Based on his review of records following the subject accident until 09/23/10, Dr. Schiffini discusses the medical chronology of the case. He, however, notes that he appeared to be missing records from the initial stages following the accident, including the ones from Mountain View Hospital, Dr. Benjamin Lurie, Dr. Olmstead and Dr. Koka as well as records from the later stages of Ms. Seastrand's care including those of Dr. Leo Langlois, Dr. Jorg Rosler, Dr. Yevgeniy Khavkin, and Dr. Jaswinder Grover. Following his review of records, Dr. Schiffini provided his opinions and conclusions. He notes that the subject incident only caused minor damage to both vehicles. *[Reviewer's note: please see my above stated comments regarding Dr. Siegler. Dr. Schiffini and Dr. Siegler are apparently reliant on the damage to vehicles to determine injuries to patients. This is not a concept instructed in medical school or residencies and appears to be an opinion of convenience.]* He also makes note that Ms. Seastrand on an intake form from Nevada Imaging from 04/03/09 admitted to a 26-year history of back pain. Dr. Schiffini thus opines that based on the mechanism of injury and the review of records, if at all injury was felt to have been caused by the 03/13/09, it would have been limited **to a temporary exacerbation of preexisting conditions or development of soft tissue injuries, and these would have resolved within four to eight weeks of the "minor" 03/13/09 motor vehicle accident.** *[Reviewer's note: minor injuries are often limited to short courses of treatment. Using that logic in the present matter, the ongoing need for treatments supports that the fact that the injury was greater than that as described by Dr. Schiffini. Additionally, he does not specify which soft tissues he is giving opinions regarding: discs?, nerves?, spinal cord?, ligaments, ?, etc. Grouping all of these different tissues together is not a useful clinical approach. Furthermore, use of the term "minor" applies only to the vehicle and not the patient. Dr. Schiffini also completely omits any reference to the important medical analysis of susceptibility in discussing prior conditions. Thus, similar to the other physicians who rendered defense opinions as noted in my review herein, his opinions is incomplete and oversimplified. Dr. Schiffini also discussed what "would" have occurred, and not which did occur. His opinion deals with expectations and statistics therefore, and not actual events. Thus, his opinion does not meet a medically probable standard.]* Thus, treatment beyond 05/13/09 was thought to be considered unrelated to the subject accident. *[Reviewer's note: Dr. Schiffini's opinion is arbitrary. This would only be true had the patient returned to her baseline quality of life she enjoyed prior to the present injury, which has not occurred.]* He also expressed concerns for secondary gain based on his opinion that the patient's subjective complaints often outweighed the objective findings and medical records indicated "omissions or minimization" of her prior conditions. *[Reviewer's note: in meeting and examining Ms. Seastrand and reviewing her records, I found no evidence of any such psychological*

elements. If anything, this is a stoic patient who would have liked nothing more than to not have been injured. It is the physician's job to correlate the symptoms and findings. I found them to match reasonably in this matter, as have her other treatment physicians. Thus, there is no basis for Dr. Schifini's allegations.] Dr. Schifini then also commented on the diagnostic usefulness of the injections performed by Dr. Belsky in that the combination of multi-level and multi-site lumbar injections on 02/20/09 reduced the diagnostic value in addition to the non documentation of pre-procedure and post-procedure Visual Analog Pain Scale scores. He stated that the lumbar discography revealed a negative disc at L3-4, a likely indeterminate disc at L4-5, and either a concordant or indeterminate disc at L5-S1. With regard to plasma disc decompression performed after the discography, he stated that it was considered experimental by most insurers and considered non-standard in the Southern Nevada medical community. *[Reviewer's note: If Dr. Schifini defines the utility of treatments based upon who will or will not readily pay of the treatment, than his methods are non-medical, and only economically driven.]* Neurodiagnostic testing performed by Dr. Shah was felt to be likely unnecessary and demonstrated subacute findings, which Dr. Shah defined would have occurred three to nine months prior to the test, and thus the upper extremity and lower extremity findings were felt to be unrelated to the subject accident. *[Reviewer's note: Dr. Shah's electrodiagnostic testing was done about 9 months after the present injury. Subacute findings at that time could easily and readily be related to the post-traumatic symptoms. Further, there is no reasonable opinion to detract from the necessity of the evaluation by Dr. Shah. Ms. Seastrand's physicians were attempting to correlate the findings and symptoms that were still ongoing at that time. Such evaluation is the job of her treating physicians and is a typical and necessary part of the treatment of any patient with problems.]* Dr. Schifini questioned the medical logic of the cervical spine and lumbar spine surgery. *[Reviewer's note: no basis is provided for Dr. Schifini's questioning. There is no discussion of his "logic" to overcome the reasonableness of the approach of Ms. Seastrand Surgeons. Dr. Schifini is, in effect, calling her treating physicians: "illogical."]* He, however, had no records pertaining to the pending lumbar spine surgery. The injections performed by Dr. Belsky were performed under deep sedation using Versed, Fentanyl and Propofol thus again raising questions about the validity of the diagnosis. *[Reviewer's note: I prefer my patients to have pain injections under such sedation. The diagnostic component of an injection can be determined after the medication begins to take effect and the patient has woken up.]* He quoted from the ISIS guidelines to support his argument against the use of sedation. Dr. Schifini also included his opinions on the reasonableness of billing of various providers, though also added that this in no way meant that the billed charges were related to the subject accident.

Dr. Schifini concluded by stating that the patient's future was guarded. *[Reviewer's note: this is interesting since if Dr. Schifini felt that Ms. Seastrand should have had resolution of her injuries and symptoms in a few months, then why would he feel that she should still be guarded. Clearly, those opinions conflict and serve to underscore the inconsistencies in his approach.]* He reserved opinions on future needs pending his review of the latest records. He did not anticipate any decreased work life capacity or permanent impairment for Ms. Seastrand related to the subject accident. A record review section was included at the end of the report documenting his review of multiple records, as stated above.

DIAGNOSTICS:

I personally reviewed the following supplied images on CD:

4/3/09 Lumbar MRI shows a small L5-S1 and L4-5 discal protrusions. There is L4-5 inflammatory facet joint fluid and bilateral foraminal narrowing at L4-5. There is reduced T2 signal at L4-5 and L5-S1.

4/3/09 Cervical MRI shows straightening. There is a small C5-6 protrusion and mild kyphosis at C5-6. There is left C5-6 foraminal narrowing.

DISCUSSION:

In review of these additional records, I have identified areas of disagreement with defense participants. I have provided the reasons and basis for my disagreement, with my opinions being supported by the medical facts, medical knowledge, and applied clinical logic. My opinions are given within a reasonable degree of medical probability.

Sincerely,

JEFFREY D. GROSS, M.D.
Spine Fellowship Trained Neurosurgeon
Diplomate, American Board of Neurological Surgery

EXHIBIT 3

Comprehensive Injury Institute
Complete Care from Diagnosis to Treatment

Office of: Jeffrey D. Gross, M.D.
Spine Fellowship Trained Neurological Surgeon
Diplomate, American Board of Neurological Surgery

August 7, 2012

PATIENT NAME:	SEASTRAND, MARGARET
DATE OF BIRTH:	12/27/1961
DATE OF INJURY:	03/13/09
DATE OF REVIEW:	COMPLETED 08/07/12

EXPERT NEUROSURGICAL CASE REVIEW AND MEDICAL LIFE CARE PLAN

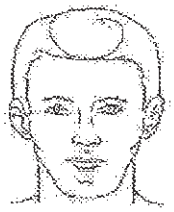
To Whom It May Concern:

I received and reviewed the following reports:

1. 09/12/04 *Unknown provider of Summerlin Hospital Medical Center* – Emergency nursing record. The patient presented with complaints of headache for three days, and numbness and tingling into the left arm and fingers. She also had nausea, visual disturbances, and neck discomfort. A pain diagram identified the symptomatic areas as shown below:

The patient hit her head on the car hatch seven days ago, no loss of consciousness. Past history included chronic neck and back pain?. Medications included estradiol, Lortab, and Percocet. The patient was given morphine and Phenergan in the emergency room and her pain improved. Diagnostic studies were obtained. She was discharged in improved and stable condition.

2. 09/12/04 *Unknown provider of Summerlin Hospital Medical Center* – Emergency physician record. The patient presented with complaints of **headache, for two to three days**, status post head injury one week ago. Associated symptoms included **nausea and vomiting. Light bothered her eyes.** A pain diagram identified the symptomatic areas as shown below:



Past history was noted to be negative. On exam, the patient was mildly anxious. Head CT was obtained and was negative. Cervical spine was negative. The clinical impression was *"post concussion syndrome."* The patient was discharged with a prescription for **Lortab.**

3. 09/12/04 *Morris Schaner, DO of Summerlin Hospital Medical Center* – Report of a CT of the brain without contrast. The impression was *"normal CT of the brain without contrast."*

4. 09/12/04 *Morris Schaner, DO of Summerlin Hospital Medical Center* – Report of x-rays of the cervical spine, five views. The impression was *"normal cervical spine."*

DATE OF PRESENT INJURY: 03/13/09

5. 03/13/09 *Las Vegas Fire and Rescue* – EMS report. The patient sustained trauma secondary to motor vehicle accident. The patient was a restrained driver of the vehicle that was struck on the rear side by an SUV. The patient complained of **pain to the neck, right shoulder, back and pelvis.** She denied loss of consciousness or loss of sensation or function of the extremities. On physical examination, there was neck, upper back and spine pain upon palpation. There was pain to the right shoulder consistent to seatbelt. Diffuse pain was noted throughout the pelvis. The assessment was *"rule out trauma secondary to motor vehicle accident."* The patient was transported in full C-spine precautions with collar/backboard with vitals monitored to Mountain View Emergency Department.

6. 03/13/09 *Mark Ferdowsian, DO of Mountain View Hospital* – Physician clinical report. Chief complaint was **motor vehicle collision with injuries to the neck and back with pelvic, right shoulder and neck pain.** The patient was rear-ended by another vehicle. The air bag did not deploy.

According to EMS report, the patient was alert and oriented and transported in C-spine and backboard precautions. The patient had a past medical history of previous neck injury, concussion x2 and degenerative disc disease and surgical history of bilateral lower extremity fracture with hardware and she had also had a hysterectomy. On physical examination, the patient was on a backboard with C-collar in place, alert and in moderate distress due to pain. There was decreased range of motion of the neck with muscle spasm and mild tenderness over the cervical area. Initial x-rays of the cervical spine and CT of head were negative. The patient was given **morphine** and **Zofran** in the emergency department. The clinical impression was ***"acute pain in head and neck with cervical strain."*** Instructions were given not to work for three days and to follow up with Dr. Edward Ashman in two days. She was given prescription of **Lortab** and **Soma**.

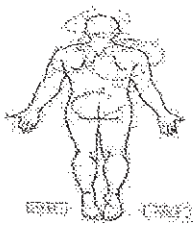
7. 03/13/09 *David P. Gorczyca, MD of Mountain View Hospital* – Report of x-rays of the cervical spine, five views. The findings revealed normal alignment of the cervical spine. No fractures or subluxations identified. Prevertebral soft tissues were within normal limits. There were minimal degenerative changes. A follow-up study or CT scan was recommended in case of persistent symptoms or for any clinical concerns. There was debris over the posterior aspect of the neck, most likely sheets. The impression was ***"negative study."***

8. 03/13/09 *Lindsey C. Blake, MD of Mountain View Hospital* – Report of a CT of the brain without IV contrast. The findings revealed that the brain parenchyma appeared normal. There was no intracranial hemorrhage, mass effect, or hydrocephalus. There was no midline shift or abnormal extra-axial fluid collection. The basilar cisterns were patent. The visualized orbits were unremarkable. The bony calvaria appeared intact. The visualized paranasal sinuses and mastoid air cells were clear. The impression was ***"negative brain and no significant change."***

9. 03/13/09 *Mountain View Emergency Department:* Billing statement. Total charges for the services provided on 03/13/09 were $4,468.45.

10. 03/20/09 *Timothy Knauff, PA-C of Primary Care Consultants*– Initial Evaluation: The patient was a driver of a vehicle that was involved in a rear end collision. The patient complained of **headache, cervical pain and stiffness as well as bilateral trapezius pain and stiffness**. Past history was notable for two accidents in 1981 and 1985 from which the patient had no residuals. On physical examination, the patient complained of cervical pain and stiffness with flexion, extension, left rotation, right rotation, left lateral flexion, right lateral flexion. Muscles were hypertonic on palpation. The trapezius exam showed bilateral pain and tenderness to

palpation. A pain diagram identified the symptomatic areas as shown below.



The assessment was *"cervical sprain/strain, cervical pain, headaches, bilateral trapezius sprain/strain secondary to motor vehicle accident."* The patient was referred for conservative rehabilitation for 12 to 15 weeks to include passive and active therapy along with orthopedic modalities. The patient was advised to follow up in two weeks for reevaluation. The patient was a candidate for trigger point injections, and future orthopedic evaluation and pain management consultation if she did not respond to the above treatment. The patient was given a prescription for **Fioricet** and **Valium.** Records from Mountain View Emergency Room were to be obtained.

11. 03/20/09 *Benjamin S. Lurie, DC* – Initial consultation and examination: The patient stated that she was involved in a motor vehicle collision on 03/13/09. The patient stated that **immediately after the motor vehicle collision she had headaches, neck pain, mid back pain, low back pain, and right shoulder pain.** Since the accident, she was unable to perform activities of daily living without experiencing moderate amount of pain and was experiencing **sleeping difficulties.** Past history was notable for bilateral foot surgery in approximately 2008, two concussions in approximately 2004, hospitalization for syncopal episodes in approximately 2005 and 2006. She had injuries to her neck, mid back, and lower back following motor vehicle accidents in 1981 and 1985. She was treated and healed without residuals. **Headaches were rated at 7/10** and all cervical spine ranges of motion increased her pain as well as coughing, sneezing, or laughing. The patient also noted a history of headaches predating the motor vehicle accident, intermittent and rated at a 2/10. **Her neck pain radiated into the bilateral shoulders and upper extremities, rated at an 8/10.** *The patient stated that prior to the motor vehicle collision she was not experiencing intermittent neck pain (sic). The previous intermittent neck pain was approximately 3/10 and 2-3 x per month when present.* She had **numbness and tingling in the bilateral hands.** She had **frequent mid back pain, rated at an 8/10. She had low back pain radiating to the buttock region and to the bilateral legs and knees. She had numbness and tingling in the leg. Pain was rated at an 8/10.** *Prior to the motor vehicle collision she was not experiencing any lower*

back pain (sic). She rated the previous intermittent lower back pain as approximately 4/10 approximately 1-2 x per month when present. She had **bilateral shoulder pain rated at a 7/10.** On physical examination, there was tenderness noted over the right shoulder on palpation. On orthopedic evaluation, O'Donoghue Maneuver was positive for sprain/strain of the cervical spine. Jackson Compression Test was negative on the right and the left; however, pain was elicited upon cervical compression. Maximum Cervical Compression on the right was positive on the left. This result was consistent with muscular strain of the cervical paraspinals. Maximum Cervical Compression on the left was positive on the right. This result was consistent with muscular strain of the cervical paraspinals. Spurling's test was positive. Distraction Test was positive in producing cervical paraspinal muscular pain on the right and the left. This result is consistent with muscular sprain/strain in the cervical paraspinals. Soto-Hall (Afebrile) Sign was positive with pain elicited in the cervical spine. O'Donoghue Maneuver was positive for sprain/strain of the lumbar spine. Straight-Leg Raising Test was negative bilaterally at approximately 10 degrees; however, lower back pain was elicited. Double Leg-Raise Test was positive for lower back pain at approximately 5 degrees and elicited lower back pain. Kemp's Test was positive for lower back pain. Dejerine's Triad was positive for cervical spine pain and lower back pain with coughing, sneezing, or bearing down for bowel movement. Dawbarn's Sign was positive for right and left shoulder bursitis. I/S incongruency signs -- head compression was positive. Chiropractic examination suggested articular dysfunction at C3-C6, T4-T8, and L3-S1. Cervical spine range of motion was flexion 38/50, extension 46/60, left lateral flexion 36/45, right lateral flexion 39/45, left rotation 72/80, and right rotation 70/80. Lumbosacral range of motion was flexion 54/60, extension 10/25, left lateral flexion 15/25, and right lateral flexion 15/25. The patient had moderate pain on cervical and lumbosacral active and passive ranges of motion with moderate restriction due to pain. On manual muscle strength testing, neck flexors and extensors were +4, otherwise normal strength in the rest of the muscle groups of the upper and lower extremities. The assessment was *"**cervical articular sprain with associated cervical posterior facet syndrome/facet capsulitis secondary to motor vehicle collision; sprain/strain of the cervical, thoracic, and lumbar paravertebral soft tissue structures with associated neuritis/radiculitis, paresthesia, myofascial pain syndrome and segmental dysfunction of the cervical/thoracic, thoracic/lumbar, and lumbar spinal articulations with attendant cervicalgia, dorsalgia, and lumbalgia; traumatic onset of posttraumatic headaches secondary to motor vehicle collision, sprain/strain injury of the right/left shoulder rotator cuff secondary to motor vehicle collision with associated tendonitis/bursitis.*** The patient was given work restrictions. She was advised chiropractic treatment three times a week. Physiotherapy was

applied to the neck, upper mid back, and lower back. The patient was scheduled for approximately 12 office treatments and was given home stretching and strengthening exercises. The patient was referred to her primary care physician for a complete medical consultation and evaluation as well as pharmaceutical support and co-management. The patient elected to get treated in North Las Vegas office and records were forwarded to Dr. Olmstead to review and to begin treatment.

12. 04/03/09 *William Orrison, MD/George Mulopulos, MD of Nevada Imaging Center* – Report of an MRI of the cervical spine without contrast. History – rule out discopathy. The findings revealed straightening of the cervical lordosis. Vertebral body heights were well preserved. Marrow signal intensity throughout the cervical region was normal, except for subtle findings related to chronic degenerative disc disease at C5-6 in the endplates. The foramen magnum and craniovertebral junction were normal. The C1-2 joint was normal. The C2-3, C3-4, and C4-C5 discs were normal. At C5-6, disc space narrowing and endplate signal intensity changes were seen, consistent with chronic degenerative disc disease. There was also posterior protruding disc and osteophyte in the midline with indentation on the ventral thecal sac. There was a broad-based indentation and there was some mild bilateral foraminal encroachment. The C6-7, C7-T1 and T1-2 discs were normal. The cervical cord was normal in caliber and signal intensity. The impression of the study was *"Moderate chronic disc degenerative changes at C5-6 with posterior protruding disc osteophyte complex and broad indentation on the ventral thecal sac associated mild bilateral neural foraminal narrowing. Straightening of the cervical lordosis."*

13. 04/03/09 *Keith Lewis, MD of Nevada Imaging Center* – Addendum report of the MRI of the cervical spine without contrast. History – rule out discopathy, neck pain. The findings revealed reversal of the inferior cervical lordosis, apex at the C5-6 level with torticollis to the left compatible with muscle spasm. There was mild subchondral edema at the anterior opposing vertebral body endplates C5-6 level at the point of maximal kyphosis, compatible with bone contusions without fracture. The cervical vertebrae were otherwise intact. There was no evidence of infraction, focal destructive lesion nor subluxation. No abnormal paravertebral soft tissue mass effect was identified. There was desiccation of all the cervical intervertebral discs. There was moderate disc narrowing at C5-6. No significant abnormality was identified at C2-3, C3-4 intervertebral discs. **At C4-5 level there was a right posterolateral disc osteophyte complex protrusion extending 1-2 mm right posterolateral recess.** However, there was no significant neural foraminal narrowing nor central spinal canal stenosis at this level. **At the C5-6 level there was disc osteophyte complex protrusion extending up to 2-3 mm bilateral posterolateral**

recesses. There was accompanying moderate bilateral neural foraminal narrowing at this level without significant central spinal canal stenosis secondary to uncovertebral osteophyte formation. No significant abnormality was identified at C6-7 and C7-T1 intervertebral discs. The cervical spinal cord was normal in configuration, caliber and signal intensity. No abnormal central spinal canal masses are identified. The interpretation of the study was *"Evidence of cervical strain/torticollis. Mild bone contusions vertebral body endplates anteriorly at C5-6 at the point of maximal kyphosis. There was no evidence for fracture. Disc protrusions C4-5, C5-6 levels as described above. Associated mild bilateral neural foraminal narrowing C5-6. No significant central spinal stenosis in the cervical spine."*

14. 04/03/09 *Keith Lewis, MD of Nevada Imaging Center* – Report of an MRI of the lumbar spine without contrast. History – low back pain, rule out discopathy. The findings revealed there was a mild lumbar levoscoliosis compatible with muscle spasm. The lumbar vertebrae were intact. There was no evidence of infraction, focal destructive lesion nor subluxation. No abnormal paravertebral soft tissue mass effect was identified. There was prominent desiccation of L5-S1 intervertebral disc, with more moderate desiccation of L4-5 intervertebral disc and only mild desiccation of more superior lumbar intervertebral discs. Disc height was well maintained in the lumbar spine. No significant abnormality was identified at T12-L1, L1-2, L2-3 and L3-4 intervertebral discs. At the L4-5 level, there was right posterolateral annular tear of the intervertebral disc. There were bilateral posterolateral disc bulges extending up to 2 mm into bilateral L4-5 neural foramina. There was associated moderate bilateral neural foraminal narrowing at L4-5 secondary to posterolateral disc bulge, posterior facet joint hypertrophy and ligamentum flavum hypertrophy. There was no significant central spinal canal stenosis at this level. At the L5-S1 level, there was central posterior annular tear with central disc protrusion extending up to 2 mm into the central spinal canal. There was no significant central spinal canal stenosis nor significant neural foraminal encroachment at this level. The conus medullaris was normal in position, configuration and signal intensity. No abnormal central spinal canal masses were identified. Posterior facet joint arthropathy was identified bilaterally at L3-4 through L5-S1. There was left posterior facet joint synovitis at L4-5. The interpretation of the study was *"Evidence for lumbar strain. Posterior annular tears at L4-5 and L5-S1 intervertebral discs. Bilateral posterolateral disc bulges at L4-5. Central disc protrusion at L5-S1. Posterior facet joint arthropathy L3-4 through L5-S1 bilaterally, with left posterior facet joint synovitis at L4-5. Moderate bilateral neural foraminal narrowing at L4-5. No significant central spinal canal stenosis in the lumbar spine."*

15. 04/09/09 *CHW Nevada Imaging Company LLC* – Billing statement. Total charges for the services provided on 04/03/09 were $1,332.00.

16. 04/09/09 *Neck and Back Clinic*: Billing statement. Total charges for the services provided from 03/20/09 to 04/03//09 were $1,020.

17. 04/10/09 *CHW Nevada Imaging Company LLC* – Billing statement. Total charges for the services provided on 04/03/09 were $1,411.00.

18. 04/22/09 *Radiology Specialists Limited* – Billing statement. Total charges for the services provided on 03/13/09 were $215.00.

19. 04/23/09 *Freemont Emergency Services* – Billing statement. Total charges for the services provided on 03/13/09 were $275.00.

20. 03/25/09 through 05/01/09 – *Matthew Olmstead, DC*. Chiropractic routine office visit notes documenting therapy on the aforementioned dates (11 visits).

21. 05/01/09 *Matthew Olmstead, DC* – Chiropractic reevaluation. The patient indicated that she was still experiencing **lower back pain which radiates from the lower back to her bilateral posterior medial calf.** Additionally, she described having **neck pain with radiation of pain to her bilateral posterior upper arm.** On physical examination, palpation of the cervical, thoracic, and lumbosacral spinal facet joints and paraspinal musculature revealed +2 tenderness with positive for presence of slightly decreased muscle spasm/guarding. Thoracic pain was elicited with cervical and lumbosacral active range of motion. Cervical spine flexion 25/50, extension 40/60, right lateral flexion 40/45, left lateral flexion 30/45, right rotation 70/80 with pain on active and passive range of motion. Lumbosacral flexion 20/60, extension 10/25, right lateral flexion 15/25 and left lateral flexion 10/25 with pain on active and passive range of motion. Assessment was ***"muscle spasm, cervical sprain strain with upper extremity pain/paresthesia--neuritis/radiculitis vs. sclerotogenous referral, cervical segmental dysfunction, thoracic sprain strain with thoracic segmental dysfunction, lumbosacral sprain strain with lumbosacral segmental dysfunction, and lower extremity pain/paresthesia--neuritis/radiculitis, vs. sclerotogenous referral, posttraumatic headaches, shoulder sprain strain, L5-S1 disc protrusion with annular tearing, L4-5 disc bulge with annular tearing, bone contusions C5-6, disc protrusions C4-5 and C5-6."*** Modalities applied to the area of chief complaint consisted of full range interferential EMS set to patient tolerance, moist heat.

22. 05/05/09 *Marjorie Belsky, MD* – Consultation report. The patient's chief complaint was **lumbar and cervical pain.** The patient was a restrained driver

involved in a motor vehicle accident on 03/13/09. The patient was rear-ended by another vehicle. The patient was taken to the emergency room at Mountain View where she was evaluated and discharged. The patient reported symptoms of **cervical pain and numbness radiating down the right upper extremity and lumbar pain L4-5 distribution pain.** The symptoms were exacerbated by reaching, bending, and sitting and relieved by rest, sleep, chiropractic therapy and medications. Review of systems was positive for **bilateral lower extremity numbness and right upper extremity numbness.** The patient was taking **Soma, Flexeril,** and **Valium.** On physical examination, the cervical spine range of motion was limited in flexion, extension, and lateral rotation. There was pain with movement and trapezius and rhomboid muscles tenderness as well as facet tenderness. Lumbar spine range of motion was limited in flexion, extension, and lateral extension. There was pain with movement and paravertebral muscles and facet tenderness. No other positive findings were noted on exam. The assessment was ***"neck pain/strain, cervical radiculopathy, cervical discogenic pain, lumbar pain/sprain, lumbar disc displacement, and lumbar radiculopathy."*** The patient was advised to continue with the chiropractic treatment as prescribed. The patient was recommended lumbar transforaminal **epidural steroid injections at L4 and L5 bilaterally and facet blocks at L4-5 bilaterally.** Following this, she was to receive **cervical transforaminal epidural steroid injections at C4-5 on the right.** The patient was given prescriptions for **Ultram** and **Flexeril.** The patient was to be scheduled for above procedures in the next two weeks at Surgery Center and was advised to stop NSAIDs 7 to 10 days prior to the procedure.

23. 05/15/09 Primary Care Consultants– Billing statement. Total charges for the services provided on 03/20/09 were $300.00.

24. 05/20/09 *Marjorie Belsky, MD of Surgery Center of Southern Nevada*– Procedure note. The preoperative and postoperative diagnoses were ***"lumbar disc bulge, lumbar radiculopathy, and lumbar facet pain."*** The procedure performed was **transforaminal epidural at L4-5 and L5-S1 bilaterally with L4-5 bilateral facet injections and epidurogram under fluoroscopic guidance.** The patient tolerated the procedure without complications.

25. 05/26/09 *Surgery Center of Southern Nevada* – Billing statement. Total charges for the services provided on 05/20/09 were $13,345.90.

26. 05/11/09 through 07/22/09 *Matthew Olmstead, DC*— Chiropractic office visit notes documenting therapy provided on the aforementioned dates (nine visits).

27. 08/04/09 *Marjorie Belsky, MD* – Visit note. The patient reported that her pain was **better after the injections but then the pain increased down the legs and in the back.** Review of systems was positive for numbness in the lower extremities bilaterally and in the right upper extremity. She was taking **Soma, Flexeril** and **Valium**. On examination, cervical range of motion was limited on flexion, extension, and lateral rotation. There was pain with movement and trapezius and rhomboid muscle tenderness. There was facet tenderness also. Lumbar range of motion was also limited on flexion, extension and lateral extension, and there was pain with movement and paravertebral muscle tenderness and facet tenderness. The assessment was *"Cervical/neck pain/strain, cervical radiculopathy, cervical discogenic pain, lumbar pain/strain, lumbar disc displacement and lumbar radiculopathy."* The patient was advised to continue with the chiropractic treatment. She was recommended transforaminal epidural steroid injections at C5-6. She felt too sleepy from **Lortab** and **Percocet** and **Ultram** did not help her to reduce the pain. She was prescribed **Tylenol**. She was to be scheduled in the next two weeks at the surgery center for above recommended blocks.

28. 08/24/09 *William Muir, MD of Spine Surgery* – Initial evaluation. The patient presented for complaints of **neck and back pain**. On 03/13/09, she was rear-ended by another vehicle and immediately had neck and low back pain **which worsened gradually**. The patient had had MRIs of the cervical and lumbar spine and lumbar spine injection by Dr. Belsky. She had **chiropractic therapy which was discontinued since it was no longer helping**. Cervical injections with Dr. Belsky were pending. The patient had **worsening neck pain,** which was constant, moderate to severe, aching, **sharp pain on the right side radiating down the right arm.** She also had **worsening back pain,** which was constant, severe, aching, stabbing **pain on both sides radiating down the legs and feet.** There was **numbness and tingling in the right upper and bilateral lower extremities.** There was **weakness noted in the upper and lower bilateral extremities.** The patient rated her pain as 7-10/10. She was taking **Tylenol**. The patient had difficulty with activities of daily living. The patient was involved in previous accidents but had been symptom free for 23 years prior to the recent motor vehicle accident. On physical examination, lumbar spine range of motion in flexion and lateral flexion was 10% of normal and painful and extension was 5% of normal and painful. Patellar reflexes were 3+ and reflexes were 2+ at the Achilles. There was slight decrease in sensation on the right in the L5 and S1 pattern to light touch. The muscle strength was 4+/5 in the right dorsiflexor and otherwise was 5/5 in the bilateral lower extremities. There was moderate tenderness and muscle tightness to palpation in the lumbar paraspinal muscles bilaterally. Spinous process over pressure test positive at L4 and to a lesser degree at L5. X-rays of the cervical spine,

flexion/extension, showed minor hypermobility at C5-6 with mild spondylosis. Flexion/extension lumbar spine x-rays were not done due to limited motion of the lumbar spine. MRIs of the cervical and lumbar spine were reviewed and the impressions were C5-6 disc protrusion, mild deformation of the spinal cord, disc protrusion in the foramina bilaterally, probable internal disc disruption syndrome, and mild degenerative disc changes at L4-5 and L5-S1. The diagnoses were *"cervical disc displacement, cervical radiculitis, lumbar internal disc disruption syndrome and lumbar radiculitis."* Dr. Muir was of the opinion that the patient's low back pain was mostly due to the internal disc disruption at L4-5 and L5-S1. She had paresthesias, right greater than left, that followed a L5/S1 pattern. The patient was miserable with regard to her low back and her condition had actually worsened. **Dr. Muir discussed the options with the patient and she elected to proceed with discogram/plasma disc decompression at L5-S1 and L4-5 to decrease her pain, increase her function and to eventually avoid lumbar fusion L4 to S1.** Her cervical examination was to be done at a subsequent visit. The patient was advised to continue **Tylenol** and a prescription was provided for **naproxen.** The patient was advised to return for evaluation of the cervical spine.

29. 08/26/09 *Manfor ie Belsky, MD of Surgery Center of Southern Nevada*– Procedure note. The preoperative and postoperative diagnoses were *"cervical disc bulge and cervical radiculopathy."* The procedure performed was **transforaminal epidural injection at C5-6 on the right with epidurogram under fluoroscopic guidance.** The patient tolerated the procedure without complications. She was advised to follow-up in one week.

30. 08/28/09 *William Muir, MD of Spine Surgery* – Followup visit. Since last seen, the patient had had **cervical injections by Dr. Belsky and had significant improvement. Her pain scores were 5/10, down from a 7-10/10 at the** last visit. On physical examination, the cervical spine range of motion was 50% of normal and painful in flexion, 80% of normal and painful extension, 50% of normal right lateral flexion and 70% of normal left lateral flexion with pain, and 60% of right rotation and 80% of left rotation with pain. Reflexes were 2+ at the biceps and brachioradialis and 1+ at the triceps. The patient had decreased sensation down to the right arm and hand to light touch with positive Hoffman bilaterally and Spurling's sign was positive on the right resulting in paresthesias into the middle and ring fingers greater than the other fingers. Motor strength was 4+/5 on the right at the biceps, triceps, wrist extensors and wrist flexors and otherwise was 5/5 in the other muscles groups of the bilateral upper extremities. Grip strength was decreased by 25% on the left. There was mild-to-moderate tenderness and muscle tightness over the posterior cervical

musculature and upper trapezius. The diagnoses were *"cervical disc displacement with radiculitis, displacement site unspecified without myelopathy and lumbar radiculitis."* Dr. Muir noted that the patient had paresthesias down the right arm, consistent more with a C7 pattern but she also had components of the C6 pattern as well. She had weakness of the biceps and triceps on the right consistent with a C6 to C7 radiculopathy. The patient had had significant improvement following the cervical spine injections with Dr. Belsky and he recommended that the patient continue conservative care. Regarding the lumbar spine, authorization was awaited for the discogram/plasma disc decompression. The patient was advised to obtain the records of the recent cervical spine injections done by Dr. Belsky and to return in one month.

31. 09/08/09 *Darin Swainston, MD of Summerlin Hospital Medical Center* – Progress report. The patient presented for pellet removal. She had an allergic reaction to the pellet and it needed to be removed. She had great success with symptoms but developed a rash. On examination, the area was red, inflamed, hot to touch and like a size of a watermelon. The assessment was *"Adverse effect of unspecified medicinal or biological substance."* She was advised to start Lortab. The pellet was located bimanually and attempted to remove after administering Marcaine with epinephrine around the pellet site. Incision was made and attempt was made to grasp the pellet with hemostat, but unable to be located. The patient was in a great deal of pain. It was decided to remove the pellet under sedation.

32. 09/09/09 *The Valley Health System* – Laboratory report. Hematology – Neutrophils were high at 71.8, lymphocytes were low at 19.3.

33. 09/09/09 *Darin Swainston, MD of Summerlin Hospital Medical Center* – Operative report. The diagnosis was *"Testosterone pellet local reaction with severe allergic reaction."* The performed procedure was resection of tissue and pellet full-thickness through adenopathy, down to the level of the fascia. The size was about five centimeter in length. The outer edge of the hives, allergic reaction area was marked with a date and if that continued to extend out, use of steroids to decrease the inflammatory histamine response would be considered. She was advised to follow up in one week.

34. 09/09/09 *Diane M. Lachey, MD of The Valley Health System* – Pathology report. The specimen collected was a resected foreign body and surrounding tissues from the left buttock. Preop diagnosis – allergic reaction to drug. The diagnosis was *"Foreign body material associated with exuberant inflammatory infiltrate of mainly eosinophils and focal granulomatous reaction, ulcerated."*

35. 09/16/09 *Marjorie Belsky, MD of Surgery Center of Southern Nevada* – Procedure Note. Discogram at L3-L4, L4-L5, and L5-S1 with fluoroscopic guidance and discographic interpretation. ***At L3-L4 the opening pressure was 30 mm/Hg with maximum pressure 81 mm Hg, 2 mL was injected and there was no concordant pain. At L4-L5, opening pressure of 25, maximum pressure 75, 2 mL was injected and there was concordant pain at 40 mmHg. At L5-S1, opening pressure of 15, maximum pressure of 40, 2 mL was injected with concordant pain at 25 mmHg.*** *There also appeared to be a posterior leak at L5-S1 and some disc degeneration.*

36. 09/16/09 *William Muir, MD of Surgery Center of Southern Nevada* – Procedure note. Preprocedure and post procedure diagnosis was ***"discogenic pain L4-S1."*** The procedure performed was **Lumbar plasma disc decompression surgery L4-S1.** The patient tolerated the procedure well without complications.

37. 09/21/09 *Matthew C. Olmstead, DC* – Billing statement. Total charges for the services provided from 03/20/09 to 07/22/09 were $3,500.00.

38. 09/22/09 *William Muir, MD of Spine Surgery* – Followup visit. The patient was status post discography/plasma disc decompression of L4-5 and L5-S1 done on 09/16/09 with Dr. Muir and Dr. Belsky. The patient stated that upon waking immediately after the injections at the Surgery Center, she **had increased significant pain in spite of receiving multiple doses of morphine sulfate and had significant nausea and vomiting. She had severe pain during the weekend.** The diagnoses remained unchanged. The patient was advised to follow up with Dr. Belsky for stat visit in the afternoon and to continue with present medication therapy with a follow-up appointment with Dr. Muir in one week.

39. 09/22/09 *Marjorie Belsky, MD* – Visit note. The patient had a **plasma disc decompression which did not help her despite taking medications. She had more muscle spasm, with radicular pain. She had trouble with sleeping** and she was evaluated by Dr. Muir. The exam findings and assessment remained unchanged. She was prescribed **Neurontin, Valium and Flector patches,** and advised to follow up in one week.

40. 09/23/09 *Surgery Center of Southern Nevada* – Billing statement. Total charges for the services provided on 09/16/09 were $19,676.25.

41. 09/23/09 *Surgery Center of Southern Nevada* – Billing statement. Total charges for the services provided on 09/16/09 were $12,087.27.

42. 09/29/09 *William Muir, MD of Spine Surgery* – Followup visit. The patient underwent plasma disc decompression of L4-5 and L5-S1 on 09/16/09, and **has increased symptoms since that time which were intolerable.** The patient could not tolerate short-term **morphine** and **threw up 15 times and her pain increased significantly. The right leg and buttocks pain was worse than the back pain.** Pain was rated at a 9/10. The exam findings and diagnoses remained unchanged. Dr. Muir noted that the multiple episodes of severe vomiting due to **morphine** could have caused a disc herniation and there was a possibility that the patient could have an infection. Her back and particularly right leg pain followed a L5 pattern and was intolerable despite **Neurontin**. The patient was advised CBC and sed rate to rule out infection associated with injection. If there was no infection, an MRI was to be obtained and then possible right L5 selective nerve root block. Pain medicine prescriptions from Dr. Torquino and **Medrol Dosepak** from Dr. Muir were to be started after the results of lab work. The patient was advised to follow up in one week.

43. 09/29/09 *Quest Diagnostics Inc.* – Laboratory study. CBC was within normal limits. Sed rate within range.

44. 09/29/09 *Mario Torquino, MD* – Billing statement. Total charges for the services provided on 05/20/09 and 08/26/09 were $1,920.00.

45. 10/06/09 *William Muir, MD of Spine Surgery* – Followup visit. **The right leg neuritis overwhelmed her neck pain.** The patient returned after the lab work which was unremarkable. Dr. Belsky increased the Neurontin which helped somewhat and ordered a new MRI. The patient rated her pain as 10/10. The diagnoses remained unchanged. The patient was advised to continue the current medications and return after the MRI.

46. 10/06/09 *Marjorie Belsky, MD* – Followup note. The patient **had vomiting after the procedure and had severe pain down her right leg.** Before the procedure she had pain in the back and down the leg too. The exam findings and assessment remained unchanged. The patient was given prescriptions for **Neurontin, Valium** and **Ultram**. She was advised to follow up in one week.

47. 10/13/09 *Sonny A. Patidar, MD of Las Vegas Radiology*– Report of an MRI of the lumbar spine without contrast. Clinical history: Pain. The findings revealed that there was straightening of the lumbar lordosis. Mild disc desiccation was noted at L4-5 and L5-S1. The vertebral body heights were maintained. The conus medullaris ended at L1-2. At T12-L1, L1-2, and L2-3 there was no significant disc bulge or protrusion. The neural foramina were patent and the exiting nerve roots were normal. At L3-4, there was a minimal 1 to 2 mm disc protrusion that abutted the thecal sac.

The neural foramina were patent, and the exiting nerve roots were normal. At L4-5, there was a 4.3 mm disc bulge and facet and ligamentum flavum hypertrophy that produced mild spinal canal narrowing and mild to moderate left and mild right neural foraminal narrowing. At L5-S1, there was a 3.1 mm disc protrusion and facet hypertrophy that produced mild left neural foraminal narrowing. The impression of the study was *"L4-5: 4.3 mm disc bulge and facet and ligamentum flavum hypertrophy produces mild spinal canal narrowing and mild to moderate left and mild right neural foraminal narrowing. L5-S1: 3.1 mm disc protrusion and facet hypertrophy produces mild left neural foraminal narrowing."*

48. 10/13/09 *Mario Torquino, MD* – Followup note. Since the last visit, her radicular **pain was controlled with medications.** She had had an MRI and the results were pending. The Neurontin dose was to be increased. She was to be scheduled for caudal blocks to relieve some of her pain. She was provided with a prescription for **Lortab** and advised to follow up in one week.

49. 10/16/09 *William Muir, MD* – Followup visit. The patient returned following the new MRI. This showed a slight increase in the disc protrusion at L4-5 but not to a degree that resulted in any significant neural impingement. Dr. Muir noted that the **right leg neuritis was the major complaint which was severe. This fit into a L5 or S1 nerve distribution.** The patient did not have radicular pain immediately after the plasma disc decompression and discogram but developed rapidly after severe vomiting five to six hours later. The radiculitis could be due to chemical irritation on the L5 or S1 nerve roots on the right but it was unlikely that the disc was compressing on the nerves to result in a severe neuritis. He thought that this would settle down spontaneously and needed to be treated with adequate medications and selective nerve root blocks. The patient was advised to continue the current medications including **Neurontin.** She was pending a right-sided selective nerve root block by Dr. Belsky. The patient was advised to return in two weeks for follow up.

50. 10/19/09 *Sonny Patidar, MD* – Las Vegas Radiology. Total charges for the services provided on 10/13/09 were $1,650.00.

51. 10/21/09 *Marjorie Belsky, MD of Surgery Center of Southern Nevada* – Operative report. The preoperative and postoperative diagnoses were *"Lumbar disc bulge."* The procedure performed was **lumbar caudal epidural with epidurogram.** During the procedure, no complications were noted. Her pain before the **procedure was 8/10 and after the procedure was 5/10.**

52. 11/02/09 *William Muir, MD of Spine Surgery* – Followup visit. The patient returned with ongoing severe **pain despite significant medications**

provided to her by Dr. Belsky. She had both severe back pain for which she was taking Lortab and leg pain for which she was taking Neurontin. The back pain was worse than the leg pain. Dr. Belsky did do a selective nerve root block one and a half weeks ago without improvement. The diagnoses remained unchanged. The patient was advised to continue medications per Dr. Belsky including Neurontin. If the patient became too sedated from Neurontin consideration could be given for Lyrica. Owing to the severe right leg pain, the cervical spine treatment was being postponed. The patient was administered an injection of Toradol due to severe pain. She was advised to use a TENS unit at home and to return for follow up in two weeks.

53. 11/02/09 *Mario Tarquino, MD* – Followup note. The patient's recent MRI did not show much change from the previous study. The injection was not of much help. She could not stand or sit for more than 30 minutes. She was prescribed Neurontin 1800 per day, Ultram t.i.d., and Lortab 10 mg b.i.d. The patient was advised to follow up in four weeks.

54. 11/17/09 *William Muir, MD of Spine Surgery* – Followup visit. The patient returned with significant improvement regarding her right leg neuropathy. She did have continued numbness in her toes. She also had significant low back and buttocks pain. The diagnoses remained unchanged. Dr. Muir noted that the right leg pain was beginning to improve. The principal complaint was back pain. If the degree of pain was not improved over a couple of months then a two level lumbar fusion would be offered. The patient was advised to continue present medications per Dr. Belsky including Neurontin and was prescribed tramadol and ibuprofen. She was advised EMG of the right upper extremity and to return up in one month.

55. 11/20/09 *Marjorie Belsky, MD* – Followup note. The patient rated her leg pain at 4/10. She also had back pain. She was provided with prescriptions for Ultram, Neurontin, Lortab, and Valium. She was also advised a repeat caudal block and to follow up in four weeks.

56. 11/30/09 *City of Las Vegas* – Billing statement. Total charges for the services provided on 03/13/09 (transportation to Mountain View Hospital) were $772.00.

57. 12/10/09 *Russell Shah, MD* – Neurology evaluation. The patient was seen upon referral by Dr. Muir for a neurologic evaluation. The history of the 03/13/09 motor vehicle accident was reviewed in which the patient was rear ended. She hit her head on the headrest but did not lose consciousness. Her subsequent treatments were reviewed. Her past history was notable for two other motor vehicle accidents, in 1981 and

1985. She received therapy for injuries from the 1985 motor vehicle accident but had no residuals. In 2004/2005 she hit her head, once while getting in a chair and then once in a church bathroom. She lost awareness for 4.5 hours a week later after the church incident. She had an MRI of the brain and one year headaches for concussion. She had no blood in the brain and made a full recovery. She was currently on **Neurontin, Ultram, and ibuprofen.** Her present complaints included **low back pain that was spreading into both buttocks but right buttocks, posterior thigh, and right ankle and numbness and tingling only in the right foot.** She was unable to sit or stand for prolonged periods. She had had some improvement with injections to the low back area. She had **neck pain spreading into the right shoulder area** and injections had helped partially. She had **headaches mainly right hemicranial** since March 2009 and had sometimes **left hemicranial headaches.** Her **memory was off** due to medication side effects. On exam, the patient was unable to sit for more than 30 seconds and pacing noted. There was moderate cervical paraspinal muscle tenderness, mild cervical spinal processes tenderness, moderate upper thoracic paraspinal muscle tenderness, and moderate right lumbar paraspinal muscle tenderness. Cervical range of motion was right lateral limited at 30, left lateral at 40. She had positive axial compression, positive right Spurling's with pain in the cervical/upper back and proximal right upper. Lumbar range of motion was limited with flexion 80 and extension 10, right lateral 20 and left lateral 30. She had positive bilateral straight leg raises with right sciatic stretch. Reflexes were 2 throughout with brisk 3 in the triceps bilaterally. Hoffmann's signs were present. Sensation was decreased in the right C5 dermatome arm, right C5/6 upper back. She had an asymmetric mild antalgic gait. The impressions were ***"Cervical strain / radiculopathy. Cervicogenic headaches. Lumbar strain / radiculopathy."*** The patient was being seen mainly for neck pain. EMG/NCV of the right upper extremity was to be obtained. Dr. Shah suggested obtaining treatment records from Dr. Olmstead as well as records of Las Vegas Radiology. Neuro imaging was to be reviewed to evaluate the etiology of the Hoffmann's signs. The patient may need brain imaging. A lumbar evaluation was to be performed at her follow-up visit.

58. 12/10/09 *Russell J. Shah, MD* – Upper extremity EMG/NCV study report. The cervical paraspinals were also studied. The impression was ***"Subacute C6 radiculopathy with minimal active denervating potentials. Please note that the patient did have a steroid treatment in the neck area and active axonal denervating potentials may not be as reflective given the indicated therapeutic intervention."***

59. 12/15/09 *William Muir, MD of Spine Surgery* – Followup visit. The patient had had **temporary relief of pain with the injections by Dr. Bolsky,** however it was still severe. **Due to the severity of the right leg pain, the neck**

problems had been somewhat ignored. Nevertheless, the neck pain and arm pain had worsened. The initial relief after the epidural injection had worn off. The patient described her neck pain and arm pain as quite severe. With regards to the lumbar spine, Dr. Muir reiterated his opinion of offering a two level fusion in case of persistent symptoms. Other option, he stated, would be a spinal cord stimulator. The patient wished to consider surgery. Prior to surgery, Dr. Muir recommended an EMG of the right lower extremity by Dr. Shah. With regard to her cervical spine symptoms, the patient had weakness in the biceps on the right consistent with a C6 radiculopathy. The EMG showed subacute C6 radiculopathy with minimal active theater bathing potentials. Due to the ongoing severity of the subjective and objective findings, the patient elected to proceed with ACDF at C5-6. The patient was advised to continue present medications. Anterior cervical diskectomy and fusion at C5-6 was planned in January. The patient was advised an EMG of right lower extremity from Dr. Shah and to return in one month.

60. 12/15/09 *Marjorie Belsky, MD* – Followup note. The patient reported a lot of hot flushes since her steroid injections. Her lumbar pain was 5/10. Her physical examination and assessment remained unchanged. She was provided with prescriptions for Ultram, Valium, Lortab and Neurontin. The patient was advised to followup in four weeks.

61. 01/07/10 *Russell J. Shah, MD* – Lower extremity EMG/NCV study report. The lumbar paraspinals were also studied. The impression was *"Mild subacute bilateral L5 radiculopathies."*

62. 01/07/10 *Russell Shah, MD* – Neurology follow-up. The patient's complaints included low back pain spreading into the right leg more than the left leg, neck pain spreading into the right arm mainly and persistent headaches. Exam revealed brisk reflexes at 3 in the triceps, otherwise were 2 throughout. Hoffmann's signs were present. The impressions remained unchanged. The patient was to have EMG/NCV studies of the lower extremities. Cervical spine MRI films were to be obtained for reviewed from April 2009. The patient was advised to follow-up in six weeks.

63. 01/15/10 *Russell Shah, MD* – Health Insurance Claim Form. Charges for services provided on 12/10/09. Total $1,095.00.

64. 01/15/10 *Russell Shah, MD* – Health Insurance Claim Form. Charges for services provided on 12/10/09. Total $3,075.00.

65. 01/20/10 *William Muir, MD of Spine Surgery* – Followup visit. The patient was seen preoperatively for scheduled anterior cervical discectomy and fusion at C5 to C6 with spinal cord monitoring and instrumentation that was to be done on 01/25/10 at Summerlin Hospital. General risks and potential benefits of the surgery were discussed and the patient stated understanding and agreed to proceed. The patient was advised to continue current medications of Ultram and Neurontin. Preoperative history and physical examination was completed. The patient was advised to avoid high impact activities and strenuous physical activities and to start Keflex after the surgery. The patient was instructed to follow up one week after surgery and go to the Summerlin Hospital to pre-register and no physical therapy for six weeks.

66. 01/21/10 *Russell Shah, MD* – Health Insurance Claim Form. Charges for services provided on 01/07/10. Total $3,825.00.

67. 01/22/10 *Rajashree Vyas, MD of Summerlin Hospital Medical Center* – Report of x-rays of the chest, two views, PA and lateral. History – Preoperative assessment. The findings revealed that the lungs were clear, no pleural effusions, no pneumothorax. The heart size was normal. The pulmonary vascularity was normal. The mediastinal contour was normal. There was no hilar or mediastinal lymphadenopathy. The visualized thoracic spine and ribs were normal. The impression of the study was "*normal chest.*"

68. 01/22/10 *Summerlin Hospital* – ECG report. The interpretation was normal sinus rhythm, incomplete right bundle branch block, T-wave abnormality, considered inferior ischemia. The impression was *"Abnormal ECG."*

69. 01/25/10 *William Muir, MD of Summerlin Hospital Medical Center* – Preoperative history and physical. The patient had **neck and lumbar spine pain. The neck pain was severe, constant, radiating to both upper extremities, right worse than left with numbness and tingling.** The pain was 7/10 with worse days being 9/10. The patient was on Ultram and Neurontin. Past history was reviewed. On physical exam, there was slightly decreased cervical range of motion. The impression was *"Cervical spine C5-6 herniated nucleus pulposus with C6 radiculopathy."* Proposed surgery by Dr. William Muir was anterior cervical interbody fusion with spinal cord monitoring at C5-C6 with instrumentation. Risks and benefits of the surgery were explained to the patient in great detail. She understood and wished to proceed with the surgery.

70. 01/25/10 *William Muir, MD of Summerlin Hospital Medical Center* – Operative report. The preoperative and postoperative diagnosis was *"herniated nucleus pulposus, C5-6."* the procedure performed was **Anterior approach to the cervical spine, decompression discectomy C5-6,**

anterior cage placement C5-6, anterior fusion and plating C5-6, spinal cord monitoring and closure. The patient tolerated the procedure well without complications.

71. 01/25/10 *Emad S. Soumi, MD of Summerlin Hospital Medical Center* – History and physical. The patient had right upper extremity numbness and pain. She was evaluated by her primary care physician and later a neurologist and a pain specialist. She was admitted to the Summerlin hospital and underwent surgery. According to her, the numbness and pain had resolved. The assessment was *"Right upper extremity numbness and pain status post C5-6 discectomy, pain resolved, hemodynamically stable, without neurological deficit, low back pain, and mild leukocytosis, no significant infection."* It was planned to hold all antibiotics at that time.

72. 01/26/10 *The Valley Health System* – Laboratory report. The WBC count was high at 13.1, glucose was high at 142, and calcium was low at 8.4.

73. 02/02/10 *William Muir, MD* – Followup visit. The patient presented for postoperative follow-up appointment. The patient was status post anterior cervical interbody fusion at C5 to C6 that was done on 01/25/10. The patient stated that she improved approximately 90% since her surgical intervention. The patient stated that at night she had difficulty sleeping secondary to incisional pain. She had significant lumbar spine pain and wished to proceed with lumbar spine surgery within the next six weeks. The dressing was removed from the incision and directly observed. On physical examination of the cervical spine, there was no erythema, swelling or exudates and the incision looked excellent. The old Steri-Strips were removed. The patient was instructed to continue present medications and to avoid high impact activities and strenuous physical activities. The patient was advised to follow up in two weeks and advised against physical therapy for six weeks. She was advised to take Valium p.r.n.

74. 02/16/10 *William Muir, MD* – Followup visit. The patient presented for postoperative follow-up appointment. She did have some discomfort at night in the shoulder region which was stabbing pain for which Lortab and Valium was helping at nighttime. The patient continued to report approximately 90% since her surgical intervention. She continued to have significant lumbar spine pain. The dressing was removed from the incision and directly observed. On physical examination of the cervical spine, there was no erythema, swelling or exudates and the incision looked excellent. The patient was instructed to continue present medications and to avoid high impact activities and strenuous physical activities. The

patient was advised to follow up in two weeks with Dr. Muir and no physical therapy for six weeks and to continue Valium.

75. 03/01/10 *Emad S. Soumi, MD of Summerlin Hospital Medical Center* – Discharge summary. Admission date **01/25/10 and discharge date 01/27/10**. The diagnosis at the time of admission was *"Neck pain and low back pain."* The patient was involved in a motor vehicle accident and had severe pain in the right upper extremity and in the cervical spine area. She was admitted for surgical intervention. She had herniated nucleus pulposus at C5-6. She underwent surgery and tolerated the procedure without complications. She was discharged home with specific instructions to go to the emergency room for any neurological deficit, chest pain, and shortness of breath, abdominal pain, nausea and vomiting. The discharge diagnosis was *"Neck pain resolved, status post decompression, discectomy on C5-6 with anterior cage displacement, anterior fusion of C5-6 and low back pain."*

76. 03/05/10 *William Muir, MD* – Followup visit. The patient wished to discuss her low back surgery options regarding her radiculitis. The patient was a candidate for L4 to S1 fusion. However, due to her leg symptoms, she was also a candidate for spinal cord stimulator to address her back pain as well as leg pain. Another option was to continue on medication and bide time in the hope that she would improve. After a lengthy discussion, the patient wished to proceed with a lumbar fusion as this would permanently resolve the problem rather than to have repeated battery packs placed. Anterior posterior lumbar fusion at L4-S1 was planned. The patient was advised to avoid high impact activities and strenuous physical activities. The patient was advised to follow up in one month for cervical spine x-rays and no physical therapy for neck until April and to continue Valium and **Neurontin**.

77. 04/02/10 *Leo Langlois, MD of Kern Island Pain Medicine* – Pain medicine consultation report. The patient was seen for **back pain and extremity pain**. She complained of **pain in the lower back in the midline** aggravated by standing, sitting, walking, exercise, and movement and partially relieved with rest/relaxation, oral pain medication. She complained of **radiation of pain to both legs**. She had **pain at the base of the neck** that was worsened with movement and partially relieved with rest. **Current pain was 9/10, average pain level 8-9/10, and 2/10 at rest with legs elevated**. She had multiple epidural steroid injections with minimal relief. A percutaneous plasma disc decompression severely exacerbated her back pain and worsened her leg pain and paresthesias. She was recovering from a recent cervical disc fusion. She was scheduled for a lumbar fusion and thus presented for a second opinion. Her medications included **Neurontin, Lortab, and Valium**. On exam, the

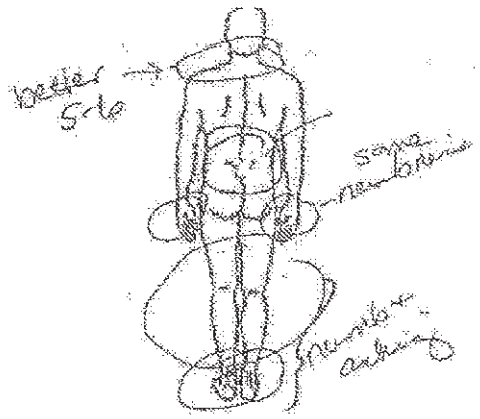
patient was noted to be uncomfortable due to pain. She had limited range of motion of the lumbar spine, reaching the fingertips to her mid thighs, and pain with extension and rotation. Back examination also revealed tenderness to palpation in the paraspinal muscles, PSIS, and sacrum. Straight leg raise – stiffness in hamstring muscles. Gait was stiff and slow. Neck exam revealed tenderness to palpation in the paraspinal muscles. Range of motion was painfully limited at end range of motion in all directions. The assessment was *"lumbar degenerative disc disease, neuralgia, radiculitis, neuritis, HNP/disc protrusion/extrusion, and post laminectomy cervical."* The patient was provided with a prescription for Ultram. EMG/NCS of the bilateral lower extremities was ordered. She was advised to continue her home exercise program. She was referred to Dr. Scott Conner for evaluation of surgical options. The patient was advised to follow-up after the EMG/NCS.

78. 04/14/10 *Leo Langlois, MD of Kern Island Pain Medicine* – Report of EMG/NCS of the bilateral lower extremities. The lumbar paraspinals were also studied. The impressions of the study were *"Normal electrodiagnostic study. No electrodiagnostic evidence of right or left lower extremity radiculopathy or myopathy was noted."*

79. 04/20/10 *Leo Langlois, MD* – Billing statement for services provided on 04/02/10. Total $607.00.

80. 04/28/10 *Leo Langlois, MD* – Billing statement for services provided on 04/14/10. Total $784.00.

81. 04/29/10 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* – Neurological evaluation report. The patient's chief complaint was **low back pain and numbness in her legs.** She had a longstanding history of **neck and low back problems. The low back pain got severe almost on a daily basis and prevented her from doing activities of daily living.** The patient had conservative treatments in the past including physical therapy and pain management with **temporary improvement.** The patient presented for second opinion regarding possible surgical treatment options for her low back pain. A pain diagram identified her symptomatic areas as shown below:



Past medical history was significant for motor vehicle accidents in 1981 and 1985, four foot surgeries and C5-C6 anterior cervical discectomy and fusion in 2010. On exam, the patient appeared to be uncomfortable and she positioned herself on the floor with pillows with her legs propped up to maximize her comfort. The physical examination was limited due to pain. Her reflexes were 1+ in the upper extremities, 3+ in the knees, and 2+ patellar reflexes. She had decreased sensation to light touch in a patchy distribution in the lower extremities. The patient presented with MRI of the lumbar spine from 2009 showing degenerative changes at L4-L5 and L5-S1 without associated stenosis. Discogram of the lumbar spine showed concordant pain at L4-5 and L5-S1 and a negative control at L3-4. The EMG nerve conduction study of January 2010 showed mild subacute bilateral L5 radiculopathy. The patient was recommended to consider surgical treatment consisting of L4-L5 and L5-S1 interbody fusion. The risks and benefits of the procedure were explained and the patient wished to proceed with the surgery in the next two weeks. The patient was advised to get an MRI of thoracic spine to rule out thoracic pathology based on the discrepancy in the upper extremity and lower extremity reflexes.

82. 05/07/10 *Kelly R. Gardner, MD of Sunrise Hospital Medical Center*– Preop chest x-ray, PA and lateral. The impression was *"No acute cardiopulmonary disease.*

83. 05/07/10 *Sunrise Hospital* – Laboratory study. The MRSA screen was negative. BMP was within normal limits except for elevated creatinine at 0.81 (normal 0.50-0.80). PT and PTT were normal. RBC count was high at 5.12 (normal 3.91-9.68). Rest of the CBC was within normal limits. The blood type was A negative.

84. 05/07/10 *Sunrise Hospital* – ECG report. ECG showed sinus rhythm with RSR in V1 or V2, right VCD or RVH with borderline T abnormalities, diffuse leads. ***Borderline ECG, otherwise normal.***

85. 05/12/10 *Eddy Luh, MD of St. Rose Dominican Hospitals*– Consultation report. The patient was seen at the request of Dr. Khavkin. Reason for consultation – discogenic back pain. The patient presented for anterior lumbar fusion and Dr. Khavkin requested assistance for anterior approach access. The past history was reviewed and a physical examination performed. The risks and benefits were explained to the patient and all questions answered.

86. 05/12/10 *Eddy Luh, MD of St. Rose Dominican Hospitals*– Operative report. The preoperative and postoperative diagnosis was *"Discogenic back pain."* The procedure performed was **Retroperitoneal exposure and mobilization of the aorta, iliac artery, vein and lumbosacral spine. Diskectomy, lumbar interbody fusion of L4-L5, L5-S1 intervertebral disk space. Placement of Gore-Tex lumbosacral patch.** The patient tolerated the procedure well without complications.

87. 05/12/10 *Yevgeniy Khavkin, MD of St. Rose Dominican Hospitals*– Operative report. The preoperative and postoperative diagnosis was *"L4-5 and L5-S1 disc compromise."* The procedure performed was **Anterior lumbar approach for L4-5 and L5-S1 discectomy with placement of the interbody cage device by Stryker at the L4-5 and L5-S1 levels with an L4-5 interbody fusion using Vitoss and BMP followed by the placement of anterior lumbar instrumentation from L4 to S1 using a Stryker Thor plate. Use of interpretation of intraoperative fluoroscopy.** The patient tolerated the procedure well without complications.

88. 05/12/10 *Matthew Treinen, MD of St. Rose Dominican Hospitals*– Report of lumbar spine x-rays, intraoperative views. There was anterior fusion from L4 to S1. The intervertebral disc space was present. Alignment was anatomic.

89. 05/12/10 *Gnaneswar Billakanti, MD of St. Rose Dominican Hospitals* – Consultation report. The patient was admitted to the hospital for **back pain.** The patient was diagnosed to have lumbar radiculopathy and was admitted to the hospital for anterior-posterior lumbar interbody fusion. The patient had a past medical history of lumbar radiculopathy. X-rays of the lumbar spine showed anterior fusion from L4-S1. The impression was *"back pain, lumbar radiculopathy, L4-5 and L5-S1 anterior-posterior lumbar interbody fusion.* The patient was closely monitored in the hospital and pain was adequately controlled.

90. 05/12/10 *Joaquin Tavares, MD of St. Rose Dominican Hospitals* – Consultation note. The reason for consultation was postoperative care, post spine surgery the patient was lethargic. The patient underwent anterior lumbar interbody fusion L4-S1. The surgery was uneventful **but the patient took a while to get fully awake and she was transferred to ICU for further monitoring.** The patient was complaining of **back pain.** On physical examination, the patient was drowsy but was able to follow commands. Assessment was ***"status post spine surgery."*** The patient's drowsiness was likely related to the lasting effects of anesthesia plus pain management. The patient was to be closely monitored in the ICU. DVT prophylaxis with SCDs and stress ulcer prophylaxis were given per post spine surgery protocol.

91. 05/14/10 *Jasvinder Grover, MD of St. Rose Dominican Hospitals*– Discharge summary report. Date of admission 05/12/10 and date of discharge was 05/14/10. The admission diagnoses were ***"intractable back pain and lower extremity radiculopathy."*** The patient underwent elective surgery in the form of an anterior posterior lumbar interbody fusion, L4-S 1, on 05/12/10. The patient did have some **hypersomnolence** following the surgery. The patient was put in the ICU for careful monitoring overnight and was followed by the intensivist overnight. She was transferred to the JRU on 05/13/12 in the morning, and progressed nicely. The patient was discharged from the hospital on 05/14/10, in a stable condition. The patient was given postoperative instructions. The patient did have a prescheduled postop appointment within 7 to 10 days with Dr. Grover.

92. 05/18/10 *St. Rose Dominican San Mar* – Billing statement. The total charges for the services provided from 05/12/10 to 05/16/10 were $168,074.00.

93. 05/20/10 *Jasvinder S. Grover, MD of Nevada Spine Clinic* –Followup report. The patient presented for followup status post ALIF L4-S1. Incisions were well healed. The patient was recommended advancement of activities, stabilization and strengthening with reassessment in four to six weeks with followup x-ray.

94. 06/08/10 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* –Followup report. The patient presented for followup after L4-L5, L5-S1 anterior lumbar interbody fusion with reported **significant improvement in her lower back pain** requiring **minimum amount of pain medications.** Incisions appeared to be healing well. X-rays showed unchanged position of the plate with top of the plate slightly displaced ventrally with no change since previous. The patient was advised to follow-up with Dr. Eddy Luh the same day. She was to return for follow-up with at the Nevada Spine Clinic in one month with x-rays.

95. 06/22/10 *Nevada Spine Clinic* – Billing statement. Total charges for the services provided from 04/29/10 to 06/08/10 were $36,792.50.

96. 06/29/10 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* –Followup report. The patient presented for followup and stated that her pain was getting better each day with the left leg pain essentially resolved but still with some residual numbness on the right side which was improving. Incision appeared to be well healed and x-rays were as mentioned before. The patient was advised to continue current treatment and follow up back in neurosurgery clinic in two months with x-rays.

97. 08/19/10 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* –Followup report. The patient presented for followup and stated that about five weeks ago she strained her back trying to pick up a child and was complaining of pain in the low back and right buttock area. Repeat x-rays were unchanged from before. The patient was advised to continue current pain management with pain medications and muscle relaxants and follow up back in a month. She was advised to get a CT of the lumbar spine to evaluate the condition of her fusion and instrumentation if she continued to experience current symptoms.

98. 09/30/10 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* –Followup report. The patient presented for followup and stated that she had been feeling much better and was experiencing no pain with walking and denied any numbness but complained of some discomfort in her lower back overnight. CT of the lumbar spine showed changed position of the anterior lumbar plate with superior portion slightly displaced anteriorly with cages being in an adequate position within the disc space. The possibility of reinforcing her construct with a posterior lumbar instrumentation with pedicle screws and rods versus continuation of observant conservative treatment was discussed. The patient acknowledged understanding of pros and cons of those approaches and decided to continue with current management and not to proceed with surgery. The patient was instructed to contact the clinic if she developed any new symptoms and follow up in two months with x-rays.

99. 11/16/10 *William Mutz, MD of Spine Surgery* – Billing statement. Total charges for the services provided from 08/24/09 to 03/05/10 were $49,714.00.

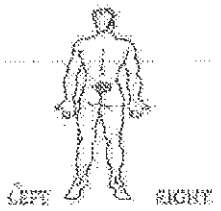
100. 11/17/10 *Marjorie Belsky, MD* – Billing statement. The total charges for the services provided from 05/05/09 to 12/15/09 were $22,310.00.

101. 11/30/10 *Summerlin Medical Center* – Billing statement. The total charges for the services provided from 01/22/10 to 01/27/10 were $58,495.00.

102. 12/02/10 *Nevada Spine Clinic* – Billing statement. Total charges for the services provided on 06/29/10 were $140.00.

103. 12/02/10 *Nevada Spine Clinic* – Billing statement. Total charges for the services provided on 08/19/10 to 09/30/10 were $900.00.

104. 12/14/10 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* –Followup report. The patient presented for follow up and stated that she continued to have **fairly substantial relief of her low back pain compared to the preoperative state.** A pain diagram identified her symptomatic areas as shown below:



The x-rays showed unchanged position of the instrumentation and interbody cages. The patient was instructed to initiate physical therapy and follow up in May 2011, a year since the surgery.

105. 01/14/11 *Yevgeniy Khavkin, MD of Nevada Spine Clinic* – Dr. Khavkin noted that the patient had had significant improvement following surgery. Over the course of her followup, Dr. Khavkin had identified evidence of some **withdrawal of the anterior lumbar plate that had been used intraoperatively for fixation across the L4-5 and L5-S1 level.** Given these radiographic findings, Dr. Khavkin felt that it threatened the long-term compromise of the surgical reconstruction, and thus recommended further surgical treatment in the form of posterior fixation and fusion and instrumentation in an effort to provide greater structural support and to enhance the likelihood of a long-term successful outcome as it related to the interbody fusion and reconstruction at L4-5 and L5-S1.

106. 02/10/11 *Wendy Geken, Authorization Manager Legal Coordinator of Nevada Spine Clinic* – Estimated surgical treatment costs of posterior lumbar fusion stabilization and reconstruction L4-S1. These included surgeon's fees of $22,000.00, assistant surgeon's fees of $6,000.00, anesthesia fees $4,200.00, hospitalization surgery center equipment fees $84,000.00, and post operative rehabilitation and medical management $6,000.00.

107. 03/07/11 *Nevada Spine Clinic* – Billing statement. Total charges for the services provided on 08/19/10 to 12/14/10 were $1,100.00.

108. 03/25/11 *Nevada Spine Clinic* – Health insurance claim form. Total charges for the services provided on 03/07/11 were $1,250.00.

109. 09/29/11 *Marjorie Belsky, MD* – Billing statement. The total charges for the services provided from 05/05/09 to 12/15/09 were $22,310.00.

110. 11/02/11 *James A. Cooper, MD of Las Vegas Radiology* – Report of a CT of the lumbar spine without contrast. History – low back pain. The findings revealed that the patient was status post L4-S1 anterior lumbar interbody fusion. The alignment was anatomic. The interbody spacer graft at L4-5 was displaced forward by approximately 12 mm. This resulted in displacement of the anterior fusion plate as well. **However, there was still solid osseous incorporation across this fusion construct.** Similar findings were present at L5-S1 with anterior displacement by approximately 5 mm. **The fusion was at most only minimally incorporated.** At T12-L1, there was a 1.4 mm posterocentral and right paracentral protrusion, AP dimension of the central canal measured 16.3 mm. At L1-2, AP dimension of the central canal measured 16 mm. At L2-3, there was a 1.5 mm disc bulge, AP dimension of the central canal measured 15 mm. At L3-4, AP dimension of the central canal measured 13.7 mm. At L4-5, the patient was status post ALIF. There was 10.5 mm central canal stenosis due to 4 mm diffuse disc bulge. There was mild-to-moderate stenosis at the bilateral neural foramen due to disc bulge and facet joint arthrosis. At L5-S1, the patient was status post ALIF. There was a 3 mm diffuse disc bulge. AP dimension of the central canal measured 12.2 mm. There was mild-to-moderate stenosis at the bilateral neural foramen due to disc bulge and facet joint arthrosis. The impressions of the study were ***"L4-S1 ALIF, with solid osseous incorporation at L4-5. L4-L5, 10.5 mm central canal stenosis due to 4 mm diffuse disc bulge; Mild to moderate bilateral neural foraminal stenosis. L5-S1, 3 mm diffuse disc bulge. There is mild bilateral neural foraminal stenosis. No significant interval change since prior study."***

111. 11/17/11 *Yevgeny Khavkin, MD of Nevada Spine Clinic* –Followup report. The patient presented for followup and **reported significant improvement in her symptoms. She denied having back pain other than when she was occasionally bending forward forcefully. Neurological exam was unremarkable.** CT showed unchanged position of instrumentation with solid bony fusion in interbody spaces and along the anterior lumbosacral plate. The patient was continued on the current management.

112. 12/06/11 *Nevada Spine Clinic* – Health insurance claim form. Total charges for the services provided on 11/17/11 were $640.00.

113. 05/25/12 *Nevada Spine Clinic* – Billing statement. Total charges for the services provided from 04/29/10 to 08/10/10 were $19,665.00.

114. 05/25/12 *Nevada Spine Clinic* – Billing statement. Total charges for the services provided from 08/19/10 to 01/11/12 were $4,730.00.

DIAGNOSTIC IMAGES:

I reviewed the following films on CD, personally:

10/13/09 MRI Lumbar spine shows protrusions and mild loss of T2 signal at L4-5 and L5-S1. There is bilateral foraminal narrowing at L4-5. There is right more than left L4-5 inflammatory facet joint fluid.

9/23/10 Lumbar CT shows a ventral L4-S1 fusion construct with interbody spacers. The plate is elevated and there are some screw halos, mainly L4 and S1. The L5 screw does not look fully seated to the plate. The grafts are not incorporated.

11/2/11 Lumbar CT contains no reconstructed images. I cannot evaluate the fusion status well. The scout view does not show evidence of fusion and does show halos around the screws.

DISCUSSION:

This case review describes a 50 year old female who was injured in a rear-ending traffic collision. She sustained neck, pelvic, right shoulder, and low back symptoms. She proceeded through a conservative course of treatment starting with therapy, and then progressing to pain management. Cervical injections were helpful on a temporary basis and guided by MRI findings. A combined lumbar injection was inadequate. The lumbar condition was affiliated with right leg radiculopathy. Discography was performed and found to be positive at L4-L5 and L5-S1. A plasma disc decompression was performed. There was an increase in symptoms in that area for about two months. Eventually, she underwent cervical fusion at C5-6 by Dr. Muir with significant reduction in radiculopathy.

She sought an opinion from Dr. Khavkin, who performed an anterior lumbar fusion, L4-S1, which was also quite helpful for Ms. Seastrand. Dr. Khavkin followed her during her recovery and found some movement of the plate and graft. CT scan showed minimal incorporation of the L5-S1 graft. Posterior instrumented fusion to bolster the construct is under consideration.

It appears that the treatment provided to date has been both reasonable and necessary and related to the stated injury. It also appears that a posterior lumbar instrumented fusion, L4-S1 will be required.

MRI and discogram reports, as well as electrodiagnostic testing are well correlated to the symptoms.

A past history of neck and back pain and one prior concussion appear to have no significant factor in the need for treatment stemming from the present injury.

My opinions concerning future treatment are laid out in the following medical life care plan. I have not yet been able to schedule an examination of this patient, where I can also take my own detailed history, but I have made a request to do so, and will provide any amendments or modifications of my opinions at that time, if they become necessary.

My opinions are given within a reasonable degree of medical probability based upon the information supplied. The basis of my opinions is formed by applying medically constructive logical to the available information, including medical records. The opinions given, therefore represent the most probable and logical conclusions. I reserve the right to modify, improve, and/or clarify my opinions if any contrary information is supplied.

Part of my basis, is formed by my training and experience. I have a degree in biochemistry from the University of California, at Berkeley (1988). Following that, I obtained my medical degree form the George Washington University (1992). My general surgery internship followed immediately after that and was performed at the University of California, Irvine (92-93). Following that training, I undertook four years of neurological surgery residency at the same institution (93-87). From 1997-1998, I fulfilled a fellowship in spinal biomechanics (neurosurgery) at the University of New Mexico, in Albuquerque. I then completed a chief residency in neurosurgery (98-99), also at the University of New Mexico, thereby completing 7 post-graduate training years. Since then, I have been in the practice of neurological surgery and am board certified by the American Board of Neurological Surgery. More details can be found in my CV, including various publications and areas of research interest.

MEDICAL LIFE CARE PLAN:

Life Expectancy

Life expectancy is based on the records of mortality furnished through the studies provided by the National Vital Statistics Report, which is updated through the CDC website. The Vital Statistics table projects the life expectancy based on demographic status, which includes current age, gender, and race. In reviewing the tables, the life expectancy for Ms. Seastrand is 32.7 years, which is based on a female 50 years old defined by the National Vital Statistics System (Vol. 59, No. 9, September 28, 2011).[4]

Conclusions

The goal of this life care plan is to establish the costs to care for Ms. Seastrand related to her medical needs as a result of the collision on March 13, 2009. It will be edited or modified if new information or findings are presented.

The dollar amounts included in this life care plan are based on "real" dollars (2012), which are obtained through interviews with suppliers, facilities, vendors and healthcare providers. Local prices are used unless local vendors are unable to supply the data. If non-local vendors are used, shipping expense is included with the cost. The life expectancy calculation noted is rounded up to 33 years.

I. Therapies[9]						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Physical therapy for the cervical and lumbar spine flare-ups	2012	2045	248.00	3 visits/ week for 3 weeks, for 3 flare ups a year (27 visits/year)	6,493.09	214,272.00
Lumbar physical therapy post-operatively	2012	2045	248.00	3x/week for 3 months (36 total)	270.55	8,928.00
					6,763.64	223,200.00

The patient will need outpatient physical therapy post-operatively. It is also anticipated that she will have flare-ups of her neck and low back pain. Physical therapy to accommodate such flare-ups is specified above and is calculated one year later, in anticipation that the lumbar surgery will take place within a year.

II. Diagnostics[8]						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Lumbar x-ray	2012	2045	100.0	Monthly x3, then every other month x3, then every 6 months for 2 years (10 total)	30.30	1,000.00
Pre-op clearance (chest x-ray, EKG, labs) prior to cervical spine surgery	2012	2045	700.00	Once	21.21	700.00
					51.51	1,700.00

With regard to the lumbar spine, the patient will need follow up x-rays after the fusion to monitor the site for signs of healing.

Medical clearance is necessary prior to surgery.

III. Pain Management						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Sacro-iliac injections	2012	2045	7,720.00			
Sacro-iliac and/or facet rhizotomies	2012	2045	8,000.00			

Sacro-iliac injections and SI and/or facet rhizotomies are also anticipated for post-fusion sacroiliitis. This is a common occurrence after a fusion. It is noted on this plan, however, it is not calculated in the total cost, until the patient has had the lumbar fusion, and her residual symptoms are further determined.

This Life Care Plan will have to be modified to include the recommended injections should the patient require them.

IV. Surgical Intervention[iv]

Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Anterior cervical discectomy with fusion/plating	2012	2045	143,500.00	Once		
Lumbar decompression and fusion, posterior, L4-S1	2012	2045	166,250.00-202,500	Once	5,587.12	184,375.00
					5,587.12	184,375.00

Ms. Seastrand may be a candidate for another cervical spine fusion to include the segment C4-5, but this is not included in the cost until diagnostic images can be reviewed personally.

The lumbar CT scan that was reviewed showed minimal incorporation of the L5-S1 graft. Another lumbar fusion to stabilize this level and to reinforce the fusion above it is recommended. The cost for this surgery is noted above. The average is used, which is 184,375.00

V. Physician Appointments

Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Pain management specialist for medication management	2012	2045	150.00	See narrative below (75 total)	340.91	11,250.00
Spinal specialist	2012	2045	250.00	See narrative below (15 total)	113.64	3,750.00
Internal Medicine	2012	2045	180.00	Once	5.45	180.00
					460.00	15,180.00

Monthly follow up with the pain management specialist for medication management is recommended until six months after surgery. This will be followed by every other month for one year, then as needed (estimated to be twice a year). Additional visits will be added if sacroiliac injections are added to the plan as noted above.

Routine follow up with the spinal specialist is recommended to coincide with the scheduled post-op x-rays for close monitoring of the fusion site. Monthly for 3 months, then every other month x3, then every 6 months for 2 years, then annually for 5 years.

Medical clearance is needed prior to surgery.

VI. Medications[v]						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Neurontin	2012	2045	87.45/ 90 tablets	1 cap 3x/day	1,049.40	34,630.20
Lortab 7.5/325mg	2012	2045	46.56/ 120 tablets	1 tab every 6 hours	554.49	18,298.08
Valium 5mg	2012	2045	321.95/ 90 tablets	1tab 3x/day	3,863.40	127,492.20
Lortab 10/325mg Post-op	2012	2045	83.18/ 180 tablets	1 tab every 4 hours for 3 months	7.56	249.54
					5,474.85	180,670.02

The above medications are the patient's current list of medications. The higher dose of Lortab is provided to compensate for post-operative pain.

VII. Durable Medical Equipment[9]						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Walker	2012	2045	500.00	Once	N/A	500.00
Chair Back brace	2012	2045	700.00	Once	N/A	700.00
					36.37	1,200.00
The above equipment will be provided for the patient for better stability.						

COST SUMMARY		
Table	Category	Life Expectancy Cost
I	Therapies	$223,200.00
II	Diagnostics	$1,700.00
III	Pain Management	$0.00
IV	Surgical Intervention	$184,375.00
V	Physician Appointments	$15,180.00
VI	Medications	$180,670.02
VII	Durable Medical Equipment	$1,200.00
	Grand Total	$606,325.02

Sincerely,

JEFFREY D. GROSS, M.D.
Spine Fellowship Trained Neurosurgeon
Diplomate, American Board of Neurological Surgery

[i] National Vital Statistics System (Vol. 59, No. 9, September 28, 2011)
[ii] Cost is the average rate among three physical therapy facilities.
[iii] Cost is the average rate among three radiology facilities.
[iv] Cost includes hospitalization, surgeon, assistant surgeon, and anesthesia fees.
[v] Cost is the average among three pharmacies.
[vi] Cost is the average among three DME companies.

EXHIBIT 4

Comprehensive Injury Institute
Complete Care from Diagnosis to Treatment

Office of: Jeffrey D. Gross, M.D.
Spine Fellowship Trained Neurological Surgeon
Diplomate, American Board of Neurological Surgery

August 28, 2012

PATIENT NAME:	SEASTRAND, MARGARET
DATE OF BIRTH:	12/27/1961
DATE OF INJURY:	03/13/09
DATE OF EXAMINATION:	08/28/12

NEUROSURGICAL EXPERT CONSULTATION (SUPPLEMENTING THE CASE REVIEW)

To Whom It May Concern:

I saw Ms. Margaret Seastrand for neurosurgical consultation concerning a motor vehicle collision related injury on the above-referenced date. This consultation is supplementary to my Neurosurgical Case Review dated 8/7/12.

Ms. Seastrand is a 50-year-old, right-handed woman.

HISTORY OF INJURY:

She reports that she was stopped as the driver of a 2002 Honda Odyssey minivan with her seatbelt on. She was at a red light at a surface street, when she was rear ended by an SUV without warning. She did not hear a screech. She thinks she was looking left at that time. There was no secondary impact. Her air bags did not deploy. She was jerked forward at some point. She was stunned. She felt pain in her neck and shoulders immediately, which was worse with turning. There was low back pain. Police came to the scene and made a report. She was taken by ambulance to Mountain View Hospital. Her car was towed.

She was treated in the emergency room predominantly for neck and shoulder pain. Medications were given and films were taken. She was released. She was instructed to follow-up with her physician and to take it easy. She missed some work at her business (child theatre). She had trouble with the narcotics (they made her loopy, nauseated, and constipated).

She sought care with Dr. Lurie within a week for worsening neck and right shoulder area. She continued to have low back pain and headaches. She also saw a medical doctor. Her initial treatment was cautious due to pain. Neck and back MRIs were obtained. She had developed leg and arm symptoms. She was referred to Dr. Belsky. A combined low back injection was given for increasing low back pain, but it did not help her in a lasting way. She may have had multiple injections. She was referred to Dr. Muir. She continued chiropractic care. A cervical injection was done at some point which helped her neck and shoulder area.

She took off work for the fall of that year, since she was struggling with her pain symptoms, and noted memory loss. Her husband, employees, and partners knew of this. She thought (and hoped) the memory problems were related to medication use. She also noticed slowness of calculation. She started having depression due to pain and was recommended to have a testosterone implant, but it had to be removed due to an allergic reaction.

In September of 2009, she had a lumbar discogram and a two level plasma disc decompression, L4 to S1. She felt worse and had severe spasms. She had increased right leg numbness and painful tingling. She received another injection from Dr. Belsky with temporary benefit. She was referred to Dr. Shah, who found her to have nerve problems in her cervical region. She was irritable and depressed. This was really hard for her. Her injuries affected her relationships with her husband and children. She could not fully function as a wife and mother. She became teary eyed when discussing this with me.

She also had a lumbar EMG that was positive. She was advised by Dr. Muir to have cervical surgery. This was performed by Dr. Muir. She had significantly reduced neck pain and right shoulder pain and reduced right arm tingling. She sought a second opinion from a pain physician in Dr. Bakersfield. She sought neurosurgical care with Dr. Khavkin, who performed an anterior L4-5 and L5-S1 fusion procedure. She had improvement in her legs. A few months later, she was back to work (with limitations). She bent down to attend to a child and strained her back and felt more low back pain. A CT scan was obtained. Posterior surgery was contemplated. She and Dr. Khavkin were trying everything they could to avoid additional surgery. She purposefully lost weight to help her low back. She did low back strengthening. She avoided lifting. Her low back has slowly improved and is now better before her flare-up she had after surgery.

CURRENT COMPLAINTS:

Her low back area is still the worst area. There is residual pain on the sacrum on a constant basis. The pain is tolerable unless she bends or does repetitive acts with her back. She feels best after a good night's sleep. There is mild right lateral thigh from the buttock to the lateral right leg to the outside of the right foot. There is also numbness at the same time, worse with lying on the right leg. There can be right low back pain when the leg is giving her trouble. She sometimes limps, but not often. Her distance is limited due to increasing low back pain (more than two laps around her cul-de-sac).

She reports urinary leakage mainly with coughing and sneezing. She did not have these symptoms prior to her injury or low back surgery. She has low back pain with intimacy. Her positional repertoire is limited due to her injuries or treatments.

She has limited low back motion with twisting and turning.

The neck area has limited motion. There is intermittent mild discomfort in the right trapezial and lower neck area. This is worse with sitting at a computer. Her headaches are very uncommon. There is no right arm pain, but she notes worsening right ulnar distribution numbness and bilateral hand pain.

There is some continued slow swallowing.

She continues to have issues with memory and calculations. She has to compensate by writing things down. She takes half of a valium from time to time due to stress. She had to be hospitalized three weeks ago. She uncommonly takes pain medications.

Household chores are limited and met with more symptoms.

She has residual depression but is managing as best as she can.

PREVIOUS INJURIES:

She sought chiropractic in college since her mother suggested it for maintenance.

In 2004, she bumped her head on the car trunk and had a brief concussion. A few months later, she bumped her head while cleaning the church bathroom, and had four hours of memory loss and was taken to the hospital. She made a full recovery, although she had a headache for a year.

She was in an accident at age 5-6 without injury.

She was in a traffic collision without injury at age 16.

She was in a rollover accident in college (1981) and had neck pain and right knee pain. She was seen at a hospital. She received a colonic by a naturalist. Her pain resolved within a few weeks.

In 1985, she was in another accident and had neck pain. She had physical therapy. Her pain resolved.

She was in an accident without injury when her son was driving about eight years ago.

She denies work injuries or other childhood injuries. She denies work injuries.

She denies any other episodes of neck or back pain aside an occasional stiff neck.

She had one episode of anxiety in the 1990s.

PAST MEDICAL HISTORY:

Past history includes low blood pressure and PCOS.

PAST SURGICAL HISTORY:

The patient has had two D&Cs, hysterectomy, cyst ablation, four foot surgeries with hardware, back surgery, one neck surgery, and one plasma disc decompression.

MEDICATIONS:

Medications include Women to Women, Juice Plus, and occasional Valium.

ALLERGIES:

No known drug allergies.

FAMILY HISTORY:

Family history is positive for heart disease, diabetes, and back problems.

SOCIAL HISTORY:

The patient does not drink or smoke.

REVIEW OF SYSTEMS:

The following list was supplied to the patient for review with me:

General/Constitutional: Fevers, chills, nausea, vomiting, lethargy, fast or slow heartbeat, lapses of consciousness or memory.

Skin/Breast: Rashes, lumps under the skin, easy bruising, easy bleeding.

Eyes/Ears/Nose/Mouth/Throat: Sore throat, difficulty swallowing or getting food down, stuffed nose or sinuses, hoarseness.

Cardiovascular: Chest pain, skipped or irregular heartbeats.

Respiratory: Trouble breathing, frequent coughing, production of sputum, blood in sputum.

Gastrointestinal: Bloating, abdominal pain, pain after eating, trouble with bowel movements.

Genitourinary: Trouble starting or stopping urine flow, leakage of urine, impotence, incontinence, blood in the urine or burning on urination.

Musculoskeletal: Pain in the joints, limitation of range of motion, cramping in the muscles.

Neurologic/Psychiatric: Problem controlling mood, loss of appetite or sleepiness, sleeping too much, trouble with balance or walking, problems with vision, hearing, taste and /or smell.

Allergic/Immunologic/Lymphatic/Endocrine: Swollen lymph glands, frequent infections or illness, milk from breasts.

From this list, the patient chose difficulty with swallowing or getting food down sometimes, stress related chest pain, leakage of urine, pain in the joints, limitation of range of motion, loss of appetite, insomnia at times, trouble with balance or walking, and trouble with vision.

NEUROSURGICAL PHYSICAL EXAMINATION:

General: The patient shifts position often and sat with a pillow behind her. She cried while telling me how her family was affected by her injury.

Cervical Spine:

Appearance: Well healed cervical surgery just to right of center.

Palpation: No tenderness over the spinous process, or paraspinal musculature

Range of Motion:	Right	Left
Forward flexion:	Mildly reduced	
Reverse extension:	Mildly reduced	
Lateral bending:	Mildly reduced	Mildly reduced
Lateral twisting:	Mildly reduced	Mildly reduced

Provocative Testing: Spurling's maneuver was negative.

Upper extremities:

Arm Muscular appearance: Normal bulk and tone, with symmetry. No scapular winging.

Strength:	Right	Left
Grip	5/5	5/5

Interossei	5/5	5/5
Wrist flexion	5/5	5/5
Wrist extension	5/5	5/5
Brachioradialis	5/5	5/5
Biceps	5/5	5/5
Triceps	5/5	5/5
Deltoids	5/5	5/5
Trapezii	5/5	5/5

Sensory Testing: Reduced pin prick right hypothenar area and right pinky.

Reflexes:	Right	Left
Brachioradialis	2	2
Biceps	2	2
Triceps	2	2
Knees:	2	2
Ankles:	2	2
Toes:	Downgoing	Downgoing
Clonus:	None	None
Hoffman's sign	No	No

Pathologic Reflexes: None

Gait: Heel, toe and tandem gait are normal.

Joint Range of Motion:	Right	Left
Shoulder	Mildly reduced	Mildly reduced
Elbow	Normal	Normal
Wrist	Normal	Normal

Joint Palpation:	Right	Left
Shoulder	Normal	Normal
Elbow	Normal	Normal
Wrist	Normal	Normal

Provocative Testing:	Right	Left
Impingement	Negative	Negative

Signs of Peripheral Nerve Entrapment	Right	Left
Median Tinel's	None	None
Ulnar Tinel's	None	None
Supraclavicular Tinel's	None	None
Phalen's Test	Negative	Negative

Lumbar Spine:

Appearance: Well healed left hypogastric scar. Scars on both large toes and both heels.

Palpation:

	Right	Left
Lumbar spine:		
Spinous Processes:	Nontender	Nontender
Facet Joints:	Nontender	Nontender
Paraspinal musculature:	Nontender	Nontender
Sacroiliac joints:	Nontender	Nontender
Sciatic notch:	Nontender	Nontender
Paraspinal bulk:	Reduced	Reduced
Paraspinal tone:	Normal	Normal

Range of Motion:	Right	Left
Flexion:	Mildly reduced	
Extension:	Mod. reduced extension	
Lateral Rotation:	*	*
Lateral flexion:	*	*

* = mild-to-moderately reduced

Lower extremities:

Leg Muscular appearance: Normal bulk and tone with symmetry.

Strength:	Right	Left
Plantar Flexion:	5/5	5/5
Dorsiflexion:	5/5	5/5
Extensor Hallucis longus	5/5	5/5
Knee Flexion:	5/5	5/5
Knee Extension:	5/5	5/5
Hip Abduction:	5/5	5/5
Hip Adduction:	5/5	5/5
Hip Flexion:	5/5	5/5

Sensory Testing: Reduced pin prick right lateral foot and lateral leg.

Joint Range of Motion:	Right	Left
Hip	Full	Full
Knee	Full	Full
Ankle	Full	Full

Provocative Testing:	Right	Left
Straight leg raise sign:	Negative	Negative
Sacroiliac Stress test:	Not performed	Not performed
Lateral Hip Tenderness	Negative	Negative
FABER sign	Negative	Negative
Crossed Abduction	Negative	Negative

Reflexes:	Right	Left
Knees:	2	2
Ankles:	2	2
Toes:	Downgoing	Downgoing
Clonus:	None	None

Gait: Heel, toe and tandem gait are normal.

Other Neurologic:
Romberg's test: Negative.

DIAGNOSTIC IMAGING:

I reviewed the following films personally as documented in my 7/3/12 Neurosurgical case review:

10/13/09 MRI Lumbar spine shows protrusions and mild loss of T2 signal at L4-5 and L5-S1. There is bilateral foraminal narrowing at L4-5. There is right more than left L4-5 inflammatory facet joint fluid.

9/23/10 Lumbar CT shows a ventral L4-S1 fusion construct with interbody spacers. The plate is elevated and there are some screw halos, mainly L4 and S1. The L5 screw does not look fully seated to the plate. The grafts are not incorporated.

11/2/11 Lumbar CT contains no reconstructed images. I cannot evaluate the fusion status well. The scout view does not show evidence of fusion and does show halos around the screws. The full study will be requested again.

SUMMARY OF TREATMENT FOR THIS INJURY:

Therapy:	Chiropractic treatment, 03/20/09 through 07/22/09.
Performed by:	Dr. Benjamin Lurie and Dr. Matthew Olmstead.
Result:	Temporary benefits.
Injections:	Transforaminal epidural at L4-5 and L5-S1 bilaterally and L4-5 bilateral facet injections, 05/20/09.
Performed by:	Dr. Marjorie Beisky.
Result:	Initial improvement but then had increased pain in the legs and back.
Injections:	Transforaminal epidural injection at C5-6 on the right, 08/26/09.
Performed by:	Dr. Marjorie Beisky.

Result:	Improvement with pain down from 7-10/10 to 5/10. Helped neck and shoulder area.
Injections:	Lumbar caudal epidural, 10/21/09.
Performed by:	Dr. Marjorie Belsky.
Result:	Temporary benefit.
Injections:	Lumbar caudal epidural, 12/09/09.
Performed by:	Dr. Marjorie Belsky.
Result:	Temporary relief. Had a lot of hot flushes since the injection.
Surgeries:	Plasma disc decompression L4 to S1, 09/15/09.
Performed by:	Dr. William Muir.
Result:	No benefit. Had increased symptoms.
Surgeries:	Anterior approach to the cervical spine, decompression discectomy C5-6, anterior cage placement C5-6, anterior fusion and plating C5-6, 01/25/10.
Performed by:	Dr. William Muir.
Result:	Significantly reduced neck pain and right shoulder pain and reduced right arm tingling. This is followed by subsequent tingling as noted above.
Surgeries:	Anterior lumbar approach for L4-5 and L5-S1 discectomy with placement of the interbody cage device by Stryker at the L4-5 and L5-S1 levels with an L4-5 interbody fusion using Vitoss and BMP followed by the placement of anterior lumbar instrumentation from L4 to S1 using a Stryker Thor plate. 05/12/10.
Performed by:	Dr. Yevgeniy Khavkin.
Result:	Improvement in legs, strained back a few months later and had more low back pain, followed by slow and meaningful improvement.

REVIEW OF RECORDS AFTER CLINICAL VISIT:

I received and reviewed additional records:

1. 12/09/09 *Marjorie Belsky, MD of Surgery Center of Southern Nevada* – Operative report. The preoperative and postoperative diagnoses were *"Lumbar disc bulge and lumbar radiculopathy."* The procedure performed was lumbar caudal epidural with dye study and fluoroscopic guidance. There were no complications and the patient was advised to follow-up in one week.

2. 09/23/10 *Lawrence Bogle, MD of Las Vegas Radiology* – Report of CT of the lumbar spine, unenhanced with CT reconstructions. The study was compared to the prior MRI of 10/13/09. The findings revealed normal lordosis and no significant listhesis. The paraspinous soft tissues were normal. From T12 to L5, there was normal height without compression fracture. Anterior fixation of L4, L5 and S1 vertebral bodies were noted. At T12-L1 and L1-2, AP dimension of the central canal measured 15 mm. At L2-3, AP dimension of the central canal measured 14.2 mm. At L3-4, there was a diffuse disc bulge and AP dimension of the central canal measured 13.7 mm. There was mild stenosis of the bilateral neural foramen due to disc bulge. At L4-5, postoperative changes were noted in the anterior portion of the disc. There was 10.5 mm central canal stenosis due to 4.5 mm diffuse disc bulge. There was moderate stenosis of the bilateral neural foramen due to disc bulge and facet joint arthrosis. At L5-S1, postoperative changes were noted in the anterior portion of the disc. There was a 3 mm diffuse disc bulge. AP dimension of the central canal measured 12.2 mm. There was mild stenosis of the bilateral neural foramen due to disc bulge and facet joint arthrosis. The impressions of the study were *"Interval anterior fixation of L4, L5, and S1 vertebral bodies, postoperative changes at L4-5 and L5-S1 intervertebral discs. L3-L4 – 2 mm diffuse disc bulge causing mild bilateral neural foraminal stenosis. L4-L5 – 10.5 mm central canal stenosis due to 4.5 mm diffuse disc bulge. There is moderate bilateral neural foraminal stenosis. L5-S1 – 3 mm diffuse disc bulge causing mild bilateral neural foraminal stenosis."*

3. 09/23/10 *Lawrence Bogle, MD of Las Vegas Radiology* – Report of bilateral screening mammogram. The findings revealed moderately dense parenchymal patterns bilaterally. No suspicious clusters of microcalcifications were seen. No asymmetric densities were identified to suggest the presence of malignant change. Several scattered benign-appearing calcifications were seen bilaterally. The impression of the study was *"Bilateral mammography reveals no evidence of malignant change. Recommend annual screening."*

I reviewed my findings in detail with this patient. Questions were asked and answered satisfactorily.

NEUROSURGICAL IMPRESSION

Motor vehicle collision related injury resulting in:

1. Discogenic cervical pain with discogenic headaches and right upper extremity radiculopathy, improved after C5-6 anterior cervical discectomy with fusion and plating. There are mild residual symptoms, which are typical.

2. Low back pain, improved after L4-S1 anterior fusion with slow incorporation. There is improvement in the right leg radiculopathy with some residual right S1 numbness and tingling.

3. Mild post fusion right sacroiliitis.

4. Possible right ulnar neuropathy.

5. Secondary aggravated depression and anxiety.

6. Mild traumatic brain injury.

RECOMMENDATIONS:

1. Continue self-guided rehabilitation and weight loss.

2. Continue cognitive compensation.

3. Based upon her interval improvement and slow fusion incorporation in the lumbar spine, I will reasonably remove my prior recommendation for posterior lumbar fusion procedure from my life care plan, including medical clearance, and any other factors related to that surgery.

FOLLOW-UP:

Follow-up as needed.

DISCUSSION:

It appears clear based on my own history taken directly from the above named patient, a physical examination as performed by me, review of diagnostic tests listed, review of relevant medical records supplied, and taking into consideration the mechanism of injury, that the above listed diagnoses and the need for further work-up and treatment are directly related to the stated injury. My opinion is based upon the traditional application of constructive medical logic. There is no information to detract from this opinion. I would make myself available to review any additional medical records or clarification of my opinion as would be appropriate.

Sincerely,

JEFFREY D. GROSS, M.D.
Spine Fellowship Trained Neurosurgeon
Diplomate, American Board of Neurological Surgery

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET G. SEASTRAND, Plaintiff, vs. RAYMOND RIAD KHOURY; DOES I-X, and ROE CORPORATIONS I-X, inclusive, Defendants.	CASE NO.: A-11-636515-C DEPT. NO.: XXX Date of Hearing: January 9, 2014 Time of Hearing: 9:00 a.m.

OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

Plaintiff MARGARET SEASTRAND ("Margie"), by and through her counsel of record, BENJAMIN P. CLOWARD, ESQ. and ALISON BRASIER, ESQ. of the RICHARD HARRIS LAW FIRM, hereby submits her Opposition to Defendant's Motion for New Trial. This Opposition is based on the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument entertained by this Court.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The verdict in this trial was a mixed result for both sides — significantly more than Defendant asked the jury to award, and significantly less than Plaintiff asked the jury to award. This verdict demonstrated that a fair and impartial jury was empaneled and that the jury accepted arguments from both parties in reaching its verdict.

Defendant argues that Plaintiff's counsel improperly indoctrinated and biased the jury during voir dire by stating that Plaintiff would ask for "in excess of $2 million dollars" at the end of trial. The jury's verdict completely defeats that argument — the verdict returned was approximately 1/3 of the amount mentioned during voir dire. The verdict demonstrates that the jury clearly was not influenced by any dollar amounts that were mentioned during voir dire and considered the evidence presented at trial in reaching its decision.

Defendant's other argument is that he was unfairly "surprised" by testimony at trial and that such testimony led to an inability to rebut Plaintiff's doctors' testimony. There was no "surprise" and Defendant was adequately prepared with expert testimony to present his defense of the case. Defendant presented rebuttal causation testimony from Dr. Schinfini, Dr. Siegler, Dr. Villablanca, and Dr. Smith — and the jury apparently considered that testimony, as the verdict for past medical specials was significantly reduced form the actual amount billed.

The verdict returned demonstrates an acceptance of both parties' arguments and evidence offered. And, there is absolutely no basis for a new trial.

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II. STATEMENT OF FACTS

A. Dr. Gross' Opinions and Testimony.

1. Dr. Gross Provided Opinions Regarding Margie's 2008 Treatment in His Expert Report.

Plaintiff retained Dr. Gross as a medical expert to review all of Margie's medical treatment and, among other things, to "provide opinions regarding the causation of Plaintiff's injuries and the necessity and reasonableness of Plaintiff's past and future medical expenses."[1] In support of his opinions, Dr. Gross was provided with all of Margie's accident-related medical bills and records and records associated prior medical treatment, including treatment for cardiac symptoms in October 2008.

In September 2012, approximately 10 months before trial, Dr. Gross prepared a supplemental report that included his review of Margie's treatment in October 2008.[2] In that supplement, Dr. Gross summarizes the 2008 treatment record and the diagnosis listed: "**atypical chest pain, numbness, and anxiety**."[3] Notably, in that supplement, Dr. Gross specifically addresses defense expert, Dr. Siegler's, opinion that Margie's symptoms in 2008 were indicative of a cervical injury. In commenting on Dr. Siegler's opinion, Dr. Gross notes:

> Dr. Siegler appears to completely mis-represent the [2008] medical records . . . . In addition, he conveniently omits the fact that **the [2008] record notes that the episode of tingling to the upper extremities was related to chest pain and stress**.[4]

Thus, more than 10 months before trial, Dr. Gross specifically discussed Margie's 2008 treatment — and stated that such treatment was attributed to "chest pain and stress." In his

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[1] See Plaintiff's Initial Expert Disclosure, attached as Exhibit 1.
[2] See September 29, 2012 Expert Report, attached as Exhibit 2.
[3] Id. at pp. 9-10 (emphasis added).
[4] Id. at p. 12 (emphasis added).

initial report and all of his supplemental reports, Dr. Gross' causation opinion remains unchanged: the subject accident caused Margie's injuries and need for treatment.[5]

Consistent with his report, during trial Dr. Gross provided the following testimony regarding the October 2008 treatment:

> Q: Is it more probable those findings were – of the numbness and tingling were coming from the neck or more probable it was from the heart event for which she had a positive stress test?
> A: It is more probable than not that the arm symptoms are unrelated to the neck and **more likely related to the heart or anxiety or both**.[6]
> . . .
> Q: And the treatment that she received [after the subject accident] was necessary and was caused by the motor vehicle collision dated March 13, 2009?
> A: Yes, it was.[7]

This testimony mirrors the statements contained in his previously-disclosed expert reports and supports his prior conclusions that the 2008 symptoms were entirely unrelated to the symptoms Margie experienced after the crash.

When defense counsel objected to Dr. Gross' opinions regarding the 2008 treatment at trial the Court prudently reasoned:

> As far as the discussion regarding the discrepancies in the record and with regard to Dr. Gross' discussion regarding the – the 2008 records, I think that those are causation opinions. If the doctor talked about causation in his report, he's been identified as a causation expert, the statute – or the rules and the notes to the rules talk about the fact that even a treating physician can come in and say something at trial to defend their opinions that hasn't even been disclosed before. I think that has to apply to experts as well, if it's to defend his opinions. And then, I think that's what he's doing. I don't think it changed his opinions that – that previously have been disclosed. **I think it's related to the original causation opinion that he authored, and that's why I overruled the objection**.[8]

[5] See id.; see also August 7, 2012 Expert Report, attached as Exhibit 3; August 28, 2012 Expert Report, attached as Exhibit 4.
[6] Reporter's Transcript of Trial, July 19, 2013 A.M. Session, attached as Exhibit 5, at 43:1-8 (emphasis added).
[7] Reporter's Transcript of Trial, July 19, 2013, attached as Exhibit 6, at 30:15-18.
[8] Exhibit 5 at 51:5-20 (emphasis added).

In Defendant's case-in-chief, he offered testimony from Dr. Siegler to provide a differing opinion regarding this prior treatment. Dr. Siegler — who is a physiatrist and not a cardiologist — offered the following testimony regarding Margie's 2008 symptoms.

> Q: Now, would you explain to us your interpretation of why the plaintiff was seen that day and what the results were.
>
> A: She had been having chest pain with associated numbness and tingling into both arms and shooting pain in left arms, no shortness of breath, and it was actually going away with – with exercise. It said – it says, with numbness and then below, under the assessment, they recommended an X ray of the neck. So concern was with – two concerns there. One with the chest pain, concern is always it may be a cardiac issue. But it was pretty atypical for cardiac pain to go away with exercise. The other concern was of – of a neck issue. And so they ordered an X ray of the neck.
>
> Q: Now, sir, **do you believe that this was a cardiac even that she was ultimately seen for in terms of the cause of the visit?**
>
> A: **No, I don't think so.**[9]

Notably, these opinions were contained in Dr. Siegler's expert report and were not opinions or testimony that he had to spontaneously provide in response to Dr. Gross' testimony.[10]

2. Dr. Gross Provided Opinions Regarding Secondary Gain and Dr. Schifini's Finding of Secondary Gain in His Expert Report.

In his review of the records and examination of Margie, Dr. Gross did not find any evidence of secondary gain behaviors. Accordingly, none were addressed in his initial report and supplemental report.[11] Dr. Gross subsequently received the report of defense expert, Dr. Joseph Schifini, wherein Dr. Schifini opined that Margie was exhibiting secondary gain behaviors. Dr. Gross specifically addressed this issue in his September 2012 supplemental report — approximately 10 months before trial.[12]

[9] Reporter's Transcript of Jury Trial, July 24, 2013, attached as Exhibit 7, at 18:25-19:18 (emphasis added).
[10] See Expert Report of Dr. Siegler, attached as Exhibit 8, at p. 10.
[11] See Exhibits 3 and 4.
[12] See Exhibit 2 at pp. 19-20.

> (Dr. Schiffini) expressed concerns for secondary gain based on his opinion that the patient's subjective complaints often outweighed the objective findings and medical records indicated "omissions and minimization" of her prior conditions. *[Reviewer's note: in meeting and examining Ms. Seastrand and reviewing her records, I found no evidence of any such psychological elements. If anything this is a stoic patient who would have liked nothing more than to not have been injured. It is the physician's job to correlate the symptoms and findings. I found them to match reasonably in this matter, as have her other treatment physicians. **Thus, there is no basis for Dr. Schiffini's allegations.**]*[13]

Dr. Gross expressed his opinion that Margie did not exhibit secondary gain behavior in his report 10 months before trial and he provided similar opinions during his trial testimony.

> Q: So I have a question: Margie told you that she was doing well when she saw you?
> A: She was improving.
>
> Q: She was improving. Now, you're aware that Dr. Schiffini has suggested that Margie has something called secondary gain.
> A: I saw that.
>
> Q: Whereby, you know, that would suggest or imply that, you know, she is exaggerating her symptoms for financial gain in this lawsuit.
> A: That's his idea.
>
> Q: Okay. And let me ask a question: Would you expect someone with this term financial – "secondary gain," you know, this exaggeration, would you expect them to report to you that they were doing better or improving?
> (Objection omitted)
> A: The answer's no.
>
> Q: Why not?
> A: People who exhibit secondary gain tend to amplify, exaggerate pain. Those patients complain of more pain or worsened pain. Ms – Ms. Seastrand complained of improvement. So the improvement doesn't go along with any support for the – the doctor's opinion on secondary gain being in play here.[14]

Again, Dr. Gross' trial testimony mirrored the opinions provided in his previously-disclosed report.

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[13] Id. (italics in original and emphasis added).

When defense counsel objected to Dr. Gross' testimony regarding secondary gain at trial the Court prudently reasoned:

> Now, with regard to Dr. Schifini and the testimony with regard to Dr. Schifini's opinion regarding secondary gain, if you recall, when you came up to the bench, I allowed the question regarding secondary gain because in reviewing the specific question that was asked, yes, he had previously addressed Dr. Schifini's report. But the question that was asked about Dr. Gross' secondary gain opinion did not specifically reference Dr. Schifini's report and didn't ask him to comment on Dr. Schifini's report or any criticisms with him. Now, that being said, when Dr. Gross answered the question, he did specifically criticize Dr. Schifini's opinion regarding secondary gain, and I expected an objection and a motion to strike. But I didn't hear it at that point.[15]

In Defendant's case-in-chief, Defendant called Dr. Schifini testified in support of his secondary gain opinions.

> Q: Do you have any opinions regarding secondary gain in this case?
> A: I do.
>
> Q: What are those?
> A: I believe there are factors associated with secondary gain other than the medical legal context of this claim. I mean, that could be said of anybody that files a lawsuit so I don't necessarily hold that against Ms. Seastrand, but there is that sort of factor associated with secondary gain that's associated with anybody who files a lawsuit. But besides that, the complaints of hers what we call the subjective complaints, outweighed the objective findings or the testing that was done, she appeared to have minimized or omitted some of the facts regarding her long history of neck and back pain in the past. Although, she did fill that out on one particular form from a radiology facility that she had had back pain for 26 years. She told the police officer that she had a history of neck and back pain from prior accidents, she commented to the chiropractor that a couple of times, a week or a month, I think two to four times a month that she would have neck or back symptoms. But she didn't relay that information to all of the providers involved. So that they could take that into consideration when they were offering her treatment, and so for those reasons, I – I feel she has some secondary gain behavior

[14] Exhibit 5 at 29:25-31:12.
[15] Id. at 51:21-52:11.

> that was exhibited during my review of the records that I have had the opportunity [to] explore over the past year or so.[16]

Notably, secondary gain opinions were contained in Dr. Schiffini's expert report and were not opinions or testimony that he had to spontaneously provide in response to Dr. Gross' testimony.[17] Defendant clearly had an expert prepared to discuss secondary gain issues. And, Defendant offered that testimony at trial.

B. Dr. Muir's Opinions and Testimony.

1. Dr. Muir Relied Upon Dr. Belsky's Records as Part of His Treatment of Margie.

In May 2009, two months after the subject accident, Margie began treatment with pain management specialist, Dr. Marjorie Belsky. At that time, Margie was experiencing significant cervical and lumbar symptoms. On May 20, 2009, Dr. Belsky performed lumbar transforaminal epidural steroid injections. These injections did not provide any long-term relief. Dr. Belsky subsequently referred Margie for evaluation with spine surgeon, Dr. William Muir. Dr. Muir first saw Margie in August 2009. From August 2009 until December 2009, Dr. Belsky and Dr. Muir coordinated their treatment of Margie in an attempt to identify her pain generator(s) and facilitate a long-term treatment plan.

Dr. Muir's treatment records evidence his reliance on Dr. Belsky's work-up. His December 15, 2009 record specifically references Margie's response to injections performed by Dr. Belsky.[18] The "Studies/tests" reference the positive lumbar discogram performed by Dr. Belsky.[19] The record notes the various cervical and lumbar injections performed by Dr. Belsky and Margie's response to those injections.[20] (All of Dr. Muir's treatment records make similar

[16] Exhibit 7 at 111:20-112:23.
[17] See Expert Report of Dr. Schiffini, attached as Exhibit 9, at pp. 7-8
[18] See December 15, 2009 treatment record (personal identifying information redacted), attached as Exhibit 10.
[19] See id.
[20] See id.

reference to Dr. Belsky's treatment and Margie's responses to such treatment. The December 15, 2009 record is attached as an exemplar.)

During deposition, Dr. Muir discussed how Dr. Belsky's work-up of Margie affected his treatment decisions, and ultimate decision to perform surgery. First, he discussed the general diagnostic benefit of pain management injections.

> Oftentimes it's – as far as making a diagnosis, and what I'm referring to is that source of one's pain, there's multiple tools that we utilize. And in some situations – they're more important in some situations that the other. Sometimes it's history alone, sometimes it's physical examination, EMGs, responses to injections, discograms. There's many different components, and it varies –.[21]

Dr. Muir also explained that his decision to perform a lumbar plasma disc decompression was, in part, based on the pain management work-up performed by Dr. Belsky. Dr. Muir testified:

> Q: What was it that made her a legitimate candidate for plasma disc decompression then?
> A: She was a candidate for plasma disc decompression because she failed with conservative care to date, including injections [performed by Dr. Belsky], chiropractic treatment. . . . And the discogram [performed by Dr. Belsky] was positive at those two levels. She also had injections [performed by Dr. Belsky] that were diagnostic.[22]
> . . .
> A: . . . I always explain to the patient that the plasma disc decompression will be done based upon not only the previous findings but the results of the discogram.[23]

Dr. Muir further testified that he received treatment records from Dr. Belsky that pre-dated his involvement with Margie and that he found the work-up prior to his involvement reasonable, customary, and related to the accident.[24]

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[21] Deposition of Dr. Muir, attached as Exhibit J 1, at 32:8-16.
[22] Id. at 57:17-58:2.
[23] Id. at 58:6-9.

2. Dr. Muir's Trial Testimony Regarding the Pre-Surgical Work-Up.

At trial, Dr. Muir testified regarding his treatment of Margie. In defense of his diagnosis, treatment, and decision to perform lumbar and cervical surgeries, Dr. Muir testified regarding the appropriateness of the work-up performed by Dr. Belsky upon — which he relied in his treatment decision-making.

> Q: Okay. Now, there was a criticism that Dr. Belsky doing the facet injection in addition to the transforaminal epidural injections would be inappropriate. Do you have any feelings –
>
> Mr. Jaffe: Objection, Your Honor. May we approach?
>
> The Court: Sure
>
> (Whereupon a brief discussion was held at the bench.)
>
> The Court: Objection's overruled.
>
> Q: Dr. Muir, No. 1, do you feel that there was an adequate work-up of the patient prior to getting to you?
>
> A: Yes.[25]

Dr. Muir further explained that he reviewed Dr. Belsky's work-up during his course of treatment of Margie.[26]

When defense counsel objected to the question posed to Dr. Muir regarding Dr. Belsky's surgery, the Court prudently reasoned:

> The other issue with regard to Dr. Belsky, the record will show that the objection was at approximately 1359 hours. I just wrote some notes here to myself that Dr. Muir talked about the injections of Dr. Belsky. I overruled your objection. The argument was that – at least at the bench, that Dr. Muir had done surgery without an adequate workup. There – there's allegedly an expert opinion that talked about Dr. Muir doing the surgery without an adequate workup. Under the new 16.1 language and the comments, a treating physician can talk about issues to defend his own care and treatment of the patient even if those issues and opinions haven't been previously disclosed.

[24] See id. at 75:7-25.
[25] Reporter's Transcript of Jury Trial, July 18, 2013, attached as Exhibit 12 at 29:23-30:13.
[26] See id. at 31:7-10.

> If in this case, there's an allegation that he did a surgery without an adequate workup, I thought that based upon his testimony that he did rely upon Dr. Belsky's injections, that his reference to the injections and whether they were appropriate, what they did, and his explanation of the injections was probably actually necessary. So I – I found that his reliance on Dr. Belsky's injections and the information obtained therefrom, because that was the basis of his care and treatment of the patient, that it was allowable, and that's why I overruled the objection, so . . . .[27]

When Defendant called Dr. Schifini during his case-in-chief, Dr. Schifini provided that exact criticism of Dr. Muir's decision to perform surgery.[28] Accordingly, the Court was correct that it was necessary for Dr. Muir to defend his reliance upon Dr. Belsky's work-up.

C. **Biases Expressed During Voir Dire.**

In light of Margie's significant damages, and the multi-million dollar pain and suffering verdict Plaintiff intended to ask for during closing arguments, it was critical that Plaintiff's counsel be permitted to inquire as to prospective jurors' potential biases regarding verdict amounts and pain and suffering verdicts. Plaintiff filed a motion in limine regarding this specific issue to ensure counsel would be permitted to explore these biases during voir dire. The Court granted Plaintiff's Motion.

To uncover any potential biases, Plaintiff's counsel asked all prospective jurors a series of questions regarding their **pre-conceived** ideas regarding verdict amounts and personal injury cases, in general. None of the questions were based on hypothetical facts or facts of this case. Responses to these questions from prospective jurors Frazier, Runz, Vera, Ong, and Agnor revealed that they all held long-standing biases regarding damages awards and/or personal injury cases, in general, and that they should be stricken for cause.

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[27] Id. at 60:22-61:20.
[28] See Exhibit 7 at 107:25-108:19.

2. Juror Frazier.

Mr. Frazier was asked if he were a plaintiff asking for in excess of $2 million dollars at trial if he would feel comfortable with someone with his frame of mind sitting on the jury. Mr. Frazier responded as follows:

Mr. Cloward:	I know you wouldn't. But just assume for me that you did [ask for more than $2 million dollars], and would you feel comfortable having a jury with your frame of mind, sit on the, you know, on the panel on that just that specific issue? Just, you know, not talking about everything else but just that one little issue? Would you feel uncomfortable?
Mr. Frazier:	Yeah.
Mr. Cloward:	. . . You agree in on that specific issue, you would not be a good fit.
Mr. Frazier:	I would not.
Mr. Cloward:	And the parties, you know, they're not going to get a good or a fair fight on just that issue, the defendant is going to start off just a little bit ahead of the plaintiff.
Mr. Frazier:	Absolutely.
Mr. Cloward:	. . . And you felt that way nothing that I say will change that right?
Mr. Frazier:	No.
Mr. Cloward:	Nothing that Mr. Jaffe says is going to change that right.
Mr. Frazier:	Absolutely not.
Mr. Cloward:	Nothing that, you know, your fiancé . . . or the judge [is] going to say is . . . going to change that right.
Mr. Frazier:	No.
Mr. Cloward:	Okay. And that's just a core value core belief that you hold.
Mr. Frazier:	Correct.[29]

Mr. Frazier also expressed a belief that most lawsuits are frivolous.

Mr. Cloward:	Thank you for being (brutally) honest with (me) Mr. Frazier you that way -- the majority of the cases are frivolous?

[29] Reporter's Rough Draft, July 15, 2013, attached as Exhibit 13, at 145:11-146:18. (Typographical and grammatical errors have been corrected from the original *rough draft* transcript exhibit.)

Mr. Frazier: Yeah it seems like everybody's always looking for a way to sue somebody for something. I mean, whether it's big small or in between they're looking for quick fix.[30]

Mr. Frazier further explained that because of this belief, he would feel uncomfortable with someone like him sitting on the jury if he were a plaintiff.

Mr. Cloward: Would you feel uncomfortable having someone if it was you, sit on your jury.
Mr. Frazier: Yes because I would feel they were biased already.[31]

. . .

Mr. Cloward: And Mr. Frazier, you also agree that for this specific case you're not a good fit, right.
Mr. Frazier: I do.[32]

3. Juror Runz.

Mr. Runz admitted that he would be biased against awarding a verdict in excess of $2 million dollars.

Mr. Cloward: Okay. And you agree that you would have a bias on just that one specific issue.
Mr. Runz: Yes.

Mr. Cloward: Okay. And so maybe, you know, just on that one specific issue you might not be the right fit for this particular case right.
Mr. Runz: Right.

Mr. Cloward: And you agree that on just – just talking – just that particular issue, the parties are not starting out at the same place right.
Mr. Runz: Right.

Mr. Cloward: Okay. And I appreciate that. And you felt this way for a long time right.
Mr. Runz: A long time.

Mr. Cloward: . . . And, but you agree with me that nothing that I say you know, is going ot change [the] way you feel, your – your values, your beliefs, right?

[30] Id. at 165:4-10.
[31] Id. at 174:9-12.
[32] Id. at 177:3-6.

Mr. Runz: That's correct.

Mr. Cloward: Nothing Mr. Jaffe says is going to change that right.
Mr. Runz: That's correct.

Mr. Cloward: Okay. Nothing in fact that even the judge or you know maybe your neighbor, or your dad is going to say, or you know someone in your family member (sic) is going to say is going to change [the] ways you feel right.
Mr. Runz: Correct.[33]

. . .

Mr. Cloward: But if everybody had your same view you would feel uncomfortable having . . . jurors with those views on your panel?
Mr. Runz: Yes.[34]

. . .

Mr. Cloward: This is a personal injury case, do you agree with me that just on that specific personal injury [case] you are probably not a good fit for this particular case?
Mr. Runz: Yes.[35]

4. **Juror Vera.**

In response to a verdict in excess of $2 million dollars, Ms. Vera responded as follows:

> I just – I agree that any losses that you suffered, medical bills, property damage, pain and suffering, I don't think you can – I don't think you should put a value on it so that you know, maybe you don't have to work anymore.[36]

When asked her feelings regarding pain and suffering verdicts, Ms. Vera responded as follows:

Mr. Cloward: Ms. Vera I wanted to ask you – you also indicated that you – you share the same view on pain and suffering. You have fundamental kinds of core values, beliefs, regarding pain and suffering you agree with that.
Ms. Vera: Uh-huh.

[33] Id. at 137:12-138:19.
[34] Id. at 176:5-8.
[35] Id. at 176:13-17.
[36] Id. at 112:12-16.

Mr. Cloward: Is that a yes?
Ms. Vera: Yes.[37]
. . .

Mr. Cloward: So, but regarding this one narrow issue of – of pain and suffering, you agree like Mr. Evans that, you know, if you brought a case, and you knew your attorney was going to ask for pain and suffering, you would feel uncomfortable having a juror with your same frame of mind sitting on, you know, a case that you were asking for that.
Ms. Vera: Yes.[38]
. . .

Mr. Cloward: Mrs. Vera, so back to, you know, your beliefs and your opinions, those are – those are beliefs that you have – you had for (sic) prior to just wake (sic) up today, you would agree?
Ms. Vera: Yes.

Mr. Cloward: You had those for a long time.
Ms. Vera: Yes.

Mr. Cloward: And you know nothing that I'm going to say or nothing that Mr. Jaffe is going to say or your neighbor is going to say is going to change the way that you have those beliefs and those values right.
Ms. Vera: Correct.

Mr. Cloward: Okay. And let me just ask the – the same question did I ask (sic) if you were sitting (on) a hypothetical jury like Mr. Evans whether you would feel comfortable with . . . someone with your frame of mind sitting on that jury?
Ms. Vera: No, I would not feel comfortable.

Mr. Cloward: Okay. You would not feel comfortable. And you – you would agree with me that just on this very narrow – just on pain and suffering, just on that issue alone, you – you would not be a good fit for this specific case right.
Ms. Vera: Correct.

Mr. Cloward: Okay. And that parties on that just – just that specific issue wouldn't have a fair fight on just that specific issue wouldn't have a fair fight on just that specific issue the defendant

[37] Id. at 123:14-20.
[38] Id. at 123:25-124:8.

would start just a little bit ahead of the plaintiff, you agree with that right.

Ms. Vera: I agree.[39]

Later, Ms. Vera stated that she feels that most lawsuits are frivolous and that she would feel uncomfortable if she were a plaintiff and the jury was filled with people with her state of mind.

Mr. Cloward: You feel uncomfortable having someone with your frame of mind on just that very specific issue on your jury.

Ms. Vera: . . . (I)f every person on the jury had that, yes, I would be very uncomfortable.[40]

. . .

Mr. Cloward: Okay. And Ms. Vera you also agree that this specific kind of case, you are probably not a good fit.

Ms. Vera: Yeah just I feel I'm not – I'm not a good choice.[41]

5. **Juror Ong.**

In response to the general question about biases involving a verdict in excess of $2 million dollars, Ms. Ong responded as follows:

I think's it's a bit too excessive too, because [it's] an accident. Nobody intends to harm nobody. So that for me [is] too much.[42]

Ms. Ong further stated that she would be biased on the issue of damages.[43]

Mr. Cloward: Ms. (Ong) [I] think you also indicated you felt like you – the amount is – is just outrageous – it's too much money you agree with that.

Ms. Ong: Yes, I do.

Mr. Cloward: And, you know, assuming the same hypothetical, would you – you would feel uncomfortable having someone with your core values and your beliefs sitting on the jury, if it was you as the plaintiff, right?

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[39] Id. at 124:17-125:22.
[40] Id. at 174:21-175:2.
[41] Id. at 176:18-22.
[42] Id. at 107:7-9.
[43] The *rough draft* of the transcript refers to Ms. Ong as "Ms. You." There was no prospective juror named Ms. You. Throughout the transcript, including when Ms. Ong was first questioned by the Court, different phonetic phrases are used to identify Ms. Ong.

Ms. Ong: Yes.

Mr. Cloward: . . . I'm talking, you know, just this is (sic) specific issue of – of, you know, in excess of 2 million, you would not be the right fit for this specific case right.

Ms. Ong: I won't be yeah because I will be biased evidently.[44]

. . .

Mr. Cloward: And you – you've had these beliefs for a long time – you didn't wake up –

Ms. Ong: A long time. I even put it in my questionnaire. I don't believe in those class lawsuits because I think some of them are just for making money.[45]

. . .

Mr. Cloward: And nothing that I'm going to say or, you know, Mr. Jaffe or even the judge is going to say is going to change the way that you view that – that's a belief you have had for a long time right.

Ms. Ong: Yes.[46]

6. Juror Agnor.

In response to the idea of a verdict in excess of $2 million dollars, Ms. Agnor responded:

> I think I agree. I think it's excessive because I'm sure I can't remember his name, I'm sure he didn't mean to do this, if it was – if it was a death, maybe it would be a little bit more to pay that kind of money, but I'm sure he didn't mean to – to cause the accident.[47]

In response to questions regarding pain and suffering verdicts, Ms. Agnor responded as follows:

Ms. Agnor: I think pain and suffering is – there's a big difference. You got pain and suffering on one hand clear to the other end. I mean, clear to when you're disabled for pain and suffering, so there's a big difference in how much you're going to get from this ends (sic) to a disability to where you're not going to be able to work anymore.

Mr. Cloward: Yeah.

Ms. Agnor: But even if you can't work, $2 million is a lot.

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[44] Id. 134:17-135:12.
[45] Id. at 135:16-21.
[46] Id. at 136:10-15.
[47] Id. at 106:7-13.

Mr. Cloward: Just the amount of money being asked for is just --
Ms. Agnor: It's astronomical.[48]

Ms. Agnor responded as follows to additional questioning:

Mr. Cloward: Let me ask Mrs. Agnor, you shared an opinion earlier you would have a hard time awarding an amount above $2 million; is that correct?
Ms. Agnor: Correct.

Mr. Cloward: Okay. And would you tell -- [not] knowing anything about the facts of the case, you agree with me that you would – you would have a hard time -- that would be something that you would – just due to your fundamental beliefs – your core beliefs – you would have a hard time doing – is that true?
Ms. Agnor: I think so unless that person was physically disabled or missing a limb, or –[49]

. . .

Mr. Cloward: Yeah, how long have you had the belief that, you know, 2 million is just a number that you kind of, you know, would be difficult.
Ms. Agnor: Well, I think for any of us two million dollars is kind of unfathomable – we can't imagine that kind of money having or just giving to somebody. So to me, that is so much money, that somebody is hut, by an accident, which I'm sure he didn't cause or create knowingly, but yeah, that would be a lot of money to give to a woman.

Mr. Cloward: I . . . appreciate that and knowing that about yourself, you know, assume hypothetically, you know, you were . . . injured, and you brought a lawsuit, and your attorney was asking for an amount above 2 million, or in excess of 2 million, knowing that about you and your frame of mind, would you feel uncomfortable having someone with your frame of mind sit on the jury?
Ms. Agnor: I would.[50]

. . .

Mr. Cloward: Okay. And you agree that the parties wouldn't start on a fair or on not a fair, but at a level field on that specific issue.
Ms. Agnor: Right.

[48] Id. at 113:4-17.
[49] Id. at 131:6-18.
[50] Id. at 131:24-133:6.

Mr. Cloward: And that's because you have these beliefs and these core values that you're find to have, but you've had those and you didn't form those today right.

Ms. Agnor: Right.[51]

. . .

Mr. Cloward: Sure. But just the preliminary, you know, without knowing any of the facts it would be difficult for you -- and you wouldn't want someone with your frame of mind of a hypothetical jury if it was and you [as] the plaintiff right.

Ms. Agnor: Right.[52]

7. **The Court Prudently Granted Plaintiff's Cause Challenges.**

The Court initially denied Plaintiff's cause challenges for potential jurors Frazier, Runz, Vera, Ong, and Agnor. However, after reviewing Nevada case law, the Court reverse its initial decision and prudently struck these impartial jurors.[53]

III. LEGAL ARGUMENT

A. The Court Properly Allowed Dr. Gross' Testimony.

NRCP 26(e)(1) requires that expert reports be supplemented with additional facts pursuant to the general expert disclosure requirement of NRCP 16.1(a)(2)(B), and states that any such supplements are due "by the time the party's disclosures under NRCP 16.1(a)(3) are due." NRCP 16.1(a)(3) provides that, unless otherwise ordered by the court, such information is due "at least 30 days before trial."

In accordance with this supplementation rule, Dr. Gross provided several supplements to his initial expert report when new records were received. In September 2012 — approximately 10 months before trial — Dr. Gross authored a second supplemental report, which included his

[51] Id. at 133:18-134:1.
[52] Id. at 134:9-14.
[53] See Reporter's Transcript of Trial, July 16, 2013, attached as Exhibit 14, at 17:1-20:3.

review of Margie's October 2008 treatment and Dr. Schiffini's discussion of secondary gain issues.[54]

Defendant was well-aware of Dr. Gross' opinions regarding these topics before trial and there was no basis for striking Dr. Gross' testimony. Thus, the Court properly allowed Dr. Gross' testimony at trial.

1. **Dr. Gross' Reports Contained the SAME Opinions Regarding Margie's 2008 Treatment Offered at Trial.**

As discussed above, in his September 2012 report, Dr. Gross specifically addressed the symptoms Margie reported in 2008 and stated that "the episodes of tingling to the upper extremities [in 2008] was **related to chest pain and stress**."[55] Dr. Gross offered this same opinion at trial.[56] The only way that Defendant could have "learned for the first time"[57] at trial that Dr. Gross was going to offer this opinion is if Defendant did not read Dr. Gross' September 2012 report. The opinion was provided to Defendant **10 months before trial**.

Further, since his first expert report in August 2012 — **11 months before trial** — Dr. Gross has consistently maintained that all of Margie's injuries were related to the subject crash and that there were no other factors that contributed to her post-crash symptoms.[58] Dr. Gross offered this same opinion at trial.

Dr. Gross' opinions regarding Margie's 2008 symptoms and the causation of her injuries following the crash were disclosed 10-11 months before trial, in accordance with NRCP 16(a)(3) and NRCP 26(e). There was no "surprise." There were no "new" opinions. And, there was no basis for excluding Dr. Gross' testimony in this area.

[54] See Exhibit 2.
[55] Id. at p. 12 (emphasis added).
[56] See Exhibit 5 at 30:15-18.
[57] Defendant's Motion at 23:16.
[58] See Exhibits 2-4.

2. **Defendant Was NOT Prejudiced by Dr. Gross' Testimony Regarding Margie's 2008 Treatment — Dr. Siegler Testified About the Same Issue.**

Defendant further argues that he was unfairly prejudiced by Dr. Gross' testimony because he "did not have the expert necessary to properly rebut (Dr. Gross') opinions."[59] Apparently Defendant forgot that he called Dr. Siegler to testify regarding this **exact** issue. As cited above, Dr. Siegler testified contrary to Dr. Gross and told the jury that Margie's 2008 treatment was not related to a cardiac event.[60] Dr. Siegler provided the same opinion in his expert report, disclosed one year before trial.[61] Defendant clearly had an expert prepared to discuss whether or not the 2008 treatment was related to a cardiac issue. And, Defendant offered that testimony at trial. Defendant's claims of "prejudice" are clearly rebutted by the record.

3. **Dr. Gross is Qualified to Testify Regarding Margie's 2008 Treatment.**

Pursuant to NRS § 50.275, an expert must have "special knowledge, skill, experience, training, or education" that will assist the trier of fact to understand the evidence or determine a fact in issue. Plaintiff agrees that under the expert requirements, not all physicians are qualified to testify regarding all areas of medicine. However, there are certain general areas of medicine that are common throughout all medical specialties — chief among them, identification of potentially-fatal cardiac symptoms.

As a board-certified neurosurgeon, Dr. Gross clearly has training and experience in identifying these symptoms in his everyday practice. Is he a trained cardiologist? No. However, he is trained to identify whether someone is having potentially-fatal cardiac symptoms or whether the symptoms are related to the spine. Accordingly, the Court properly allowed him to

[59] Defendant's Motion at 26:4-5.
[60] See Exhibit 7 at 18:25-19:18.
[61] See Exhibit 8 at p. 10.

offer testimony that Margie's 2008 treatment was related to a cardiac event, and not related to her spine.

Defendant argues that the "cardiologic" testimony offered by Dr. Gross fell outside his area of expertise as a neurosurgeon. Again, however, it appears that Defendant fails to recall that he offered *physiatrist*, Dr. Siegler, to testify regarding this same issue. While neither doctor is a board-certified cardiologist, their training as medical doctors clearly qualifies them as experts in identifying general cardiologic symptoms — such as those discussed during trial. Neither doctor testified as to specific cardiologic injuries, diseases, etc. They both provided opinions regarding whether symptoms were related to the spine (well within Dr. Gross' area of expertise) or related to the heart.

This classification of symptoms is something that Dr. Gross is trained to do in his everyday practice as a neurosurgeon. Defendant clearly understands this, which explains his use of Dr. Siegler to testify regarding the same symptoms. Dr. Gross testified within his area of expertise and the Court properly allowed his testimony.[62]

4. **Dr. Gross' Reports Contained the SAME Opinions Regarding Secondary Gain Offered at Trial.**

As discussed above, Dr. Gross' September 2012 supplemental report specifically addressed Dr. Schifini's opinion that Margie exhibited secondary gain behavior.[63] Dr. Gross stated: "(T)here is no basis for Dr. Schifini's allegations" of secondary gain.[64] It does not get much clearer than that. Further, in his report, Dr. Gross explained that Margie was "stoic" and did not exhibit any of the typical secondary gain behaviors.[65] Again, the only way that this

[62] See NRS §50.275.
[63] See Exhibit 2 at pp. 19-20.
[64] Id. at 20.
[65] See id. 2 at pp. 19-20.

opinion could have been a "surprise" to Defendant is if Defendant did not read Dr. Gross' report.

Moreover, the question objected to at trial did not specifically address Dr. Schifini's report — it addressed Dr. Gross' general experience with secondary gain behaviors. Pursuant to NRS §50.275, as a board-certified neurosurgeon, Dr. Gross is certainly experienced in identifying secondary gain behaviors and treating patients who have exhibited such behaviors. His general experience and opinions regarding secondary gain behaviors are within his area of expertise and the Court properly allowed him to testify regarding that topic.[66]

5. **Defendant Was NOT Prejudiced by Dr. Gross' Testimony Regarding Secondary Gain — Dr. Schifini Testified About the Same Issue.**

Again, Defendant claims that "Plaintiff deprived Defendant of the opportunity to adequately rebut (Dr. Gross') opinions."[67] It appears that Defendant also forgot that Dr. Schifini testified at trial regarding this exact issue. As cited above, Dr. Schifini provided secondary gain opinions that were contrary to Dr. Gross' opinions — and told the jury that Margie exhibited secondary gain behaviors.[68] Dr. Schifini provided the same opinion in his expert report, disclosed 11 months before trial.[69] Defendant clearly had an expert prepared to discuss secondary gain behaviors. And, Defendant offered that testimony at trial. Defendant's claims of "prejudice" are clearly rebutted by the record.

B. The Court Properly Allowed Testimony from Dr. Muir.

The Drafter's Note of the 2012 amendment to NRCP 16.1(a)(2)(B) states:

> A treating physician is not a retained expert merely because the witness will opine about diagnosis, prognosis, or causation of the patient's injuries, or

[66] See NRS §50.275.
[67] Defendant's Motion at 27:25-26.
[68] See Exhibit 7 at 110:10-112:23.
[69] See Exhibit 9 at pp. 7-8.

because the **witness reviews documents outside his or her medical chart in the course of providing treating or defending treatment**. (Emphasis added).

Notably, Defendant conveniently fails to acknowledge this binding authority regarding the requirements for treating physician experts. The Court must dismiss the non-binding, out-of-state authority Defendant relies upon in an attempt to strike Dr. Muir's testimony.

If NRCP 16.1(a)(2)(B) was not clear enough, Nevada Courts have also held that treating physicians may testify as to opinions formed "during their course of treatment" — even if such opinions include the treatment provided by other doctors.[70] These opinions and the reference to other physicians' records does turn the treating physician into a retained expert — triggering the formal report requirement. The basis for this position makes sound judicial sense. Treating physicians must be permitted to testify as to review of prior doctor's treatment because the physician reviewed that prior treatment and developed opinions about the prior treatment in deciding an appropriate course of treatment for the future.[71]

As discussed above, Dr. Muir and Dr. Belsky worked in conjunction to identify the source of Margie's ongoing spine pain for several months before Dr. Muir ultimately performed a lumbar plasma disc decompression surgery and a cervical fusion surgery on Margie.[72] In

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[70] See Piper v. Harnischfeger Corp., 170 F.R.D. 173, 174-75 (D. Nev. 1997); see also Elgas v. Colorado Belle Corp., 179 F.R.D. 296, 299 (D. Nev. 1998); Kirkland v. Union Pacific Railroad, 189 F.R.D. 604 (D. Nev. 1999).

[71] See McCloughan v. City of Springfield, 208 F.R.D. 236, 242 (C.D. Ill. 2003) ("In order to treat and diagnose a patient, the doctor needs to know, establish, or reach a conclusion regarding the cause of the patient's injuries. The Court believes that causation, diagnosis, and prognosis would be based upon the treating physician's personal knowledge"); Mangla v. University of Rochester, 168 F.R.D. 137, 139 (W.D.N.Y. 1996) (holding that treating physician's testimony "may include opinion[s] as to the cause of an injury based upon their examination of the patient or to the degree of injury in the future. These opinions are a necessary part of the treatment of the patient . . . [and] do not make the treating physicians experts"); Fielden, 482 F.3d 866, 869-70 ("doctors may need to determine the cause of the injury in order to treat it"); Odum v. Rayonier, Inc., 2007 WL 2002445 (S.D. Ga.) (treating physician may testify as to causation without expert report); Shapardon v. West Beach Estates, 172 F.R.D. 415, 417 (D. Haw. 1997) (treating physician considers diagnosis, prognosis, and cause of plaintiff's injuries).

[72] See Exhibit 10; see also Exhibit 11 at 31:25-32:16; 36:5-39:3, 40:3-17, 57:17-58:2, 58:6-9, 75:7-25 (quotations included above).

order for Dr. Muir to determine that surgery was an adequate recommendation, he relied upon Dr. Belsky's pain management work-up and the results of that work-up.[73]

Dr. Muir's testimony regarding the work-up performed by Dr. Belsky was critical to his ability to defend his own treatment plan. Dr. Schifini specifically stated in his expert report that, based on Dr. Belsky's work-up, he was "unclear as to the logic used in making the decision to operate on Ms. Seastrand's cervical and lumbar spines."[74] It was necessary for Dr. Muir to discuss the propriety of Dr. Belsky's work-up to defend his decision to perform surgeries on Margie.

The 2012 Drafter's Note to NRCP 16.1(a)(2)(B) clearly allows for this type of "defense of treatment" testimony without a formal report. There was no basis for excluding Dr. Muir's testimony regarding the propriety of Dr. Belsky's treatment and the Court properly allowed Dr. Muir's testimony at trial.

C. **The Court Allowed Proper Voir Dire Questioning Regarding Juror Bias — and Prudently Granted Cause Challenges Based on the Standard Established by the Nevada Supreme Court in Jitnan.**

1. **Voir Dire Regarding Verdict Amounts Did NOT Violate EDCR 7.70.**

EDCR 7.70(c) prohibits questions "touching on the verdict a juror would return **when based upon hypothetical facts**." (Emphasis added). The questions regarding verdict amounts posed by Plaintiff's counsel during voir dire fully complied with EDCR 7.70(c), as they were based upon general feelings for any personal injury case. In fact, several jurors expressed frustration that counsel could not tell them the facts of the case before asking about their preconceived ideas regarding verdict amounts and pain and suffering.

[73] See id.
[74] Exhibit 9 at p. 9.

Plaintiff's counsel did not be pose questions such as: "If the evidence shows that this plaintiff has special damages of $2 million dollars and general damages of $2 million dollars, would you be willing to return a verdict of $4 million dollars in this case if that is what the evidence shows?" Instead, Plaintiff's counsel asked general questions about jurors' general feelings regarding a verdict "in excess of $2 million" and awards for pain and suffering. Notably, Defendant fails to cite to **any** question allowed during voir dire that is based on "hypothetical facts" or the facts of the underlying case that would violate EDCR 7.70(c).

2. **The Court Properly Granted Plaintiff's Cause Challenges in Accordance with Jitnan.**

Recently, the Nevada Supreme Court reaffirmed that whether a juror should be removed for cause is based upon whether the panel member's views could substantially impair her performance of her duties as a juror in accordance with the Court's instructions.[75] The United States Supreme Court in Wainwright, which the Nevada Supreme Court relied upon in Jitnan, held that prospective jurors must be excused if their views could substantially impair their ability to perform their function as jurors, and the impairment need not be shown with unmistakable clarity.

The Nevada Supreme Court provided guidance for the District Court and trial counsel in determining whether a juror should be removed for cause. The Court explained, "[i]t is not enough to be able to point to detached language which, alone considered, would seem to meet the statute requirement, if, on construing the whole declaration together, it is apparent that the juror is not able to express an **absolute belief** that his opinion will not influence his verdict."[76] The Jitnan Court further stated: "[d]etached language considered alone is not sufficient to

[75] See Jitnan v. Oliver, 2011 Nev. LEXIS 40, 127 Nev. Adv.Rep. 35 (Nev. July 7, 2011) (quoting Weber v. State, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (quoting Leonard v. State, 117 Nev. 53, 65, 17 P.3d 397, 405 (2001) (quoting Wainwright V. Witt, 496 U.S. 412,424 (1985))).

establish that a juror can be fair when the juror's declaration as a whole indicates that she could not state **unequivocally** that a preconception would not influence her verdict."[77]

In Jitnan, the juror in question provided inconsistent statements regarding his feelings regarding personal injury cases. The Supreme Court held that despite the juror's "ever changing position when questioned by counsel," the whole record showed that the panel member had a fixed opinion of bias against plaintiffs in personal injury cases and his belief may substantially impair him from performing his duties if seated as a juror, given the nature of the case.[78] Thus, the Jitnan case is a prime example that a prospective juror cannot be "rehabilitated" after the prospective juror expresses views that could impair that juror's ability to serve.

The fact that defense counsel in Jitnan, in response to follow-up leading questions, was able to get the prospective juror to say that the prospective juror could be fair and listen to the facts of this particular case was irrelevant. The Supreme Court held that those inconsistent statements did not alter the juror's "fixed opinion" that plaintiffs should not be entitled to pain and suffering and that most claims were frivolous.[79]

Consequently, the views expressed by a prospective juror, which evidence the juror's partial beliefs cannot be subsequently obviated by a simple "yes" response to voir dire questions such as "can you follow the law?" or "can you be fair and impartial?" Such questions are coercive and, thus, gather no reliable information. In fact, these kinds of questions border on bullying. They intimidate even self-assured jurors into giving false answers such as "yes, I can follow the law" or "yes, I can be fair and impartial," which are insufficient under the law to discover prospective jurors whose biases or prejudices may affect their ability to fairly serve.

[76] Thompson vs. State of Nevada, 111 Nev. 439, 443, 894 P.2d 375, 377 (1995) (citing Bryant v. State, 72 Nev. 330, 305 P.2d 360 (1956) (emphasis added)).
[77] Jitnan, 127 Nev. at 11 (quoting Weber, 121 Nev. at 581, 119 P.3d at 125)).
[78] Id. at 12.
[79] See id.

Thus, if a juror expresses views during voir dire which might substantially impair the performance of his or her duties as a juror the juror should be removed for cause, even if the juror answers "yes" to the generic question, "can you follow the law?" Such "detached language," without more, should not allow an otherwise partial juror to remain on the panel.[80] Moreover, a juror's impairment does not need to be shown with "unmistakable clarity."[81] Any doubt should be weighed **in favor of being excused** in order to remove even the possibility of bias or prejudice infecting the deliberations.[82]

The Nevada Supreme Court emphasized this point in Thompson, cited in Jitnan, and found that, "[s]imply because the district court was able to point to detached language that prospective juror eighty-nine could be impartial does not eradicate the fact that he previously demonstrated partial beliefs, capped by an unequivocal statement that [the Defendant] was guilty."[83] The Court further explained: "It may be true that on examination [the prospective juror's] answers tended to contradict his previous statements, but we believe that his very self-contradictions do not increase his fitness as a juryman."[84] The Thompson court ultimately concluded that "it was prejudicial error that [the] prospective juror was not excused for cause."[85] This principle is echoed in Courts throughout our country.

Notably, the Georgia Court of Appeals in Walls, supra, discussed the fallacy of the "rehabilitation question" often relied upon by judges to justify retention of biased jurors. The Walls Court discussed the fact that in too many cases, judges confronted with clearly biased jurors use their significant discretion by asking a version of the following question, which the Walls Court characterized as a "loaded question":

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[80] See id.
[81] Wainwright, supra.
[82] See Walls v. Kim, 549 S.E.2d 797,250 Ga.App. 259 (Ga. 2001).
[83] Thompson, supra at 443.
[84] Id. (citing Bryant, 72 Nev. at 334).

> After you hear the evidence and my charge on the law, and considering the oath you take as jurors, can you set aside your preconceptions and decide this case solely on the evidence and the law?[86]

The Walls Court further explained, "[n]ot so remarkably, jurors confronted with this question from the bench almost inevitably say, 'yes.'" The Walls case is a classic example of a trial Judge's misuse of the "rehabilitation question." The Georgia Court of Appeals found that the Judge erred in not dismissing the juror for cause and reversed the judgment and remanded for a new trial.[87] The Court explained that the mere fact the juror told the court she could decide the case on the law and facts, did not eliminate the reality of her potential bias. The Court further explained that a trial judge should **err on the side of caution by dismissing biased jurors, rather than trying to rehabilitate them**, because in reality, the judge is the only person in the courtroom whose primary concern, and primary duty, is to ensure the selection of a fair and impartial jury.[88]

As discussed in detail above, during voir dire questioning by Plaintiff's counsel, potential jurors, Frazier, Runz, Vera, Ong, and Agnor, all expressed biases that would affect their respective abilities to serve as fair and impartial jurors in this matter.

Mr. Frazier said that he felt that, before hearing any evidence, Defendant was already starting ahead of Plaintiff.[89] He stated that he thought most personal injury lawsuits were frivolous.[90] And, he unequivocally stated that he was not a "good fit" for this case.[91]

Mr. Runz stated that he had a bias against a verdict in excess of $2 million.[92] He stated that he was not a "right fit" for this case.[93] He stated that most personal injury lawsuits are

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[85] Id.
[86] Walls, 549 S.E.2nd at 799.
[87] See id.
[88] See id. at 799.
[89] See fn. 29-32, supra.
[90] See id.
[91] See id.

frivolous.[94] And, he stated that, before hearing any evidence, the parties were not starting on equal footing in his mind.[95]

Ms. Vera said that she did not believe in pain and suffering awards.[96] She agreed that she was not a "good fit" for this case.[97] She stated that most personal injury lawsuits are frivolous.[98] And, she further stated that, before hearing any evidence, Defendant was starting ahead of Plaintiff in her mind.[99]

Ms. Ong indicated that a verdict in excess of $2 million was "too excessive."[100] And, she agreed that she would not be the "right fit" for this case because she was "biased."[101]

Finally, Ms. Agnor stated that a verdict in excess of $2 million was "excessive," "astronomical," and "unfathomable," and that she would have a hard time awarding such a verdict unless the act was intentional or there was a death involved.[102] She had a hard time with the idea of $2 million dollars, in general damages alone, even if the person was disabled from working.[103] And, she stated that, before hearing any evidence, Defendant would be starting ahead of Plaintiff in her mind.

Not surprisingly, defense counsel attempted to "rehabilitate" these biased jurors by asking them the "magic question" of whether they could set aside their feelings and "follow the law." Defense counsel intimidated each of the jurors into saying what they believed counsel, and the Court, wanted them to say: "Yes, they will follow the law." This about-face in position

[94] See fn. 33-35, supra.
[95] See id.
[96] See id.
[97] See id.
[98] See fn. 36-41, supra.
[99] See id.
[100] See id.
[101] See id.
[102] See fn. 47-52, supra.
[103] See id.

and inconsistency in responses in exactly what Jitnan and the litany of cases it relies upon was referencing. Of course jurors, sitting in a courtroom full of strangers, facing attorneys and a judge, are going to feel intimidated and say they will follow the law — despite the fact that their biases and prejudices will ultimately prevent them from doing so in a fair manner.

This reality is exactly why the Jitnan Court directs that the juror must state "**unequivocally** that a preconception would not influence her verdict."[104] If there is any inconsistency, the trial court is directed to err on the side of caution and strike the juror. As discussed above, prospective jurors Frazier, Runz, Vera, Ong, and Agnor all expressed biases against verdict amounts, pain and suffering awards, and/or personal injury cases, in general. Accordingly, they cannot be "rehabilitated" by providing inconsistent statements when pressured by defense counsel to answer the "magic question" correctly.

For these reasons, the Court prudently granted Plaintiff's counsel's cause challenges for these jurors and a fair and impartial jury was impaneled and delivered their verdict in this case.

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court deny Defendant's Motion for New Trial.

DATED THIS 2nd day of December 2013.

RICHARD HARRIS LAW FIRM

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[104] Jitnan, 127 Nev. at 11 (quoting Weber, 121 Nev. at 581, 119 P.3d at 125)).

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM, and that on this 23 day of December, 2013, I served a copy of the foregoing **OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL** as follows:

☑ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☑ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Steve Jaffe, Esq.
Hall, Jaffe & Clayton
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Attorney for Defendant

An employee of the Richard Harris Law Firm

RICHARD HARRIS LAW FIRM

EXHIBIT 1

DOEW
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RICHARD HARRIS LAW FIRM

DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET G. SEASTRAND,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-11-636515-C

DEPT. NO.: XXX

PLAINTIFF'S DESIGNATION OF EXPERT WITNESSES

COMES NOW, Plaintiff MARGARET G. SEASTRAND, by and through her counsel of record, Joshua R. Harris and Alison M. Brasier, of the RICHARD HARRIS LAW FIRM, and hereby submits the following Designation of Expert Witnesses:

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EXPERT WITNESSES

1. JEFFREY GROSS, M.D.
27882 Forbes Road, Suite 109
Laguna Niguel, California 92677
Tel: 949-364-6888

Dr. Gross is a board certified neurosurgeon and is expected to provide expert testimony relating to his review of Plaintiff's medical records, opinions regarding his past medical care and/or treatment, and his opinions regarding her potential need for future care and/or treatment, including the treatment and medical reasonableness of other medical providers. He will also provide opinions regarding the causation of Plaintiff's injuries and the necessity and reasonableness of Plaintiff's past and future medical expenses.

2. TERRENCE B. DINNEEN, M.S., C.R.C., C.R.E.
DeVINNEY & DINNEEN CAREER and VOCATIONAL ECONOMICS SERVICES, LTD.
445 Apple Street, Suite 205
Reno, Nevada 89502
Tel: 775-825-5558

Mr. Dinneen is a qualified economist and is expected to provide expert testimony relating to Plaintiff's present day value of Dr. Gross' life care plan and vocational loss report. Mr. Dinneen will also provide testimony as to any other economic issues raised by Defendant's or other experts in this action and will opine regarding the present value of Plaintiff's future medical expenses and vocational loss.

3. Arthur C. Croft, Ph.D.(c), D.C., M.Sc., M.P.H., F.A.C.O.
826 Orange Avenue, #633
Coronado, California 92118
Tel: (619) 423-9867

Dr. Croft is expect to testify with respect to accident reconstruction and injury biomechanics, including but not limited to, testimony with respect to vehicle components,

vehicle handling characteristics, the performance of the subject vehicle and its components at the time of the accident, vehicles speeds, impacts, motion, orientation, kinematics, and the reconstruction of the subject accident. Dr. Croft will testify in the areas of mechanical engineering, vehicle dynamics, and vehicle design in relation to accident reconstruction. Dr. Croft will also testify as to the injuries allegedly sustained by plaintiff, including an analysis of the mechanism of injury and injury causation, seating position of the plaintiff, and related issues.

EXHIBITS

1. Expert Neurosurgical Case Review and Medical Life Care Plan of Jeffrey D. Gross, M.D. dated June 4, 2012 (39 pages);

2. Curriculum Vitae, Fee Schedule, and Testimony and Depositions of Jeffrey D. Gross, M.D. (22 pages);

3. Present Value of Life Care Plan of Terrence B. Dinneen, M.S., C.R.C., C.R.E. dated August 24, 2011 (10 pages);

4. Vocational Loss Report by Terrence B. Dinneen, M.S., C.R.C., C.R.E. dated August 27, 2011 (13 pages);

5. Curriculum Vitae, Fee Schedule, Testimony and Depositions of Terrence B. Dinneen, M.S., C.R.C., C.R.E. (27 pages);

3. Expert Report of Arthur C. Croft, Ph.D.(c), D.C., M.Sc., M.P.H., F.A.C.O. dated August 28, 2012 (28 pages);

4. Curriculum Vitae, Fee Schedule, and Testimony Report of Arthur C. Croft, Ph.D.(c), D.C., M.Sc., M.P.H., F.A.C.O. (25 pages);

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RICHARD HARRIS LAW FIRM

Plaintiff reserves the right to supplement and/or amend any and all Expert Witness Disclosures and supplements thereto, as discovery is continuing.

DATED this 27th day of August, 2012.

RICHARD HARRIS LAW FIRM

By: /s/ 7580
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Nevada Bar No. 10522
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

RICHARD HARRIS LAW FIRM

EXHIBIT 2

Comprehensive Injury Institute
Complete Care from Diagnosis to Treatment

Office of: Jeffrey D. Gross, M.D.
Spine Fellowship Trained Neurological Surgeon
Diplomate, American Board of Neurological Surgery

September 29, 2012

PATIENT NAME: **SEASTRAND, MARGARET**
DATE OF BIRTH: 12/27/1961
DATE OF INJURY: 03/13/09
DATE OF REVIEW: 09/29/12

NEUROSURGICAL SUPPLEMENTAL REPORT

To Whom It May Concern:

I received and reviewed the following reports:

1. 12/08/04 *Lisa Underwood, MD* – Report. The patient complained of "left lower quadrant pain, burns, improved with eating, radiates down leg, onset eight years ago, now pain is worse six weeks – daily – better with lying flat." She was doing Weight Watchers since two weeks. She had a concussion on labor day weekend, and had headaches for three weeks, CT normal. She had menstrual migraines, and IBS. Past surgical history included D&C, left ovarian cyst rupture in 1997, endometriosis, LLQ pain, colon adherent to sidewall 2002, and LAH-BSO in 2003. She had severe PMS. Family history and social history were reviewed. The assessment was *"Menopausal syndrome. Hormone imbalance. LLQ pain, history of endometriosis, history of adhesions. Rule out hernia, ? constipation. Chronic insomnia. PMS, moody, migraines. IBS."* Lab studies and diagnostic studies were ordered. Prescriptions were provided for medications and the patient was advised to follow-up in four to six weeks.

2. 12/08/04 *Lisa Underwood, MD* – Report. The patient had had a near syncopal episode (history of headaches for three weeks, recent concussion, MRI within normal limits). She used melatonin and last used Sarafem in the AM. The plan was to obtain an MRI of the head and observe the patient for 24 hours and to give consideration for EEG/neuro consult.

3. 12/08/04 *Robert S. Pretto, MD of West Valley Imaging* – Report of whole body percentage fat composition. Using a GE DEXA scanner, whole body images were performed and analysis for total body fat was performed. The total body fat was calculated at 44.0 %, placing the patient in the 92nd percentile. No other abnormalities were seen. Whole body, DEXA scan calculation for bone mineralization put the patient in a T score of +2.0, placing her with normal bone mineralization for age. The impression was *"Total body fat of 44.0%."*

4. 12/09/04 *Sunrise Hospital Laboratory* – Laboratory report. Comprehensive metabolic panel showed high chlorine at 108 and low albumin/globulin ratio at 1.5 and low SGPT/ALT at 12. PT with INR and PTT was normal. CBC was within normal limits.

5. 12/09/04 *Quest Diagnostics* – Laboratory report. PAP smear were negative for intraepithelial lesion or malignancy. Pregnenolone was normal at 18. TSH was within normal limits. Estradiol was reduced to 87. Testosterone, free testosterone, and percent testosterone and AM cortisol were normal. CBC with differential and platelets was within normal limits. DHEA sulfate was normal at 247.5. Cardio CRP was at 2.2. Cardiovascular homocysteine was high as 12.3. Free T4 was normal at 1.1. Insulin was low as 4.8. Lipid panel showed high HDL as 76. Glycohemoglobin A1c was 5.4. Free T3 was normal at 308 and TSH was normal at 2.0.

6. 12/10/04 *Simon J. Farrow, MD of Sunrise Hospital and Medical Center* – Report of electroencephalogram. The electroencephalogram which was recorded at the patient's bedside was so extensively contaminated with electromyographic and maintenance frequency activity as that it was mostly un-interpretable. *There did not appear to be any prominent focal or paroxysmal slowing. Background rhythm at about 10 cycles per second was symmetrical and reactive to eye opening. Contamination was primarily anterior.* Dr. Farrow commented that if there was any question of epileptic activity, and if the purpose of the recording was to look for irritative foci, spikes, etc, a repeat recording would be clinically appropriate.

7. 12/10/04 *Lindsey C. Blake MD of Sunrise HospitalMed Center* – Report of intracranial MR angiogram without contrast. The findings showed normal intracranial arteries in caliber. Hyperplasia of the left P1 segment was an anatomic variant. There was no stenosis or major branch occlusion. There was no vertebral basilar stenosis or no aneurysm or AVM. The impression was *"Negative."*

8. 12/10/04 *Lindsey C. Blake MD of Sunrise Hospital/Med Center* – Report of an MRI of the brain without and with contrast. The findings showed normal midline brain structures. The sella and suprasellar cistern and optic chiasm were unremarkable. The brain, cerebral ventricles, and extra-axial CSF spaces were within normal limits. There was no mass or abnormal intracranial enhancement. In the superficial lobe of the left parotid gland there was a 4 mm focus of increased signal. Images were not completely obtained through this lesion. The impression was *"Appearance of the brain is within normal limits, left parotid 4 mm nodule in the superficial lobe. This may represent a lymph node. A tumor cannot entirely be excluded."* Follow up was suggested.

9. 12/10/04 *Anil Foredar, MD of Sunrise Hospital and Medical Center* – 2-D and Doppler echocardiography. The impression was *"Normal left ventricular size and systolic function. Estimated ejection fraction 60%. Redundant mitral valve without evidence of mitral valve prolapse. Normal chamber size. No pericardial effusion, intracardiac thrombus, or vegetation. No mitral regurgitation."*

10. 12/11/04 *Sunrise Hospital Laboratory* – Laboratory report. Basic metabolic panel was within normal limits.

11. 12/14/04 *Lisa Underwood, MD* – Report. Message. The patient called to say that the doctors found nothing when she was admitted for testing on 12/08/04. The patient was to pursue the recommendations of the last office visit – clear out her bowels.

12. 01/13/05 *Lisa Underwood, MD* – Visit report. The patient had a history of left lower quadrant pain, used two enemas, now no pain. She had a trial of Sarafem with improvement in mood, decreased migraines and normal sleep. Results of labs studies and DEXA study were reviewed. She still had dizziness. The assessment was *"history of near syncopal episodes, hospitalized for three days, history of concussion, increased homocysteine, and vaginitis"*. The patient was recommended to follow-up with Dr. Diaz. Labs were ordered and medication prescriptions provided. The patient was advised to follow-up in six weeks.

13. 01/19/05 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Initial office evaluation. The patient reported that she hit her head back in September on the back of a hatchback. About three days later, she had a headache and was hospitalized. Head CT was negative and she was diagnosed with a concussion. In December, she hit her head on a towel rack. A few days later she had quite a bit of blood drawn by her general practitioner. She became dizzy and developed double vision. She felt that she blacked out and her vision dimmed. Her husband reported that she talked

throughout the next four hours but she had no recollection of this. Evidently MRI scan, carotid ultrasound, and echocardiogram were normal at Sunrise Hospital. She had chronic low blood pressure. She had been trying to lose weight over this time with Weight Watchers. She had been diagnosed with low progesterone levels. She did have fluid retention with salt. She would drink large amounts of water throughout the day. She did have some dizziness with walking two days ago. Current medications were Estrogen, Sarafem, melatonin, and ibuprofen. Past medical history was positive for acid reflux. On examination, blood pressure supine was 100/64 and heart rate 58. Standing blood pressure was 96/62 and heart rate increased to 73. EKG showed normal sinus rhythm. The diagnoses were *"Post concussion syndrome with persistent headache. Chronic low blood pressure with orthostatic changes. Syncope times one and near syncope, probably secondary to increased vagal tone with the concussion."* The patient was recommended to push salt and continue ibuprofen at least six tablets per day. She was started on Elavil and was asked to return in two to three weeks for follow up. The records from Sunrise Hospital were requested for review.

14. 01/24/05 *Thomas Lamberi, MD of Cardiology Specialists of Nevada* – Follow up visit. The patient returned for follow up and reported over the weekend she had blood pressure drop in the 70's with severe headache and lightheadedness. She slept for 14 hours. She had been taking Elavil and overall her symptoms had been better than previous. On examination, supine blood pressure was 118/62 and heart rate 62 and standing BP was 118/88 and heart rate 84. Heart showed normal S1, S2 with a very soft mild systolic murmur at the apex. The impression was *"Recurrent episodes of hypotension, probably related to blood pressure drops from higher vagal tone with the postconcussive syndrome."* The patient was started on Florinef and was recommended an echocardiogram in one to two weeks and office visit in three to four weeks. She was to check chemistry prior to next visit.

15. 02/16/05 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Report of echo/Doppler. The impression was *"Mild mitral valve prolapse with mild mitral regurgitation, suggest antibiotic prophylaxis."*

16. 03/11/05 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Follow up visit. The patient reported that every time she had a headache, she would become vagal and drop her blood pressure. She had several fainting episodes. She felt very well with Florinef as regards to her periods of hypotension, but she started to have swelling and then increasing headache. She had since discontinued this. She continued to use Advil about six to eight per day. On examination, BP was 124/80 and pulse 105. The diagnosis was *"Postconcussive syndrome with recurrent near*

syncope from neurogenic cause." Advil was discontinued. She was started on Naprosyn and recommended continuing off Florinef. ProAmatine was to be considered if she had continued symptoms. The patient was asked to return in four to five weeks and recommended antibiotic prophylaxis for dental work.

17. 03/15/05 *Luis Diaz, MD of Summerlin Medical Center* – Consultation. The patient presented for consultation with the history of two separate incidents in which she experienced head trauma. The first one was on 09/04/04, when she hit her head in the occipital area against the hatchback of her car. She did not lose consciousness, but she became somewhat dizzy and the next day she developed a severe headache that lasted for one-month. The patient had a CAT scan of the head done through the emergency room, which was negative. She actually had resolution of the headaches after one month. She did well and she was asymptomatic until 12/04/04, when she also suffered again, another incident of head trauma in the occipital region. This was against a tall dispenser when she was in the restroom cleaning it at her children's school. This time, the patient did not lose consciousness either; however, she developed a headache immediately that had been present till date. This headache was now described as being present in the left hemicranium and associated with feelings of nausea and lightheadedness without any other symptoms. Her headaches were constant, 24-hours per day seven days per week. The episodes of lightheadedness were only present when the severity of the pain intensified to a great degree. Four days after the incident in December, the patient became confused for about four hours at home. She was taken to Sunrise Hospital where she remained for several days. Records from that hospitalization were unavailable for review. The patient, however stated that her neurologic workup was completely negative including MRIs, EEGs, and blood work. She was only found to have a mitral valve prolapse. She had extensive evaluation with a cardiologist. She had episodes of hypotension as low as 75/37, but always related to severe headaches. Apparently, the patient was never evaluated with a Tilt-tablet test. The ongoing medications were naproxen, Elavil since 01/19/05, hormonal replacement therapy, melatonin, and Sarafem. On examination, vitals showed blood pressure as 120/80 and pulse of 80. The patient had no orthostatic hypotension. Neurological examination was unremarkable except for decreased vibration distally. The impressions were *"History of posttraumatic headaches."* Dr. Diaz felt that the description of the headaches fitted a vascular origin. He noted the episodes of lightheadedness with documented hypotension but the patient had no signs of autonomic neurosystem disease. Her blood work had ruled out thyroid disease and only found an elevated homocysteine level. Due to persistent severe headaches, the patient was started on Topamax. She was recommended to continue the other medications but

discontinue Elavil as she had no benefit from it. Further recommendations or work up was pending review of the records and MRI films from Sunrise Hospital.

18. 05/15/05 *Thomas Lambert, MD of Mountainview Hospital and Medical Center* – Echocardiogram. The impression was *"Technically adequate study. Normal left ventricular size and systolic function. Normal left atrial, right atrial, and right ventricular size. Redundant anterior leaflet of the mitral valve without mitral valve prolapse. Trace mitral regurgitation present. No other regurgitant or stenotic lesions seen by Doppler. No pericardial effusion, masses, or vegetations seen."*

19. 05/16/05 *Thomas Lambert, MD of Mountainview Hospital and Medical Center* – Adenosine Stress Test. The initial heart rate was 62 and initial blood pressure was 135/79. Maximal heart rate was and minimal blood pressure was 126/74. Resting EKG showed normal sinus rhythm. Stress EKG showed 0.5 mm of inferolateral upsloping ST segment depression with adenosine. The impression was *"Adequate heart rate. Mild blood pressure response to adenosine. Clinically with chest heaviness. Electrocardiogram with mild to moderate changes, not diagnostic ischemia."*

20. 06/23/05 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Follow up visit. The patient had prolonged recurrent headache and periods of vasovagal syncope and near syncope. She had been off Florinef and off Naprosyn. She found that the Seraphim was giving her a headache and this had been discontinued. She was still having very rare fainting spells, which were neurogenic in origin. She had not had any fully syncope lately. Vitals showed blood pressure 112/72 and heart rate 70 without significant orthostatic changes. The impression was *"Neurogenic near syncope, which is significantly improved."* The patient needed to continue to be well hydrated and should not be on a salt restriction. She was asked to return to Weight Watchers and return in three months.

21. 01/19/06 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Follow up visit. The patient was previously seen for postconcussive syndrome. She was having recurrence that was bringing on vasovagal syndrome. She still had periods of zoning out and lightheadedness, sometimes associated with blood pressure drops in the 70's. She had been off her Florinef for several months now. She had been pushing salt and felt much better with this. The lightheaded spells were much less frequent, might be once a month. She had, over the last six weeks, had increasing palpitations, however. These were isolated episodes of ectopy, nothing sustained. There was no associated syncope or near syncope or chest discomfort with the palpitations. She denied any peripheral edema although she felt a little

fluid retention with her extra salt. Physical examination showed blood pressure 128/82 and heart rate 81. The impression was *"New onset isolated palpitations. History of neurogenic syncope. Occasional blood pressure drops which are probably neurogenic in origin and unrelated to the mitral valve prolapse but the patient usually has lower blood pressure than seen today."* Salt loading was continued and she was recommended Holter monitoring. Dr. Lambert discussed with her potential to go back on the Florinef to alleviate the near syncopal spells completely but she was asked just to push the salt at that point in time. The patient was having some periodic headaches as a residual of the postconcussive symptoms but she was blocking these with Advil on the first onset and this was helping to avoid hypotensive episodes that had previously occurred with the headaches and secondary vagal symptoms. Beta blocker was to be considered in the future if her blood pressure remained elevated.

22. 02/21/06 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Holter ECG summary report. The conclusions were *"The average heart rate was 71, with a minimum of 46 and a maximum of 132. Ventricular ectopic beats totaled three, with 0 VE Pairs and a 0 V-Runs. Supraventricular ectopics totaled 1, with 0 SV-Runs. Pauses in excess of 2.5 seconds totaled 0. The number of minutes of analyzed ECG data was 1423. ST episode minutes totaled 0."*

23. 03/20/06 *Lisa Underwood, MD* – Visit report. The patient stated that she had a terrible year. She had two concussions, was hospitalized thrice, now had low blood pressure with pain and syncope. She had had a 10 lb weight loss, was feeling great otherwise. She was following up with Dr. Lamber for her cardiac issues. Her medications included melatonin, Sarafem, pregnenolone, Vivelle, and Estradiol. Assessment was *"menopause, new onset syncope, history of recurrent episodes, seen by neuro, vaginitis."* Labs were ordered.

24. 03/22/06 *Thomas Lambert, MD of Cardiology Specialists of Nevada* – Follow up visit. The patient was seen for previous postconcussive syndrome. She was having recurrent headache that was bringing on vasovagal syndrome. She previously had been having periods of lightheadedness, sometimes associated with blood pressure drops. She had changed her diet and was eating a lower carbohydrate diet and was feeling much better. At the last visit she was having isolated palpitations. Holter monitor showed just three PVC's for the day and one PAC with no significant arrhythmias. She continued salt loading. She was feeling much better. On physical examination, blood pressure was 118/76 and heart rate was 74. The impression was *"Isolated palpitations but only rare PVC's seen, History of neurogenic syncope associated with postconcussive syndrome.*

Previous drops in the blood pressure that are probably neurogenic in origin that are improved currently. History of underlying mitral valve prolapse." The treatment plan was to continue off beta blockers since the patient was asymptomatic. She was to return in six months for follow-up.

25. 10/19/07 *Behzad Kermani, MD of Paseo Medical Center* – Office visit/regular check up. The patient was evaluated for bilateral ankle pain, especially in the morning. She stated she always had low blood pressure. She had a closed head injury in 2004, and had had loss of consciousness. Review of systems was positive for headaches. Examination showed enlarged thyroid nodule. The assessment was *"Musculoskeletal pain in the ankles, chronic baseline hypotension with negative workup, headache with chronic history of the same, thyromegaly with nodules, MVA per history with back pain though quite infrequent flare ups, hysterectomy per history, breast lumps per history, anxiety, and probable mitral valve prolapse."* For pain in the ankles, the recommendation was to obtain x-rays and place the patient on NSAIDs. It was felt that this pain was likely an inflammatory process. Early degenerative entities needed to be ruled out. The patient was placed on naproxen 500 mg with GI precautions and followup. The patient was utilizing beta blockers for headaches and at times that would drop her blood pressure. She was under the care of a different physician for that matter. The patient reported that at times she would phase out though she heard people, she would not respond for a while. She reported that she had checked out of seizures, but did not have seizures. Records on that were ordered for review. For thyromegaly, Dr. Kermani ordered labs and ultrasound. The patient was to follow up with her gynecologist. Anxiety issues were to be checked subsequent to thyroid evaluation. She was recommended obtaining an echocardiogram for possible mitral valve prolapse and was to return in two months for reevaluation.

26. 10/19/07 *Clement Herred, MD of West Valley Imaging* – Report of x-rays of the right ankle, two views. The impression was *"No acute radiographic changes. There is a large plantar calcaneal spur. Otherwise radiographically normal with intact osseous structures and normal joint relationship."*

27. 10/19/07 *Clement Herred, MD of West Valley Imaging* – Report of x-rays of the left ankle, two views. The impression was *"No acute radiographic changes. There is a large plantar calcaneal spur. Otherwise radiographically normal with intact osseous structures and normal joint relationship."*

28. 10/19/07 *Clement Herred, MD of West Valley Imaging* – Report of x-rays of the chest, PA and lateral. The findings showed normal heart size and vascular

pattern. Lungs were clear. The osseous structures were intact. The impression was *"Normal chest."*

29. 11/07/07 *Terry Leavitt, DPM of Affiliated Podiatry* – Initial podiatry exam. The patient complained of bilateral heel spurs that were painful. The pain was mostly on the medial side of the bilateral feet with painful bumps. Ongoing medications were naproxen and estrogen. The past surgical history was positive for two D&C, two cyst ablation, and hysterectomy. Review of systems was positive for headaches, low back pain, and mitral valve prolapse. On examination, there was hallux valgus bilaterally. The assessment was *"Pain in heels bilaterally-first step pain, x-rays revealing calcaneal spurring, and hallux valgus bilaterally."* The condition was explained to the patient. No treatment was given at this visit. The patient was prescribed Celebrex and was scheduled for surgery.

30. 02/12/08 *Terry Leavitt, DPM of Affiliated Podiatry* – Office visit. The patient was evaluated for heel spurs. She wanted surgery. She complained of pain in the heels and due to hallux valgus she wanted to schedule for surgery. The procedure was explained to the patient.

31. 02/19/08 *Quest Diagnostics* – Laboratory report. Liver profile, random glucose, and CBC with differential and platelets were within normal limits. HIV was non reactive.

32. 02/21/08 *Terry Leavitt, DPM of Parkway Surgery Center*– Operative report. Preoperative and postoperative diagnosis was *"Hallux valgus with bunion deformity bilateral and plantar calcaneal exostosis bilaterally."* The procedure was Excision of plantar calcaneal exostosis and Austin bunionectomy with osteotomy and screw fixation bilaterally. Following the procedure, the patient was taken to the recovery with stable vitals and in satisfactory condition.

33. 03/03/08 *Terry Leavitt, DPM of Affiliated Podiatry* – Office visit, first postoperative follow up. On examination, the incision was clear and dry and progress was satisfactory. The assessment was *"Satisfactory progress."* The sutures were removed.

34. 04/14/08 *Terry Leavitt, DPM of Affiliated Podiatry* – Office visit. The patient complained of swollen left foot, sore both feet, mainly left. She could not place the left foot on the floor. She complained of pain in the left hallux. She bumped her foot and developed pain at the osteotomy site. She was given a prescription for ibuprofen.

35. 10/27/08 *Behzad Kermani, MD of Paseo Medical Center* – Office visit. The patient was evaluated for chest pains over the last few days. She had been

having left chest wall pain associated with numbness and tingling bilaterally in both arms. The pain would shoot down her left arm; however, she had no numbness bilaterally. She denied any shortness of breath. She recently had bilateral foot surgery and just recently exercising again. The exercise actually would take her chest pain away; thus her pain was not exertional. She had been having quite a bit of stress from her job. No significant findings were noted on exam. The assessment was *"Atypical chest pain, numbness, and anxiety."* Dr. Kennani recommended noninvasive workup, cervical spine and chest x-rays, and EKG. He placed the patient on NSAIDs. The patient was referred to cardiology for echocardiogram and stress test. He recommended that the patient be placed on anxiolytics, Ativan or Xanax for anxiety. She was recommended GYN update. Based on the history of possible thyroid nodule as indicated in the records, he recommended further evaluation for the same.

36. 10/27/08 *S. Robert Hurwitz, MD of Paseo Medical Center in Las Vegas, Nevada* – Report of chest x-rays. PA and lateral views of the chest showed unremarkable osseous structures, normal heart size, and no hiler or mediastinal adenopathy. The lungs were clear, without infiltrate, mass or volume loss. The impression was *"Normal examination."*

37. 10/27/08 *S. Robert Hurwitz, MD of Paseo Medical Center in Las Vegas, Nevada* – Report of x-rays of the cervical spine, four views. The spine was mildly flexed to the right suggesting muscle spasm. The vertebral bodies were well maintained without fracture. There was mild disc space narrowing at C5-C6 with early interbody osteophytic spurring. There was early spondylitic encroachment by uncinate process spurring at C5-C6. The impression was *"Mild rightward flexion of spine compatible with muscle spasm and spondylolytic [sic] changes of mild degree at C5-C6."*

38. 10/27/08 *Unknown physician* – Report of EKG. The impression was *"Sinus rhythm. Incomplete right bundle branch block."*

39. 11/05/08 *Quest Diagnostics* – Laboratory report. CBC with differential, comprehensive metabolic panel and lipid panel were within normal limits. Urinalysis was unremarkable except for presence of few bacteria. Thyroid panel showed high TSH as 4.76.

40. 12/15/08 *Sohail Anjum, MD of Heart Center of Nevada* – Report of stress test. The test protocol was standard Bruce. Total exercise time was 09:50. Maximum heart rate was 149, % predicted MHR achieved 86%, peak BP measured was 134/76. Myoview injected at 146 bpm which was 84% of the predicted maximal heart rate. Resting EKG showed normal sinus rhythm at 75 bpm with an incomplete right bundle branch block and

nonspecific ST changes. The conclusion was *"Positive exercise stress test for exercise induced myocardial ischemia. This was ST-T depression in the inferior lateral leads. The patient denied chest pain. Frequent premature ventricular and atrial contractions. Heart rate response was normal. Blood pressure response was normal. Separate myocardial perfusion report to follow."* Recommendations were pending following perfusion imaging.

DATE OF PRESENT INJURY: 03/13/09

41. 01/07/10 *Drs. Diaz and Heran* – Billing statement. Total charges for the services provided on 03/15/05 were $250.00.

42. 03/15/11 *Affiliated Podiatry Group* – Billing statement. Total charges for the services provided from 12/07/07 through 04/14/08 were $5,060.00.

43. 03/16/11 *Lisa Underwood, MD* – Billing statement for services provided on 03/20/06. Total $490.00. Diagnoses *"hormone imbalance, candidiasis vulva/vagina, insulin resistance."*

44. 03/16/11 *Lisa Underwood, MD* – Billing statement for services provided on 01/13/05. Total $270.00. Diagnoses *"hormone imbalance, insulin resistance."*

45. 03/16/11 *Lisa Underwood, MD* – Billing statement for services provided on 12/08/04. Total $1,120.00. Diagnoses *"pelvic pain, pre-menstrual tension syndrome, migraine, NOS not intractable."*

46. 03/30/11 *Thomas Lambert, MD* – Billing statement. Total charges for the services provided from 01/19/05 through 03/22/06 were $3658.00.

47. 07/12/12 *John Siegler, MD* – Letter to Mr. Steven Jaffe with opinions following review of records. Dr. Siegler notes his review of multiple records encompassing the time frame from 01/19/05 through January 2011. Records predating the subject incident allude to a diagnosis of posteoncussive headache and low blood pressure in January 2005, evaluation for post-traumatic headaches in March 2005, mitral valve prolapse and neurogenic syncope treatment in March 2006, hallux valgus bilaterally treated in November 2007, bunion deformity and excision of exostosis in February 2008, chest pain and shortness of breath complaints in October and November 2008. He also documented his review of imaging studies following the subject accident. Billing charges from various facilities / clinicians were reviewed.

Based on the review, Dr. Siegler establishes the medical summary of the case. He notes that the patient developed neck pain and headaches following the subject accident, then underwent chiropractic treatment at which time she was noted to have low back pain with radiation to both legs. The patient had a lumbar discogram and then underwent plasma disc decompression. She had persistent symptoms and underwent cervical spine and lumbar spine injections and eventually a lumbar fusion by Dr. Grover. *[Reviewer' note: medical records and the patient's own history reflect that Dr. Khavkin performed the lumbar fusion surgery in May of 2010, not Dr. Grover.]* Dr. Siegler's accident related diagnoses were *"Exacerbation of cervical pain. Exacerbation of lumbar pain, Cervicogenic headache." [Reviewer's note: Dr. Siegler's attempted "diagnoses" appear to blur any incidental pre-injury, but resolved symptoms, with new injuries from the present trauma. Such efforts to add vagueness to the details works against a logical and thoughtful analysis as to pre-injury and post-injury events, and render his "diagnoses" incomplete inaccurate. As stated in my 7/3/12 Neurosurgical Case Review, "a past history of neck and back pain and one prior concussion appear to have no significant factor in the need for treatment stemming from the present injury." In making that statement, I had reviewed all the prior and present records in an effort to determine and/or define any relationship between incidental past events and the present injury. Clearly, a history of neck pain and back pain was only mentioned in a single medical record in 2004, and for which no additional treatment or mention exists until the present injury. Thus, any such prior symptoms appeared to be nothing significant and any present treatment would not be required absent the present injury.]*

Dr. Siegler then notes that the patient had a documented history of cervical and lumbar pain. She had back pain with flare ups in 2007 and in 2008 was seen for numbness and tingling radiating to both arms and shooting pain into the left arm. *[Reviewer's note: Dr. Siegler appears to completely mis-represent the medical records (See above). There are only two mentions of low back pain, and one the one that deals with frequency specifically notes "quite infrequent flare-ups." In addition, he conveniently omits the fact that the records note that the episode of tingling to the upper extremities was related to chest pain and stress.]* He stated that the imaging studies did not indicate any acute pathology and given her previous history, it was likely that the disc findings were preexisting. *[Reviewer's note: no films exist to confirm Dr. Siegler's speculation. There is no basis to support a pre-injury discal abnormality or clinical ramifications thereof. Pre-existent spondylosis is expected.]* He was of the opinion that chiropractic treatment following the injury was appropriate. He questioned the diagnostic utility of the injections performed by Dr. Belsky on 05/20/09 as both epidural injections and facet

injections were done at the same time. He also voiced concern over the use of sedation during discography as it would have confounded the patient's ability to express and describe the pain when the discs were stimulated. *[Reviewer's note: I order all of my discograms with sedation since they are painful. The patient is briefly aroused for the provocative portion and then re-sedated. This is common practice in the pain community.]*

With regards to plasma disc decompression, he stated that this was indicated primarily for radicular pain occurring at one level. He thus questioned the performance of the plasma disc decompression based upon the discogram results, which was done to diagnose discogenic pain and not radicular pain. Furthermore, he was of the opinion that the discogram and plasma disc decompression were done prior to other conservative treatments being exhausted. *[Reviewer's note: Ms. Seastrand underwent and completed about 4 months of chiropractic therapy and underwent a number of pain injections prior to pursuing plasma disc decompression. That appears to be a reasonable and conservative course.]* He also was of the opinion that the lumbar fusion was not medically indicated as this was based upon the incorrect data from the discogram. *[Reviewer's note: There is no basis that the discogram was anything but confirmatory and diagnostic in the present matter. Ms. Seastrand's present condition is also testament to the need for fusion surgery. Thus, Dr. Siegler's opinion is not supported in regards to the need for fusion surgery.]*

48. 08/01/12 *J. Pablo Villablanca, MD* – Letter to Mr. Steven Jaffe and Mr. Jacob Smith. Dr. Villablanca reviewed medical records and imaging studies per the retention letter dated 04/25/12 with regard to the Khoury versus Seastrand case. He discussed the summary of the case stemming from the motor vehicle accident of 03/13/09. He notes that per the retention letter, both the vehicles had minimal damages with a small puncture defect in the rear bumper of Ms. Seastrand's vehicle and a small crack on the bumper of Mr. Khoury's vehicle, which was also confirmed by photographic evidence of both vehicles. Ms. Seastrand informed the officers at the scene that she had prior neck and back injuries caused by another accident years before the subject accident. The officer, Mr. Conn, had stated in his report that the injuries being claimed by Ms. Seastrand were not consistent with being caused by the collision. This, Dr. Villablanca, thought projected that the accident was of a trivial nature. *[Reviewer's note: as a physician who treats injuries, I have learned to treat patients, not vehicles. Vehicles are designed to withstand impact. The human body has not been afforded any re-design. It is illogical and inappropriate to measure the injuries to a person by virtue of the damage to vehicles involved. Furthermore, any prior symptoms as noted in the records appeared to have been significantly, if not completely mitigated prior to the present*

injury. Hypothetically, if any such anatomic changes were caused by any prior injury, such changes would have rendered Ms. Seastrand more susceptible to the present trauma. Dr. Villablanca omits and such discussion of susceptibility in his reliance on prior events, thus rendering his opinion incomplete and oversimplified.]

Dr. Villablanca further notes that Ms. Seastrand had had two prior automobile accidents of much greater severity than the subject accident. Following the subject accident, she had anterior decompression, discectomy and interbody fusion with cage and plate as a result of disc herniation at C5-6 and also underwent plasma disc decompression and subsequent lumbar fusion due to internal disc disruption of the lumbar spine at L4-5 and L5-S1 disc levels, with total medical costs to date being $400,000. She had a postoperative complication of displacement of the anterior fusion construct, which was thought to necessitate an additional future posterior fixation fusion at a cost of $122,200, per the opinions of Dr. Grover and Dr. Khavkin.

Dr. Villablanca then documented his review of imaging studies. He reviewed a chest x-ray of 10/27/08 revealing no significant findings. He was in agreement with Dr. Robert Hurwitz' interpretation of cervical spine x-rays from 10/27/08 as showing straightening of the cervical lordosis to suggest muscle spasm and mild narrowing of the C5-6 disc space with evidence of anterior and posterior vertebral body endplate osteophytes as well as neural foraminal narrowing due to uncovertebral joint osteophytes. Cervical spine x-rays from 03/13/09 were then reviewed and Dr. Villablanca's impressions were that these showed moderate disc space degeneration at the C5-6 disc level that had progressed since the prior study of 10/28/08. *[Reviewer's note: please refer to above mentioned absence of a discussion of susceptibility from any such anatomic changes.]* He thought that Dr. David Gorczyca who read the study had under interpreted it with respect to the degree of degeneration of the C5-6 disc and in absence of comparison films, Dr. Gorczyca could not have observed interval progression of disease at the C5-6 disc level. A brain MRI of 03/13/09 is then reviewed and interpreted as being a negative study.

Dr. Villablanca then reviewed a noncontrast cervical spine MRI from 04/03/09 and his impressions were that this showed mild reversal of the normal cervical lordosis centered at the C5-6 disc level that may be related to muscle spasm of indeterminate chronicity. There was essentially single level degenerative disc disease, consisting of moderate degenerative disc space height loss at C5-6, associated with mild anterior Modic type I degenerative discogenic endplate change, and circumferential disc osteophyte complex that was degenerative in nature and caused mild

spinal canal stenosis. There was mild neuroforaminal narrowing bilaterally due to degenerative uncovertebral joint osteophytes. There was no facet degeneration, no evidence of acute disc herniation, bony or soft tissue abnormality aside from possible paraspinal muscle spasm. The original study was interpreted by Dr. George Mulopulos and Dr. Villablanca generally concurred with his interpretation of the study. He, however, was in disagreement with Dr. Keith Lewis' interpretation of the same study and thought that this had been over interpreted. He stated that the mention of bone contusions without fractures at the C5-6 disc level was not supported by the remaining findings, including the absence of prevertebral soft tissue swelling or posterior paraspinous muscle edema that would be expected if the Modic type I discogenic endplate degenerative changes present in the anterior vertebral endplates had in fact been bone contusions. He also saw no evidence of torticollis or disc protrusion at C4-5 on either the sagittal or axial images. *[Reviewer's note: it appears that Dr. Villablanca is selectively referring to one reading of that MRI as over-read and another as under-read without discussion as to the complexity of susceptibility and without discussion of clinical correlation.]*

A noncontrast MRI of the lumbar spine from 04/03/09 was then reviewed. Dr. Villablanca again thought that the study was over interpreted by Dr. Keith Lewis. *[Reviewer's note: see review of films, below.]* He stated that there was no focal posterior disc abnormality at the L4-5 disc level but only a small right foraminal disc abnormality of indeterminate age, and moreover this was insignificant as it did not compromise the exiting right L4 or traversing right L5 nerves. He also stated that there was no disc herniation at L5-S1 but only circumferential disc bulging and disc desiccation that appeared degenerative in nature. There was also a prominent prevertebral venous plexus that mimicked a disc abnormality on the axial T2W images which was confirmed by the absence of any focal disc contour abnormality on the sagittal T1W or T2W sequences. He also saw no evidence of scoliosis to suggest muscle spasm.

Dr. Villablanca reviewed a noncontrast MRI of the lumbar spine dated 10/13/09. He interpreted this as showing facet joint degeneration at L4-5 and L5-S1 that had progressed from being moderate on 04/03/09 to moderately severe on the current study. *[Reviewer's note: Dr. Villablanca makes no mention as to that rapidity of such degeneration and its relationship to the present injury.]* At L4-5, the progressive facet joint degeneration was associated with joint space widening and increased fluid within the joint spaces, leading to minimal anterolisthesis of L4 on L5. The small right foraminal annular ligament defect was unchanged at the L4-5 disc level and did not impinge upon the exiting L4 or traversing right L5 nerves. The degeneration at L4-5 and L5-S1 were unchanged when

compared to the prior scan of 04/03/09. Dr. Villablanca was of the opinion that Dr. Sonny Patidar over interpreted the study with respect to neuroforaminal narrowing at L4-5 and the bulges and protrusion from L3-4 to L5-S1 and under interpreted it with respect to the severity of facet degeneration and hypertrophy at the L4-5 and L5-S1 disc levels.

Chest, frontal and lateral radiographs, of 01/22/10 were interpreted as being unremarkable. Cervical spine, frontal and lateral radiographs, of 01/25/10 demonstrated interval C5-6 anterior discectomy and anterior fusion via a C5-6 interbody graft and an anterior C5-6 vertebral plate and dual C5 and C6 vertebral body screws. Cervical alignment was preserved. The cervical column below the level of C6 was obscured by the shoulders and therefore not evaluated. The anteroposterior diameter of the bony cervical spinal canal appeared within normal limits. The posterior elements, including the facet joints, were normal in appearance. There was no prevertebral soft tissue swelling.

A noncontrast lumbar spine MRI from 09/23/10 was then reviewed. Dr. Villablanca thought that Dr. Lawrence Bogle had over interpreted as well as under interpreted the study. He disagreed with Dr. Bogle's interpretation of spinal stenosis due to disc bulges at L4-5 and L5-S1 disc and also disagreed that neural foraminal narrowing was present. He further stated that Dr. Bogle failed to note severe bilateral lumbar facet joint degeneration at the L4-5 disc level.

A noncontrast CT of the lumbar spine from 11/02/11 was stated to reveal interval L4-5 and L5-S1 anterior discectomy and fusion via anterior metallic plate and dual vertebral body screws. The interbody grafts and anterior metallic plate were anteriorly displaced relative to the lumbar column. There was no lucency about the vertebral body screws to suggest loosening or infection. The fusion appeared solid at L4-5 and likely solid at L5-S1. Lumbar alignment was anatomic.

Following this review, in his discussion section, Dr. Villablanca opined that the cervical study of 10/28/08 revealed typical degenerative changes at the C5-6 disc space and evidence of pre-existing bilateral C5-6 neural foraminal narrowing. The study of 03/13/09 showed progression of the degeneration and revealed no direct or indirect evidence of bony or soft tissue trauma. *[Reviewer's note: it should be known that MRIs only show such bony or other trauma in catastrophic cases and typically, findings of such are not seen on post-injury MRIs.]* With respect to the 04/13/09 study, he stated that it showed only the expected circumferential disc bulging that frequently accompanied a degenerated cervical disc, which only caused mild spinal canal stenosis and no evidence of cord compression. *[Reviewer's note: Dr. Villablanca did not comment on the*

pain that disc was found to be causing, as set forth in the records and outcome of treatment. This type of clinical correlation is crucial to a complete medical evaluation. Diagnostic films are only for correlation of clinical findings. Such a disc was apparently rendering Ms. Seastrand more susceptible to the present injury.] Specifically, there was no focal or acute disc herniation on this study and no evidence of subacute soft tissue, facet joint, or ligamentous injury attributable to the incident of 03/13/09. *[Reviewer's note: such focal findings are not always present and certainly not required for an injured patient to develop a post-traumatic painful disc and related symptoms. Dr. Villablanca omits that crucial clinical component.]* He stated that the bilateral C5-6 neuroforaminal narrowing identified on the studies of 10/28/08 and 04/13/09 were due to degenerative bony uncovertebral joint osteophytes, and not to an intraforaminal disc herniation which could not be attributed to the subject accident, as bony osteophytes required years to develop, and not three weeks. *[Reviewer's note: such elements render patients more susceptible to injury. Such MRI findings are also typically performed supine and do NOT demonstrate what relationship the pathological spinal elements have to neurological structure in other positions of the spine.]* Thus, Dr. Villablanca felt that imaging studies did not establish a causal connection between the disc pathology at the C5-6 disc level, the surgical procedure performed at that level, and the accident of 03/13/09. *[Reviewer's note: such studies are typically not helpful to make such links. Ultimately, the studies are used to correlate the clinical findings, and symptoms, for which an initial link, if it exists, is established. Thus, Dr. Villablanca's comment is not useful.]*

With regards to the lumbar spine, Dr. Villablanca commented that the small intraforaminal annular ligament defect at L4-5 on the right, as seen on the scan of 04/03/09, was of indeterminate age and remained unchanged on the study of 10/13/09. *[Reviewer's note: Dr. Villablanca omits any discussion as to the complexity of susceptibility, which is an ongoing theme in his opinions.]* Annular ligament defects could persist for years and could occur spontaneously and in the absence of trauma and could resolve completely. *[Dr. Villablanca's establishment of what could be happening does not establish a most probable medical opinion. Dr. Villablanca makes no mention as to the symptoms such a defect would be expected to cause. Thus, his opinion does nothing to help explain this patient's post-traumatic symptoms.]* This defect, moreover, was not touch the exiting right L4 or traversing right L5 nerves and in the absence of focal disc herniation was not expected to cause a right sided lumbar radiculopathy. *[Reviewer's note: Dr. Villablanca omits a relevant clinical discussion as to positional anatomic changes (see discussion in prior paragraph) and omits any discussion as to the commonplace concept of chemical radiculitis from such annular defects, once again rendering*

his opinion clinically irrelevant and incomplete.] He stated that the L5-S1 also showed no focal disc pathology and only showed early disc degeneration. The MRI of 10/13/09 only revealed evaluation of progression of degenerative changes and these could not be attributed to the accident of 03/13/09. Thus, there was no causal relationship between the accident of 03/13/09 and the IDET and fusion at L4-5, if these had done for internal disc disruption. *[Reviewer's notes: Dr. Villablanca's opinion ignore important analytical components including susceptibility, aggravation, and most importantly; clinical correlation. While ignoring these concepts, Dr. Villablanca has chosen an improbable conclusion.]*

Finally, with regard to the brain, Dr. Villablansa stated that there were no medical records of head trauma, altered sensation, or loss of consciousness, and the CT scan of the brain from 03/13/09 did not reveal any pathology. Thus, there were no indications for an accident related claim of head injury for Ms. Seastrand. *[Reviewer's note: the diagnosis of mild traumatic brain injury requires none of Dr. Villablanca's list. Thus, his conclusion is incorrect based upon medical definitions, and demonstrates only an oversimplified knowledge of head injury and its clinical ramifications.]*

[Reviewer's note: Dr. Villablanca appears to have disagreements with most of the radiologists who reviewed films as part of the treatment of Ms. Seastrand. It appears that there is a pattern of disagreement with most others who treated Ms. Seastrand, which makes evaluating his ultimate conclusions skeptical. It seems highly unlikely that everyone else is wrong except for Dr. Villablanca, who has created an island of opinions, separated from most others.]

49. 08/25/12 *Joseph Schiffini, MD* – Letter to Mr. Steven Jaffe documenting opinions/conclusions following medical record review. Dr. Schiffini notes that there was only one record predating the subject accident of 03/13/09, but overall the medical records identified multiple previous accidents involving Ms. Seastrand. These included a 1981 rollover accident with resultant neck and knee pain for which she received holistic care. She received treatment to her neck, low back, and shoulders as a result of another motor vehicle accident in 1985. Additionally, there was a history of two head injuries causing concussions in 2004. Records predating the incident included an unremarkable x-ray of the chest from October 2008 and cervical spine studies from the same time revealed mild rightward flexion of the spine compatible with muscle spasm and spondylolytic *[Reviewer's note: I don't think he meant to say "spondylolytic."]* changes of a mild degree at C5-6.

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET G. SEASTRAND,

Plaintiff,

vs.

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

Defendants.

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

DEFENDANT RAYMOND KHOURY'S OPPOSITION TO PLAINTIFF MARGARET SEASTRAND'S MOTION FOR ATTORNEY FEES AND COSTS

AND

COUNTERMOTION TO RE-TAX COSTS

Defendant Raymond Khoury, by and through his counsel of record, Steven T. Jaffe, Esq. and Jacob S. Smith, Esq., of Hall Jaffe & Clayton, LLC, hereby submits his Opposition to Plaintiff Margaret Seastrand's Motion for Attorney Fees and Costs.

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This Opposition is made and based upon NRCP 68, NRS 17.115, the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and any oral argument that the Court may entertain at the hearing on the Motion.

DATED this 27th day of November, 2013.

HALL JAFFE & CLAYTON, LLP

By _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

This case arises out of a motor vehicle accident that occurred on March 13, 2009, near the intersection of Craig and Rancho in Las Vegas, Nevada. Plaintiff alleged that, on that date, Mr. Khoury negligently operated a motor vehicle in a manner that caused a collision with Plaintiff's vehicle, and further alleged that she had suffered serious and disabling injuries as a result of the collision.

On June 21, 2013, Plaintiff served its only offer of judgment on Defendant in the amount of $1,250,000.00. Defendant allowed that offer to lapse. On July 26, 2013, a jury returned a verdict in favor of Plaintiff for $760,497.03, which was $489,502.97 less than Plaintiff's offer of judgment. Judgment for Plaintiff against Defendant was entered on November 6, 2013. On that same date, Plaintiff filed a motion for fees and costs[1]. Plaintiff now appears to seek to recover its attorney fees, which totaled $304,198.81, despite the fact that verdict was nearly $500,000 less than its offer of judgment. Plaintiff also seeks costs in the amount of $125,238.01, as well as $74,741.03 in post-judgment interest. Defendant respectfully

[1] While Plaintiff's Motion for Fees and Costs was filed on November 6, 2013, her notice of Motion was not filed until November 8, 2013.

requests that Plaintiff's Motion be denied under NRCP 68, NRS 17.115, and NRS 18.010, as well as the factors established by the Nevada Supreme court in *Beattie v. Thomas*, 99 Nev. 318, 890 P.2d 268 (1983).

Plaintiff's hearsay theories regarding "new Sheriffs" and "marching orders" as to why Defendant litigated this matter to trial are not persuasive, and they must not be considered by this court. This is neither the wild west nor a revolutionary war. Instead, the court must consider those factors set forth by the Nevada Supreme Court, which show that Defendant is not entitled to attorney's fees.

II. LEGAL ARGUMENT

A. The Court Should Exercise Discretion under *Beattie* and Deny Plaintiff's Motion.

Plaintiff has asked for over $300,000 in attorney fees and over $125,000.00 in costs. A trial court, however, retains the discretion whether to award attorneys' fees to a party who makes an offer of judgment where the offeree does not accept the offer and the judgment obtained by the offeror is not more favorable than the offer of judgment. *See* NRCP 68 (f). The offeree, in this case, Defendant, received a more favorable judgment than that put forth in Plaintiff's offer of judgment, and therefore, thus making the award of attorney fees at the discretion of this Court.

In determining whether to award attorney's fees, NRS 18.010 guides the Court as follows:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought **without reasonable ground or to harass** the prevailing party...It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to **punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.**

(emphasis added). Thus, in order for Plaintiff to receive any award of attorney fees under this statute, Plaintiff must prove that Defendant's defense of this case was without reasonable grounds or was done to harass Plaintiff herself. The evidence is clear that Defendant's conduct in this matter does not come close to suggesting that Defendant acted without reasonable grounds, nor was such conduct meant to overburden limited judicial resources, increase costs, or hinder the resolution of the matter.

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Given that Plaintiff is not statutorily mandated to be awarded attorney fees in this matter, Plaintiff relies heavily on the precedent put froth in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983). In *Beattie*, the Nevada Supreme Court established what have come to be known as the "*Beattie* factors," which are commonly implemented by trial courts to evaluate whether fees and costs should be awarded. The factors are as follows:

> In exercising its discretion regarding the allowance of fees and costs, the trial court must carefully evaluate the following factors:
>
> (1) whether the plaintiff's claim was brought in good faith;
>
> (2) whether the defendants's offer was brought in good faith;
>
> (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith;
>
> (4) whether the fees sought by the offer or are reasonable and justified in amount.

Id. Subsequent to *Beattie*, the Nevada Supreme Court altered its *Beattie* factors analysis slightly in *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998), by stating that when the Defendant is the offerree party, the first *Beattie* factor should be altered to inquire whether the defendant's claim or defense was brought in good faith. The Court stated that "if the good faith of either party in litigating liability and/or damages issues is not taken into account, offers would have the effect of unfairly forcing litigants to forego legitimate claims." *Id.* The Court subsequently acknowledged the above *Beattie* factors by essentially switching the designations wherein the offeree was the Defendant. While not expressly put forth in the *Yamaha* Court's analysis, such factors would be reflected as follows:

(1) whether defendant litigated this matter in good fiath;

(2) whether the Plaintiff's offer was brought in good faith;

(3) whether the defendant's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith;

(4) whether the fees sought by the offeror are reasonable and justified in amount.

The *Yamaha* Court subsequently found that the *Yamaha*, the Defendant/Offeree in the matter, refused the offer "in bad faith", and noted the severity of the Plaintiff's injuries and the fact that the verdict *exceeded* the offer by 1.1 million dollars. *Id.*, 114 Nev. at 252, 955 P.2d at 673.

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Upon evaluation of Plaintiff's Motion, it appears her attempt to persuade this Court that Defendant should be responsible for her attorney fees is by arguing that such fees are "reasonable". Plaintiff overtly acknowledges that Defendant litigated this matter in good faith, and then conveniently skips over two of the key factors addressed in Beatie-- whether the offer was brought in good faith; and whether Defendant's decision to reject Plaintiff's offer was done so in bad faith. As such, Defendant will now address **all** of the relevant factors in turn.

1. Defendant Litigated This Matter In Good Faith.

As to factor number one, Plaintiff states that this factor "is a non-issue." [*See* Plaintiff's Mot. At p.6] This factor, thus, obviously weighs in favor of Defendant.

2. Plaintiff's offer of judgment was made in bad faith.

Plaintiff's offer of judgment in the amount of $1,250,000.00 cannot be considered to have been made in good faith. Plaintiff issued only one offer of judgment, and did so less than (3) weeks before trial. Moreover, this offer of judgment was for the policy limits available to Defendant. Even though Defendant vehemently disagrees with the unsubstantiated amount of the jury's verdict award, the verdict awarded to Plaintiff was nearly $500,000 less than Plaintiff's offer of judgment. Based upon these undisputed facts, Plaintiff's offer of judgment was brought about in bad faith. Should this Court now award Plaintiff nearly $300,000 in attorney fees, that would only encourage future plaintiffs to issue policy-limit-sized offers of judgment just weeks prior to trial, knowing that, one way or another, those plaintiffs would get their attorney fees recouped if they get awarded a judgment, even if that judgment is significantly lower than the offer of judgment.

3. Defendant's decision to reject the offer and proceed to trial was not grossly unreasonable or in bad faith.

Plaintiff's offer was so high and made in apparent bad faith that Defendant was essentially forced to reject the offer and proceed to trial. Defendant believed, and continues to believe, and still believes, that Plaintiff's claims against Defendant are without merit and that she was not entitled to the amount of damages she requested. Although Defendant disagrees with the verdict rendered by the jury, the verdict, at the very least, supports Defendant's belief that the $1.25 million that Plaintiff sought was grossly unreasonable and that Defendant was more than justified in rejecting such an offer. Aside from frivolously suggesting that

defense counsel was under "marching orders" by its insurance carrier to take the matter to trial, there is nothing to suggest that Defendant proceeded with this matter with anything but good faith, and the jury's verdict award of nearly half a million dollars less than what Plaintiff sought is confirmation that Defendant's rejection was not unreasonable.

Simply stated, the jury made it clear that Defendant was **not** "immoral and corrupt" for taking this case to trial, but was wholly justified in not accepting Defendant's last-minute policy-limits offer.

4. Defendant's claimed fees and costs are not justified given the circumstances.

Plaintiff goes to great lengths in her Motion to argue that the rates charged by her attorneys are reasonable. Although Plaintiff claims in her Motion that she satisfied "three of the two [sic] Beattie factors," in fact, the evidence shows that Plaintiff merely satisfies one of the four *Beattie* factors, and she goes to extensive detail in order prove that her fees were reasonable and justified, presumably because she was aware that single factor was the only factor that could conceivably be argued in her favor. Nevertheless, the fact that a party incurred reasonable attorney fees cannot, in and of itself, justify saddling Defendant with over $300,000 of such fees. Nevada generally follows the so-called "American Rule," under which each party must bear their own attorney's fees. *See Smith v. Crown Fin. Servs.*, 111 Nev. 277, 281, 890 P.2d 769 (1995). Even assuming, *arguendo*, that Plaintiff's fees are reasonable, Plaintiff has only satisfied one of the four *Beattie* factors, with the remaining three factors weighing in favor of Defendant. As such, Plaintiff's request for attorney fees should be denied.

III. CONCLUSION

Based on the foregoing, Defendant Khoury respectfully requests that this Court deny Plaintiff's Motion for Attorney Fees and Costs.

DEFENDANT RAYMOND KHOURY'S COUNTERMOTION TO RE-TAX COSTS

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATMENT

In the unlikely scenario that this Court finds that Defendant Khoury is liable for Plaintiff's attorney fees and costs, this Court, respectfully, must require Plaintiff to re-tax its litigation costs. As put forth in greater detail below, Plaintiff's Memorandum of Costs unjustly seeks over $90,000.00 in costs for expert

fees, when the statutory allotment for such fees is, absent exigent circumstances, $7,500. [See Ex. A to Plaintiff's Mot]. Morever, Plaintiff seeks to recover costs for greater than five experts, which is expressly prohibited by NRS 18.005, and also seeks to recover costs for experts that did not testify at trial. For these reasons alone, Plaintiff's costs must be retaxed.

Additionally, Plaintiff seeks to foist costs upon Defenadnt Khoury that applicable Nevada statutes do not permit. Plaintiff attempts to recover costs incurred to procure Plaintiff's medical records by classifying such records under NRS 18.005(12), which provides for reasonable costs of photocopies. Such medical record costs, however, are nowhere included in NRS 18.005, and the Nevada Supreme Court has reiterated that costs considered to be a routine or part of the normal overhead are not allowable costs under the statute. *See, e.g., Bergman v. Boyce*, 109 Nev. 670, 679, 856 P. 2d 560, 565-66 (1993). Obviously, the acquisition of Plaintiff's medical records by Plaintiff's counsel would be considered routine and part of the normal overhead given that this matter was for personal injuries suffered by Plaintiff. Furthermore, Plaintiff seeks nearly $5,000 in "Trial Preparation Costs." However, the costs for the services Plaintiff seeks are not recoverable under NRS 18.005, and the Nevada Supreme Court has held that an "attorney cannot expand the coverage of NRS. 18.005" by separately billing for document preparation or other normal out-of-pocket expenses as taxable costs. *Id.* 109 Nev. at 680, 856 P.2d at 560. Indeed, expenses must be necessarily incurred as a matter of course in litigation, not merely helpful or advantageous in the particular case. *Id.* at 681-682, 856 P.2d at 560. Here, Plaintiff's request for $4,941.62 consists partly of "mock jury costs", "surgical animations and color exhibit boards", and "juror interviews". Although these costs may have been incurred in the course of this litigation, the services associated with those costs are merely helpful or advantageous and constitute out-of-pocket expenses. For these reasons, as well as the additional reasons stated in Defendant's Motion to Retax, Plaintiff's litigation costs for this matter must be retaxed.

II. INTRODUCTION AND STATEMENT OF FACTS

This case arises out of a motor vehicle accident that occurred on March 13, 2009, near the intersection of Craig and Rancho in Las Vegas, Nevada. Plaintiff alleged that, on that date, Defendant Khoury negligently operated a motor vehicle in a manner that caused a collision with Plaintiff's vehicle, and further alleged that she suffered serious and disabling injuries as a result of the collision. The matter

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ultimately went to a jury trial, and on July 26, 2013, a jury returned a verdict in favor of Plaintiff for $750,497.03.

Plaintiff has now filed a "Memorandum of Costs and Disbursements," pursuant to NRS 18.110, attached hereto as Exhibit A (pleading only). Plaintiff's Memorandum purportedly includes all costs incurred by Plaintiff in the litigation of this matter. Defendant's primary point of contention with Plaintiff's Memorandum of Costs is substantive in nature, i.e., it attempts to foist certain costs upon Defendant that are unreasonable and/or not allowable under Nevada law. Specifically, Plaintiff's seeks $92,132.40 for "Expert Witness Fees," as well as $916. 83 for "Copies of Medical Records," and almost $5,000 for "Trial Preparation Fees."

For reasons explained below, Defendant requests that the allowable costs for these specific items be reviewed and adjusted by an amount as to be determined at hearing before this Court. Plaintiff's proposed "Expert Witness Fees" exceed the amount recommended by NRS. 18.005 by more than ten (10) times the statutory amount, the copying of medical records is a routine and ordinary part of a litigation, and the trial preparation items listed are not reasonable and necessary services, and thus should not be accounted for under NRS 18.005.

II. LEGAL ARGUMENT

A. Legal Standard

NRS 18.020 provides:

> Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:
>
> ...
>
> 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.

Although the allowance of costs is mandatory to a prevailing party, the district court retains discretion in determining the reasonableness of the amounts and the items of cost to be awarded. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993); *Arnold v. Mt. Wheeler Power*, 101 Nev. 612, 615, 707 P.2d 1137, 1139 (1985). Importantly, this Court must exercise restraint because statutes permitting recovery of costs are in derogation of the common law, and therefore, must be strictly construed. *Id.* "Only reasonable costs must

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be awarded." *Waddell v. LVRV, Inc.*, 125 P.3d 1160, 1166-67 (Nev. 2006) (citing *Bobby Bersonini, Ltd.* v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998)).

B. Plaintiff's Request for Recovery of "Expert Witness Fees" Totaling $92,132.40 is Plainly Excessive and Must be Reduced.

As stated above, Plaintiff has indicated, in her Memorandum of Costs and Disbursements, that her "Expert Witness Fees" total $92,132.40. Plaintiff brings this request under subsection (5) of NRS 18.005, which states, in relevant part:

> **NRS 18.005**. "Costs" defined.
>
> For the purposes of NRS 18.010 to 18.150, the term "costs" means:
>
> (5) Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require a larger fee.

Even though Plaintiff, in her Motion for Costs and Reasonable Attorney Fees, states that "each expert was critical to establishing causation" and that the "touchstone for the recovery of expert cost hinges instead on whether the cost was a 'reasonable and necessary expense incurred in connection with this action,'" the matter should be brought before the Court to determine whether the circumstances surrounding the experts' retention and testimony were of such necessity as to require the larger fee. Plaintiff should not be allowed to demand more than ten (10) times the amount suggested by NRS 18.005(5) for expert fees by simply stating that such experts were "critical" to her litigation.

Plaintiff also seeks to recover costs for experts it retained who did not testify at trial. Specifically, Plaintiff is seeking costs for Marjorie Belsky, who, Plaintiff did not call to testify in this matter. Plaintiff asserts that these experts were procured to "combat arguments from Defendant's [sic] regarding liability and causation" and that such costs were "reasonable and necessary." However, without such expert testimony at trial, Plaintiff's argument must rest on the fact that those experts performed the normal and routine tasks of any expert. Such routine tasks as reviewing documents and providing an expert report necessitate the awarding of a larger fee. If Plaintiff's arguments were to be accepted here, then nearly every expert retained in every case in Nevada would be able to demonstrate circumstances requiring a larger fee. If that were the case, the statute limiting expert's fees to $1,500 for each expert would lose all meaning.

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Most importantly, the language of NRS 18.005(5) is clear and unambiguous by stating that "fees of **not more than five expert witnesses**" may be recovered. Plaintiff's motion seeks to recover expert witness fees of at least eight (8) expert witnesses. The clear language of the statute provides this Court with no discretion to waiver from "up to five" limit. As such, in the unlikely scenario that this Court finds that Plaintiff's expert witness fees were necessary and unreasonable, the statutory award of $1,500 should be issued to, at most, five (5) expert witnesses.

C. Plaintiff Cannot Recover Costs That are Not Allowed Under NRS 18.005

In addition to the fact that Plaintiff attempts to foist the unreasonable costs of its experts on Defendant, Plaintiff also seeks to shift other costs on Defendant that are not even allowed under the applicable statute. Specifically, Plaintiff seeks costs for copies of medical records, and attempts to support this assertion by stating that NRS 18.005(12) defines costs to include reasonable costs for photocopies. *See* Ex. A, p. 3. However, the Nevada Supreme Court has reiterated that costs considered routine or part of the normal overhead are not allowable costs under the statute. *See, e.g., Bergman v. Boyce*, 109 Nev. 670, 679, 856 P. 2d 560, 565-66 (1993). Obviously, the acquisition of Plaintiff's medical records by Plaintiff's counsel would be considered routine and part of the normal overhead. As such, Plaintiff's request for $916.83 for medical record copies should be denied.

Additionally, Plaintiff attempts to foist nearly $5,000 in "Trial Preparation Costs." However, the costs for the services Plaintiff seeks are not recoverable under NRS 18.005, and the Nevada Supreme Court has held that an "attorney cannot expand the coverage of NRS. 18.005" by separately billing for document preparation or other normal out-of-pocket expenses as taxable costs. *Id.* 109 Nev. at 680, 856 P.2d at 560. Indeed, expenses must be necessarily incurred as a matter of course in litigation, not merely helpful or advantageous in the particular case. *Id.* at 681-682, 856 P.2d at 560 (denying juror analysis and witness preparation expenses). Computerized legal research costs, for example, is one type of reasonable and necessary service. NRS. 18.005(17). Plaintiff's request for trial preparation costs are not.

Here, Plaintiff's request for $4,941.62 consists partly of "mock jury costs", "surgical animations and color exhibit boards", and "juror interviews". Although these costs may have been incurred in the course of this litigation, the services associated with those costs are not necessary; rather, such costs are merely helpful or advantageous and constitute out-of-pocket expenses. Additionally, Plaintiff seek over $400 for

"runner fees," again inferring that such fees were reasonable and necessary under 18.005(17). Clearly, the use of runner constitutes an out-of-pocket expense and is not a reasonable and necessary service that Defendant for which Defendant should be held responsible.

III. CONCLUSION

In light of Plaintiff's attempt to expand the coverage of NRS 18.005 to include improper costs and services, Plaintiff's costs should be retaxed and Plaintiff's request for $125,238.01 in statutory costs should be denied.

DATED this 27th day of November, 2013.

HALL JAFFE & CLAYTON, LLP

By _____

STEVEN T. JAFFE
Nevada Bar No. 007035
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Nevada Bar No. 010231
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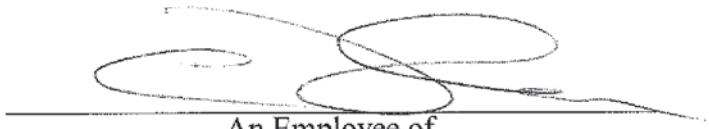
Las Vegas, Nevada 89128
Attorneys for Defendant
Raymond R. Khoury

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that service of the foregoing **DEFENDANT RAYMOND KHOURY'S OPPOSITION TO PLAINTIFF MARGARET SEASTRAND'S MOTION FOR ATTORNEY FEES AND COSTS AND COUNTERMOTION TO RETAX COSTS** was made on the 27th day of November, 2013, by depositing a true and correct copy of the same by U.S. Mail in Las Vegas, Nevada, addressed, stamped, and mailed to the following:

Richard A. Harris, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff



An Employee of
HALL JAFFE & CLAYTON, LLP

EXHIBIT "A"

MEMC
RICHARD A. HARRIS, ESQ.
Nevada Bar No. 505
JOSHUA R. HARRIS, ESQ.
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CLERK OF THE COURT

RICHARD HARRIS LAW FIRM

DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET SEASTRAND, Plaintiff, vs. RAYMOND RIAD KHOURY; DOES 1 through 10; and ROE ENTITIES 11 tough 20 inclusive, Defendants.	CASE NO: A-11-636515-C DEPT NO: XXX

PLAINTIFF MARGARET SEASTRAND'S MEMORANDUM OF COSTS AND DISBURSEMENTS

Plaintiff, MARGARET SEASTRAND (by and through her attorneys of record, the RICHARD HARRIS LAW FIRM and hereby submits the following Memorandum of Costs and disbursements pursuant to NRS § 18.020 for this Court's consideration in connection with Plaintiff's Motion for Cost and Attorney Fees, filed currently herewith.

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NRS § 18.020(3) allows costs as a matter of course to the prevailing party "in an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500." Plaintiff in this matter sought to recover well in excess of that amount and, ultimately, received a jury verdict in her favor. Accordingly, costs must be awarded to Plaintiff pursuant to NRS § 18.020(3).

Below is a listing of Plaintiff's costs associated with litigating and bring this matter to trial:

PLAINTIFF'S COSTS

A. Clerk's Fees

NRS §18.005(1) defines costs to include clerk's fees. The following is an itemized breakdown of the total clerk's fees incurred by Plaintiff in bringing this lawsuit. Please refer to Exhibit 1, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
04/08/2011	Complaint filing fee and e-filing fee for case initiation documents	$281.60
4/8/2011 – 7/26/2013	Wiznet filing fees	$66.50
	TOTAL	**$348.10**

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RICHARD HARRIS LAW FIRM

B. Photocopies, Fax, Telephone and Postage

NRS §18.005(12)-(14) define costs to include reasonable cost for photocopies, fax, telephone and postage. The following is an itemized breakdown of the total costs for photocopies fax, telephone and postage incurred by Plaintiff in bringing this lawsuit. Please refer to Exhibit 2, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
4/8/2011 – 7/26/2013	Copies/Fax/Telephone/Postage	$250.00
05/16/2011	Fed Ex charges	$52.16
08/09/2012	Fed Ex charges	$22.22
05/07/2009	Copy of Traffic Accident Report	$20.00
1/17/2013	Labor Market Consulting – Copy of Expert file	$22.40
	TOTAL	**$366.78**

C. Copies of Medical Records

NRS §18.005(12) defines costs to include reasonable costs for photocopies. Furthermore, NRS § 629.061 allows healthcare providers to change $0.60 per page for copying requested records. The following is a summary of copying charges incurred by Plaintiff related to requests for Plaintiff's pertinent medical records. Please refer to Exhibit 3, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
4/13/2009	Healthport – Mountainview Hospital medical records	$11.79
4/13/2009	Healthport – HCA medical records	$5.60

04/23/2009	LV Fire and Rescue medical records	$2.00
04/27/2009	Fremont Emergency medical records	$2.40
10/08/2009	Surgery Center of Southern Nevada medical records	$40.20
07/02/2010	Nevada Spine Clinic medical records	$55.95
12/06/2010	Doc Request – Dr. Muir medical records	$117.00
01/06/2011	Luis Diaz, MD medical records	$19.13
01/07/2011	Nevada Spine Clinic medical records	$54.00
01/14/2011	Med R – Nevada Spine Clinic medical records	$5.84
02/24/2011	Med R – Nevada Spine Clinic medical records	$3.89
04/21/2011	Thomas Lambert, MD medical records	$16.80
07/27/2012	Nevada Imaging medical records	$35.00
01/17/2013	Matt Smith PT medical records	$52.30
06/27/2013	Newport MRI medical records	$25.00
07/03/2013	St. Rose Hospital medical records	$64.00
7/08/2013	Nevada Imaging Centers medical records	$35.00
07/08/2013	Summerlin Hospital medical records	$50.00
07/09/2013	Doc Request – Mario Tarquino, MD medical records	$54.40
07/09/2013	Doc Request – Las Vegas Radiology medical records	$83.10
07/15/2013	I Quantified Management - medical records	$15.92
08/06/2013	Healthport – Summerlin Hospital medical records	$4.40
11/18/2010	Integrity Document Solutions – St. Rose Dominican Hospital medical records	$163.11
	TOTAL	**$916.83**

RICHARD HARRIS LAW FIRM

D. Deposition Transcript Fees

NRS §18.005(2) defines costs to include reporter's' fees for depositions, including a reporter's fee for one copy of each deposition. The following is a summary of copying charges incurred by Plaintiff. Please refer to Exhibit 4, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
07/18/2012	Manning Hall – Deposition of Margaret Seastrand	$658.35
09/11/2012	Ann Salisbury – Deposition of Officer Todd Conn & Sgt. John Hines	$295.95
09/11/2012	Ann Salisbury – Deposition of Douglas Seastrand	$241.90
09/11/2012	Certified Legal video-Video of Deposition of Douglas Seastrand	$205.39
09/11/2012	U.S. Legal Support – Deposition of Raymond Khoury	$420.25
11/08/2012	U.S. Legal Support – Video of Deposition of Officer Todd Conn and Sgt. John Hines	$180.00
12/04/2012	Manning Hall – Deposition of Larry Snowden & Jaclyn Snowden	$214.50
12/04/2012	Ann Salisbury – Deposition of Jerry Busby, Karla Busby, Bethany Roberts & Scott Seastrand	$253.00
12/31/2012	Litigation Services – Deposition of Terrance Dinneen	$448.85
12/31/2012	Ann Salisbury – Deposition of Sharla Isle & Shirley Seastrand	$121.00
12/31/2012	Ann Salisbury – Deposition of Barbara Van Buskirk & Carrie Jepson	$118.25
01/08/2013	Ann Salisbury – Deposition of William Muir	$370.05
01/08/2013	Esquire Deposition – Deposition of Arthur Croft Vol. 1	$1,184.65
01/08/2013	Manning Hall – Deposition of Yevgeniy Khavkin	$260.40
01/17/2013	Ann Salisbury – Deposition of Marjorie Belsky Vol. 1	$261.75
01/17/2013	U.S. Legal Support – Deposition of Stacy Schonbrun	$667.80
01/30/2013	US Legal Support – Deposition of John Siegler Vol. 1	$403.85

03/05/2013	US Legal Support – Deposition of Joseph Schifini	$540.20
03/05/2013	US Legal Support – Deposition of Harry Smith	$692.90
03/05/2013	US Legal Support – Deposition of J. Pablo Villablanca	$431.10
03/29/2103	Manning Hall – Deposition of Jeffrey Gross	$242.10
03/29/2013	US Legal Support – Deposition of John Siegler Vol. 2	$389.00
06/25/2013	Esquire – Deposition of Arthur Croft Vol. 2	$550.25
07/22/2013	Ann Salisbury – Deposition of Marjorie Belsky Vol. 2	$111.15
07/23/2013	Manning Hall – Deposition of Chalice Lundquist	$74.25
03/05/2103	U.S. Legal Support – Deposition of Craig Greene	$110.00
	TOTAL	**$9,446.89**

E. Official Reporter Fee

NRS §18.005(8) defines costs to include compensation for the official reporter or reporter pro tempore. The following is a summary of official reporter fees incurred by Plaintiff in this matter. Please refer to Exhibit 5, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
07/26/2013	KG Court Reporting – Trial Transcript	$4,054.17
07/29/2013	Jennifer O'Neil – Trial Transcript	$2,468.40
06/20/2013	Margaret Isom - Transcript of hearing on Motions in Limine (total cost split 50% with Defendant)	$436.54
	TOTAL	**$6,959.11**

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F. Necessary Travel Expenses

NRS §18.005(15) defines costs to include reasonable costs for travel and lodging incurred taking depositions and conducting discovery. The following is a summary of reasonable costs for travel and lodging incurred taking depositions and conducting discovery incurred by Plaintiff to attend depositions and conduct discovery in this matter. Please refer to Exhibit 6, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
12/04/2012	Travel for deposition of Arthur Croft	$493.98
12/04/2012	Travel for deposition of Terrance Dinneen	$482.60
12/27/2012	Travel for deposition of Stacy Schonbrun	$551.09
01/30/2013	Travel for deposition of Harry Smith	$665.84
	TOTAL	**$2,193.51**

G. Witness Fees

NRS §18.005(4) defines costs to include fees for witnesses at trial, pretrial hearings and deposing witnesses. The following is a summary of fees for witnesses at trial, pretrial hearings and deposing witnesses. Please refer to Exhibit 7, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
12/04/2012	Stacy Schonbrun – Deposition fee	$600.00
01/02/2013	Joseph Schifini, M.D – Deposition fee	$250.00
01/02/2013	Joseph Schifini, M.D – Deposition fee	$1,250.00
01/02/2013	John Siegler, M.D. – Deposition fee (Vol. 1)	$600.00
01/02/2013	John Siegler, M.D. – Deposition fee (Vol. 1)	$400.00

01/08/2013	Harry Smith, Ph.D – Deposition fee	$1,400.00
01/17/2013	Joseph Schifini, M.D	$750.00
1/30/2013	John Siegler, M.D. – Deposition fee (Vol. 2)	$1,000.00
02/04/2013	J. Pablo Villablanca, MD – Deposition fee	$1,200.00
	TOTAL	**$7,450.00**

H. Expert Witness Fees

NRS §18.005(5) defines costs to include Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, *unless the court allows a larger fee after determining that the circumstance occurred taking depositions including a reporter's fee."* The following is a summary of the reasonable fees incurred by Plaintiff in bringing this lawsuit. Please refer to Exhibit 8, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
2/28/2011	Nevada Spine Clinic – Surgical Cost Letter	$1,250.00
9/11/2012	DeVinney & Dinneen Career & Vocational Economics-Initial review of medical records, contact with client, review of financial records and research on earnings issues	$3,411.00
9/11/2012	Medical Strategy Management, Inc.-Dr. Gross' records review and preparation of life care plan	$6,250.00
9/24/2012	Terrance Dinneen – File review and report preparation	$3,870.00
10/15/2012	Medical Strategy Management, Inc.-Additional medical records review	$2,250.00
11/06/2012	DeVinney & Dinneen Career & Vocational Economics-Review of defense expert report and prepare supplemental expert report	$930.00
11/27/2012	Integrated Pain Specialists-Dr. Belsky rebuttal expert report concerning defense expert	$3,500.00
11/29/2012	Arthur Croft, Ph.D.(c), DC, MSc, MPH-Site Inspection and vehicle inspection, travel to inspection, review of medical records	$11,352.60
12/04/2012	Terrance Dinneen – Report preparation	$330.00

RICHARD HARRIS LAW FIRM

12/04/2012	Dr. William Muir-Depo preparation	$850.00
12/31/2012	Terrance Dinneen – Report preparation and deposition preparation	$1,050.00
1/17/2013	Terrance Dinneen – File review	$690.00
01/30/2013	Arthur Croft, PhD-Rebuttal expert report	$1,750.00
04/11/2013	Medical Strategy-Dr. Gross' pre-deposition review of reports	$500.00
06/14/2013	Terrance Dinneen – File review and report preparation	$3,232.00
07/03/2013	Arthur Croft, PhD – Trial Testimony	$4,000.00
07/03/2013	Jeffrey Gross, M.D. – Trial Testimony	$4,500.00
07/03/2013	Jaswinder Grover, MD – Trial Testimony	$6,000.00
07/03/2013	William Muir, M.D. – Trial Testimony	$6,000.00
07/12/2013	Mark Ferdowsian, D.O. – Trial testimony	$4,000.00
07/23/2013	Medical Strategy Management-Dr. Gross' records review and pre trial preparation, and additional ½ of trial appearance	$9,375.00
07/29/2013	Arthur Croft, Ph.D. – Trial Testimony preparation and travel for trial	$2,518.80
07/30/2013	Terrance Dinneen – Trial testimony and preparation	$6,273.00
08/01/2013	Dr. William Muir-Trial Testimony	$4,250.00
08/27/2013	Nevada Spine clinic-Dr. Grover Trial Preparation	$4,000.00
	TOTAL	**$92,132.40**

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I. **Process Server Fees**

NRS §18.005(7) defines costs to include the fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that of the service was not necessary. The following is an itemized breakdown of the "process server fees" Plaintiff incurred in bringing this lawsuit. Please refer to Exhibit 9, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
06/13/2011	Service of Summons and Complaint upon Defendant	$65.00
	TOTAL	**$65.00**

J. **Trial Preparation Costs**

NRS §18.005(17) defines costs to include any other reasonable and necessary expense incurred in connection with this action. The following is an itemized breakdown of the "trial preparation costs" Plaintiff incurred. Please refer to Exhibit 10, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
07/03/2013	Mock Jury Costs	$40.00
07/03/2013	Mock Jury Costs (8 jurors $75/each)	$600.00
07/03/2013	Quivx – Trial Exhibits	$351.33
07/12/2013	Quivx – Color Trial Exhibit	$108.10
07/12/2013	Quivx – Color Trial Exhibit	$324.30
07/12/2013	Ann Salisbury – Copy of EDCR 2.67 Conference	$182.75
07/15/2013	Quivx – Trial Exhibits	$216.20

07/17/2013	Medivisuals – Surgical Animation and Color Exhibit Boards	$2,430.00
07/19/2013	Demonstrative Exhibit	$2.49
07/23/2013	Quivx – Trial Exhibit	$486.45
08/15/2013	Hillary Robison – Juror Interviews	$200.00
	TOTAL	**$4,941.62**

K. Runner Fees

NRS §18.005(17) defines costs to include any other reasonable and necessary expense incurred in connection with this action. The following is an itemized breakdown of the "runner costs" Plaintiff incurred in bringing this lawsuit. Please refer to Exhibit 11, attached hereto for supporting documents.

DATE	DESCRIPTION	COSTS
09/01/2011	June Legal Service-Delivery of authorizations from client to Richard Harris Law firm	$40.00
10/19/2011	June Legal Service-Receipt of copy on defense for discovery	$25.00
10/31/2011	June Legal Service-Pick-up medical records from provider	$35.00
12/31/2012	June Legal Service-Delivery to Discovery Commissioner	$12.00
07/3/2013	June Legal Service-Delivery and pick up from defense counsel-same day	$62.00
07/26/2013	June Legal Service-Delivery to Dept. 30	$12.00
07/26/2013	June Legal Service-Pick up motion from Dept. 30	$22.00
07/26/2013	June Legal Service	$22.00
4/8/2011 – 7/26/2013	In house runner service	$175.00
7/10/2013	In hour runner service	$12.77
	TOTAL	**$417.77**

RICHARD HARRIS LAW FIRM

Plaintiff's total costs incurred in this litigation, pursuant to NRS § 18.005, are **$125,238.01.**

DATED this 6th day of November, 2013.

RICHARD HARRIS LAW FIRM

By: _____
ALISON M. BRASIER, ESQ.
Nevada Bar No. 10522
801 South Fourth Street
Las Vegas, Nevada 89101

RICHARD HARRIS LAW FIRM

STATE OF NEVADA }

COUNTY OF CLARK }

ALISON M. BRASIER, ESQ. ., being duly sworn states: that affiant is one of the attorneys for the Plaintiff Margaret Seastrand has personal knowledge of the above costs and disbursements expended; that the costs contained in the above memorandum are true and correct to the best of this affiant's knowledge and believe; and that the said disbursements have been necessarily incurred and paid in this action.

By: _____
ALISON M. BRASIER, ESQ.

SUBSCRIBED AND SWORN to before me this 6 day of November, 2013.

_____
NOTARY PUBLIC

JODIE M. SWIFT
Notary Public State of Nevada
No. 08-8156-1
My appt. exp. July 20, 2016

RICHARD HARRIS LAW FIRM

EXHIBIT "L"

CASE NO. A-11-636515-C

DEPT. NO. 30

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

MARGARET G. SEASTRAND,

Plaintiff,

vs.

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

Defendants.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE JERRY A. WIESE, II

DEPARTMENT XXX

DATED TUESDAY, JULY 16, 2013

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

APPEARANCES:

For the Plaintiff:

RICHARD HARRIS LAW FIRM
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BY: ROBERT T. EGLET, ESQ.
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LAS VEGAS, NEVADA, TUESDAY, JULY 16, 2013;

10:30 A.M.

P R O C E E D I N G S

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THE COURT: Let's go back on the record in Case No. 636515, Seastrand versus Khoury.

I know that you guys wanted to maybe talk about something this morning. Before you do that, let me just tell you, because I went home -- you can sit. I went home last night and read over the plaintiff's bench brief on the issue of jury selection. I read over the Jitnan case again. I read over some other cases.

The Jitnan case -- the language that I think is the most, I don't know if I'd say the most important, but what I circled anyway says, "In determining if a prospective juror should have been removed for cause, the relevant inquiry focuses on whether the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath."

And then it says, "Broadly speaking, if a

prospective juror expresses a preconceived opinion or bias about the case, that juror should not be removed for cause if the record as a whole demonstrates that the prospective juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court."

But then the Court goes on and says, "But detached language considered alone is not sufficient to establish that a juror can be fair when the juror's declaration as a whole indicates that she could not state unequivocally that a preconception would not influence her verdict."

Now, the word "unequivocally" is the word that is kind of a problem for me in that. I went back and the Georgia Appellate Court did a case called Walls that was cited in the plaintiff's brief. Walls versus Kim. It's a 2001 Georgia Appellate Court case. It says, "A juror's impairment does not need to be shown with unmistakable clarity." That's cited to Wainwright. It says, "Any doubt should be weighed in favor of being excused in order to remove even the possibility of bias or prejudice affecting the deliberations."

Now, it looks like this is -- then there's a cite to this case O'Dell versus Miller, which is a

West Virginia case from 2002. There's a cite here that says, "Once a prospective juror has made a clear statement during voir dire reflecting or indicating the presence of a disqualifying prejudice or bias, the prospective juror is disqualified as a matter of law and cannot be rehabilitated by subsequent questioning, later retractions, or promises to be fair."

Now, the language that the Walls case said basically, you know, that we should -- any doubt should be weighed in favor of excusing people to remove the possibility of bias or prejudice. I think that kind of -- if I read that in conjunction with this word "unequivocally" that was set forth by the Court in the Jitnan case, it almost -- it almost gets to the point where you're at that -- the bill that was in front of the legislature recently that says, you know, if a juror expresses any opinion or bias, then you really can't do any rehabilitation. I mean, there's -- the legislature didn't pass that bill but that's kind of what this language says.

MR. EGLET: Well, the legislature -- just let me correct the record. You made that comment yesterday, Judge. Because I think you know that Peter Neumann and I are the ones who that drafted that bill.

THE COURT: I didn't know that.

MR. EGLET: We did. The legislature did pass that bill. It passed the Assembly. It passed the Senate by more than a majority in both cases. Overwhelmingly in both the Assembly Judiciary Committee, which is made up of almost all lawyers, and the Senate Judicial Committee, which is made up of almost all lawyers, it overwhelmingly passed those two committees, went to the floor, overwhelmingly passed in both branches of the legislature. Two days after the legislative session had ended, the governor vetoed the bill, a governor who has never tried a civil case in his entire career. Okay.

THE COURT: It doesn't matter because it's not law.

MR. EGLET: It may not be the law but I want to give Your Honor some legislative history of that bill. This bill by the legislature by both the Assembly and the Senate Judiciary Committee asks the supreme court, including our chief justice, who arguably is the most conservative member of the Nevada Supreme Court in five decades -- she said, speaking for the Court, and the Court said the bill is an accurate statement of the law and we do not take a position that it should not be passed. We believe it is an accurate statement of the law. If the judges are following the

law, this is what they would do anyway so we have no problem with the bill.

The only -- the only ones who expressed a problem with the bill was the State's District Court -- District Court Judges Association whose meeting did not -- had barely a majority. I don't know if you attended.

THE COURT: I did.

MR. EGLET: But had barely a majority of your members in attendance and barely a majority voted against it. So it was the district court judges who had this perception that something was being taken away from them, which it wasn't under the law, who lobbied the governor to veto the bill. That is the legislative history of the bill.

So this bill did not need to pass to still be the law. It is the law in the State of Nevada. It is the law.

The problem and the reason for the bill is, Judge, unlike judges like you who have extensive experience before you got on the bench trying cases and particularly civil cases, we have a number of judges who have either came from the district attorney's office and never tried a civil case in their life -- and it's a different voir dire and the basis for cause

is a different scenario on the criminal side than on the civil side -- who don't have an appreciation for the nuances and differences, or we do have, as you know, a number of judges who never tried any case before they became a judge.

There has been a problem with some of these judges thinking that the jurors can just be rehabilitated by asking them what's called in the case law around the country as the "magic question." Well, in spite of all your viewpoints and your feelings, you know, you're going to follow the law that I give you and do your duty as a juror and follow the law. Well, everybody is going to say yes to that because it's intimidating, Judge. Everybody wants to follow the law.

And that's why those cases say what they say. So I just want to be clear that that bill didn't change the law.

THE COURT: All right. So here's the thing: The language in Jitnan -- the unequivocally, that word is what causes me a little bit of heartburn because it says basically you can't rely on detached language, which is basically they relied on specific statements that the jurors were able to respond to rebuttal or rehabilitation-type questions.

It says, "Detached language alone is not sufficient to establish that a juror can be fair when the declaration as a whole indicates that they could not state unequivocally that a preconception would not influence their verdict."

The unequivocally part is what, in my mind, takes me back to this Georgia Appellate Court case that any doubt should be weighed in favor of excusing people to remove the potential for bias.

Now, you can try to convince me I'm wrong about that, Mr. Jaffe.

MR. JAFFE: Well, a couple of things here. First, Your Honor, I think there's two points right now that I need to make.

First, what I did yesterday was not rehabilitation. Rehabilitation is taking somebody and turning it back another way. What I did was further explore their general feelings to find out if they are partial or impartial. Because what we did was -- if I turn and -- I think there's a difference between rehabilitation and further inquiry. Rehabilitation involves changing. Further inquiry involves asking questions to find out.

Counsel for the plaintiff, Mr. Cloward, was asking questions yesterday about $2 million,

$2 million, $2 million. Now, that is what the plaintiff is asking for, but that does not in and of itself imply that that's what this case is or it's worth. It's almost suggesting it's a liquidated damage.

What I did was ask them can you award pain and suffering damages, and they said yes. Can you award them fairly based upon the evidence that is presented and the law read? Yes. I didn't say -- I didn't change them. I just further inquired.

What the plaintiff was doing -- and this is why I think it's a whole problem with being allowed to even offer a number -- is indoctrination because it's talking about the plaintiff's case. It's indoctrinating them in the plaintiff's case to see if they've got a bias against that one particular issue, but the jury is not there to render a verdict for $2 million for the plaintiff because that's what the plaintiff asks. It's Ray Khoury's jury too.

It's a jury that's supposed to be fair and impartial as to the whole case and what they have to be able to do is render a verdict that's fair and impartial based on the evidence applied to the law as they decide to accept or reject the evidence. That was what I inquired about.

So when you take this language from Jitnan, what I think is important is this: That one piece of the language of the case is what the Court said, but I think the reverse is true as well because that's what the plaintiff was doing. The detached language considered alone should not be sufficient to establish that a juror can be unfair when the juror's declaration as a whole indicates that he or she could not state unequivocally that a preconception would influence her verdict.

Because what these jurors did yesterday is said that they can be fair. They can deliberate on the evidence. They can listen to what's presented by both sides and render a fair verdict based on the law. What they had a problem with was the one particular aspect of the plaintiff's case that they're not obligated to accept that there's a $2 million pain and suffering entitlement. And the plaintiff is trying to say because they cannot accept $2 million, they're bias. Well, if that's the case and they can accept $2 million, then they're equally biased against Ray Khoury.

So the question is are we going to accept jurors who are biased one way or the other and say that they are unbiased simply because that's what the

plaintiff wants them to believe as part of their case, or do we want a jury that's going to listen to all of the evidence equally for both sides and give both sides a fair chance to hear what the evidence is, hear the law and apply it, and either accept or reject the arguments. That's the fair fight.

The fair fight is a jury that does not have a preconception in favor of one argument. And what the plaintiff did yesterday for three or four hours was try to pound on these jurors into accepting $2 million as the almost liquidated damage value or value of their damage of their pain and suffering amount. And if they couldn't accept that, they inherently must be biased. That was the arguments and that's not the law. That's not what the Court wants.

And what the plaintiff is trying to now imply to the Court is simply because these two jurors were loathe to accept $2 million under the plaintiff's scenario, they inherently must be biased and that they must be behind the defendant because they're not going to accept $2 million and, therefore, must be biased.

Well, if I sat there and said to them as well, just because she had surgeries -- she said she had surgeries in an accident that we admitted and we're denying that those surgeries are related -- because

that's effectively the same thing as saying the $2 million because he said they're asking for $2 million. And if I turned around and said because of those surgeries, are they now -- is my client behind the plaintiff because you don't want to accept it? And if a juror said, well, wait a minute, if she had surgeries from this accident, you must have caused it, yes, you are behind, does that make them biased? That means that they're just not accepting my argument.

And that's what we as lawyers do, as litigators do, is try to advocate our position as best as we possibly can to convince the jury why we are right, why the evidence favors our client, why our arguments make the most common sense. And that's what the plaintiff is actually trying to do is take that away by saying that because they're not going to accept $2 million simply because that's what we say it is, they must be biased.

And, Judge, when you take a look at the Jitnan case, what Jitnan is saying is you don't have to accept the fact that they're not going to simply believe one particular argument and accept that they must be biased because of that. Because the Court said at the very end, we hold that when a prospective juror expresses a potentially disqualifying bias or prejudice

and is inconsistent in his or her responses regarding that preconception upon further inquiry -- which is what I did, further inquiry -- as here the district court must set forth on the record the reasons for its grant or denial of the challenge for cause.

Now, the supreme court did not say that we hold that when a prospective juror expresses a potentially disqualifying bias or prejudice and is inconsistent in his or her responses regarding that preconception upon further inquiry that the juror must be stricken. They did not say that.

They gave the Court the latitude because the very first comment -- one of the first comments made by the supreme court is: "A district court's ruling on a challenge for cause involves factual determination, and therefore, the district court enjoys broad discretion as it is better able to view a prospective juror's demeanor than a subsequent reviewing court."

Your Honor has discretion as to whether they are biased or unbiased and it does not have to be complete and unequivocal as Georgia is suggesting. The Nevada Supreme Court has not gone there. They had that opportunity with Jitnan and they didn't. They said you've still got latitude as a trial judge.

The question is: Does it go so far, and the

Court simply requires that district court judges or trial judges explain why they have or have not accepted the grant or denial of the challenge for cause.

And inconsistency is not in and of itself a basis. If it was, the Jitnan supreme court would have said that and that is not what this opinion said. It allows for inconsistencies as long as the Court accepts that there is still a juror who is going to be impartial and give everybody a chance. And that's what we've got. That is exactly what we've got and that's what those two jurors said. They said we're willing to award pain and suffering if it's proven; we're willing to look at the evidence and award what is a fair amount for pain and suffering; we're willing to consider the law and apply those facts and that evidence as we see it to render a fair verdict. And isn't that what we want?

That's what we all want. I mean, if the plaintiff doesn't want a fair verdict, why are we here? Mr. Khoury wants a fair verdict. If the jury comes down against him, we're giving it our best shot. Not every -- the lawyer who wins every case hasn't tried a tough enough case. We all know that. You're going to lose some cases but the question is you have to do the best you can and try to convince that jury and that's

what we want to do, but we don't want to be in a situation of having to convince a jury which is already accepting $2 million as what must be the value of the case.

Because what the plaintiff is trying to say is the bias is that they cannot accept or are reluctant to accept a $2 million liquidated pain and suffering damage award. And that's not bias. That's just unwillingness to accept an argument.

Every lawyer loses some arguments in front of a jury. Just because we want future pain and suffering doesn't mean a jury gives it to us. Just because we want future household services losses doesn't mean a jury is going to give it to us. Just because we want a jury to say the plaintiff did not have to have surgery because of this accident, doesn't mean the jury is going to give it to us.

The fact remains that all we want is a jury that is going to listen and give us a fair shake, and that's what those two jurors said they would do. They would listen to the evidence and render a pain and suffering award that they believe was fair compared to the evidence and the law.

The fact that they are reluctant at $2 million -- one juror said she can award $2 million but

in her mind it has to be a pretty significant injury like losing a limb. Well, she's still willing to award pain and suffering. If you don't like what she believes is the threshold, that's why we have peremptory challenges and that's where the peremptory challenges come in. She is a juror who will listen to the law, will abide by the law, and apply the facts to the law and that is an unbiased juror. That is an impartial juror. That is a fair juror. That is one who will do what they're obligated as a juror to do in Clark County and in the state of Nevada. And that's what we want.

THE COURT: Don't argue again. You guys argue like you're getting paid by the word.

MR. EGLET: Your Honor, I do have to --

THE COURT: You've made your record. You've made your record.

Here's what we're going to do, guys. I understand the Jitnan case. I think that the Walls case out of Georgia is actually something that probably wasn't directly acknowledged by the Court in Jitnan but the unequivocal language, I think, matches up with the Georgia language.

So what I'm going to do in an abundance of caution is I am going to grant the plaintiff's

challenge for cause on No. 1, Mr. Frazier; No. 4, Mr. Runz; No. 5, Ms. Vera; No. 6, Ms. Ong; and No. 9, Ms. Agnor.

I can -- because of the Jitnan case, I have to make a record and explain my reason for that. Each one of them talked about the fact that they were -- that $2 million was too much. Now, I understand the argument that they've been indoctrinated, but I don't think that that's the case.

I think what the question was and -- and what we want is we want a jury that is willing to award 2 million or $10 million, whatever the number is, if the facts justify it. We also want a jury who's willing to award a zero if the facts justify it.

And you're going to have your chance to ask those questions. And just like you have jurors that say, look, I'm going to have a real hard time awarding $2 million even if the facts justify it because I don't know any facts yet but I have a problem with the $2 million number, you may have jurors that, when you start asking them questions, they say there's no way I'm going to be able to award a zero if this person has medical bills.

Well, you know, you have the same challenge. Plaintiff's counsel may get up and try to rehabilitate

them and convince them that they're going to listen to the judge's instructions and follow the law, but I think we want jurors who are willing to give a zero. We want jurors who are willing to give millions of dollars. I don't think we want to limit them.

So out of an abundance of caution and in accordance with the Walls case and the Jitnan case, I can't find that any of those individuals in response to Mr. Jaffe's follow-up questions yesterday indicated that they would be unable -- that they were able to state unequivocally that their preconceptions or their prior thoughts and ideas would not influence their verdict. I don't think any of them stated that unequivocally and because of that, I'm going to go ahead and grant the motion to strike each of them.

MR. JAFFE: Your Honor, we did -- I know plaintiff's counsel ordered the transcript of last night. We got it this morning. We looked and Ms. Vera made it very clear she has no artificial limits that she's established in her mind. She said that on the record yesterday.

THE COURT: I looked at the record as well. Some of them you couldn't even tell who it was that was saying things but some of them you could. I looked at that as well, but the unequivocal language is the

language that I keep coming back to and in order to avoid the potential of bias or prejudice, I'm going to exclude them all. Okay.

MR. JAFFE: Yes, sir.

MR. EGLET: Your Honor, could the clerk indicate to us who will be going into what seats now?

MR. JAFFE: Yeah. If we can get that done now so that we all have a chance to --

MR. EGLET: Change our charts.

MR. JAFFE: -- to fix our charts. Exactly.

THE COURT: And because of the fact that I excused some of them yesterday and not others, they were taken out of order, so.

MR. EGLET: I know. You excused them -- well, okay, that's --

THE COURT: So we're going to have to do these in the order that I'm excusing these.

MR. EGLET: You had seated the ones you excused yesterday so just go down the list and go to this list.

THE COURT: So Mr. Frazier will be excused next. He's in Seat No. 18.

Who takes Frazier's seat?

THE CLERK: Helen Perrine.

MR. EGLET: She goes into 18?

THE CLERK: Yes.

MR. EGLET: And who is next, Judge?

THE COURT: The next one to be excused would be Mr. Runz in Seat No. 1.

MR. EGLET: Is that Christina Essaqi?

THE CLERK: Yes. Correct.

MR. EGLET: Next, Judge?

THE COURT: The next challenge for cause was Ms. Vera.

MR. JAFFE: Wait. Can I have one second here. So next is Vera.

MR. EGLET: Is she in Seat 5?

THE CLERK: Yes. And Sherronda Anderson will now take Seat 5.

MR. JAFFE: So what happened to Fidencio Chavez?

THE CLERK: He was not present yesterday.

MR. JAFFE: Sherronda Anderson is now in 5 or 4?

MR. EGLET: Five. What was next, Judge?

THE COURT: The next one is Ms. Ong in Seat No. 19.

THE CLERK: That will be Gina Arroyo. She will take Seat 19.

THE COURT: The next one is Ms. Agnor in Seat

No. 4.

THE CLERK: Francisco Bangayan will take Seat 4.

THE COURT: When we bring them back in, I'll sit them where -- we'll have them sit where they were and then I'll excuse those individuals. We'll bring up these individuals in these seats and then we'll give it back to Mr. Cloward.

Anything else we need to take care of before we start?

MR. EGLET: If we could just have five minutes or so to fix our charts, Judge.

THE COURT: Okay.

(Whereupon, a recess was taken.)

THE COURT: All right. Let's bring them in.

THE BAILIFF: All rise.

(Whereupon, prospective jurors enter the courtroom.)

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

PROSPECTIVE JURORS: Good morning.

THE COURT: Welcome back. Sorry to keep you waiting. You know, the interesting thing is if you don't see the lawyers come in after you're sitting out there waiting, that means they're already in here.

We're already working. If you see them come in later, you know that I just wasn't here or they weren't here but you're not going to see that. Usually if you're waiting, it's because we're in here doing something else.

But welcome back. We appreciate you coming back. Is there anybody here that wasn't here yesterday? Raise your hand. Good.

We're back on the record in Case No. A636515. We're in the middle of jury selection.

Just to remind you, folks, I had you all sworn in yesterday to tell the truth during jury selection. You're still under oath so you still have to tell the truth today. Be open and honest in response to all the questions.

Before we get going, I'm going to excuse some more of you. So you can look at that as lucky or unlucky. However you want to look at it. As I read off your name, please stand and we're going to thank and excuse you and have you report back down to the third floor and let them know that you've been excused by Department 30.

First, Mr. Frazier in Seat No. 18, thank you, sir, appreciate your time.

Next is Mr. Runz in Seat No. 1, appreciate

your time. Thank you, sir.

Ms. Vera, I believe, is in Seat No. 5. Thank you, ma'am. Appreciate all the time and effort you folks have given us. Sorry to keep you here all day yesterday and have you come back today and then just send you home.

Ms. Ong, who's in Seat No. 19, thank you, ma'am. Appreciate your time. Go back down to the third floor.

And, Ms. Agnor, I believe, is in Seat No. 4. Thank you. Appreciate all your time and your efforts.

All right. Do you want to call up the new people?

THE CLERK: Helen Perrine, Badge No. 71, please take Seat 18.

Christina Essaqi, Badge No. 075, please take Seat No. 1.

THE COURT: Hold on a second. Let's make sure they go to the right place.

Ms. Perrine, you're down here in the front. There you go.

Ms. Essaqi, you're in the back all the way on the end.

THE CLERK: Sherronda Anderson, Badge No. 082, Seat No. 5.

THE COURT: Seat No. 5 is on the back row on the left.

THE CLERK: Gina Arroyo, Badge No. 084, Seat No. 19 up in the very front.

THE COURT: Number 19. Did you say 18?

THE CLERK: Nineteen.

THE COURT: Thank you.

THE CLERK: Francisco Bangayan, Badge No. 085, Seat No. 4. Top row, please.

THE COURT: See, and you folks -- I told you don't be -- don't think that you're out of this yet, you guys that are in the back. You never know. We just keep replacing people.

All right, folks. I'm going to go through those five of you that we just resat and I'm going to ask you the questions that we asked the jurors yesterday. We'll start with you Ms. -- is it Essaqi?

PROSPECTIVE JUROR NO. 075: Yes.

THE COURT: Ms. Essaqi, tell us your name and badge number.

PROSPECTIVE JUROR NO. 075: Christina Essaqi, Badge No. 075.

THE COURT: Ms. Essaqi, how long have you lived in Las Vegas?

PROSPECTIVE JUROR NO. 075: Sixteen years.

THE COURT: And are you married or have a significant other?

PROSPECTIVE JUROR NO. 075: I am divorced.

THE COURT: Okay. Do you have any children that live --

PROSPECTIVE JUROR NO. 075: I have three girls. I have one just moved back to New York City. She is a certified nurse's assistant. She is at college, and she also works in a nursing home part-time.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 075: I have daughter No. 3. She's a bank teller with Wells Fargo, and daughter No. 1 is disabled.

THE COURT: Okay. And do you work outside the home?

PROSPECTIVE JUROR NO. 075: Yes. I'm a legal secretary with the State of Nevada Attorney General's Office.

THE COURT: Okay. What did your ex-husband do?

PROSPECTIVE JUROR NO. 075: He was a plumber.

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

PROSPECTIVE JUROR NO. 075: I have not.

THE COURT: Thank you, ma'am.

Anything in response to any of the other questions yesterday that you feel like you need to offer to us?

PROSPECTIVE JUROR NO. 075: Well, I've had three accidents in the space of two months. Not one of them my fault. And this is my -- this would probably relate my view.

On the first accident, the woman backed out of her parking driveway at full speed. My vehicle was damaged. It hit the passenger's side and $2500 in damage. I was shooken up initially, but I got over that so I only claimed damage for the vehicle.

Accident No. 2 while the vehicle was in the repair shop, I had a rental. A drunk driver hit my vehicle and spun it around. The air bag exploded and I received lacerations on my knee and on my shoulder, whiplash. I ended up in the hospital and she ended up in jail.

I did get compensated and I do understand that when you have an accident it does put you out of commission somewhat. It changes your life. I did have a different experience with this accident. I was pretty much shaken up. I -- every time I drove thereafter I thought somebody was going to hit me but I

got over that. It took quite a while, six months. I had to go to therapy a little bit.

I do believe that in a case like that you have to get compensated because your life has changed and you need it to be restored. Just as you do time for the crime, I think you should be compensated on the extent of your damage.

THE COURT: What about the third accident?

PROSPECTIVE JUROR NO. 075: The third accident I was dropping my daughter off at high school at 6:30. She had an early call and we had bumper-to-bumper traffic. I have an SUV. The gentleman behind me ran into me and I -- from the back and I did not feel the thump but I heard it. I got out. I checked. There was no damage to my vehicle. However, I had him pull into the lot on the next street. I examined my car a little closer. His only had a little damage from the bumper. I told him I'm fine, go ahead.

And that was my experience with accidents. As I said, that's the way I handled them all.

THE COURT: Okay. Anything else you wanted to offer us?

PROSPECTIVE JUROR NO. 075: No. I think that we all are here for justice and it's a concerted

effort. We deliberate after we have heard the facts and that's the only way we can get to a conclusion.

THE COURT: I like your accent. Where's that from?

PROSPECTIVE JUROR NO. 075: I'm from Trinidad originally. It's the Queen's language.

THE COURT: Very nice.

PROSPECTIVE JUROR NO. 075: Thank you.

THE COURT: Thank you, ma'am.

Let's go across the back. We have -- is it Mr. Bangayan?

PROSPECTIVE JUROR NO. 085: Yes.

THE COURT: You say it.

PROSPECTIVE JUROR NO. 085: Bangayan.

THE COURT: Bangayan. Okay. Mr. Bangayan, tell us your name and badge number.

PROSPECTIVE JUROR NO. 085: Francisco, Badge No. 085.

THE COURT: How long in Vegas?

PROSPECTIVE JUROR NO. 085: Twenty-five years, sir.

THE COURT: What do you do for work?

PROSPECTIVE JUROR NO. 085: I'm retired but I used to be a food server at the Tropicana Hotel.

THE COURT: Do you have a wife or a

significant other?

PROSPECTIVE JUROR NO. 085: I'm divorced, sir.

THE COURT: Do you have any grown children that work?

PROSPECTIVE JUROR NO. 085: Three of them.

THE COURT: What do they do?

PROSPECTIVE JUROR NO. 085: They're out of work right now. They don't have any work.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 085: They got laid off.

THE COURT: All right. Have you ever served on a jury before?

PROSPECTIVE JUROR NO. 085: My first time, sir.

THE COURT: Anything you wanted to offer to us in response to any of the questions yesterday?

PROSPECTIVE JUROR NO. 085: No, sir.

THE COURT: Thank you, sir.

Is it Ms. Anderson?

PROSPECTIVE JUROR NO. 082: Yes.

THE COURT: Ms. Anderson.

PROSPECTIVE JUROR NO. 082: Sherronda Anderson, Badge 082. I have been in Las Vegas for 24

years.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 082: I work as a program coordinator for Clear which is now a Sprint corporation. No children and I'm not married.

THE COURT: Ever served on a jury before?

PROSPECTIVE JUROR NO. 082: No.

THE COURT: All right. Thank you, ma'am. Anything you want to offer to us about any of the questions yesterday?

PROSPECTIVE JUROR NO. 082: No. I have been in seven accidents --

THE COURT: Wow.

PROSPECTIVE JUROR NO. 082: -- in the 12 years I've been driving, and only one is my fault and only one was bad.

THE COURT: Was it the one that was your fault?

PROSPECTIVE JUROR NO. 082: No. And the one that was my fault, legally it was my fault but it was not my fault.

THE COURT: All right. The fact that you have been in so many accidents, is that going to affect your ability to be fair and impartial today or during this trial?

PROSPECTIVE JUROR NO. 082: No.

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

Let's come down to the front row. Ms. Perrine.

PROSPECTIVE JUROR NO. 071: Perrine.

THE COURT: Perrine.

PROSPECTIVE JUROR NO. 071: Yes.

THE COURT: I'm sorry. I must have spelled that wrong. Ms. Perrine, how long -- tell us your name and badge number.

PROSPECTIVE JUROR NO. 071: Helen Perrine, Badge No. 071.

THE COURT: How long in Vegas?

PROSPECTIVE JUROR NO. 071: Nine years.

THE COURT: What do you do for work?

PROSPECTIVE JUROR NO. 071: I'm a computer programmer.

THE COURT: For who?

PROSPECTIVE JUROR NO. 071: Reliant Programming. And I have a husband and he's a computer programmer also for Jet Set Games. We have two kids, 13 and 12.

THE COURT: They don't work outside the home yet.

PROSPECTIVE JUROR NO. 071: Darn it, no.

Some day soon. I have not been on a jury before.

THE COURT: All right. Anything you want to offer to us in response to any of the questions from yesterday?

PROSPECTIVE JUROR NO. 071: No.

THE COURT: Thank you, ma'am.

Ms. -- is it Arroyo?

PROSPECTIVE JUROR NO. 084: That's right.

THE COURT: Ms. Arroyo.

PROSPECTIVE JUROR NO. 084: Gina Arroyo, 084. I'm 28. I've been here all my life.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 084: And I have one child that does not work out of the home. My significant other is -- works -- he's in the Navy. He's an aviation rescue swimmer. I work in the health information management department at Spring Valley Hospital.

What else was it?

THE COURT: Ever served on a jury before?

PROSPECTIVE JUROR NO. 084: No, never.

THE COURT: Anything you want to offer to us in response to any of the questions yesterday?

PROSPECTIVE JUROR NO. 084: No, not particularly.

THE COURT: All right. You will get asked more questions.

PROSPECTIVE JUROR NO. 084: Okay.

THE COURT: All right. Thanks, folks. Turn the time back over to Mr. Cloward.

MR. CLOWARD: Thank you. Good morning, everybody.

PROSPECTIVE JURORS: Good morning.

MR. CLOWARD: Sorry for the delay. As the judge talked about, sometimes we have things outside the presence of the jury. And that's actually one thing I wanted to talk a little bit about. I know it can be frustrating. The lawyers are always up talking to the judge sidebar and doing things like that. That's kind of just the way -- the way the process is.

I can guarantee that there's probably already some folks that are already tired of that and that's okay. It is a pain and we know that, Mr. Jaffe knows that, I know that, the judge knows that. You know, that's just the way it is.

Is there anyone that's going to hold it against either me or Mr. Jaffe that that's just the way that this is? It's kind of a long process. It's sometimes kind of a pain in the butt. Anybody that's going to -- sir?

PROSPECTIVE JUROR NO. 003: Fitzgerald, No. 003. After reflection of what happened yesterday, I think it's a personal assault on our integrity and this whole notion of belaboring the point about money to the exclusion of thinking about guilt versus no guilt, fault versus no fault, I think that's a personal affront and I take exception to that.

THE COURT: Let me make a comment here, Mr. Fitzgerald, because I think you may be concerned because of some of the questions that were asked yesterday.

One of the things that is important for us, we need to find a jury that is fair and impartial in all respects. And so what that means is we need a jury who is able to award a certain amount of money if the facts justify an award of a certain amount of money. We also need to be able to have a jury that's able to award no money if the facts don't justify any money.

The issue of damages is always an issue that's difficult to address with a jury before you know the facts. As you saw yesterday, there were certain people who expressed an opinion that regardless of what the facts were, they were not willing to consider a certain number.

And that's why we have to talk about -- why

the attorneys are talking about numbers and things like that because we just want to have a jury of members who are willing to consider anything based on the fact that you don't know what the facts are yet.

Does that make sense to you?

PROSPECTIVE JUROR NO. 003: No, sir, it does not.

May I respond?

THE COURT: Sure.

PROSPECTIVE JUROR NO. 003: After thinking about this whole notion of money -- belabored, I think, was the point used by the fellow at the other desk -- it's almost to the point of bait and switch. We forget about, you know, having an open mind, open ears, and a closed mouth until we get into the jury room.

You know, reflection, keeping an open mind, I took that -- what you told us yesterday, instructed, the notion of patriotism, the notion of our civic duty quite well. I understood that message. But this whole notion of belaboring and overemphasis on money is just a bait and switch between getting us off the point of guilt versus no guilt, fault versus no fault, listening to the merits of the case, and I just think it's a product of getting the horse way too far in front of the cart. I take exception to that. I think it's an

insult not only to my intelligence but everybody in the front, the back row, and all the people back there. That's after reflection last evening.

THE COURT: I feel bad -- I feel bad that you have that opinion, but the issue of damages is one of the issues that you're going to potentially consider in the case. The issue of fault is another issue that you're going to potentially consider in the case, but that's an issue that is more difficult to talk to you about before you know the facts.

PROSPECTIVE JUROR NO. 003: May I speak, Your Honor?

THE COURT: Sure.

PROSPECTIVE JUROR NO. 003: Okay. One thing I think that most would probably kind of understand is -- there's two parts to this case. We find if there's any fault or who the winner and the loser is, and then the second is the compensation of money.

You haven't instructed us yet that we're the one that's to decide the amount of money. Maybe that's your job to do that. You haven't instructed us about that. It's almost to the point to who's supposed to decide what amount of money? And, like I said, that's just to create a confusion. And, like I said, I take that as a personal affront to my intelligence and to

everybody else here.

THE COURT: I'm sorry you feel that way, sir.

Are you willing to answer some more questions?

PROSPECTIVE JUROR NO. 003: Absolutely.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. CLOWARD:

Q. Mr. Fitzgerald, I appreciate your candor and brutal honesty with me. All of us, we've been doing this for a long time, and it's not going to hurt our feelings so I appreciate the fact that you shared with us the views that you felt and if there's anything I have done to make you feel that way, I apologize.

I can tell you, as Mr. Jaffe indicated when we started off, he said that his client admits fault. So that issue has already been decided and so that's why there was so much discussion yesterday and there will be continued discussion today.

Are you upset with me? The fact that I -- me personally -- the fact that I spent so much time on that issue yesterday?

A. I understand both you attorneys got to give the best of your ability to represent your client. I take no exception to that. That being the point. I

don't like the idea of getting the horse far too far in front of the cart because I think the cart, that's what we're supposed to decide here. The first thing is what I'll call guilt versus not guilty or whatever.

And to talk about money too much in front of that decision I think belittles what we're supposed to do and what we learned in civics class about having an open mind to what you two have to present to us as potential jurors.

Q. Sure.

A. And I take -- after some discernment last night, I really don't feel that I could give a fair hearing to you.

Q. I appreciate that.

A. Nothing personal. That's just strong impressions that I have about my civic duties.

Q. Okay. I appreciate that. I do. I know my client -- my client appreciates that honesty, that brutal honesty. I do appreciate that.

MR. CLOWARD: You know, we can't talk about the facts. We can't, you know -- so it's difficult. Assume hypothetically that my client had $10 million in just medical bills, that she had some very, very serious, serious, serious complications and was hospitalized for a year long, and so just the medical

bills alone were going to be $10 million, you know, that's the reason why we have to ask some of these questions, and I know they're difficult and I wanted to be brutally honest with all of you folks is I don't like the discussion either. Money is something that --

MR. JAFFE: Your Honor, may we approach?

THE COURT: Sure.

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

THE COURT: All right, folks, here's what we're going to do. I apologize for this. It's 11:30. I'm going to send everybody to lunch except for Mr. Fitzgerald. We're going to talk to him outside the presence of everybody else for a few minutes. So I'm going to ask Mr. Fitzgerald if he would stay.

Instead of having all the rest of you go out to the hallway for a few minutes and then come back in for a few minutes and then send you to lunch in a half hour, I'm just going to send you to lunch now.

We'll take lunch from 11:30 to 12:30. So you guys go to lunch now. Come back at 12:30 and we'll be able to move forward.

Before you leave I have to read you the admonishment. I told you you're going to hear this a lot. You're getting used to this, aren't you.

During our break, you're instructed not to talk with each other or with anyone else about any subject or issue connected with the trial. You're not to read, watch, or listen to any report of or commentary on the trial by any person connected with the case or by any medium of information, including, without limitation, newspaper, television, the Internet, or radio. You're 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 the case. You're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Come back at 12:30.

THE BAILIFF: All rise.

THE COURT: Actually, make it 12:35 because you know we're not going to start until then.

(Whereupon, prospective jurors exit the courtroom.)

THE COURT: Go ahead and be seated. We're still on the record. We're outside the presence of the general jury panel with only Mr. Fitzgerald as a potential juror in Seat No. 2.

Mr. Fitzgerald, we just have a little bit of a concern that -- you made a statement a little while ago that based on your reflection last night it was going to be difficult for you to give a fair hearing to us today.

PROSPECTIVE JUROR NO. 003: That's correct.

THE COURT: Or during the next couple of weeks.

Can you explain that a little bit?

PROSPECTIVE JUROR NO. 003: Yes, Your Honor. I feel --

THE COURT: You can sit.

PROSPECTIVE JUROR NO. 003: I'll stand. Thank you.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 003: You know, I appreciate what you taught us yesterday, the civics lesson, the notion of patriotism. Some of us don't, you know, have too many encounters with the legal system, the justice system. I'm one of those people. I don't hang around with criminals or drug people or anything like that. I don't have too many dealings with attorneys. So, you know, obviously like you told us, instructed us, keep your ears open, keep your mind open, and keep your mouth shut until it comes to the

jury room, and I took that seriously.

But this whole notion of putting this issue of money and belaboring the point over and over again and picking on, I think, that first group of four or six jurors that were dismissed, it was my impression that just insulted their intelligence almost to the point where this one lady I think it was Ms. Vera or Verda was almost in tears yesterday.

And, like I said, I think that was an overemphasis on money to the point of exclusion of this notion of what I'll call guilt or not guilty or however the first phase goes here, that money was the issue to the exclusion of the first step.

And based on our civic responsibility and lessons to give a fair hearing, I think it just usurped the whole process. It left a very bad taste in my mouth last evening at home when I had a chance to think about it.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 003: In fact, I probably should have spoken up a little bit earlier yesterday because I sensed, in my mind, that that was somewhat of a bullying tactic and I take offense to that.

THE COURT: Let me ask this: The fact that

you haven't had a lot of experience with the legal system, would you trust me to protect the jurors from bullying if I felt that the jurors were being bullied?

PROSPECTIVE JUROR NO. 003: Well, of course. You're an Officer of the Court. I think that's --

THE COURT: That's part of my job.

PROSPECTIVE JUROR NO. 003: -- that's your main responsibility.

THE COURT: That's part my job.

PROSPECTIVE JUROR NO. 003: One thing I do not know and did not know when I came into this room is the notion of money. Who would decide what amount of money was fair or just or would be awarded or whatever? I had no idea that that was the notion of the jury here. I kind of halfway thought that maybe that was your responsibility.

THE COURT: Well, and --

PROSPECTIVE JUROR NO. 003: I felt insulted by that.

THE COURT: You'll be instructed later on the law and what your responsibility is as a juror as it relates to the facts. I will tell you that in a personal injury case like this, you will be instructed that one of the claims is for negligence. In order to determine negligence, it's essentially a determination

of whether or not a party acted reasonably under the circumstances.

PROSPECTIVE JUROR NO. 003: Right.

THE COURT: In this case I think Mr. Jaffe indicated in -- when he introduced his case that his client had admitted fault for the accident, correct?

MR. JAFFE: Yes, sir.

THE COURT: So that's why that issue is not being explored tremendously. At the end of the trial if the jury finds that the plaintiff suffered injuries as a result of the defendant's negligence, then you would be asked to consider a number.

Now, the reason that there's been a lot of discussion about the numbers is because of the fact, I think that as Mr. Cloward said, he's going to be asking for a number in excess of $2 million and that's a big number.

PROSPECTIVE JUROR NO. 003: May I respond to that, Your Honor?

THE COURT: Not yet. Not yet. The reason that there's been some discussion about that is because there are some people that cannot keep an open mind as it relates to a certain number. And I think there were several people that said that regardless of what the facts were, they would have a hard time with a number

like $2 million.

Now, there have been other cases in this courthouse that have resulted in verdicts of hundreds of millions of dollars, and one of the reasons that the attorneys explore that issue is because they don't want to offend someone like you at the end of the trial by asking for a certain number and having it offend you then because you -- because a big number offends you. So one of the reasons that they ask the jurors at the beginning about numbers is because they want to know if it's going to offend you, we need to know about that now.

And Mr. Jaffe when he has his turn to ask people about numbers, he will be asking people if they're willing to award zero if the facts justify a zero because both parties need to make sure that the jury is able to keep an open mind to both sides, consider all the facts that both sides present, and if an award is justified at the end of the case that they will be willing to at least consider the numbers that both parties suggest at the end of the case without being offended at that point.

I think that's why the questions are coming out the way they are. And I understand that you don't want to put the horse before the cart, but essentially

the cart issue that you're talking about is the fault issue.

PROSPECTIVE JUROR NO. 003: Yes. Right.

THE COURT: And we're not talking about fault. You actually used the terms guilt and innocence or guilt and not guilty. Those are actually terms that are only used in a criminal trial.

PROSPECTIVE JUROR NO. 003: Okay.

THE COURT: In a civil trial we talk about liability or fault. And as Mr. Jaffe talked to you about in the introduction, liability or fault is really not going to be an issue in this case. Okay.

Does that explain a little bit why the attorneys have focused on what they have focused on so far?

PROSPECTIVE JUROR NO. 003: I think they've obsessed on it.

May I speak, Your Honor?

THE COURT: Sure.

PROSPECTIVE JUROR NO. 003: I think they've obsessed on it. And to show you a little bit the opposite side of the coin, the notion of a sensitivity to $2 million -- my experiences in life, I've worked on big construction projects, billion-dollar projects, $2 million in some cases doesn't even reach the point

of being material. It's what we call the materiality concept in accounting. That was never brought out here yesterday. I'm not afraid of a big number.

THE COURT: But some people are.

PROSPECTIVE JUROR NO. 003: But why do we insult all these four people with that and I just -- I take exception to that.

THE COURT: And I understand that you feel like maybe those people were bullied and if I felt like they were bullied, I would have stopped it. I didn't because of the fact that they had given somewhat inconsistent responses and it seemed like they were concerned with the number. And if they're going to be offended by that number at the end, the attorneys want to know if they're going to be offended by that number. They need to know that early so that they have a chance to either challenge that person for cause or use a peremptory challenge like I talked about yesterday.

PROSPECTIVE JUROR NO. 003: Yes, Your Honor.

THE COURT: They need to be able to determine if that jury, if those jurors, are going to be fair and impartial and at least consider whatever the attorneys want to suggest.

Now, you talk about the fact that the $2 million could actually be an immaterial number if

we're talking about a billion-dollar contract. I agree with you. But that's because you have life experiences that are different from some of these other jurors, and that's part of the jury selection process is to determine what life experiences people have because while you may not be offended by that number, some other people were. That's why those questions are asked.

Does that make sense to you?

PROSPECTIVE JUROR NO. 003: I hear what you're saying.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 003: I respect that. But, you know, these are my life experiences and, like I say, I found that insulting to these people's intelligence, much less mine. And to belabor the point over and over again was pedantic. It's like something you do to a grade school student. You beat it into their mind and say we're going to have a quiz on Friday so stay alert. Here's the answers to the quiz. I find that insulting as an adult.

THE COURT: All right. Because you were insulted by that you feel that it's going to be difficult for you to be a fair and impartial juror?

PROSPECTIVE JUROR NO. 003: Yes, Your Honor.

Yes, sir, Your Honor.

THE COURT: Are you favoring one side or the other because of the questions that were asked?

PROSPECTIVE JUROR NO. 003: Yes. Or not asked. Maybe that's an important thing.

THE COURT: All right. Do you guys have questions? Do you want to follow up, Mr. Cloward?

MR. CLOWARD: No.

THE COURT: Mr. Jaffe.

MR. JAFFE: Yes, sir.

THE COURT: You can be seated if you want, Mr. Fitzgerald.

PROSPECTIVE JUROR NO. 003: I'll stand in respect to the Court. Thank you, Your Honor.

THE COURT: Thank you.

VOIR DIRE EXAMINATION

BY MR. JAFFE:

Q. Mr. Fitzgerald, you indicated that as of right now based upon what was asked, you would -- what was not asked, you would favor one side.

Did I say that correctly, sir?

A. Yes.

Q. Does that mean that if -- because see what's going to happen is Mr. Cloward gets to finish his questions. Then I get to ask my questions and those

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

THE COURT: Sure. Probably a good idea. So for these four, let's start with Mrs. Her her. Tell us your name and badge number, ma'am.

PROSPECTIVE JUROR NO. : Vicky Ellen her her 063.

THE COURT: How long have you been in Vegas.

PROSPECTIVE JUROR NO. : a year and a half.

THE COURT: That's not very long welcome.

PROSPECTIVE JUROR NO. : thank you.

THE COURT: What do you do for a living right I'm retired.

THE COURT: What did you do.

PROSPECTIVE JUROR NO. : I used to work to the federal government department of defense as compensation analyst I'm divorced I have two adult children my 38-year-old son works for department of defense and my 35-year-old daughter works for the department of transportation.

THE COURT: Okay.

PROSPECTIVE JUROR NO. : \and\{,?}and there was another I have never been on a jury before. Is that all the questions.

THE COURT: That's probably it other ones about your spouse, but you said.

PROSPECTIVE JUROR NO. : well, he was United States Navy, and then retired he worked as civilian for the Navy.

THE COURT: Okay. Never been on a jury before.

PROSPECTIVE JUROR NO. : nope.

THE COURT: Thank you, ma'am. Mr. Dare dare how long in Vegas.

PROSPECTIVE JUROR NO. : eight years.

THE COURT: Tallols your name badge number.

PROSPECTIVE JUROR NO. : Jonathan dare dare I have NO.L : Nicholas in Las Vegas for for three years group reelingser evasion special at the cosmopolitan I have a girlfriend she works as a honestiesest azurite I am kitchen I never served on a jury, and I have no kids.

THE COURT: Okay. Thank you. Let's see, Mr. Is it did you play.

PROSPECTIVE JUROR NO. : yeah.

THE COURT: Mr. Did you play how long in Vegas tallols your name and badge number please.

PROSPECTIVE JUROR NO. : mark did you play 064 been in Las Vegas for 15 years, director of

financial planning at New York, New York, single, no kissed,.

THE COURT: Served on a jury.

PROSPECTIVE JUROR NO. : \have I\I have not served on a jury before.

THE COURT: All right. Thank you, sir. Mr. Saxton.

PROSPECTIVE JUROR NO. : Michael Saxton 056.

THE COURT: Mr. Saxton how long in Vegas.

PROSPECTIVE JUROR NO. : 29 years.

THE COURT: That's a long time.

PROSPECTIVE JUROR NO. : yeah.

THE COURT: What do you do for a living.

PROSPECTIVE JUROR NO. : I'm retired.

THE COURT: What did you do.

PROSPECTIVE JUROR NO. : IT manager for local architectural firm.

THE COURT: You have a spalls or significant other.

PROSPECTIVE JUROR NO. : yes I'm married.

THE COURT: What does your outside do.

PROSPECTIVE JUROR NO. : she's retired.

THE COURT: What did she do.

PROSPECTIVE JUROR NO. : homemaker.

THE COURT: Okay. Do you have any adult children.

PROSPECTIVE JUROR NO. : no.

THE COURT: You ever served on a jury.

PROSPECTIVE JUROR NO. : no.

THE COURT: You four that just joined the jury panel, you have heard allot questions previously, number response to all of those questions that you heard previously, any of you have any information that you want to share with us before the attorneys come up and start asking more specific questions. You know what the questions are going to be so, anyone feel like you need to share something that's relevant? No. All right. Mr. Cloward, it's all yours.

MR. CLOWARD: Thank you.

MR. CLOWARD: Okay. Let me talk to the new folks and ask you a couple of questions, and you know, I just want to want to say one thing, you know, I could judge a pie Conn test you know, I could do that. That's what the law said you know or whatever I could do that. Just like, you know, my mother in law that was sued and has one view of a personal injury case she could silt on a jury, she could do that, she could follow the law, but I know me personally I couldn't be fair, Judgeing pie bacon test knowing I don't like

cherry pie. And so, you know, that's what I want to talk about is the difference between, you know, yeah you can do what the law says, but are the Conn test than thes in the pie baking Conn test really going to get a fair fight or you know are you going to have some some views that you bring that you bring with you. Ms. Vera, you know Mr. Jaffe asked you some questions, and you know earlier in the day you indicated to me that, you know, you wouldn't feel comfortable with someone like your with your frame mind sitting on a jury knowing what you know, and so forth. And I know me I wouldn't want someone with my frame of mind in a pie baking Conn test knowing what I know. And there's difference of following the law what the Judge says you got to do, versus, you know, what my view might just be because of my -- my my values might be it might color it a little bit, and the people might not have a fair shake. And can you can you just level with me, can you, you know, be brutally honest on those issues do you think that you have a little -- a difficult time, bailed on the way that you feel on pain and suffering and the amounts that we talked about, and you think my client would start off just even if it's ever so sightly in a different position than Mr. Khoury.

MR. JAFFE: Your Honor I have to object.

Rule 7.70A, this is about questions asked and answered we've already had a ruling.

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

MR. CLOWARD: I just want I want a fair fight that's it. You know.

PROSPECTIVE JUROR NO. : and and I I want to do my duty.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : the way you asked the question was based on feeling, the way the other attorney asked was based on fact.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : and evidence, and proof, and if it sounds like I gave two different answers, I apologize for that. But I asked I answered \your\you're question the way you asked the question, and I answered the other attorney's question the way he asked it.

MR. CLOWARD: Sure, and I.

MR. CLOWARD: And I appreciate that. And I think you done a really nice job telling us, you know, your views and the way you feel about things and I appreciate I appreciate that. Do you think that you know, if if my mother in law who was say, you know she was sued, do you think that if she was sitting on a

jury, do you think that may be the way that she viewed like the actual let's say, based on her experiences she puts on a pair of glasses and that's the way she views certain things. And then my -- my aunt Nancy or, you know, my mother in law is he see it is one way and my aunts Nancy who is the store owner, you know, she sees facts a different eyebeamsed on her experience it's okay because they both had different experiences they both, you know, they both have different ways that they see the same the same fact. And so the question that I have is do you think that bailed on, you know, your experiences and you're values and your beliefs that you know that might might color the facts in a specific way that my client might not have the same fair fight that Mr. Khoury and you know it's okay to have beliefs it's okay, but I just want to know, if you think that your views, you know, the facts might be colored just a little bit based on your beliefs and values?

PROSPECTIVE JUROR NO. :

MR. JAFFE: Your Honor same objection.

PROSPECTIVE JUROR NO. : I don't know.

THE COURT: Overruled.

MR. CLOWARD: Sure it's hard to know isn't it? Till you hear the the facts that's the one frustrating part about this we can't tell you anything

about the case Mr. Jaffe and I would move to do that go ahead.

PROSPECTIVE JUROR NO. : well if you can't tell us anything about the case why was the amount of money brought up.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : why was that even said and I think that's why I'm having trouble now,.

MR. CLOWARD: How come you're why.

PROSPECTIVE JUROR NO. : I feel frustrated right now.

MR. CLOWARD: Sure I know this process is frustrating. I'm sorry about that.

PROSPECTIVE JUROR NO. : and I feel like I've already answered \your\you're questions, I feel like I'm done.

MR. CLOWARD: Okay. I appreciate that.

PROSPECTIVE JUROR NO. : that's the way I feel.

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

PROSPECTIVE JUROR NO. : being brutally

honest.

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

MR. CLOWARD: Mr. Do you have a first name.

PROSPECTIVE JUROR NO. : Jonathan.

MR. CLOWARD: May I call you John.

PROSPECTIVE JUROR NO. : no problem.

MR. CLOWARD: Okay. Your last name is kind of it's not toes read so I will call you John is that okay.

PROSPECTIVE JUROR NO. : no problem.

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

PROSPECTIVE JUROR NO. : \well\well{,}\{--}well{,} I mean, I know jurors are all the selected to be fair. And we all have our own opinions, you know I'm I'm a dancer, and there's a bunch of competitions where they have judges ander that's all Stiles, one judge may not like this style, but that's not fair. Soar a they're going to judge basis on, you know, what is fair.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : so I agree with her as well that $2 million it's making us bias, but we don't know what the exact facts are, because it could be completely different when we find out the facts. But I don't think it's fair for us to be bias just because of a number that's thrown out before the actual case is being brought to us.

MR. CLOWARD: Okay. So kind of like in -- in in your line of work, you're there are certain judge who is already have kind of a different view on certain things.

PROSPECTIVE JUROR NO. : yeah sort of like all Stiles there's break dancing there's locking there's all these types of dances and each judge is specifically for like they're good at that style, but they Judge other Stiles. So it's not fair for them just because on their opinion, their style is better than everyone else's they can't be a judge that's why we're here and that's why I think our opinions are our opinions we can't judge other people because they have their opinions.

MR. CLOWARD: Sure. Let me ask you this question: And you know there are lots of different cases, and, and just because you know maybe someone has a view on on one specific case, doesn't mean that

they're not a good fit for a totally different a different case. Let me ask you this, though: Other than break dancing what's another popular kinds of dance?

PROSPECTIVE JUROR NO. : I do choreograph, so I'm in the hip hop crew locally.

MR. CLOWARD: So hip hop and break dancing those would be two different types of dancing.

PROSPECTIVE JUROR NO. : yeah choreograph break dancing locking popping those are all different types of dancing.

MR. CLOWARD: Which ones do you feel like you like the best your very favorite.

PROSPECTIVE JUROR NO. : \well\well{,}\{--}well{,} with choreograph all these Stiles are included-r \so\{,}so\{,}so{~}... I mean, I started out doing popping, but as I went on, to experience other things, I liked started liking more.

MR. CLOWARD: Okay. When you talked about, you know, some judges that you deal within your career, and your line of work, maybe they don't like a specific style, now, tinge would be possible for them to judge, you know, let's say you had a hip hop dancer and then you had a break dancer do you agree with me that, you know, they could judge that, they could do the judging

do you agree with that.

PROSPECTIVE JUROR NO. : yeah because I'm not them. With me, I I have my own opinion but I'm not going to base that off what the facts are so I don't know about them, but I know what I know. And, and just because I I have my own opinion, I'm not going to be like I'm this is wrong I'm right, you're wrong.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. :s in facts are brought \{^en}\{en^} to me then I will be like okay. Maybe my opinion wasn't right or maybe it was right. But I don't know.

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

PROSPECTIVE JUROR NO. : yeah.

MR. CLOWARD: So imagine that you had a, you know, a judge that all he did was break dancing and that's all that you know that they did, and then there's a a Conn test, where break dancing, and then, ballroom dancing is is, and he's asked to, you know, to Judge those two Conn tests. Do you think that even though he could, you know, he could judge them he could physically do it he could go down there he could do it it. Do you think that he might have a little bit of a bias toward, you know, the break dancing.

PROSPECTIVE JUROR NO. : depends on that person.

MR. CLOWARD: Do you think it's.

PROSPECTIVE JUROR NO. : because like me, where I'm going to be fair, if they're really good if the ballroom dancer is really good, I'm going to be fair. You know, if that breakdancers really good I'm going to be fair.

MR. CLOWARD: Yeah.

PROSPECTIVE JUROR NO. : the fact is fact if they have proven that they are good, then yeah. Of course. I don't know that other person. I don't know what they're going to do, but for me fair is fair.

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

PROSPECTIVE JUROR NO. : when I first heard the number, yeah, it was a little shocking.

MR. CLOWARD: Okay.

PROSPECTIVE JUROR NO. : as far as pain and suffering, I guess, I don't know if it's the same kinds of thing, but you, you know, when you find something in your food, there are people that like, you know, what I'm going to bring it to the attention I'm

going to get my bill taken care of.

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

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

MR. CLOWARD: Okay.

PROSPECTIVE JUROR NO. : I mean, I may bring it like hey there was a hair here, but that's okay don't worry about it. I'm knotted not trying too do it just so I can get a free meal.

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

PROSPECTIVE JUROR NO. : \right\{,}right\right{,}\{,}right{,} \right\{,}right\right{,}\{,}right{,}, and you got the 2 million was a big deal, but for pain and suffering, as far as bills, go, in the long run, that I believe, you know, it wasn't their fault that they should get the amount that was actually taken out from their life, and if it was life changing then yeah.

MR. CLOWARD: Is that just for bills or is that for, you know, you know pain and suffering you can't, you know, you can't push a button on somebody, and it print a receipt and says hey this is this the amount Mr. Jaffe alluded to that that's something we all struggle with we wish there was a computer program

that we could plug it in and calculate it, but it's so \personal\personnel to each person that it's really tough.

PROSPECTIVE JUROR NO. , right.

PROSPECTIVE JUROR NO. : that's the hard thing to judge.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : that's why I guess fact comes into play, I don't know how much fact we can get to know how much they're going to suffer in the long run. So yeah, I'm not quite sure.

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

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

MR. CLOWARD: Okay.

PROSPECTIVE JUROR NO. , but I don't know what right now is fair. In this case.

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

PROSPECTIVE JUROR NO. , right.

MR. CLOWARD: That's right. Okay. Let me think, how do you feel about personal injury lawsuits in general?

PROSPECTIVE JUROR NO. : in general, I mean, I don't really have a bias you know, opinion about it it. If there's if people are trying to do it just because they want money or people are actually doing it because they need or they got injured. Yeah I don't really have a bias opinion about it.

MR. CLOWARD: And then the other question was, if a let me go back. Oh, the do you have any beliefs that in order for someone to have a significant injury, you have also got to have a significant crash like a roll over something like that?

PROSPECTIVE JUROR NO. : no. So yeah, I believe we all we are all different shapes and sizes, I'm a skinny guy I'm sure can I get I get hurt really easily, but I can do the same thing as some other person and I will get more hurt than them just because they're biggish than me.

MR. CLOWARD: I'm bigger than you, but I bet you could do about 15 times more push-ups then me I might get one. If someone was helping.

PROSPECTIVE JUROR NO. : just depends on the impact I guess.

MR. CLOWARD: Thank you. Appreciate it. Mr. Is it did you play.

PROSPECTIVE JUROR NO. : yep.

MR. CLOWARD: Did you play how are you today?

PROSPECTIVE JUROR NO. : great.

MR. CLOWARD: Can I talk to you a little bit.

PROSPECTIVE JUROR NO. : sure.

MR. CLOWARD: Mr. Did you play, you have been here we have been having this long discussion I have been droning on, and I'm trying to get through this. You can tell me do you have any thoughts or you know when I first \stood\instituted up here and I said hey I just want to be brutally hones, I want to be brutally honest my client suing for millions of dollars, and did you have any views one way or another did you kind of like holy smokes this lady I, I am just wow,.

PROSPECTIVE JUROR NO. : honestly, you know, I don't I don't disagree with the principal behind it. But, you know, by trade, I'm an analyst, and just the way that I think, I'm an analyst also.

MR. CLOWARD: What do you could.

PROSPECTIVE JUROR NO. : financial planning and analysis. But it's difficult for me to really, you know, say one would I way or another the big of course picture or what was going on just like at

work every situation is unique and every situation is different so until you have all the information, it's hard to say what's fair and what's not. I don't I don't disagree that pain and suffering is is a possibility, yet in this, been discussed before $2 million may be the right number. But until I until I see all that.

MR. CLOWARD: Information.

PROSPECTIVE JUROR NO. : impair Cal data it's hard for me to say one way or another whether it's fair.

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

PROSPECTIVE JUROR NO. : no.

MR. CLOWARD: And thank you and the $2 million the first you're kind of shocked but as you think about it, you don't you know you're not like oh, there's no way there's not a ceiling I think it was Mr. Waker, he just said hey look there's no way I could ever get above that no matter what the factings showed are you like that or not?

PROSPECTIVE JUROR NO. : not at all, but I will say that, that that's not the number nay would start at. If that makes \sense\essence so it's definitely it is really big number. So it requires a lot of it requires a lot to get to that number, but it's -- it's not something that I that I find impossible.

MR. CLOWARD: Okay. Thank you. And then regarding the automobile crashes and things like that, are you someone who believes that in order to have a significant or serious injury, you know you got to also have a significant, you know, like a rollover or something like that.

PROSPECTIVE JUROR NO. : not at all I have actually been in a rollover, and I was fine.

MR. CLOWARD: And you're still here.

PROSPECTIVE JUROR NO. : yeah, I was actually completely fine but the car was done, but I climbed out a big hole in the roof but when I yeah nothing happenedded so, you know,, there's there are a lot of factors that come into play so certainly anything anything could happen.

MR. CLOWARD: All right thank you. Appreciate it. Mr. Saxton, how are you today.

PROSPECTIVE JUROR NO. : fine.

MR. CLOWARD: Or this afternoon getting kind of late in the afternoon. We've had a lot of talking today. About pain and suffering, about, you know, the amount, $2 million and so forth. Tell me your thoughts about that.

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

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

PROSPECTIVE JUROR NO. : no. I don't have a position.

MR. CLOWARD: Okay. Thank you. You can tell me what about the, you know, the property damage you feel that someone in order to have a significant injury would need to have, you know, correlating significant property damage.

PROSPECTIVE JUROR NO. : I don't think it's really I don't think that the two are relateed.

MR. CLOWARD: Tell me why.

PROSPECTIVE JUROR NO. : well just ,

there's a I mean, can you have a very small accident,.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : and have a, you know, a mental trauma, from I mean, it could affect you greatly.

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

PROSPECTIVE JUROR NO. : yes.

MR. CLOWARD: That's fair too say.

PROSPECTIVE JUROR NO. : I believe so.

MR. CLOWARD: Okay; is there anybody that disagrees with Mr. Saxton on that issue on that very specific issue? Okay.. Thank you. Ms. Her her is it Mrs. or Mrs.

PROSPECTIVE JUROR NO. : I'm divorced so I gets it's Ms.

MR. CLOWARD: What do you prefer to be called.

PROSPECTIVE JUROR NO. : Vicky.

MR. CLOWARD: Vic O Vicky tell me a little bit about how you think.

PROSPECTIVE JUROR NO. : well when you said in excess of two and a half million I just

thought, that was the number that was thrown out there, but it wasn't the final result.

MR. CLOWARD: Sure.

PROSPECTIVE JUROR NO. : there's information that has to be provided before the decision can be made.

MR. CLOWARD: Sure.

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

MR. CLOWARD: Okay.

PROSPECTIVE JUROR NO. : there's too many factors.

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

PROSPECTIVE JUROR NO. : no. I think pain and suffering is something that's very difficult to put a price tag on.

MR. CLOWARD: It is.

PROSPECTIVE JUROR NO. : yeah, so you know a lot of information is required.

MR. CLOWARD: Do you have any -- any views or, you know, Mr. Jaffe asked some questions about could you do this or could you follow the law could you

do this, and and that's one question, but another question is is do you feel do you have any views or opinions like Mr. Evans, or Mr. Waker, you know, they just said flat-out look I don't believe in that concept as a concept, and so I couldn't -- I couldn't do that. Do you have any beliefs like that?

PROSPECTIVE JUROR NO. : no when it comes too frivolous lawsuits, the only ones we hear about, are the ones the media find interesting.

MR. CLOWARD: Yeah.

PROSPECTIVE JUROR NO. : and the majority of those are frivolous so there are valid lawsuits out there.

MR. CLOWARD: Okay.

PROSPECTIVE JUROR NO. : it's just a question of whether the information's supports whatever the the result, you know.

MR. CLOWARD: Yeah.

PROSPECTIVE JUROR NO. : yeah.

MR. CLOWARD: Okay. I appreciate that. Thanks.

MR. CLOWARD: Okay. You know we have talked a little bit about frivolous lawsuitses and the impact those have on society. I think everyone can agree that our community, you know, lawsuitings involving thumbs

being put in \chilly\Chile and things like that, that's not good for the community, so my question is this: Are there when there is a legitimate lawsuit, is there a danger to the community of having a jury not enter into the verdict form the full and fair amount for the harms and losses caused by the defense or the defendant? So for instance, if if if the defendant causes something you \Noel\knoll like in the heme hemophiliac example, if president defendant does something and and the jury in that case said you know what I feel bad for him, so I'm not going to I'm not going to award the full amount of damages. Is there a danger to our community for not doing that?

Mr. Frasier?

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

PROSPECTIVE JUROR NO. : to where a jury doesn't like provide for pain and suffering in a proper manner.

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

PROSPECTIVE JUROR NO. : that, I have no

answer for: I don't know.

MR. CLOWARD: Anyone else have thoughts on that?

PROSPECTIVE JUROR NO. , you know, a minute ago somebody said it doesn't sell up ins, but not many people bite up in any more any ways. So.

MR. CLOWARD: You can see it online.

PROSPECTIVE JUROR NO. : so that's not a solution.

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

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

THE COURT: Sure.

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

THE COURT: All right folks we're going to go ahead and take our evening breaks sorry folks I'm going to have to have everybody come back tomorrow again. I know that doesn't make you happy we were hoping we could get a jury picked today but it's just not going to happen tomorrow morning I have a morning calendar at 9:00 o'clock, so we have to start a little bit later,

but I think it's goodbye to be a quick calendar, so I'm to have everybody show up at 1030 tomorrow go for an hour and a half probably till the lunch, and we'll get the jury picked tomorrow. That's going to happen. During our break tonight you're instructed.

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.

That means don't talk with each other about anything you have heard or seen don't talk to anybody else about any family members just tell them the jury hasn't been picked yet you can't talk about it you have to come back tomorrow you'll know by the end of the day

tomorrow whether you're on the jury or not. You folks in the box make sure you remember where you are so when you come back tomorrow you can sit in the same seats I didn't get to the preliminary instructions I usually talk to people about, but if you want to bring drinks and stuff in here I'm fine with that I want you to be comfortable that goes for everybody just don't bring something that's going to make a mess because we try to I'm going to try to move this along as quickly as we can to make sure we get you guys out of here by next Thursday the problem if you bring something, and you spill it and you make a big mess we have to it's going to cause delay while we clean it up so, I mean, if you want to bring a snack I sit here and munch on M&Ms, and drink my Gatorade, it doesn't make a mess, so as long ass as you can bring something that doesn't make a mess I'm fine with that if is going to make a mess don't bring it. We will give you a usually break in the morning break in the evening, and a lunch break do you have a question.

PROSPECTIVE JUROR NO. : are we Gregory come back to the Court or go to the third floor.

THE COURT: You come back to the floor ^KRISTY CHECK that was Fitzgerald.

THE COURT: I'm wrong. Since air notaeum

paneled yet you have to go to jury services and check in.

PROSPECTIVE JUROR NO. : what time, Your Honor.

THE COURT: Go before February 30 you so can be up here at 1030.

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

THE COURT: You have a question, ma'am.

PROSPECTIVE JUROR NO. : we get a work \excuse\skews today 010.

THE COURT: How do you do work excuses Randy?

THE BAILIFF: I will discuss it with you outside.

THE COURT: Randy knows the answer to more of these questions than I do. All right folks, thank you for your time, yes another question.

PROSPECTIVE JUROR NO. : could we wear our badges in for downstairs and up here ^KRISTY CHECK Unger.

THE COURT: You have to keep wearing those

until you get the new ones see you tomorrow.

PROSPECTIVE JUROR NO. : young do we need to check out on the third floor.

THE COURT: Ask Randy ^KRISTY CHECK Madrigal.

THE COURT: Yes, ma'am.

UNIDENTIFIED SPEAKER: I haven't spoke up earlier about my child care issues because I'm not sure what I'm supposed to do.

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

PROSPECTIVE JUROR NO. : it was 106. ann boon.

THE COURT: I remember I wrote it down.

PROSPECTIVE JUROR NO. : I wouldn't I wouldn't say anything it's just that my it's my three 1/2 \year old\{-}year-old and she qualifies for special education,.

THE COURT: I understand because.

PROSPECTIVE JUROR NO. : because of her social anxiety.

THE COURT: R you're excused tell them on the third floor that I excused.

PROSPECTIVE JUROR NO. : I'm sorry I apologize.

THE COURT: You're fine I'm sorry.

THE COURT: Have a good day, ma'am.

THE COURT: Badge No. 106 Ann boon.

MR. CLOWARD: Briefly one thing on the record, Your Honor. We would like to hands Mr. Jaffe plaintiff's bench brief regarding the I believe of jury selection. Your Honor may I provide with you a copy.

THE COURT: Sure come on you up.

MR. CLOWARD: And this will be filed tonight thank you.

THE COURT: Okay. We're outside the presence of the jury. Pursuant to the Jitnan case I have to make a record on why I either granted or denied the motions challenges for cause, with regard to the first challenge which was Mr. Frasier, the challenge for cause was denied, based upon the fact that he said that he was willing to follow the law, he was treating both sides equal, and he previously had said that most cases were frivolous, but he acknowledged he didn't know this case was frivolous because I didn't know the facts yet I got the information from the information overall that he was going to be fair and impartial and listen to the facts before he made a decision. With regard to challenge No. 2, which was Evans, Mr. Evans specifically said that he would he could not make an award for pain and suffering under any circumstances and based upon that, I granted the challenge. No. 3,

challenge was Mr. Walker, I granted this challenge based upon the fact that he said that he was uncomfortable with 2 million-dollar suggested damages he thought that amount was ridiculous, he said that he would give both side on equal shake, but he said that the amount that an amount that large meant to him that the case was frivolous. The fact that he said that just just requesting an amount that large meant to him that the case was frivolous I got the impression overall that he was not going to be able to be fair that he had a bias that you wouldn't be able to overcome the fourth challenge was Mr. Runs, based on the let's see. I -- I denied the challenge with regard to Mr. Runs. Because he said that he would be willing to award pain and suffering if the if the situation justified it, that's the only note I had down so that's why I denied the challenge on him. On Ms. Vera, she said that I denied the challenge on Ms. Vera she said that she could award pain and suffering consistent with the law, in determining what was fair she would have to listen to the facts and any award she made would depends object the circumstances, I did not feel she was biased to the extent that justified a cause excusal. Sixth challenge was Mrs. One way or another, she said that she would listen to the facts, and if she

believed that a 2 million-dollar award was justified she would consider that. So even though she said initially she thought the 2 million-dollar award was excessive she said she would consider it if the facts justified it so that's why the challenge was denied on Mrs. One way or another the seventh challenge wases to Mr. June, he indicated initially he was uncomfortable with the 2 million-dollar award he was uncomfortable with him self on the jury, and Mr. Jaffe's attempt to rehabilitate him he indicated he would require proof in order -- to award any type of pain and suffering, and that he did not believe anybody should be compensated for pain based upon that I thought there was a bias that justified a cause challenge so we excused Mr. Jeung. The eighth challenge was to Mr. Bulason and the parties stipulatedded to strike Mr. Bulason. Ninth challenge was Ms. Agnor, she indicated initially \she was\shelves uncomfortable with the 2 million-dollar award. She talkedded about intent needed to be involved, she would not want herself on a jury and she said, initially that the defendant would start out ahead, response to Mr. Jaffe's questions she said that she was willing to follow the law and give a fair award for pain and suffering, if if the evidence justified it, she said that the parties were starting at equal

places and she would be able to be fair to both sides. I did not feel there was a bias that effected her ability to be fair and impartial in the case. Anything else we need to put on the record now?

MR. EGLET: , does the Court have any objection to me making a record, Your Honor? As Mr. Cloward's jury consultant in this case? I am a licensed attorney here in Nevada.

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

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

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

MR. JAFFE: Yes, he's not counsel of record in the case. Added a I get \association\Association over in about five minutes Your Honor.

MR. EGLET: I don't think it's necessary, Your Honor. I mean, I could, you know, I could we comate wait.

THE COURT: I'm going to allow to do is it go ahead.

MR. EGLET: Okay. Your Honor, I'm sure as I know, the Court has read the Jitnan decision, which I handled on appeal I was not the Counsel trial counsel

before, as a matter of fact, Mr. jaffe was the trial counsel below the defense counsel on the case before we tried to engage in the same rehabilitation tactics he did here in in case which the Nevada Supreme Court found in Jitnan were insufficient in Jitnan, Mr. Polessen Berg actually handled the appeal, and what the Jitnan court specifically says is that when a jury member of the jury makes inconsistent statements in other words, they say one thing in response to the plaintiffs questioning them and then turn around, and same the opposite when defense counsel gets up and trying fries to rehabilitate them using leading questions that doesn't make them nonbias that doesn't make them more appropriate and qualified to sit as a person on the jury it makes them less qualified to sit as a person on the jury. Because they're making inconsistent statements based on who's asking them the questions. Mrs. Agnor, stated, on multiple occasions, she stated, that she felt that $2 million, and remember, something, the question he posed wasn't just for pain and suffering, it was 2 million his client was going to ask for an amount in excess of $2 million. That wasn't focused just on pain and suffering as Mr. Jaffe tried to imply and convince these jurors it was, when he got up and did his so-called

rehabilitation. It wasn't. He said, $2 million period. That includes all types of damages. And Ms. Agnor stated -- Mrs. Agnor Agnor, excuse me, she's in seat I don't know what which seat I think she's in Seattle four stated that it is extremely excessive that only maybe in a death case would she think that that would be appropriate. She stated that and I wrote these down, that she stated that even if a person was never able to work again, $2 million would be too much would be two excessive so she's talking about their she's not even talking about pain and suffering she's talking about even if somebody loss their complete \100{~}percent\a hundred percent their capacity to work the $2 million would be too excessive in hear mind she's not even talking about just caps on on pain and suffering she's talking about caps on special damages as well. That's what she said, it will be in the record. Clearly Judge. Ms. Agnor also stated unless the plaintiff is totally disabled or missing a limb, this is her words, not coming from Mr. Cloward, these came from her lips, unless the plaintiff is totally disabled, or missing a limb, she would -- could never go anywhere near $2 million. For any one this is her words, $2 million is unfathomable that's the word she used I wrote it down. Unfathomable it's too much

money. That someone that anyone could be hurt in a motor vehicle accident and deserve that kind of money is Your Honor that's what she said those weren't Mr. Cloward's words those workeds came from her mouth. She also said, that she felt that she could never award that kind of money unless somebody hurt the person on person. She required their to be intent not just mere negligence. Then when Mr. Cloward asked her the hypothetical and said I know you probably wouldn't do this, but if you were injured and were a plaintiff in a personal injury case, and you knew that your attorneys were going to be asking for millions of dollars for you, do you think you would feel comfortable with with somebody with your state of mind sitting on your jury? Was there no hesitation, she said no. She said yes, I would be uncomfortable. I would not want someone with my state of mind sitting on my jury, Your Honor. She also says, that she agrees that because of that, she is not the right fit for this type of case, she agreed with that she has stated that the plaintiff and the defendant are not starting at the same start line that the defendants are starting ahead of the plaintiff on the issue of damages and that these are long held beliefs that nothing that anyone said including, Your Honor, was going to change her mind on this issue.

Now, the fact that Mr. Mr. Jaffe got her to get up and say -- well,, you'll follow the law that judge gives you won't you, that doesn't qualify her under the law as a an appropriate \juror\Juror understand Jitnan or any other cases, that Your Honor has seen in this brief multiple times, in the past. That is not the law. The fact somebody says oh, yes if the judge tells me that -- that pain and suffering damages are appropriate, then I will, you know, I guess I will consider her. Consider them. Her inconsistent statements makes her less qualified as a juror than they -- than more qualified. And the Supreme Court in the Jitnan case, like Ms. Both Ms. Vera and Mrs. Ago in a -- Agnor who stated she had proves with purge that \juror\Juror stated that he did not believe in punitive damages as well. Both of these women said that that they had problems and did not believe and Ms. Vera said she in fact believed she felt exactly the same way Mr. Evans did with respect to pain and suffering damages. That's what she said. I feel exactly the way Mr. Evans did -- does with respect to pain and suffering damages. In approximately Jitnan case that was exactly the issue. That juror was challenged for cause, Judge Vega allowed Mr. Jaffe to rehabilitate him, and he changed his mind in in rehabilitation, and

then the supreme court came back and says wait a minute, you know, you can't have these inconsistent statements he never stated unconditional unqualifiedly that he would be willing to award appropriate amount of pain and suffering damages. So Ms. Agnor and modification both stated that they -- it was clear from their testimony, when she says well they both said it was $2 million we had a problem with. Well, that is an indication, that they have a preconceived limit before this case even starts, of be a amount of money they will not go over regardless of what the evidence is. Mr. Cloward asked them, verified with them regardless of what the evidence shows, $2 million is just not something you could get to, Ms. Agnor says unfathomable Ms. Vera says no way. That she can get to those kinds of damages \judge\Judge{~} so when you have jurors who are making these kinds of statements, and then on so-called rehabilitation, they say well I can follow the law and if the Judge says to me, I can I have to consider pain and suffering damages that doesn't change what they said on their testimony under voir dire in approximate response to the plaintiff's question ings. Now, specifically, Ms. Vera, says, specifically she says I agree with Mr. Evans. There should be no compensation for pain and suffering. Those are her

exact quote of what came out of her mouth I wrote it down. She thinks of her sister who who was in a motor vehicle accident and she didn't ask for pain and suffering, and she is still out there working. She went back to work she didn't ask for any pain and suffering, she doesn't believe in pain and suffering, that pain and suffering should be an awarded in a personal injury case. She then says, later, that she shares the same values and beliefs as Mr. Evans, that's what came out of the her mouth. He gives her the hypothetical about if she was an injured party bringing a personal injury case sitting in the seat of the plaintiff, would she feel comfortable with someone with her state of mind being a juror in her case, she says no, I would not feel comfortable with that. At all. She says, that she's held these beliefs and values for a long time. She didn't just come in here today and state these things that. No one is going to change her mind on this. Not Mr. Cloward, Mr. Jaffe or Your Honor, and that this she agrees that she is not a good fit for this type of case because of these preconceptions she has, about damages. And that the parties are not starting on the same start line, that the defendants are staterring ahead of the plaintiffs when it comes to the issue of damages. Your Honor. So

we will reserve our arguments on the other ones we made motions on earlier, but with respect to those two with all due respect Judge \it's\{^}'s the not even a close call when it comes to those women they can't come in and say later in response to a leading \question\Question{#G}, yes, I can be fair and impartial, when all indications are from their testimony, is in fact, that the cannot be fair and impartial when it comes to that issue. At least when it comes to the issue of damages. And remember, the United States Supreme Court and this isn't just a -- this isn't just a Nevada Supreme Court this is the United States states Supreme Court has recognized that the fundamental importance of am panel a fair and impartial jury stating it is difficult to conceive of a more effective obstruction to the judicial process than a juror who has pre \judge\Judge{~}ed the case, these two jurors with respect to the issue of damages, have pre \judge\Judge{~}ed the case, and they have clearly indicated that they're not open to the idea that this case could have a value in excess of 2 million-dollars. The Nevada Supreme Court reaffirmed that whether or not a juror should be removed for cause is based upon whether the panel members view could substantially impair her performance of her duties as a juror in

accordance with the Court's instructions. These two women have clearly indicated that they that their views could substantially impair her performance and let me point out Judge, no trial judge has ever been reversed for excusing a jury for cause. Ever. But many trial judges have been reversed for not excusing a jury for cause, and allowing that case to go to trial, when there's a potential that that -- these views could substantially impair their abilities, and therefore the Court says the Court should err on the side of caution, and excuse someone who could potentially whose views could potentially impair their ability to serve as jurors and excuse them. The Court also has held that the respective jurors must be excused if their views can substantially impair their ability to perform their functions as jurors and is that the impairment need not be shown with unmistakable clarity. We don't have to show this beyond a reasonable doubt. By clear and convincing evidence or even by a preponderance of the evidence. If there's a chance that it could occur, and there's clearly much more than a chance, with these women, the Court should excuse them. So that all parties, make sure there's actually a completely fair impartial and unbiased jury before this case begins, on all issues on all issues including the issues of the

amount of damages. As the supreme court stated our supreme court stated, in in Thompson, it is not enough for the Court or defense counsel torques point to detached language as I suggest Your Honor has done on some of your rulings, specifically with these two women, to point detached language which alone considered would seem to meet the statute requirement. If on construing the whole declaration together there's an than the juror is not able to express an absolutely belief that his or her opinions will not influence his or her verdict. That's the standards judge. Not if you can pick out some language that Ms. Vera says well I can follow the law or where Mrs. Agnor says well I can follow the law. That's not enough young. Or that I think I can be fair and impartial or I will consider pain and suffering even if it's up to $2 million. That's not the law. You have to consider everything they said together and everything they said together considered as a whole this isn't even a close call Judge. This is reversible error with all due respect to let these two women continue on this panel.

THE COURT: Let me ask you a question Mr. Eglet because I think Ms. Vera made a good point in response to one of the attorneys questions she said that that the distinction was feelings versus facts.

And she she made a point that I think it was Mr. Cloward was asking her about feelings, and Mr. Jaffe asked what was her response in regard to facts, and were there facts that would justify her giving ag awards and she said yes.

MR. EGLET: Feelings with views Judges. A person's viewpoints you can express it as a viewpoints or how I feel about something, that's the same thing. And the supreme court is specifically set state a panel member's views could substantially impair her performance or abilities as a juror. Now, that's the same thing. You want to call them feelings you want to call them point of view it's the same thing what's the distinction? There is no distinction. And that's why the that's why the Court doesn't say facts. It says, views. The viewpoint of that person. That's why we do this, that's why their viewpoint important that's why we have people who just can't be fair and impartial because they have viewpoints. Mr. Evans says he doesn't believe in pain and suffering. Ms. Vera -- Ms. Vera said the same thing. She said she agrees exactly with what Mr. Evans said, that's what she said. Those words came out of her mouth Judge. Nowhere else. And so when it's -- in this situation, you can't just you constant, and the supreme court said Jitnan it said

this in the Thompson case and the Court cited in this brief which I have written in I think you're right this basically this brief was published in the NJA in sections, over the last several months, it cites to case law all over the country which says the same thing, and it talks about the fact in case after case and study after study, that in fact, Judges intimidate these jurors when they go to ask those questions and I know you decedent that, but there's no difference between opposing counsel gets up and says well you're going to follow the law, right? I mean, of course people are going to say they're going to follow the law. Nobody wanting to sounds like they're not going to follow the law even Mr. Evans said well yeah I will follow the law I will follow the law because I don't want to be held in contempt that's how they all feel anybody ask them are you going to follow the law are you going to do what the judge tells you to do or are you just go going to ignore and do willy-nilly what you want of course they're going to answer that magic question that way, and that's all the case law says around that country that of course they're going to say that in New York they don't even allow the judges to be in the room when jury selection goes on did you know that because of that very issue? Only the attorneys

are permitted in jury selection. The judges are not permitted. Because they intimidate the jurors. So I'm not suggesting that you did that that in this indication judge, but what eye point is is if you say to anybody who's been taken an oath in a courtroom with a bunch of strangers who they don't know for the first time, and say well air going to follow the law, like Mr. Jaffe did here, just like he did in the Jitnan case, and when our supreme court found that Judge Vega committed err by not dismissing that juror. Now, since that case Judge, Supreme Court has set forth a series of what we have to do so I'm going to tell you Mr. Cloward, if this doesn't change will not pass this panel for cause, will refuse to do Judge. That's what's going to happen because that's what the supreme court says he has to do in Jitnan to preserve the record. So he will be , but this isn't even a close call so, Your Honor, I I am employer you could reconsider with respect to these two jurors and, you know, we will I will look at my notes and counsel will discuss this with Mr. Mr. Cloward tonight and in the morning about the other people he made motions on, but with respect to those two, Your Honor, Ms. Vera and Mrs. Agnor, it's not even a close call. It just isn't. Thank you.

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

MR. JAFFE: Couple of things, Your Honor. First off, I'm not going to sit here and debate counsel on the record and rulings and rulings have been made I'm presuming that the Court is not at this point reversing its rulings the record is what it is. The problem was that the questions phrased by Mr. Cloward, were so vague and ambiguous, in approximate terms of constantly saying this issue that issue, to the point in it was impossible to pack and forth what was going on was there even at some points when he was making his argument on the challenges he kept saying on in issue I kept saying on what issue the 2 million the this, the pain and suffering, and it was it was very confusing even for me. Now, when the jurors were then when I asked them, a more pointed question, it was effectively clarifying it question is essentially what these two jurors were the one lady Ms. Vera did say. And they have made it very clear, they can follow the law, but Your Honor, there is no definite standard. But to leave them with an impression it's 2 million or you can't follow the law, which is essentially what counsel was doing, was very disconcerting, it was very disingenuous, and that was why a lot of these jurors

had problems \and\{,?}and mistook what was being asked of them. And I think that became very clear when the jurors all said no, or several of them said, no, we can award pain and suffering, we can award what's fair, we can award it based upon the law, and the evidence presented, and we all know there is no definite standard for what is pain and suffering and damages. We leave that to the jurors to decide amongst themselves. So that's effectively what they have all said they are and can and will do. This was not a matter of strong arming people as counsel Mr. Eglet would certainly have the Court believe. And Your Honor, I believe that we have acted entirely consistent and properly with the law. Now, with that having been said we would also object to the fact that the Court struck Mr. Walker, Mr. Jeung, and Mr. Walker, and Mr. Jeung, I believe that they both said they could award pain and suffering, they could award it fairly, and at least as they believe it to be fair again since there there isn't a definite standards there can be no issue as it relates to that there's no mandate you must award pain and suffering. The jurors don't feel they want to, they don't have to. That's not mandatory. But the point is, Your Honor, they have no definite standards, and that is our law, with Mr. Mr. Evans, I

agree, he was he was -- he was definitely.

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

MR. JAFFE: No, he was dancing to his own tune.

MR. CLOWARD:

MR. EGLET: Case law in Nevada, Mr. Mr. Mr. Jaffe does not know the case law when it comes to pain and suffering. The case law in Nevada is clear. If a jury finds in favor of the plaintiff find they were injured find their medicals awards medical expenses, for their injury any medical expenses, they cannot put zero in the verdict for pain and suffering. And if the judge does not add and conduct additur that is reversible error pain and suffering is required under Nevada law the dromonds case Judge and you know that. You practiced personal injury law for many years know that. That is just a misstatement of the law. In, correct. And that's what he was trying do with some of these jurors up here. He was saying well you know you'll get an instruction on this, but you don't necessarily have to to award pain and suffering that's not true. If they find in favor of the plaintiff, and award any medical expenses, pain and suffering damages are required under Nevada law. That is the law. And

Mr. Jaffe can get up and try to suggest that he was not strong arming or not, you know, when he says to people, the first questions you can follow the law, right? And says that over and over, and whenever somebody starts to say something that's a little bit insquint with what he wants to hear and he says you can follow the law, though, right you can follow the law and if the judge tells you that, you know, pain and suffering damages are something you should consider you're going to follow the law? Well, of course they're going to say that, that doesn't change the circumstances and that doesn't change the fact that, Your Honor with all due respect what you did was you picked out some phrases with these jurors that they might have said in response to Mr. Jaffe's questions, that were completely inconsistent with what they said in response to Mr. Cloward's questions, Mr. Cloward's questions were not at all vague, and ambiguous. They were direct, they were pointed, and these jurors who stated that they cannot fathom damages of $2 million or more in a motor vehicle accident case, then they have a preconceived limit a of an amount they will go to before any evidence has been presented in this case and I have cited you case after case, after case in jurisdictions all over this country who says, that by

itself, that one thing by itself means that juror is not qualified to sit o as a juror in the case Judge \so\{,}so\{,}so{~}... again, I imploratory consider Ms. Vera and Ms. Agnor and we'll make a record on the other ones tomorrow morning judge.

THE COURT: All right. Thanks guys I will look T at the brief tonights at this point I'm not going to change anything, but I will read the brief.

MR. JAFFE: Thank you, sir.

THE COURT: 1030 tomorrow we going to have to do some stuff outside the presence before we bring the jury.

MR. EGLET: Yes.

THE COURT: Why don't you folks come at 1015.

MR. CLOWARD: Thanks Judge.

THE COURT: Have a good day off the record.

(Discussion was held off the record.)

(Thereupon, the deposition concluded at Time)

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, WitName , deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

_____

WitName , Deponent Date

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 deposition of WitName , commencing on day , month day , 2013, at time o'clock am-pm .m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. 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, and that a request has signature waive not been made to review the transcript.

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 day day of month , 2013.

KRISTY L. CLARK, CCR #708

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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 XXII

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VOLUME XXII

Exhibit 50	Exhibit "K" to Defendant's Motion For New Trial, pages 240-292	JA 4122-4174
Exhibit 51	Exhibit "L" to Defendant's Motion for New Trial	JA 4175-4225
Exhibit 52	November 27, 2013, Defendant Raymond Khoury's Opposition To Plaintiff Margaret Seastrand's Motion For Attorney Fees And Costs And Countermotion To Re-Tax Cost	JA 4226-4252
Exhibit 53	December 23, 2013, Opposition To Defendant's Motion For New Trial, with Exhibits 1-4	JA 4253-4364