CASE NO. A-11-636515-C

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DISTRICT COURT

CLARK COUNTY, NEVADA

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MARGARET G. SEASTRAND,

Plaintiff,

vs.

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

Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE JERRY A. WIESE, II

DEPARTMENT XXX

DATED THURSDAY, JULY 25, 2013

REPORTED BY: JENNIFER O'NEILL, RPR, NV CCR #763

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LAS VEGAS, NEVADA, **THURSDAY, JULY 25, 2013;**

10:35 A.M.

P R O C E E D I N G S

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THE COURT: Let's go on the record. We're on the record in Case No. 636515. We're outside the presence of the jury to discuss jury instructions.

Have you guys looked through the set that I proposed yesterday?

MR. HALL: I have, Your Honor.

MS. BRASIER: Yes, Your Honor.

THE COURT: You haven't?

MR. HALL: I have.

THE COURT: You have. Okay. Here's what I want to do. I just want to go through with you the set that was submitted to me as the stipulated set. I want to tell you the ones that I made changes to and the ones that I...

MR. HALL: I think I saw them all, and I don't think we had any problems with the changes you made.

THE COURT: The second one that was proposed, You are admonished that no juror should declare to a

fellow juror, that's a preinstruction so I took it out.

The trial will proceed in the following order, that's a preinstruction.

MR. HALL: Okay. But the admonish one is in your set too right now, right?

THE COURT: It's different. I don't think so.

MR. SMITH: You must be looking at the wrong ones.

THE COURT: It was the second proposed instruction that you submitted in your stipulated set. I took that one out.

MR. HALL: I got it. I'm sorry, Judge.

THE COURT: Okay. And then a few more down, there's one that says, The trial will proceed in the following order. That's a preinstruction. I took that out.

The next one, Your purpose as jurors is to find and determine the facts. I made some changes to that one in the second paragraph to make it past tense as opposed to future tense.

MR. HALL: Okay.

THE COURT: I just want to make sure. I don't want to try to pull something over on you guys.

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.

Again, let me remind you until the case is submitted to you, that's a preinstruction. I took it out.

We get to one that says, There are two kinds of evidence: Direct and circumstantial. In your stipulated set there was a second paragraph. I took the second paragraph out because that's a preinstruction.

MR. HALL: Preinstruction.

MS. BRASIER: Okay.

THE COURT: You never had a judge go through the instructions like this ahead of time, have you?

MS. BRASIER: I know. It's nice.

MR. SMITH: But you told us you never had the instructions ahead of time, right?

THE COURT: That's true.

MR. CLOWARD: That's just when it dealt with me, right, Judge?

THE COURT: There's one that's towards the back. It's about five or six up from the back. I am further instructing you that you are not to consider the legal fees and costs. I changed the language to

that one.

Do you see the one I'm talking about?

MS. BRASIER: I do. I don't have any problem with that change, Your Honor.

THE COURT: The change -- the way I changed it, I changed it to read: You are not to consider the legal fees and costs which a party may owe. Attorney's fees and costs are not elements of damages and you may not consider whether they should be included as an element of your award.

MR. SMITH: How does it start, Your Honor? You are not --

THE COURT: You are not to consider. I took out the "during your deliberations" that you had in there. Okay?

MR. SMITH: Yes.

MS. BRASIER: That's fine.

THE COURT: Otherwise, your stipulated set was fine. I didn't make any additional changes.

MS. BRASIER: Your Honor, we did propose yesterday some changes to the damages instruction to add the household services damage and the verdict form to add the --

THE COURT: I saw that.

MS. BRASIER: -- household services.

THE COURT: The instructions I got back from Mr. Cloward yesterday with little tabs on them -- there's an instruction about two-thirds of the way through that says, When I use the word negligence.

You guys want to turn to that one.

MR. HALL: I'm sorry, Judge. Which one?

THE COURT: About two-thirds of the way through my set. It starts, When I use the word negligence.

MR. HALL: How are you finding them so fast?

MS. BRASIER: I had that one tabbed.

MR. SMITH: Is this one of the ones that the plaintiff gave yesterday?

THE COURT: No. It's in my set.

MR. HALL: Yes. I have it. I'm sorry.

THE COURT: I have a little note here from Mr. Cloward, why is this one necessary?

Generally, we -- in the past if you look at the old jury instructions, which I like better than the new ones still --

MR. HALL: Absolutely.

THE COURT: -- the old jury instructions had an introductory instruction saying, Plaintiff seeks to establish a claim of negligence. I will now instruct on the law relating to that. And you go -- you went

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 because one of the elements of negligence was 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 clarity on whether or not we were admitting fault. And once that happened, you know, it became arguably unnecessary.

THE COURT: And if you both agree that this one should come out, I'll take it out.

MR. HALL: Take it out.

MS. BRASIER: Yeah, I would like to take it out. We had a proposed one that we submitted yesterday that we would like to put in place that just reads: In order to establish a claim of negligence, plaintiff, Margaret Seastrand, must prove the following element by a preponderance of evidence. And then it just lists that Raymond Khoury was -- his negligence was a proximate cause.

THE COURT: I'm sorry. Hold on one second.

I'm trying to -- I want to change these in my -- on the computer as we're going. I took that one out.

Do you want to put a different one in its place?

MR. HALL: We've got one. Should we combine that into two -- or just combine that into one?

MS. BRASIER: That would be fine.

MR. HALL: That one being the first one. See if these work for you, Judge.

THE COURT: It is admitted that Raymond Khoury was negligent in causing the collision of March 13, 2009. In order to establish a claim of damages against --

MR. HALL: A claim for damages, Your Honor.

THE COURT: -- a claim for damages against Raymond Khoury, plaintiff Margaret Seastrand must prove the following elements by a preponderance of the evidence: One, that defendant Raymond Khoury's negligence was a proximate cause of damage to Margaret Seastrand.

MR. HALL: Maybe we don't need to do "the following." But say "in order to establish a claim for damages, he must establish," without saying semicolon and one.

THE COURT: Must prove that defendant Raymond

Khoury's negligence was the proximate cause.

MS. BRASIER: That's fine, Your Honor.

THE COURT: All right. I will do this in a minute. I'm going to just do this first.

We'll add that one.

MR. HALL: Yes.

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 admitted liability?

THE COURT: Sure. Are you okay with that, Mr. Hall?

MR. HALL: Yes.

THE COURT: All right. And then I had a couple more down, In determining the amount of losses, if any, suffered by the plaintiff. The plaintiff wanted to add past loss of household services and future loss of household services.

MR. HALL: Let me get to that one real quick, Judge. Right.

The future one should be discounted to present value. Did they include that?

THE COURT: No, but it should. Okay.

The only other suggestion I got yesterday was to include the past and future household services on

the verdict form. We'll talk about that in a little bit.

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 present value. I don't believe that's supported by the case law.

THE COURT: The future pain and suffering?

MS. BRASIER: Yes. That that needs to be discounted to present value.

THE COURT: Is there case law that says otherwise?

MS. BRASIER: There is, Your Honor.

MR. HALL: I'm sorry. What are we arguing about, Your Honor?

THE COURT: The future physical, mental pain, suffering, anguish, and disability. She says that shouldn't be discounted to present value.

MR. HALL: Which case is that? I read that case yesterday.

MS. BRASIER: Porter v. Funkhouser. It's 79 Nev. 273, 382 P.2nd 216. It's a 1963 case out of Nevada.

THE COURT: Do you agree with that, Mr. Hall? Should I take out the discounted to present value?

MR. JAFFE: I need to see that. I researched this.

MS. BRASIER: This is -- sorry -- my summary of different cases.

MR. HALL: Sorry. I need to take a look at 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 present value. I think it's ambiguous. I really do.

I did find cases saying that future disability should be discounted to present value. But I've got to be honest, I think the law -- like her, I saw a case that -- there's a case out there -- and I don't know if it's the one she's citing -- where there's an assignment of error brought up to the Nevada Supreme Court, and the error is that they didn't discount future pain and suffering to present value. And the Supreme Court said -- it's an old case. It might be that one -- said, no, that's not enough of an error that we're going to throw it back.

I didn't read it to say that the supreme court was saying you don't have to. So I think they did say the law.

THE COURT: I guess my concern -- I think she's probably right because as it relates to future

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.

MR. HALL: Right.

THE COURT: When you're talking about future pain and suffering --

MR. HALL: You can't discount the pain.

THE COURT: -- you can't put a number on it because there's --

MS. BRASIER: There's no number being offered yet.

THE COURT: -- there's nobody to discount it because you don't know what the number is.

MR. HALL: Okay.

THE COURT: Right?

MR. HALL: Yes. That's right.

THE COURT: So I think you're right. I think we take out the discounted to present value on that.

MS. BRASIER: Was there an objection to adding the household services to that?

MR. HALL: No, but those clearly are discounted. The law is clear on that.

THE COURT: The future?

MR. HALL: Yes.

MS. BRASIER: And I don't have a problem with that.

THE COURT: All right. So that's all of mine. Let's go with additional jury instructions that the plaintiff is proposing.

MS. BRASIER: Sorry, Your Honor. I had everything in order and then started pulling stuff.

THE COURT: That's all right.

MS. BRASIER: Let me just get everything together.

MR. HALL: Just to cut through some things, Judge, we are withdrawing our objection to the instruction on mortality tables.

Didn't you have one in there in yours, in your set?

MS. BRASIER: It's the life expectancy.

THE COURT: I think there's one in there.

MR. HALL: Yes, there is. Are you withdrawing that one?

MS. BRASIER: It's already included so if you're not objecting.

MR. HALL: We're not. So we're withdrawing any objection to that one, Judge.

THE COURT: Okay.

MR. HALL: And the next two of theirs in

their modified form, we allowed in.

THE COURT: Okay. Hold on a second.

MR. HALL: I'm sorry.

THE COURT: You got to -- you got to point me to what you're looking at. Okay.

I see what you're looking at. Plaintiff's proposed jury instructions. The first one was a table of mortality. I think I already put that in there.

MS. BRASIER: Yes.

MR. HALL: Right.

THE COURT: There's already one on read-backs in there, I think.

MR. HALL: Judge, let me just say, I didn't see that in yours.

THE COURT: No?

MR. HALL: Did you see read-backs?

MS. BRASIER: I think there was one but I could be wrong.

MR. HALL: I, frankly, have always found that was a nightmare. I really just don't like to have it in there but if it's already in there, I don't have any objection.

THE COURT: It's the third one from the back in my set. I'll take it out if you both want to take it out.

MR. HALL: How do you feel about that?

I hate that. I mean, one of these jurors starts wanting to read stuff back, it delays -- I've had cases go three days because they want to read stuff back. I'd rather take it out, but I'll leave it up to these guys.

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 had some kind of question.

THE COURT: Okay. You're okay with leaving it in?

MR. HALL: Yes.

THE COURT: All right. Let's leave it in.

The next one that they propose: If you find that plaintiff suffered injury as a result of the defendant's negligence, you must award reasonable and fair past and future pain and suffering damages. Based on the Drummond versus Mid-West case.

What do you think about that one, Mr. Hall?

MR. HALL: Two things. First of all, I certainly disagree with the portion that says they must award future pain and suffering.

The Drummond case is a case where a guy lost his arm. The jury came back and said, well, you know,

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 --

THE COURT: Here's the question: If because of the fact that there was no dispute that she at least suffered sprains and strains even from the defense experts, does that warrant the giving of this instruction because there is at least a stipulated -- there are some damages that seem to be stipulated.

MR. HALL: Two points about that. The main point I'm making is, Judge, if you read that, the point I'm most strenuously objecting --

THE COURT: Is the futures.

MR. HALL: Right.

THE COURT: I know.

MR. HALL: And the jury is absolutely entitled to come to the conclusion there's no future damages at all. If they get this instruction, I mean, they're going to think they have to side with the plaintiff's theory of the case. If you tell them you must award future damages and they believe it's a sprain, they're going to wonder what to do.

But let's go back to your first question. This type of instruction has never been approved, and I think -- I couldn't find it. But what these cases talk about is exactly that where -- when the jury commits nullification or they just disregard the instructions you gave -- the judge gave. That's what these cases

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

might have duplicates of those two.

THE COURT: I've got some other proposed ones that look like I got yesterday, but I think we've already discussed them all.

You gave me two new ones today?

MS. BRASIER: I did, Your Honor.

THE COURT: I don't know what I did with them.

What are the new ones?

MS. BRASIER: The first one is just an extension of the ones that defense have proposed regarding request for admissions. They proposed a much longer one than Your Honor included in his set. But they didn't include a full statement of what the rule actually says so we're just asking to include the additional language so the jury has a complete understanding of what the rule is regarding the request for admissions.

THE COURT: Hold on. I have it here.

MR. HALL: Judge, I'm at a disadvantage on these last two because I just got them this morning.

THE COURT: So did I.

MR. HALL: So I just want to see them.

THE COURT: Well, let's look at the first one because the first one talks about a preexisting

condition, right?

MR. HALL: Okay.

MS. BRASIER: Sure.

THE COURT: If plaintiff suffers from a preexisting condition, in order for plaintiff to 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 damages between preexisting and the motor vehicle accident.

MS. BRASIER: Your Honor, that's based on the Kleitz case and a number of cases.

THE COURT: The Kleitz case actually talked about two different accidents.

MR. HALL: Thank you.

THE COURT: I know that case real well. There was two accidents that happened in a short period of time and in the Kleitz versus Raskin case, the Court said that if -- because the doctors were unable to apportion, if the doctors came in and said that both accidents contributed to the injury and they were unable to apportion it, then the burden shifted to the defendant to apportion between the two accidents. Right?

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 any aggravation of a preexisting condition or disability resulting from the injury even if it made them more susceptible.

This is the plaintiff instruction but I think it addresses the same thing except for the shifting the burden of proof, right?

MS. BRASIER: I agree with you. You know, their whole argument this whole time has been she's had this pain for all these years since this accident in the 1980s. If they weren't saying that, if they weren't trying to point it back to this accident 24 years before, then I think it would be a different situation but that's been -- that's been the theme is that since 1985 she's been having this pain so it was caused by this accident 24 years prior.

MR. HALL: Okay. Real quick, Judge. Again, I got this this morning but I've already read this one like 30 times, including the Ninth Circuit leaflet. I'm going to have e-mailed to me right now a federal U.S. published U.S. District Court case that held that Kleitz means exactly the opposite of what they're trying to do in this case which is the burden shifting to us.

If you follow Kleitz, Judge --

MR. CLOWARD: Is it the Schwartz v. State Farm case?

MR. HALL: Yes, it is.

MR. CLOWARD: We'll withdraw this. I understand. We'll just withdraw this. That's fine. I agree.

THE COURT: Okay. All right. So this one is withdrawn.

The next one I have proposed by the plaintiff is the request for admissions one.

MR. HALL: I may agree with this one, Judge. I just need to compare it with what we submitted.

How is it different than ours?

MS. BRASIER: It adds -- I don't know where yours is.

MR. SMITH: I have ours right here, Mike.

MS. BRASIER: It adds the rest of the rule to it. You guys had whited out the rest of the rule.

MR. SMITH: So it's this last section right here that says if -- no, sorry. The last section right here that says --

MS. BRASIER: I just added the rest of the paragraph. You guys had it whited out on yours.

MR. SMITH: I remember there was a reason why 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

those responses and they're trying to impeach her on that but that's what the rule allows. And, you know, Rick pulled me aside yesterday --

THE COURT: I like it.

MR. CLOWARD: I'm done.

THE COURT: I think it should be allowed.

MR. HALL: The whole --

THE COURT: The whole thing. If you're going to just question whether or not we're going to allow the last sentence to be included, I think it -- I think we include it out of an abundance of caution.

MR. SMITH: Fair enough.

THE COURT: So that takes care of all the plaintiff's proposed, right?

MS. BRASIER: Yes, Your Honor.

THE COURT: Let's find the defendant's proposed that are not agreed to.

MR. SMITH: Your Honor, if I can approach, there's one other one that we came with today. I've given a copy to counsel as well.

THE COURT: All right.

MR. SMITH: There is a cited and an uncited version there for you.

THE COURT: Okay.

MR. CLOWARD: Which one is that?

MR. SMITH: Statute of limitations.
THE COURT: Statute of limitations?
MS. BRASIER: I don't have an objection, but I don't know why we need to include it.
MR. HALL: Yes. I mean, there's a lot of --
THE COURT: I don't get it.
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 investigated, whether we should have had our doctors look at the plaintiff.

And for that reason, one of the things that I know Steve wants to get into during trial is setting up this notion of, look, we didn't get this case. It was filed almost two years after this thing happened. By then there had already been these surgeries so we didn't have the opportunity to do the things they're telling us we should have done. So that's why we want that instruction in there.

MS. BRASIER: Well, I think that --
THE COURT: I think that's already come out.
MR. HALL: The two-year statute of limitations?
THE COURT: Not the statute of limitations

but that the case was filed years after the accident.

MR. HALL: Right. Well, I mean, he wants it 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 confusion by including it.

MS. BRASIER: Yeah. When I first read it, I kind of got concerned did we file it too late or what's, you know. But, yeah, I don't see why the jury would need to know that if it's not an issue.

THE COURT: I don't like it. I think it confuses the jury and it implies that there may be some issue about when the plaintiff filed the case.

MR. HALL: All right, Judge.

MR. SMITH: Just then for clarification, Your Honor, will the Court take judicial notice of the two-year statute of limitations so that when -- while Mr. Jaffe is explaining the timing of events he can reference the fact that they had two years to file their lawsuit?

THE COURT: Are you going to object to that?

MR. CLOWARD: As long as we can talk about

how we provided Mr. Khoury with a demand packet with all the medical records and a release, that's fine. Sure.

MR. HALL: He said that, right? He said that in open court, right?

MR. CLOWARD: No.

MR. HALL: Well, you know, that's going to open a whole can of worms of insurance and things like that, so no.

THE COURT: We don't want to get into the insurance thing but the case is filed when it is.

MR. SMITH: The statute of limitations --

THE COURT: The statute of limitations is two years for this case. I don't have a problem with that, but the instruction I think is confusing.

MR. SMITH: Okay.

THE COURT: What else do we have? Certain evidence was admitted for a limited purpose.

MR. HALL: It never did. I'm sorry. This was obviously before we knew what was going to happen.

THE COURT: So I wrote nonapplicable.

The next one is: When I use the word negligence. I had included that. You guys agreed to take that out.

MR. HALL: That's right.

THE COURT: So that's come out.

In determining the amount of losses, if any -- I think we have one that everybody essentially agrees to and we're going to include the future -- past and future loss of household services, right?

MS. BRASIER: Yes.

MR. HALL: That's right.

THE COURT: The next one I have is: Where plaintiff's injury or disability is clear and readily observable, no expert testimony is required for an award of future pain, suffering, anguish, and disability. However, where an injury or disability is subjective and not demonstrable to others, expert testimony is necessary before a jury may award future damages.

Here's the issue I have with this one.

MR. HALL: Sure.

THE COURT: This is a -- deals with a legal issue, and if there had not been evidence by an expert as to future pain and suffering, then you would be entitled to a Rule 50 motion on that issue.

I don't know that this is an instruction that 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 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 in determining pain and suffering. This seems to imply that there has to be a number proven.

MR. HALL: Okay. I understand, again, your position on that, Judge. I just -- I think it is the law in Nevada that you have to bring up substantial, competent evidence to allow a jury to come to a number. I just -- the way that the damage instruction reads that's currently in the packet, I don't think it gives the jury enough of a charge about exactly what level of proof the plaintiff has to come by. I understand your objection.

THE COURT: Let me ask you this because in the first line it says, To justify a money judgment, the amount as well as the fact of damage must be proven by substantial evidence.

MR. HALL: That's right.

THE COURT: How is a plaintiff or any plaintiff going to prove the amount of pain and suffering by substantial damage?

MR. HALL: Well, they've done it. They've had the plaintiff get on the stand and say, look, this is how much I hurt. They're going to have mortality tables to try to put a number on it. So that's what they have to -- I think that's the law in Nevada.

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

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 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.

MR. HALL: Judge, here's the thing. 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

picking things up, bending, anything like that. We 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 is evidence of the -- whether she tried to pick up the kid or not. I know there's a discrepancy on that. There is that reference in the record. I think she even testified that she had additional back pain because of that, so I think this is a fair statement of the law. I'm going to allow it.

MR. CLOWARD: Judge, can I argue to persuade you before you make a decision?

THE COURT: Didn't we already do this?

MR. CLOWARD: Yeah. Because, remember, we had a huge issue in the Schmidt case, huge issue. This opinion has not been given to a reasonable degree of probability to allow this. Dr. Grover was never asked can you state to a reasonable degree of medical probability on a more likely than not basis that her damages were increased as a result of her picking that up. That question was never asked. That opinion was never given. Dr. Schifini never gave it. Dr. Siegler never gave it. Dr. Villablanca never gave it. Dr. Smith never gave it. Not a single expert that they -- that they had said that.

THE COURT: It was admitted by the plaintiff.

MR. HALL: That's right.

MR. CLOWARD: She said -- no. 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.

MR. CLOWARD: So they get to argue that at 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.

THE COURT: I don't know what they're going to argue.

MR. CLOWARD: Well, that's what I would argue if I was Steve.

MR. HALL: They're going to argue what they just argued now. That it only took two weeks.

THE COURT: Yeah. I'm going to allow it. I'm going to hope that they don't Google what the term mitigation means.

The next one is: Physical, mental suffering -- pain, suffering, anguish, and disability. This is part of another instruction already.

MR. HALL: It is. It is, Judge.

THE COURT: So that's all of the defendant's proposed, right?

MR. HALL: No.

THE COURT: No. You just gave me -- yes, that's all I have.

MR. SMITH: There should be four additional ones. There was a supplemental set, Your Honor, that I provided to you, I believe, two days ago. I have an

extra copy if you need it.

THE COURT: Yeah. I'm not seeing it, so. Thanks.

MR. SMITH: On the back of that is the statute of limitations that you already ruled on so there's only four.

THE COURT: Okay. I did see these. Proximate cause. This is an intervening superseding issue. I have it here. I had it with some other notes that I had made. All right.

So the intervening superseding cause instruction is ordinarily given in a product defect case or another case that you're using the legal cause analysis as opposed to a proximate cause analysis.

MR. HALL: I agree. I further agree that 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 -- you know, it's the -- what's that lady on the train case? That's the Levy case, right?

THE COURT: Palsgraft.

MR. HALL: Palsgraft, yeah. So it's a closed case here. You understand the law very well. So I think it's reasonable to argue that with respect to injuries and pain and suffering which occurred after

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 something that should be reasonably anticipated by us or borne by us, so that's my argument, Judge.

THE COURT: Yes. I'm not liking it.

MR. HALL: I got that sense, Judge. I got that sense.

THE COURT: I don't think it's an instruction that ordinarily would be given in a case involving proximate cause. And I think that the proximate cause instruction and the other instructions dealing with causation and the standard in proving a negligence case satisfy this.

MR. HALL: All right.

THE COURT: So I'm going to say no.

The next one is the request for admissions. We already talked about the request for admission instruction.

MR. HALL: We did.

THE COURT: The next one talks about willful suppression of evidence. I don't find that there's any willful suppression of evidence so I don't know how I could give this instruction.

MR. HALL: Well, let me take my shot and then

you'll rule the way you rule.

THE COURT: Okay.

MR. HALL: Judge, here's the thing. Again, one of the problems we're dealing with in this case is this -- I mean, we're going to hear it again in closing. I know we heard it in opening. We've heard it with the other witnesses.

What we're hearing is that we, meaning the defense, never examined the plaintiff, never laid hands on her, never talked to her. We're all relying on records and radiographs and things like that.

Here's the thing. Within a few days after this accident, the plaintiff was represented by one of the best and most sophisticated law firms in the city, right? Best plaintiff law firms. And at that time --

THE COURT: I'm sure Mr. Harris would love to hear that.

MS. BRASIER: That's on the record, right. We're going to print that and put it --

MR. HALL: Well, you know, I'll call them sophisticated when it helps me, and I'll call them a bunch of rapscallions when it helps me too.

Here's the point. They -- what happened in this case was they took the key piece of -- a key piece of evidence out of the case early on by doing the

surgery and doing the fusion and then afterwards they are saying, well, now it's too late, you know.

THE COURT: You know, that's like making the argument that allowing a plaintiff to get medical care is spoliation of evidence, right?

MR. HALL: I honestly -- look, me and my partner go back and forth on this. He loves this argument. But why isn't it true, though? Why isn't it true? I represent all these hotels and casinos and if they don't have the video footage of the exact event or if they don't have the incident report, plaintiff's lawyers are running around. What is the key piece of evidence in this case really? What is the key piece of evidence in the whole case? It really is that level of her spine and it was gone.

THE COURT: There's a public policy that favors allowing people that are hurt to get better, right?

MR. HALL: Of course there is, Judge. But why wouldn't they call us? I mean, they were -- let me just add one more fact to this. Let me add one more fact.

They wrote the insurance company. They wrote us the day of the surgery and they said, by the way, you may want to know this. We may in the future go

forward with a surgery. And the fact of the matter was she went through the surgery the very next day. So they knew this.

MR. SMITH: Two times.

MR. HALL: Twice.

MR. SMITH: That happened exactly that way on both the lumbar and the cervical, so if they're going to try to make a notice argument --

MR. HALL: They were playing games with us right during medical treatment. Why didn't they call us and say, look, get an IME. That happens all the time, by the way. We get calls all the time on unlitigated cases. We get calls saying, look, this person is going forward with a two-level fusion, you know, why don't you -- if you want to examine this person, if you want to talk to her, if you want to do any of this stuff, that happens all the time. Why didn't it happen here? They were in conversation with us.

I know -- look, this would be a different case -- it really would, Judge -- if there were an unsophisticated person that was hit as a pedestrian on the street and two weeks later they had their leg put back together and if I was standing in front of you telling you that that was willful destruction of

evidence. I mean, I admit you should laugh at me.

THE COURT: Here's the thing. Even based on your argument, you're saying that it was willful suppression by plaintiff's counsel, not plaintiff. So why would the plaintiff suffer from that?

MR. HALL: Well, they are -- plaintiff's counsel -- plaintiff or plaintiff's counsel are one in the eyes of the law in terms of what they knew, what they did.

THE COURT: I'm not going to allow that. Willful suppression of evidence, that didn't happen here.

The next one is: When the physical condition of a party to a lawsuit is in controversy, the Court may order the party to submit to physical or mental exam. The person has no obligation to submit prior to filing the suit. Rather the person to be examined must be a party to a lawsuit before a physical exam may be ordered.

MR. HALL: That's fair, Judge. Again, that's -- that is fair. Look, that was something that they made a big stink of this whole time is that we didn't do an examination. And the fact of the matter is by the time this case was filed, by the time we had 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 surgery?

And there has to be something given to the 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 happened, the surgery had already taken place, Judge.

THE COURT: Isn't this going to open up a whole issue of what was produced or not produced or allowed or requested prior to the filing of a lawsuit from the insurance company?

MR. HALL: Well, this is just on that single issue of the IME. It's not --

THE COURT: Let's talk about that issue. Doesn't it open up that issue in litigation?

MR. HALL: Yes. See, it's been -- the box has been opened up by the plaintiff on this by repeatedly saying, look, you didn't see her, right? Our doctors saw her. You didn't see her, right? You had a chance to talk to her, right? You never did, 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

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.

Any other proposed?

MR. HALL: Do you have any others?

MR. SMITH: I don't think so.

MR. HALL: No.

THE COURT: So what I want you to do is -- let me do this: I'm going to go fix a complete set real fast that everybody is, I hope, comfortable with and then I'll bring out the complete set. We'll go through it, and in the meantime you folks get together what you want to submit as proposed but not given so that you can make those part of the record. And if there's objections to anything that's in there, I don't think there is, but if there's an objection to any instruction that we are giving, you can make a record on that. Okay.

It will probably take me about 10 or 15 minutes and I'll be back.

Off the record.

(Whereupon, a recess was taken.)

THE COURT: We're on the record in Case 636515. We're outside the presence of the jury.

So as far as jury instructions, Jury Instruction No. 1 will be the purpose of the trial is to ascertain the truth.

Anybody has a problem with the order? Have

you looked at the order?

MS. BRASIER: Not since you handed it to me.

THE COURT: I only inserted a couple of different ones. Let me show you.

Go back to the one where it says, Plaintiff is seeking damages based on a claim of negligence.

Find it?

MR. HALL: Yes.

MS. BRASIER: Yes. I'm there, Your Honor.

THE COURT: The next one is the one that I took out defining what negligence was and instead I put in: In order to establish a claim of negligence, plaintiff must prove that defendant Raymond Khoury's negligence was a proximate cause of damage to the plaintiff Margaret Seastrand.

And I included the next one that you guys agreed to: It is admitted that Raymond Khoury was negligent in causing the collision of March 13th.

MS. BRASIER: Okay.

THE COURT: I think that's a good place for those.

MS. BRASIER: Yes, Your Honor.

MR. SMITH: We're fine with that, Your Honor.

THE COURT: Two more instructions back, I added the reasonable value of past loss of household

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.

I moved pain and suffering to 5 and 6.

I eliminated the discounted to present value on the pain and suffering.

MS. BRASIER: It looks good, Your Honor.

MR. SMITH: Fair enough.

THE COURT: Two more past that is the mitigation of damages and I changed the mitigation of damage instruction from what we proposed. So if you want to propose the one as offered and not given the way you had it worded, you can. I took out the first little part of it.

So now it will read: The plaintiff cannot recover for damages which could have been avoided by the exercise of reasonable care. This is referred to as a duty to mitigate damages. This doctrine precludes you from awarding damages to the plaintiff, et cetera, et cetera, and I left the end of it the way it was. I just changed the beginning. You'll see the difference.

I don't know that there's -- I don't know that there were any other changes. Were there? I

don't think so.

Let's go through them and number them.

The purpose of trial is to ascertain the truth will be Instruction No. 1.

Ladies and gentlemen of the jury will be No. 2.

If in these instructions will be Instruction No. 3.

This is a civil case will be Instruction No. 4.

The masculine form will be Instruction No. 5.

Your purpose as jurors will be Instruction No. 6.

Although you are to consider will be Instruction No. 7.

You are not to discuss will be Instruction No. 8.

If during this trial I have said or done anything will be Instruction No. 9.

You must decide all questions of fact will be Instruction No. 10.

In determining whether any proposition will be Instruction No. 11.

There are two kinds of evidence will be Instruction No. 12.

Certain testimony will be No. 13.

During the course of trial will be Instruction No. 14.

As permitted by law will be Instruction No. 15.

The credibility or believability will be Instruction No. 16.

MS. BRASIER: Your Honor, can we just stop and go back to No. 15? We had agreed upon a longer instruction on the request for admissions.

MR. HALL: Which one is that?

MR. SMITH: You're right.

THE COURT: You're right. Okay. I'll make that modification but we'll keep it No. 15.

MS. BRASIER: Okay.

THE COURT: Okay.

Discrepancies in a witness's testimony will be No. 17.

MS. BRASIER: I'm sorry. Can I just -- I just need to catch up real quick. The credibility or believability is No. 16; is that right?

THE COURT: Correct.

MR. SMITH: Right.

MS. BRASIER: And discrepancies is No. 17, right?

THE COURT: Correct.

Certain charts and summaries will be 18.

An attorney has the right to interview a witness will be 19.

A witness who has special knowledge will be 20.

An expert witness has testified will be 21.

Hypothetical question will be 22.

MS. BRASIER: I don't have that in my set.

MR. SMITH: Nor do I.

THE COURT: All right. I'll get it for you. I don't know why we're having problems.

MS. BRASIER: Is yours the next one plaintiff is seeking damages?

MR. SMITH: Plaintiff seeking damages.

THE COURT: What's the next one you have?

MS. BRASIER: Plaintiff is seeking damages based on defendant's negligence.

THE COURT: So you missed a few pages.

The hypothetical question is going to be 22.

Whenever in these instructions I state that burden is going to be 23.

I'll get you guys copies of these. I don't know why they're not copying right.

The preponderance or weight of the evidence

is going to be 24.

MR. SMITH: Is that the one that starts plaintiff is seeking damages?

THE COURT: It starts the preponderance or weight of evidence.

The next one you guys have is plaintiff is seeking damages is going to be 25.

In order to establish a claim of negligence -- do you have that one?

MS. BRASIER: Yes.

THE COURT: That's 26.

Is admitted that Raymond Khoury was negligent, that is 27.

When I use the expression proximate cause will be 28.

In determining the amount of losses will be 29.

No definite method of calculation will be 30.

The plaintiff cannot recover for damages which could have been avoided by the exercise of reasonable care is 31.

A person who has a condition or disability is 32.

According to the U.S. Department of Health and Human Services is 33.

Whether any of these elements is 34.

You are not to consider the legal fees is 35.

The Court has given you instructions is 36.

It is your duty as jurors will be 37.

If during your deliberation will be 38.

MS. BRASIER: I don't have that one.

MR. SMITH: Neither do I.

THE COURT: All right. We'll get it to you.

Now you will listen to arguments of counsel. You don't have that one either. That's 39.

I'll make sure that these are done right. When we copied them for some reason, they're not. They're sticking together or something.

When you retire to consider your verdict will be No. 40.

That's all. So I need to modify Instruction No. 15. Let me get that done first and then I'll let you make a record on the other things. I'll be right back.

Off the record.

(Thereupon, the proceedings adjourned at 12:10 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Jennifer O'Neill, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the proceedings commencing on Thursday, July 25, 2013, at 10:35 o'clock a.m.

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

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

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 15th day of March, 2014.

JENNIFER O'NEILL, RPR, CCR #763

THE COURT: Welcome back, folks.

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

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. Jaffe, you may proceed.

BY MR. JAFFE:

Q. We figured out the problem, huh, Doc?

A. Yeah.

Q. By the way, before I forget, I want to ask you: How many spinal interventional neuroradiologists are there in the country?

A. There's not a large number of us, but there's at least a half dozen that I'm aware of. In -- that come to the field from diagnostic neuroradiology.

Q. Okay.

A. Then there's a number that come from physical medicine and rehabilitation and probably the majority come from anesthesia.

Q. Okay. Now, let's -- let's talk about that X ray. We found it?

A. Yep.

Q. Let's pull it up.

A. So this is one of the images from the cervical spine X rays that were obtained on March 13th, 2009, on the day of the accident. And you can see that

the patient is looking off to your -- what would be your right, because it's the patient's chin and these 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 shaped. And then there are these gaps in between the bones, these dark areas that represent the disk spaces. The disk spaces should be -- in a normal person should be of uniform height and of the same height all the way across.

The other thing that is important to notice 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

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 I can -- you can appreciate this better.

Q. I think we have a measuring tool. There's a measuring tool on here, isn't there?

A. This is a little measuring tool. Yeah, it's this one here. And we could, in fact, if we were so inclined, draw up a little caliber that measures the 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. The C4-5 disk here measures approximately 7.9 millimeters. And let me double click on that so that little guy stays. And then we can measure the C6-C7 disk, and that one comes out at approximately something very similar. It would be probably, I would guess, in the range of 7 or so millimeters. It's not letting me quite margin down all the way there. But we'll leave that one as it is.

But the one I'd like to draw your attention to is this one here. This is the C5 disk space. And this disk space, instead of being as tall as its neighbors, is almost half as tall meaning that it has lost approximately 50 percent of its height. Here I'm coming up with about 5.5, maybe a little bit less millimeters in height.

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.

So by looking at these images, I can 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.

Would that be an accurate term?

A. Bony spurs are referred to as osteophytes, yes.

Q. Okay. Now, you mentioned the word "posterior," and -- and anterior means the front of the body?

A. Exactly.

Q. And posterior means the back of the body?

A. Exactly.

Q. Okay. And I -- I know you're going to be using the words "inferior" and "superior" as well.

A. Yes.

Q. So would you tell us what those refer to.

A. So superior means up towards the head, and inferior means down towards the feet.

Q. So, for example, if we were going to be looking at -- let's take the C7 -- or the C6 vertebral body for an example.

The top -- the top line of it would be the inferior edge?

A. The top line of the C6 -- this is a C6 vertebra that I have my cursor on right now. And the top margin of that vertebra is the superior margin. The bottom of the vertebra is the inferior margin. The front of the vertebra is the anterior margin, and the

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

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?

A. Yes. Most -- most of the time when there's -- the disk is moderately decreased in reduction, you do have a disk osteophyte complex. Eventually as time goes on, the disk will collapse even further, and then it will just be bone on bone. At that time, that disk is gradually reabsorbed by the body, and you're just left with bone. No more disk. The disk has been gobbled up by the cells in our body that we have that remove waste, which is basically what a damaged disk becomes.

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?

A. Well, what I see here is consistent with degeneration. But I would expect to see maybe asymmetric widening or narrowing of the disk spaces, as I mentioned; reversal of the normal curve, which is preserved here, that might indicate spasm of the muscles in the back pulling the natural curve out of alignment and back towards the back so that instead of it going forward as it does here, it's going posterior. And I might expect swelling of the soft tissues or malalignments of these bones in the posterior elements as I described here. So that this distance, this black stripe here, would be wider at this level, at the C5-6 level than it is at the other levels, or that there would be a slippage of one relative to the other. None 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

be straight and what is visible of 5 1/2 millimeters of normal forward curvature of that cervical spine.

Q. Other than the degeneration, is this a normal X ray?

A. Yes, it is.

Q. And there's no evidence of trauma?

A. There is not. No, there is not.

Q. Now, three weeks later, the plaintiff underwent an MRI. First, would you explain to us what an MRI is conceptually and how an MRI works?

A. Sure. An MRI is basically a big magnet, and the way that we make this magnet is by taking a wire and winding it around a bunch of times. Now you have a tunnel made of wire. If you then put a current through that tunnel of wire, you've created a magnet. And that magnet has a north pole and a south pole. And if you put a body into that magnetic field, all of the protons, which are the hydrogen atoms in a water molecule, will instantly align themselves along the north-south axis of that magnet.

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

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

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.

And then the one standard that I require of 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 disk is beginning to break down that that height is being lost.

And, in fact, it's a normal process of aging. Older people, you know, we lose -- we lose as we age. As we all age, we lose several centimeters of height as those disks naturally degenerate and collapse.

Q. Now, Dr. Villablanca, would you agree with me that the -- an MR [sic] is warranted based upon symptoms and you -- to correlate it, but you don't get the MR first and then find out what the symptoms are?

A. That's correct.

Q. Okay. So now let's turn to Mrs. Seastrand. And you had the opportunity to look at some medical records from that time.

A. I have.

Q. What were the symptoms that you were concerned about which make the MRI important for the purposes of correlation?

MR. CLOWARD: Judge, I'm just going to object. If you'll allow me to have a standing objection on the foundation of his opinions.

MR. JAFFE: Your Honor --

THE COURT: Based on the records?

MR. CLOWARD: Yes, on the records issue.

MR. JAFFE: Your Honor, it's -- it's in his report.

THE COURT: That's fine. I understand the records issue. You can have a standing objection.

MR. CLOWARD: Thank you.

THE COURT: It's overruled.

MR. JAFFE: Thank you, sir.

BY MR. JAFFE:

Q. Go ahead, Doctor.

A. So what I would be looking for is as I read these records, I'm looking for symptoms that allow me to correlate to specific pathology. In other words, if somebody says, I have pain in my big thumb and my index finger, that's the C6 dermatome. That means that the nerve that goes all the way back from the arm to the neck is getting pinched possibly there, but it could be getting pinched in other places. But this is C6. These two are C7, and the pinky is C8.

And the same thing with the forearm and the arm and the shoulder. Every one of these tissue areas is a piece of real estate, and that piece of real estate is owned by a nerve. And it's remarkable how consistent that ownership is across our bodies. That's why we have what we call dermatomes. These are maps

that we can follow as neurologists, neuroradiologists, et cetera, to try and tease out when a patient says, I've got this terrible pain right here and right here and right here (witness indicating), and that's -- ah, that's the C6 dermatome or that's the L5 dermatome.

And I'm looking -- thank you. And I'm looking for those features in the scan, right? I'm saying somebody's complaining of pain in the neck, somebody's complaining of pain in the right upper extremity. Right upper extremity is not very specific, but I'm willing to say it could be C6, C7, C -- or C8. Those are the three main nerves that innervate, provide innervation to the arm for sensation.

So I'm looking for the cervical scan. I'm saying I want to find problems that are impacting those nerves, either in the spinal canal or in the foramina, which are the bony openings that allow the nerves to exit from the spinal cord and out to the body.

Q. Now, on the right side, you've -- we've now got a split screen. I know -- I understand the left side is like we were slicing the neck down top -- head to toe.

What is that right side? Is that an axial image?

A. 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

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

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

A. Correct.

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.

So on this particular axial image, you can 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

process of doing that, more red blood cells arrive, more white blood cells arrive, and there's a bit of inflammation.

That bit of inflammation has been described by Dr. Modic as a Modic type of degeneration. He's got three types. This is Type 1 where you see some increased water in the bony marrow adjacent to the degenerating disk.

Q. You used the term "edema"?

A. Edema is --

Q. Swelling?

A. -- increased -- yeah, swelling or increased water. Swelling or increased water.

Q. Okay.

A. So we have something that could explain neck pain, but we don't have a good explanation for the arm symptoms based on this scan. There's a discordance between the patient's complaints and the -- the imaging findings.

That doesn't mean the patient's complaints aren't valid. It means we may need to look elsewhere for where those complaints may be coming from, the thoracic outlet, thoracic outlet syndrome is very common, carpal tunnel, et cetera.

Q. When Dr. Muir was here on Thursday, he told

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

Is there any fragment shown on these MRIs?

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

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. And 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 bone. There's no tear of the anterior or posterior longitudinal ligament. There's no widening of the interspinous disk distance, and there's no asymmetric disk space widening or narrowing.

Q. 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?

A. 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. So as 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 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.

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.

A. So, again, I think what I'll do is I'll split the screen for our benefit, and I'll make it one on one 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 one. In fact, I may just choose this one all the way. We'll close this. There. Now I'm going to go to a one-on-one format. There it is. So this is essentially the same view that we just had of the neck looking from the side, but now it's the lumbar spine, the lowest segment of the spine before we get to the 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.

Q. Now, are we looking at the T1 or T2 image?

A. This is the T2.

Q. So now we can see the hydration in the disk.

A. Yeah, because this is a bigger disk. And so here, the signal of the disk is a more reliable indicater of its health.

And we can see that the T12 to L1 through L3-L4 disks are all very uniform and they're all bright. These are healthy disks. That doesn't mean that one of these disks couldn't have traumatic herniation. It would still be bright, but it would have a contour abnormality along its margin. None of those things are present there?

We do know that the L4-5 and L5-S1 disks were abnormal. Not only do they show a little bit of decreased signal here or a significant amount of decrease signal, but the height is ever so slightly reduced. And then the other thing you can appreciate is that here, again, there's some beaking, anterior beaking of that contour. And if I mag this up, you can see that little beak right there. This is an early osteophyte that's forming in the L4-5 disk. This is a disk that has degeneration.

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 dermatome, which I would like to have. Specifically where on the leg is the pain? Specifically where is the numbness? But I have legs. So whenever I see legs involved, I'm thinking nerves. Where is the nerve being pinched? If it's bilateral symptoms, there better be bilateral nerves being pinched someplace. Because a degenerated disk can cause you back pain sometimes radiating to the hips, but it will not cause you leg pain. Only a pinched nerve will cause you leg pain. So I'm looking for that.

Later, Dr. Olmstead on May 1 says the same thing, low back pain radiating to the bilateral posteromedial calves. Now he's getting a little bit more specific.

(Clarification by the Reporter.)

MR. JAFFE: Posteromedial calves.

THE WITNESS: Is -- my apologies -- S1. So I'd say, okay. I can check off my list -- when I look at this scan, I want to look for problems with S1.

Then, later on, Dr. Belsky herself says the patient has bilateral lower extremity numbness. Again, I'm concerned about all the nerves that go to the lower extremities. That's L1 through S1.

And then finally, Dr. Muir on August 24th,

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. This 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 the patient. But I still haven't explained the symptoms, and I need to explain these symptoms, bilateral lower extremity numbness and weakness.

So I'm going to say, well, if it's not in the canal, maybe it's in the foramina. So to see the foramina on the sagittal view, I have to go out off to the side, because that's where the bony openings are in the spinal canal that allow for each one of the nerves to come out and do their job in the leg.

MR. CLOWARD: Judge, can I approach?

THE COURT: Sure.

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

THE COURT: Overruled.

MR. JAFFE: Thank you, Your Honor.

BY MR. JAFFE:

Q. I'm sorry, Doctor. Please finish your answer.

A. I had said that based on our review of the images from the sagittal plane and here on the axial plane, we can see that the spinal canal is open and that there's not one image where these little tiny dots surrounded by the white material, which is the spinal

fluid, these little tiny dots were squished or compressed. So we know that the spinal canal is not the source of her symptoms. So where are her symptoms coming from?

The next thing I'm going to do is look at the foramina, the place where the nerves come out. So to see that, I have to go to the side where the nerves come out of the side of the spinal canal. And the best way to do that is to move from the midsagittal image --

(Clarification by the Reporter.)

MR. JAFFE: Sagittal.

THE WITNESS: I'm sorry.

-- off to the side. And here you can see a foramen. And a foramen looks basically like a ovalish or roundish white area, which is fat. And in the center, there's a -- another small dark circle. That's -- that dark circle is the nerve root sleeve. The nerve root sleeve contains the nerve rootlets which are even smaller than the nerve root sleeve.

So when I suspect there's compression of the nerve rootlets within the foramen, I better see significant deformation of that nerve root sleeve, flattening of the nerve root sleeve indicating that there's some way that the nerves inside the nerve root sleeve are getting compressed or squished.

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. Could this be a little disk herniation or even an annular ligament tear. And I considered that, except 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 indicates to me that this most is likely the peri or 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.

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:

Q. Is there any evidence of trauma shown on these lumbar MRIs?

A. Yes.

Q. Due to the accident?

A. No. There is no evidence of trauma that I could attribute to the motor vehicle accident of March 13th, 2009, when looking not only at the disk,

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 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 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.

Q. Doctor, based on your review of the films, is there any indication of a -- any trauma of the lumbar spine as a result of the March 13th, 2009, motor vehicle collision?

A. No, there is not.

Q. Now, was Dr. Gross critical of you with respect to correlation of symptoms?

A. Yes.

Q. Did you address that in your reports?

A. I certainly did.

Q. Is that consistent with what you've told the jury today?

A. Yes, it is.

Q. And, Doctor, have all of your opinions stated today been stated to a reasonable degree of medical probability as a board-certified neuroradiologist?

A. They have.

Q. And as a -- an interventional -- as an interventional spine radiologist?

A. Yes.

Q. Thank you.

MR. JAFFE: I have no further questions, Your Honor.

THE COURT: Cross.

MR. CLOWARD: Yes. May I take a moment to set up.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. CLOWARD:

Q. How you doing today, Doctor?

A. Very well. How about yourself?

Q. Good. I saw that you spent the lunch with Mr. Jaffe.

A. Yes.

Q. Did he tell you about what the other doctors in the case have said?

A. Not to my recollection.

Q. What did you talk about?

A. We talked about the sandwiches we were eating.

Q. That's it?

A. Yes. I mean, we -- we basically -- I asked how long the case has been going on. He said we were going on, I think, a week or thereabouts. And I asked him when he thought I might be going on, and he said in the afternoon around 2:00 o'clock.

Q. He didn't tell you -- he didn't tell you what Dr. Smith said?

A. Not that I can recall.
Q. What about Dr. Schifini?
A. No. I don't know when Dr. Schifini testified.
Q. What about Dr. Siegler?
A. Not to my recollection.
Q. Did you meet with Mr. Hall, Mr. Jaffe's partner?
A. I did not.
Q. What about Mr. Clayton, Mr. Jaffe's other partner?
A. I have not.
Q. You didn't meet with them over the lunch?
A. That's correct.
Q. Have you worked with them before?
A. I met them here in this room.
Q. Have you done work with them before on other cases?
A. With Mr. Hall, yes, I believe.
Q. How many times?
A. I don't recall. Maybe a half dozen times.
Q. What about Mr. Clayton?
A. Mr. Clayton, perhaps. But I haven't met him.
Q. But you think perhaps you've worked with him before?

A. Yeah. I don't do a lot of this type of work. But maybe in the course of the last ten years, I may have worked on a few cases with him.

Q. So you don't do it very often, but when you do do it, it's with their firm?

A. No. I work with other firms as well.

Q. Okay. Couple of things, Doctor. First, do you remember at your deposition when I asked you specifically what records you reviewed, and at the time of your deposition, you could not tell me?

A. Do I recall saying that?

Q. Yeah.

A. I don't recall saying that. But if I said it, then that is correct. There are many, many records in this case, and I wrote my report over a year ago. So I wouldn't expect to remember every record I've reviewed.

Q. Okay. Do you deny that I -- that Ms. Brasier specifically asked you for a list of all of the prior and current records you reviewed, and you could not give us a list? Do you deny --

A. You mean on the spot, from memory?

Q. Yeah.

A. No, I don't deny that. That would be perfectly -- I wouldn't be surprised.

Q. And it's not contained in your report either, is it?

A. The records?

Q. Yeah.

A. Well, I indicate the correspondence that I am responding to. So her retention letter, and that letter accompanied the attachments, and those attachments are described in those letters.

Q. Sure.

A. And then in the supplemental report, if I say reviewed the additional medical records pertinent to this record, that means up through October 15th, that any record that had been mailed to me and I had those correspondences and exactly what's contained within them, that would be available to everybody.

Q. Who is the -- that letter from?

A. This is from the Offices of Hall Jaffe & Clayton.

Q. Who's that addressed to?

A. Dr. Villablanca for the majority. This one says Dr. Siegler, who I don't know who he is, but --

Q. Let me ask --

A. -- I presume it was sent to me.

Q. Let me ask you a question: Was I copied on that?

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

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.

A. So based on my report there, specific reference is made to the vehicle accident report.

Q. Okay.

A. To the State of Nevada Traffic Accident Report.

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 page says, In summary, opinions rendered to a reasonable degree of medical probability in my primary expert report dated August 1, 2012, are not altered by the additional medical records since provided to me for review, including the supplemental report offered by Dr. Gross --

THE COURT: You got to slow down.

THE WITNESS: My apologies.

THE COURT: You're making it really tough on our court reporter.

THE WITNESS: My apologies.

-- are not altered by the additional medical records provided to me for review including the supplemental reports authored by Dr. Jeffrey Gross and other documents forwarded as enclosures to the letter dated October 8th, 2012.

BY MR. CLOWARD:

Q. You were deposed after your second report, right?

A. I don't recall when my deposition was.

Q. What's the date of that?

A. The date of this report is October 15th, 2012.

Q. Okay. You were deposed on January 18th,

2013.

Is that after that report?

A. After this report?

Q. Yeah.

A. This report is before.

Q. Okay. So during your deposition, we asked you to provide us a list of all the records that you reviewed, correct?

A. Yes.

Q. You said you'd provide us a report, correct?

A. Yes.

Q. You didn't provide us a report, did you?

A. I don't know. Asked my office to provide you the reports.

Q. So you did? Who at your office so we can follow up on that after trial?

A. I don't -- well, I only have one administrative assistant. That would have been January. Ms. Diana Fang.

Q. So if we subpoena her, she'll testify to that?

A. I would think so.

Q. Okay. So, Doctor, from those two reports, can you tell me specifically what records there were?

A. I just did.

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?

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.

Q. But, Doctor, the very specific question is: Is that sometimes an HIZ, even without the disk material, can in and of itself be evidence of trauma, correct?

A. I've already answered your question.

Q. And it's correct, right?

A. Yes. I said yes.

Q. And you -- you agree with me, Doctor, that an annular ligament defect or a tear -- I don't want to say -- you know, so annular ligament defect can cause chemical irritation to the L4 nerve?

A. Correct.

Q. If it's a circumferential tear, that means that it's a broad base tear, correct?

A. I don't know what you mean by circumferential.

Q. Well, what is your definition of circumferential, Doctor?

A. I said circumferential disk bulge. Circumferential to me means 360 degrees, all the way around.

Q. What if you have a tear that's halfway around the disk?

A. An annular ligament defect that's halfway around the disk.

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

BY MR. CLOWARD:

Q. Doctor, would you please come down off of the stand and show us on this MRI where the pain is.

A. I could show you potentially where pain could be coming from, but I cannot show you where the pain is.

Q. Why not?

A. Because these scans have to be correlated to the clinical exam.

Q. Would you please pull up the X ray of the cervical spine.

A. Doesn't want to seem to bring that up. Here it is. I can't seem to load that particular study up.

Q. Let's just say if you pulled that study up, could you show us where the pain is on that study?

A. Scans don't show pain. They show potential sources of pain.

Q. Okay.

A. And that has to be correlated to the clinical exam.

Q. Does the clinical correlation always match up with what's on the scan 100 percent of the time?

A. It should be pretty close. Because if it doesn't, then we need to look elsewhere. That's why we do these scans.

Q. Doctor, the question was: Does it always 100 percent of the time?

A. One hundred percent of the time, probably not.

Q. Okay. Now, when you were asked about the independent medical examination, you didn't, in fact, do an independent medical examination of Ms. Seastrand, did you?

A. I have not.

Q. You've never met her?

A. That is correct.

Q. So you relied on the experts in the case who did medical exams, right?

A. Well, no, not just the expert but the direct medical records of people that saw her primarily and were not retained as expert individuals who are not retained in the case. These are primary care providers who interacted with the patient when she first saw them, the emergency room people, the tech, the physical therapists, the chiropractor, et cetera. All those records as well.

Q. Dr. Muir, Dr. Grover, Dr. Gross, Dr. Khavkin, right?

A. All of the clinicians that have evaluated this patient along her course.

Q. Yet they all think and they all testified and their records suggest that these -- that the surgeries she received were directly related to the automobile crash, and you disagree with all of them, don't you?

A. If that's what they testified, then, yes, I do.

Q. Okay. And, in fact, you disagree with the other doctors that Mr. Khoury hired regarding the injury, correct?

A. I don't know what you're talking about.

Q. Dr. Schifini testified that she sustained injury in this crash.

A. I don't know who Dr. Schifini is but -- or what he testified to, but I can say that the imaging, the scans that I've shown you and that I've been given an opportunity to review do not show focal pathology that is attributable to the accident of March 13th, 2009.

Q. So if Dr. Schifini came in and talked to these jurors and told them that, yeah, you know what, she is injured -- she was injured, you disagree with that?

A. I wouldn't argue that she's injured. I would argue -- or I would argue that there's no imaging evidence to support the contention that there's imaging

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

accident. You could have internal disk disruption through the process -- that's what disk degeneration is. It's the development of internal disk disruption as the architecture of the disk breaks down.

Q. Doctor, how many people over 50 have degeneration?

A. Probably the majority.

Q. What percentage of those people have fusions?

A. Very few.

Q. Okay. Without this automobile crash, to a reasonable degree of medical probability, can you state on a more likely than not basis that Ms. Seastrand would have required the fusion surgeries that she had?

MR. JAFFE: Your Honor, if counsel wants to get into this, that's fine, but he did not want to go this far, and I believe this is now beyond the scope.

THE COURT: Come on up for a minute.

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

THE COURT: Go ahead. You want to reask it or read it back?

MR. CLOWARD: Please read it back.

THE COURT: It says: Okay. Without this automobile crash, to a reasonable degree of medical probability, can you state on a more likely than not

basis that Ms. Seastrand would have required the fusion 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.

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

case.

Q. Doctor, can you tell me one time where you've ever asked one of your patients -- and this is completely unrelated. Can you tell me one time where you've asked your patients to show you the property damage to their vehicle?

MR. JAFFE: Objection. Unrelated. Irrelevant.

THE WITNESS: I don't really --

MR. JAFFE: Hold on.

THE COURT: Sustained.

MR. JAFFE: Thank you.

THE COURT: There's been no testimony on anything having to do with that.

BY MR. CLOWARD:

Q. Doctor, do you ever call a biomechanical engineer to tell you if someone's really hurt?

MR. JAFFE: Objection, Your Honor. Argumentative.

THE WITNESS: I have not.

THE COURT: It's overruled on that basis.

BY MR. CLOWARD:

Q. Now, do you know who Ryan Neilsen is?

A. I don't know that person personally.

Q. What about Anthony Bruno?

A. No.
Q. What about Timothy Coshy?
A. No.
Q. Those are all interventional radiologists. You say there's only a handful of you, maybe like 12?
A. Yeah.
Q. You don't -- so you don't know the other -- the other 9.
A. These are diagnostic interventional spine radiologists or they're anesthesiologists or physical medicine and rehabilitation pain specialists?
Q. Interventional radiologists.
A. Interventional radiologists?
Q. Yeah.
A. And are they neurointerventional radiologists?
Q. Yeah.
A. Or spinal interventional. I don't know them.
Q. Okay. And regarding the money to UCLA --
A. Yeah.
Q. -- isn't it a fact that you have to report the money to UCLA because some of your colleagues at the Spine Institute got in trouble for not reporting, and it was biasing their studies?
A. No. We've always reported. We've always

turned our checks in. The checks that I receive for today's testimony, they're not made to me. They're paid to the UC Regents. And it's been that way for, you know, years.

Q. That's not what happened to Jeff Wang?

MR. JAFFE: Your Honor. Objection --

THE WITNESS: I don't know who Jeff --

MR. JAFFE: Hold on.

Your Honor, objection. This is argumentative. It's well beyond the scope, and it's irrelevant.

THE COURT: Sustained.

MR. JAFFE: Thank you.

BY MR. CLOWARD:

Q. Is it your belief on a more likely than not basis that Ms. Seastrand did not experience pain as a result of this crash?

A. No, that is not correct.

Q. You just believe that there's no -- nothing to correlate that on -- on the MRI there.

A. That is also not correct.

Q. Well, explain that to me, then.

A. For instance, the cervical MRI that she had on April 3rd, that shows reversal of the normal cervical curve, even though the initial radiograph

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 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, et cetera.

Q. Okay. Doctor, can you point to this MRI here and tell us when that abnormality happened?

A. Which abnormality are we referring to?

Q. Let's go with the L5-S1.

A. And what abnormality of the L5-S1 are you referring to?

Q. The dark disk.

A. The low signal intensity on T2?

Q. Sure.

A. This occurred over the course of several years, maybe more, in the past. I can't say more than that. I know that it didn't occur in the last several weeks, and it certainly probably didn't occur in the last several months. Usually this degree of low signal on T2 in the lumbar disk takes months, many months or years to develop.

Q. I'd like a date. When did it start?

A. I can't do that, as you know.

Q. It's impossible, isn't it?
A. Yes. But I can give you time frames which for clinical purposes --
Q. Doctor, the question --
A. -- is just --
Q. -- the question was yes or no. It's impossible, isn't it?
A. An exact date, yes, it's impossible.
Q. You talked about predisposition. Tell me what risk factors predispose Ms. Seastrand to being injured.
MR. JAFFE: Objection, Your Honor. Beyond the scope.
MR. CLOWARD: He -- he -- predisposition, Your Honor, is his word, not mine.
MR. JAFFE: Your Honor, it's --
THE COURT: Let him go. Overruled.
MR. JAFFE: Okay.
THE WITNESS: So what?
BY MR. CLOWARD:
Q. You talked about -- when Mr. Jaffe was asking you questions about people -- some people are predisposed to injury. So I would like to know what factors did Ms. Seastrand that predisposed her, made her more susceptible to injury.

A. At what level? I don't know. I don't understand your question.
Q. Let's talk about the neck.
A. Okay. So you're talking from an imaging perspective, what factors are there?
Q. Sure.
A. That predispose her to injury, nothing predisposes her to injury except having an injury or time. That -- if you look at degeneration as an injury over the course of time, then time predisposes her to injury.
Q. So there are no specific findings on the cervical MRI that predispose her to injury?
A. Yeah. I don't really understand what your question is saying. What findings would -- would you have in mind? I don't know what you mean.
Q. Doctor, you're the one that used the word "predisposition." Okay? So I'm just trying to find out what you meant by that.
Apparently, you don't understand that?
A. I don't understand your question.
Q. Okay. That's fine. We can move on.
As an interventional pain management doctor, radiologist, you do injections, right?
A. Correct.

Q. Okay. So what -- how much medication do you use when you're putting, like, an epidural for a pregnant person?

A. For a pregnant person?

Q. Yeah.

A. I don't do these injections on pregnant people.

Q. I know you don't, Doctor. But can you just tell me based on your experience?

A. How much I would put in a pregnant person, zero. I don't inject pregnant people because the only way to do the injection is with fluoroscopy, and I'm not going to radiate a pregnant woman. I would manage her medically.

Q. Doctor, I understand that. I understand that.

What I'm trying to find out is the amount of medication, hypothetically speaking, if you were to give a pregnant person an epidural during childbirth.

A. Oh, during childbirth. You mean as a -- for the birth process.

Q. Yes.

A. That's --

MR. JAFFE: Objection, Your Honor. That's outside the scope.

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

MR. CLOWARD: Can we switch over, Judge, to the ELMO.

BY MR. CLOWARD:

Q. Doctor, if -- if Dr. Siegler and Dr. Schifini testified that just because there's no -- not trauma on the X ray, MRI, or CT scan like blood or broken bone does not mean that the person is not injured.

Do you disagree with that statement, or do you agree with that statement? This one right here.

A. Yeah, I don't know what the definition of their word "trauma" is. I would like to see a listing of specific imaging findings, and then I would be capable of answering this question.

Q. How long did you go to school to become the interventional radiologist you are total?

A. Including undergraduate?

Q. Sure.

A. That would be four years of undergrad. Then four years of medical school. That's 8. Year of internship, 9. Four years of radiology residency. That's 12. Then 2 additional years of fellowship.

Q. And you don't know what trauma means?

A. Well, trauma is -- is a nonspecific term. I would need to have that definition -- that term defined.

Q. Okay. Doctor, you've never done a spinal fusion, have you?

A. No.

Q. And when you come and testify in courtrooms, 90 percent of the time is for defendants like Mr. Khoury, correct?

A. I don't know what the percentage would be, but I have done work on both sides. The -- probably the majority is defense, but I also do plaintiffs.

Q. Well, let me ask you this question: Have you previously testified that 90 percent of the time when you do this forensic work is for the defendants?

A. I don't recall.

Q. Now, you reviewed a lot of films in the case, right?

A. Yes.

Q. I want to go through some of those. You reviewed the MRI from April 3rd, 2009, correct?

A. Correct.

Q. You disagreed with Dr. Lewis, correct?

A. I believe so.

MR. CLOWARD: Your Honor, may I approach the witness?

THE COURT: You may.

MR. CLOWARD: Do I need to get the original?

Let me just ask him if this --
BY MR. CLOWARD:
Q. Does that refresh your recollection of --
A. It does.
Q. -- what percentage of work you do?
A. Yes.
Q. It's about 90 percent for the defense?
A. Yes. That was an estimate at that time, and an it's an estimate now.
Q. Okay. Fair enough. Doctor, I apologize if I was a little upset earlier.
A. It's okay.
Q. So you -- you disagreed with the cervical interpretation that Dr. Lewis provided, right?
A. Yes.
Q. You, in fact, disagreed with the lumbar interpretation that Dr. Lewis did, correct?
A. Yes.
Q. You disagreed with the lumbar MRI from October 13th, 2009, that Dr. Pratidar did, correct? Page 5 of your report.
A. Only in respect to some aspects.
Q. But you did in fact say that he overinterpreted the test, right?
A. That's correct.

Q. You also disagree with Dr. Muir's interpretation of the same MRIs, correct?
A. Dr. Muir's interpretation -- did he prepare a report?
Q. He's a treating physician.
A. Well, he's -- I think he basically went along with Dr. Pratidar said.
Q. So you would disagree with him?
A. Yeah.
Q. Same thing with Dr. Gross, you disagreed with him?
A. Dr. Gross does not disagree with my report. He says that it's degenerative. He never contends that it is degenerative. He recites the impressions prepared by Dr. Pratidar, but I don't believe that he contends that the changes are not degenerative. It's in his report, all 29 pages of it.
Q. You disagreed with Dr. Gross, correct?
A. Yes. And his conclusions.
Q. You disagree with Dr. Khavkin, correct?
A. I don't recall what Dr. Khavkin said.
Q. Treating physician.
A. I don't remember specifically what you're referring to.
Q. Sure. You disagree with Dr. Grover, correct?

A. You would have to tell me what I disagree with. There are probably many things we do agree with. You'd have to ask me a specific question so I can give you a specific answer. It's not fair to ask me a general question like that.

Q. Doctor, you wrote a report in this where you set forth the doctors that you agreed with or disagreed with, correct?

A. Yes. And I stated that specifically in my report and why.

Q. Okay. I'd like to know your knowledge -- I want to test your knowledge of Ms. Seastrand's playing field or her baseline before the crash. Okay?

What restrictions did she have before the crash --

MR. JAFFE: This is --

BY MR. CLOWARD:

Q. -- due to her -- the neck and low back.

MR. JAFFE: Objection. This is outside the scope, Judge.

MR. CLOWARD: I don't think it is, Judge. It goes to clinical correlation which was allowed.

MR. JAFFE: His clinical correlation was of the symptoms after the accident, sir.

THE WITNESS: Relative to the imaging.

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

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

THE COURT: Objection's overruled.

BY MR. CLOWARD:

Q. Doctor, were you provided any documents before your testimony today?

A. No. Just before my testimony?

Q. Sure.

A. No.

Q. What are you referring to up there?

A. Just notes that I wrote. Last night I prepared a little summary to help me refresh my memory on the chronology of things, when the scan was done, and so on.

Q. Can I see that?

A. Yes.

Q. Thank you. Okay.

So, Doctor, I'd like to know what restrictions did Ms. Seastrand have before the motor vehicle accident?

A. I'm not aware.

Q. What were her pain levels and frequency before the motor vehicle accident?

A. I do know that in the months of October and

November of 2007, she reported to Dr. Kermani and 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 those symptoms to doctors.

Q. And were those primary complaints or were those incidental?

A. I don't know. They're part of her problem list as they are being listed. There's no order in which they're presented. It says that the patient is complaining of these things.

Q. Okay. So fair to say that you don't know what the pain level was on a scale of 1 to 10?

A. From memory, I don't recall if one was indicated. Some may have been given, but I don't recall.

Q. Fair to say you don't know what the frequency was?

A. I don't have the direct documents in front of me to refer to that, so I couldn't tell you.

Q. Doctor, can you state one record, can you point me to one record where Ms. Seastrand reported to the doctor where the primary or chief complaint of neck pain or back pain between 1985 through March of 2009?

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

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.

A. See gynecologist, routine physical.
Q. No, before that. Requesting?
A. Requesting heart check.
Q. Oh, okay. Do you see anything in there about the neck?
A. Can you show me the very end of the paper?
Q. Sure. You bet, Doctor.
A. Checked will -- no, not in the reason for visit.
Q. Okay. And then right here, Doctor, what would these be?
A. These are checkmarks.
Q. Those are findings for, like, physical exam?
A. I don't know. Can you move the page over?
Q. Which way?
A. To there. Physical. Physical. And then it talked about an area, and then it talks about whether it's normal or abnormal.
Q. What was the finding for the neck?
A. There is a mark there on the normal column.
Q. So what would that tell you?
A. Well, that this particular doctor had no abnormal physical exam findings when he saw this patient. I don't know that this is the doctor that ordered the X ray.

Is -- do you have an order from this doctor ordering the X ray?

Q. You tell us, Doctor.

A. Can you show me that?

Q. You tell us, Doctor. You reviewed the records, right?

A. Yes. I never saw an order. But some doctor ordered an X ray of this patient's neck and it wasn't because they were having their heart checked.

Q. Sure. You don't know the purpose of the visit, do you?

A. The purpose of which visit?

Q. Of that visit.

A. Well, that visit that you just showed me was for a heart check.

Q. Okay.

A. And at that time, the doctor that examined the patient found nothing in physical exam. It makes no reference to complaints of the patient. Those are physical exam findings.

Q. Sure. Sure. Doctor, can you tell me of a specific singular visit where the primary complaint for neck or back was made by Ms. Seastrand between 1985 and 2009?

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

and I can't cite a special one to you from memory.

Q. Because there are none.

A. I don't know if there are or are not. You can say that, and you're perfectly entitled to, but I cannot.

Q. Well, I'm sure if I'm not -- if I'm incorrect, Mr. Jaffe will correct me when I sit down.

Doctor, so after -- so here's a motor vehicle crash. Okay? So after the crash, what were her restrictions?

A. I don't recall what her restrictions were.

Q. Don't know?

A. No, I didn't say I don't know. I don't recall. I'd have to go through the medical records again and review that specific aspect of the record.

Q. Well, I think it's important, Doctor. Do you want to take a minute to do that or --

A. It's up to you.

Q. As you sit here, you're unable to tell us, though, without checking?

A. Yeah. I didn't specifically review the record for her restrictions after the motor vehicle accident.

Q. Okay. And you never talked to her, so you wouldn't know from your face-to-face consultation,

right?

A. I have not spoken with her or met her.

Q. You haven't examined her?

A. That's correct.

Q. Do you know whether there were any restrictions of her activities of daily living?

A. I don't recall from memory whether there were.

Q. Okay. Do you know what the average pain level and frequency is after the motor vehicle accident?

A. They go up and they go down. I know that they vary generally from 4 to about 8, occasionally 9. And I have seen records before the accident, and I don't recall exactly -- see if I wrote it down in my little notes here. I don't recall from memory exactly. But I remember pain levels around the range of 4. But I don't know if that's an average pain level, a maximum, or a minimum.

Q. What record was that that you were referring to?

A. I can't tell you from the top of my head. There were many records in this case.

Q. Is it possible you were mistaken, and it's actually Dr. Lurie's, the first provider she went to?

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

explain that?

MR. JAFFE: Objection, Your Honor. Calls for speculation. Outside the scope. Argumentative also.

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

THE WITNESS: We know that the scan -- we 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 treated, then it is certainly reasonable that her pain would improve. That does not imply causation with respect to the motor vehicle accident.

BY MR. CLOWARD:

Q. Is there any evidence that the pain that she was experiencing, the pain levels and the restrictions and the treatment that she had after the motor vehicle accident were also happening before the motor vehicle accident?

A. I don't know because I don't know what the indication for that cervical spine radiograph was on October 27th, 2008.

Q. So, Doctor, is it just coincidental that 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?

A. We just talked about what are the things can cause neck pain, including spasm. If she has spasm, that could cause pain from the instant the accident occurs.

Q. Doctor, can you just tell us the total amount that you've charged for your time in this case?

A. I don't know. I don't have that with me.

Q. Thanks, Doctor.

MR. CLOWARD: No further questions, Judge.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. JAFFE:

Q. Doctor, I'm going to be very quick. You testified that the scans show no injury; is that correct?

A. They show disease, but they show no focal injury that I could attribute to the motor vehicle accident of March 13th, 2009.

Q. Do sprains and strains show up on X rays or MRIs?

A. No.

Q. Do they show up on CT?

A. No, they may not. If you have severe spasm

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

her two surgeries?

A. Not based on the imaging evidence provided to me for review.

MR. JAFFE: Nothing further. Thank you, sir.

THE COURT: Any more, Mr. Jaffe -- or Mr. Cloward? Sorry.

MR. CLOWARD: Yeah. I was just trying to pull up my laptop.

RECROSS-EXAMINATION

BY MR. CLOWARD:

Q. Do you believe that in order to rupture a disk in a car crash, you have to have a fracture of the adjacent bone?

A. No.

MR. CLOWARD: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. JAFFE:

Q. Have you ever performed biomechanical studies to determine whether an accident severe enough to rupture a disk will cause disruptions of the adjacent bone?

A. I have not.

Q. Would you defer to a biomechanic who's also a

medical doctor on that topic?

A. Absolutely, I would.

Q. Thank you, sir.

MR. JAFFE: Nothing further.

THE COURT: Any more?

MR. CLOWARD: I have one more question.

FURTHER RECROSS-EXAMINATION

BY MR. CLOWARD:

Q. Doctor, on this topic of the biomechanical engineers, can you tell me one time in your practice, one time, where you have called a biomechanical engineer to tell you, a medical doctor, whether someone was really hurt or not?

A. Well, we generally don't use them in medical practice. They're part of the legal arena.

Q. That's what I thought.

MR. CLOWARD: Thank you.

MR. JAFFE: I'll let it go.

THE COURT: Ladies and gentlemen, any questions for this doctor? We got at least one.

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

THE COURT: All right. Doctor, just one question: Did you see any radiographs or MRIs done for

Ms. Seastrand prior to her 2009 motor vehicle accident?

THE WITNESS: There was one cervical radiograph from October 27 that I have in my report, but I could not find that film in my -- when I brought my stack of films, and it's not entirely clear to me in reviewing my report whether I actually saw those films or was going from the report generated of those films because it had been a long time.

THE COURT: Okay. Mark that Court's next in order.

Any follow-ups?

MR. JAFFE: Nothing, sir.

THE COURT: Mr. Cloward?

MR. CLOWARD: No thanks.

THE COURT: Thank you, Doctor. Appreciate your time.

THE WITNESS: Thank you very much.

THE COURT: Come back up for just one second, guys.

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

THE COURT: All right, folks, trying to get you out of here as soon as we can. So here's what I'm going to do. Tomorrow, the attorneys and I -- I got a 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

submitted to you.

See you tomorrow at noon.

THE BAILIFF: All rise.

(Whereupon jury exited the courtroom.)

THE COURT: All right. We're outside the presence of the jury. As far as scheduling, if you 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 changes that I made to the ones that were previously proposed because even some of the ones that you stipulated to, some of those were preinstructions that are not applicable at the end of trial, and there was I know at least one that I had to change from future tense to past tense so that it applied. I don't remember what other changes that I made. But I mean, I can go through that stuff with you guys tomorrow.

My hope is that we can go through jury instructions between 10:30 and noon, have the instructions ready for them by noon so that we can instruct them and do closings tomorrow.

The reason I'm having them come at noon instead of trying to get them here earlier is because if we go earlier, we're going to have to take a lunch, and I don't want to do a lunch in between closings. I know you guys want to do one after the other, so ...

MR. JAFFE: Just go.

THE COURT: Any idea how long the closing arguments are going to be?

MR. CLOWARD: I'm sorry, Judge.

THE COURT: I know she was talking to you while I was asking.

MR. JAFFE: Judge, I would expect that mine is probably going to be in the range of an hour.

THE COURT: How long for closing arguments?

MR. CLOWARD: To be honest, mine's going to be a little lengthy. It's going to be probably an hour and a half, and my rebuttal will be probably at least a half an hour. I need to walk through everything.

THE COURT: So you're looking at two hours which probably means two and a half, and you said an hour, which means an hour and a half.

MR. JAFFE: I won't be an hour and a half.

MR. CLOWARD: It's an hour multiplier, Judge.

MR. SMITH: Your Honor, just so I'm entirely clear. Sorry.

MR. JAFFE: Let's finish this, and he'll do that.

THE COURT: I guess the question is: Assuming we don't get done within -- instructions and closing arguments until sometime between 4:00 and 5:00,

I would usually leave it to the jurors to decide whether they want to stick around, especially because we told them they would be done tomorrow. But I'm not going to let them stay too late. I would rather let them go for a little while, maybe 6:00 or 7:00 and then probably bring them back the next day. I don't like the jury deliberation all through the night.

MR. JAFFE: If they decide they want to, would you allow them to?

THE COURT: Probably not. Not -- not into the middle of the night. We've done that once or twice, and it just -- not only does it create an overtime problem for us, there has -- it requires additional people in the building later than it should, including janitorial people, security people.

MR. JAFFE: I understand, sir.

THE COURT: So I would prefer not to go super late. So the earlier we get done, the more time it gives them to deliberate. That's all I'll tell you. But after about 7:00 o'clock, I think I probably will call it and have them come back Friday.

Now, I believe that the only two people originally that said that they had trips planned that we were going to have to accommodate --

MR. JAFFE: One of them I think was already

kicked off.

THE COURT: I think were Mr. Unger and Ms. Brown, and I think they're both gone, right?

MR. JAFFE: I think so. Yeah, they're both gone. Brown was dismissed for cause and Unger was stricken.

THE COURT: I don't believe anybody else had an issue, but that's not to say that we won't hear about an issue if we go later than what we told them.

MR. CLOWARD: Sure.

MR. JAFFE: Okay. Judge, I have two additional exhibits that I would like to mark. One is Exhibit YY, which are another set of records from Southern Nevada Surgery Center. And then plaintiffs' counsel had indicated that the -- all the MRIs and films were marked and moved into evidence. I just, out of an abundance of caution, have marked as ZZ1 and ZZ2 copies of the disks of the films that Dr. Villablanca testified as to during his testimony. So I would like to mark those and move those into evidence, again, just out of an abundance of caution more than anything else.

THE CLERK: You said YY?

MR. JAFFE: YY are the records from Southern Nevada Surgery Center.

THE CLERK: I don't have an XX submitted.

MR. CLOWARD: Your Honor --
MR. JAFFE: Didn't we have an XX?
MR. CLOWARD: We would object to YY. I don't know why it's being moved in. We've already moved it in.
MR. SMITH: In part. There were parts missing. That's why we're moving it in.
MR. CLOWARD: What parts?
MR. SMITH: December 9th, 2009, records.
MR. JAFFE: The injections that we referenced today were not in plaintiffs' copy of the Southern Nevada surgery Center records. I want those in front of the jury.
And then we -- then, like I said, just to play it safe --
THE COURT: Hold on. Hold on. Hey, guys, one at a time. We're still on the record. Okay?
MR. JAFFE: And then like I said, I got ZZ -- I've only got one set of ZZ1 and 2. It's the copies of the disk we have. We can certainly produce additional copies if counsel would like, but it's the only copy I have here today. I just --
THE COURT: You think you've already admitted it.
MR. CLOWARD: The films?

MR. JAFFE: Yeah.

THE COURT: Yeah.

MR. CLOWARD: Yeah, I believe so. I don't have a problem with the film. I just have a problem with YY, because those records are contained within Belsky's. So if he's doing it separately, then that implies that we didn't -- you know, that we didn't include something that should have been included.

MR. JAFFE: Judge, they were not included in Belsky's. There was a preoperative report and a postoperative report talking about -- about pain interpretations --

THE COURT: Okay. Here's the thing: If it's a couple of pages, can't we just add those couple pages to already admitted exhibit, make it more complete?

MR. JAFFE: I have no problem just -- doing that, but the problem is when my -- my paralegal sent them down today, she made a copy of the whole chart, and those two pages -- I can excerpt those out from there, those two pages, and I'm fine admitting just those two as Exhibit YY.

THE COURT: Or just add it to another exhibit that you're saying that they aren't part of that they should be, right?

MR. JAFFE: Well, see, that's just the thing

because the Southern Nevada Surgery Center records, counsel's saying their part of Belsky's records. They're actually in neither. So I wouldn't even know which one to add it to. So I'd just like to make it a separate exhibit.

MR. CLOWARD: We pulled it out of our binder and put it on the ELMO.

MR. JAFFE: ZZ1 and 2.

THE COURT: All right. Guys, here's the deal: As far as YY is concerned, I don't want to duplicate a bunch of records. So why don't you talk to Mr. Cloward once we're off the record and find out where they are in his records, and if they're in his records, we don't need to make a new exhibit.

MR. JAFFE: I fully agree, sir.

THE COURT: Fair?

MR. JAFFE: Fully agree.

THE COURT: If they're not in his records, but he can tell you where they're supposed to be and they for some reason didn't get copied when the records were copied, let's just insert them in the record where they belong.

MR. JAFFE: I prefer to make them a new exhibit, if it's all right, sir.

THE COURT: Well, let's see if they're

already there.

MR. JAFFE: If they're not there, I -- if they're there, I fully agree.

THE COURT: I don't know that it's appropriate to allow it to be a separate exhibit so you could argue to the jury that they pulled something out of a record when it arguably just gotten inadvertently left out.

MR. JAFFE: Okay. Here's the problem, Judge: That has happened with so many other providers that we have marked and already moved records in on, that one it's -- it's not a one-time thing.

MR. CLOWARD: I'll bring my staff down who prepared -- I'll get on the stand right now -- I'll get on the stand right now, on my daughter's life, I didn't remove any record, like he's suggesting, and -- and it's -- it's really getting quite offensive.

THE COURT: Quit, guys. I mean, it's like -- it's like this is my little kids fighting. Let's just get the trial done. I mean, work together, get the records in. I mean, I don't care what the exhibit number or letter is, let's just get the exhibits in so that the jury can see them and don't fight about it. Just get along. Let's go.

Is there anything else we need to do outside

the presence?

MR. SMITH: Yes, Your Honor. I just wanted to seek clarification. The jury instructions that we have on our table that came in this morning included two copies of the instruction to the jury. I presume that's the stipulated ones you've made your changes to?

THE COURT: Some of them are stipulated. Some of them were not.

MR. SMITH: Okay. And then there was a separate stack of plaintiffs' disputed jury instruction, so that's why --

THE COURT: Didn't give you those.

MR. SMITH: Those weren't from you.

THE COURT: No. The two sets that I gave you include most of the stipulated ones. It may include some other ones. I know that I rearranged them because the order that they were in did not make sense to me. So you're going to have to compare them to the sets that you provided to me, and we can go through the changes tomorrow.

MR. SMITH: Fair enough.

MR. CLOWARD: I just -- just for your staff, I put in past loss of household services and future household services.

THE COURT: I saw that.

MR. CLOWARD: Do you want this? It just might shortcut things if they do that tonight. However you want --

THE COURT: This is a separate instruction or on the verdict form?

MR. CLOWARD: Just on the verdict form, and then also they're in one of the instructions itself.

THE COURT: Okay. Let me take a look at it.

Anything else?

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 when we disclosed them? And it was on the list that I provided the Court this morning. It's consistent with the 16.1 and 16.1(A)(3) disclosures that we lodged with the Court the other day.

THE COURT: Let me just make sure I understand the -- the intention of this.

MR. JAFFE: Yes, sir.

THE COURT: As far as taking judicial notice of the dates that certain things were filed or --

MR. JAFFE: Disclosed.

THE COURT: -- I don't have a problem taking judicial notice of that. If you're planning on showing these 16.1 productions --

MR. JAFFE: I'm not.

THE COURT: -- to the jury for some reason, there's a problem.

MR. JAFFE: No, I'm not showing that. I just want it on the record when records were disclosed.

THE COURT: Do you have a problem with that, Mr. Cloward?

MR. CLOWARD: Well, I do have a problem with it, and here's the reason why: I know why he's making the argument. He's trying to make the argument that, hey, Ms. Seastrand didn't provide us with information, you know, we obtained things, and that's why we didn't get them to the experts, and that's why the experts weren't provided the information, so that's why they didn't review those documents.

Two fundamental problems with that: No. 1, when I asked for a release, instead of giving them a specific release, we gave them a blanket release, which we hardly ever do. The second thing is before the lawsuit was even filed, we gave them all the records.

So to now try and make the argument that, hey, you know, we didn't get a release or we didn't get records until a certain time so I want to take judicial notice so I can tell the jurors that, hey, Mr. Cloward didn't provide us this, that's unfair. Because that's

not the truth. That's not what happened. We gave them a blanket authorization, and in our demand packet here's all the records.

THE COURT: Is that what you're going to try to use them for?

MR. JAFFE: That Mr. Cloward didn't give these to us? No, I'm not arguing that at all.

THE COURT: That the plaintiff didn't give them to you?

MR. JAFFE: That they didn't give them to me? No, I'm not making that at all. That's not my argument. I have no intention of using it that for purpose.

THE COURT: I would hate to have to get into the insurance issues --

MR. JAFFE: Trying not to establish --

THE COURT: One at a time.

MR. JAFFE: Sorry, sir.

THE COURT: I would hate to have to get into the insurance issues for the purpose of establishing that a medical release was provided to somebody prior to initiation of a lawsuit to allow you to get records.

MR. JAFFE: Not my intention, sir.

THE COURT: That's not going to be the issue?

MR. JAFFE: Not at all.

THE COURT: Okay. Then I'll-- I'll take judicial notice of the dates that the documents were filed. You gave me a list.

MR. JAFFE: I provided a copy of the list to the Court this morning.

THE COURT: Okay. And you made this a -- you gave a copy of this to Alice?

MR. JAFFE: I gave a copy to counsel before I provided it to the Court.

THE COURT: All right. We'll mark it as a Court's exhibit.

MR. JAFFE: Thank you, sir.

THE COURT: Anything else?

MR. CLOWARD: Thanks, Judge.

MR. JAFFE: Nothing, sir.

THE COURT: Thanks, guys. See you tomorrow. Come at 10:30.

MR. JAFFE: Yes, sir.

MR. CLOWARD: 10:30.

THE COURT: Off record.

(Thereupon, the proceedings concluded at 4:58 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kristy L. Clark, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the proceedings commencing on Wednesday, July 24, 2013, at 9:06 o'clock a.m.

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

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

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

Kristy Clark

KRISTY L. CLARK, CCR #708

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY, Appellant, vs. MARGARET SEASTRAND, Respondent.	Supreme Court Case No. 64702 Supreme Court Case No. 65907 Supreme Court Case No. 65172

APPEAL

from the Eighth Judicial District Court, Clark County

The HONORABLE JERRY WEISE, District Court Judge

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

APPELLANT'S APPENDIX

VOLUME XVII

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VOLUME XVII