely to be injured.
Q. Okay. Maybe like a --
MR. JAFFE: Your Honor, I'm sorry. I have to approach again.
THE COURT: Come on up.
(Whereupon a brief discussion was held at the bench.)
THE COURT: All right. The objection's sustained.

Ladies and gentlemen, I'm going to instruct you not to -- not to consider any of the testimony with regard to the more susceptible than not to injury, that line of questioning.

MR. JAFFE: Thank you, Your Honor.

BY MR. CLOWARD:

Q. Doctor, let me ask a question: On a more likely than not basis, if this MVA had never happened, even with her prior history of degeneration, would Margie have needed to have this surgery?

MR. JAFFE: Hold on. Your Honor, I'm going to object to foundation.

THE COURT: It's overruled.

MR. JAFFE: Thank you.

THE COURT: That's an easy one.

MR. JAFFE: Okay.

THE WITNESS: Absent the injury, she would have most probably not required any type of neck or back surgery.

BY MR. CLOWARD:

Q. Okay. So let's talk about the crash itself and the course of treatment that she received after the crash.

First off, Doctor, in your experience, you do treat patients who are injured, correct?

A. I do.
Q. Okay. In order for someone to have a significant injury, do you need to have significant property damage?
MR. JAFFE: Objection. This goes into biomechanics, Your Honor. It's outside the scope of his expertise and outside -- this is an undisclosed opinion with regard to property damage.
MR. CLOWARD: It's a basic --
MR. JAFFE: And causal relationship.
THE COURT: It's overruled.
THE WITNESS: Patient injuries do not require a match to vehicular injuries. I treat the patients.
BY MR. CLOWARD:
Q. Okay. Have you ever once in your entire career when a patient came to see you, have you ever once asked them to go out and inspect the vehicle?
A. I have never.
Q. So after the accident happens, what is your understanding of what happened next?
A. Ms. Seastrand went to MountainView Hospital.
Q. And can you tell the -- can you tell us how she arrived at MountainView? Was it by ambulance or by her personal car?
A. Taking a look to confirm. She was placed on

a backboard with cervical precautions and taken by ambulance, according to emergency medical service report, and treated in the emergency room at MountainView.

Q. Okay.

MR. JAFFE: What's the exhibit on this?

MR. CLOWARD: It's Exhibit 4.

MR. JAFFE: I don't think that's one of the ones you --

MR. CLOWARD: Move into evidence Exhibit 4, Judge.

MR. JAFFE: No objection, sir.

THE COURT: Exhibit 4 will be admitted.

(Whereupon, Plaintiff's Exhibit 4 was admitted into evidence.)

BY MR. CLOWARD:

Q. Okay. Doctor, do you recognize this document?

A. Yes.

Q. And what would this document be?

A. Would you mind going -- showing the top of the document, please.

Q. Sure. Let me show you the first page.

A. Thank you. That is the Las Vegas Fire and Rescue Emergency Medical Service Report.

Q. Okay. Can you tell -- can you tell us, what were the findings from the paramedics there?

A. Well, they said this is a 47-year-old female. She sustained a trauma secondary to an MVA, for motor vehicle accident. The patient states she was restrained driver, restrained meaning the seat belt was worn, of a vehicle struck in the rear by an SUV traveling approximately 10 miles per hour. Patient complains of pain to neck, right shoulder, back pelvis. Patient denies loss of consciousness or loss of sensation/function to all extremities.

Q. Okay. Doctor, can you explain to us what the SOAP of the medical record mean?

A. Yes. This is a typical medical record format called the SOAP format, as S-O-A-P spelled. S stands for subjective, meaning what the patient starts with or what the details are from the patient. O is for objective, which is usually the physical exam. In a doctor's office, that would also include test results. A is for assessment, meaning the diagnosis or the main problem. And P is for plan, meaning what are we going to do about it?

Q. Okay. So subjective is what the patient tells the provider, correct?

A. Correct.

Q. And the objective is what the provider notes for themselves.

A. Well, based on findings and examinations, yes.

Q. Okay. Can you tell the jurors what the examinations or findings were for this emergency medical technician, or the EMT, the paramedic.

A. The objective findings under O?

Q. Yes.

A. It says, Patient is awake, alert, oriented times four. That means they know where they are, who they are, what's going on. It says skin. I'm not sure what the letters are after that. And then HEENT stands for head, eyes, ears, nose, and throat are unremarkable. Then it says, PEERL, which stands for pupils of the eyes are equal. They're reactive to light. Then it says CX equals C/G bilateral.

Q. What does that mean, Doctor? What does CX mean?

A. I'm not certain.

Q. What about the next line, Doctor?

A. Neck equals pain upon palpation, meaning they were feeling her neck. No deformities noted. Deformity would be something you would be looking for in a fracture or dislocation.

Q. Okay. Doctor, what else -- what other findings significant -- or what other findings for the neck and the back were there on this record, if any?

A. It says, Back equals pain upon palp, which is palpation to spine. Again, no deformities noted. Pain to right shoulder consistent to seat belt.

Q. What does that mean?

A. That means the area of the shoulder pain would be perhaps in relationship to the positioning of the seat belt.

Q. Okay. And one other thing, Doctor, the vital signs, the pulse was 86. Is that high or low or normal?

A. It might be normal or a slightly high.

Q. Okay. Now, is your -- your understanding is she then presented to MountainView Hospital?

A. Yes.

Q. Do you -- and you've reviewed those records.

A. I have.

Q. Okay. Can you just briefly tell the jurors what happened at MountainView without -- I won't go through records in great detail, but what -- what treatment did she receive there?

A. Well, it looks like she was evaluated by the emergency room doctor, Dr. Ferdozian. He took a

history and examined her and gave her some morphine which is a intravenous pain medicine, and some Zofran to help with nausea. He arranged for a CT scan of the head and X rays of the cervical spine, meaning the neck.

Q. Okay. What is morphine used for?

A. Pain.

Q. Is that a medication that's given out regularly? If -- for -- you know, for just -- if anybody presents to the ER, do they give anybody morphine?

A. No.

Q. Why not?

A. Because some people go to the emergency room just looking for morphine.

Q. Okay. What other treatment while she was there was provided?

A. Well, it looks like she received some prescriptions for -- for medications when she left. And she was given instructions not to work for three days, and to follow up with Dr. Ashman.

Q. Who kind of a doctor was Dr. Ashman?

A. I'm sorry, I don't know what kind.

Q. Okay. All right. After she's -- was she discharged, I'm assuming?

A. Yes.
Q. Okay. Was she discharged with any medications?
A. Yes, two.
Q. Okay. Do you know where she went next after she was discharged?
A. You mean right away or her next medical visit?
Q. Next medical visit.
A. Yes.
Q. Is that the Neck & Back Clinic as well as Primary Care?
A. Correct. Seven days later.
Q. Okay. Now, she gave a history to Dr. Lurie, correct?
A. She did.
Q. Do you remember -- or can you tell the jurors, what was the history that she gave of what her neck and back complaints or pain was before the car crash?
A. Dr. Lurie said in his report of 3/20/09, The patient stated that prior to the motor vehicle collision, she -- she was not experiencing intermittent neck pain. But then he describes the previous intermittent neck pain was approximately 3 out of 10

and two to three times a month. So I think she -- I think he misspoke. I think she was experiencing that intermittent neck pain.

Q. Okay. So neck pain is -- is how many -- how many times a month again?

A. Two to three times per month when present.

Q. Okay. Two to three times, month. Is there a rating?

A. Three out of 10. Approximately.

Q. Three out of 10. Okay. What about the back, if anything?

A. He says that she was not experiencing any lower back pain, but then he says, She rated the previous intermittent lower back pain as approximately 4 out of 10 one to two times per month.

Q. Okay. So one to two times per month, pain 4 out of 10.

A. Correct.

Q. Okay. Now, what -- how does she describe the pain upon that initial presentation, and there was a change or not?

A. Well, in regards to the neck, she describes the pain as not only in the neck but radiating into both shoulders and the upper extremities at 8 out of 10.

Q. Okay.
A. She also describes headaches, and I group that with the neck, at 7 out of 10.
Q. Okay.
A. She also describes numbness and tingling in both hands. She describes frequent mid back pain rated at 8 out of 10. And then she describes lower back pain radiating to the buttocks and both legs and knees with numbness and tingling in the legs, rated 8 out of 10. She also notes bilateral shoulder pain at 7 out of 10.
Q. Okay. So would it be fair to say -- I've got a diagram here. This is kind of her baseline or her playing field before the crash.
A. Correct.
Q. And then here's the -- the -- the crash 3/13/09.
A. Yes.
Q. And then here's the immediate playing field or baseline after.
A. One week after.
Q. Okay. So there's a change -- is there a change in her symptoms?
A. Clearly, yes.
Q. Okay. Now, Doctor, did you have a chance to review the MRIs in this case?

A. I did.
Q. And you have the -- the MRIs there with you.
A. I have them on disc, yes.
Q. Okay.
MR. CLOWARD: Judge, and -- Mr. Jaffe would like to have Dr. Gross put those into his computer and show the jurors. Any objection?
MR. JAFFE: I want to did you say?
MR. CLOWARD: Was there any objection?
MR. JAFFE: Oh, no. Those are the MRIs. No, those are fine.
THE COURT: What do you want to do? You want to put them in their computer?
MR. CLOWARD: In Dr. Gross's computer.
MR. JAFFE: But -- okay. So is he putting it up on the screen, then?
MR. CLOWARD: Yes.
MR. JAFFE: Okay.
MR. CLOWARD: Is there a plug up there for him to plug his computer in?
THE COURT: I don't know. I've never done that.
MR. CLOWARD: Okay. Maybe you could bring the -- thanks. Maybe you could bring that down, and we'll plug it into mine. I know there's on mine.

THE WITNESS: Okay. If I could be allowed.
THE COURT: Sure.
THE WITNESS: I've got power. May I step down?
THE COURT: You may.
MR. CLOWARD: Okay. Can you switch us over? Court's indulgence. We apologize.
THE WITNESS: All right. I'm ready.
MR. CLOWARD: Okay.
BY MR. CLOWARD:
Q. So can you just show us what the MRIs -- whether there was any significance or just walk us through what the MRI findings were?
A. Sure. For identification, this is the April 3rd, 2009, MRI of the neck and MRI of the low back. You can see in the upper right-hand corner the images. It says Margaret Seastrand. So we know it's the right person. I'll start with the neck study. And now if it can work at the same time. Okay.
On the right of the screen is a side view of the neck for orientation. Looking across the left, as the jury's looking through my neck and chin and face, one can see the profile showing the chin here, the front of the throat, and upper sternum. And this white line is the upper back and back of the head. Now, the

head would go up and -- on top of that computer screen, but they zoomed in on the neck so they don't show you the head. You can see the bottom of the brain where I'm indicating. And stemming down from the brain is the gray spinal cord that travels down a canal in the neck that normally houses and protects the spinal cord. Right in front of the spinal cord are these gray rectangles and those are the vertebral bones in the neck. In between the vertebral bones are the disks, the cushions.

Now, the first thing I look at is the posture of the neck, and it's very straight. And normally there should be a nice C-shape curve, and that curve is lost here. And that's sometimes a clue that there's a problem underneath or some muscle spasm.

Q. Why would muscle spasm or what would the correlation there be? Explain that.

A. If someone has, for example a disk problem, which I might show you in a minute, then the body's response is to say, ow, that hurts. Let me tighten up my muscles and protect myself from moving too much against that disk problem. So it's the body's response. So it's a clue. Muscle spasm isn't a disease, it's a -- something that stems from a problem. It's a secondary or indirect issue.

Q. Okay.

A. On the left screen are the cross section pictures. This is if we were to chop someone with a guillotine at different places in the neck and look up the head that fell in the basket. In fact, if you see on the right side, there's an orange dotted line that crosses through the spine. That indicates where the guillotine slice is taken.

Q. This right here, Doctor?

A. Yes.

Q. So this image right here is a view of what would be going on there.

A. Exactly.

Q. Okay.

A. And to improve our education here, I will zoom in on the cross section. Okay? I'll do a little zooming here on the side view. So these are the two views I use commonly in my office when I evaluate films. And if you look closer on the right of the screen, you can see the disk. And the normal disk -- for example, this disk where my arrow is, is normal appearing. The front of the disk lines up with the front of the bones above and below the disk. And the back of the disk lines up with the bones -- sorry, the front of the disk lines up with the front of the bones

in front, and the back of the disk lines up with the back of the bones in the back. There's no material coming out of the disk I'm showing you as an example. And that -- and that disk is -- looks normal to me.

Now, that's different than the one that I just moved my arrow to, which is called the Cervical 5-6 disk.

Q. And, Doctor, how do you know looking on that image which one is, you know, 5-6 or 4-5? How do you know -- I don't understand that.

A. Well, we count down from the top.

Q. Okay.

A. The top vertebra is where my arrow is right now.

Q. Okay.

A. And this is a ring vertebra. Sits on this peg vertebra which is the second one. This next one is the Cervical 3, Cervical 4, Cervical 5. The disk here is the disk between Cervical 5 and 6. It's therefore called the C5-6 disk or 5 to 6.

Q. So the disk in between the C5 vertebrae and the C6 vertebrae.

A. That's the one we're looking at because the material is slipping backwards out of its normal place, towards the area where the spinal cord and nerves sit,

and it also has this white color right in front of and behind -- sorry, above and below the disk rather. And that means there's some swelling or reaction in the -- in the bone itself surrounding the disk.

Q. Can you come over and talk to us a little bit more about that.

A. Sure. Where my arrow is pointed here, this white signal in the corner of the vertebral bone Cervical 5 and the top area in the vertebral bone Cervical 6 have some changes. Those changes are bright, intense on this film. They're white indicating some fluid has seeped into the bone marrow. They call that edema or inflammation.

A famous Dr. Modic out of the Cleveland Clinic described these as reactionary changes to the edge of the bone. When the disk isn't doing its property -- it's cushioning property properly, then the bone starts to feel it.

Q. Okay. Thank you.

Now, do those generally take a long time to develop --

A. We couldn't tell by the MRI. They can be new or long-standing.

Q. Okay. So unless there -- unless you have like an MRI from the day before an event and the day

after the event, it's difficult, if not impossible, to date those changes.

A. True. The MRI by itself doesn't tell us any dates.

Q. Okay.

A. We have to correlate that clinically.

Q. Okay.

A. So the -- I draw -- I am moving the orange line through that disk of interest, which is Cervical 5-6. And the slice isn't taken exactly in the middle of the disk, but one can see there -- can I go back?

Q. Yes, please do.

A. There is -- on the cross section, the spinal cord is the gray structure here and here. The disk is this structure, and there's a piece of the disk that is coming into this pathway on the patient's left. And I'm pointing to L for left, which is interestingly on the right side of that picture. That's how we read them. This is a narrowing of the canal to the left side where the nerve travels.

Q. Okay. Let me keep you over here for one moment, Doctor.

A. Sorry.

Q. Would that finding cause pain?

A. It could.
Q. Okay. And could that finding cause no pain?
A. It could.
Q. Okay. Doctor, is there anything significant about this thing right here, this little area right here?
A. Yes. The significant findings are the black disk material is emanating outward in comparison to the surrounding disks. In fact, the one below has a small curvature. In addition, there's the changes in the bone that I mentioned. And there's sort of an angle there. There's a little bit of a kink. All these are clues as to the source of something interesting in the neck, which is then used to go to the doctor to correlate to the patient's symptoms.
Q. Okay. Let me ask a question, Doctor: Can these findings cause pain?
A. They can.
Q. Can these findings not cause pain?
A. Possibly.
Q. I mean, someone could have these findings and have no pain whatsoever.
A. True.
Q. Okay. So talk to us a little bit more about clinical correlation before we -- we move on.

A. Doctors don't treat MRIs. We treat patients. Patients have symptoms. We use the MRI to explain the symptoms. If a patient has neck pain and headaches and pain into the shoulder blades and down the arm, and I see this on an MRI, I can say, ha, those match. I just clinically correlated the findings on the MRI. I can't just look at the MRI in a vacuum and say it doesn't matter what the patient says or complains of, because that's not clinical medicine. That's just radiology. We treat patients.

Q. Okay. So, Doctor, you cannot look at this -- at these images alone and determine whether someone --

MR. JAFFE: Objection. Leading, Your Honor.

BY MR. CLOWARD:

Q. Doctor --

MR. JAFFE: Asked and answered.

MR. CLOWARD: I'll rephrase. I'll rephrase.

BY MR. CLOWARD:

Q. Doctor, can you tell from looking at these images alone whether a patient has pain?

A. No.

Q. Okay. You need to evaluate the patient?

A. It's mandatory.

Q. Okay. Continue on. These are the cervical findings. Is there anything else that is worth noting?

A. I think I showed the salient features to the jury for the neck.

Q. Okay. Now, if you will --

A. The same two pictures are now shown for the lower back, a side view on the right and cross sections on the left.

Q. Okay.

A. So now one can see on the right screen the skin on the back and upper buttock, the belly button is here, the guts are in here, the vertebral bones are here, the rectangles, and in between are the disks. Now, you can see better in the low back that a normal disk has a moist white color, as I'm showing --

Q. Okay.

A. -- but --

Q. That's with the little arrow there?

A. Yes.

Q. Do you mind walking over --

A. I'm so sorry.

Q. -- showing us those.

A. A healthy disk should be moist. Think of a sponge at the sink. A wet sponge is moist. If the sponge has dried out like they tend to do here in Nevada if you don't use it, they're dry and hard. So the darker disks in the lower area are drier and not as

moist. The last two. This upper one is named L4 to L5 because this bone is L4 and this is the last bone, L5. And then the last disk is called the L5 to S1 because S is the sacrum or the upper tailbone. So the L4 to 5 and the L5 to S1 disks are a little bit darker.

Q. Okay.

A. Show you a cross section on the left from L4 to 5. It shows -- may I?

Q. Yes, please.

A. It shows the disk is a little darker than I would expect. The nerve canal and the nerve branches have a little less room to leave the spine. There's a little bit of inflammatory fluid, this white line in the joints of the back of the spine called the facet joints.

Q. Okay. Now, Doctor, let me ask a question: Can a patient have those findings and not experience pain?

A. They can.

Q. Okay. And can those findings also cause pain?

A. They can be correlated with pain and be the source of pain.

Q. So you would need to, again, evaluate the patient after looking at the MRI?

A. Well, we usually evaluate the patient first and order the MRI based upon suspicions or findings and then correlate them afterwards.

Q. Okay. That makes sense. Anything else you would like to point out?

A. I think I've shown the jury, just as I would show to a patient like Ms. Seastrand, what I see on the MRI.

Q. Okay. Thank you, Doctor.

A. Sure. May I have my computer back?

Q. Oh, yes. Sorry. Thank you.

A. Thank you.

Q. Okay. Doctor, generally speaking, will an MRI -- I think you said that regarding the date, is there any way to look at those images and pinpoint when those things took place?

A. Not just based on the images.

Q. Okay. And that's if it's a discogenic or a disk issue. What about if there's actually a broken bone?

A. Well, a broken bone, you can sometimes see if it's an acute finding, meaning it's new, it's cracked, that might be something you would say, well, this looks new, particularly if there was an event with pain right away.

Q. Okay. And can you also see blood on an MRI image if there's a significant enough acute event?

A. Did you say blood?

Q. Yes.

A. Yes, we would be able to see bleeding if it's in the wrong place. Yes.

Q. Okay. So other than those two instances, can you -- that could be clinically correlated as being acute, are there other instances that you can determine when it's -- when the actual date was looking at just the image alone?

A. The only other item in the spine is if an MRI is done with a special sequence within 72 hours of an injury, it can show some edema or fluid inflammation in the ligaments. But very rarely do we get MRIs within 72 hours.

Q. Okay. So taking solely just the MRI with nothing else, is that -- is it accurate to look at an MRI to determine when an acute event took place?

A. No.

Q. Is that even -- is that -- is that fair to do or is it possible to do?

MR. JAFFE: Objection, Your Honor. Argumentative as to the term "fair."

MR. CLOWARD: I'll withdraw.

BY MR. CLOWARD:

Q. Is that -- is that possible to do, Doctor?

A. Well, it's really not possible by itself. It's out of context and cannot tell us the date of a neck or back condition like I showed you here.

Q. Okay. So it's just taking one piece of -- or one piece of the information alone.

A. Right. It's one element of one part of the SOAP structure. It's one piece of the O, the objective. It's not even the entire O, so it's only a fraction.

Q. Okay. Now, Doctor, I have a spine model here. Did you make any opinions as to the injuries that Ms. Seastrand sustained as a result of the automobile crash of March 13, 2009?

A. I did.

Q. And what were those?

A. The first item is discogenic cervical pain with discogenic headaches and right upper extremity radiculopathy improved after C5-6 anterior cervical disk infusion surgery. There is some mild residual symptoms.

So I told you more than just the injury. I told you my evaluation after I had seen her for the neck.

Q. For the neck.

Now, can you tell us any diagnosis or evaluation that you made, any opinions you made regarding the lumbar spine?

A. Yes. She has been diagnosed with low back pain related to disk problems at L4-5 and L5-S1, as proven by diskography, improved eventually after L4 to S1 anterior fusion surgery. She also had improvement in the right leg symptoms with some residual numbness and tingling down the right leg.

Q. Okay. And it's your opinion that those were -- those injuries were caused by the motor vehicle crash?

A. Yes, from 2009.

Q. Okay. And those opinions are more likely than not to a reasonable degree of medical certainty or probability?

A. Yes, they are.

Q. Now, Doctor, you talked about the diskogram. I think you said as diagnosed by diskogram?

A. As confirmed or proven by diskogram.

Q. Can you tell us a little bit --

MR. JAFFE: Your Honor, may we approach?

THE COURT: Sure.

/////

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

MR. CLOWARD: The objection is overruled?

THE COURT: There's no objection.

MR. JAFFE: There was no objection.

BY MR. CLOWARD:

Q. Doctor, can you tell us, what is the diskogram procedure and what does that do?

A. A diskogram is a diagnostic test. In fact, it's called a provocative diagnostic test. It practically assesses the ability of a disk to be structurally and functionally competent or not.

Q. I don't understand that. Can you explain that?

A. Sure. I showed the jury earlier on the MRI that there were clues that two of those lower disks didn't look right.

Q. Okay.

A. We also know the patient has low back pain.

Q. Okay.

A. In an effort to figure out exactly where that pain is coming from, there is a test called diskography by which a pain specialist places needles into a number of neighboring disks and puts a little bit of fluid under growing pressure in the disk.

Now, a normal disk should not be able to tolerate much fluid and the patient should feel some pressure. A disk whose internal structures have been upset or deranged will not feel that pressure immediately and will require more fluid. And that fluid will eventually potentially duplicate someone's pain on a bad day.

Q. Okay.

A. That's the provocative component of the test. It's also important that the test includes a normal disk to compare to. That is called a negative control.

Q. Was there a negative control in Ms. Seastrand's case?

A. Yes.

Q. What level, if any, was that?

A. The negative control in this case was L3 to 4, which is the disk above the two dark ones.

Q. Okay. And, Doctor, can you explain a little bit -- I have this diagram down here, if you could just come down.

THE WITNESS: May I?

THE COURT: You may.

BY MR. CLOWARD:

Q. Can you explain the differences in the type of -- the type of problem, disk problem in the neck

versus the lumbar, the lumbar spine?

A. Sure. These -- these particular images appear more lumbar anatomically. But if you can use the upper image that I'm demonstrating here, the two components of the disk are shown. The inner nucleus, which is a very soft tissue, is what we like to see hydrated because that is the main source of cushioning power. That's the stuffing in the cushion. Or some people like to call it the jelly in the jelly doughnut because it stays in the center.

The tougher fibrous cartilaginous rings that run around the disk are called the annulus. And those annular fibers generally contain that softer nuclear material, although both tissues are soft, contain it so that when someone bears weight or bends and the nucleus is being pushed in different directions, the fibers of the annulus contain it.

But in a deranged disk, particularly in a case of a trauma, there are tears in those fibers in the annulus because there is too much force on the nucleus. And those tears don't repair. And then when the nucleus is being stressed by movement or weight bearing or lifting or diskogram --

Q. Sure.

A. -- the nucleus pieces are pushed through

these tears in the annular fibers and can make the disk herniate. Some people call that a slipped disk or a disk protrusion. And those protrusions can leak enzymes and sometimes touch a nerve. Doesn't require touching, but the nerves can then be upset. And that's how people get leg pain from a back condition and arm pain or tingling from a neck condition.

Q. Okay. And that would be if there's actually a compression of this nerve, correct?

A. No. You don't require compression because the fluids that keep the disk nucleus moist, even if they leak or irritate through the tears, the nerve is upset and inflamed, it does not require physical compression or impingement or squishing of the nerve.

Q. Okay. So that would be like a chemical irritation?

A. That's a biochemical irritation.

Q. Okay. And this would be a picture of what? Like, is this the nerve root coming in?

A. This is the nerve leaving the -- leaving the spine, and little fibers from the nerve not only go down the leg but give sensation to the outer area of the disk. And that's why people can have pain in the disk or in their back from tears in the disk.

Q. Okay. So irritation of these nerve fibers

that enervate the annular fibers can also be painful?
A. Yes.
Q. Okay. Thank you, Doctor.
So after Ms. Seastrand is referred -- well, what was -- what was her course of therapy with the chiropractor and the Primary Care Consultants? What did that consist of, and how long did that take?
A. Well, she treated with therapy over a course. It looks like many months. I see treatment into the -- July of 2009.
Q. Okay. So she treats from approximately March of 2009 until about July 2009 at the chiropractor?
A. Yes.
Q. Okay. And what does it mean to fail conservative therapy?
A. Well, that usually means that therapy such as chiropractic care or physical therapy was not enough to fully help someone recover from their injuries. So it failed.
Q. Does that mean that the patient did anything wrong?
A. No.
Q. That just means that the therapy -- that specific type of therapy cannot help; is that fair?
A. Ultimately, the therapy did not provide

long-term help.

Q. Okay. And in your opinion, did Ms. Seastrand fail the conservative therapy that was offered to her by the Neck & Back Clinic?

A. Yes.

Q. Okay. And based on that, where did she next go? Was that to Dr. Belsky?

A. Dr. Belsky for pain management.

Q. Okay. Why would an individual go from chiropractic or physical therapy to pain management?

A. For continued --

MR. JAFFE: Objection. Speculation. Are we talking about this plaintiff or generally?

MR. CLOWARD: Generally speaking.

THE COURT: I think he asked a general question. I'm going to allow it. Overruled.

THE WITNESS: For continued pain symptoms. When therapy is not adequate to help someone recover adequately, pain management is the typical next step to see if we can get pain reduction.

BY MR. CLOWARD:

Q. Okay. And what do pain management providers generally do for people?

A. Well, they can provide pain medicine, and they can provide pain injections.

Q. Is pain medicine a -- a -- are there -- are there any problems with having someone on pain medicine for a long period of time for treatment of pain?

A. There can be.

Q. And what are the problems that could occur?

A. Well, the two main problems with pain medicine is, one, side effects --

Q. Okay.

A. -- particularly constipation, nausea, usually involving the gastrointestinal tract. Second is tolerance or dependence, meaning the medications become less useful because the cells and the receptors adapt to them and then patients need more, or they can even become addicted.

Q. So addiction is also a side effect of the use of pain medication.

A. It can be.

Q. Okay. Now, let's talk about the -- the injections. What are injections and how are they used to treat pain?

A. There are different types of injections, but the deeper ones, to the spine specifically, include epidural injections which help deal with generally nerve pain into the extremities and some of the disk-based pain such as what we just demonstrated on

your diagram.

The other type of injection would be a facet joint injection. You might recall earlier, I showed the jury on the lumbar MRI there was an inflammation in the facet joint in the low back.

MR. JAFFE: Judge, objection. Cumulative.

THE COURT: I'll let him go for a minute.

BY MR. CLOWARD:

Q. And what does the facet injection do?

A. Well, could do two things. One, if there is pain emanating from the facet joint and the injection helps, then it was therapeutic. It was beneficial.

Secondly, if there's facet joint fluid and the injection only in the facet joint helps, then it's also diagnostic. Meaning we can say, ah-ha, we numbed up that facet joint, the pain got better; therefore, that facet joint is most probably a source of the pain.

Q. Okay. Doctor, can I have you come down briefly and -- and then after this question, I think we would need to break for lunch. I have a diagram here or an illustration --

MR. CLOWARD: Mr. Jaffe.

MR. JAFFE: Okay.

BY MR. CLOWARD:

Q. -- of the injections that would have been

performed by Dr. Belsky. Can you explain, I guess, where the facet is, where the -- you know, the difference between I think you said there were two injections.

A. Correct. The larger view is looking at the back of the patient, and there's some transparency through the skin and muscles, and you can see the bony spine. And the curved areas on either side of the spine are called the facet joints of the spine that I might also show on the model at the same time if that would be useful.

I think your model has scoliosis. But in the lower spine or the lumbar spine, the disks are in the front between the bones, as I showed you on the MRI. In fact, this would be the orientation of the MRI side view. But in the back of the spine, the bones touch each other on the right and on the left. And those are called the facet joints, and they -- they have some restrictive properties and they help movement and restrict movement in different areas of the spine.

Q. Do those go -- that's just -- that just in the lumbar or does that go all the way?

A. They go all the way up.

Q. Okay.

A. So each -- each bone, each vertebral bone

interacts with its neighbor below it through the disk in the front and the two facet joints in the back. Three contact points.

Q. Okay. Thank you.

Now, would this -- this type of injection where you're doing a -- you know, a two-level -- I think you said a transforaminal injection and then also the facet injection, would that ever have the effect of numbing the patient from the waist down?

MR. JAFFE: Objection, Your Honor. This is cumulative. It was all discussed yesterday.

MR. CLOWARD: We'll move on.

MR. JAFFE: Thank you.

MR. CLOWARD: If we can --

THE COURT: Take our lunch break now?

MR. CLOWARD: Yeah, sure.

THE COURT: Let's go ahead and take our lunch, folks.

During our break, you're instructed not to talk with each other or with anyone else, about any subject or issue connected with this trial. You are not to read, watch, or listen to any report of or commentary on the trial by any person connected with this case or by any medium of information, including, without limitation, newspapers, television, the

Internet, or radio. You are not to conduct any research on your own, which means you cannot talk with others, Tweet others, text others, Google issues, or conduct any other kind of book or computer research with regard to any issue, party, witness, or attorney, involved in this case. You're not to form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

See you back at 1:00 o'clock.

THE BAILIFF: All rise.

(Whereupon jury exited the courtroom.)

THE COURT: We're outside the presence. Do you need to make a record on something?

MR. JAFFE: No. We've got the reports from -- that we want to lodge, place as Court exhibits that were referenced last time we --

THE COURT: Okay. You just want to make those court exhibits.

MR. JAFFE: Sir, yes.

THE COURT: Okay. Anything else outside the presence?

MR. CLOWARD: No, Judge. Thank you.

THE COURT: Thanks, guys. Off the record.

(Thereupon, the proceedings adjourned at 11:58 a.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kristy L. Clark, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the proceedings commencing on Friday, July 19, 2013, at 9:09 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 23rd day of July, 2013.

Kristy Clark

KRISTY L. CLARK, CCR #708

Q

SAO
STEVEN T. JAFFE, ESQ.
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Attorneys for Defendant
Raymond R. Khoury

DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET G. SEASTRAND,

Plaintiff,

vs.

RAYMOND RIAD KHOURY; DOES 1 through 10; and ROE ENTITIES 11 through 20, inclusive,

Defendants.

CASE NO. A-11-636515-C
DEPT NO. XXX

STIPULATION AND ORDER REGARDING JURY QUESTIONNAIRE

Firm Trial Date: July 15, 2013

Plaintiff MARGARET G. SEASTRAND, by and through her attorneys RICHARD A. HARRIS, ESQ. and ALISON BRASIER, ESQ., of the RICHARD HARRIS LAW FIRM, and Defendant RAYMOND RIAD KHOURY, by and through his counsel of record STEVEN T. JAFFE, ESQ. and JACOB S. SMITH, ESQ., of the law firm of HALL JAFFE & CLAYTON, LLP, hereby submit the instant Stipulation and Order Regarding Jury Questionnaire. Plaintiff and Defendant, and their respective attorneys (hereinafter parties and counsel shall be collectively referred to as the "Parties") stipulate as follows:

///

///

///

///

IT IS HEREBY STIPULATED AND AGREED that a Jury Questionnaire, attached hereto as **Exhibit "A"**, previously agreed upon by the parties and approved by this Court, will be provided to potential jurors in the above-referenced matter.

DATED this ___ day of June, 2013.

RICHARD HARRIS LAW FIRM

By _____
RICHARD A. HARRIS, ESQ.
Nevada Bar No. 000505
ALISON BRASIER, ESQ.
Nevada Bar No. 010522
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff
Margaret G. Seastrand

DATED this 24 day of June, 2013.

HALL JAFFE & CLAYTON, LLP

By _____
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JACOB S. SMITH, ESQ.
Nevada Bar No. 010231
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendant
Raymond R. Khoury

ORDER

Upon stipulation of the parties, by and through their respective counsel of record:

IT IS SO ORDERED this _____ day of June, 2013.

_____
DISTRICT COURT JUDGE

Respectfully Submitted By:

HALL JAFFE & CLAYTON, LLP

By _____
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JACOB S. SMITH, ESQ.
Nevada Bar No. 010231
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendant
Raymond R. Khoury

IT IS HEREBY STIPULATED AND AGREED that a Jury Questionnaire, attached hereto as **Exhibit "A"**, previously agreed upon by the parties and approved by this Court, will be provided to potential jurors in the above-referenced matter.

DATED this 24th day of June, 2013.

RICHARD HARRIS LAW FIRM

By _____
RICHARD A. HARRIS, ESQ.
Nevada Bar No. 000505
ALISON BRASIER, ESQ.
Nevada Bar No. 010522
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff
Margaret G. Seastrand

DATED this ___ day of June, 2013.

HALL JAFFE & CLAYTON, LLP

By _____
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JACOB S. SMITH, ESQ.
Nevada Bar No. 010231
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendant
Raymond R. Khoury

ORDER

Upon stipulation of the parties, by and through their respective counsel of record:

IT IS SO ORDERED this 25 day of June, 2013.

_____
DISTRICT COURT JUDGE

Respectfully Submitted By:

HALL JAFFE & CLAYTON, LLP

By _____
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JACOB S. SMITH, ESQ.
Nevada Bar No. 010231
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Defendant
Raymond R. Khoury

EXHIBIT "A"

JURY QUESTIONNAIRE

I do solemnly swear or affirm, that I will well and truly answer each and every question set forth below.

1. Your Full Name:_____Badge No. _____

2. Your age: (Circle one)

(less than 20)	36-45
20-25	46-55
26-35	56-65
	>65 (more than 65)

3. What is your sex? Male _____ Female _____

4. What is your marital status?

Single (never married)	Divorced for _____ years
Engaged	Widowed for _____ years
Married for _____ years	Living with partner for _____ years
Separated for _____ years	

5. What is the last level of education completed? (Circle one) Answer under (a) for self and under (b) for spouse.

a) Self	b) Spouse
Less than high school	Less than high school
High school grad	High school grad
Business/tech school/some college	Business/tech school/some college
Community or 2-yr college grad (AA)	Community or 2-yr college grad(AA)
4-year college grad	4-year college grad
Postgraduate work or degree	Postgraduate work or degree

If more than high school, please fill in below for yourself only:

School Degree Major Area of Study Dates

_____

_____

_____

6. Have you received special training or schooling in the following areas? Check all areas that apply.

_____ Medical	_____ Traffic Safety
_____ Accident Investigation	_____ Engineering (includes all mechanical civil, structural or other)

Please describe any of the above areas that are checked.

_____

_____

7. Has any member of your immediate family or close friends ever worked or have any training in any of the occupations or fields listed under item number 6?

_____ Yes _____ No

If Yes, please describe.

_____

_____

8. Please circle all categories that apply to your current job status:

Employed full time	Retired
Temporarily laid off	Full time homemaker
Employed part time	Disabled
Unemployed	Student

IF CURRENTLY EMPLOYED: List your current job and employer and briefly describe your job duties:

_____

_____

Length of employment? _____

IF NOT CURRENTLY EMPLOYED: List your most recent job and employer and briefly describe those job duties:

_____

_____

When was this? _____

9. What industry do you, or if retired did you, mostly work in? (Circle one)

Agriculture/mining	Wholesale/retail trade
Construction	Finance/insurance/real estate
Manufacturing	Business/repair services
Transportation	Entertainment & tourism
Communications/utilities	Health care
Educational services	Professional services
Public administration	(other than health care & education)
	Other: _____

10. Have you ever had any management or supervisory responsibilities in current or in previous jobs?
_____Yes _____No

IF YES, how many people do (did) you supervise? _____

Describe your responsibilities:

_____

_____

Have you ever had the authority to hire/fire others? _____Yes _____No

Is (was) your job considered to be a position of: (Circle)

Senior management
Middle management
Lower management
Supervisor/Foreperson
Non-supervisory

11. Have you or has anyone close to you ever been self-employed or owned a business?
_____Yes _____No If YES, who? (Circle One)

Myself Someone close to me Both myself and someone close to me

a. Please describe the business:

_____

b. Is the business still operating? _____Yes _____No
If No, why not?

_____

c. Was this experience: (Circle one)

Positive Negative Mixed

Please explain:

_____

_____

12. Have you, any family members, or close friends ever worked for an insurance company or in the field of insurance or claims? ____ YES ____ NO

If YES, who was the person, what company was it, and what was the person(s) job?

_____

_____

13. Have you, any family member, or close friends ever worked for a hospital, clinic, doctors office, or any job in the healthcare field? ____ YES ____ NO

If YES, who was that person, where did (s)he work, and what was the persons job?

_____

_____

14. Please describe the employer, occupation, and education of each of the following people (if retired, unemployed, or deceased, include last employer):

		Employer	Occupation	Education
a.	Your adult children			
b.	Your mother			
c.	Your stepmother			
d.	Your father			
e.	Your stepfather			

15. Have you or anyone in your family ever been a member of a labor union? _____Yes _____No

If YES, which best describes:

a. You:
A current labor union member
A former labor union member
Never was a member

b. Your Family Member:
A current labor union member
A former labor union member
Never was a member

c. Please list any service on union committees and appointed and/or elected positions (include unsuccessful attempts at seeking a union office):

_____

_____

_____

16. Please circle the approximate household income for last year (include spouses income) before taxes?

Under $20,000
$20,000-$29,000
$30,000-$44,000
$45,000-$59,999
$60,000-$74,999
$75,000-$99,999
$100,000-$149,000
$150,000 and over

17. In what part of Clark County do you live? _____
How long have you lived in that location? _____
How long have you lived in Clark County? _____

18. Circle the living situation that applies to you currently:

Live and Own House.
Live and Own Condominium.
Live and Own Townhouse.
Rent Apartment.
Rent House.
Rent Condominium.
Rent Townhouse.
Live with parents or relative
Other (Please explain): _____

19. If you have ever been a juror before, please state for each case:

Year	Civil or Criminal	Submitted to Jury	Did You Reach a Verdict?
_____	_____	Y____ N_____	Y____ N____
_____	_____	Y____ N_____	Y____ N____
_____	_____	Y____ N_____	Y____ N____

If civil, what was the nature of the case? _____
_____

Were you pleased with the outcome? _____Yes _____ No

20. Were you ever the foreperson or the presiding juror of the jury? _____Yes _____No

21. Did you find your experience as a juror to be:

Positive_____
Negative _____

If NEGATIVE, please explain:
_____
_____

22. Are you taking any medication regularly that might make it difficult for you to pay attention or concentrate for long periods? _____Yes _____No

If YES, please specify the medication, the purpose for which you are taking it, and describe its effects upon your ability to concentrate:
_____
_____

23. Do you have any difficulty with your hearing? _____Yes _____No

If YES, please specify the nature of that difficulty and how it might affect your performance as a juror:

_____

_____

24. Do you have any problem with your vision? _____Yes _____No

If YES, please specify the nature of that difficulty and how it might affect your performance as a juror:

_____

_____

25. Do you have any language or communication problems that might affect your performance as a juror?
_____Yes _____No

If YES, please explain:

_____

_____

26. Do you have any religious or philosophical beliefs that would make it difficult for you to be a juror?
_____Yes _____No

If YES, please describe:

_____

_____

27. If the trial is expected to last two weeks (July 15 – 25, 2013, excluding weekends), would serving on the jury create any hardship for you?
_____Yes _____No

If YES, please describe:

_____

_____

28. Have you or any family member or close friend ever been involved in a civil litigation or dispute, (i.e. claims for injuries due to an accident, landlord/tenant disputes, disputes regarding the ownership of property, etc.) either as a party or as a witness? _____Yes _____No

If YES, please explain (what happened, when did it happen):

_____

_____

_____

_____

29. Please identify your major source of business and financial news:
Newspapers: _____
TV/radio stations: _____
Magazines:_____

30. How often do you follow business and financial news?

Daily	Several times a week
Several times a month	Almost never

31. What local T.V. news channel do you watch?

1. Cable Channel 3 (NBC)
2. Cable Channel 5 (FOX)
3. Cable Channel 8 (CBS)
4. Cable Channel 13 (ABC)
5. Cable Channel 21 (Fox News Channel)
6. Cable Channel 20 (CNN)
7. Cable Channel 40 (MSNBC)
8. None of the above

32. The following is a list of the parties in this case. If you know or have heard of any of the following parties, please check the appropriate box(es):

Party	Know	Heard Of	Worked For
Margaret Seastrand			
Raymond Riad Khoury			

33. The following is a list of the attorneys and law firms in this case. If you have hired, know, have heard of, or worked for any of the following attorneys or law firms, please check the appropriate box(es):

Name	Have hired	Know	Heard of	Worked for
Richard Harris				
Benjamin Cloward				
Alison Brasier				
Richard Harris Law Firm				
Steve Jaffe				
Jacob Smith				
Hall, Jaffe & Clayton				

34. Have you been exposed to any information, through the media (print, radio, T.V., etc.), word of mouth or any other source about any of the lawyers or law firms involved in this case?

_____ Yes _____ No

If YES, which lawyers or law firms, how were you exposed to this information, and generally what information were you provided?

_____

_____

_____

35. The following is a list of the potential witnesses in this case. If you know, have heard of, or have worked for any of the following individuals or entities, please check the appropriate box(es):

Name	Have hired	Know	Heard of	Worked for
Dr. Yevgeniy Khavkin				
Dr. Marjorie Belsky				
Dr. Mario Tarquino				
Dr. William Muir				
Dr. Russell Shah				
Dr. Leo Langlois				
Dr. Eddy Luh				
Matt Smith Physical Therapy				
Matthew Olmstead, D.C.				
Benjamin Laurie, D.C.				
Dr. William Orrison				
Dr. Sonny Patidar				
Dr. Benjamin Kermani				
Dr. Luis Diaz				
Dr. Lisa Underwood				
Dr. Terry Leavitt				
Dr. Mark Ferdowsian				
Dr. Jaswinder Grover				
Dr. Jeffrey Gross				
Dr. Arthur Croft				
Terrence Dinneen				
Dr. Joseph Schifini				
Dr. Staci Schonbrun				
Dr. John Siegler				
Dr. Harry Smith				
Dr. J. Pablo Villablanca				

36. Have you been exposed to any information, through the media (print, radio, T.V., etc.), word of mouth or any other source about any of the witnesses involved in this case?

_____Yes _____No

If YES, which witnesses, how were you exposed to this information, and generally what information were you provided?

_____

_____

_____

37. Do you believe your relationship with any attorney, medical provider, or any other person would affect your ability to be fair and impartial to both sides of an accident case? _____Yes _____No

If YES, please explain:

_____

38. Which of the following best describes you? (Please circle all that apply.)

Analytical	Careful	Compassionate	Compulsive	Creative	Emotional
Generous	Impulsive	Judgmental	Logical	Naive	Old-fashioned
Open-minded	Opinionated	Outspoken	Practical	Private	Pro-Company
Pro-worker	Sensitive	Skeptical	Smart	Strict	Successful
Technical	Thoughtful	Trusting	Other: _____		

Circle only one answer for the following questions:

39. Are you
A) easy to get to know, or
B) hard to get to know?

40. Would people consider you more
A) talkative, or
B) reserved?

41. When you are with a group of people, would you rather
A) join in the talk of the group, or
B) talk one-on-one with people you know well?

42. I decide my priorities and take firm action to achieve them
A) True
B) False

43. I wait for events to take their course before deciding what to do.
A) True
B) False

44. I see to it that things come out the way I want them to.
A) True
B) False

45. I do a lot for others, but little is done for me.
A) True
B) False

46. I can persuade almost anyone to switch to my side of an argument.
A) True
B) False

47. I do not hesitate to direct people what I think is best for them.
A) True
B) False

48. I believe in complaining if I receive bad service in a restaurant
A) True
B) False

49. If I notice that another persons line of reasoning is wrong, I usually
A) point it out
B) let it pass

50. When people do something that bothers me, I usually
A) mention it to them.
B) let it go.

51. If we were lost in a city and my friends did not agree with me on the best way to go, I would
A) let them know that I thought my way was best
B) make no fuss and follow them

52. Would you describe yourself as being a leader:
A) rarely
B) occasionally
C) regularly

53. Would you rather be thought of as a
A) practical person, or
B) an ingenious person?

54. When tackling a project, does it appeal to you more to
A) do it in the accepted way, or
B) invent a way of your own?

55. Are you more drawn to
A) facts, or
B) theories?

56. Would you rather be considered a
A) determined person, or
B) a devoted person?

57. Is it a higher compliment to be called
A) a person of feeling, or
B) a consistently reasonable person?

58. Do you consider yourself more of a
A) thinking, or
B) feeling person?

59. Does following a schedule
A) make you feel constrained, or
B) appeal to you?

60. When you go somewhere for the day, would you rather
A) just go, or
B) plan what you will do and when?

61. Do you:
A) prefer to do things at the last minute, or
B) find that hard on the nerves?

62. Friends and family turn to me for warmth and support.
A) True
B) False

63. I dislike depending on anyone in my work.
A) True
B) False

64. I prefer to make decisions on my own, with little or no advice from others.
A) True
B) False

65. I you or a loved one were injured by the negligence of another would you consider filing a lawsuit?
A) Yes
B) No

66. Do you have any beliefs that would prevent you from awarding a multi-million dollar verdict if the evidence supported it? YES NO

67. Do you have any beliefs that would prevent you from awarding a multi-million dollar pain and suffering verdict if the evidence supported it? YES NO

68. Do you believe there should be limits placed on how much money a jury should be allowed to award a person for pain and suffering? YES NO

69. Do you have any beliefs that, if a Plaintiff asks for a multi-million dollar award, you could not award damages below a million dollars, even if the evidence supports a verdict below that amount?
YES NO

70. Do you have any beliefs that would prevent you from awarding less than a million dollars to a Plaintiff if the evidence supports a verdict below that amount? YES NO

71. Do you have any beliefs that would prevent you from awarding a Plaintiff no money ($0) if the evidence supports such a verdict, despite the Plaintiff asking for more than a million dollars?

YES NO

72. Is there anything else that you feel is important for the parties to know about you?

_____

I understand the importance of providing true, accurate and complete responses to the questions set forth above to ensure that a fair and impartial jury will be selected. I affirm that the selected answers to the questions set forth above are true and accurate to the beset of my ability

_____
SIGNATURE

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. 65907 Supreme Court Case No. 65172

APPEAL

from the Eighth Judicial District Court, Clark County

The HONORABLE JERRY WEISE, District Court Judge

District Court Case No. A-11-636515-C

APPELLANT'S APPENDIX

VOLUME XI

STEVEN T. JAFFE, ESQ.
Nevada Bar No. 007035
JACOB S. SMITH, ESQ.
Nevada Bar No. 010231
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, Nevada 89128
Attorneys for Appellant Raymond Riad Khoury

VOLUME XI

Exhibit 33	Exhibit "Q" to Defendant's Trial Brief [For brevity, all exhibits to Defendant's Trial Brief redacted except Exhibit "Q"]	JA 2090-2106
Exhibit 34	July 19, 2013, Reporter's Transcript of Jury Trial, (Day 5, am)	JA 2107-2202