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    CASE NO. A-11-636515-C
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                          DISTRICT COURT
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                       CLARK COUNTY, NEVADA
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   MARGARET G. SEASTRAND,
10
           Plaintiff,
11
          VS.
   RAYMOND RIAD KHOURY, DOES 1
    through 10; and ROE ENTITIES
    11 through 20, inclusive,
13
14
           Defendants.
15
16
                      REPORTER'S TRANSCRIPT
17
18
                                 OF
19
                             JURY TRIAL
20
            BEFORE THE HONORABLE JERRY A. WIESE, II
                          DEPARTMENT XXX
21
22
                  DATED THURSDAY, JULY 25, 2013
23
24
25
   REPORTED BY:
                   JENNIFER O'NEILL, RPR, NV CCR #763
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1	APPE	ARAI	ĪCES:
2	For	the	Plaintiff:
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7		4.7	The first desired in
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23			
24			
25			
			?

1	LAS VEGAS, NEVADA, THURSDAY, JULY 25, 2013;
2	10:35 A.M.
3	
4	PROCEEDINGS
5	* * * * *
6	
7	THE COURT: Let's go on the record. We're on
8	the record in Case No. 636515. We're outside the
9	presence of the jury to discuss jury instructions.
10	Have you guys looked through the set that I
11	proposed yesterday?
12	MR. HALL: I have, Your Honor.
13	MS. BRASIER: Yes, Your Honor.
14	THE COURT: You haven't?
15	MR. HALL: I have.
16	THE COURT: You have. Okay. Here's what I
17	want to do. I just want to go through with you the set
18	that was submitted to me as the stipulated set. I want
19	to tell you the ones that I made changes to and the
20	ones that I
21	MR. HALL: I think I saw them all, and I
22	don't think we had any problems with the changes you
23	made.
24	THE COURT: The second one that was proposed,
25	You are admonished that no juror should declare to a

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fellow juror, that's a preinstruction so I took it out.
 1
 2
             The trial will proceed in the following
 3
   order, that's a preinstruction.
 4
             MR. HALL: Okay. But the admonish one is in
   your set too right now, right?
 6
             THE COURT: It's different. I don't think
   so.
 8
                        You must be looking at the wrong
             MR. SMITH:
   ones.
10
             THE COURT:
                         It was the second proposed
11
   instruction that you submitted in your stipulated set.
   I took that one out.
12 |
13
             MR. HALL: I got it. I'm sorry, Judge.
14
             THE COURT: Okay. And then a few more down,
15
   there's one that says, The trial will proceed in the
   following order. That's a preinstruction. I took that
17
   out.
             The next one, Your purpose as jurors is to
18
19
   find and determine the facts. I made some changes to
20
   that one in the second paragraph to make it past tense
21
   as opposed to future tense.
22
             MR. HALL: Okay.
23
             THE COURT:
                         I just want to make sure.
   don't want to try to pull something over on you guys.
24
25
             Four or five more down, there's one that
```

says, The jury will not have a transcript to consult at the close of the case. Raise your hand if you can't hear. That's a preinstruction. I took that one out. 3 Again, let me remind you until the case is 4 submitted to you, that's a preinstruction. I took it 6 out. 7 We get to one that says, There are two kinds 8 of evidence: Direct and circumstantial. In your stipulated set there was a second paragraph. I took the second paragraph out because that's a 10 11 preinstruction. MR. HALL: Preinstruction. 12 13 MS. BRASIER: Okay. THE COURT: You never had a judge go through 14 15 the instructions like this ahead of time, have you? MS. BRASIER: I know. It's nice. 16 17 MR. SMITH: But you told us you never had the 18 instructions ahead of time, right? 19 THE COURT: That's true. That's just when it dealt with 20 MR. CLOWARD: 21 me, right, Judge? THE COURT: There's one that's towards the 22 23 It's about five or six up from the back. I am 24 further instructing you that you are not to consider the legal fees and costs. I changed the language to 25

1 that one. 2 Do you see the one I'm talking about? 3 MS. BRASIER: I do. I don't have any problem 4 with that change, Your Honor. 5 THE COURT: The change -- the way I changed 6 it, I changed it to read: You are not to consider the 7 legal fees and costs which a party may owe. Attorney's fees and costs are not elements of damages and you may 8 not consider whether they should be included as an 10 element of your award. 11 MR. SMITH: How does it start, Your Honor? 12 You are not --13 THE COURT: You are not to consider. I took out the "during your deliberations" that you had in 14 15 there. Okay? Yes. 16 MR. SMITH: 17 That's fine. MS. BRASIER: 18 THE COURT: Otherwise, your stipulated set 19 was fine. I didn't make any additional changes. 20 MS. BRASIER: Your Honor, we did propose 21 yesterday some changes to the damages instruction to 22 add the household services damage and the verdict form to add the --23 24 THE COURT: I saw that. -- household services. 25 MS. BRASIER:

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1
             THE COURT: The instructions I got back from
 2
   Mr. Cloward yesterday with little tabs on them --
 3
   there's an instruction about two-thirds of the way
   through that says, When I use the word negligence.
 4
 5
             You guys want to turn to that one.
 6
             MR. HALL:
                       I'm sorry, Judge. Which one?
 7
             THE COURT: About two-thirds of the way
 8
   through my set. It starts, When I use the word
 9
   negligence.
10
             MR. HALL: How are you finding them so fast?
11
             MS. BRASIER: I had that one tabbed.
             MR. SMITH: Is this one of the ones that the
12
13
   plaintiff gave yesterday?
14
             THE COURT: No.
                              It's in my set.
15
             MR. HALL: Yes.
                              I have it. I'm sorry.
16
             THE COURT: I have a little note here from
   Mr. Cloward, why is this one necessary?
18
             Generally, we -- in the past if you look at
19
   the old jury instructions, which I like better than the
20
   new ones still --
21
             MR. HALL: Absolutely.
22
             THE COURT: -- the old jury instructions had
   an introductory instruction saying, Plaintiff seeks to
23
24
   establish a claim of negligence. I will now instruct
25
   on the law relating to that. And you go -- you went
```

1 through several definitions of what was negligence, what was proximate cause, what are the elements of negligence. I didn't like the elements of negligence 4 because one of the elements of negligence was 5 negligence, so I always thought that was a stupid instruction. But somehow we need to explain to the jury what negligence is. Somebody must have proposed this negligence instruction. MR. HALL: I think that was before there was 10 clarity on whether or not we were admitting fault. 11 12 once that happened, you know, it became arguably 13 unnecessary. 14 THE COURT: And if you both agree that this one should come out, I'll take it out. 15 16 MR. HALL: Take it out. Yeah, I would like to take it 17 MS. BRASIER: We had a proposed one that we submitted yesterday 18 19 that we would like to put in place that just reads: order to establish a claim of negligence, plaintiff, 20 Margaret Seastrand, must prove the following element by 21 a preponderance of evidence. And then it just lists 22 that Raymond Khoury was -- his negligence was a 23 24 proximate cause. THE COURT: I'm sorry. Hold on one second.

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I'm trying to -- I want to change these in my -- on the
 2
   computer as we're going. I took that one out.
 3
             Do you want to put a different one in its
   place?
 5
             MR. HALL: We've got one. Should we combine
6
   that into two -- or just combine that into one?
 7
                           That would be fine.
             MS. BRASIER:
 8
             MR. HALL: That one being the first one. See
   if these work for you, Judge.
10
             THE COURT: It is admitted that Raymond
11
   Khoury was negligent in causing the collision of
   March 13, 2009. In order to establish a claim of
12
13
   damages against --
             MR. HALL: A claim for damages, Your Honor.
14
15
             THE COURT: -- a claim for damages against
16
   Raymond Khoury, plaintiff Margaret Seastrand must prove
17
   the following elements by a preponderance of the
18
   evidence: One, that defendant Raymond Khoury's
   negligence was a proximate cause of damage to Margaret
19
20
   Seastrand.
21
                        Maybe we don't need to do "the
             MR. HALL:
22
   following." But say "in order to establish a claim for
23
   damages, he must establish," without saying semicolon
   and one.
24
25
             THE COURT: Must prove that defendant Raymond
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Khoury's negligence was the proximate cause. 1 MS. BRASIER: That's fine, Your Honor. 2 3 THE COURT: All right. I will do this in a I'm going to just do this first. minute. 4 We'll add that one. 5 MR. HALL: Yes. 6 7 MS. BRASIER: And are we -- we're removing the one that you had when I used the word negligence and also the one following that says the defendant has 10 admitted liability? 11 THE COURT: Sure. Are you okay with that, 12 Mr. Hall? 13 MR. HALL: Yes. THE COURT: All right. And then I had a 14 couple more down, In determining the amount of losses, 15 if any, suffered by the plaintiff. The plaintiff 16 wanted to add past loss of household services and 17 future loss of household services. 18 19 MR. HALL: Let me get to that one real quick, 20 Judge. Right. 21 The future one should be discounted to 22 present value. Did they include that? 23 THE COURT: No, but it should. Okay. 24 The only other suggestion I got yesterday was 25 to include the past and future household services on

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the verdict form. We'll talk about that in a little
 1
   bit.
 3
             MS. BRASIER: My only other concern with that
   instruction, Your Honor, is on No. 4 where it indicates
   that the pain and suffering needs to be discounted to
 6
   present value. I don't believe that's supported by the
   case law.
                         The future pain and suffering?
 8
             THE COURT:
 9
             MS. BRASIER: Yes.
                                  That that needs to be
   discounted to present value.
10
11
             THE COURT: Is there case law that says
   otherwise?
12
13
             MS. BRASIER:
                            There is, Your Honor.
14
             MR. HALL:
                        I'm sorry. What are we arguing
15
   about, Your Honor?
16
             THE COURT:
                         The future physical, mental pain,
17
   suffering, anguish, and disability. She says that
18
   shouldn't be discounted to present value.
19
             MR. HALL: Which case is that? I read that
20
   case yesterday.
21
             MS. BRASIER: Porter v. Funkhouser.
22
   Nev. 273, 382 P.2nd 216. It's a 1963 case out of
23
   Nevada.
24
                         Do you agree with that, Mr. Hall?
             THE COURT:
25
   Should I take out the discounted to present value?
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1 MR. JAFFE: I need to see that. I researched 2 this. 3 MS. BRASIER: This is -- sorry -- my summary of different cases. 5 MR. HALL: Sorry. I need to take a look at 6 that case. I have to be honest with you. I think the law is kind of weird in Nevada about future pain and suffering and whether or not it should be discounted to 8 present value. I think it's ambiguous. I really do. 10 I did find cases saying that future 11 disability should be discounted to present value. I've got to be honest, I think the law -- like her, I 12 saw a case that -- there's a case out there -- and I 13 14 don't know if it's the one she's citing -- where 15 there's an assignment of error brought up to the Nevada 16 Supreme Court, and the error is that they didn't 17 discount future pain and suffering to present value. 18 And the Supreme Court said -- it's an old case. 19 might be that one -- said, no, that's not enough of an 20 error that we're going to throw it back. 21 I didn't read it to say that the supreme 22 court was saying you don't have to. So I think they 23 did say the law. 24 THE COURT: I guess my concern -- I think 25 she's probably right because as it relates to future

```
1 medicals or future household services, you put an
   expert on or put a number on those and they can
   discount the number to present value because of the
   fact that you have a number to discount.
 5
             MR. HALL: Right.
 6
             THE COURT: When you're talking about future
 7
   pain and suffering --
             MR. HALL: You can't discount the pain.
 8
 9
             THE COURT: -- you can't put a number on it
10
   |because there's --
11
             MS. BRASIER: There's no number being offered
12
   yet.
13
             THE COURT: -- there's nobody to discount it
14
   because you don't know what the number is.
15
             MR. HALL: Okay.
16
             THE COURT: Right?
17
                              That's right.
             MR. HALL: Yes.
18
             THE COURT: So I think you're right. I think
19
   we take out the discounted to present value on that.
20
             MS. BRASIER: Was there an objection to
   adding the household services to that?
21
22
             MR. HALL: No, but those clearly are
23
   discounted. The law is clear on that.
24
             THE COURT: The future?
25
             MR. HALL: Yes.
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MS. BRASIER: And I don't have a problem with
1
2
   that.
             THE COURT: All right. So that's all of
 3
   mine. Let's go with additional jury instructions that
 5
   the plaintiff is proposing.
             MS. BRASIER: Sorry, Your Honor.
                                               I had
 6
   everything in order and then started pulling stuff.
 7
 8
             THE COURT: That's all right.
             MS. BRASIER: Let me just get everything
 9
10
   together.
11
             MR. HALL: Just to cut through some things,
   Judge, we are withdrawing our objection to the
12
   instruction on mortality tables.
13
             Didn't you have one in there in yours, in
14
15
   your set?
             MS. BRASIER: It's the life expectancy.
16
             THE COURT: I think there's one in there.
17
18
             MR. HALL: Yes, there is. Are you
19
   withdrawing that one?
                          It's already included so if
20
             MS. BRASIER:
21
   you're not objecting.
22
             MR. HALL: We're not. So we're withdrawing
23
   any objection to that one, Judge.
24
             THE COURT: Okav.
             MR. HALL: And the next two of theirs in
25
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their modified form, we allowed in.
1
             THE COURT: Okay. Hold on a second.
 2
3
             MR. HALL: I'm sorry.
             THE COURT: You got to -- you got to point me
 4
5
   to what you're looking at. Okay.
6
             I see what you're looking at. Plaintiff's
   proposed jury instructions. The first one was a table
 7
8
   of mortality. I think I already put that in there.
9
             MS. BRASIER: Yes.
10
             MR. HALL: Right.
11
             THE COURT: There's already one on read-backs
   in there, I think.
12
13
             MR. HALL: Judge, let me just say, I didn't
14
   see that in yours.
             THE COURT: No?
15
16
             MR. HALL: Did you see read-backs?
             MS. BRASIER:
                           I think there was one but I
17
18
   could be wrong.
19
             MR. HALL: I, frankly, have always found that
   was a nightmare. I really just don't like to have it
20
   in there but if it's already in there, I don't have any
21
22
   objection.
             THE COURT: It's the third one from the back
23
   in my set. I'll take it out if you both want to take
24
25
   it out.
```

1 MR. HALL: How do you feel about that? 2 I mean, one of these jurors I hate that. 3 starts wanting to read stuff back, it delays -- I've had cases go three days because they want to read stuff 5 I'd rather take it out, but I'll leave it up to 6 these guys. 7 MS. BRASIER: I would like to keep it in just in case it comes up. They have the right to do it. I don't want to take that right away from them if they 10 had some kind of question. 11 THE COURT: Okay. You're okay with leaving it in? 12 13 MR. HALL: Yes. THE COURT: All right. Let's leave it in. 14 15 The next one that they propose: If you find 16 that plaintiff suffered injury as a result of the 17 defendant's negligence, you must award reasonable and 18 fair past and future pain and suffering damages. Based 19 on the Drummond versus Mid-West case. 20 What do you think about that one, Mr. Hall? 21 MR. HALL: Two things. First of all, I 22 certainly disagree with the portion that says they must 23 award future pain and suffering. 24 The Drummond case is a case where a guy lost 25 The jury came back and said, well, you know, his arm.

they gave him no future disability, no future pain and suffering. And the judge, the supreme court said, come on, the guy lost his arm. He's got some future pain and suffering.

The Shere case is different but it's similar in one way. In that case there was — the guy was injured, badly injured, in a car wreck. They were challenging the back. They said, look, the guy did not need back surgery. None of that's related. But evidence went in unrefuted that he had injured his knee and his foot and that he needed future physical therapy for that. That went in unchallenged to the jury. And, again, the supreme court said, look, there is — that was unchallenged. The jury just can't disregard it because they don't like the plaintiff. They have to award it because it went in and there was no challenge to it.

Here, Judge, it's pretty clear what the theory of the case is. I mean, the judge — or the jury has to decide whether, A, this was a self-limiting strain and sprain that would have resolved in a few weeks or, two, whether this was an accident which caused disc injury which required surgery and still causes plaintiff problems to this day. That's the issue, Judge. And if —

1 THE COURT: Here's the question: If because 2 of the fact that there was no dispute that she at least 3 suffered sprains and strains even from the defense experts, does that warrant the giving of this 5 instruction because there is at least a stipulated -there are some damages that seem to be stipulated. 6 MR. HALL: Two points about that. The main point I'm making is, Judge, if you read that, the point 8 I'm most strenuously objecting --9 10 THE COURT: Is the futures. 11 MR. HALL: Right. THE COURT: I know. 12 13 MR. HALL: And the jury is absolutely 14 entitled to come to the conclusion there's no future damages at all. If they get this instruction, I mean, 15 16 they're going to think they have to side with the 17 plaintiff's theory of the case. If you tell them you 18 must award future damages and they believe it's a sprain, they're going to wonder what to do. 19 20 But let's go back to your first question. 21 This type of instruction has never been approved, and I 22 think -- I couldn't find it. But what these cases talk 23 about is exactly that where -- when the jury commits nullification or they just disregard the instructions 24 you gave -- the judge gave. That's what these cases 25

arise out of.

There isn't a case where the Nevada Supreme Court or anyone else has said this is a proper instruction. I believe, Judge, that the instructions that you gave otherwise — all the ones you have about what constitutes negligence, what constitutes proximate cause, and what damages are, I think this is superfluous. That's my objection to the whole thing.

But on the future damages, Judge, there is no way that this should be given. It doesn't — a jury is absolutely entitled to come to a conclusion there are no future medical expenses warranted and no future pain and suffering.

THE COURT: Okay. Ms. Brasier.

MS. BRASIER: My compromise, I guess, then would be if we wanted to reword it to say: If you find that she has suffered past injury, you must award past -- you know, break it up to past and future.

But I think the Drummond case and all the cases that follow pretty clearly say that if you find there is some injury, you have to award something for pain and suffering. And injury and pain go hand in hand. So I think we need to tell the jury that they don't have an option. If they find an injury, they have to find there was some — you know, award

something for the pain that went along with it.

I'm fine if he has a problem with the future and making sure the jury knows they don't have to award future pain and suffering. My proposal would then be just to expand it a little bit to break it into two sections. I think it's pretty clear that they have to award something if they find for future injury [sic].

MR. CLOWARD: Could I just add something?

That's a fall-back position. We believe that the correct statement of the law is if they find that the injuries were proximately caused by the crash, they must award not only past but future pain and suffering. And importantly, there's zero evidence from any of their medical providers that Ms. Seastrand would not experience pain in the future. Zero.

On the other hand, all of our doctors indicated that she would continue to have pain into the future. So if they find the injuries are proximately caused by the event, then the past pain and suffering is appropriate and so would the future because there's no evidence to contradict the future.

MR. HALL: Okay. Judge, there's plenty of evidence saying that. Every one of our doctors said it was a self-limiting sprain and strain. It should have resolved in weeks. And a jury is absolutely entitled

to come to the conclusion that whatever problem she has now has nothing to do with this accident.

THE COURT: Here's the deal, guys. Since there's not going to be a compromise that both parties agree to, I'm not going to give it. If at the end of the trial, there's a verdict that is wrong because they award damages, then you're going to have to do a motion for additur or something and the Court can take care of it.

But I'm with Mr. Hall. I don't know that there has ever been an instruction like this given that the supreme court has approved of. And I don't like telling the jury that they have to do something. Let them decide for themselves based on the instructions they're given.

Now, with regard to this instruction, you need to have a copy of it so that you can give it to the court clerk, lodge it as a — it will be an instruction that's proposed but not given so you can make a record on that for later on. Just keep track of that so you can — so you can have a copy of that lodged. I also have — I don't know if these are the same.

MS. BRASIER: I handed you two copies of -- or two instructions that were part of my copies. You



1 might have duplicates of those two. 2 THE COURT: I've got some other proposed ones 3 that look like I got yesterday, but I think we've already discussed them all. 5 You gave me two new ones today? 6 MS. BRASIER: I did, Your Honor. 7 THE COURT: I don't know what I did with them. 9 What are the new ones? MS. BRASIER: The first one is just an 10 11 extension of the ones that defense have proposed regarding request for admissions. They proposed a much 12 [13 longer one than Your Honor included in his set. 1.4 they didn't include a full statement of what the rule 15 actually says so we're just asking to include the 16 additional language so the jury has a complete 1.7 understanding of what the rule is regarding the request for admissions. 1.8 19 THE COURT: Hold on. I have it here. 20 MR. HALL: Judge, I'm at a disadvantage on 21 these last two because I just got them this morning. 22 THE COURT: So did I. 23 MR. HALL: So I just want to see them. 24 Well, let's look at the first one THE COURT: 25. because the first one talks about a preexisting

1 condition, right? 2 MR. HALL: Okav. 3 MS. BRASIER: Sure. THE COURT: If plaintiff suffers from a 4 5 preexisting condition, in order for plaintiff to 6 recover damages, et cetera, et cetera, you have to prove that the accident was the cause of the injuries. After plaintiff establishes that the accident was the cause of injuries, the burden shifts to apportion 9 10 damages between preexisting and the motor vehicle 11 accident. 12 MS. BRASIER: Your Honor, that's based on the 13 Kleitz case and a number of cases. 14 THE COURT: The Kleitz case actually talked 15 about two different accidents. 16 MR. HALL: Thank you. 17 THE COURT: I know that case real well. 18 There was two accidents that happened in a short period 19 of time and in the Kleitz versus Raskin case, the Court 20 said that if -- because the doctors were unable to 21 apportion, if the doctors came in and said that both 22 accidents contributed to the injury and they were 23 unable to apportion it, then the burden shifted to the 24 defendant to apportion between the two accidents. 25 Right?

2.

1.4

MS. BRASIER: Absolutely.

THE COURT: So this is a different case. I mean, we're not talking about two different accidents.

MS. BRASIER: Well, I think the implication throughout the defense of this case has been that all these, you know, this chronic condition that she had is related to these accidents that she had in the 1980s. And so while they haven't ever said apportion, they're, you know, telling the jury that she's had these problems ever since she had these two serious car accidents. And so if they're going to try to blame these injuries on another car accident or two car accidents that happened 25 years ago, then they're going to have to get someone in here to say what additional harm — you know, what was caused from the first accidents and what was caused from this one.

They've already conceded that this accident caused some injury so now if they're going to try to point the finger at two other car accidents, they've got to do some apportionment and they haven't done that.

THE COURT: I understand the argument but, I mean, there's already in our set an agreed upon one that talks about if a person who has a condition or disability at the time of an injury is not entitled to

recover for that but they are entitled to recover for 1 any aggravation of a preexisting condition or disability resulting from the injury even if it made 3 them more susceptible. This is the plaintiff instruction but I think 5 it addresses the same thing except for the shifting the 6 burden of proof, right? 8 MS. BRASIER: I agree with you. You know, their whole argument this whole time has been she's had 10 this pain for all these years since this accident in 11 the 1980s. If they weren't saying that, if they weren't trying to point it back to this accident 24 12 13 years before, then I think it would be a different situation but that's been -- that's been the theme is 14 that since 1985 she's been having this pain so it was 15 caused by this accident 24 years prior. 16 17 MR. HALL: Okay. Real quick, Judge. I got this this morning but I've already read this one 18 19 like 30 times, including the Ninth Circuit leaflet. 20 I'm going to have e-mailed to me right now a federal U.S. published U.S. District Court case that held that 21 22 Kleitz means exactly the opposite of what they're trying to do in this case which is the burden shifting 23 2.4 to us. 25 If you follow Kleitz, Judge --

MR. CLOWARD: Is it the Schwartz v. State 1 2 Farm case? 3 MR. HALL: Yes, it is. MR. CLOWARD: We'll withdraw this. 4 5 understand. We'll just withdraw this. That's fine. Ι 6 agree. 7 THE COURT: Okay. All right. So this one is withdrawn. 9 The next one I have proposed by the plaintiff 10 is the request for admissions one. 11 MR. HALL: I may agree with this one, Judge. I just need to compare it with what we submitted. 12 13 How is it different than ours? 14 MS. BRASIER: It adds -- I don't know where 15 yours is. MR. SMITH: I have ours right here, Mike. 16 17 MS. BRASIER: It adds the rest of the rule to 18 it. You guys had whited out the rest of the rule. 19 MR. SMITH: So it's this last section right 20 here that says if -- no, sorry. The last section right 21 here that says --22 MS. BRASIER: I just added the rest of the 23 paragraph. You guys had it whited out on yours. 2.4 MR. SMITH: I remember there was a reason why 25 we whited that out. I need to see our version.

THE COURT: The one that I included was the old pattern instruction that just says: Parties may have served upon each other written requests for admission of the truth of certain matters. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the parties or which the parties failed to deny.

MR. HALL: And here's --

THE COURT: You guys don't like that one?

MR. HALL: Sorry.

MS. BRASIER: I think that we need a more full explanation of it because, you know, there was a lot of cross—examination about didn't you deny this, didn't you deny this. And so I think the jury needs a more comprehensive understanding of what the rule says and why denials might be made for procedural reasons.

So I just -- they propose an abbreviated version of the rule. I just want the jury to have the full rule so that they can understand some of the procedural history behind things.

MR. HALL: Okay. Judge, just real quick. She's right. The reason we need this in is because a lot of discussion at trial involved things that were denied rather than were admitted. Here's why we pulled that out, Judge. There was no -- there was never an

objection made in their request to admit, in their written responses. They never did an objection to any of them.

So we were concerned that the jury would be confused about the term "object" thinking that that meant objections made during trial. There were no written objections made so we thought that sentence was superfluous and confusing in the context of what happened here.

MR. CLOWARD: Judge, can I respond?

THE COURT: I don't care. Sure.

MR. CLOWARD: They — this instruction that we have is the instruction they actually submitted. They just whited out that last sentence. So when they gave it to us and to you, they whited out that last sentence. So it's a correct statement of law to include that and it basically says — the very last part, it says: A party who considers that a matter of which an admission has been requested presents a genuine issue for trial — so like the ultimate issue — may not on that ground alone object to the request, but the party may, subject to the provisions of Rule 37C, deny the matter or set forth the reasons why they cannot admit or deny.

So it's appropriate for her to have denied

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   those responses and they're trying to impeach her on
   that but that's what the rule allows. And, you know,
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   Rick pulled me aside yesterday --
             THE COURT: I like it.
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             MR. CLOWARD:
                           I'm done.
             THE COURT: I think it should be allowed.
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             MR. HALL: The whole --
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             THE COURT: The whole thing. If you're going
   to just question whether or not we're going to allow
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10
   the last sentence to be included, I think it -- I think
   we include it out of an abundance of caution.
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             MR. SMITH: Fair enough.
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             THE COURT: So that takes care of all the
   plaintiff's proposed, right?
14 l
             MS. BRASIER: Yes, Your Honor.
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             THE COURT: Let's find the defendant's
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   proposed that are not agreed to.
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             MR. SMITH:
                         Your Honor, if I can approach,
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   there's one other one that we came with today. I've
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   given a copy to counsel as well.
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             THE COURT: All right.
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             MR. SMITH: There is a cited and an uncited
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   version there for you.
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             THE COURT:
                         Okay.
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             MR. CLOWARD: Which one is that?
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Statute of limitations. MR. SMITH: 1 THE COURT: Statute of limitations? 2 3 MS. BRASIER: I don't have an objection, but I don't know why we need to include it. 4 5 MR. HALL: Yes. I mean, there's a lot of --6 THE COURT: I don't get it. 7 MR. HALL: Okay. One thing my -- one thing that's going to come up in this case is the timing of everything. And one of the things that we had raised is what we should have done, when we should have 10 11 investigated, whether we should have had our doctors 12 look at the plaintiff. 13 And for that reason, one of the things that I 14 know Steve wants to get into during trial is setting up 15 this notion of, look, we didn't get this case. It was filed almost two years after this thing happened. 16 17 then there had already been these surgeries so we didn't have the opportunity to do the things they're 18 19 telling us we should have done. So that's why we want that instruction in there. 20 21 MS. BRASIER: Well, I think that --22 THE COURT: I think that's already come out. 23 MR. HALL: The two-year statute of limitations? 24 THE COURT: Not the statute of limitations 25

1 but that the case was filed years after the accident. 2 MR. HALL: Right. Well, I mean, he wants it 3 in there to establish the timing of everything. I think the jury -- there's a danger of the jury being confused about how this thing could have happened and taken so long and things like that so that's the reason we want it in there. THE COURT: I think there's a danger of 8 9 confusion by including it. 10 MS. BRASIER: Yeah. When I first read it, I kind of got concerned did we file it too late or 12 what's, you know. But, yeah, I don't see why the jury 13 would need to know that if it's not an issue. 14 THE COURT: I don't like it. I think it 15 confuses the jury and it implies that there may be some 16 issue about when the plaintiff filed the case. 17 All right, Judge. MR. HALL: Just then for clarification, Your 18 MR. SMITH: 19 Honor, will the Court take judicial notice of the 20 two-year statute of limitations so that when -- while 21 Mr. Jaffe is explaining the timing of events he can 22 reference the fact that they had two years to file their lawsuit? 23 24 THE COURT: Are you going to object to that? 25 MR. CLOWARD: As long as we can talk about

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how we provided Mr. Khoury with a demand packet with
 2
    all the medical records and a release, that's fine.
 3
    Sure.
              MR. HALL: He said that, right? He said that
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    in open court, right?
              MR. CLOWARD: No.
 6
              MR. HALL: Well, you know, that's going to
    open a whole can of worms of insurance and things like
 8
 9
    that, so no.
10
              THE COURT: We don't want to get into the
    insurance thing but the case is filed when it is.
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              MR. SMITH: The statute of limitations --
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13
              THE COURT: The statute of limitations is two
14
    years for this case. I don't have a problem with that,
    but the instruction I think is confusing.
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              MR. SMITH: Okay.
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              THE COURT: What else do we have? Certain
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    evidence was admitted for a limited purpose.
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              MR. HALL: It never did. I'm sorry.
                                                    This
20
    was obviously before we knew what was going to happen.
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              THE COURT: So I wrote nonapplicable.
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              The next one is: When I use the word
23
    negligence. I had included that. You guys agreed to
24
    take that out.
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              MR. HALL: That's right.
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THE COURT: So that's come out. 1 2 In determining the amount of losses, if any -- I think we have one that everybody essentially 3 agrees to and we're going to include the future -- past and future loss of household services, right? 5 MS. BRASIER: Yes. 6 7 MR. HALL: That's right. 8 THE COURT: The next one I have is: plaintiff's injury or disability is clear and readily 9 observable, no expert testimony is required for an 10 11 award of future pain, suffering, anguish, and 12 disability. However, where an injury or disability is subjective and not demonstrable to others, expert 13 14 testimony is necessary before a jury may award future 15 damages. 16 Here's the issue I have with this one. 17 MR. HALL: Sure. 18 THE COURT: This is a -- deals with a legal 19 issue, and if there had not been evidence by an expert 20 as to future pain and suffering, then you would be 21 entitled to a Rule 50 motion on that issue. I don't know that this is an instruction that 22 23 we give to the jury because I can tell you as a matter of law, I -- I will allow this to go to the jury 24 25 because there has been expert testimony talking about

future pain and suffering.

MR. HALL: That's right.

THE COURT: Does that make sense?

MR. HALL: It sure does, Judge. I mean, just to make a record on it, we think that it would be helpful to the jury to understand you just don't assume -- you don't just assume future pain and suffering, things like that. You need to have expert testimony on that. And then weigh whether or not they've provided competent evidence on that, but I understand your objection. For the record we're offering it and that's why I think we should have it.

THE COURT: I think there's sufficient instructions that deal with whether or not they should or should not award damages, including future damages. And I think this, again, is a potentially confusing instruction because it deals with a legal issue, not a factual issue. I don't think I'm going to allow that one.

The next one: To justify a money judgment, the amount as well as the fact of damage must be proven by substantial evidence. This talks about the law does not permit arriving at an amount by pure conjecture.

The problem with this instruction is it conflicts with the pain and suffering instruction that

talks about there is no way -- there is no set standard 1 in determining pain and suffering. This seems to imply 2 3 that there has to be a number proven. MR. HALL: Okay. I understand, again, your 4 5 position on that, Judge. I just -- I think it is the law in Nevada that you have to bring up substantial, 6 competent evidence to allow a jury to come to a number. I just -- the way that the damage instruction reads 8 that's currently in the packet, I don't think it gives 9 10 the jury enough of a charge about exactly what level of proof the plaintiff has to come by. I understand your 11 12 objection. 13 THE COURT: Let me ask you this because in 14 the first line it says, To justify a money judgment, the amount as well as the fact of damage must be proven 15 16 by substantial evidence. 17 That's right. MR. HALL: THE COURT: How is a plaintiff or any 18 19 plaintiff going to prove the amount of pain and 20 suffering by substantial damage? MR. HALL: Well, they've done it. They've 21 22 had the plaintiff get on the stand and say, look, this 23 is how much I hurt. They're going to have mortality tables to try to put a number on it. So that's 24 what they have to -- I think that's the law in Nevada. 25

I really do. I will just say the cases that we cited here are not P.I. cases. The Morelong [ph] case and the Kelly Broadcasting case, but that is the law in Nevada.

You have to give the jury a basis to come to a number even if the -- and, again, it says you don't have to bring it with exactitude but you have to give the jury a basis to come back with a number. Again, I understand your position. We're offering this. We think that's the law.

THE COURT: I understand. I think it conflicts with the pain and suffering instruction and it's a pattern instruction. I don't like it.

The next one is: The plaintiff has a duty to reasonably seek treatment and follow the physicians' orders. This is the mitigation of damage instruction. I thought there was a pattern mitigation of damage instruction — there is as it relates to contracts. The pattern mitigation instruction on contracts under the new instructions is 13CN.50. And I don't think it applies in a personal injury case.

It says, A party cannot recover damages for losses they could have avoided by reasonable efforts. The burden is on the party whose wrongful acts resulted in the damages to prove that the damages might have

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1 I been lessened by reasonable diligence and expenditures on the part of the party seeking damages. However, reasonable diligence does not require that the party seeking damages ask the party whose wrongful conduct resulted in the damages to remedy the injury, detriment, harm, or loss resulting from the breach of contract. It sounds like a contract issue.

> MR. HALL: No.

MS. BRASIER: Your Honor, I don't think -- I don't disagree that this is a correct statement of the law, but there's been no evidence, no testimony by any doctor, even their own experts, that said that she suffered additional injury because she failed to 14 mitigate.

I think it's just kind of like the statute of limitations. You throw that in and the jury thinks there's an issue they have to decide. There's been absolutely no testimony by any of their doctors that there's a failure to mitigate in this circumstance where she's made her injuries worse. There's been no testimony to that.

Judge, here's the thing. MR. HALL: 23 Dr. Grover got on the stand and testified that he would have told Ms. Seastrand, like all of his patients, that after a surgery like this they're not supposed to be

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1 picking things up, bending, anything like that. Wе have a record within that period of time dated August 19, 2010, in which Dr. Grover says the patient states that about five weeks ago she strained her back trying to pick up a child and since that time has been complaining about pain in her lower back and the right buttock. We have further testimony by the doctors that sometime in that time period the instrumentation somehow became out of whack.

So there's certainly enough evidence in this case given doctor -- given this record, given Dr. Grover's testimony, and given the subsequent testimony about the impact that this may have had, there's certainly enough evidence for a jury to come to the conclusion that the plaintiff did not follow her doctor's orders and that resulted in additional problems, that no matter what view the jury takes as to what injury was caused by this car accident, that that was a failure to mitigate and it caused her additional injury, Judge. This is the law.

This is out of the Lee case or that automatic merchandisers case. It says, It is unquestioned that an injured person cannot recover for damages which could have been avoided by the exercise of reasonable care. Further, to the extent to which a broken bone

causes pain — I'm sorry. It goes on specifically to say that the failure to follow the recommendations of a doctor is a valid basis for an affirmative defense of a failure to mitigate.

Given this is an affirmative defense, I think everyone agrees that a failure to mitigate is a valid affirmative defense in a personal injury case. There has to be an instruction on it. Otherwise, the jury won't know what to do with it.

MS. BRASIER: Your Honor, she didn't — this additional exacerbation that she had didn't necessitate any further treatment. They contemplated a future surgery following it but that's since been removed so we're not asking for any damages that follow from this incident. She testified that after it happened Dr. Khavkin told her to rest and that she took a few months off of work so that she could heal and that she did heal.

So if they're going to use that as an affirmative defense, they have to put on evidence in support of their affirmative defense and they haven't done so. None of their doctors have testified that she increased her damages or increased her pain and failed to mitigate these injuries.

MR. HALL: Well, her --

THE COURT: Here's the deal. I mean, there 1 is evidence of the -- whether she tried to pick up the 2 kid or not. I know there's a discrepancy on that. There is that reference in the record. I think she 5 even testified that she had additional back pain because of that, so I think this is a fair statement of I'm going to allow it. the law. 8 MR. CLOWARD: Judge, can I argue to persuade 9 you before you make a decision? 10 THE COURT: Didn't we already do this? 11 Yeah. Because, remember, we MR. CLOWARD: had a huge issue in the Schmidt case, huge issue. This 12 opinion has not been given to a reasonable degree of 13 14 probability to allow this. Dr. Grover was never asked 15 can you state to a reasonable degree of medical probability on a more likely than not basis that her 16 17 damages were increased as a result of her picking that 18 up. That question was never asked. That opinion was never given. Dr. Schifini never gave it. Dr. Siegler 19 20 never gave it. Dr. Villablanca never gave it. 21 Dr. Smith never gave it. Not a single expert that 22 they -- that they had said that. 23 THE COURT: It was admitted by the plaintiff. 24 That's right. MR. HALL: She said -- no. 25 MR. CLOWARD: Judge ---

THE COURT: She said she had increased pain because of it.

MR. CLOWARD: Judge, you have to show that there's an additional harm, there's an additional harm created. Okay? An increase in pain, a temporary two-week increase in pain or three-week increase in pain, she returned to baseline. She didn't have any additional treatment as a result of this.

It would be one thing if as a result of that she had to have another fusion, but they're going to get up there and say her pain and suffering should be limited because she bent over and picked up a child. That's absurd. That would be completely unfair to her. Completely unfair to her.

They've not met the burden. It's not been in a single expert report. Dr. Grover didn't state it to a reasonable degree of medical probability. Not a single doctor said that her continued pain complaints would be as a result of her action of bending over and picking up the child. It would be error.

MR. HALL: That's --

THE COURT: I get it, but I think she admitted to it. She admitted there was additional pain because of doing something that the doctors told her not to do. I think the instruction comes in.

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             MR. CLOWARD: So they get to argue that at
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   the date that she stops -- that she bends over to pick
   up her kid, that's when her pain and suffering ends?
   That's the effect.
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             THE COURT: I don't know what they're going
 6
   to argue.
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             MR. CLOWARD: Well, that's what I would argue
 8
   if I was Steve.
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                        They're going to argue what they
             MR. HALL:
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   just argued now. That it only took two weeks.
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             THE COURT:
                          Yeah.
                                 I'm going to allow it.
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   I'm going to hope that they don't Google what the term
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   mitigation means.
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             The next one is: Physical, mental
15
   suffering -- pain, suffering, anguish, and disability.
16
   This is part of another instruction already.
17
                        It is.
                                 It is, Judge.
             MR. HALL:
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             THE COURT: So that's all of the defendant's
19
   proposed, right?
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             MR. HALL:
                        No.
21
             THE COURT:
                         No. You just gave me -- yes,
22
   that's all I have.
             MR. SMITH: There should be four additional
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          There was a supplemental set, Your Honor, that I
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   provided to you, I believe, two days ago.
                                               I have an
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extra copy if you need it. 2 THE COURT: Yeah. I'm not seeing it, so. 3 Thanks. MR. SMITH: On the back of that is the 4 5 statute of limitations that you already ruled on so there's only four. 6 THE COURT: Okay. I did see these. Proximate cause. This is an intervening superseding 8 I have it here. I had it with some other notes 9 issue. that I had made. All right. 10 11 So the intervening superseding cause 12 instruction is ordinarily given in a product defect case or another case that you're using the legal cause 13 14 analysis as opposed to a proximate cause analysis. 15 MR. HALL: I agree. I further agree that 16 normally it's given in a case where the whole argument is that there would have been no injury whatsoever but for some other superseding intervening cause that --18 19 you know, it's the -- what's that lady on the train 20 That's the Levy case, right? 21 THE COURT: Palsgraft. 22 MR. HALL: Palsgraft, yeah. So it's a closed 23 case here. You understand the law very well. So I 24 think it's reasonable to argue that with respect to injuries and pain and suffering which occurred after 25

1 whatever Ms. Seastrand did with that child, those are referable to that rather than the other. And then her failure to follow the advice of Dr. Grover is not 3 4 something that should be reasonably anticipated by us 5 or borne by us, so that's my argument, Judge. THE COURT: Yes. I'm not liking it. 6 7 MR. HALL: I got that sense, Judge. that sense. 8 9 THE COURT: I don't think it's an instruction that ordinarily would be given in a case involving 10 11 proximate cause. And I think that the proximate cause instruction and the other instructions dealing with 12 causation and the standard in proving a negligence case 13 14 satisfy this. 15 MR. HALL: All right. 16 THE COURT: So I'm going to say no. 17 The next one is the request for admissions. 18 We already talked about the request for admission 19 instruction. 20 MR. HALL: We did. The next one talks about willful 21 THE COURT: 22 suppression of evidence. I don't find that there's any 23 willful suppression of evidence so I don't know how I could give this instruction. 24 .25 MR. HALL: Well, let me take my shot and then

1 you'll rule the way you rule. THE COURT: 2. Okay. MR. HALL: Judge, here's the thing. Again, 3 one of the problems we're dealing with in this case is 4 this -- I mean, we're going to hear it again in 5 closing. I know we heard it in opening. We've heard 6 it with the other witnesses. What we're hearing is that we, meaning the 8 defense, never examined the plaintiff, never laid hands on her, never talked to her. We're all relying on 10 records and radiographs and things like that. 11 12 Here's the thing. Within a few days after this accident, the plaintiff was represented by one of 13 the best and most sophisticated law firms in the city, 14 right? Best plaintiff law firms. And at that time --15 THE COURT: I'm sure Mr. Harris would love to 16 17 hear that. MS. BRASIER: That's on the record, right. 18 19 We're going to print that and put it --MR. HALL: Well, you know, I'll call them 20 sophisticated when it helps me, and I'll call them a 21 bunch of rapscallions when it helps me too. 22 23 Here's the point. They -- what happened in this case was they took the key piece of -- a key piece 24 25 of evidence out of the case early on by doing the

1 surgery and doing the fusion and then afterwards they are saying, well, now it's too late, you know. 2 3 THE COURT: You know, that's like making the argument that allowing a plaintiff to get medical care 5 is spoliation of evidence, right? MR. HALL: I honestly -- look, me and my 6 7 partner go back and forth on this. He loves this argument. But why isn't it true, though? Why isn't it 8 9 true? I represent all these hotels and casinos and if 10 they don't have the video footage of the exact event or 11 if they don't have the incident report, plaintiff's lawyers are running around. What is the key piece of 12 13 evidence in this case really? What is the key piece of 14 evidence in the whole case? It really is that level of 15 her spine and it was gone. 16 THE COURT: There's a public policy that favors allowing people that are hurt to get better, 18 right? 19 MR. HALL: Of course there is, Judge. 20 why wouldn't they call us? I mean, they were -- let me 21 just add one more fact to this. Let me add one more 22 fact. 23 They wrote the insurance company. They wrote 24 us the day of the surgery and they said, by the way, 25 you may want to know this. We may in the future go

1 forward with a surgery. And the fact of the matter was she went through the surgery the very next day. 3 they knew this. MR. SMITH: Two times. 4 5 MR. HALL: Twice. MR. SMITH: That happened exactly that way on 6 7 both the lumbar and the cervical, so if they're going 8 to try to make a notice argument --They were playing games with us MR. HALL: 10 right during medical treatment. Why didn't they call 11 us and say, look, get an IME. That happens all the 12 time, by the way. We get calls all the time on 13 unlitigated cases. We get calls saying, look, this 14 person is going forward with a two-level fusion, you 15 know, why don't you -- if you want to examine this 16 person, if you want to talk to her, if you want to do 17 any of this stuff, that happens all the time. Why didn't it happen here? They were in conversation with 18 19 us. 20 I know -- look, this would be a different 21 case -- it really would, Judge -- if there were an 22 unsophisticated person that was hit as a pedestrian on 23 the street and two weeks later they had their leg put 24 back together and if I was standing in front of you 25 telling you that that was willful destruction of

evidence. I mean, I admit you should laugh at me. 1 2 THE COURT: Here's the thing. Even based on 3 your argument, you're saying that it was willful suppression by plaintiff's counsel, not plaintiff. 4 why would the plaintiff suffer from that? 5 MR. HALL: Well, they are -- plaintiff's 6 counsel -- plaintiff or plaintiff's counsel are one in the eyes of the law in terms of what they knew, what 8 they did. 10 THE COURT: I'm not going to allow that. Willful suppression of evidence, that didn't happen 11 12 here. The next one is: When the physical condition 13 14 of a party to a lawsuit is in controversy, the Court may order the party to submit to physical or mental 15 The person has no obligation to submit prior to 16 exam. filing the suit. Rather the person to be examined must 1.7 be a party to a lawsuit before a physical exam may be 18 19 ordered. 20 That's fair, Judge. Again, MR. HALL: 21 that's -- that is fair. Look, that was something that 22 they made a big stink of this whole time is that we didn't do an examination. And the fact of the matter 23 24 is by the time this case was filed, by the time we had 25 the opportunity to ask the Court or ask the

commissioner for an exam, the surgery had already taken place. And we went through with the doctors saying, look, was there anything you can do. Was there any useful examination to be done after she already had the 5 surgery? And there has to be something given to the 6 jury to let them know that, look, man, we did the best we could. By the time we had the case, by the time the defendant had the chance to defend himself and use the tools that we're given in discovery, by the time that 10 happened, the surgery had already taken place, Judge. 11 12 THE COURT: Isn't this going to open up a 13 whole issue of what was produced or not produced or 14 allowed or requested prior to the filing of a lawsuit 15 from the insurance company? 16 MR. HALL: Well, this is just on that single issue of the IME. 17 It's not --18 THE COURT: Let's talk about that issue. Doesn't it open up that issue in litigation? 19 20 MR. HALL: Yes. See, it's been -- the box 21 has been opened up by the plaintiff on this by repeatedly saying, look, you didn't see her, right? 22 23 Our doctors saw her. You didn't see her, right? You 24 had a chance to talk to her, right? You never did, 25 right? You never did any of this stuff. And the jury

has to be given a foothold and we have to be given a foothold to explain to the jury, look, we couldn't. We had no right to talk to this lady until — we had no right to do an IME on this until the case was filed. There had already been surgeries here. It was too late.

MS. BRASIER: Your Honor, with all due respect to Mr. Hall, he just said the exact opposite of what he argued in the last instruction, which was we do this all the time. We do prelit IMEs all the time. And so if they're going to put up that defense that she had to be a party to litigation, then we have to be given the opportunity to say, no, before — before the attorneys got involved, we're dealing with the insurance company, and they could have asked for an IME at any time and they never did, and, obviously, we can't say that.

So now it leaves the jury with this impression that they never had an opportunity until litigation commenced when they had a letter of representation within two weeks of this car accident. At any point in time they could have asked for it.

So I think it kind of -- if you allow this,

it doesn't let us defend ourselves because we can't talk about insurance. And so I don't think that

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there's any basis to put that in there because it just causes confusion to the jury.

MR. HALL: I've just explained to you what they did, though, why we didn't. The only time we would do an IME prelit like that is prior to a surgery. And here we got that phone call the day before and we couldn't do it, Judge. And it's just not fair that the argument that they're going to make and they have made that we didn't do an IME, that we didn't talk to the plaintiff. We have to have some way to combat that, Judge. This is a fair statement of law.

THE COURT: I think the way you combat it is you say that by the time they filed a lawsuit, she already had the surgeries.

MR. HALL: All this does --

THE COURT: That's already come out.

MR. HALL: All this does is explain to the jury and give them an instruction as to why we didn't do it. Otherwise, we can't -- there's been no evidence here saying we couldn't. We want an instruction that explains that to the jury.

THE COURT: I think it's too confusing and I think it opens the door to the insurance prelitigation stuff. I think it's too dangerous. I'm going to say no.

1 Any other proposed? 2 MR. HALL: Do you have any others? MR. SMITH: I don't think so. 3 MR. HALL: 4 No. 5 THE COURT: So what I want you to do is -let me do this: I'm going to go fix a complete set 6 real fast that everybody is, I hope, comfortable with and then I'll bring out the complete set. We'll go 8 through it, and in the meantime you folks get together 10 what you want to submit as proposed but not given so 11 that you can make those part of the record. And if 12 there's objections to anything that's in there, I don't 13 think there is, but if there's an objection to any 14 instruction that we are giving, you can make a record on that. Okay. 15 16 It will probably take me about 10 or 15 minutes and I'll be back. 17 Off the record. 18 19 (Whereupon, a recess was taken.) 20 THE COURT: We're on the record in Case 21 636515. We're outside the presence of the jury. 22 So as far as jury instructions, Jury 23 Instruction No. 1 will be the purpose of the trial is to ascertain the truth. 2.4 25 Anybody has a problem with the order?

you looked at the order? 2. MS. BRASIER: Not since you handed it to me. 3 THE COURT: I only inserted a couple of 4 different ones. Let me show you. 5 Go back to the one where it says, Plaintiff 6 is seeking damages based on a claim of negligence. 7 Find it? MR. HALL: Yes. 8 9 MS. BRASIER: Yes. I'm there, Your Honor. 10 THE COURT: The next one is the one that I 11 took out defining what negligence was and instead I put 12 in: In order to establish a claim of negligence, plaintiff must prove that defendant Raymond Khoury's 13 14 negligence was a proximate cause of damage to the 1.5 plaintiff Margaret Seastrand. 16 And I included the next one that you guys 17 It is admitted that Raymond Khoury was agreed to: 18 negligent in causing the collision of March 13th. 19 MS. BRASIER: Ôkay. 20 THE COURT: I think that's a good place for 21 those. 22 MS. BRASIER: Yes, Your Honor. 23 MR. SMITH: We're fine with that, Your Honor. 24 THE COURT: Two more instructions back, I 25 added the reasonable value of past loss of household

1 services plaintiff has incurred and the reasonable value of future household services you believe plaintiff is reasonably certain to incur in the future. Discounted to present value as numbers 3 and 4 5 4. I moved pain and suffering to 5 and 6. 6 I eliminated the discounted to present value 7 on the pain and suffering. 8 MS. BRASIER: It looks good, Your Honor. 9 MR. SMITH: Fair enough. 10 11 THE COURT: Two more past that is the mitigation of damages and I changed the mitigation of 12 damage instruction from what we proposed. So if you 13 want to propose the one as offered and not given the 14 way you had it worded, you can. I took out the first 15 little part of it. 16 So now it will read: The plaintiff cannot 17 recover for damages which could have been avoided by 18 the exercise of reasonable care. This is referred to 19 as a duty to mitigate damages. This doctrine precludes 20 you from awarding damages to the plaintiff, et cetera, 21 et cetera, and I left the end of it the way it was. 22 just changed the beginning. You'll see the difference. 23 I don't know that there's -- I don't know 24 25 that there were any other changes. Were there?

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   don't think so.
           Let's go through them and number them.
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 3
              The purpose of trial is to ascertain the
   truth will be Instruction No. 1.
 4
 5
              Ladies and gentlemen of the jury will be
   No. 2.
6
              If in these instructions will be Instruction
 7
   No. 3.
 8
              This is a civil case will be Instruction
9
   No. 4.
1.0
              The masculine form will be Instruction No. 5.
11
              Your purpose as jurors will be Instruction
12
   No. 6.
13
14
             Although you are to consider will be
15 Instruction No. 7.
              You are not to discuss will be Instruction
16
   No. 8.
1.7
              If during this trial I have said or done
18
19
   anything will be Instruction No. 9.
20
              You must decide all questions of fact will be
   Instruction No. 10.
21
              In determining whether any proposition will
22
   be Instruction No. 11.
23
              There are two kinds of evidence will be
24
25
   Instruction No. 12.
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Certain testimony will be No. 13.
2
             During the course of trial will be
 3
   Instruction No. 14.
             As permitted by law will be Instruction
 4
5
   No. 15.
              The credibility or believability will be
6
 7
   Instruction No. 16.
             MS. BRASIER: Your Honor, can we just stop
 8
   and go back to No. 15? We had agreed upon a longer
10
   instruction on the request for admissions.
             MR. HALL: Which one is that?
11
             MR. SMITH: You're right.
12
                                               I'll make
13
              THE COURT:
                        You're right. Okay.
14
   that modification but we'll keep it No. 15.
15
             MS. BRASIER: Okay.
16
              THE COURT: Okay.
17
              Discrepancies in a witness's testimony will
   be No. 17.
1.8
19
             MS. BRASIER:
                            I'm sorry. Can I just -- I
20
   just need to catch up real quick. The credibility or
21
   believability is No. 16; is that right?
22
                         Correct.
              THE COURT:
23
             MR. SMITH:
                          Right.
             MS. BRASIER: And discrepancies is No. 17,
24
25
   right?
```

1 THE COURT: Correct. Certain charts and summaries will be 18. 2. 3 An attorney has the right to interview a witness will be 19. 5 A witness who has special knowledge will be 20. 6 7 An expert witness has testified will be 21. 8 Hypothetical question will be 22. 9 MS. BRASIER: I don't have that in my set. 10 MR. SMITH: Nor do I. 11 THE COURT: All right. I'll get it for you. 12 I don't know why we're having problems. MS. BRASIER: Is yours the next one plaintiff 13 14 is seeking damages? 15 MR. SMITH: Plaintiff seeking damages. 16 THE COURT: What's the next one you have? 17 MS. BRASIER: Plaintiff is seeking damages based on defendant's negligence. 18 19 THE COURT: So you missed a few pages. 20 The hypothetical question is going to be 22. Whenever in these instructions I state that 21 22 burden is going to be 23. 23 I'll get you guys copies of these. I don't know why they're not copying right. 24 25 The preponderance or weight of the evidence 57

1 is going to be 24. MR. SMITH: Is that the one that starts 2 3 plaintiff is seeking damages? THE COURT: It starts the preponderance or 4 5 weight of evidence. The next one you guys have is plaintiff is 6 7 seeking damages is going to be 25. In order to establish a claim of 8 negligence -- do you have that one? MS. BRASIER: Yes. 10 THE COURT: That's 26. 11 12 Is admitted that Raymond Khoury was 13 negligent, that is 27. When I use the expression proximate cause .14 15 | will be 28. 16 In determining the amount of losses will be 17 29. No definite method of calculation will be 30. 18 19 The plaintiff cannot recover for damages 20 **l** which could have been avoided by the exercise of 21 reasonable care is 31. 22 A person who has a condition or disability is 23 32. According to the U.S. Department of Health 24 25 and Human Services is 33.

1 Whether any of these elements is 34. 2 You are not to consider the legal fees is 35. The Court has given you instructions is 36. 3 It is your duty as jurors will be 37. 4 5 If during your deliberation will be 38. MS. BRASIER: I don't have that one. 6 MR. SMITH: Neither do I. 7 THE COURT: All right. We'll get it to you. 8 Now you will listen to arguments of counsel. 9 You don't have that one either. That's 39. 10 11 I'll make sure that these are done right. When we copied them for some reason, they're not. 12 They're sticking together or something. 13 14 When you retire to consider your verdict will 15 be No. 40. That's all. So I need to modify Instruction 16 No. 15. Let me get that done first and then I'll let 17 you make a record on the other things. I'll be right 18 19 back. 20 Off the record. 21 (Thereupon, the proceedings adjourned at 12:10 p.m.) 22 23 24 25

1 CERTIFICATE OF REPORTER STATE OF NEVADA ss: COUNTY OF CLARK I, Jennifer O'Neill, a duly commissioned 4 Notary Public, Clark County, State of Nevada, do hereby That I reported the proceedings commencing on certify: 6 Thursday, July 25, 2013, at 10:35 o'clock a.m. That I thereafter transcribed my said 8 shorthand notes into typewriting and that the 9 typewritten transcript is a complete, true and accurate 10 transcription of my said shorthand notes. 11 I further certify that I am not a relative or 12 employee of counsel of any of the parties, nor a 13 14 relative or employee of the parties involved in said 15 action, nor a person financially interested in the 16 action. IN WITNESS WHEREOF, I have set my hand in my 17 office in the County of Clark, State of Nevada, this 18 19 15th day of March, 2014. 20 11014 21 JENNIFER O'NEILL, RPR, CCR #763 22 23 24 25

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Welcome back, folks. 1 THE COURT: Doctor, just be reminded you're still under 2 3 oath. THE WITNESS: Thank you, Your Honor. 4 Mr. Jaffe, you may proceed. 5 THE COURT: BY MR. JAFFE: 6 We figured out the problem, huh, Doc? 7 Q. 8 A. Yeah. By the way, before I forget, I want to ask 9 Q. you: How many spinal interventional neuroradiologists 10 are there in the country? 11 There's not a large number of us, but there's 12 at least a half dozen that I'm aware of. In -- that 13 come to the field from diagnostic neuroradiology. 14 15 Q. Okay. Then there's a number that come from physical 16 17 medicine and rehabilitation and probably the majority come from anesthesia. 18 19 Okay. Now, let's -- let's talk about that Q. X ray. We found it? 20 21 Α. Yep. 22 Let's pull it up. Q. So this is one of the images from the 23 cervical spine X rays that were obtained on March 13th, 24 2009, on the day of the accident. And you can see that 25

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the patient is looking off to your -- what would be 2 your right, because it's the patient's chin and these 3 are the teeth. This is the jaw bone. And then this is the cervical column, as we call it. And the cervical column is composed of bones which are mostly block - 6 And then there are these gaps in between the 7 bones, these dark areas that represent the disk spaces. 8 The disk spaces should be -- in a normal person should be of uniform height and of the same height all the way 10 across.

on this particular view, the view from the side of the neck, is that the — the neck normally has a natural curve which is if you're looking at the neck from the side, that curve should be towards the front, much like this patient has on this day. So there's — instead of there being a straight line going right down here along the posterior bony margin of these vertebra, there is, in fact, space between what would be a straight line and a mild curve towards the front. That is the preservation of the normal cervical lordosis.

- Q. Now, Doc, explain to us what, first off, are the benefits of an X ray?
- A. An X ray is useful for looking at bones and calcified soft tissue. And they also would be useful

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for looking at gross soft tissue contours.

So, for instance, I can see the contour of the folds in the fat of the neck or the contours of the airway here as outlined by the soft tissues of the larynx and the hypopharynx. But I can't see the soft tissues that compose the disk spaces. Those are beyond the ability of the X ray to resolve.

So general information about soft tissues like whether these soft tissues were swollen or not for these major ventral or anterior prevertebral soft tissues, I — as I call them or as they are called, I can see. And the bone.

And the bone is extremely important because the bone is involved in the reparative or healing process of the body, and the bone tends to undergo a process of overgrowth as the body tries to compensate for soft tissue injuries or problems that are present.

And if we look at the scan of

Mrs. Seastrand -- this X ray from Mrs. Seastrand from

March 13th on the day of the accident, you can see that
the vertebra all have a nice block shape. There's a

little bit of an undercurve to each one of them which
is the normal contour. And the disk spaces are pretty
uniform in height.

So if I were to measure, for instance, the

height -- let me magnify this a little bit more so that 1 I can -- you can appreciate this better. 3 I think we have a measuring tool. Q. measuring tool on here, isn't there? This is a little measuring tool. Yeah, it's 5 this one here. And we could, in fact, if we were so 6 inclined, draw up a little caliber that measures the 7 height of the C3-4 disk as 8.17 millimeters, the C4-5 disk -- I think I have to click on it one more time. 10 The C4-5 disk here measures approximately 7.9 millimeters. And let me double click on that so 11 that little guy stays. And then we can measure the 12 C6-C7 disk, and that one comes out at approximately 13 something very similar. It would be probably, I would 14 quess, in the range of 7 or so millimeters. It's not 15 letting me quite margin down all the way there. 17 we'll leave that one as it is. 18 But the one I'd like to draw your attention 19 to is this one here. This is the C5 disk space. this disk space, instead of being as tall as its 21 neighbors, is almost half as tall meaning that it has lost approximately 50 percent of its height. Here I'm 22 coming up with about 5.5, maybe a little bit less 23 millimeters in height. 24

And -- and that indicates to me that this is

the disk that is diseased. This is a degenerated disk. The loss of height of the disk, instead of it being like a nice lozenge, it's squishing down like a pancake. And if it's squishing down, that distance between the two bones that it separates is being reduced. And this does not happen overnight. This takes years to develop.

The other thing that happens in this condition, degeneration of the disk, is that the body says, whoa, this is not okay. I'm feeling too much strain in the bones adjacent to the disk. The disk instead of cushioning and protecting bone from bone is actually exposing bone on bone. So the body tries to compensate for that by making bony spurs, or it increases, tries to increase the surface area of interaction so that the amount of stress at any one spot is as little as the body can make it.

And the way that it does it is by growing these bony spurs. And you can see here that instead of there being a nice rounded or block-like contour, as we see in the other vertebra, in the C5-6 disk space, you see that there is a big bony beak that goes to the front. You see that outline there in the white bone —

Q. You might even be able to -- I think you can circle what you mean. You may want to even take away

those numbers, so we can --

A. Yeah. Let me put a little reason of interest around there, just sort of outline that beak. I think everybody can easily see that beak. And not only is there a beak there, there are beaks that go in the opposite direction towards the spinal canal, and you can see those outlined here along the posterior aspect of the disk. Those are the beaks that we see in the other area.

I think I can get rid of these annotations.

To the annotations, and I might be able to just --

- Q. So if you hit delete all there.
- A. Yeah, delete selected. There we go. Yeah.

determine just from this one lateral view of the X ray that the C5-6 disk is a diseased disk and that based on the presence of bony spurs that go both to the front and to the back, that this is a process that has taken years to develop. One can't make bony spurs in three weeks or a day or hours. It takes many years. And that means that this is a disk that has been in the process of degenerating for a long time.

Q. Now, I want to make sure we understand some of the terms that you're using. And by the way, the bony spurs we've heard referred to as osteophytes.

1 Would that be an accurate term? 2 Bony spurs are referred to as osteophytes, Α. 3 yes. 4 Now, you mentioned the word Q. Okay. 5 "posterior," and -- and anterior means the front of the body? 6 7 A. Exactly. 8 And posterior means the back of the body? Q. 9 Exactly. A. 10 Okay. And I -- I know you're going to be Q. 11 using the words "inferior" and "superior" as well. 12 A. Yes. 13 So would you tell us what those refer to. Q. 14 So superior means up towards the head, and Α. 15 inferior means down towards the feet. 16 So, for example, if we were going to be Q. 17 looking at -- let's take the C7 -- or the C6 vertebral 18 body for an example. 19 The top -- the top line of it would be the 20 inferior edge? 21 The top line of the C6 -- this is a C6 A. vertebra that I have my cursor on right now. And the 22 23 top margin of that vertebra is the superior margin. The bottom of the vertebra is the inferior margin. 24 25 front of the vertebra is the anterior margin, and the

1 back of the vertebra is the posterior margin.

So this scan, this X ray, demonstrates that this patient has significant osteophytes that go towards the front, or the anterior, and also towards the back. And generally when they're present in the front and back, it's — in reality, they actually are a rim of bony spurs, like a ring that's formed around that vertebra because the body's saying let me try to do everything I can to increase that surface area of interaction, spread out that stress, and do all I can with the tools that the body has to — to compensate for the degenerating disk.

- Q. Now, we've heard a term called a "disk osteophyte complex." Is that something that you can see on this image?
- A. No, you cannot see the disk osteophyte complex on an X ray unless the margin of the disk is calcified. I mentioned earlier that an X ray can see calcified soft tissue. And sometimes the margin of the disk will calcify, and then we can make out that margin. But very often in the degenerative process, as the disk collapses, it's also squishing outward and it's becoming a bigger it's a bigger disk.

So you're losing height, but you're also gaining total circumference because the fibers that

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hold that material in are weakening. And that means
the whole disk — it's like a belt is being loosened
and that whole disk is beginning to enlarge. So
typically when we refer to disk osteophyte complexes,
it's a combination of the disk that's bulging out with
the osteophyte that's accompanying it. That's why we
refer to it as a disk osteophyte complex. The two
things occur together.

- Q. So on an X ray, even though you can't see the disk, because you can see the reduced disk space and the osteophyte, is it reasonable to presume that you do have a disk osteophyte complex at the C5-6 level?
- Most -- most of the time when Yes. 13 Α. there's -- the disk is moderately decreased in 14 reduction, you do have a disk osteophyte complex. Eventually as time goes on, the disk will collapse even 16 further, and then it will just be bone on bone. At 17 that time, that disk is gradually reabsorbed by the 18 body, and you're just left with bone. No more disk. 19 The disk has been gobbled up by the cells in our body 20 that we have that remove waste, which is basically what 21 a damaged disk becomes. 22
 - Q. And we've heard that -- from a few doctors that disks have a large degree of water content, and is it losing the disk height because it's losing that

water content?

A. It's losing the disk height primarily because it's losing the water content, but also because its architecture is breaking down. The architecture is breaking down. Sometimes it's for no other reason than our parents, our mom and dad, have arthritis in their spine, and we inherit that same predisposition to the arthritis. And sometimes it's because of injuries that we encounter in life.

- Q. Okay. Is there anything else significant about this X ray or should we move on to the MRI?
- A. There are some significant things. When I'm looking at an X ray of the spine in the setting of trauma, I'm looking for anything that could be indirect or direct evidence of trauma.

So I talked to you about the shape of the vertebra. I'm looking for any evidence that there's wedging of the bone indicating that was compressed either anteriorly or posteriorly. I'm looking for asymmetric widening or compression of the disk that would indicate that it was torn, either from the front or from the back, forcing the disk to be wider in the front than the back. I'm looking for any malalignment of these posterior elements as we call them. Not the vertebra, but the pieces of the bone on the side and in

the back of the spinal canal that make up the ring that represents the spinal canal.

And notice, if you look at these, everything is lined up very nicely. You see all these repeating densities. And you may not know what they are, but you can see that this is here and this is here and the space between these things is the same and the shape is the same, so there's no malalignment or widening that would suggest that the patient had a ligamentous injury that couldn't hold those bones together anymore.

There's nothing like that on these images. So I don't see direct or indirect evidence of a traumatic soft tissue pathology.

And then as I mentioned to you before, the one soft tissue area that's most viably valid here is the prevertebral soft tissues, and you can see that they're very uniform at the level of the nasal pharynx and the oropharynx, these higher areas. And then down here, we get, at the esophagus, the swallowing tube, and it's expected to be thicker, that thickness remains uniform throughout the course of that cervical column.

Q. Now, if there was trauma, particularly to the C5-6 disk as a result of a car accident, would you expect to have any other findings beyond what you see here?

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1 Well, what I see here is consistent with A. 2 degeneration. But I would expect to see maybe 3 asymmetric widening or narrowing of the disk spaces, as I mentioned; reversal of the normal curve, which is 5 preserved here, that might indicate spasm of the muscles in the back pulling the natural curve out of 7 alignment and back towards the back so that instead of 8 it going forward as it does here, it's going posterior. 9 And I might expect swelling of the soft tissues or 10 malalignments of these bones in the posterior elements 11 as I described here. So that this distance, this black 12 stripe here, would be wider at this level, at the C5-6 13 level than it is at the other levels, or that there 14 would be a slippage of one relative to the other. 15 of those things are present on this X ray.

- Q. Is there any tool available to actually show the curvature of the spine?
- A. Well, you can sometimes drop and we don't normally do this, but I think for the purposes of illustration, you can drop a line that connects the top to the bottom of the spine. And this is what the spine would look like if it was just straightened, not even reverse just straightened, mild cervical spasm. You can see here that the normal curve has been preserved. So, in fact, I've got a space here between what would

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be straight and what is visible of 5 1/2 millimeters of 1 normal forward curvature of that cervical spine. 2 Other than the degeneration, is this a normal 3 Q. X ray? Yes, it is. 5 Α. And there's no evidence of trauma? 6 Q. There is not. No, there is not. 7 A. Now, three weeks later, the plaintiff 8 Q. underwent an MRI. First, would you explain to us what 9 an MRI is conceptually and how an MRI works? 10 An MRI is basically a big magnet, and 11 the way that we make this magnet is by taking a wire 12 and winding it around a bunch of times. Now you have a 13 tunnel made of wire. If you then put a current through 14 that tunnel of wire, you've created a magnet. And that 15 And if you magnet has a north pole and a south pole. 16 put a body into that magnetic field, all of the 17 protons, which are the hydrogen atoms in a water 18

And that's not enough to make an image. In addition to that, you have to know where each dot in that volume of cylinder of wire is located. And to figure that out, additional magnetic RAMs are added in each standard plane, the axial plane, the sagittal

molecule, will instantly align themselves along the

north-south axis of that magnet.

plane, and then the coronal plane. This is the sagittal. This is the coronal for you. So that that way, as we activate those magnetic fields, we say, ah-huh, we see that the signal is coming from this particular spot.

And that's still not enough to create an image. Then we need to add additional radiofrequency energy. And what that does is it takes those protons, those hydrogen atoms within the water molecule that are lined up along that main magnetic field, and it pulls them to an angle that's different than straight up and down the north-south pole of that magnet. And it forces them into a — typically a 90— or 180—degree reversal.

And then we turn it off, and we look at the amount of time the signal characteristics that are released by those little protons as they return to their normal state prior to us giving that additional radiofrequency energy. And by doing that, we can determine precise information about the signal characteristics of the tissue that are formed by the structure that's being scanned.

And the beauty of them are is that by varying the amount that you — the duration of your signal, the amount of time that you wait to obtain the signal of

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the decay of those protons as they return, and other parameters, you can get tremendous information about the composition of tissues, such that tissues of every type have been characterized based on the signal characteristics that they derive on the various sequences that we use to image patients using MRI.

So, for instance, fat on an MRI, if you —

- Q. Why don't you pull up one of the MRIs.
 - A. I can.
- Q. Let's pull up the cervical one from three weeks after the accident, and you can use that as an example.
- A. Yeah. All right. So what I'm going to do here is go to a one on one so you can see a bigger picture, and I'm going to toggle through these images. In fact, I'm probably going to magnify them a little bit so that you can see them a little bit better.

And then here you can see that on this particular sequence, which is a T2 sequence, this sequence is very sensitive to fluid. Anything that contains fluid is going to be white. So we know that the spinal cord, which is this dark ban here, in this image looking from the side, which is the sagittal view, is showing us the spinal cord, and the spinal cord is bathed in fluid. So here we see the fluid

column both in front and behind the cervical cord.

We also know that on this T2 sequence, fat is bright. So the two things that can be bright on an MRI are fluid and fat. And the other third thing that can sometimes be bright is blood, but the blood has to be of the proper age to be bright on T2. Not all blood is bright on T2. So those are the main things we'd be looking for on the MRI using the T2 sequence.

If we were to switch to the T1 sequence, and I'll show you that in a moment, that sequence is very good for anatomy. Shows you an outline and the contour of things. So we as radiologists use these sequences in every plane, looking from the side, looking from the front, and looking from underneath the axial plane to detect abnormalities.

all my radiologists and of myself is that if I think that something is present or might be present on one plane, I look for it on the other plane. It has to be present on two planes. The sagittal and the axial. The axial and the coronal. If I just see it on one, then I ask myself, maybe this is an artifact and is not real. So I require that of the images, and I think that that has served us well in the past. It's a standard that the images have to meet before we're

willing to call something abnormal.

- Q. Okay. So when you're looking at the disks, since the disks are made they have a water content, is the color of the disk an important factor for for considering —
- A. The color of the disk is important, more in the lumbar spine than in the cervical spine. Because the cervical disks are pretty small, they don't always have a higher signal that we associate with a healthy, normal disk like we do in the lumbar spine. The lumbar spine is a much bigger disk. These disks are smaller. So sometimes if they look dark, it may not necessarily be an abnormality. And in younger patients, we may see disks that look relatively dark and are relatively normal.

What we do require, though, is that that disk height be preserved. So in the cervical spine, disk height is tremendously important. And when that disk space height is lost, that indicates degeneration.

If all we see is decreased signal on this T2, a dark disk, all the other ones were bright but one is dark and its height is preserved, that's what we call disk desiccation. It's the earliest stages of degeneration. The disk is starting to dry out. That's why it looks dark in this sequence. But it hasn't yet

really begun to break down, and that's why its height is preserved. It's only when the architecture of the 2 disk is beginning to break down that that height is 3 being lost. And, in fact, it's a normal process of aging. 5 Older people, you know, we lose -- we lose as we age. 6 As we all age, we lose several centimeters of height as 7 those disks naturally degenerate and collapse. Now, Dr. Villablanca, would you agree with me 9 Q. that the -- an MR [sic] is warranted based upon 10 symptoms and you -- to correlate it, but you don't get 11 the MR first and then find out what the symptoms are? 12 That's correct. 13 A. So now let's turn to Mrs. Seastrand. 14 0. Okay. And you had the opportunity to look at some medical 15 records from that time. 16 17 I have. What were the symptoms that you were 18 concerned about which make the MRI important for the 19 purposes of correlation? 20 MR. CLOWARD: Judge, I'm just going to 21 If you'll allow me to have a standing 22 objection on the foundation of his opinions. 23 Your Honor --MR. JAFFE: 24 THE COURT: Based on the records? 25

MR. CLOWARD: Yes, on the records issue. 1 Your Honor, it's -- it's in his MR. JAFFE: 2 3 report. That's fine. I understand the THE COURT: 4 records issue. You can have a standing objection. 5 MR. CLOWARD: Thank you. 6 It's overruled. THE COURT: 7 Thank you, sir. 8 MR. JAFFE: BY MR. JAFFE: 9 10 Q. Go ahead, Doctor. So what I would be looking for is as I read 11 Α. these records, I'm looking for symptoms that allow me 12 to correlate to specific pathology. In other words, if 13 somebody says, I have pain in my big thumb and my index 14 finger, that's the C6 dermatome. That means that the 15 nerve that goes all the way back from the arm to the 16 neck is getting pinched possibly there, but it could be 17 getting pinched in other places. But this is C6. 18 These two are C7, and the pinky is C8. 19 And the same thing with the forearm and the 20 Every one of these tissue areas arm and the shoulder. 21 is a piece of real estate, and that piece of real 22 estate is owned by a nerve. And it's remarkable how 23 consistent that ownership is across our bodies. That's 24 why we have what we call dermatomes. These are maps 25

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that we can follow as neurologists, neuroradiologists, 1 et cetera, to try and tease out when a patient says, 2 I've got this terrible pain right here and right here 3 and right here (witness indicating), and that's -- ah, that's the C6 dermatome or that's the L5 dermatome. 5 And I'm looking -- thank you. 6 looking for those features in the scan, right? I'm 7 saying somebody's complaining of pain in the neck, 8 somebody's complaining of pain in the right upper 9 extremity. Right upper extremity is not very specific, 10 but I'm willing to say it could be C6, C7, C -- or C8. 11 Those are the three main nerves that innervate, provide 12 innervation to the arm for sensation. 13 So I'm looking for the cervical scan. 14 saying I want to find problems that are impacting those 15 nerves, either in the spinal canal or in the foramina, 16 which are the bony openings that allow the nerves to exit from the spinal cord and out to the body. 18 Now, on the right side, you've -- we've now 19 O. I know -- I understand the left 20 got a split screen. side is like we were slicing the neck down top -- head 21 22 to toe. What is that right side? Is that an axial 23 24 image?

The right side is, in fact, an axial image.

and what this axial image is, is a scan that — and I'm going to bring this back here. Cancel that. It's a scan that is taken like a slice of bread. If you were to have a loaf of bread, you're slicing the neck like a loaf, and you're now looking from underneath at that slice that you obtained. This is the axial plain right here. I'm looking at it from underneath. So the right is on the left, and the left is on the right, but nevertheless — nevertheless, it's there.

So let me take that one more time. We'll load it up. And this is the April 3rd MRI of the cervical spine. And I'm going to split that screen so that you can see the sequences that I'm interested — that we're interested in.

Now, on this side on the left, I'm going to put that view from the side because I think it's helpful, and I'm going to make that a one on one so we can appreciate the features there. We'll magnify that image so that you can see that in detail. And now I'm going to toggle through the images. Then I'm going to bring over from that same cervical scan, the April 3rd scan I'm going to bring forth the axial T2 image, the one that's the cross section. And what's nice about this little program is that it puts a line — that orange line that you can see on that screen on the left

1 side, it puts a line showing you the level where the
2 axial slice on your right corresponds to. So you have
3 a good idea of what is — where these images are coming

- Q. Well, because we're -- we're three dimensional, not two dimensional, right?
 - A. Correct.

from.

- Q. One scan is actually only two dimensional,
 but when you bring in the third dimension, it gives you
 the full three-dimensional image of the body at that
 particular spot?
 - A. It does. It does. So this allows you to see all of the soft tissue structures. Not just the cord, and the vertebra, but also the facets, the paraspinal muscles, the prevertebral muscles, everything that makes up what we call the spinal column. All of the supporting structures, the ligaments and all that. So it's a tremendously helpful, tremendously powerful technique.
 - Q. Now, on the axial image, the one on the right, where is the spinal cord and where is the disk?
 - A. So on this particular image, which you see on your right, this oval is the cord. And the disk space is this black zone in front of it. So on this axial image, this right here, where my cursor is, which is

anterior, is heading towards the chin. And this back here where the cursor is heading towards the back of the neck and the back of the head.

see the arrow of this line corresponds to this C2-C3 disk space because this is the C2 body, this is the C3 body. And this gives an idea of what a normal disk should look like. It's got the height that we noticed previously. It's got a uniform height from front to back. It has a contour that is normal in the front and in the back of the disk margin. And if you look here at these openings, this is where the nerves come out, and these openings are called the foramina.

Notice that this opening is bright on the T2 sequence. That bright is fat that lives within the foramen, and it helps to cushion and protect the nerves as they come out. So this essentially T2-3 is an example of a normal disk and a normal foramina.

- Q. Having considered the symptoms raised, do you find any abnormalities due to trauma in the cervical spine looking at the MRI that was taken three weeks postaccident?
- A. The answer to that question is no. My -- my mind, in listening to -- to the reading, the description of the symptoms that are here, is that the

patient's complaining of neck pain. The patient is also complaining of pain radiating to the upper extremity, which numbness as well. So I'm looking for pinching or compromise of the C6, C7, and C8 cervical nerves.

- Q. Now, where on here would you be looking for that?
- A. Not at C2-3. I've got to move south. I've got to move down, or caudal as we say. And what I'm going to do is do that for you. So I'm hitting now the arrow. Watch what happens to the orange line. I'm marching down now to the C3-4 disk space. Now to the C4-5 disk space. And, again, the contour of the cord is normal. The foramina are nice and open. And now to the C5-6 disk space where we've already identified that we have moderate loss of disk space height and bony spurs.

So what are those bony spurs doing? Well, they're slightly reducing the amount of fluid in front of and behind the cord, but they're not squishing the cord. They're not deforming or compromising that cord. And also I can see that the foramina here are not quite as big as they should be. This one here has this black stuff which is the same color as bone here, and you can see that it — extending into the foramina a little bit

and causing what we would call mild foraminal narrowing on the left side. And on the right side, there's minimal foraminal narrowing.

These correspond to what we call uncovertebral joint osteophytes. Little bony spurs that instead of going back have gone into the foramen through a little accessory joint that's called the uncovertebral joint that's part of that cervical disk articulation.

So to me — to me at this point, I'm worried, because I don't see the evidence of significant foraminal narrowing on the right side that would explain a C6 radiculopathy. This is the C5—6 disk space, and out of this foramen comes the C6 nerve. Nor do I see as I move down to the C7 and the T1 foramina any hint of pinching of those nerves as they come out of that — those foramina, particularly on the right side where the patient is complaining of pain and numbness.

So we have disk degeneration and we have evidence of reaction of the bone adjacent to that degenerated disk. Here you see these little stripes of high T2 signal. They correspond to edema of the bone marrow as it objects to the fact that that disk is collapsing and says I need to make bone. And in the

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process of doing that, more red blood cells arrive, 1 more white blood cells arrive, and there's a bit of 2 inflammation. 3 That bit of inflammation has been described 4 by Dr. Modic as a Modic type of degeneration. He's got 5 three types. This is Type 1 where you see some 6 increased water in the bony marrow adjacent to the 7 degenerating disk. You used the term "edema"? 9 Q. Edema is --10 A. Swelling? 11 Q. -- increased -- yeah, swelling or increased A. 12 Swelling or increased water. water. 13 Okay. Q. 14 So we have something that could explain neck 15 pain, but we don't have a good explanation for the arm 16 symptoms based on this scan. There's a discordance 17 between the patient's complaints and the -- the imaging 18 findings. 19 l That doesn't mean the patient's complaints 20 It means we may need to look elsewhere aren't valid. 21 l for where those complaints may be coming from, the 22 thoracic outlet, thoracic outlet syndrome is very 23 common, carpal tunnel, et cetera. 24

When Dr. Muir was here on Thursday, he told

us that he removed a fragment from behind the posterior ligament.

A. No. What the scan shows is circumferential bulging of the disks the disk osteophyte complex, which is best seen on these sagittal images. And I'll take you now to the image off to the side here. I think all of you can — I'm going to mag this up so that you can see that.

See this big hook right there that's white?
That's the bony spur. That's the bony spur that takes
years to develop. And this right here is the disk
component that accompanies the bony spur. That's why
it's called a disk osteophyte complex. And you see the
same thing in the front. The front, the bony spur is
even bigger and the disk component is a little bigger.
So it's a circumferential disk bulge. And this is a
classic pattern of degeneration that we see. The whole
disk is kind of flattening and broadening out, and it's
accompanied by a skirt of bony spurs that are produced
by the vertebra in an attempt to make up as best as it
can for the degeneration of the disk.

There's no focal protrusion or outpouching of the disk as we would typically expect to see in a traumatic condition. Nor do I see the other findings

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that are very often accompanied by traumatic disk injury, swelling of the muscles or tearing of the ligaments. In fact, those things are far more common and occur usually before a disk herniation occurs. none of those features are present here. There's no swelling of the prevertebral soft tissue. There's no distraction of the facet joint. There's no edema around the facet joints. There's no fracture of the There's no tear of the anterior or posterior bone. 10 longitudinal ligament. There's no widening of the interspinous disk distance, and there's no asymmetric disk space widening or narrowing. 12

- The last thing I want to ask you: Is there any evidence of the cord either being misshapen or compressed or any -- any evidence whatsoever of cord compromise on these films?
- There is not. At first glance, somebody who is not really experienced at looking at scans might say, well, you know, as I look at -- off to the side here, is this not a little contour abnormality in the cord on the sagittal view? But you have to remember that the sagittal view is looking at a cylinder. you take slices farther away from the center of that cylinder, you're now getting out towards the edge of the cylinder. So the structures that are a little bit

farther out appear to project into the spinal canal.

So we never call deformation of the cord on

the sagittal. We only call it on the axial. Because there you're actually looking at on end. So if the cord really were to be different in caliber, you would see it. It would look like (noise), like that. It would decrease in caliber before your eyes as you move through these images.

And let's take ourselves through that slice. Here you can see that the cord is oval, oval, oval, oval, oval, oval, oval, oval the whole way. And it never really shows any flattening of the contour from front to back. The amount of fluid around it is a little bit reduced, but the cord itself is not deformed.

- Q. Based on your review of these films, sir, is there any evidence of traumatic insult to the cervical spine as a result of this incident?
 - A. There is not.
- Q. And based on your review of these films, any abnormality that exists at the C5-6 intervertebral level, is it due to trauma or long-standing degeneration?
- A. The imaging findings support that this is due to long-standing degeneration of the disk and with the reactive changes involved.

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Q. Okay, Doc, are we done with the cervical spine?

- A. I believe so.
- Q. Let's move on to the lumbar spine. Let's pull up the lumbar spine from 4/3/09 as well, the day three weeks after the accident.
- So, again, I think what I'll do is I'll split 7 the screen for our benefit, and I'll make it one on one 8 as we have in the past. And I'll do the same thing here because I think it helps us to -- to visualize the anatomy. And let's close that and go here. One on 11 In fact, I may just choose this one all the way. 12 We'll close this. There. Now I'm going to go to a 13 one-on-one format. There it is. So this is 14 essentially the same view that we just had of the neck 15 l looking from the side, but now it's the lumbar spine, 16 l 17 the lowest segment of the spine before we get to the 18 pelvis.

The lumbar spine also has a natural curve.

Its natural curve is also to the front. So just by looking at this image, because this curve here points towards the front, we know that this is the front of the patient, and here's the patient's bellybutton. And back here is the small of the back. So this is anterior, this is posterior, this is superior, and this

is inferior.

And just like I reviewed with the cervical spine with respect to the vertebra, the spinal canal, the nerve roots, here I would do the same thing, and I would at every one of those structures. Is the vertebra wedged? Is the disk space asymmetrically widened or narrowed? Are the facet joints distracted? Or is there any evidence of degeneration in these areas? Do I see any high signal in the muscles on T2 that would indicate edema?

And typically this -- I think scan was done about three and a half weeks -- for a very mild soft tissue injuries, those may have resolved, but for moderate or severe, like we would expect if we had a traumatic disk injury, those would probably be persisting at this point, even if a -- in a reduced fashion. I would look for those things.

And as we look at these disks, we see that the lumbar curve is preserved. The vertebra look block-like at every level. And the one thing that we do see is that these disks are very uniform in their appearance. They're bright on the T2 sequence, except at this level and at this level. This level is the disk space corresponding between the L4 and L5 vertebra. Therefore, it's the L4-L5 disk. And this is

the disk between the L5 and the S1 vertebra. 1 Now, are we looking at the T1 or T2 image? 2 A. This is the T2. 3 So now we can see the hydration in the disk. Q. 4 Yeah, because this is a bigger disk. And so 5 A. here, the signal of the disk is a more reliable 6 indicater of its health. And we can see that the T12 to L1 through 8 L3-L4 disks are all very uniform and they're all These are healthy disks. That doesn't mean 10 that one of these disks couldn't have traumatic 11 It would still be bright, but it would herniation. 12 have a contour abnormality along its margin. None of 13 those things are present there? We do know that the L4-5 and L5-S1 disks were 15 abnormal. Not only do they show a little bit of 16 decreased signal here or a significant amount of 17 decrease signal, but the height is ever so slightly 18 reduced. And then the other thing you can appreciate 19 is that here, again, there's some beaking, anterior 20 beaking of that contour. And if I mag this up, you can 21 This is an early see that little beak right there. 22 osteophyte that's forming in the L4-5 disk. This is a 23 disk that has degeneration. 24

The degeneration is evidenced by the

decreased T2 signal, the very minimal loss of disk space height. And then the disk osteophyte complex, we can appreciate here, going forward with the osteophyte and with the corresponding bulging of the disk. If the bulging in the disk is present anteriorly and posteriorly, in all probability this is a circumferential disk bulge, all the way around like we expect to see in a degenerated disk.

- Q. Now, when you talk about signal intensity, is that the darker color? The decreased signal intensity means the disk is darker meaning less water?
- A. Correct. That disk is already beginning to break down, and that is evident on the images by that loss of water that makes on a T2 sequence the disk appear darker.
- Q. Okay. Now, the -- what symptoms would you be looking to corroborate or address in looking at the lumbar?
- A. That's an excellent concern. This was, of course, my first concern. Dr. Lurie on the day actually, just about a week after the accident, the accident was on March 13th, on March 20th, Dr. Lurie noted that the patient was complaining of low back pain that was radiating to the bilateral hips and to the mid legs. Bilateral hips and mid legs.

So I'm thinking, well, I don't have a 1 dermatome, which I would like to have. Specifically where on the leg is the pain? Specifically where is 3 the numbness? But I have legs. So whenever I see legs 4 involved, I'm thinking nerves. Where is the nerve 5 being pinched? If it's bilateral symptoms, there 6 better be bilateral nerves being pinched someplace. 7 Because a degenerated disk can cause you back pain 8 sometimes radiating to the hips, but it will not cause you leg pain. Only a pinched nerve will cause you leg 10 pain. So I'm looking for that. 11 Later, Dr. Olmstead on May 1 says the same 12 thing, low back pain radiating to the bilateral 13 posteromedial calves. Now he's getting a little bit 14 more specific. 15 (Clarification by the Reporter.) 16 MR. JAFFE: Posteromedial calves. 17 Is -- my apologies -- S1. THE WITNESS: 18 I can check off my list -- when I look I'd say, okay. 19 at this scan, I want to look for problems with S1. 20 Then, later on, Dr. Belsky herself says the 21 patient has bilateral lower extremity numbness. 22 I'm concerned about all the nerves that go to the lower That's L1 through S1. extremities. 24 And then finally, Dr. Muir on August 24th, 25

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says the patient has increasing severe, constant bilateral leg and feet pain, numbness, tingling, and weakness. And at this point, I'm very concerned that either there's a horrible disk herniation pressing on all those nerves or that there are multiple abnormalities at multiple levels compromising those nerves.

So as I now examine the images, the very first thing I'm going to do is say, Where is this huge disk herniation? Where is this compression of the spinal nerves happening in the spinal canal? And as I look at the images that -- this is that sagittal view from the side that you see on the left of your screen, you can see the canal is this big, white area. dark stripe is the lowest part of the spinal cord, what's called the conus medullaris. And then this little thing right here, this little kind of fuzzy area, are all the nerves that come from the lowest part of the spinal canal or the spinal cord. Those are all called the caudal equina or the nerve roots that come out and innervate the lower extremities and the pelvis. BY MR. JAFFE:

- Q. Tail of the horse?
- A. Tail of the horse. And I can see no narrowing in the spinal canal and certainly no

wholesale compromise of those nerves. So I'm extremely relieved when I see this because this is good news for 2 the patient. But I still haven't explained the 3 symptoms, and I need to explain these symptoms, bilateral lower extremity numbness and weakness. 5 So I'm going to say, well, if it's not in the 6 canal, maybe it's in the foramina. So to see the 7 foramina on the sagittal view, I have to go out off to 8 the side, because that's where the bony openings are in the spinal canal that allow for each one of the nerves 10 to come out and do their job in the leg. 11 MR. CLOWARD: Judge, can I approach? 12 THE COURT: 13 Sure. (Whereupon a brief discussion was 14 held at the bench.) 15 THE COURT: Overruled. 16 17 MR. JAFFE: Thank you, Your Honor. BY MR. JAFFE: 18 I'm sorry, Doctor. Please finish your 19 Ö. 20 answer. I had said that based on our review of the 21 Α. images from the sagittal plane and here on the axial 22 plane, we can see that the spinal canal is open and 23 that there's not one image where these little tiny dots 24 surrounded by the white material, which is the spinal 25

fluid, these little tiny dots were squished or 1 compressed. So we know that the spinal canal is not 2 the source of her symptoms. So where are her symptoms coming from? The next thing I'm going to do is look at the 5 foramina, the place where the nerves come out. 6 see that, I have to go to the side where the nerves 8 come out of the side of the spinal canal. And the best way to do that is to move from the midsagittal image --10 (Clarification by the Reporter.) 11 MR. JAFFE: Sagittal. I'm sorry. THE WITNESS: 12 13 -- off to the side. And here you can see a And a foramen looks basically like a ovalish 14 foramen. or roundish white area, which is fat. And in the 15 center, there's a -- another small dark circle. 16 That's -- that dark circle is the nerve root sleeve. 17 The nerve root sleeve contains the nerve rootlets which 18 are even smaller than the nerve root sleeve. 19 20 So when I suspect there's compression of the 21 nerve rootlets within the foramen, I better see 22 significant deformation of that nerve root sleeve, flattening of the nerve root sleeve indicating that 23 there's some way that the nerves inside the nerve root 24 sleeve are getting compressed or squished. 25 l

And as we look at each one of these levels, I see a cuff of high signal which is protective fat around each nerve, and I see no evidence that there is compression of these nerves as they exit the L1 up here, L2, L3, L4, or L5 nerves. Each one of those nerves has a cuff of fat around it.

Now, at 4-5 the amount of fat is not like it is in the other levels. You can see it's a little bit less. But still this qualifies as only mild foraminal narrowing because there's fat just about around the entire nerve root sleeve, and it still has a round contour.

The other thing that is of interest is that you see this little white stripe right there on the T2 image. On the axial image, that little white stripe is confirmed so that I know it's not an artifact. And I want to show you that little white stripe, this little white stripe right here. This represents a high signal intensity zone, or what we call a marginal annular ligament defect where some of the fibers there have actually broken down further. And that is an area of vulnerability.

Typically what I see in the cases of acute disk herniation is not just a high signal intensity zone, but herniated disk material. In this case what I

see is just a high signal intensity zone and no herniated disk material. That pattern is much more often seen with degeneration than it is with acute trauma, because acute trauma not only tears those fibers, but pushes disk material out. So in this case, we can see that there is a small high signal intensity zone, but that high signal intensity zone is not in contact with, it's not pushing or squishing that nerve at all.

Here's the nerve on the axial view. This is a kind of fuzzy area where you can see that there's a little stripe of fat separating the nerve from the high signal intensity zone, and that high signal intensity zone does not contact or displace or compress that nerve. So I'm reassured by that.

If we move down to the L5-S1 level, which is the one level lower, now I'm at the disk level. And I'm looking at the abnormality here, and I'm saying, well, I've got some disk degeneration at this level too. I've got some circumferential disk bulging which I'm seeing here is relatively mild, but still could be symptomatic in causing low back pain. And I've got a little osteophyte. Look at the osteophyte going back here at L5 with its own little disk components. This is a disk, very minor. And I also see a little spot on

the axial T2 here that, at first glance, worried me. 1 Could this be a little disk herniation or even an annular ligament tear. And I considered that, except 3 when I look at the sagittal image, and I look at the orange line that corresponds to that slice, that is above the disk level. There is no disk there which 6 indicates to me that this most is likely the peri or 7 epidural venous plexus. There's lots of veins that drain this area. And particularly in the lumbar spine, they're prominent, and they can be asymmetric. 10

And in my assessment, this represents a small perivenous, perivertebral or epidural venous plexus, because the line that corresponds to the slice where this image was obtained was above the level of the disk, not at the level of the disk and, therefore, would not be consistent with a disk herniation which, by definition, has to be at the level of the disk. BY MR. JAFFE:

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- Is there any evidence of trauma shown on these lumbar MRIs?
- 21 Α. Yes.
 - Due to the accident? Q.
- There is no evidence of trauma that I 23 could attribute to the motor vehicle accident of 24 March 13th, 2009, when looking not only at the disk, 25

but also at the vertebra, also at the facet joints,
also at the perivertebral soft tissues, the psoas
muscles, and the ligaments that support these areas.
What I do see is evidence of disk damage that's
consistent -- most consistent with degenerations.
And those disk problems can cause symptoms
like back pain, and eventually those can lead to

like back pain, and eventually those can lead to surgery. But I don't have any focal disk pathology that I can attribute causally to the motor vehicle accident of March 13th.

Q. During the trial, doctors have talked about a potential annular tear shown — rather at the L4-5 and L5-S1 levels causing chemical irritation of the nerve roots.

Are you able to tell whether there are any tears on these disks?

A. Yes. I just described for you, at L4-5, this right L4-5 intraforaminal annular ligament defect. We don't use the word tear anymore. All the spine societies say that that's not appropriate because it implies trauma, a traumatic mechanism. But most of our patients with annular ligament defects acquired them through degeneration and not through trauma. They're not always symptomatic. Many of them are asymptomatic.

But that having been said, as I look at this

annular ligament defect, it's sufficiently close to the L4 nerve, although it's not compromising the nerve, but if it were to be generating some little chemical irritants, it could potentially irritate the L4 nerve. So where's the L4 nerve dermatome? On the right side. This is the right side. This would be the front of the thigh to the area of the knee. And as I look at the records, there is no mention of any type of radicular symptoms in the legs

mention of any type of radicular symptoms in the legs that are referable to the L4 dermatome. The pain here and the numbness and the weakness is in the bilateral lower extremities, involving the posterior lateral calf, the back of the legs and the feet. That does not correspond to a right L4. And there's no way that whatever microscopic amounts of chemicals are elaborated by this little tiny marginal defect that it could impact nerve on the other side. That just doesn't happen. The amounts are tiny, and they're, at best, going to irritate a little bit this nerve.

So if the patient had said, I have pain. I have back pain and I have pain in my right anterior thigh, I'd say that's L4 and this corresponds. But her symptom complex does not correspond to what the imaging findings show. And those imaging findings are most consistent to a reasonable degree of medical

probability with degeneration and not with trauma. 1 Doctor, based on your review of the films, is 2 Q. there any indication of a -- any trauma of the lumbar 3 spine as a result of the March 13th, 2009, motor 4 5 vehicle collision? No, there is not. A. 6 Now, was Dr. Gross critical of you with 7 Q. respect to correlation of symptoms? 8 9 A. Yes. Did you address that in your reports? 10 0. I certainly did. 11 Α. Is that consistent with what you've told the 12 Q. 13 jury today? 14 A. Yes, it is. And, Doctor, have all of your opinions stated 15 Q. today been stated to a reasonable degree of medical 16 probability as a board-certified neuroradiologist? 17 18 A. They have. And as a -- an interventional -- as an 19 Q. interventional spine radiologist? 20 21 A. Yes. 22 Q. Thank you. I have no further questions, Your 23 MR. JAFFE: 24 Honor. 25 THE COURT: Cross.

MR. CLOWARD: 1 Yes. May I take a moment to 2 set up. 3 THE COURT: Yes. 4 5 CROSS-EXAMINATION BY MR. CLOWARD: 6 How you doing today, Doctor? 7 Q. Very well. How about yourself? 8 Α. I saw that you spent the lunch with 9 Q. Mr. Jaffe. 10 11 A. Yes. Did he tell you about what the other doctors 12 Q. in the case have said? 13 Not to my recollection. 14 A. 15 What did you talk about? Q. We talked about the sandwiches we were 16 Α. 17 eating. That's it? 18 Q. 19 Yes. I mean, we -- we basically -- I asked A. how long the case has been going on. He said we were 20 going on, I think, a week or thereabouts. And I asked 21 22 him when he thought I might be going on, and he said in the afternoon around 2:00 o'clock. 23 He didn't tell you -- he didn't tell you what 24 Q. Dr. Smith said? 25

1	A.	Not that I can recall.
2	Q.	What about Dr. Schifini?
3	A.	No. I don't know when Dr. Schifini
4	testified	•
5	Q.	What about Dr. Siegler?
6	A.	Not to my recollection.
7	Q.	Did you meet with Mr. Hall, Mr. Jaffe's
8	partner?	
9	A.	I did not.
10	Q.	What about Mr. Clayton, Mr. Jaffe's other
11	partner?	
12	A.	I have not.
13	Q.	You didn't meet with them over the lunch?
14	A.	That's correct.
15	Q.	Have you worked with them before?
16	A.	I met them here in this room.
17	Q.	Have you done work with them before on other
18	cases?	
19	Ā.	With Mr. Hall, yes, I believe.
20	Q.	How many times?
21	A.	I don't recall. Maybe a half dozen times.
22	Q.	What about Mr. Clayton?
23	A.	Mr. Clayton, perhaps. But I haven't met him.
24	Q.	But you think perhaps you've worked with him
25	before?	

I don't do a lot of this type of work. 1 A. Yeah. But maybe in the course of the last ten years, I may 2 3 have worked on a few cases with him. So you don't do it very often, but when you do do it, it's with their firm? 5 I work with other firms as well. 6 Α. Okay. Couple of things, Doctor. First, do 7 Q. you remember at your deposition when I asked you 8 specifically what records you reviewed, and at the time 9 of your deposition, you could not tell me? 10 Do I recall saying that? 11 12 Q. Yeah. I don't recall saying that. But if I said 13 Α. it, then that is correct. There are many, many records 14 in this case, and I wrote my report over a year ago. 15 So I wouldn't expect to remember every record I've 16 reviewed. 17 Okay. Do you deny that I -- that Ms. Brasier 18 specifically asked you for a list of all of the prior 19 and current records you reviewed, and you could not 20 give us a list? Do you deny --21 You mean on the spot, from memory? 22 A. 23 Q. Yeah. That would be No, I don't deny that. 24 A.

perfectly -- I wouldn't be surprised.

that?

1 Q. And it's not contained in your report either, 2 is it? The records? 3 Α. Yeah. 4 Q. Well, I indicate the correspondence that I am 5 A. responding to. So her retention letter, and that 6 7 letter accompanied the attachments, and those attachments are described in those letters. 8 9 Q. Sure. 10 And then in the supplemental report, if I say 11 reviewed the additional medical records pertinent to this record, that means up through October 15th, that 12 any record that had been mailed to me and I had those 13 14 correspondences and exactly what's contained within them, that would be available to everybody. 15 16 Q. Who is the -- that letter from? This is from the Offices of Hall Jaffe & 17 Α. 18 Clayton. 19 Who's that addressed to? Q. Dr. Villablanca for the majority. This one 20 Α. says Dr. Siegler, who I don't know who he is, but --21 22 Q. Let me ask --23 Α. -- I presume it was sent to me. Let me ask you a question: Was I copied on 24

1	A. I don't know. It doesn't say cc you here.
2	Q. Can you can you look and see? I'd like to
3	know.
4	A. Yeah.
5	Q. Because
6	A. Because it doesn't say who received this
,7	besides myself.
8	Q. Okay. Because to date, I still don't know
9	what records you've reviewed because you haven't set it
10	forth in any of your reports.
11	A. I just stated it under oath today what
12	records I reviewed. And I cited the letter that I was
13	referring to that indicates every item that I've been
14	given access to review, and this is the document.
15	Q. Doctor, I think those I think you agreed
16	with Mr. Jaffe when he led you and told you the records
17	you reviewed. So what I want you to do
18	MR. JAFFE: Objection, Your Honor.
19	BY MR. CLOWARD:
20	Q. I want you to pull out
21	THE COURT: Overruled.
22	BY MR. CLOWARD:
23	Q. I want you to pull out your two reports, just
24	your two reports, set aside the correspondence from
25	Mr. Jaffe that I didn't receive. Tell me from those

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1 reports, the records that you received.

A. This — the report that I prepared doesn't describe every record that I received because I don't review every record. I review only the records I think are relevant to myself, including — but I may not review, for instance, a pharmacy record or a billing record.

- Q. Okay. Well, I would like to just make a list based on your two reports of the records that you reviewed. Just let me know what those are so I can write them down here.
- 12 A. So based on my report there, specific 13 reference is made to the vehicle accident report.
 - Q. Okay.
 - A. To the State of Nevada Traffic Accident Report.
- 17 Q. I'm talking about medical records, Doctor.
- A. I talk about every one of the radiologic
 reports and make reference to what the radiologists
 describe in each one of those reports. And I describe
 a report prepared by Dr. Gross, including the
 supplemental report.
- Q. That's an expert report not a medical record, correct?
 - A. Correct. And in page 4 of my supplemental

report dated October 15th, the last paragraph on that 1 page says, In summary, opinions rendered to a 2 reasonable degree of medical probability in my primary 3 expert report dated August 1, 2012, are not altered by the additional medical records since provided to me for 5 review, including the supplemental report offered by 6 7 Dr. Gross --You got to slow down. THE COURT: 8 THE WITNESS: My apologies. 9 You're making it really tough on THE COURT: 10 our court reporter. 11 THE WITNESS: My apologies. 12 -- are not altered by the additional medical 13 records provided to me for review including the 14 supplemental reports authored by Dr. Jeffrey Gross and 15 other documents forwarded as enclosures to the letter dated October 8th, 2012. 17 BY MR. CLOWARD: 18 You were deposed after your second report, 19 Q. 20 right? I don't recall when my deposition was. 21 A. What's the date of that? 22 Q. The date of this report is October 15th, 23 A. 2012. 24 You were deposed on January 18th, 25 Q. Okay.

2013. 1 Is that after that report? 2 3 A. After this report? Yeah. Q. 4 This report is before. 5 Α. Okay. So during your deposition, we asked 6 Q. you to provide us a list of all the records that you 7 reviewed, correct? 8 9 A. Yes. You said you'd provide us a report, correct? 10 Q. 11 Α. Yes. You didn't provide us a report, did you? 12 Q. I don't know. Asked my office to provide you 13 A. 14 the reports. So you did? Who at your office so we can 15 Q. follow up on that after trial? 17 I don't -- well, I only have one Α. That would have been administrative assistant. 18 19 Ms. Diana Fang. January. So if we subpoena her, she'll testify to 20 Q. that? 21 I would think so. 22 A. 23 Okay. So, Doctor, from those two reports, Q. can you tell me specifically what records there were? 24 25 I just did. A.

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- Q. No. You I don't think you gave me the name of any records.
- A. I made reference to a letter, and that letter makes reference to every record.
- Q. I didn't get the letter, though. That's why
 we asked you at your deposition for the for the
 records.
 - A. And I have no hesitation to give you those things. I'm not in the business of withholding any records. And I would imagine whatever records I receive, you receive as well.
- Q. Okay. Very specific question, Doctor. Very specific. An HIZ, high intensity zone, without the disk material, can in and of itself be evidence of a traumatic event, correct?
- 16 A. Hypothetically, yes.
- Q. You don't have to see the -- the evidence of the disk material protruding out for that to be traumatic, correct?
- A. Well, if you're proposing that that injury is acute, you would expect to see disk material present.

 If you're proposing the high signal intensity zone, which can persist for an indefinite period of time, at some point was caused by trauma then, you know, yes,

you could see that from trauma that occurred in 1984.

But, Doctor, the very specific question is: 1 Q. Is that sometimes an HIZ, even without the disk 2 material, can in and of itself be evidence of trauma, 3 4 correct? I've already answered your question. 5 A. And it's correct, right? 6 Q. I said yes. 7 Yes. A. And you -- you agree with me, Doctor, that an 8 Q. annular ligament defect or a tear -- I don't want to say -- you know, so annular ligament defect can cause 10 chemical irritation to the L4 nerve? 11 12 Α. Correct. If it's a circumferential tear, that means 13 Ο. that it's a broad base tear, correct? 14 I don't know what you mean by 15 Α. circumferential. 16 Well, what is your definition of 17 circumferential, Doctor? 18 I said circumferential disk bulge. 19 Circumferential to me means 360 degrees, all the way 20 21 around. What if you have a tear that's halfway around 22 Ο. 23 the disk? An annular ligament defect that's halfway 24 25 around the disk.

1 Q. Yes. Then it would be hemispheric annular ligament 2 A. 3 Those are extremely rare. This is probably no more than 10 degrees of the arc of the circumference of the disk. 0. Okay, Doctor. If you have one that goes 6 7 around like that --8 A. Hypothetically. -- hypothetically speaking, that will in fact 9 Q. 10 leak material onto both nerve roots, correct? 11 Potentially. Α. 12 Q. Okay. 13 Doesn't have to. A. I have a question to you about this MRI here. 14 Can you show me where the pain is? Can you come down 15 and -- off the stand and show us where the pain is. 17 Come on, Doctor. 18 A. The pain? 19 0. Yeah, come show on this image here. 20 Your Honor, Your Honor, Your MR. JAFFE: I -- I believe the doctor's entitled to some 21 Honor. modicum of respect. "Come on, Doctor" --23 THE COURT: The objection is argumentative. 24 It's sustained. ///// 25

1 BY MR. CLOWARD: Doctor, would you please come down off of the 2 Q. stand and show us on this MRI where the pain is. 3 I could show you potentially where pain could 4 A. be coming from, but I cannot show you where the pain 5 6 is. 7 Why not? Q. Because these scans have to be correlated to 8 A. the clinical exam. 9 Would you please pull up the X ray of the 10 Q. cervical spine. 11 Doesn't want to seem to bring that up. 12 A. I can't seem to load that particular study up. 13 Let's just say if you pulled that study up, 14 Q. could you show us where the pain is on that study? 15 Scans don't show pain. They show potential 16 A. 17 sources of pain. 18 Okay. Q. 19 And that has to be correlated to the clinical Ä. 20 exam. Does the clinical correlation always match up 21 Q. with what's on the scan 100 percent of the time? 22 It should be pretty close. Because if it 23 doesn't, then we need to look elsewhere. That's why we 24 25 do these scans.

Doctor, the question was: Does it always 1 Q. 2 100 percent of the time? One hundred percent of the time, probably 3 4 not. Now, when you were asked about the Okay. 5 independent medical examination, you didn't, in fact, do an independent medical examination of Ms. Seastrand, 7 did you? 8 I have not. 9 Α. You've never met her? 10 Q. That is correct. 11 A. So you relied on the experts in the case who 12 Q. did medical exams, right? 13 Well, no, not just the expert but the direct 14 A. medical records of people that saw her primarily and 15 were not retained as expert individuals who are not 16 These are primary care providers retained in the case. 17 who interacted with the patient when she first saw 18 them, the emergency room people, the tech, the physical 19 therapists, the chiropractor, et cetera. All those 20 records as well. 21 Dr. Muir, Dr. Grover, Dr. Gross, Dr. Khavkin, 22 Q. right? 23 All of the clinicians that have evaluated 24 A.

this patient along her course.

Yet they all think and they all testified and 1 their records suggest that these -- that the surgeries 2 she received were directly related to the automobile 3 crash, and you disagree with all of them, don't you? If that's what they testified, then, yes, I 5 Α. 6 do. And, in fact, you disagree with the 7 Q. Okay. other doctors that Mr. Khoury hired regarding the 8 9 injury, correct? I don't know what you're talking about. 10 Α. Dr. Schifini testified that she sustained 11 Q. 12 injury in this crash. I don't know who Dr. Schifini is but -- or 13 14 what he testified to, but I can say that the imaging, the scans that I've shown you and that I've been given 15 an opportunity to review do not show focal pathology 16 17 that is attributable to the accident of March 13th, 2009. 18 So if Dr. Schifini came in and talked to 19 these jurors and told them that, yeah, you know what, 20 she is injured -- she was injured, you disagree with 21 22 that? I wouldn't argue that she's injured. 23 argue -- or I would argue that there's no imaging 24

evidence to support the contention that there's imaging

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abnormalities that were caused by the accident of March 13th, 2009. I cannot find those, although I've looked hard.

- Q. So, Doctor, are you here to tell the jurors, to tell us that Margie was not hurt or just that there was no finding on the MRI that you could characterize as traumatic?
- A. There are no findings on any of the scans that could be characterized as traumatic. If she was hurt, she certainly may have been hurt. It could have been anything from a minor sprain to something more significant, but the imaging does not support that.
- Q. So you don't rule out the possibility that she, in fact, did sustain a internal disk disruption at L4-5 and 5-S1.
 - A. Please define an internal disk disruption.
- Q. Doctor, the intellectual battle, you're going to win it every time. Every time.
 - A. I don't know what you mean by that term.
 - Q. Her doctors testified that she had internal disk disruption.
- A. Internal disk disruption is is a term that has no causation attached to it. I could say that anybody, any one of you could have an internal disk disruption. That doesn't mean that it was caused by an

1	accident. You could have internal disk disruption
2	through the process that's what disk degeneration
3	is. It's the development of internal disk disruption
4	as the architecture of the disk breaks down.
5	Q. Doctor, how many people over 50 have
6	degeneration?
7	A. Probably the majority.
8	Q. What percentage of those people have fusions?
9	A. Very few.
10	Q. Okay. Without this automobile crash, to a
11	reasonable degree of medical probability, can you state
12	on a more likely than not basis that Ms. Seastrand
13	would have required the fusion surgeries that she had?
14	MR. JAFFE: Your Honor, if counsel wants to
15	get into this, that's fine, but he did not want to go
16	this far, and I believe this is now beyond the scope.
17	THE COURT: Come on up for a minute.
18	(Whereupon a brief discussion was
19	held at the bench.)
20	THE COURT: Go ahead. You want to reask it
21	or read it back?
22	MR. CLOWARD: Please read it back.
23	THE COURT: It says: Okay. Without this
24	automobile crash, to a reasonable degree of medical
25	probability, can you state on a more likely than not

1 basis that Ms. Seastrand would have required the fusion 2 surgeries that she had?

THE WITNESS: Based on my clinical experience and her rate of deterioration in both the neck and the lumbar spine, I predict that she would eventually require some type of intervention in her cervical and lumbar spine.

8 BY MR. CLOWARD:

- Q. When?
- A. I don't know. Depends on how she's managed.
- Q. Didn't you just spend about 45 minutes explaining how these were insignificant findings?
- A. No, I didn't say they were insignificant. I said they don't explain her clinical symptoms, which is very different.
- Q. Surgeons don't do surgery based on an MRI, do they?
- A. I hope they take them into consideration.

 Because you want good correlation. You want evidence, physical evidence that what you suspect is happening based on clinical exam is in fact supported by the imaging findings. If there's a discordance, then you need to look elsewhere to make sure that you're not missing other important things. And assuming that it's something in the cervical or lumbar spine as in this

1 case. 2 Q. Doctor, can you tell me one time where you've 3 ever asked one of your patients -- and this is 4 completely unrelated. Can you tell me one time where you've asked your patients to show you the property damage to their vehicle? 6 7 MR. JAFFE: Objection. Unrelated. 8 Irrelevant. 9 THE WITNESS: I don't really --10 MR. JAFFE: Hold on. 11 THE COURT: Sustained. 12 MR. JAFFE: Thank you. 13 THE COURT: There's been no testimony on anything having to do with that. 15 BY MR. CLOWARD: 16 Q. Doctor, do you ever call a biomechanical 17 engineer to tell you if someone's really hurt? 18 MR. JAFFE: Objection, Your Honor. 19 Argumentative. 20 THE WITNESS: I have not. 21 THE COURT: It's overruled on that basis. 22 BY MR. CLOWARD: 23 Q. Now, do you know who Ryan Neilsen is? 24 A. I don't know that person personally. 25 Q. What about Anthony Bruno?

1	A.	No.
2	Q.	What about Timothy Coshy?
3	A.	No.
4	Q.	Those are all interventional radiologists.
5	You say t	here's only a handful of you, maybe like 12?
6	A.	Yeah.
7	Q.	You don't so you don't know the other
8	the other	9.
9	A.	These are diagnostic interventional spine
10	radiologi	sts or they're anesthesiologists or physical
11	medicine a	and rehabilitation pain specialists?
12	Q.	Interventional radiologists.
13	A.	Interventional radiologists?
14	Q.	Yeah.
15	A.	And are they neurointerventional
16	radiologis	sts?
17	Q.	Yeah.
18	A.	Or spinal interventional. I don't know them.
19	Q.	Okay. And regarding the money to UCLA
20	A.	Yeah.
21	Q.	isn't it a fact that you have to report
22	the money	to UCLA because some of your colleagues at
23	the Spine	Institute got in trouble for not reporting,
24	and it was	s biasing their studies?
25	A.	No. We've always reported. We've always

turned our checks in. The checks that I receive for 1 today's testimony, they're not made to me. They're 2 paid to the UC Regents. And it's been that way for, 3 you know, years. 4 That's not what happened to Jeff Wang? 5 Q. Your Honor. Objection --MR. JAFFE: 6 THE WITNESS: I don't know who Jeff --7 Hold on. MR. JAFFE: 8 This is Your Honor, objection. 9 argumentative. It's well beyond the scope, and it's 10 irrelevant. 11 THE COURT: Sustained. 12 MR. JAFFE: Thank you. 13 BY MR. CLOWARD: Is it your belief on a more likely than not 15 Q. basis that Ms. Seastrand did not experience pain as a 16 result of this crash? 17 No, that is not correct. 18 You just believe that there's no -- nothing 19 Q. to correlate that on -- on the MRI there. 20 That is also not correct. 21 A. Well, explain that to me, then. 22 Q. For instance, the cervical MRI that she had 23 Α. on April 3rd, that shows reversal of the normal 24 cervical curve, even though the initial radiograph 25

Α.

ī showed a normal cervical curve. There's two possibilities: One, that's positional, she's laying on her back; or two, she had some spasm and could have had 3 a whiplash-type injury, that's perfectly possible, a soft tissue injury that's generally self-limited and is treated with physical therapy and anti-inflammatories, 6 7 et cetera. Doctor, can you point to this MRI here 8 Q. Okay. and tell us when that abnormality happened? Which abnormality are we referring to? 10 A. 11 Q. Let's go with the L5-S1. And what abnormality of the L5-S1 are you 12 A. 13 referring to? The dark disk. 14 Q. The low signal intensity on T2? 15 A. 16 Q. Sure. This occurred over the course of several 17 A. years, maybe more, in the past. I can't say more than 18 I know that it didn't occur in the last several 19 weeks, and it certainly probably didn't occur in the 20 last several months. Usually this degree of low signal 21 on T2 in the lumbar disk takes months, many months or 22 23 years to develop. 24 I'd like a date. When did it start? Ο.

I can't do that, as you know.

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1
             It's impossible, isn't it?
        Q.
             Yes. But I can give you time frames which
2
        Α.
   for clinical purposes --
3
             Doctor, the question --
 4
        Q.
             -- is just --
5
        A.
                                              It's
             -- the question was yes or no.
6
7
   impossible, isn't it?
             An exact date, yes, it's impossible.
8
 9
             You talked about predisposition.
                                                 Tell me
        0.
   what risk factors predispose Ms. Seastrand to being
10
11
   injured.
             MR. JAFFE: Objection, Your Honor.
                                                   Beyond
12
13
   the scope.
             MR. CLOWARD: He -- he -- predisposition,
14
   Your Honor, is his word, not mine.
15
16
             MR. JAFFE: Your Honor, it's --
                          Let him go. Overruled.
              THE COURT:
17
18
             MR. JAFFE:
                          Okay.
              THE WITNESS:
19
                            So what?
20
   BY MR. CLOWARD:
              You talked about -- when Mr. Jaffe was asking
21
        Q.
   you questions about people -- some people are
22
   predisposed to injury. So I would like to know what
23
   factors did Ms. Seastrand that predisposed her, made
24
25 | her more susceptible to injury.
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1	A. At what level? I don't know. I don't
2	understand your question.
3	Q. Let's talk about the neck.
4	A. Okay. So you're talking from an imaging
5	perspective, what factors are there?
6	Q. Sure.
7	A. That predispose her to injury, nothing
8	predisposes her to injury except having an injury or
9	time. That if you look at degeneration as an injury
10	over the course of time, then time predisposes her to
11	injury.
12	Q. So there are no specific findings on the
13	cervical MRI that predispose her to injury?
14	A. Yeah. I don't really understand what your
15	question is saying. What findings would would you
16	have in mind? I don't know what you mean.
17	Q. Doctor, you're the one that used the word
18	"predisposition." Okay? So I'm just trying to find
19	out what you meant by that.
20	Apparently, you don't understand that?
21	A. I don't understand your question.
22	Q. Okay. That's fine. We can move on.
23	As an interventional pain management doctor,
24	radiologist, you do injections, right?
25	A. Correct.

1	Q. Okay. So what how much medication do you
2	use when you're putting, like, an epidural for a
3	pregnant person?
4	A. For a pregnant person?
5	Q. Yeah.
6	A. I don't do these injections on pregnant
7	people.
8	Q. I know you don't, Doctor. But can you just
9	tell me based on your experience?
10	A. How much I would put in a pregnant person,
11	zero. I don't inject pregnant people because the only
12	way to do the injection is with fluoroscopy, and I'm
13	not going to radiate a pregnant woman. I would manage
14	her medically.
15	Q. Doctor, I understand that. I understand
16	that.
17	What I'm trying to find out is the amount of
18	medication, hypothetically speaking, if you were to
19	give a pregnant person an epidural during childbirth.
20	A. Oh, during childbirth. You mean as a for
21	the birth process.
22	Q. Yes.
23	A. That's
24	MR. JAFFE: Objection, Your Honor. That's
25	outside the scope.

1 THE WITNESS: Yeah. I don't do --2 MR. JAFFE: He's not an anesthesiologist. 3 THE WITNESS: I don't do anesthesia for 4 pregnant women. That's generally handled by 5 anesthesiologists, and I don't know how much they give. BY MR. CLOWARD: 7 Q. Doctor, do you agree with the general Okay. 8 statement that disks are stronger than the adjacent 9 bone? 10 A. No. 11 Q. If you rupture a disk in a car crash, do you 12 always have to fracture the adjacent bone? 13 A. No. 14 Ο. Doctor, there's been several doctors, 15 Dr. Gross, Dr. Schifini, Dr. Siegler, who talked about 16 the only way to determine whether a disk injury is from 17 a traumatic event is to do a special test, a special sequence that's done 24 to 72 hours after the acute 18 19 event. 20 Do you know what they would be talking about? 21 Α. No. 22 Q. So if they testified to that, you would 23 disagree? 24 A. Yes. 25 And, Doctor --Q.

1 MR. CLOWARD: Can we switch over, Judge, to 2 the ELMO. 3 BY MR. CLOWARD: Doctor, if -- if Dr. Siegler and Dr. Schifini 4 testified that just because there's no -- not trauma on 5 6 the X ray, MRI, or CT scan like blood or broken bone 7 does not mean that the person is not injured. Do you disagree with that statement, or do 8 9 you agree with that statement? This one right here. 10 Yeah, I don't know what the definition of their word "trauma" is. I would like to see a listing 11 of specific imaging findings, and then I would be 12 13 capable of answering this question. 14 How long did you go to school to become the Q. 15 interventional radiologist you are total? 16 A. Including undergraduate? 17 Ο. Sure. 18 A. That would be four years of undergrad. 19 four years of medical school. That's 8. Year of internship, 9. Four years of radiology residency. 20 21 That's 12. Then 2 additional years of fellowship. 22 And you don't know what trauma means? 23 Well, trauma is -- is a nonspecific term. A. I would need to have that definition -- that term 24 defined. 25

1	Q.	Okay. Doctor, you've never done a spinal
2	fusion, ha	ave you?
3	A.	No.
4	Q.	And when you come and testify in courtrooms,
5	90 percent	of the time is for defendants like
6	Mr. Khoury	y, correct?
7	A.	I don't know what the percentage would be,
8	but I have	e done work on both sides. The probably
9	the major:	ity is defense, but I also do plaintiffs.
10	Q.	Well, let me ask you this question: Have you
11	previously	y testified that 90 percent of the time when
12	you do th	is forensic work is for the defendants?
13	A.	I don't recall.
14	Q.	Now, you reviewed a lot of films in the case,
15	right?	
16	A.	Yes.
17	Q.	I want to go through some of those. You
18	reviewed	the MRI from April 3rd, 2009, correct?
19	A.	Correct.
20	Q.	You disagreed with Dr. Lewis, correct?
21	A.	I believe so.
22		MR. CLOWARD: Your Honor, may I approach the
23	witness?	
24		THE COURT: You may.
25		MR. CLOWARD: Do I need to get the original?

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ī
   Let me just ask him if this --
   BY MR. CLOWARD:
 2
              Does that refresh your recollection of --
 3
        Q.
 4
        A.
              It does.
              -- what percentage of work you do?
 5
        Q.
 6
        A.
              Yes.
 7
              It's about 90 percent for the defense?
         Q.
                    That was an estimate at that time, and
 8
         A.
              Yes.
   an it's an estimate now.
              Okay. Fair enough. Doctor, I apologize if I
10
         Q.
11
   was a little upset earlier.
              It's okay.
12
         A.
              So you -- you disagreed with the cervical
13
         Q.
   interpretation that Dr. Lewis provided, right?
14
15
         A.
              Yes.
              You, in fact, disagreed with the lumbar
16
   interpretation that Dr. Lewis did, correct?
17
18
         A.
              Yes.
19
              You disagreed with the lumbar MRI from
         Q.
   October 13th, 2009, that Dr. Pratidar did, correct?
21
   Page 5 of your report.
22
              Only in respect to some aspects.
         A.
23
              But you did in fact say that he
24
    overinterpreted the test, right?
25
              That's correct.
         A.
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1	Q. You also disagree with Dr. Muir's
2	interpretation of the same MRIs, correct?
3	A. Dr. Muir's interpretation did he prepare a
4	report?
5	Q. He's a treating physician.
6	A. Well, he's I think he basically went along
7	with Dr. Pratidar said.
8	Q. So you would disagree with him?
9	A. Yeah.
10	Q. Same thing with Dr. Gross, you disagreed with
11	him?
12	A. Dr. Gross does not disagree with my report.
13	He says that it's degenerative. He never contends that
14	it is degenerative. He recites the impressions
15	prepared by Dr. Pratidar, but I don't believe that he
16	contends that the changes are not degenerative. It's
17	in his report, all 29 pages of it.
18	Q. You disagreed with Dr. Gross, correct?
19	A. Yes. And his conclusions.
20	Q. You disagree with Dr. Khavkin, correct?
21	A. I don't recall what Dr. Khavkin said.
22	Q. Treating physician.
23	A. I don't remember specifically what you're
24	referring to.
25	Q. Sure. You disagree with Dr. Grover, correct?

1	A. You would have to tell me what I disagree
2	with. There are probably many things we do agree with.
3	You'd have to ask me a specific question so I can give
4	you a specific answer. It's not fair to ask me a
5	general question like that.
6	Q. Doctor, you wrote a report in this where you
7	set forth the doctors that you agreed with or disagreed
8	with, correct?
9	A. Yes. And I stated that specifically in my
10	report and why.
11	Q. Okay. I'd like to know your knowledge I
12	want to test your knowledge of Ms. Seastrand's playing
13	field or her baseline before the crash. Okay?
14	What restrictions did she have before the
15	crash
16	MR. JAFFE: This is
17	BY MR. CLOWARD:
18	Q due to her the neck and low back.
19	MR. JAFFE: Objection. This is outside the
20	scope, Judge.
21	MR. CLOWARD: I don't think it is, Judge. It
22	goes to clinical correlation which was allowed.
23	MR. JAFFE: His clinical correlation was of
24	the symptoms after the accident, sir.

Relative to the imaging.

THE WITNESS:

1 THE COURT: Come on up for a minute, guys. (Whereupon a brief discussion was 2 3 held at the bench.) THE COURT: Objection's overruled. 4 5 BY MR. CLOWARD: Doctor, were you provided any documents 6 Q. 7 before your testimony today? No. Just before my testimony? 8 A. 9 Q. Sure. 10 A. No. What are you referring to up there? 11 Q. Just notes that I wrote. Last night I 12 Α. prepared a little summary to help me refresh my memory 13 on the chronology of things, when the scan was done, 14 15 and so on. 16 Can I see that? Q. 17 A. Yes. 18 Thank you. Okay. Q. 19 So, Doctor, I'd like to know what 20 restrictions did Ms. Seastrand have before the motor vehicle accident? 21 22 I'm not aware. Α. 23 What were her pain levels and frequency Q. before the motor vehicle accident? 24 25 Α, I do know that in the months of October and

Α.

November of 2007, she reported to Dr. Kermani and 1 Dr. Leavitt, two different physicians, that she had low back pain. And I don't recall specifically what levels of pain were reported at that time, but she did report 4 those symptoms to doctors. 5 And were those primary complaints or were 6 Q. those incidental? 7 I don't know. They're part of her problem 8 Α. list as they are being listed. There's no order in 9 which they're presented. It says that the patient is 10 11 complaining of these things. 12 So fair to say that you don't know Q. Okav. what the pain level was on a scale of 1 to 10? 13 From memory, I don't recall if one was 14 Α. Some may have been given, but I don't 15 indicated. recall. 16 Fair to say you don't know what the frequency 17 Q. 18 was? 19 A. I don't have the direct documents in front of me to refer to that, so I couldn't tell you. 20 Doctor, can you state one record, can you 21 point me to one record where Ms. Seastrand reported to 22 the doctor where the primary or chief complaint of neck 23

pain or back pain between 1985 through March of 2009?

Well, I know that on -- in 2008, she had a

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cervical spine radiograph that was interpreted by

Dr. Hurvitz, H-u-r-v-i-t-z, I believe. And in order to

get an X ray, you need to see a doctor and presumably

be complaining of pain in the neck.

I don't have records of what it was that generated those X rays, but they were performed which implies that there was some problem with the neck. I don't know what that problem was. I can assume it was pain because her neck shows degeneration at C5-6 which can be painful.

- Q. You're assuming that that visit was for pain?
- A. I don't know why what the purpose of that visit was. I haven't seen any notes, so I can't tell you why she saw a doctor. But normally a patient can't get an X ray on themselves. They have to see a physician who then orders it. And generally doctors order X rays of the neck because a patient has symptoms, and the most common neck symptom is pain.
 - Q. Okay. Doctor, can I show you a record?
- A. Yes, of course.
- Q. This is from the 2008 neck visit that you're talking about. Can you -- can you read this right here? What does this say right here, Reason for visit?
 - A. Reason for visit. October 27th, 2008.
 - Q. Yeah.

	f	
1	A.	See gynecologist, routine physical.
2	Q.	No, before that. Requesting?
3	A.	Requesting heart check.
4	Q.	Oh, okay. Do you see anything in there about
5	the neck?	
6	A.	Can you show me the very end of the paper?
7	Q.	Sure. You bet, Doctor.
8	A.	Checked will no, not in the reason for
9	visit.	
10	Q.	Okay. And then right here, Doctor, what
11	would the	se be?
12	A.	These are checkmarks.
13	Q.	Those are findings for, like, physical exam?
14	A.	I don't know. Can you move the page over?
15	Q.	Which way?
16	A.	To there. Physical. Physical. And then it
17	talked ab	out an area, and then it talks about whether
18	it's norm	al or abnormal.
19	Q.	What was the finding for the neck?
20	A.	There is a mark there on the normal column.
21	Q.	So what would that tell you?
22	A.	Well, that this particular doctor had no
23	abnormal	physical exam findings when he saw this
24	patient.	I don't know that this is the doctor that
25	ordered t	he X ray.

1 Is -- do you have an order from this doctor 2 ordering the X ray? 3 You tell us, Doctor. Q. 4 A. Can you show me that? 5 You tell us, Doctor. You reviewed the 6 records, right? 7 A. I never saw an order. Yes. But some doctor ordered an X ray of this patient's neck and it wasn't because they were having their heart checked. You don't know the purpose of the 10 Q. Sure. 11 visit, do you? 12 The purpose of which visit? Α. 13 Q. Of that visit. 14 Α. Well, that visit that you just showed me was 15 for a heart check. 16 Okay. Q. 17 Α. And at that time, the doctor that examined 18 the patient found nothing in physical exam. It makes 19 no reference to complaints of the patient. Those are physical exam findings. 21 Sure. Doctor, can you tell me of a Q. Sure. 22 specific singular visit where the primary complaint for neck or back was made by Ms. Seastrand between 1985 and 24 2009?

I don't have all the records in front of me,

and I can't cite a special one to you from memory. 1 Because there are none. 2 Ο. I don't know if there are or are not. 3 Α. can say that, and you're perfectly entitled to, but I 4 5 cannot. Well, I'm sure if I'm not -- if I'm Q. 6 incorrect, Mr. Jaffe will correct me when I sit down. 7 Doctor, so after -- so here's a motor vehicle 8 Okay? So after the crash, what were her restrictions? 10 I don't recall what her restrictions were. 11 Α... Don't know? Ο. 12 No, I didn't say I don't know. I don't 13 I'd have to go through the medical records recall. 14 again and review that specific aspect of the record. 15 Well, I think it's important, Doctor. 16 want to take a minute to do that or --17 It's up to you. 18 As you sit here, you're unable to tell us, 19 Q. though, without checking? 20 I didn't specifically review the 21 Yeah. record for her restrictions after the motor vehicle 22 accident. 23 Okay. And you never talked to her, so you 24 Q. wouldn't know from your face-to-face consultation, 25

right? 1 I have not spoken with her or met her. 2 A. You haven't examined her? 3 0. That's correct. A. 4 Do you know whether there were any 5 Q. restrictions of her activities of daily living? 6 I don't recall from memory whether there 7 were. 8 Okay. Do you know what the average pain 9 level and frequency is after the motor vehicle 10 11 accident? They go up and they go down. I know that 12 they vary generally from 4 to about 8, occasionally 9. 13 And I have seen records before the accident, and I 14 don't recall exactly -- see if I wrote it down in my 15 little notes here. I don't recall from memory exactly. 16 But I remember pain levels around the range of 4. I don't know if that's an average pain level, a 18 19 maximum, or a minimum. What record was that that you were referring 20 0. 21 to? I can't tell you from the top of my head. 22 A. There were many records in this case. 23 Is it possible you were mistaken, and it's 24 Q. actually Dr. Lurie's, the first provider she went to? 25

A. I don't recall. Not that I have here in my little brief summary.

- Q. Okay. Doctor, you don't know how many visits she's had for the primary complaints of neck and low back pain after the motor vehicle accident?
- A. I don't know the exact number. I know it's been a fairly large number.
- Q. Okay. So my question is, Doctor: Without this motor vehicle accident, do you think that she would have still, on a more likely than not basis to a reasonable degree of medical probability, had a fairly large number of primary visits for neck and back pain after this crash without this crash?
- A. Well, we know that the accident could certainly have caused cervical and lumbar spasm. Right? Whiplash-type injuries. Those can last for significant amount of time, and those may require visits to the doctor to try different treatments, first conservative and then maybe more aggressive as time goes on. So these things are certainly possible, but they don't necessarily imply the severity of the injury or the nature of the injury.
- Q. How do you explain the fact that the instant that she got out of the surgery for her neck, she experienced a 90 percent pain reduction? How do you

25

1 explain that? 2 Objection, Your Honor. Calls for MR. JAFFE: 3 speculation. Outside the scope. Argumentative also. 4 THE COURT: I'm going to allow it. Overruled. 5 We know that the scan -- we 6 THE WITNESS: 7 reviewed the scan. We know that the scan shows significant degeneration at the C4-5 level, and that can be very painful. So if that C4-5 disk level is 10 treated, then it is certainly reasonable that her pain would improve. That does not imply causation with 12 respect to the motor vehicle accident. 13 BY MR. CLOWARD: 14 Is there any evidence that the pain that she was experiencing, the pain levels and the restrictions 15 16 and the treatment that she had after the motor vehicle 17 accident were also happening before the motor vehicle 18 accident? 19 A. I don't know because I don't know what the 20 indication for that cervical spine radiograph was on 21 October 27th, 2008. 22 Q. So, Doctor, is it just coincidental that 23 after she gets smacked from this motor vehicle accident

that she develops an immediate onset of pain and

continues to have problems until she has a cervical

fusion? 1 We just talked about what are the things can 2 A. cause neck pain, including spasm. If she has spasm, 3 that could cause pain from the instant the accident 5 occurs. Doctor, can you just tell us the total amount Q. 6 that you've charged for your time in this case? 7 I don't know. I don't have that with me. A. 8 9 Q. Thanks, Doctor. MR. CLOWARD: No further questions, Judge. 10 11 THE COURT: Redirect. 12 13 REDIRECT EXAMINATION BY MR. JAFFE: 14 Doctor, I'm going to be very quick. 15 testified that the scans show no injury; is that 16 17 correct? They show disease, but they show no focal 18 A. injury that I could attribute to the motor vehicle 19 accident of March 13th, 2009. 20 Do sprains and strains show up on X rays or 21 Q. 22 MRIs? 23 Α. No. 24 Do they show up on CT? Q. No, they may not. If you have severe spasm 25 Α.

of the muscle, if you have severe edema of the muscles, then that may show up as high T2 signal in the muscles.

And I looked for that in the front and in the back of the neck on both sides, and I did not see that. But sometimes patients have mild or moderate that could — may not show anything on the images in terms of spasm and could be causing lots of pain to the patient.

- Q. Doctor, if a disk if a car accident is severe enough to cause a disk to rupture, since the disk is enclosed within the bone, would you expect to see structural damage even though it might not necessarily be a fracture?
- A. In the vast majority of the cases, when there's a traumatic injury of sufficient force to rupture a disk, then in the vast majority of the cases, there are accompanying abnormalities that go along with that. Hematomas of the muscles, tearing of ligaments, the anterior/posterior longitudinal ligament, swelling of the muscles, et cetera, or displacement of the vertebra one relative to another. And I did not see those things.
 - Q. Including bony abnormalities --
- A. Including bony abnormalities which I looked for those as well.
 - Q. Doctor, did this accident cause the need for

1 her two surgeries? Not based on the imaging evidence provided to 2 A. 3 me for review. Nothing further. Thank you, sir. 4 MR. JAFFE: 5 THE COURT: Any more, Mr. Jaffe -- or Mr. Cloward? Sorry. 7 Yeah. I was just trying to MR. CLOWARD: 8 pull up my laptop. 9 10 RECROSS-EXAMINATION 11 BY MR. CLOWARD: Do you believe that in order to rupture a 12 13 disk in a car crash, you have to have a fracture of the 14 adjacent bone? 15 A. No. No further questions. 16 MR. CLOWARD: 17 FURTHER REDIRECT EXAMINATION 18 19 BY MR. JAFFE: 20 Have you ever performed biomechanical studies 21 to determine whether an accident severe enough to 22 rupture a disk will cause disruptions of the adjacent 23 bone? 24 Α. I have not. Would you defer to a biomechanic who's also a 25 Q.

medical doctor on that topic? 1 Absolutely, I would. 2 A. Thank you, sir. 3 Q. Nothing further. MR. JAFFE: 4 THE COURT: Any more? 5 I have one more question. MR. CLOWARD: 6 7 FURTHER RECROSS-EXAMINATION 8 BY MR. CLOWARD: Doctor, on this topic of the biomechanical 10 engineers, can you tell me one time in your practice, 11 one time, where you have called a biomechanical 12 engineer to tell you, a medical doctor, whether someone 13 was really hurt or not? 14 Well, we generally don't use them in medical 15 They're part of the legal arena. 16 practice. That's what I thought. 17 Q. Thank you. MR. CLOWARD: 18 I'll let it go. 19 MR. JAFFE: Ladies and gentlemen, any 20 THE COURT: questions for this doctor? We got at least one. 21 (Whereupon a brief discussion was 22 held at the bench.) 23 All right. Doctor, just one THE COURT: 24 Did you see any radiographs or MRIs done for 25 question:

Ms. Seastrand prior to her 2009 motor vehicle accident? 2 THE WITNESS: There was one cervical 3 radiograph from October 27 that I have in my report, but I could not find that film in my -- when I brought 5 my stack of films, and it's not entirely clear to me in 6 reviewing my report whether I actually saw those films 7 or was going from the report generated of those films 8 because it had been a long time. 9 THE COURT: Okay. Mark that Court's next in 10 order. 11 Any follow-ups? 12 MR. JAFFE: Nothing, sir. 13 THE COURT: Mr. Cloward? 14 MR. CLOWARD: No thanks. 15 THE COURT: Thank you, Doctor. Appreciate 16 your time. 17 THE WITNESS: Thank you very much. 18 THE COURT: Come back up for just one second, 19 guys. 20 (Whereupon a brief discussion was 21 held at the bench.) 22 THE COURT: All right, folks, trying to get 23 you out of here as soon as we can. So here's what I'm 24 going to do. Tomorrow, the attorneys and I -- I got a 25 morning calendar again in the morning. I'm going to

have the attorneys come back earlier so that we can
work out some stuff that we need to do without you.

I'm going to ask you folks to come back at noon
tomorrow. Just eat before you come, okay, so we can
start at noon and we don't have to take a lunch break.

I know that's a little bit inconvenient for you, and
we'll -- we'll take at least one break during the
afternoon, but it's not going to be an hour long. It
will be more like ten minutes. Okay? So be back by
noon tomorrow.

During our break this evening, 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

1 submitted to you. 2 See you tomorrow at noon. 3 THE BAILIFF: All rise. (Whereupon jury exited the courtroom.) 4 5 THE COURT: All right. We're outside the 6 presence of the jury. As far as scheduling, if you 7 guys get here by 10:30, I want you to look at the set of instructions that I gave to you today. Look at the 8 9 changes that I made to the ones that were previously 10 proposed because even some of the ones that you 11 stipulated to, some of those were preinstructions that 12 are not applicable at the end of trial, and there was I 13 know at least one that I had to change from future 14 tense to past tense so that it applied. I don't 15 remember what other changes that I made. But I mean, I 16 can go through that stuff with you guys tomorrow. 17 My hope is that we can go through jury 18 instructions between 10:30 and noon, have the 19 instructions ready for them by noon so that we can 20 instruct them and do closings tomorrow. 21 The reason I'm having them come at noon 22 instead of trying to get them here earlier is because 23 if we go earlier, we're going to have to take a lunch, 24 and I don't want to do a lunch in between closings. Ι 25 know you guys want to do one after the other, so ...

MR. JAFFE: Just go. 1 Any idea how long the closing 2 THE COURT: arguments are going to be? 3 I'm sorry, Judge. MR. CLOWARD: 4 I know she was talking to you THE COURT: 5 while I was asking. 6 Judge, I would expect that mine 7 MR. JAFFE: is probably going to be in the range of an hour. 8 How long for closing arguments? THE COURT: 9 To be honest, mine's going to MR. CLOWARD: 10 be a little lengthy. It's going to be probably an hour 11 and a half, and my rebuttal will be probably at least a 12 half an hour. I need to walk through everything. 13 So you're looking at two hours THE COURT: 14 which probably means two and a half, and you said an 15 hour, which means an hour and a half. 16 I won't be an hour and a half. MR. JAFFE: 17 MR. CLOWARD: It's an hour multiplier, Judge. 18 MR. SMITH: Your Honor, just so I'm entirely 19 20 clear. Sorry. Let's finish this, and he'll do 21 MR. JAFFE: 22 that. I guess the question is: THE COURT: 23 Assuming we don't get done within -- instructions and 24 closing arguments until sometime between 4:00 and 5:00, 25

I would usually leave it to the jurors to decide 1 whether they want to stick around, especially because 2 we told them they would be done tomorrow. But I'm not 3 I would rather let going to let them stay too late. them go for a little while, maybe 6:00 or 7:00 and then 5 probably bring them back the next day. I don't like 6 the jury deliberation all through the night. 7 If they decide they want to, MR. JAFFE: 8 would you allow them to? 9 THE COURT: Probably not. Not -- not into 10 the middle of the night. We've done that once or 11 twice, and it just -- not only does it create an overtime problem for us, there has -- it requires 13 additional people in the building later than it should, 14 including janitorial people, security people. 15 I understand, sir. MR. JAFFE: 16 So I would prefer not to go super THE COURT: 17 So the earlier we get done, the more time it 18 gives them to deliberate. That's all I'll tell you. 19 But after about 7:00 o'clock, I think I probably will 20 call it and have them come back Friday. 21 Now, I believe that the only two people 22 originally that said that they had trips planned that 23 we were going to have to accommodate --24 One of them I think was already MR. JAFFE: 25

kicked off. 1 I think were Mr. Unger and 2 THE COURT: Ms. Brown, and I think they're both gone, right? 3 I think so. Yeah, they're both MR. JAFFE: 4 Brown was dismissed for cause and Unger was 5 stricken. 6 7 THE COURT: I don't believe anybody else had an issue, but that's not to say that we won't hear 8 9 about an issue if we go later than what we told them. 10 MR. CLOWARD: Sure. Okay. Judge, I have two 11 MR. JAFFE: additional exhibits that I would like to mark. 12 Exhibit YY, which are another set of records from 13 Southern Nevada Surgery Center. And then plaintiffs' counsel had indicated that the -- all the MRIs and 15 films were marked and moved into evidence. I just, out 17 of an abundance of caution, have marked as ZZ1 and ZZ2 copies of the disks of the films that Dr. Villablanca 18 19 testified as to during his testimony. So I would like to mark those and move those into evidence, again, just 20 21 out of an abundance of caution more than anything else. You said YY? 22 THE CLERK: YY are the records from Southern 23 MR. JAFFE: Nevada Surgery Center. I don't have an XX submitted. 25 THE CLERK:

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1
              MR. CLOWARD:
                            Your Honor --
 2
              MR. JAFFE:
                          Didn't we have an XX?
 3
              MR. CLOWARD:
                           We would object to YY.
                                                    I don't
 4
   know why it's being moved in. We've already moved it
 5
   in.
 6
              MR. SMITH:
                          In part.
                                    There were parts
   missing.
             That's why we're moving it in.
 8
             MR. CLOWARD: What parts?
 9
             MR. SMITH:
                         December 9th, 2009, records.
10
             MR. JAFFE:
                          The injections that we referenced
11
   today were not in plaintiffs' copy of the Southern
12
   Nevada surgery Center records. I want those in front
13
   of the jury.
14
             And then we -- then, like I said, just to
15
   play it safe --
16
              THE COURT:
                         Hold on. Hold on.
                                              Hey, guys,
   one at a time. We're still on the record. Okay?
17
18
             MR. JAFFE: And then like I said, I got ZZ --
19
   I've only got one set of ZZ1 and 2. It's the copies of
20
   the disk we have. We can certainly produce additional
21
   copies if counsel would like, but it's the only copy I
22
   have here today.
                     I just --
23
             THE COURT: You think you've already admitted
24
   it.
25
             MR. CLOWARD:
                            The films?
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1 MR. JAFFE: Yeah. 2 THE COURT: Yeah. 3 Yeah, I believe so. MR. CLOWARD: have a problem with the film. I just have a problem 4 5 with YY, because those records are contained within Belsky's. So if he's doing it separately, then that 6 7 implies that we didn't -- you know, that we didn't include something that should have been included. 8 9 MR. JAFFE: Judge, they were not included in 10 Belsky's. There was a preoperative report and a 11 postoperative report talking about -- about pain 12 interpretations --13 THE COURT: Okay. Here's the thing: If it's a couple of pages, can't we just add those couple pages 14 15 to already admitted exhibit, make it more complete? 16 I have no problem just -- doing MR. JAFFE: 17 that, but the problem is when my -- my paralegal sent 18 them down today, she made a copy of the whole chart, 19 and those two pages -- I can excerpt those out from 20 there, those two pages, and I'm fine admitting just 21 those two as Exhibit YY. 22 THE COURT: Or just add it to another exhibit 23 that you're saying that they aren't part of that they 24 should be, right? 25 Well, see, that's just the thing MR. JAFFE:

because the Southern Nevada Surgery Center records, 1 counsel's saying their part of Belsky's records. 2 They're actually in neither. So I wouldn't even know 3 which one to add it to. So I'd just like to make it a 4 5 separate exhibit. MR. CLOWARD: We pulled it out of our binder 6 7 and put it on the ELMO. MR. JAFFE: ZZ1 and 2. 8 Guys, here's the 9 THE COURT: All right. As far as YY is concerned, I don't want to 10 duplicate a bunch of records. So why don't you talk to 11 Mr. Cloward once we're off the record and find out 12 where they are in his records, and if they're in his 13 records, we don't need to make a new exhibit. 14 15 MR. JAFFE: I fully agree, sir. THE COURT: Fair? 16 MR. JAFFE: Fully agree. 17 18 THE COURT: If they're not in his records, 19 but he can tell you where they're supposed to be and they for some reason didn't get copied when the records 20 were copied, let's just insert them in the record where 21 22 they belong. I prefer to make them a new 23 MR. JAFFE: 24 exhibit, if it's all right, sir. Well, let's see if they're 25 THE COURT:

1 already there. MR. JAFFE: If they're not there, I -- if 2 they're there, I fully agree. 3 I don't know that it's THE COURT: 4 appropriate to allow it to be a separate exhibit so you 5 could argue to the jury that they pulled something out of a record when it arguably just gotten inadvertently left out. 8 Here's the problem, Judge: MR. JAFFE: Okay. 9 That has happened with so many other providers that we 10 have marked and already moved records in on, that one 11 it's -- it's not a one-time thing. 12 MR. CLOWARD: I'll bring my staff down who 13 prepared -- I'll get on the stand right now -- I'll get 14 on the stand right now, on my daughter's life, I didn't 15 remove any record, like he's suggesting, and -- and 16 it's -- it's really getting quite offensive. 17 I mean, it's like --18 THE COURT: Quit, guys. 19 it's like this is my little kids fighting. Let's just I mean, work together, get the get the trial done. 20 I mean, I don't care what the exhibit records in. 21 number or letter is, let's just get the exhibits in so 22 that the jury can see them and don't fight about it. 23 24 Just get along. Let's go. Is there anything else we need to do outside 25

1 the presence? Yes, Your Honor. I just wanted 2 MR. SMITH: to seek clarification. The jury instructions that we 3 have on our table that came in this morning included 4 two copies of the instruction to the jury. I presume that's the stipulated ones you've made your changes to? 6 7 THE COURT: Some of them are stipulated. 8 Some of them were not. Okay. And then there was a 9 MR. SMITH: separate stack of plaintiffs' disputed jury 10 instruction, so that's why --11 THE COURT: Didn't give you those. 12 Those weren't from you. 13 MR. SMITH: The two sets that I gave you 14 THE COURT: No. include most of the stipulated ones. It may include 15 some other ones. I know that I rearranged them because 16 l the order that they were in did not make sense to me. 17 So you're going to have to compare them to the sets 18 that you provided to me, and we can go through the 19 20 changes tomorrow. 21 MR. SMITH: Fair enough. I just -- just for your staff, 22 MR. CLOWARD: I put in past loss of household services and future 23 household services. 24 25 THE COURT: I saw that.

1 MR. CLOWARD: Do you want this? It just 2 might shortcut things if they do that tonight. However 3 you want --4 THE COURT: This is a separate instruction or 5 on the verdict form? 6 MR. CLOWARD: Just on the verdict form, and 7 then also they're in one of the instructions itself. 8 THE COURT: Okay. Let me take a look at it. 9 Anything else? 10 MR. JAFFE: Just, Your Honor, like I mentioned before at the bench, will Your Honor allow us to take notice of the documents that we disclosed and 12 13 when we disclosed them? And it was on the list that I provided the Court this morning. It's consistent with 15 the 16.1 and 16.1(A)(3) disclosures that we lodged with 16 the Court the other day. 17 THE COURT: Let me just make sure I 18 understand the -- the intention of this. 19 MR. JAFFE: Yes, sir. 20 As far as taking judicial notice THE COURT: 21 of the dates that certain things were filed or --22 MR. JAFFE: Disclosed. 23 THE COURT: -- I don't have a problem taking 24 judicial notice of that. If you're planning on showing 25 these 16.1 productions --

1 MR. JAFFE: I'm not. 2 THE COURT: -- to the jury for some reason, 3 there's a problem. No, I'm not showing that. MR. JAFFE: 4 5 want it on the record when records were disclosed. 6 THE COURT: Do you have a problem with that, 7 Mr. Cloward? MR. CLOWARD: Well, I do have a problem with 8 it, and here's the reason why: I know why he's making 9 the argument. He's trying to make the argument that, 10 11 hey, Ms. Seastrand didn't provide us with information, you know, we obtained things, and that's why we didn't 12 13 get them to the experts, and that's why the experts 14 weren't provided the information, so that's why they 15 didn't review those documents. Two fundamental problems with that: 16 17 when I asked for a release, instead of giving them a specific release, we gave them a blanket release, which 19 we hardly ever do. The second thing is before the lawsuit was even filed, we gave them all the records. 20 21 So to now try and make the argument that, 22 hey, you know, we didn't get a release or we didn't get 23 records until a certain time so I want to take judicial 24 notice so I can tell the jurors that, hey, Mr. Cloward 25 didn't provide us this, that's unfair. Because that's

```
1
   not the truth. That's not what happened. We gave them
   a blanket authorization, and in our demand packet
2
   here's all the records.
                          Is that what you're going to try
 4
              THE COURT:
 5
   to use them for?
                         That Mr. Cloward didn't give
 6
             MR. JAFFE:
   these to us? No, I'm not arguing that at all.
 7
                          That the plaintiff didn't give
 8
              THE COURT:
 9
   them to you?
                          That they didn't give them to me?
10
             MR. JAFFE:
   No, I'm not making that at all. That's not my
11
              I have no intention of using it that for
12
13
   purpose.
                          I would hate to have to get into
14
              THE COURT:
15
   the insurance issues --
                          Trying not to establish --
16
             MR. JAFFE:
17
              THE COURT:
                         One at a time.
18
             MR. JAFFE:
                          Sorry, sir.
19
                          I would hate to have to get into
              THE COURT:
   the insurance issues for the purpose of establishing
20
   that a medical release was provided to somebody prior
21
22
   to initiation of a lawsuit to allow you to get records.
23
                          Not my intention, sir.
              MR. JAFFE:
24
              THE COURT:
                          That's not going to be the issue?
25
                          Not at all.
              MR. JAFFE:
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1	THE COURT: Okay. Then I'll I'll take
2	judicial notice of the dates that the documents were
3	filed. You gave me a list.
4	MR. JAFFE: I provided a copy of the list to
5	the Court this morning.
6	THE COURT: Okay. And you made this a you
7	gave a copy of this to Alice?
8	MR. JAFFE: I gave a copy to counsel before I
9	provided it to the Court.
10	THE COURT: All right. We'll mark it as a
11	Court's exhibit.
12	MR. JAFFE: Thank you, sir.
13	THE COURT: Anything else?
14	MR. CLOWARD: Thanks, Judge.
15	MR. JAFFE: Nothing, sir.
16	THE COURT: Thanks, guys. See you tomorrow.
17	Come at 10:30.
18	MR. JAFFE: Yes, sir.
19	MR. CLOWARD: 10:30.
20	THE COURT: Off record.
21	(Thereupon, the proceedings
22	concluded at 4:58 p.m.)
23	
24	
25	

1	CERTIFICATE OF REPORTER
2	STATE OF NEVADA)
3) ss: COUNTY OF CLARK)
4	I, Kristy L. Clark, a duly commissioned
5	Notary Public, Clark County, State of Nevada, do hereby
6	certify: That I reported the proceedings commencing on
7	Wednesday, July 24, 2013, at 9:06 o'clock a.m.
8	That I thereafter transcribed my said
9	shorthand notes into typewriting and that the
10	typewritten transcript is a complete, true and accurate
11	transcription of my said shorthand notes.
12	I further certify that I am not a relative or
13	employee of counsel of any of the parties, nor a
14	relative or employee of the parties involved in said
15	action, nor a person financially interested in the
16	action.
17	IN WITNESS WHEREOF, I have set my hand in my
18	office in the County of Clark, State of Nevada, this
19	5th day of May, 2014.
20	
21	Kristin Christ
22	KRISTY L CLARK, CCR #708
23	
24	
25	

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,

Supreme Court Case No. 64702

Appellant,

Supreme Court Case Electronically Filed Nov 13 2014 08:24 a.m.

11

Supreme Court Case Nrage K2 Lindeman Clerk of Supreme Court

VS.

MARGARET SEASTRAND,

Respondent.

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 XVII

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VOLUME XVII Exhibit 40 July 24, 2013, Reporter's Transcript of Jury Trial, JA-3029-3130 (Day 8), Pages 209-310 July 25, 2013, Reporter's Transcript of Jury Trial, (Day 9, am) Exhibit 41 JA 3131-3200