

1 the TV.

2 MR. CLOWARD: And our law firm does put ads  
3 on TV. So we, you know, we're guilty of that. What  
4 are other things that maybe contribute to that view,  
5 of, you know, Jack pot justice, frivolous lawsuit, you  
6 know, the media sensationlizing you got attorneys that  
7 are, you know, putting in bunch of ads on TV billboards  
8 on the side of the road doing things like that what  
9 else do you think that adds to that.

10 PROSPECTIVE JUROR NO. : well, when I  
11 first moved here somebody told me, when you're driving  
12 down the strip don't drive in the I had inside lane or  
13 the outside lane make sure you drive in the middle lane  
14 because people intentionally will walk-in front of you  
15 so they can gain some profit.

16 MR. CLOWARD: Okay.

17 MR. CLOWARD: You feel like in that even  
18 society, has kind of gotten to a point where they  
19 recognize that a lawsuit is a payday.

20 PROSPECTIVE JUROR NO. : a payday.

21 MR. CLOWARD: Sure Mr. Unger you're nodding  
22 and agreement.

23 PROSPECTIVE JUROR NO. : in agreement.

24 MR. CLOWARD: Tell me your thoughts on that.

25 A. Barton Unger 00 sixer.

1 MR. CLOWARD: Thank you.

2 PROSPECTIVE JUROR NO. : I believe exactly  
3 what she's saying what you just how you just your  
4 analogy that people have we become such a lit justice  
5 society, and we live in in an area where we pay extreme  
6 amounts for insurance I pay for umbrella insurance  
7 policy to protect myself against situations like this,  
8 I own a business I have to take out insurances for  
9 things I have never even heard of before like sign  
10 better threat insurance for my employee I have to worry  
11 about one employee talking about another employee how  
12 that's going to affect me as business owner and so I  
13 see it and live it every day from a standpoint of  
14 trying protect myself and my business.

15 MR. CLOWARD: Yeah. Anything else?

16 PROSPECTIVE JUROR NO. : I.

17 MR. CLOWARD: I appreciate that. Who here  
18 also kind of agrees that you know, society's gotten to  
19 a point where lawsuit equals payout lawsuit, you know,  
20 Jack pot, Mr. Frasier tell me your thoughts on that  
21 tell me how you feel.

22 PROSPECTIVE JUROR NO. : I just wanted to  
23 commend the judge on his statement about America, I  
24 think that somewhere along the line we have lost the  
25 ability really to work hard for stuff, so instead of

1 working hard for stuff, we expect somebody to hand us  
2 something. And if it means I'm going to slip in a  
3 store, and lay there and say I'm hurt that's what I'm  
4 going to do because now I don't have to work. You  
5 know, and it's it just became it's become the norm.  
6 More than the exception.

7 MR. CLOWARD: Easier to-- to, you know, get  
8 rear ended or fall down in a store, then get a bunch of  
9 money, then you know what actually go out there and  
10 work and save, and invest, .

11 PROSPECTIVE JUROR NO. : that's my  
12 opinion.

13 MR. CLOWARD: Who who here agrees with that?  
14 Tell me about that right agree I think.

15 MR. CLOWARD: Ms. Brown sorry.

16 PROSPECTIVE JUROR NO. : I agree that  
17 people want the quick fix. We live in the microwave  
18 society, I mean just the other day somebody hit me from  
19 behind, and nothing happened, I mean I didn't didn't do  
20 anything to my car so I was the lady was really  
21 apologetic so I was like it's fine.

22 MR. CLOWARD: Sure.

23 PROSPECTIVE JUROR NO. : she kept asking  
24 me are you okay are you okay it's fine I don't need  
25 your information it's fine.

1 MR. CLOWARD: Sure. Okay. Anyone else have  
2 a similar experience or similar view? There were some  
3 other folks raising their hand about lawsuit equals  
4 Jack pot lawsuit equals quick buck who here else feels  
5 that way? Mr. Madrigal I haven't heard from you in a  
6 while do you mean one way or another.

7 PROSPECTIVE JUROR NO. : well, I believe  
8 there are a lot of frivolous lawsuits but until you  
9 hear the facts of the case you can't really make a  
10 decision, I'm just neutral I like to I like to weigh --  
11 weight case and then and then make a decision on that.

12 MR. CLOWARD: See from there.

13 PROSPECTIVE JUROR NO. : exactly.

14 MR. CLOWARD: Mr. Rendina you're nodding in  
15 approval do you feel the same way.

16 PROSPECTIVE JUROR NO. : yeah, I mean you  
17 can't judge you can't say anything before, you know,  
18 all the facts, and I feel like everyone is allowed to  
19 come into court if they have any problems or if  
20 something happened.

21 MR. CLOWARD: Okay. Anyone else care to  
22 share some feelings on the Jack pot justice, you know  
23 lawsuit equals lottery, you know, they want to voice  
24 that opinion? Any other comments? Let me ask this  
25 question: Who here believes that the majority some



1 folks believe that the majority of lawsuits filed are  
2 somebody trying to get rich quick, that involve  
3 personal injury, somebody out to get a quick buck,  
4 somebody out to get the golden parachute some folks  
5 believe that other folks believe that the majority of  
6 the lawsuits are legitimate, but there's sprinkled in  
7 there that's.

8 MR. JACKSON: Pot justice question way do you  
9 lean, sir,.

10 PROSPECTIVE JUROR NO. : I think there are  
11 a lot of lawsuits here out there there aren't real that  
12 people have just trying to make a buck that's what I do  
13 for a living is manage for my company, and I see it all  
14 the time 'KRISTY CHECK Evans.

15 PROSPECTIVE JUROR NO. : we do public  
16 events and it happens all the time.

17 MR. CLOWARD: So you feel like that the  
18 majority of lawsuits probably fit into the first group  
19 of folks that they're more, you know, Jack pot-j  
20 frivolous, things like that? That fair?

21 PROSPECTIVE JUROR NO. : I think that  
22 they're why he that I have experienced.

23 MR. CLOWARD: Sure I appreciate that. Who  
24 who else agrees that with with Mr. Evans, badge  
25 No. 012. Who here agrees with Mr. Evans that the

1 majority of lawsuits are, you know, what's the just  
2 frivolous Jack pot justice, oh, boy here we got another  
3 another case here who here also kind of believes that?  
4 That the majority of the cases thank you for being  
5 Pruittly honest with he Mr. Frasier you feel that way  
6 the majority of the cases are frivolous.

7 PROSPECTIVE JUROR NO. : yeah it seems  
8 like everybody's always looking for a way to sue  
9 somebody for something. I mean, whether it's big small  
10 or in between they're looking for quick fix. You know  
11 and Ms. Brown said that she was rear ended once before.  
12 I was rear ended four times.

13 MR. CLOWARD: Wow.

14 PROSPECTIVE JUROR NO. : nothing ever  
15 happened.

16 MR. CLOWARD: Wow.

17 PROSPECTIVE JUROR NO. : one time I hit a  
18 lady, I end up going to court for it.

19 MR. CLOWARD: Got that.

20 PROSPECTIVE JUROR NO. : it was the same  
21 situation a little smack on the behind, and she comes  
22 out holding her neck and all this other stuff, and you  
23 know, zero speed means zero damage.

24 MR. CLOWARD: Sure.

25 PROSPECTIVE JUROR NO. : in my mind.

1 MR. CLOWARD: Who here agrees with that that  
2 you know, zero speed, equals zero damage, and that you  
3 know, fender benders that just people are, you know,  
4 too quick to sue, and that's part of the reason? We  
5 all would you all please raise your hand if you feel  
6 that way. Okay. Tell me tell me about that Mr. Evans.

7 PROSPECTIVE JUROR NO. : to an extent. I  
8 mean, if there's damage, there's damage. But if you  
9 get a little tap, say a 2-mile an hour bump from  
10 behind, I find it pretty hard to justify that you got  
11 whiplash or anything else that could happen at a higher  
12 impact.

13 MR. CLOWARD: Sure.

14 PROSPECTIVE JUROR NO. :

15 MR. CLOWARD: Who here also agrees with  
16 Mr. Evans, and Mr. Frasier, Ms. Reason Deena did you  
17 have your hand raised.

18 PROSPECTIVE JUROR NO. : well, I'm kind of  
19 on the fence about that.

20 MR. CLOWARD: Okay. Fair enough. Mrs. Runs  
21 I saw your hand up tell me how you feel.

22 PROSPECTIVE JUROR NO. : well, even even  
23 though it's 2 miles an hour a person still can get  
24 hurt.

25 MR. CLOWARD: But but there are way too many,

1 you know, frivolous lawsuits out there I think.

2 MR. CLOWARD: Okay. Ms. Vair-a tell me your  
3 thoughts. Do you think that, you know, people in these  
4 mine area tap case, I think is what Mr. Evans said they  
5 are they're gist out to get a buck or do you agree with  
6 maybe Mr. Runs that people do get hurt, but there are  
7 still a lot of frivolous lawsuits which way do you --  
8 how do you feel about it?

9 PROSPECTIVE JUROR NO. : I just  
10 unfortunately, I know people that have done it,  
11 \and\{, ?\}and, you know, my ex father-in-law, you know,  
12 never got in a car accident that was the first thing he  
13 said is oh, my neck my back you know.

14 MR. CLOWARD: Sure.

15 PROSPECTIVE JUROR NO. : unfortunately, I  
16 know I know people that have done it, and it's, and  
17 it's wrong, and I just -- I think it's the amount of  
18 lawsuits I don't know if it's a majority, or what, but  
19 it seems to be a lot.

20 MR. CLOWARD: Sure. So based on your  
21 personal experience you have seen people who have taken  
22 advantage of the system.

23 PROSPECTIVE JUROR NO. : yes.

24 MR. CLOWARD: Okay. Anyone else no someone  
25 that, you know, what, I kind of felt they took



1 advantage of the system? Mr. Unger, tell me your  
2 experience.

3 PROSPECTIVE JUROR NO. : I had an employee  
4 who was in a terrible car accident, and and she had to  
5 go through neck and back surgery because of it. But  
6 she also was suing for an ex bore than the amount of  
7 money at the time, and I don't know what she was  
8 awarded, but I know after she was finished she bought a  
9 new house a new car for her and her husband there were  
10 expenses that were beyond just pain suffering or  
11 medical expenses. It was to change their way of life.

12 MR. CLOWARD: It was more of a wind fall than  
13 hey just balancing the harms and losses.

14 PROSPECTIVE JUROR NO. : exactly.

15 MR. CLOWARD: Okay. You know, does anyone  
16 know someone that, you know, they feel like they may be  
17 it wasn't a serious significant accident, but maybe it  
18 was a smaller case like Mr. Runs, where they actually  
19 were injured, and and it was legitimate I mean, you  
20 guys are there legitimate cases throughout too or it  
21 kind of like every single, you know, case is -- is  
22 frivolous and someone's outlooking for a quick buck?  
23 Anyone know someone who was serious hurt and seemingly  
24 not a serious event.

25 PROSPECTIVE JUROR NO. : myself. Bart ton

1 Unger 006.

2 MR. CLOWARD: Tell me about that Mr. Unger.

3 PROSPECTIVE JUROR NO. : I was in two car  
4 accidents 20 plus years ago rear ended twice and today  
5 I suffer, I guess it's called spinal stenosis in my  
6 upper vertebra and face surgeries because of it, but I  
7 didn't sue somebody from it. I was -- my car was  
8 repaired, I got physical therapy from it at the time  
9 years ago. And but the doctor had told me recently  
10 that what I'm suffering now is probably because of the  
11 trauma from the accident years ago.

12 MR. CLOWARD: Anyone else have an experience  
13 like that or know someone who had an experience like  
14 that? Somebody's got to. Talk to me, please. Pruitt  
15 honesty talk to me. Mrs. Brown tell me your  
16 experience.

17 PROSPECTIVE JUROR NO. : my mother she had  
18 an accident, when she worked at McCarran, and she  
19 actually to this day is still disabled and can't really  
20 work, but I don't think she was really compensated  
21 enough.

22 MR. CLOWARD: You didn't feel in that  
23 specific case that there was there was enough too or to  
24 balance the harms and losses.

25 PROSPECTIVE JUROR NO. : uh-huh.

1 MR. CLOWARD: Ms. I'm sorry, Mrs. Temple on  
2 it tell me your experience.

3 PROSPECTIVE JUROR NO. : with.

4 MR. CLOWARD: I thought you raised your hand.

5 PROSPECTIVE JUROR NO. : I did sorry.

6 MR. CLOWARD: Ms. Vera,

7 PROSPECTIVE JUROR NO. : here's an example  
8 I feel this is abuse the system, my son-in-law's  
9 mother, legitimately was injured, in her workplace,  
10 they settled, she was award money, then years later,  
11 she wanted a tummy tuck, and liposuction, and I don't  
12 know how she did it, but she got in an accidents, and  
13 it didn't do any damage to her vehicle, but she was  
14 awarded money, and she got her liposuction and her  
15 tummy tuck.

16 MR. CLOWARD: I'm not good with that. I  
17 agree with you on that one. You know,.

18 PROSPECTIVE JUROR NO. : she lives in  
19 New Mexico and I live all the way over here so it's  
20 like try to distance myself from people with morals  
21 that are bailed on money.

22 MR. CLOWARD: He agree that's a bad  
23 situation. Ms. Agnor. Number 033 tell me your  
24 thoughts.

25 PROSPECTIVE JUROR NO. : I was rear ended

1 one time, and the person that rear ended me did not  
2 have insurance.

3 MR. CLOWARD: Okay.

4 PROSPECTIVE JUROR NO. : so immediately I  
5 had a lawyer call me, and all we did I had to go to a  
6 chiropractor, and they did all kinds of adjustments for  
7 quite a few months.

8 MR. CLOWARD: You had a lawyer call you.

9 PROSPECTIVE JUROR NO. : yeah the lawyer  
10 called me, I think it was a matter of a friend called  
11 the lawyer and then the lawyer called me. So we did I  
12 did get the lawyer, but all the lawyer paid for was all  
13 we sued for was my treatments, and that's all we got.

14 MR. CLOWARD: Okay. Okay. Yeah, they  
15 shouldn't do that that's against the rules, to do that.  
16 But tell me so let me ask just a broad question, just  
17 get a show show of hands-on who believes that the  
18 majority so if there's two groups folks, one group that  
19 thinks that the majority of personal injury cases you  
20 know, slip and fall, injuries that happen at work, you  
21 know, automobile crashes, personal injury case the  
22 majority of them are frivolous, and then so that's one  
23 group and then the other group is that you know,  
24 there's -- there's frivolous ones out there, sure, but  
25 there's also legitimate ones, and the majority of the



1 cases are legitimate, but it's sprinkled with, you  
2 know, some frivolous ones in there, so who here by  
3 raise of hands believes that the majority of the  
4 cases these days is just about the money, it's about  
5 the lawyers Jack pot justice, who hear believes that  
6 the majority of the cases they're frivolous cases in  
7 personal injury context? Any other hands? Any other  
8 hands? Want to make sure everyone has an opportunity  
9 answer? Okay..

10 PROSPECTIVE JUROR NO. : majority is a  
11 tough word.

12 PROSPECTIVE JUROR NO. : 012. If I saw  
13 statistics I could honesty answer that,.

14 MR. CLOWARD: I'm just I'm just.

15 PROSPECTIVE JUROR NO. : it would kind of  
16 help.

17 MR. CLOWARD: I appreciate it Mr. Evans I'm  
18 I'm just asking baseed on beliefs, and, and opinions  
19 canner that the way that you view things. Like I can  
20 tell you my -- my aunt Nancy she's the one that had the  
21 slip and fall at her store, you know she would she  
22 would definitely State into the into the first group,  
23 because she thinks all lawsuits hey I was sued myself I  
24 think all lawsuits are bad, and that's fine for her to  
25 believe that. I love my aunt Nancy, my mother in law

1 she has a different experience. And so, you know,  
2 because she had a different experience she had  
3 different views and different beliefs and so that's all  
4 I'm trying to get at is just maybe your first blush, do  
5 you think all lawsuits are frivolous? Or first blush,  
6 you know what most of them are meritorious? Same  
7 question, frivolous who thinks frivolous? Same group  
8 of folks. Okay. Let me ask just a question, you know  
9 with that with that belief or that view, that core  
10 value, given that this is a personal injury case, will  
11 you level with me and do you feel that because my  
12 client filed A the lawsuit she maybe or she wouldn't  
13 start at the same place as as Mr. Khoury, just the fact  
14 that she's filed the lawsuit, .

15 PROSPECTIVE JUROR NO. : I don't think so  
16 so ^KRISTY CHECK Brown.

17 MR. CLOWARD: You don't think so.

18 MR. CLOWARD: Mr. Frasier, what do you think  
19 on that on just that one specific issue that's just a  
20 slender, you know, the very slender, you know, if you  
21 feel like the majority of lawsuits are are -- are  
22 frivolous, that, you know, maybe you, you know, you  
23 already feel that way so the fact that she filed a  
24 lawsuit, the fact that she's hear hers is probably  
25 going to fall into that majority as well? Do you feel

1 that way? Mr. Frasier do you feel.

2 PROSPECTIVE JUROR NO. : I just think it's  
3 excessive so I guess that's my best answer.

4 MR. CLOWARD: Okay. Do you feel like you  
5 know, earlier I talked about a fair fight. That's  
6 important for us, and for Mr. Khoury, do you feel like  
7 that with that just on that very slender issue, the  
8 fact that my client filed a lawsuit and the way that  
9 you feel, would you feel uncomfortable having someone  
10 if it was you, sit on your jury?

11 PROSPECTIVE JUROR NO. : yes because I  
12 would feel they were biased already.

13 MR. CLOWARD: Would you feel that way if you  
14 maybe feel uncomfortable having someone sit on a jury  
15 of Mrs. Brown, if you were if you were hurt? And you  
16 had to file a lawsuit.

17 PROSPECTIVE JUROR NO. : no.

18 MR. CLOWARD: Okay. Thank you. Was it  
19 Ms. Vera? Do you feel.

20 PROSPECTIVE JUROR NO. : yes.

21 MR. CLOWARD: You feel uncomfortable having  
22 someone with your frame of mind on just that very  
23 specific issue on your jury.

24 PROSPECTIVE JUROR NO. : if -- I don't  
25 know -- it just occurred to me that I don't know if

1 every person on the jury had that, yes, I would be very

2 uncomfortable. But if it's split, or if it's 5050, .

3 MR. CLOWARD: No assume that kind of like in  
4 the pie baking Conn test.

5 PROSPECTIVE JUROR NO. : does everybody  
6 have that.

7 MR. CLOWARD: Yeah.

8 PROSPECTIVE JUROR NO. : so everybody  
9 feels that way.

10 MR. CLOWARD: You're exact mind frame so you  
11 would feel uncomfortable.

12 PROSPECTIVE JUROR NO. : if everybody on  
13 the jury neat way.

14 MR. CLOWARD: Shared that same core value or  
15 that same belief that you had you agree that?

16 PROSPECTIVE JUROR NO. : yes if everyone  
17 on the jury.

18 MR. CLOWARD: Okay. Mrs. Brown, .

19 PROSPECTIVE JUROR NO. : I feel like she  
20 said if everybody on the jury, then, yeah I would feel  
21 uncomfortable.

22 MR. CLOWARD: Okay. Thank you. And that's  
23 that's someone else rated their hands was it Mr. Runs.

24 PROSPECTIVE JUROR NO. : yeah.

25 MR. CLOWARD: Every other jury they have the



1 same view that, you know, what a majority of lawsuits  
2 personal injury they're frivolous.

3 PROSPECTIVE JUROR NO. : I yeah it would  
4 be have to be everybody.

5 MR. CLOWARD: But if everybody had your same  
6 view you would feel uncomfortable having that person  
7 orthos jurors with those views on your panel?

8 PROSPECTIVE JUROR NO. : yes.

9 MR. CLOWARD: Thank you. And you agree that  
10 that, you know, there are a lot of different --  
11 different types of lawsuits you know there's  
12 contract -- cases that are contract case, patent cases,  
13 trademark cases, you know, but this is a -- this is a  
14 personal injury case do you agree with me that just on  
15 that specific personal injury you are probably not a  
16 good fit for this particular case.

17 PROSPECTIVE JUROR NO. : yes.

18 MR. CLOWARD: Okay. And Ms. Vera you also  
19 agree that this specific kind of a case, you are  
20 probably not a good fit.

21 PROSPECTIVE JUROR NO. : yeah just I feel  
22 I'm not I'm not a good choice.

23 MR. CLOWARD: Okay. Thank you. And  
24 Ms. Brown, you agree with Ms. Vera Mr. Runs that for  
25 this specific kind of a case a personal injury case,

1 you're you're not a good fit, right?

2 PROSPECTIVE JUROR NO. : yes.

3 MR. CLOWARD: And Mr. Frasier, you also agree  
4 that for this specific case you're not a good fit  
5 right.

6 PROSPECTIVE JUROR NO. : I do.

7 MR. CLOWARD: Okay. Thank you. Okay. Let  
8 me ask I have an outline that I try to remember rather  
9 than go over the outline. How do you think that you  
10 tell whether it's a frivolous case or whether it's a  
11 legitimate somebody said legitimate case Mr. Car  
12 pens -- Karepenko.

13 PROSPECTIVE JUROR NO. : yes, sir.

14 MR. CLOWARD: Mr. Car pinko said cases some  
15 are legitimate, and they need to have a forum can you  
16 tell me how do you think we tell the difference between  
17 hey this is someone this is Jack pot justice going on  
18 here, you know, that's what's going on here, versus hey  
19 you know what this is this is legitimate one? How do  
20 you know?

21 PROSPECTIVE JUROR NO. : Nicholas  
22 Karepenko 025. I think something like that you don't  
23 really know it till after you haired all the phaks.  
24 You hear what people want why they want it, and that's  
25 when you make the decision whether or not to even think

1 it's legitimate. At this point you know right now,  
2 without knowing anything, I think view to assume that  
3 both sides are legitimate.

4 MR. CLOWARD: Okay.

5 PROSPECTIVE JUROR NO. : so to answer your  
6 question you don't know until you hear everything.

7 MR. CLOWARD: Gotcha what kind of things, you  
8 know, you know, you know if you were on a hypothetical  
9 jury, and you know, the people they brought the case,  
10 and and you had to determine hey is this a gemmated  
11 case or this is a frivolous this guy is getting Jack  
12 pot justice this is not even, you know, we should kick  
13 this out of the door, what things are you going to be  
14 looking for to tell you legitimate versus frivolous?

15 PROSPECTIVE JUROR NO. : well, I think I  
16 would look at the law, to see what it says, how it  
17 applies to the two sides,.

18 MR. CLOWARD: Sure.

19 PROSPECTIVE JUROR NO. : \and\{, ?}and then  
20 I would look at going hypothetical not knowing  
21 anything, I guess yeah really all we have is just the  
22 law at that point, I'm trying not to answer in a way  
23 that would, you know, bring bring out something that  
24 somebody has already said.

25 MR. CLOWARD: Feel free I want to hear I want

1 to know you too.

2 PROSPECTIVE JUROR NO. : at this point I  
3 would just base it on what the law says if this happens  
4 you know this is right this is wrong. And just decide  
5 it from there.

6 MR. CLOWARD: Yeah.

7 MR. CLOWARD: Okay. You know, I think there  
8 are some case that you say hear about them holy smokes  
9 there's no we question on that one the guy suing in  
10 New York for \$5 million or whatever it was for a pair  
11 of setenants got lost and the dry cleaner, and that's  
12 there's that's a no brainer that's that's clearly  
13 frivolous, so how do you, you know, how do you sift  
14 through the, you know, the different one Mrs. Frasier,  
15 what do you think? What do you think is important?

16 PROSPECTIVE JUROR NO. : life change.

17 MR. CLOWARD: Okay.

18 PROSPECTIVE JUROR NO. : if someone has a  
19 significant life change, does it alter their ability to  
20 earn an income. You know, the same income, and by  
21 being awarded this money, is it over and above what  
22 they would have made over however long their however  
23 long their injuries would have like held them back.

24 MR. CLOWARD: Sure.

25 PROSPECTIVE JUROR NO. :



1 MR. CLOWARD: Okay.

2 PROSPECTIVE JUROR NO. : and then I think  
3 you also to tie in all the other things attorney fees  
4 and all that other stuff, you know, how much is the  
5 victim actually going to receive.

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NO. : to help their  
8 life.

9 MR. CLOWARD: Okay. Anyone else have have  
10 some views on how you would sift through, you know,  
11 whether it's, you know,, it's a Jack pot justice  
12 frivolous type lawsuit versus a legitimate one?

13 PROSPECTIVE JUROR NO. : it seems to me  
14 like if you would think of a frivolous lawsuits, it  
15 would be the amount of money that they're asking for if  
16 they're asking for the ex or than the amount of money,  
17 I would consider that a frivolous lawsuits, right up  
18 front.

19 MR. CLOWARD: Gotcha. ^KRISTY CHECK ex bore  
20 than the.

21 PROSPECTIVE JUROR NO. : rather than a  
22 lesser amount than than you might think it's more legit  
23 because it's not going to change their lifestyle  
24 they're gist going to try to get by.

25 MR. CLOWARD: Gotcha. So is it fair to say

1 that you know, the fact that that my client has you  
2 know that knowing that my client has sued for in excess  
3 of 2 million that, just that that alone makes you to  
4 makes you believe that it's it's privilege will you  
5 tell lawsuit you agree with that?

6 PROSPECTIVE JUROR NO. : probably because  
7 that is a lot of money, but we don't know the case so,.

8 MR. CLOWARD: Sure.

9 PROSPECTIVE JUROR NO. : we can't say.

10 MR. CLOWARD: But just on that very specific  
11 issue the very fact fact that the amount you probably  
12 think it's for frivolous than --

13 PROSPECTIVE JUROR NO. , right.

14 MR. CLOWARD: And Mr. Young you also were you  
15 were agreeing you also share that view.

16 PROSPECTIVE JUROR NO. : yeah 009 that's  
17 the first question you asked the first time around  
18 about the ex sells of 2 million, but I'm also agreeing  
19 with that guy over there, about there being legitimate  
20 cases and also frivolous cases depending on want facts.

21 MR. CLOWARD: Sure Mr. Young, you know how  
22 would you if you were on the on the hypothetical jury,  
23 in a personal type lawsuit where someone was claiming  
24 to be injured how would you go about determining  
25 whether it was frivolous or whether it was legitimate

1 what kind of things would you look for.

2 PROSPECTIVE JUROR NO. : fact, evidence,

3 MR. CLOWARD: But what kind of yeah, what  
4 kind of facts and evidence would you be interested in  
5 hearing.

6 PROSPECTIVE JUROR NO. : talk about the  
7 2 million stuff like that so if we're talking about a  
8 surgery fees, and that kind of stuff, then, if that's  
9 all taken into account, then I guess it would make  
10 sense if we're just talking about pain and suffering  
11 and what they can get with that money,

12 MR. CLOWARD: Okay. So you would maybe look  
13 for medical bills, things like that.

14 PROSPECTIVE JUROR NO. : yeah.

15 MR. CLOWARD: Okay. What are other things  
16 that would be important in determining whether it's  
17 frivolous or legitimate Mrs. Brown what do you think?

18 PROSPECTIVE JUROR NO. : I would say how  
19 they were medically before the accident.

20 MR. CLOWARD: So maybe what their playing  
21 field is before, and their baseline before, and their  
22 playing field after or their baseline after the crash?

23 PROSPECTIVE JUROR NO. : yes.

24 MR. CLOWARD: Or after the whatever whatever  
25 event. Everyone -- everyone agree that that would be

1 important to know? You guys would all want to know,  
2 you know, the playing field before and the playing  
3 field after? How would you how would you know, though?  
4 You know if the person, you know, just if the person  
5 just told you, hey this is how I was before and after,  
6 how do you how do you determine hey you know what this  
7 is this is frivolous versus this is legitimate how do  
8 you think, you know, Mr. Evans.

9 PROSPECTIVE JUROR NO. : well, caterer  
10 would be the type of the type of claims it.

11 MR. CLOWARD: Okay.

12 PROSPECTIVE JUROR NO. : and and, you  
13 know, if it drastics, then ten it probably isn't  
14 frivolous, but if it drawings attention that's what you  
15 want to look at and go a little further \into the\in to  
16 the details with it before you make an opinion.

17 MR. CLOWARD: Can you tell me what you do you  
18 mean by draws attention.

19 PROSPECTIVE JUROR NO. : just something  
20 out of the ordinary that soundses ridiculous.

21 MR. CLOWARD: You can give me an example.

22 PROSPECTIVE JUROR NO. : like when you  
23 burn burn yourself with cough pee and you're trying to  
24 get \$25 million I mean, that sounds ridiculous.

25 MR. CLOWARD: Sure. Where you get your, you



1 know, brother-in-law or whoever's thumb you put it in a  
2 cup of coffee or Chile that kind of thing right.

3 PROSPECTIVE JUROR NO. : right but see I  
4 wouldn't draw my opinion on that one until I knew for a  
5 fact that's what happened.

6 MR. CLOWARD: Gotcha.

7 PROSPECTIVE JUROR NO. : you know I'm not  
8 going to automatically assume somebody put that thumb  
9 in there.

10 MR. CLOWARD: Sure.

11 PROSPECTIVE JUROR NO. : that's not as  
12 easy to young as somebody spilling coffee on their lap.

13 MR. CLOWARD: Over themselves, gotcha. So  
14 what are other things that you know would be important  
15 Mr. Unger, would what would be important for you if you  
16 were determining hey what's legitimate versus frivolous  
17 what are you looking for.

18 PROSPECTIVE JUROR NO. : I'm looking for  
19 fact.

20 MR. CLOWARD: What kind of facts  
21 \though\{, }though\{, }\{, }though can you tell me.

22 PROSPECTIVE JUROR NO. : facts on the  
23 case, factses on the accident if there was an accident,  
24 just the witnesses testimonies, of what they're going  
25 to say what the person went through what the person

1 what suffering they feel that the person did have.

2 Association maybe people other than than the person  
3 who's injured right.

4 PROSPECTIVE JUROR NO. : I would think the  
5 more professional opinions..

6 MR. CLOWARD: So you would want to hear maybe  
7 from more doctors.

8 PROSPECTIVE JUROR NO. : that would be  
9 part of it yes.

10 MR. CLOWARD: Or experts or whatever the case  
11 was.

12 PROSPECTIVE JUROR NO. , right.

13 MR. CLOWARD: Okay. Who who here has some  
14 feelings on that or agrees or disagrees? You were kind  
15 of nodding your head Mrs. Rendina do you agree with  
16 that.

17 PROSPECTIVE JUROR NO. : yes, I think if  
18 we have medical records to show, how the person was  
19 before the accident how they are now, because  
20 sometimes, if someone's in a certain shape, and they  
21 get hit it gets worse, then can you kind of sift  
22 through what's really true and what's not.

23 MR. CLOWARD: Gotcha. So maybe like using,  
24 you know, the medical records to show a baseline as  
25 well like the playing field hey here's the playing

1 field for the person here's what, you know, what the  
2 records show was going on and then the accident happens  
3 or the event and slip and fall, whatever it is, and  
4 then here's what the medical records after is that  
5 fair.

6 PROSPECTIVE JUROR NO. : yes.

7 MR. CLOWARD: Everyone agree that would be  
8 important anyone agree that wouldn't be important?  
9 Mr. Car pen ski what do you think about that.

10 PROSPECTIVE JUROR NO. : Nicholas par  
11 pinko 025.

12 MR. CLOWARD: Karepenko sorry sorry.

13 PROSPECTIVE JUROR NO. : that's all right.  
14 I think the idea that the playing field before and  
15 after it does make sense to me. I can see that, just  
16 because if you're on if you're not able to do as much  
17 as you could before an accident, I think that would  
18 that could potentially have a long term affect on what  
19 you're able to bring in as far as money is concerned so  
20 if you're going to go the route of money. I could see  
21 that as being a possibility if you have kids you know  
22 how well you can take care of your kids would be a  
23 possibility there. So the idea that you would be  
24 trying to get something to compensate that, makes  
25 sense. But I think because you are 81 asking for

1 something you would have to be able to prove that this  
2 is -- this whatever it is, is really what you needed.

3 MR. CLOWARD: Sure. You know, I think I  
4 think you know brutal honesty, okay. I think you  
5 know, we can all make room for the possibility that  
6 both parties are going to be a little bit you know,  
7 have -- have their side of things just because involves  
8 them, and, and that's, you know, that's just human  
9 nature. We all agree that you know, that that that's  
10 just the way that it is? You agree with that?

11 PROSPECTIVE JUROR NO. : uh-huh ^KRISTY  
12 CHECK Brown.

13 MR. CLOWARD: Okay. One second.

14 MR. CLOWARD: Your Honor may I have Court's  
15 indulgence for just one moment.

16 THE COURT: Yep.

17 MR. CLOWARD: Okay. I wanted to move on now  
18 to a different topic, and there's there's been some  
19 discussion we're going to talk about, you know, crashes  
20 that happen. I think Mr. Unger, you said you were  
21 involved in relatively minor crash, but you've had some  
22 long lasting effects from that and then I think you  
23 said you have been in four crash, you have been rear  
24 ended four times, and you you're not you weren't hurt  
25 right.



1 PROSPECTIVE JUROR NO. : no.

2 MR. CLOWARD: So how do we explain, you know,  
3 has anyone heard of someone that was in like just a  
4 massive rollover, and they they were okay. They walked  
5 away from it? Anyone heard of that? And then  
6 obviously we unfortunately, you know Mr. Hicks, my  
7 partner over there when he was about 17 had he a van  
8 full of 17 or I think 1515 kids jooks, Your Honor.  
9 This is.

10 MR. CLOWARD: Just it's an example of I mean,  
11 he rolled his I mean,, what's so what's the objection?  
12 Mr. Jaffe.

13 MR. JAFFE: This is irrelevant and it's now.

14 THE COURT: Ask a question.

15 MR. CLOWARD: Okay. How do you explain when  
16 somebody you have a rollover, same two people in the  
17 rollover, one person lives, one person dies. Or like  
18 Mr. Frasier in your instance have you been rear ended  
19 four times and you weren't, but Mr. Unger, had kind of  
20 a minor event, and he's had long lasting how do we  
21 explain that?

22 PROSPECTIVE JUROR NO. :

23 MR. CLOWARD: Somebody's got to have some  
24 ideas.

25 PROSPECTIVE JUROR NO. : did I VIN

1 intervention.

2 MR. CLOWARD: Divine intervention.

3 PROSPECTIVE JUROR NO. : I agree with that

4 ^KRISTY CHECK Vermont have a.

5 MR. CLOWARD: Ms. Vera.

6 PROSPECTIVE JUROR NO. : unfortunate lie a  
7 set of twin as family went down to Florida father and  
8 the boy twin were sitting up-front dad was driving, the  
9 girl twin the mother, and her sister were asleep in the  
10 back of the van, the girl twin died, how do we know?

11 We don't. Sorry.

12 THE COURT: At least I'm not the only one who  
13 got emotional today.

14 MR. CLOWARD: Yeah sometimes I think it  
15 definitely is out of our hands. Mr. Unger.

16 PROSPECTIVE JUROR NO. : another example  
17 it just happened in St. George Utah about a months ago  
18 where a family driving in a motor home, and the  
19 grandmother was driving the vehicle, I think she had  
20 four or five of her family members in the back of it  
21 and she lost control went off the highway, through a  
22 house, through another street and stopped in another  
23 house, and she and her husband was from killed, but  
24 none was other kids were killed in the backseat. You  
25 don't know how or why or when, or to what extent.

1 MR. CLOWARD: I heard about that. You know,  
2 I'm a basketball fan, and I remember earlier this year  
3 there was a guy from Kansas state, who jumped, and it  
4 didn't seem like it was a out of the ordinary jump,  
5 didn't seem like there was anything you know there's  
6 thousands and thousands of players throughout the  
7 nation thousands and thousands of jumps just like that,  
8 but in that situation, and I'm sure some of you have  
9 seen that, Mr. Frasier tell the jurors what happened  
10 there.

11 PROSPECTIVE JUROR NO. : his knee just  
12 snapped his leg just snapped.

13 MR. CLOWARD: Right in half.

14 PROSPECTIVE JUROR NO. : right in half,  
15 and it was just a freaky accident.

16 MR. CLOWARD: Probably the worst you know the  
17 worst sportings injury I think that that I have ever  
18 seen anyway other than, you know, if somebody lost  
19 their life. But how do we explain those things other  
20 than, you know, divine intervention, you know that  
21 better's all built kind of differently, Mr. Young,  
22 okay. Ms. Pro sick pro sick pro check.

23 PROSPECTIVE JUROR NO. : pro sick 044. I  
24 think it's the law of physics, it's, you know,, how big  
25 how small are you? Your physical condition, and how

1 you get hit. Because you can be wearing your seat belt  
2 or not, and then you get ejected from the vehicle  
3 and you die, or you know you're whoever's sitting next  
4 to you, they get hit a different way, and something,  
5 you know, I don't know if they can get hurt a different  
6 way just because of the different way that they get  
7 hit, so and your fine, and you might not have even been  
8 wearing your seat belt, so. I think it's a law  
9 physics.

10 MR. CLOWARD: So just different maybe just  
11 one little thing tweaked a little bit differently that  
12 makes all the difference.

13 PROSPECTIVE JUROR NO. : yeah absolutely.

14 MR. CLOWARD: Anybody agree with that or  
15 disagree with that?

16 PROSPECTIVE JUROR NO. : I agree ^KRISTY  
17 CHECK Agnor.

18 MR. CLOWARD: Anybody disagree with that?

19 MR. CLOWARD: Okay. Anyone here believe that  
20 in order to have a, you know, a serious or significant  
21 injury you have to have a serious or significant event  
22 like you got to have a roll over? Mrs. -- Mrs. Pro  
23 sick tell me you're nodding your head or shake your  
24 head why.

25 A. I don't think you have to have a roll over to

1 be hurt. You could have just a minor accident, and you  
2 could be, you know, like okay. I just bought an SUV  
3 because it's much safer than my 350Z I have, but I  
4 still try to sit far away from the steering wheel  
5 because I'm afraid of the airbag that's going to hurt  
6 me, and I'm 52, so a guy that's as big as you, you  
7 know, you might take a an accident a lot different than  
8 than I would, I can get severely injured just because  
9 I'm shorter \and\{, ?}and, you know, the I can get  
10 killed by the bit bag. So.

11 MR. CLOWARD: Sure. Like Mr. Mr. Frasier  
12 looks like he's lifted lots of weight and is he's, you  
13 know,, pretty strong pretty strong guy.

14 PROSPECTIVE JUROR NO. , right.

15 MR. CLOWARD: He probably wouldn't have the  
16 same risk factor or pre disposition than maybe you  
17 would, you agree with that.

18 PROSPECTIVE JUROR NO. : correct yeah.

19 MR. CLOWARD: Does anyone does anyone here  
20 believe that or not believe that, anyone not think  
21 that? Anyone that thinks that, you know, what, we're  
22 all created in the image of God some, you know, some  
23 say so, that's what everyone's going to be hurt the  
24 exact same and the same way every single time does  
25 anyone have that belief? okay. Mr. Evans, what do you



1 think.

2 PROSPECTIVE JUROR NO. : no.

3 MR. JAFFE: Your Honor may we approach?

4 THE COURT: Okay.

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

7 THE COURT: Everybody okay right now or  
8 anybody need a break right now? I don't see any hands.  
9 Go for a little bit longer.

10 MR. CLOWARD: Thanks Judge. Just one just  
11 these two pieces of paper are getting the better of me.  
12 Just one -- one more question and then we can move on  
13 to another section. You know some folks believe that  
14 in order to have significant injury you got to have  
15 significant damage you got to be a significant  
16 collision with significant property damage, other folks  
17 believe that, you know, what, our bodies are made  
18 differently, different factors contribute. And so  
19 there's really there's nothing about the the damage in  
20 the vehicle versus damage to the person. Who here  
21 liens towards in the in your mind, you got to have  
22 significant damage in order for there to be a  
23 significant significant injury, and we're talking  
24 property damage to a vehicle? Anyone have that belief  
25 got to be somebody. Not one person.

1 PROSPECTIVE JUROR NO. : 008.

2 MR. CLOWARD: Ms. Vera thank you for sharing.

3 PROSPECTIVE JUROR NO. : can you say it  
4 differently. Maybe a little more specific. And give  
5 us a little bit more than that.

6 MR. CLOWARD: Sure. It was a bad question.  
7 Who here believes that someone cannot have a serious  
8 injury without significant property damage? Anyone  
9 believe that?

10 MR. JAFFE: Judge I have to -- to raise the  
11 same objection.

12 THE COURT: Overruled.

13 MR. CLOWARD: Anyone have that belief? Got  
14 to be -- nobody at all? Okay.. Thank you very much.  
15 I will move on. Okay. Next thing that I want to talk  
16 about, and I'm getting I'm really I know you guys  
17 probably don't believe me, but I'm getting close to the  
18 end here. So let me ask about personal injury cases  
19 where money damages you know money damages are asked  
20 for, there's been a couple of folks \and\{,?}and it's  
21 okay to have that feeling have those beliefs, have  
22 those core values there's nothing wrong with that, some  
23 folks believe that, you know, pain and suffering is  
24 just, you know, something that that they just have a  
25 hard time with, and that's fine. Nothing wrong with

1 that. Okay? Nothing wrong with with being having  
2 different views and beliefs and core values. Who here  
3 has a hard time with, you know, medical bills, that you  
4 know, you feel like medical bills are just not  
5 something that somebody should be able to recover for,  
6 anyone have that view? Anyone? What about like lost  
7 wages or, you know, if someone is no longer able to  
8 work or if their work was reduced or something along  
9 those lines, does anyone have a view one way or  
10 another, about that specific issue? Mrs. Temple on it,  
11 do you have a view one way or another on that?

12 PROSPECTIVE JUROR NO. : as far as whether  
13 they should receive it or not 08 teen temple ton.

14 MR. CLOWARD: Sure like somebody brings a  
15 lawsuit, and one of the things that they're suing for  
16 is like an economic type.

17 PROSPECTIVE JUROR NO. : recovery of lost  
18 wages or -- or whatever the case is on that.

19 MR. CLOWARD: Sure. Something.

20 PROSPECTIVE JUROR NO. : I think they  
21 should be awarded that, sure. It's not their fault  
22 that they missed the work or they have had to leave for  
23 therapy or just days off to recuperate that type of  
24 thing is what you are a he asking?

25 MR. CLOWARD: Sure.

1 PROSPECTIVE JUROR NO. : sure they should  
2 get that.

3 MR. CLOWARD: Anybody have a problem with  
4 that? Even if just it's a little bit of a problem.  
5 Okay. Let me ask this question: What if what if there  
6 was a situation where you know let's say you had you  
7 had two you had you had some high school kids they were  
8 playing they were horsing around, and one of the high  
9 school kids, you know, let's say he had -- does anyone  
10 know what hemophilia is like a person with home know a  
11 feel yack what is that, sir tell me what that is  
12 Mr. Fitzgerald.

13 PROSPECTIVE JUROR NO. : yeah double 03  
14 basically if your blood will not clot so literally  
15 blood will run out of your body and you die.

16 MR. CLOWARD: You bleed to death really easy.

17 PROSPECTIVE JUROR NO. , right.

18 MR. CLOWARD: So let's just say you had you  
19 had students, and they were horsing around one of them  
20 had hemophilia, and then the other one didn't have  
21 anything, and the 11 student pushes the the one with no  
22 issue, and he falls down and he gets a crack, and then,  
23 you know, I has to go and get some stitches and the  
24 stitches \you know\{, }you know\{, }\{, }you know\you  
25 know\{, } to do that it's only maybe \$2,000 to the



1 emergency room. Now, let he's say across town in  
2 another High School you have another situation two kids  
3 they're horsing around and one of them pushes the kid  
4 with home Phil feel yack the same way it's exact same  
5 push, he falls down hits his head in the same spot, but  
6 this time he has very serious very serious issues.  
7 And, you know, he has to go to UMC trauma, he's in  
8 there he has to get transfusions he has to get a lot of  
9 treatment and the medical bills are, you know, they're  
10 just really high, we're talking, you know, he's in  
11 there for two or three months and it's several, you  
12 know, maybe even five or six or seven or \$800,000 for  
13 the medical bills. Do you think it's fair that in the  
14 one situation, where you know it's same act, they're  
15 both just horsing around, do you think it's fair in the  
16 one situation, the one kid has to pay for so much more  
17 than the other kid because it's just it's the same act,  
18 who thinks that's unfair for him to the one kid to have  
19 to pay more? Ms. Vera tell me about that.

20 PROSPECTIVE JUROR NO. : 008. Which one?  
21 The hemophiliac is the one you're saying.

22 MR. CLOWARD: The boy that pushed the home  
23 know feel yack down so because of his action the heme  
24 mow feel yack his bills were up here, balances the kid  
25 across town at the other high school his bills were



1 down here from the act of pushing down.

2 PROSPECTIVE JUROR NO. : I don't think  
3 it's a question of fair numbers it's he's receiving the  
4 medical attention, and that's what it costs. If the  
5 other boy is healthy his blood clots his only costs  
6 \$2,000. I don't see where fairness pays into that is  
7 it fair for the hemophiliac have to live with that his  
8 life?

9 MR. CLOWARD: Okay. Does anyone feel like  
10 it's unfair in the second situation because you know  
11 it's the same act, they're both just horsing around one  
12 pushing the one the other pushes the other so one's  
13 not, you know, didn't do it, you know, wasn't being  
14 mean, but one boy, you know, he has to pay a lot more.  
15 Anyone feel that's unfair? Mr. Evans.

16 PROSPECTIVE JUROR NO. : 012. I think now  
17 I don't think it's unfair that he should his medical  
18 bills should shouldn't be paid for rather than the one  
19 that's got a lesser bill. But I think the hemophiliac  
20 boy should know he should know better than to be  
21 horsing around in the first place that's my opinion on  
22 your scenario. He knows his medical condition, he  
23 should point that out ahead of time look we can't be  
24 horsing around, I have a medical condition.

25 MR. CLOWARD: Sure.

1 PROSPECTIVE JUROR NO. :  
2 \but\{,}but\{,}but(~)... \at the\if he does that and he  
3 gets hurt aways then it doesn't matter a bill's a bill.  
4 And and at that point it's not his fault any more and  
5 yeah it should be taken care of.

6 MR. CLOWARD: Does anyone feel like in the,  
7 you know, the second case with the hemophiliac, that  
8 that the little the boy that pushed him down, let's  
9 just say they weren't horsing around just in one  
10 situation the kid pushes him down the other situation  
11 the kid pushes him down do you think the kid who calls  
12 for speculationed the hemophiliac and his problems  
13 should get some sort of a discounted because you know,  
14 over Ms. — Ms. Agnor, tell me 033, your nodding  
15 shaking your head.

16 PROSPECTIVE JUROR NO. : 033, it's it's an  
17 act of kids horsing around: So kids do that all the  
18 time and it's just unfortunate that that boys that the  
19 hemophilia and the other boy didn't, but like Mr. Evans  
20 was saying a bill is a bill and it's got to be paid one  
21 way or another, so is this one suing for 2,000 and this  
22 one suing for 500,000 they should both be compensated  
23 the amount of the medical bills.

24 MR. CLOWARD: Okay. Mr. Fitzgerald tell me  
25 what do you think about that.

1 PROSPECTIVE JUROR NO. : well, I think  
2 that any case I think like all my fellow jurors here  
3 needs to be decided on the merit, and not every case  
4 that comes before us is going to be the same. And like  
5 Judge is saying we're here to do justice we're not here  
6 to, you know, gold brick or anything like that. Use  
7 common sense.

8 MR. CLOWARD: Sure.

9 PROSPECTIVE JUROR NO. : we hope that  
10 prevails, and and that's everything I am hear hearing  
11 righten U up and down the front front row right up and  
12 down the back row No. 003.

13 MR. CLOWARD: One more question then I will  
14 move on. Is there anyone that thinks that that the  
15 situation in the hemophiliac that he should get a  
16 discount? Anybody feel that way? Okay.. Okay. Now I  
17 want to ask some questions about, you know, about  
18 sympathy and who here feels like, you know, let's say  
19 that had that this was this was a case about, you know,  
20 let's say this bottle was filled with some diamonds,  
21 okay, and the defendant grabbed the bottle through it  
22 into Lake Mead, and the diamonds went to the bottom of  
23 the of Lake Mead. And experts were hired, and it was  
24 determininged that the value was, you know, let as I  
25 say for the value of those diamonds was \$2.5 million.

1 Mr. Frasier, you know if you felt bad for the person  
2 who threw the diamonds into Lake Mead, would you if the  
3 value has been determined, you know, it was determined,  
4 would you give less because you maybe felt bad for one  
5 party or the other?

6 MR. JAFFE: Objection. Your Honor.  
7 Rule 7.70C.

8 THE COURT: Sustained talking about a  
9 specific hypothetical facts.

10 MR. JAFFE: Yes.

11 THE COURT: Try again.

12 MR. CLOWARD: Okay. In -- in a hypothetical  
13 situation, do you think that sympathy should come into  
14 play when making determinations about issues? I mean  
15 if you feel bad for one party or you like the other  
16 party, do you think that you should, you know, award  
17 less or enter less into the verdict form or.

18 PROSPECTIVE JUROR NO. : I think sympathy  
19 comes into all of our decisions ^KRISTY CHECK Frasier.  
20 I don't know who threw the bottle in the water. Was it  
21 the plaintiff was it a friend. You just said somebody  
22 through it in I don't know who threw it in.

23 THE COURT: We're not going to talk about the  
24 bottle any more.

25 PROSPECTIVE JUROR NO. : good because I



1 got lost on that, but the bottom line is I think in  
2 every decision we make we have sympathy for some  
3 people, but I mean, even sympathy is limited.

4 MR. CLOWARD: Sure.

5 PROSPECTIVE JUROR NO. : so, I guess  
6 that's my answer. Yes, I would be sympathetic, but how  
7 she can she can there would be would be a cutoff point.

8 MR. CLOWARD: Your Honor, I think.

9 THE COURT: Want to take a break.

10 MR. CLOWARD: Okay.

11 THE COURT: Probably a good time take our  
12 afternoon break and see if we can push through after  
13 this ladies and gentlemen during our broke.

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



1 You're not to form or express any opinion on any  
2 subject connected with this trial until the case is  
3 finally submitted to you..

4 Let's take another ten minutes.

5 THE BAILIFF: All rise.

6 (Whereupon jury the courtroom.)

7 THE COURT: All right. We're outside the  
8 presence of the jury. Does anybody need to make a  
9 record?

10 MR. SMITH: Do you want to make a record.

11 MR. JAFFE: Yes, Your Honor, I believe that  
12 when there were questions being asked before regarding  
13 the intensity of impacts and how that may affect injury  
14 as well as roll overs people walking away minor  
15 accidents people being seriously hurt that was indoc  
16 Nateing the jury in contradiction to the Nevada Supreme  
17 Court.

18 THE COURT: I disagree that's why it was  
19 overruled anything else.

20 MR. JAFFE: Nothing, sir.

21 THE COURT: All right off the record.

22 (Whereupon a short recess was taken.)

23 THE COURT: Back on the record Case  
24 No. 636515. We're outside the presence of the jury.  
25 Mr. Cloward is going to make a record on his challenges

1 for cause.

2 MR. CLOWARD: Okay. We already made the full  
3 record on Mr. Frasier he was the No. 1. 20049. So  
4 we'll move to -- oh, yeah there's also addition  
5 chemical reasons for him to be challenged for cause.  
6 In later questioning, yeah, in later questioning he  
7 felt like, he felt like the majority of cases are going  
8 to be frivolous cases. He felt like the fact that my  
9 client had filed the lawsuit, that the fact that she  
10 filed a lawsuit it probably be more likely that it's  
11 going to be frivolous versus legitimate, he also thinks  
12 that he's uncomfortable with someone of his state of  
13 mind on the jury, he's had that belief he's felt that  
14 way, he felt like \$2 million was, you know, out of  
15 the -- out of the, you know, was outrageous.  
16 Regardless of what the evidence showed. He also talked  
17 about how he would not be a good fit for this  
18 particular caisson that particular issue. That the  
19 parties would not have a fair fight. Because  
20 Mr. Khoury would start off in a position higher or you  
21 know ahead of Mrs. Seastrand on that very specific  
22 issue. He also talked about how.

23 MR. JAFFE: What specific issue? So I know  
24 exactly what I'm questioning on? The 2 million-dollars  
25 demand.

1 MR. CLOWARD: The excessive amount.

2 MR. CLOWARD: Mr. Evans, and so the second  
3 cause challenge would be Christopher Evans, and he is  
4 badge No. 020012, he was questioned about pain and  
5 suffering. He expressed clear opinions, clear views,  
6 clear beliefs about pain and suffering. He does not  
7 agree with pain and suffering. He does not think that  
8 pain and suffering justifies money at all. You know,  
9 you should only have cause for for damages, lost  
10 income, med things of that nature property damage.  
11 That's it. Mr. Evans also indicated that he would not  
12 feel comfortable with someone on -- with his frame of  
13 mind sitting on the jury, that he wouldn't, you know,  
14 he he wouldn't be able to that the parties wouldn't  
15 have a fair fight because ultimately Mr. Khoury would  
16 start off in a position higher or in front of  
17 Mrs. Seastrand on that very specific issue.

18 MR. JAFFE: Again what specific issue is it  
19 the \$2 million?

20 MR. CLOWARD: So Mr. Evans was dealing with  
21 the pain and suffering.

22 MR. JAFFE: Okay.

23 MR. CLOWARD: Additionally, that he said that  
24 no one is going to change his mind, not Mr. Jaffe, not,  
25 Your Honor, not myself, not his neighbor. And he

1 agreed or you know that he would not even be a good fit  
2 for this specific caisson that very, you know, on that  
3 issue. Which is a significant issue in in the case.  
4 And then, let's see. The third cause challenge is  
5 Mr. Gary Walker, and that's badge No. 020034, and yeah,  
6 and Mr. \walker\Walker's case he was the very first  
7 American raised his hand. He said hey look, I I think  
8 that that \$2 million that's outrageous, he said that's  
9 the lawsuits are wasting people's time. Yeah, he  
10 actually said I'm wasting their time. Additionally he  
11 felt like that there's just no way under any  
12 circumstance, under any factual any evidence that he  
13 could award above \$2 million ever.

14 Mr. Walker said that yeah he's always felt  
15 that way, nothing that I -- I'm going to say is going  
16 to change his mind nothing that Mr. Jaffe is being to  
17 change his mind nothing that the Court is going to say,  
18 is going to change his mind. And Your Honor, if you  
19 remember, he's the one that I said hey, you know,  
20 mr. \walker\Walker, please just level with me, you  
21 know, could you give us a fair fight? And he said no.  
22 Because he's already he's already got views on that, on  
23 that issue.

24 THE COURT: I thought he was the one that you  
25 tried to nail him down on that and he said that he



1 didn't know the facts of this case so he wouldn't be  
2 able to tell you one way or another.

3 MR. CLOWARD: Yeah he did at first and then  
4 if it you remember, I went through the additional he  
5 was the first person that we talkeded to about about  
6 the the amount. He was the first person and then I  
7 went and talked to the other ones and then came back to  
8 him, and that's when he said yeah you know what, I  
9 can't answer it's just ridiculous. Yeah, he says, and  
10 we're going to quote, client is not going to get a fair  
11 fight from him, he cannot say that he would be fair.  
12 That's what specifically what he said, and I went back  
13 to him, and I acknowledged that he did at first he  
14 said, you know he was wishy-washy then when I went back  
15 to him, and let's see Mr. Walker which one is he so  
16 he's No. 3 so the No. fourth one is Mr. Runs, that's  
17 badge No. 020001, and Mr. Runs, also was asked about  
18 the the amount of the award, he felt that that any  
19 amount above, you know -- any amount is is going to be  
20 ridiculous. The \$2 million is going to be ridiculous.  
21 Yeah, he actually agreed that he had a bias on that  
22 issue. He said \flat out\flat-out I have a bias on  
23 that issue. And not only that, but then he goes on to  
24 say that he he couldn't he would be uncomfortable with  
25 someone on his with his state of mind, No. 1, he says



1 he wouldn't be a good fit, and he says that Mr. Khoury  
2 would start off ahead of Mrs. Seastrand on that  
3 specific issue. And he also said that, you know, he's  
4 held that belief for a long time, nothing that I say  
5 will change it, nothing Mr. Jaffe says will change it,  
6 nothing the Court says will change it it. Nothing that  
7 his neighbor says will change it. That's just the way  
8 he feels. Now, the next one is No. 5, which is  
9 Ms. Vera, badge No. 20008, and Ms. Remember have a, the  
10 same questions, note Vera. Sure. Ms. Vera was -- was  
11 this is on the pain and suffering Mr. Jaffe, Mr. Orr  
12 Ms. Vera agreed with -- Mr. Evans, on the specific  
13 issue of pain and suffering. She didn't believe in  
14 pain and suffering. In award yeah in awarding money  
15 for pain and suffering she just does not believe that  
16 that's something that that is even compensable area of  
17 damage. She says flat-out that she agrees with  
18 Mr. Evans that she would feel uncomfortable with her,  
19 you know, having her frame of mind, having someone on  
20 the jury, not only that, but she says that she's not  
21 going to change her mind. She says that the parties  
22 are are not going to have a fair fight because  
23 Mr. Khoury is going to start off ahead of Ms. Seastrand  
24 on that specific narrow issue, and that, you know,  
25 nothing is going to change her mind I'm not going to

1 change her mind Mr. Jaffe is not going to change her  
2 mind the Court's not going to change her mind that's  
3 just the way she feels.

4           Next is No. 6, will he tissue Shah one way or  
5 another badge No. 020028, and this was dealing with  
6 the -- with the 2 million-dollar amount. Ms. One way  
7 or another was asked about that, and she says that  
8 it's outrageous, she says that you know, that there's  
9 she would feel uncomfortable having a jury or a juror  
10 with her frame of mind on a case hypothetical case,  
11 where she was the plaintiff, she's felt that way for a  
12 long time. She says that it's not going to be a fair  
13 fight. Because Mr. She actually I believe said that  
14 she also had had bias. And then additionally she  
15 that's Mr. Khoury is going to start off, you know,  
16 ahead of ahead of Ms. Seastrand. Again she says she  
17 has felt that way for a long time that no one is going  
18 to change her mind I'm not going to change her mind  
19 Mr. Jaffe is not going to change her mind or the judge,  
20 Your Honor is not going to change her mind. . Let's  
21 see. Young Mr. Young, the gentleman on the back row,  
22 what is his badge number? I can't see him yeah 20009,  
23 he also says he's uncomfortable in an amount above  
24 2 million. He would feel uncomfortable bag having a  
25 juror with his frame of mind his state of mind, his,

1 you know, if he was a plaintiff, and that that the  
2 plaintiff would not get a fair fight. He also  
3 talked about how that no one is going to change his  
4 mind he has had had that plea for a long time he  
5 carried that belief with him into the Court today he  
6 didn't form it today he has it had for a long time I'm  
7 not going to change it Mr. Jaffe is not going to change  
8 it the Court is not going to change it. Additionally  
9 he testified that they're not going to have a fair  
10 tight that Mr. Khoury is going to start off ahead of  
11 Ms. Seastrand on that specific issue. Now, finally or  
12 not finally, the eight is Joey Bulason. Badge  
13 No. 20017, and Mr. Bell son he also felt like the  
14 2 million was a problem. He put that in his jury  
15 questionnaire.

16 MR. JAFFE: If you want Bulason off I will  
17 stipulate to him.

18 MR. EGLEY: Okay.

19 MR. JAFFE: I'm not I have no problem with  
20 with throwing Bulason off.

21 THE COURT: Okay.

22 MR. CLOWARD: Okay. Your Honor. The next  
23 one.

24 MR. JAFFE: I'm not I'm not necessarily  
25 saying that it's for any of the reasons you said, but

1 if you want Bulason off I will agree to Bulason off.

2 THE COURT: Just a stipulated strike.

3 MR. JAFFE: Yeah.

4 MR. CLOWARD: No. 9, Your Honor, ninth cause  
5 challenge, for plaintiff Margie Seastrand is juror  
6 badge No. 20033, Patty J Agnor. And there were a lot  
7 of things Ms. Agnor had problems with. You know, she  
8 says that hey look, unless the plaintiff is mises ago  
9 limb, is completely disabled, there's no way she could  
10 go to 2 million for anyone that she felt like 2 million  
11 as well just outrageous, it's so much money,  
12 additionally she feels like there's -- there's a source  
13 of intent or a a level level of intent that needs to be  
14 involved. She says look only if it's on purpose, yeah  
15 that, if the if the if the person hurt the other person  
16 on purpose. That's what she would require. Another  
17 thing is that she would she said she would be  
18 uncomfortable with someone with her frame of mind on  
19 this specific issue. You know if she was a plaintiff,  
20 serving on the on the jury, she also felt like she said  
21 flat-out that there wouldn't be a fair fight because  
22 Mcwould start out ahead of her or ahead of  
23 Ms. Seastrand on that issue. And and she agreed that  
24 she would not be a good fit ^KRISTY CHECK Mr. Khoury.  
25 For this particular jury on that specific issue. And



1 finally, you know she said that she's held these  
2 beliefs for a long time. Nothing that I'm going to say  
3 is going to change that. Nothing Mr. Jaffe's going to  
4 say is going to change that. Nothing the Court is  
5 going to say is going to change that. That's the way  
6 she feels, that's the way she, you know, what what we  
7 are core values and her beliefs are, regarding that.

8 THE COURT: I would suggest that since we're  
9 going to let the defendant defense counsel try to  
10 rehabilitate on the rest of these, if I excuse  
11 Bulson right now, and we put someone else? his place  
12 air going to ask him more questions of that person  
13 before we move on, so,.

14 MR. CLOWARD: Yeah.

15 THE COURT: Maybe we let the defense go, and,  
16 and try to rehabilitate the ones that have been  
17 addressed now.

18 MR. JAFFE: Sure Judge .

19 THE COURT: Go from there.

20 MR. CLOWARD: I think that's fair everybody  
21 good with that?

22 THE COURT: All right. Those are your  
23 challenges for cause so far?

24 MR. CLOWARD: Oh, yes, Your Honor, that's it.

25 THE COURT: Okay. So are we going to just

1 let Mr. Jaffe go next?

2 MR. EGLET: With those eight jurors on those  
3 issues we just addressed.

4 MR. JAFFE: Yeah.

5 THE COURT: You good with that.

6 MR. JAFFE: Yes, sir.

7 THE COURT: See what you can do as far as  
8 rehabilitating on these eight jurors.

9 MR. JAFFE: Sure.

10 THE COURT: And then we'll address whether or  
11 not I'm going to grant the challenges for cause or not  
12 and maybe put new people up there see what happens.

13 MR. JAFFE: Yes, sir.

14 THE COURT: Okay. Let's bring them back.

15 THE BAILIFF: All rise.

16 (Whereupon jury the courtroom.)

17 THE COURT: All right. Go ahead and be  
18 seated. Welcome back folks we're back on the record  
19 Case No. 636515. Apologize for the delay that's going  
20 to happen a lot during the trial I'm going tell you ten  
21 minutes and will ends up being half hour and because  
22 sometimes there's things and the attorneys and I have  
23 to discuss it's not that we're not working we're trying  
24 to move things along in a manner that will actually be  
25 better for you you just don't understand it and why

1 that happens, but trust me that we were in here working  
2 and we're trying to move things along, and at this  
3 point, the plaintiff is not completed with their voir  
4 dire, but Mr. Jaffe's going to ask some questions at  
5 this point. and turn the time over to him.

6 MR. JAFFE: Thank you, Your Honor good  
7 afternoon. Going to be ask certain jurors questions  
8 following up on some issues raised by Mr. Cloward  
9 earlier.

10 So Ms. Agnor, if I can talk to you for a  
11 couple of minutes.

12 PROSPECTIVE JUROR NO. : okay.

13 MR. JAFFE: Now, I was a little confused  
14 before, and I want to make sure I understand one thing  
15 correctly. When Mr. Cloward was asking you questions  
16 about whether you would feel uncomfortable bothered, or  
17 could not accept a 2 million-dollar pain and suffering  
18 request, that they would be making okay, does that mean  
19 that you could never award pain and suffering in a case  
20 if there was some that you found to exist.

21 PROSPECTIVE JUROR NO. : oh, no, no. I  
22 think if someone's deserves a reward, not a reward,  
23 not a reward, but.

24 MR. JAFFE: A verdict.

25 PROSPECTIVE JUROR NO. , right. Or even

1 for pain and suffering, or missed work compensation,  
2 medical bills, of course they're entitled to whatever  
3 their whatever they miss out on.

4 MR. JAFFE: So when you were asked questions  
5 about my client possibly being ahead of his client  
6 being behind on a 2 million-dollar request, does that  
7 mean that the plaintiff is ahead ever or behind on any  
8 request for pain and suffering if they prove it 20 to  
9 be appropriate in the case.

10 PROSPECTIVE JUROR NO. :

11 MR. JAFFE: In other words, if let me ask it  
12 this way, Judge Wiese at the the end of the trial is  
13 going to give every \juror\Juror an instruction he's  
14 going to read instructions and tell you about how to  
15 view certain -- the evidence you have heard, how to  
16 \structure\structural your award to -- to make your  
17 award, and what you can and cannot award for one of  
18 which being pain and suffering. First of all, will you  
19 follow the law that Judge Wiese reads if you're  
20 selected as a juror?

21 PROSPECTIVE JUROR NO. : yes if that's the  
22 law, you bet.

23 MR. JAFFE: Okay. And if pain and suffering  
24 is allowed, as a measure of damages, will you give the  
25 plaintiff as equal a chance to prove her pain and



1 suffering claim whether you want to believe \$2 million  
2 or not, but you will still at least listen to the law,  
3 and if you felt that pain and suffering was  
4 appropriate, render what you would believe to be a fair  
5 pain and suffering verdict consistent with the law?

6 PROSPECTIVE JUROR NO. : of course.

7 MR. JAFFE: So you can follow the law on pain  
8 and suffering.

9 PROSPECTIVE JUROR NO. : you bet.

10 MR. JAFFE: So it sounds to me like what  
11 you're saying is you can give a fair award on pain and  
12 suffering it's just if \$2 million is requested, you may  
13 not necessarily feel comfortable with that number, but  
14 you would give something a different number if you felt  
15 it was fair.

16 PROSPECTIVE JUROR NO. , right. Right. I  
17 mean, if she's got \$2 million worth of medical bills,,

18 MR. JAFFE: Different story.

19 PROSPECTIVE JUROR NO. : different story.

20 MR. JAFFE: Different story. So in other  
21 words, then, when it comes to giving a pain and  
22 suffering award you will follow the law and give a  
23 number that you would feel would be appropriate based  
24 upon the law and the facts and the evidence and  
25 everything you hear in the trial.

1 PROSPECTIVE JUROR NO. : of course.

2 MR. JAFFE: Okay. And are both sides on an  
3 equal footing going into the start of the trial on what  
4 any pain and suffering award could potentially be given  
5 the fact that you have heard nothing and seen nothing  
6 in the case?

7 PROSPECTIVE JUROR NO. : I don't think so.

8 MR. JAFFE: No?

9 PROSPECTIVE JUROR NO. : I don't think so.

10 MR. JAFFE: Why is that.

11 PROSPECTIVE JUROR NO. : because we don't  
12 know where the pain and suffering's coming from.

13 MR. JAFFE: Okay. But that's part of the  
14 proof's that you would hear.

15 PROSPECTIVE JUROR NO. , right.

16 MR. JAFFE: I guess my point is this would  
17 you give plaintiff an equal point prove her pain and  
18 suffering claim.

19 PROSPECTIVE JUROR NO. : yes.

20 MR. JAFFE: Just as you will give Mr. Khoury  
21 an equal chance to defend against the pain and  
22 suffering claim.

23 PROSPECTIVE JUROR NO. , right.

24 MR. JAFFE: So I guess going into the trial,  
25 are each of them on a separate on an equal footing

1 given that you don't know anything yet.

2 PROSPECTIVE JUROR NO. , right. Yes.

3 MR. JAFFE: That's true?

4 PROSPECTIVE JUROR NO. : yes.

5 MR. JAFFE: Okay. Now, and when you were

6 asked questions about whether you would want to sit on

7 a jury be a litigant have a jury with your frame of

8 mind were you answering that based upon a 2 million

9 pain and suffering claim or the simple fact of any pain

10 and suffering claim or a personal injury claim?

11 PROSPECTIVE JUROR NO. :

12 MR. JAFFE: In other words, when you were

13 asked that question about I am not feeling comfortable

14 with a whole jury with your frame mind was that because

15 of the 2 million-dollar pain and suffering claim was

16 thrown into the mix.

17 PROSPECTIVE JUROR NO. : I think so.

18 Yeah.

19 MR. JAFFE: Now, given that how you said you

20 are you would be a fair juror on pain and suffering,

21 would you feel comfortable having a jury made-up

22 entirely of your frame of mind when it comes to obeying

23 the law and giving each side a fair shake when it comes

24 to deliberations?

25 PROSPECTIVE JUROR NO. : I think so.

1 MR. JAFFE: So you can be fair to both sides.

2 PROSPECTIVE JUROR NO. : I think so.

3 MR. JAFFE: Is that what you would want if  
4 you were sitting at one of these tables and picking a  
5 jury.

6 PROSPECTIVE JUROR NO. : to share share  
7 you bet.

8 MR. JAFFE: So in other words, you would feel  
9 comfortable having jurors like yourself, deliberating  
10 on your case because they would be fair?

11 PROSPECTIVE JUROR NO. : exactly. Because  
12 that's what the law is.

13 MR. JAFFE: Thank you. That's all I mented  
14 to find out. Now, Ms. Vera, do you agree with  
15 everything Mrs. Agnor said or do you feel differently.

16 PROSPECTIVE JUROR NO. : I agree.

17 MR. JAFFE: So Ms. Vera it soundses to me  
18 like what you're saying, then, is you can award pain  
19 and suffering in a fair amount, Kent with what the law  
20 and consistent with the facts and evidence if you're  
21 selected as Juror.

22 PROSPECTIVE JUROR NO. : yes.

23 MR. JAFFE: Okay. And given that, would you  
24 feel comfortable having eight jurors like yourselves  
25 deliberating on your case if you were here knowing that



1 they would be fair and following the law.

2 PROSPECTIVE JUROR NO. : yes.

3 MR. JAFFE: Okay. And are you -- are you do  
4 you feel that you can under no circumstances award pain  
5 and suffering?

6 PROSPECTIVE JUROR NO. :

7 MR. JAFFE: In other words, if if you heard  
8 evidence that there was pain and suffering -- excuse  
9 me. If you heard evidence that there was pain and  
10 suffering, Judge Wiese reads the law regarding pain and  
11 suffering, and you are allowed to deliberate and  
12 consider that, would you award what you felt would be a  
13 fair pain and suffering award bailed upon the evidence  
14 and the law?

15 PROSPECTIVE JUROR NO. : based upon what  
16 they can prove, .

17 MR. JAFFE: Yes.

18 PROSPECTIVE JUROR NO. : yes.

19 MR. JAFFE: Okay. So you can listen to the  
20 law and deliberate fairly on the evidence.

21 PROSPECTIVE JUROR NO. : yes.

22 MR. JAFFE: \but\{,}but\{,}but{~}... it's the  
23 simple fact that a 2 million-dollar figure was thrown  
24 out there.

25 PROSPECTIVE JUROR NO. : yeah.

1 MR. JAFFE: That's what sort of kind of  
2 allowed you.

3 PROSPECTIVE JUROR NO. : yeah a red flag  
4 went up.

5 MR. JAFFE: Okay. If there was a situation  
6 where or are you saying that you could envision  
7 absolutely no situation whatsoever where would would  
8 potentially be \$2 million in pain and suffering, or  
9 would it have to be just in the overall scale of things  
10 in your deliberations of a certain level of pain and  
11 suffering that somebody would have to experience?

12 PROSPECTIVE JUROR NO. : say that one more  
13 time.

14 MR. JAFFE: Okay. I guess what I'm trying to  
15 say is this.

16 PROSPECTIVE JUROR NO. : bets an a a long  
17 day.

18 MR. JAFFE: I know it has and my mind is numb  
19 too.

20 Ms. Vera, obviously, people are going to  
21 experience different types of pain and suffering based  
22 upon whatever sort of traumatic injury they have. I  
23 mean, if you fall down and you break your supplying it  
24 heels within six weeks okay that's one thing if you end  
25 up having surgery so and so on the long r and the more

1 extensive the potentially the greater the pain and  
2 suffering, I guess what I'm saying is in that whole  
3 graduated scales a things keep moving up the line you  
4 can envision no possible circumstances of ever awarding  
5 \$2 million?

6 PROSPECTIVE JUROR NO. :

7 MR. JAFFE: Or would it just have to be a  
8 very supreme circumstance.

9 PROSPECTIVE JUROR NO. : well with the  
10 pain, you know, there's -- okay. In my -- my small  
11 mind.

12 MR. JAFFE: That's fine.

13 PROSPECTIVE JUROR NO. : pain is  
14 associated with treatment. Okay? Suffering is  
15 associated with treatment too. But it would it would  
16 have to it would have to be Batesed on the amount of  
17 treatment they got for their suffering.

18 MR. JAFFE: Okay. So in other words, you  
19 would fairly deliberate and determine what you feel is  
20 a fair number, and you don't have any artificial limit  
21 placed in your mind as to what it would be it would  
22 just depend on the circumstances?

23 PROSPECTIVE JUROR NO. : yes.

24 MR. JAFFE: Thank you very much.

25 Mr. Evans, let me ask you heard me ask the

1 same things do you feel any differently from Mrs. Agnor  
2 and Mrs. Mr. Evans or Ms. Vera.

3 PROSPECTIVE JUROR NO. : no.

4 MR. JAFFE: So do you feel you auto could  
5 award for pain and suffering if it was appropriate.

6 PROSPECTIVE JUROR NO. : no.

7 MR. JAFFE: Not at all.

8 PROSPECTIVE JUROR NO. : no.

9 MR. JAFFE: You said no circumstances could  
10 you find pain and suffering to be an appropriate  
11 measure of damages?

12 PROSPECTIVE JUROR NO. : no.

13 MR. JAFFE: Even if the law allowed it.

14 PROSPECTIVE JUROR NO. : personally, no.

15 MR. JAFFE: Okay. That's just your feeling.

16 PROSPECTIVE JUROR NO. : that's just my  
17 feeling opinion.

18 MR. JAFFE: If Judge Wiese reads you the law,  
19 and the law says you're allowed to award for pain and  
20 suffering, would you fool the law or at that point.

21 PROSPECTIVE JUROR NO. : I would  
22 definitely follow the law so I definitely would follow  
23 the law so it doesn't put me into contempt of court,  
24 but it's not going to change my opinion on whether  
25 somebody should be awarded pain and suffering.



1 MR. JAFFE: Okay. Auto.

2 MR. JAFFE: But that's just your personal  
3 kneeling pain and suffering is is not something you  
4 feel comfortable awarding.

5 PROSPECTIVE JUROR NO. : yes.

6 MR. JAFFE: Whether somebody asks for it or  
7 not.

8 PROSPECTIVE JUROR NO. , correct.

9 MR. JAFFE: And I'm not certain you're saying  
10 the law requires you must find pain and suffering, but  
11 you will follow the law?

12 PROSPECTIVE JUROR NO. , correct.

13 MR. JAFFE: Would you expect any different  
14 from jurors if you were sitting at that table, and you  
15 were bringing a lawsuit.

16 PROSPECTIVE JUROR NO. : nope.

17 MR. JAFFE: No?

18 PROSPECTIVE JUROR NO. : no.

19 MR. JAFFE: So then you.

20 PROSPECTIVE JUROR NO. : I was brought up  
21 I was raised you work for your money you earn your  
22 money, if I get in an accident, and I need my bills  
23 covered and everything taken care of that I lost during  
24 the injury, yeah I want that back.

25 Q (By Mr. Jaffe) Okay. So then.

1 PROSPECTIVE JUROR NO. : I didn't ask for  
2 that.

3 MR. JAFFE: Okay. My point, then, is that  
4 you would feel comfortable having eight people feeling  
5 the same as you judge your case because that's a  
6 principal by which you would stand.

7 PROSPECTIVE JUROR NO. :  
8 \right\{,}right\right\{,}\{,}right\{,} now if if.

9 MR. JAFFE: You wouldn't expect different of  
10 others.

11 PROSPECTIVE JUROR NO. : if I'm sitting in  
12 her place, and I'm no longer able to to earn my living,  
13 this person took that from me, I want what I would have  
14 made until I retired.

15 MR. JAFFE: Okay.

16 PROSPECTIVE JUROR NO. : whether you deem  
17 that pain and suffering that's up to you. I don't feel  
18 that's pain and suffering. So it's my opinion.

19 MR. JAFFE: Thank you, sir, were runs how  
20 \but\you about, sir with with with what I asked Mrs.  
21 Agnor and Ms. Vera could you agree with that.

22 PROSPECTIVE JUROR NO. : yes, I do.

23 MR. JAFFE: So do you believe you could award  
24 pain and suffering.

25 PROSPECTIVE JUROR NO. : I could and if

1 the situation was extreme enough, yes.

2 MR. JAFFE: Okay. And if it was fair would  
3 you award what you would believe to be a fair amount  
4 consistent with the law and the evidence that you have  
5 heard, and that law as told you by Judge Wiese.

6 PROSPECTIVE JUROR NO. : yes, fair is a  
7 good word.

8 MR. JAFFE: That's all we want is fairness.

9 So would it sounds again just like I have  
10 asked the others is that 2 million-dollar figure, sort  
11 of kind of jolted you.

12 PROSPECTIVE JUROR NO. : yes.

13 MR. JAFFE: But if if the law was that you  
14 were not not necessarily held to that, but you could  
15 award what was in your mind a fair pain and suffering  
16 award that is something you could abide by.

17 PROSPECTIVE JUROR NO. : yes.

18 MR. JAFFE: You feel comfortable with that.

19 A. Pres.

20 Q. And if you were sitting at that table and  
21 eight jurors were told in that case to do that same  
22 thing would you feel comfortable with those eight same  
23 jurors has having the same frame of mind as you do  
24 deliberating on your case.

25 PROSPECTIVE JUROR NO. : yes.

1 MR. JAFFE: Thank you very much, sir.  
2 Mrs. One way or another, how about you anything  
3 different or do you feel the same way as those others.

4 PROSPECTIVE JUROR NO. : I feel the same  
5 way although I would say seeing pain every day I don't  
6 think there's like a certain amount that would take it  
7 away right there, but then there's relief, but I think  
8 the amount that they have been asking is too much I  
9 mean, whatever question we decide if ever, I will go  
10 for that.

11 MR. JAFFE: Okay., but would you listen to  
12 the facts to at least decide whether the 2 million is  
13 justified.

14 PROSPECTIVE JUROR NO. : yes, I would.

15 MR. JAFFE: And if it was justified, and you  
16 felt it was fair would you award that?

17 PROSPECTIVE JUROR NO. : I would think  
18 about it. Because for me it's too much really.

19 MR. JAFFE: Okay. But if Judge Wiese reads  
20 you the and you have says to you, air allowed to award  
21 a fair amount for pain and suffering, what you believe  
22 to be is fair, can you do that?

23 PROSPECTIVE JUROR NO. : yes.

24 MR. JAFFE: You can follow the law.

25 PROSPECTIVE JUROR NO. : yes.



1 MR. JAFFE: And you have no problem with a  
2 pain and suffering award it was it was the  
3 2 million-dollar figure that general jolted you.

4 PROSPECTIVE JUROR NO. : uh-huh.

5 MR. JAFFE: Thank you very much Mrs. One way  
6 or another.

7 Mr. Waker, ..

8 PROSPECTIVE JUROR NO. : yes.

9 MR. JAFFE: Got to come back to you I think  
10 you made it very clear actually that in you were in no  
11 way pre \judge\Judge{~}ing any amount until that case;  
12 is that right.

13 PROSPECTIVE JUROR NO. : yes.

14 MR. JAFFE: You were you're willing to give  
15 both sides an equal and fair shake.

16 PROSPECTIVE JUROR NO. : yes.

17 MR. JAFFE: Are you willing to listen to the  
18 evidence and and listen to it fairly, and impartially.

19 A. Yes.

20 Q. Are you willing to owe Bate law that  
21 Judge Wiese reads and apply that law to the facts as  
22 you see fit if you were selected as juror?

23 A. Yes.

24 Q. Sir, I know again, you were bothered by that  
25 2 million-dollar figure or sort of startled you a bit.

1 But can you award pain and suffering if that is the  
2 law, and there are facts to support it and you believe  
3 it's fair?

4 A. Yes.

5 MR. JAFFE: And can you award it what you  
6 believe to be a fair amount for pain and suffering if  
7 you are selected as juror.

8 A. Yes.

9 MR. JAFFE: Some you were bothered by the  
10 2 million, not the concept of pain and suffering; is  
11 that right.

12 PROSPECTIVE JUROR NO. : because I believe  
13 that an amount that large for automobile accident is  
14 frivolous extremely frivolous.

15 MR. JAFFE: Okay. You will give the  
16 plaintiff a chance to prove her case for pain and  
17 suffering and award what you -- and render an award  
18 consistent with the facts and the law?

19 PROSPECTIVE JUROR NO. : yes.

20 MR. JAFFE: And even if that includes a pain  
21 and suffering award?

22 A. That depends on.

23 MR. JAFFE: Depends on the facts you hear.

24 A. What the law states, and what is -- right.

25 A. Facts are give glen so if that's the

1 indication are both sides equally \place\played in  
2 your mind going into everything since you have heard  
3 nothing? I think that's what you have pretty much  
4 said.

5 A. Right. Zillion you haven't pre  
6 \judge\Judge{~}ed anything, right.

7 A. I haven't yet.

8 Q. Mrs. one way or another you haven't pre  
9 \judge\Judge{~}ed anything you have? About this case  
10 are both sides equally set since you have heard no  
11 evidence or facts in this case.

12 PROSPECTIVE JUROR NO. : so far.

13 MR. JAFFE: Pardon me.

14 PROSPECTIVE JUROR NO. : so far yeah.

15 MR. JAFFE: Thank you. Mr. Runs, are they  
16 equal in your mind.

17 PROSPECTIVE JUROR NO. : so far.

18 MR. JAFFE: Thank you. Mr. Frasier, will you  
19 follow the law.

20 PROSPECTIVE JUROR NO. : absolutely.

21 July.

22 Q. Will you listen to the evidence and  
23 deliberate on the evidence and apply that to the law  
24 that Judge Wiese gives you?

25 A. Yes.

1 Q. And if the law allowed for a pain and  
2 suffering award, would you deliberate on on that and  
3 render what you would feel to be a fair pain and  
4 suffering award based upon the evidence you hear?

5 A. Fair based on on the evidence, yes.

6 Q. So similar to the others is it the  
7 2 million-dollar figure when it was just randomly  
8 throwed out bothered you?

9 A. Absolutely.

10 Q. But not the concept of pain and suffering?

11 A. No.

12 Q. So then, is the plaintiff, and Mr. Khoury are  
13 they both in an equal position in your mind as well at  
14 the start since you've heard no evidence or facts?

15 A. Correct.

16 Q. You will be able to fairly drink on this case  
17 and give each a equal showed the fair fight Mr. Cloward  
18 was talking about you will give both sides an equal  
19 chance to prove their case in your mind?

20 A. (Witness nods head.)

21 MR. JAFFE: Thank you very much, sir. Now  
22 you had also made a comment, that you thought were  
23 concerned that the majority of cases are frivolous. Do  
24 you remember that, sir,.

25 PROSPECTIVE JUROR NO. : yes I do.



1 MR. JAFFE: Is this case a frivolous case.  
2 PROSPECTIVE JUROR NO. : I haven't heard  
3 it.  
4 MR. JAFFE: That's exactly, right. That's my  
5 point. So you're not you haven't Judgeed in your mind  
6 that this is a frivolous case have you.  
7 PROSPECTIVE JUROR NO. : no it's just you  
8 know the dollar figure being thrown out there, .  
9 MR. JAFFE: Kind of puts on your radar scope.  
10 A. Yeah.  
11 Q. So is that why someone is asking for that  
12 much money?  
13 A. Right.  
14 Q. But you haven't Judgeed this as frivolous or  
15 not?  
16 A. No.  
17 Q. Will you have to hear the evidence, and the  
18 facts to make that determination in your mind?  
19 A. To make it \clear cut\clear-cut yes.  
20 Q. One way or another?  
21 A. Flight are both sides again equally placed in  
22 your mind in that regard as well?  
23 A. Yeah. If we're starting out a level ground.  
24 Q. Yes?  
25 A. Not one already has this.

1 Q. Yeah?

2 A. Yeah then it's it's all fine in my mind.

3 Q. Thank you.

4 MR. JAFFE: Last one, Mr. Young, I did

5 pronounce it right.

6 PROSPECTIVE JUROR NO. : it's young, but

7 everyone says young.

8 MR. JAFFE: That's I want to make sure

9 unnerve know who is going to be offended

10 \sir\{, }sir\{, }sir{, } \sir{, } you have heard what I have

11 asked these other people as well.

12 PROSPECTIVE JUROR NO. : it's the way the

13 first question was was worded by by him.

14 MR. JAFFE: Mr. Cloward.

15 PROSPECTIVE JUROR NO. : yeah it was it

16 was very general, and it was saying himly if it was

17 \$2 million how would you view it that obviously you're

18 going to say that's a crazy amount of money so it's

19 going to seem a little off so I think that's how most

20 of us were answering the question.

21 MR. JAFFE: That's the way I took it that's

22 why I wanted to clarify so, sir, in your mind are you

23 saying that there is no such thing as pain and

24 suffering award in my personal injury lawsuit.

25 PROSPECTIVE JUROR NO. : I think there has

1 to be some kinds of proof something on paper whether it  
2 be medical something like that because I mean, you  
3 heard the stories about buying housings and cars and  
4 stuff like that if that's where the money is being  
5 spent, then. Obviously.

6 MR. JAFFE: And that's what I wanted to ask  
7 you, sir, is this this: You have heard me.

8 ALL JURORS: These other people the same  
9 question Judge Wiese is going to give you the law at  
10 the conclusion of the trial you're going to hear the  
11 evidence during the corset of of the trial you will  
12 fairly deliberate on that evidence apply the law and if  
13 you found it was appropriate, award a fair pain and  
14 shivering amount to the plaintiff?

15 A. Yeah.

16 Q. So you don't have a problem with the concept  
17 of pain and suffering it's just the \$2 million bothered  
18 you being thrown at you right out of the the of the  
19 box?

20 A. I guess it's how you view pain and suffering,  
21 if it's just like R like how someone lives but if you  
22 have the proof whether it's the money that they lost  
23 from their job not working, or disability or something  
24 like that if that's proven that I think I can go with  
25 that, but I think if it's just because you know,.

1 BY MR. JAFFE:

2 Q. Well, okay but excuse me, so you wouldn't  
3 want to see facts and evidence to support, pain and  
4 suffering, right?

5 A. Yeah.

6 Q. I mean, you would agree with me that in  
7 somebody fell and broke their leg they're going to feel  
8 pain right?

9 A. Of course you.

10 Q. Wouldn't question that or debate that point?

11 A. But I don't think they should get compensated  
12 for the pain. As far as like treatment, and getting  
13 back to normal getting back on your feet I completely  
14 agree with that, but ...

15 Q. Now, if if Judge Wiese gives you the law and  
16 says people aren't entitled to recover for pain and  
17 suffering as they see -- as as is fair, and proven, at  
18 least in your mind, there is a measure a way to measure  
19 pain and suffering for you to give such an award; is  
20 that right?

21 A. I don't know how you would put a monetary  
22 amount on that.

23 Q. That's -- that's that's what why you are the  
24 jury and you get to figure that one out I'm just a  
25 lawyer and I get to tell you why.



1           Okay. And quite candidly it's always an  
2 issue that comes up in every case, but you will hear  
3 evidence about what you experience about medical  
4 treatment claimed injuries obviously there's a big  
5 dispute here, so I don't want to sit here and say that  
6 all of it it of agents guaranteed proven given it's  
7 going to be what you accept what you want to hear, but  
8 would you able to follow the law as it applies to  
9 rendering an award for pain and suffering biopsied on  
10 the evidence you hear if you feel it is appropriate?

11         A. I would have to.

12         Q. You would?

13         A. Yeah.

14         Q. Okay.. And if that's the indication are both  
15 sides equally placed at that starting line since you  
16 have heard no evidence or facts at this point in the  
17 case?

18         A. I said the opposite the first time, but I  
19 mean it's because how it was worded but if you're  
20 playing from that side, yeah.

21         Q. Bombs the first time you heard it was when  
22 the \$2 million was thrown into it?

23         A. That was all that was put in there nothing  
24 you.

25         Q. Throw the \$2 million out now all of a sudden

1 you're hearing about, that there's a lawsuit there's  
2 claim for injuries there's claim for damages, in your  
3 mind, are both sides at an equal position to prove  
4 their case having given you nothing at that point?

5 A. Yes, sir.

6 Q. Thank you.

7 MR. JAFFE: Have the Court's inindulgence for  
8 one moment. Your Honor I have nothing further. Thank  
9 you.

10 THE COURT: So do you want any more on those  
11 eight Mr. Cloward?

12 MR. CLOWARD: Yeah may we approach?

13 THE COURT: Sure.

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

16 THE COURT: All right folks, I'm going to let  
17 you a few of of you go. Lucky. Let me get the names  
18 right here. Mr. Evans, Juror No. 9. We thank and  
19 excuse you.

20 PROSPECTIVE JUROR NO. : \juror\Juror  
21 number what.

22 THE COURT: Juror No. 9 I don't know what  
23 your badge number is we're going to excuse you go back  
24 down to the third floor and let them know you have been  
25 excused by Department 30 thank you for your time, sir.

18 (Pages 66 to 69)

18 (Pages 66 to 69)

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1 through with the surgery?

2 A. No, not that I recall. I'm not sure if

3 there's some note where she called the office. That may

4 be. I just don't recall.

5 Q. If she had called the office and said she was

6 not going to have the surgery, is that something that

7 would have been noted in the chart somewhere?

8 A. Typically there would be a note. I didn't see

9 it in reviewing for my deposition.

10 Q. Okay.

11 A. I saw that on her lumbar spine that she was

12 approved for her insurance for the surgery.

13 Q. Okay. If she had spoken to a woman in your

14 office, who might that likely have been, if we're going

15 back in March of 2010, to report she was not going to

16 have the surgery?

17 A. I don't recall. It could have been a number.

18 I have -- my PA is male and I have a medical assistant

19 that's a male. All the other employees are females.

20 Q. Okay. Because in her deposition, and I'm

21 reading from page 173, the question was: So how did you

22 tell Dr. Muir that you were not going to go through with

23 the surgery?

24 Answer: I called them and told them I'm going

25 to wait and get a second opinion and talked to his lady.

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1 And she said, Well, why? And I said, Because I don't --

2 I want -- I don't want to do the rods. And she said,

3 But it will be wonderful. And I said, I just don't feel

4 good about it for me and I'm going to get another

5 opinion, is what I told her.

6 And then I had asked her: Did you ever

7 contact them again afterwards?

8 And she said: I didn't. I didn't because

9 that was all he had to offer me was that.

10 In other words, the surgery involving rods.

11 Would you dispute that?

12 A. No.

13 Q. Well, I mean obviously you did offer her more

14 than just a surgery involving rods; you offered her

15 conservative care, spinal cord stimulator --

16 A. I'm sorry, I thought you were referring to the

17 surgery itself.

18 Q. Right. You also offered her a posterior

19 approach?

20 A. Yes, either anterior/posterior or a posterior

21 alone or spinal cord stimulator or conservative care.

22 Q. Right. But, Doctor, I mean you gave her a lot

23 of options, right?

24 A. I think you're asking me to put it on a tee

25 for you but --

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1 Q. No, no, no. No, because she's saying you

2 didn't give her any options. You're saying you did.

3 A. Well, I did. It's documented.

4 Q. Right. And you would certainly stand by

5 what's noted in your chart?

6 A. Yes.

7 Q. Now, she testified that she went to

8 Dr. Khavkin because he did a solely anterior approach.

9 If that was a surgery that she felt she wanted, is that

10 one that you would have performed in her case?

11 A. I would do -- I have done anterior stand-alone

12 single levels. Personally, for a two-level, I wouldn't

13 do that.

14 Q. For the reasons you said before?

15 A. And I'm not criticizing others. Just in my

16 hands --

17 Q. I know.

18 A. -- I feel it's a better surgery to fuse front

19 and back. However, that is acceptable treatment.

20 Q. I'm not in any way implying that it was a

21 breach of the standard of care or asking you to comment

22 on whether you believe it was a standard -- a breach of

23 the standard of care. So just we're clear I want that,

24 you know, said.

25 A. I understand.

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1 Q. And you're certainly not here to comment upon

2 the standard of care of others particularly when you

3 haven't seen their chart, I would assume, is that the

4 case?

5 A. Typically that's the case.

6 Q. Now, if she had hypothetically come back to

7 you and said, "I went to see Dr. Khavkin who believed

8 that an anterior approach can do the same job for me;

9 would you be willing to do that surgery for me, Doctor,

10 since I had a good result in my cervical spine with

11 you," what would your response to that have been?

12 A. We would have had a lengthy discussion again

13 about the pros and cons of anterior stand-alones versus

14 anterior/posterior or posterior.

15 Q. If she insisted --

16 A. Let me put it this way. I have not done

17 two -- multiple level anterior stand-alone.

18 Q. And chances are this one would not have broken

19 the streak?

20 A. Right.

21 Q. So if she insisted that that was what she

22 wanted, then you would have invited her to see another

23 physician?

24 A. Yes, I would have said that in my opinion

25 that's not the best for her, and most likely I would not



19 (Pages 70 to 73)

19 (Pages 70 to 73)

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<p>1 have done the two-level alone.</p> <p>2 Q. From an anterior approach?</p> <p>3 A. From an anterior approach.</p> <p>4 Q. Okay. Given the fact that she never returned</p> <p>5 to see you any further regarding her cervical spine,</p> <p>6 even though you expected to have her come back for final</p> <p>7 X-rays, would it be fair to say that you would need to</p> <p>8 see her again before rendering any opinion as to what</p> <p>9 her future condition might be or whether there is any</p> <p>10 need for future cervical care?</p> <p>11 A. I'm referring -- looking at the MRI scan, and</p> <p>12 I have (un)remarkable at the level above and below. And,</p> <p>13 again, the radiologist did say that there's a disc</p> <p>14 protrusion at C4-5, but I was not impressed with that.</p> <p>15 So I would say, based upon my -- my information, at two</p> <p>16 months most likely she would have gone on to a fusion if</p> <p>17 she hadn't already fused, and most likely she would not</p> <p>18 have required additional surgery.</p> <p>19 Q. In the cervical spine?</p> <p>20 A. In the cervical spine.</p> <p>21 Q. So you don't believe there was an overwhelming</p> <p>22 likelihood of an adjacent segment breakdown?</p> <p>23 A. Correct.</p> <p>24 Q. So then beyond that, would you need to see her</p> <p>25 again to render any further opinions about the need for</p>	<p>1 Q. Given the fact that when you last saw her she</p> <p>2 was a candidate for spinal surgery and she's since had a</p> <p>3 spinal surgery, would you agree with me that you're in</p> <p>4 no position to comment upon her present condition in the</p> <p>5 lumbar spine, her need for future care in the lumbar</p> <p>6 spine, or any future limitations that she may have with</p> <p>7 respect to the lumbar spine without seeing her again?</p> <p>8 A. That's fair, other than saying that people</p> <p>9 that have lumbar fusions, though most do quite well,</p> <p>10 it's not unusual to have some symptoms related to that.</p> <p>11 MR. JAFFE: Doc, thanks very much. I have no</p> <p>12 further questions. I appreciate your time and your</p> <p>13 accommodating --</p> <p>14 MR. HARRIS: Can I take five minutes?</p> <p>15 THE WITNESS: No, Yes.</p> <p>16 MR. JAFFE: He's got to leave.</p> <p>17 MR. HARRIS: He said he could go a little</p> <p>18 late.</p> <p>19 THE WITNESS: No, you're fine.</p> <p>20 CROSS-EXAMINATION</p> <p>21 BY MR. HARRIS:</p> <p>22 Q. Thank you, Doctor, for your testimony. I'm</p> <p>23 just going to go through some of your opinions to focus</p> <p>24 and clarify for evidentiary purposes.</p> <p>25 Did Ms. Seastrand give you a history of her</p>
Page 71	Page 73
<p>1 future care, future limitations, or any other future --</p> <p>2 let's leave it at that.</p> <p>3 A. Was that still a question?</p> <p>4 Q. Yes.</p> <p>5 A. Okay. I would want to -- I would -- by seeing</p> <p>6 her again, examining her again, and possibly ordering</p> <p>7 additional imaging, that would -- could provide</p> <p>8 additional information. I might change my opinion based</p> <p>9 upon those findings.</p> <p>10 Q. But without the future -- rather without</p> <p>11 seeing her again, you would not be able to comment upon</p> <p>12 the future?</p> <p>13 A. I can, based upon the last time I saw her, the</p> <p>14 probability of her doing well in the future.</p> <p>15 Q. Fair enough.</p> <p>16 A. However, there's certainly -- that's a</p> <p>17 probability. There's certainly a possibility that she</p> <p>18 could have adjacent level breakdown particularly at the</p> <p>19 C4-5 level and that she may require additional surgery</p> <p>20 even now.</p> <p>21 Q. But if trial was starting tomorrow in this</p> <p>22 case, you would not be testifying that it's likely or a</p> <p>23 reasonable degree of medical probability?</p> <p>24 A. Based on the information I have now, that's</p> <p>25 correct.</p>	<p>1 physical complaints, other than the motor vehicle</p> <p>2 accident at issue, as the cause subjectively of her</p> <p>3 problems when she presented to you?</p> <p>4 MR. JAFFE: Objection, form.</p> <p>5 THE WITNESS: Yes, she indicated that she was</p> <p>6 involved in a motor vehicle accident 3/13/09 and that's</p> <p>7 when her symptoms began both in the neck and the back.</p> <p>8 Q. (BY MR. HARRIS) And did she give any other</p> <p>9 history other than the motor vehicle accident?</p> <p>10 A. No, not that I recall.</p> <p>11 Q. And did you consider her preexisting condition</p> <p>12 that she reported in the overall evaluation of the</p> <p>13 causation opinions that you have?</p> <p>14 A. I did.</p> <p>15 Q. And what was your opinion relative to the</p> <p>16 preexisting condition?</p> <p>17 A. Well, I don't recall the specifics other than</p> <p>18 she had -- let me look at that particular note.</p> <p>19 We discussed previous injuries and accidents,</p> <p>20 but what I thought was most significant was that she was</p> <p>21 involved -- that she was symptom-free for 23 years.</p> <p>22 Q. In your earlier testimony in response to</p> <p>23 Mr. Jaffe's questions, you actually misspoke in one of</p> <p>24 the sentences by saying -- as you were explaining she</p> <p>25 had this before that, you actually said the word that</p>



20 (Pages 74 to 77)

20 (Pages 74 to 77)

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1 she did not have symptoms before the surgery instead of  
2 saying symptoms before the accident. And neither one of  
3 us jumped in then, but is it fair to say that when you  
4 were explaining that distinction that you were referring  
5 to preexisting the accident as opposed to preexisting  
6 the surgery?

7 A. Yes.

8 Q. Was your physical examination of Ms. Seastrand  
9 consistent with the symptoms that she described?

10 MR. JAFFE: Objection, over broad, vague,  
11 form.

12 THE WITNESS: Yes.

13 Q. (BY MR. HARRIS) And with respect to all  
14 diagnostic studies, was it also consistent with the  
15 symptoms that she described?

16 A. Yes, her diagnostic studies were consistent  
17 with the symptoms she described.

18 Q. And in rendering your opinions, which you've  
19 touched upon, but I want to just have you succinctly  
20 tell us, within a reasonable degree medical probability,  
21 what was your diagnosis of Ms. Seastrand relative to the  
22 motor vehicle accident which is at issue?

23 A. She sustained injury to her C5-C6 disc,  
24 including a small disc herniation, and the damage to the  
25 C5-6 resulted in her symptomatology in the neck.

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1 Regarding the low back, she sustained damage  
2 to the L4-5 and L5-S1 discs which resulted in her  
3 symptomatology.

4 Q. And that's your opinion within a reasonable  
5 degree of medical probability?

6 A. Yes.

7 Q. Did you happen to review either the records  
8 or, by a description of Ms. Seastrand, the prior  
9 treatment leading up to her visits with you?

10 A. She was sent from Dr. Belsky, and I did  
11 have -- I do have some of Dr. Belsky's notes that  
12 include that she had chiropractic treatment and  
13 injections.

14 Q. Do you have an opinion whether the treatment  
15 that she received before coming to you was reasonable,  
16 customary, and related to the accident at issue within a  
17 reasonable degree of medical probability?

18 MR. JAFFE: Objection, foundation, calls for  
19 undisclosed expert opinion.

20 THE WITNESS: Regarding the notes that I have  
21 reviewed, they were reasonable and customary. It's  
22 reasonable and customary in situations such as this to  
23 undergo chiropractic treatment, medications, injections.  
24 So the treatment that I'm aware of, but I have not  
25 reviewed the specific notes from the chiropractor.

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1 Q. (BY MR. HARRIS) But you're not aware of  
2 anything that would be inconsistent with the normal  
3 conservative course of treatment leading up to her visit  
4 with you for surgical consultation?

5 A. Correct.

6 Q. And with the diagnosis that you had, can you  
7 succinctly tell us the treatment that you rendered  
8 operatively?

9 A. Yes, I performed in the cervical spine  
10 anterior cervical discectomy and fusion with plating  
11 where an anterior incision was made, the longus colli --  
12 the strap muscles in the sternocleidomastoid muscles,  
13 the longus colli at this point, were divided. The space  
14 in that was developed down to the anterior cervical  
15 spine. Deep fascia split along its midline and  
16 retracted laterally exposing the anterior aspect of the  
17 disc. And an annulotomy was done at the disc. The  
18 nucleus pulposus was removed as well as some posterior  
19 spurting and the disc herniation. The disc space was  
20 filled with grafting material, which is a tricalcium  
21 phosphate, as well as a polyethylene cage. Then a  
22 titanium plate was placed anteriorly on the spine  
23 between the C5 and C6 vertebral body with four screws.

24 Q. That's relative to the cervical spine?

25 A. Yes.

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1 The lumbar spine plasma disc decompression was  
2 done at both the L4-5 and L5-S1 levels.

3 Q. And was all of this treatment related to the  
4 accident at issue within a reasonable degree of medical  
5 probability?

6 MR. JAFFE: Objection, foundation.

7 THE WITNESS: Yes.

8 Q. (BY MR. HARRIS) Were all the charges charged  
9 by your office, as well as the ancillary charges for  
10 these treatments, also reasonable and customary and  
11 related to the accident within a reasonable degree of  
12 medical probability?

13 A. Yes.

14 Q. And at the time that she discontinued care  
15 with you, was she a candidate for a two-level lumbar  
16 fusion?

17 A. Yes.

18 Q. And was that condition and the recommended  
19 treatment related to the accident at issue within a  
20 reasonable degree of medical probability?

21 A. Yes.

22 MR. HARRIS: No further questions.

23 MR. JAFFE: Just one follow-up question.

21 (Pages 78 to 81)

21 (Pages 78 to 81)

Page 78		Page 80	
1	REDIRECT EXAMINATION	1	CERTIFICATE OF WITNESS
2	BY MR. JAFFE:	2	PAGE LINE CHANGE REASON
3	Q. What actual damage do you believe	3	
4	morphologically this accident caused to the discs at	4	
5	L4-5 and L5-S1?	5	
6	A. That the disc was damaged, including an	6	
7	annular tear at L4-5 and L5-S1. In other words,	7	
8	fragmentation occurred of the disc.	8	
9	Q. So -- okay. Fragmentation of the nucleus	9	
10	pulposus?	10	
11	A. Meaning morphologically there was damage to	11	
12	the disc, to the nucleus pulposus, and the annulus.	12	
13	MR. JAFFE: Okay. Nothing further. Thanks	13	
14	for your time, Doc.	14	
15	Read and sign or waive?	15	
16	THE WITNESS: I'd like to have the deposition	16	
17	sent to me.	17	
18	MR. JAFFE: So read and sign?	18	
19	THE WITNESS: Yes.	19	
20	MR. JAFFE: Okay. Fax the bill over tomorrow	20	
21	to my office, if you wouldn't mind, and I'll make sure	21	
22	my secretary gets you paid for the other hour.	22	
23	THE WITNESS: All right.	23	
24	(Deposition concluded at 6:09 p.m.)	24	
25	(Defendant's Exhibits B and C marked for	25	
Page 79		Page 81	
1	identification.)	1	CERTIFICATE OF REPORTER
2	* * * * *	2	STATE OF NEVADA. )
3		3	SS:
4		4	COUNTY OF CLARK. )
5		5	I, Ann Salisbury, Certified Court Reporter for
6		6	the State of Nevada, do hereby certify:
7		7	That I reported the taking of the deposition of
8		8	the witness, William Squires Muir, MD, commencing on
9		9	Tuesday, November 27, 2012, at 4:02 o'clock p.m.
10		10	That prior to being examined the witness was by
11		11	me duly sworn to testify to the truth.
12		12	That the foregoing transcription is a true,
13		13	complete, and accurate transcription of the stenographic
14		14	notes of the testimony taken by me in the matter
15		15	entitled herein to the best of my knowledge, skill, and
16		16	ability.
17		17	That prior to the completion of the proceedings,
18		18	the reading and signing of the transcript was requested
19		19	by the witness or a party.
20		20	I further certify that I am not a relative or
21		21	employee of an attorney or counsel of any of the
22		22	parties, nor a relative or employee of an attorney or
23		23	counsel involved in said action, nor a person
24		24	financially interested in the action.
25		25	IN WITNESS WHEREOF, I have hereunto set my hand
			in my office in the County of Clark, State of Nevada,
			this _____ day of _____, 2012.
			Ann Salisbury, RPR, CCR (85)

EXHIBIT 12

JA 4447

1 CASE NO. A-11-636515-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

\* \* \* \* \*

8

9 MARGARET G. SEASTRAND,

10 Plaintiff,

11 vs.

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

14 Defendants.

15

16

REPORTER'S PARTIAL TRANSCRIPT

17

OF

18

JURY TRIAL

19

P.M. SESSION

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED THURSDAY, JULY 18, 2013

23

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

25

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13 \* \* \* \* \*



1 kicks in in a few days, if a patient gets at least  
2 50 percent reduction of their symptoms for at least two  
3 weeks, that is additional indication that this is the  
4 patient's major pain generator. And that occurred both  
5 when Dr. Belsky injected the 4-5 and 5-1 level to look  
6 at those disks and the C5-6 level in the neck.

7 Q. Thank you, Dr. Muir.

8 Now, is there also another -- other than  
9 diagnostic, are there other reasons to do injections?

10 A. What you're hoping to do with injections,  
11 besides help figure out where the problem is, is give  
12 the patient some relief. Some patients will have two  
13 to three months relief from the steroid injection.  
14 Some will have those repeated. And maybe by the time  
15 the steroid has worn off, the medicine after a couple  
16 of injections, maybe the body has healed itself. And  
17 you can treat the problem in a less aggressive way or  
18 maybe it won't require any treatment after a period of  
19 time.

20 Q. So it's fair to say that the therapeutic  
21 benefit is also a reason to do an injection?

22 A. Yes.

23 Q. Okay. Now, there was a criticism that  
24 Dr. Belsky doing the facet joint in addition to the  
25 transforaminal epidural injections would be

1 inappropriate.

2 Do you have any feelings --

3 MR. JAFFE: Objection, Your Honor. May we  
4 approach?

5 THE COURT: Sure.

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

8 THE COURT: Objection's overruled.

9 BY MR. CLOWARD:

10 Q. Dr. Muir, No. 1, do you feel that there was  
11 an adequate workup of the patient prior to getting to  
12 you?

13 A. Yes.

14 Q. Okay. And you made your decisions as to your  
15 course of treatment based on --

16 MR. JAFFE: Objection. Leading.

17 BY MR. CLOWARD:

18 Q. Did you --

19 THE COURT: Sustained.

20 BY MR. CLOWARD:

21 Q. Did you rely -- did you rely on the course of  
22 treatment of other providers in making your diagnosis  
23 and treatment plan?

24 A. I took that into consideration, though I did  
25 not see the actual chiropractic notes. Dr. Belsky

1 indicated that the chiropractic treatment was not  
2 sufficient as well as the --

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

4 THE COURT: Sustained.

5 MR. JAFFE: Thank you.

6 BY MR. CLOWARD:

7 Q. Dr. Muir, can you tell us, you did review  
8 Dr. Belsky's records prior to treating Ms. Seastrand,  
9 correct?

10 A. I did.

11 Q. Okay. And can you tell the jurors why  
12 someone would give an injection to the facet joint and  
13 the -- and do a transforaminal epidural steroid  
14 injection?

15 A. Certainly. Some of the common causes or  
16 generators of pain or problems in the spine are the  
17 disk and the joints. And if a -- sometimes pain  
18 management, I do injections myself. Sometimes when I  
19 do injections, I'm trying to be very specific, one  
20 side, one level, to determine if that particular  
21 structure alone is the source of the pain. Other  
22 times, I'm looking for some relief for the patient.  
23 Sometimes patients will have some symptoms of a disk  
24 problem and a joint. Sometimes I don't know. I'm  
25 trying to give the patient some relief. So I will

1 inject both structures to -- to try -- to hopefully  
2 give them some relief. If they do have some relief,  
3 then sometimes I'll be more specific on my second  
4 injection.

5 Q. Okay. So after -- what is your understanding  
6 of the treatment that Ms. Seastrand had prior to seeing  
7 you from Dr. Belsky alone?

8 A. Yes. She received medications, including  
9 narcotics. She had five months to allow problems to  
10 heal. She had chiropractic treatment which, my  
11 understanding, it tended to aggravate the condition  
12 more than it helped. She had injection in both -- both  
13 areas.

14 Q. When you say "both areas," what do you mean  
15 by that? Tell us what you mean.

16 A. The neck at C5-6 level and the low back at  
17 L4-5 and L5-S1 level.

18 Q. Okay. Did Ms. Seastrand have long-lasting  
19 benefit or any benefit from those procedures?

20 A. My understanding is that they both were  
21 diagnostic and they both were therapeutic for a period  
22 of time. Not a long period of time. They did provide  
23 some relief, but they were insufficient to provide two  
24 to three months' relief. She did not get that long of  
25 relief initially.

1 Dr. Muir wants to go to bat for Dr. Belsky doesn't mean  
2 that it gives him the right in this courtroom to come  
3 in and comment upon her work and give what is  
4 effectively an undisclosed expert opinion on that  
5 topic.

6 THE COURT: All right. As far as the first  
7 issue dealing with the reference to the word company, I  
8 didn't think that there was really any discussion  
9 regarding insurance. I don't think that it implied  
10 insurance to the jurors. But out of an abundance of  
11 caution, while you were at the bench, I did hand the  
12 doctor a note, just on a sticky note that says, Please  
13 avoid comments regarding insurance claims, companies  
14 that hire you to do IMEs, et cetera. I think both of  
15 you said that that note was acceptable. Doctor read it  
16 and handed -- got the note back. I don't think there  
17 was any other comments regarding companies or  
18 insurance, and I don't think there's any discussion  
19 regarding insurance anyway, but he stayed away from  
20 that issue. I don't think that that was really a  
21 problem.

22 The other issue with regard to Dr. Belsky,  
23 the record will show that the objection was at  
24 approximately 1359 hours. I just wrote some notes here  
25 to myself that Dr. Muir talked about the injections of



1 Dr. Belsky. I overruled your objection. The argument  
2 was that — at least at the bench, that Dr. Muir had  
3 done surgery without an adequate workup. There's —  
4 there's allegedly a expert opinion that talked about  
5 Dr. Muir doing the surgery without an adequate workup.  
6 Under the new 16.1 language and the comments, a  
7 treating physician can talk about issues to defend his  
8 own care and treatment of the patient even if those  
9 issues and opinions haven't been previously disclosed.

10 If in this case, there's an allegation that  
11 he did a surgery without an adequate workup, I thought  
12 that based upon his testimony that he did rely upon  
13 Dr. Belsky's injections, that his reference to the  
14 injections and whether they were appropriate, what they  
15 did, and his explanation of the injections was probably  
16 actually necessary. So I — I found that his reliance  
17 on Dr. Belsky's injections and the information obtained  
18 therefrom, because that was the basis of his care and  
19 treatment of the patient, that it was allowable, and  
20 that's why I overruled the objection, so ...

21 MR. JAFFE: Okay. Your Honor —

22 THE COURT: That's on the record now.

23 MR. JAFFE: One other quick thing, and I  
24 forgot to mention this before we started. I had  
25 indicated yesterday I expected we would have our brief

EXHIBIT 13

JA 4456

1 CASE NO. A-11-636515-C

2 DEPT. NO. 30

3 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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\* \* \* \* \*

8

9 MARGARET G. SEASTRAND,

10 Plaintiff,

11 vs.

12 RAYMOND RIAD KHOURY, DOES 1  
13 through 10; and ROE ENTITIES  
14 11 through 20, inclusive,

15 Defendants.

16

17 REPORTER'S TRANSCRIPT ROUGH DRAFT

18

OF

19

Motion name

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22 DATED Weekday

, Month

23

Date

, 2013

24

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

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13 \* \* \* \* \*

1 called City Center cafe, about a block if you want to  
2 go about a block north there's a little place on the  
3 right side of the road called Norah's is it closed down  
4 it's closed never mind. Those are kind of your  
5 options. I'm going to give you an hour for lunch but  
6 just try to be back in time we can get started again I  
7 want to make sure we get a jury before the end of the  
8 day okay so right now I'm going to turn the time over  
9 to the plaintiff's counsel just be honest open and  
10 answer his questions truthfully okay.

11 MR. CLOWARD: Thank you, Judge.

12 MR. CLOWARD: I would say good morning but  
13 we're afternoon now. So I like to give you a little  
14 bit of a roadmap of this process. I know for me, I  
15 know where I'm going and how I'm I'm going to get there  
16 I have a little less anxiety about it some of you folks  
17 have served on a jury some of you haven't so I think  
18 it's helpful for those who haven't to know a little bit  
19 about the process. The Judge talked about this is  
20 called voir dire, or voir dire. Depending upon where  
21 you live in the country you might say it a little bit  
22 differently. Really what it means is jury selection,  
23 and it comes from French and then Latin which is to see  
24 and to speak and to feel, and so it's a process that we  
25 get to learn about about you guys, and you guys get to



1 learn a little bit about us. There are a couple of  
2 rules that we attorney versus to follow. One of them  
3 is we can't discuss the facts of the case. And so if  
4 myself or Mr. Jaffe we get up here, and we don't tell  
5 you anything about the case, please don't hold it  
6 against us don't be frustrated that's just one of the  
7 rules we have to follow as attorneys, and and so, you  
8 know some of you all might think toward the end. Well  
9 they haven't said anything about the facts of the case  
10 how come that's one of the reasons so after this  
11 process we'll select ten of you to sit on the jury and  
12 then we'll begin opening statements and then opening  
13 statements progresses into presentation of the evidence  
14 and then after presentation of evidence. There's  
15 closing statement. Jury instructions, and then you go  
16 and deliberate. Like the judge indicated this process  
17 here today, we'll probably hopefully be done today, if  
18 not I don't imagine it would go too much into tomorrow.  
19 Hopefully we can resolve we can get through it today.  
20 With that introduction, the Judge talked about biases  
21 and prejudices, and things likes that, and that's not a  
22 bad word in this -- here today. That's not a bad word.  
23 Kind of has a negative connotation outside. But it's  
24 not, and I like to share two stories before I get  
25 started just real short ones about what that -- that

1 is, and and you learn one thing about me me. I don't  
2 like cherry pie. Now, you guys are probably thinking  
3 what the heck is he talking about cherry pie in this  
4 case. Well, the question that I have is, do you think  
5 it would be fair for me if all of you folks had entered  
6 a the Clark County the Clark County fair had a pie  
7 baking Conn test, and there were 100 applicants but  
8 all of you folks you specialized in making cherry pie,  
9 do you think it would be fair for me to sit and judge  
10 the pie baking Conn test, sir, what do you think about  
11 that.

12 PROSPECTIVE JUROR NO. : no 049.

13 MR. CLOWARD: Why no, Mr. Frasier would  
14 wouldn't that be fair.

15 PROSPECTIVE JUROR NO. : because you  
16 already have a predetermined idea that you don't like  
17 something. So in my mind you have already to use your  
18 term prejudiced yourself against cherry pie.

19 MR. CLOWARD: Sure. Is there anything wrong  
20 with me not like cherry pie?

21 PROSPECTIVE JUROR NO. : no.

22 MR. CLOWARD: Does anyone think hey you know  
23 what that guy, you know I mean, we all have our  
24 different views and our different opinions there's  
25 nothing bad about me right because I don't like cherry

1 pie.

2 PROSPECTIVE JUROR NO. : no.

3 MR. CLOWARD: What do you think what do you  
4 think I should do in that situation if I was the judge  
5 and I got there, and I didn't know, you know, that it  
6 was an open Conn test I thought that maybe it was just  
7 a or a chocolate cake Conn test and I get there, and  
8 I'm the judge, and all of a sudden I see 20 or 30  
9 cherry piles and I know for a fact you know what I  
10 don't like cherry pie I hate it. What should I do  
11 about it, ma'am what do you think I should do about it.

12 PROSPECTIVE JUROR NO. ; just ask someone  
13 else to be the judge for the pies. ^KRISTY CHECK.

14 MR. CLOWARD: It's it's Mrs. Templeton 018.

15 MR. CLOWARD: And I may look down at this  
16 seating chart, the the nice reporter she has to type  
17 everyone's name and the bandage number so, I apologize  
18 if I lose eye contact it's I just want to make sure  
19 that the record bears out you know who who is whose  
20 giving the comments. Would it be okay for me to sit  
21 judge, you know, like a a cake chocolate cake contest?  
22 Mrs. Templeton what do you think.

23 PROSPECTIVE JUROR NO. : sure why not?

24 MR. CLOWARD: Because I don't have a view one  
25 way our the other about chocolate cake right. All

1 right let me give you one more example. About this and  
2 then I will launch into the questions, and, and I hope  
3 this gives you an idea of why we're going to ask the  
4 questions today but I have 22 Nancys in my life I have  
5 an aunt Nancy, and then I have a mother in law Nancy,  
6 and my aunt Nancy was a store owner, and patron came  
7 into her store and she slipped and fell and had he  
8 injured themselves, and they filed a lawsuit against my  
9 Aunt Nancy. Now, my mother in law Nancy, she had a  
10 different experience she actually fell in a store, and  
11 she shattered her knee and she had to file a lawsuit  
12 and so she had a different experience with a slip and  
13 fall type case. Do you think who here thinks that  
14 they're their opinions about like a slip and fall case  
15 might be different? Who here thinks that their  
16 experiences will would be different? No hands, ma'am.  
17 Ms. Johnson 010.

18 PROSPECTIVE JUROR NO. , correct. They  
19 were two separate incidents so she probably have  
20 different viewpoints on how they experienced it.

21 MR. CLOWARD: Is either one of those women do  
22 eventer them are they bad people because they have a  
23 different experience? Sir, Mr. Madrigal 015 you're  
24 shaking your head tell me what you think.

25 PROSPECTIVE JUROR NO. : no, I don't think



1 it's they're bad people just different circumstances,  
2 on what happened.

3 MR. CLOWARD: Sure. Does anyone think that  
4 because they had a different view about, you know, a  
5 slip and fall case, one has a positive view, one has a  
6 negative view does anyone think that that -- that one  
7 person is is a bad person or one person is a good  
8 person? Anybody feel that way? I think we can all  
9 agree that hey you know what they had different  
10 experiences so, you know they're entitled to those  
11 thoughts and it doesn't make either one a better person  
12 or a worst person. Does everyone agree with that? And  
13 that's, sir,.

14 PROSPECTIVE JUROR NO. : yes, I agree with  
15 that.

16 PROSPECTIVE JUROR NO. : Chris Evans, 012.

17 MR. CLOWARD: Thank you Mr. Evans, and that's  
18 just because they have had different experiences  
19 different life experiences, and that's kind of, you  
20 know, with that overview I know they're kind of corny  
21 examples, but they kind of illustrate that that, you  
22 know, it's okay for people to have different views,  
23 nobody's going to be critical of of you guys if you  
24 express those views, nobody's going to say oh, my  
25 heavens, I can't believe he just said that or she just



1 said that that's what make our community great is  
2 diversity, you know, we all come from different place  
3 ofs he we're raised differently and, and that's really  
4 the strength of our community. So . So two things I  
5 believe in. No. 1, a fair fight. And No. 2, brutal  
6 honesty. And neither myself nor Mr. Jaffe and his  
7 client my client Ms. Seastrand none of the parties can  
8 have a fair fight unless there's brutal honesty in this  
9 this process right here called jury selection. And so  
10 I ask each of you that if it's uncomfortable, you know,  
11 I understand, but please be brutally honest with the  
12 way that you feel. I promise you nobody's going to  
13 nobody's going to be critical or anything along those  
14 lines. We're all experienced and and I appreciate  
15 that.

16 Can I get a commitment is there can everybody  
17 raise their hands for me, if you agree too just be  
18 brutally honest and share the way you feel can I get  
19 everybody to give me that commitment. Thank you.  
20 Thank you very much. So I believe in brutally honesty  
21 as well. I'm going to be brutally honest with you  
22 folks right now. I'm going to say something that's a  
23 little uncomfortable for me to say. My client is suing  
24 for in excess of \$2 million, and that's, you know,,  
25 that's that's what it is, and I'm putting that out

1 there, I'm just going to be brutally honest with about  
2 that. And I know that some of you folks, you know, you  
3 had different views, and different beliefs in -- in the  
4 jury questionnaire, and that's fine. But I want to  
5 talk about that right now. So who who here is a little  
6 uncomfortable even if it's just a little bit about what  
7 I just said? Sir, I appreciate it. Thank you. For  
8 talking to me. Tell me a little bit about why you  
9 feel.

10 PROSPECTIVE JUROR NO. : I think it's  
11 excessive.

12 THE COURT: Name and badge number.

13 PROSPECTIVE JUROR NO. : sorry Gary Walker  
14 badge No. 34.

15 THE COURT: Thank you.

16 MR. CLOWARD: Mr. Waker, I appreciate it.  
17 Tell me why you feel that way.

18 PROSPECTIVE JUROR NO. : we all pay  
19 insurance everybody knows in Nevada we pay higher rates  
20 than most people in the United States. If you're  
21 insurance doesn't cover everything, that is incurred in  
22 an accident, I just feel that it's -- it's too  
23 excessive I mean, you can't ask for a golden pot when  
24 you haven't really earned it.

25 MR. CLOWARD: Sure.

1 PROSPECTIVE JUROR NO. : if there was a  
2 death involved, possibly. But I don't know that the  
3 case so I really can't say.

4 MR. CLOWARD: Sure. Mr. Walker, I appreciate  
5 that, I really do. And you know, is there there anyone  
6 else that feels that way, Mrs. Agnor.

7 PROSPECTIVE JUROR NO. : Patty Agnor 033.  
8 I think I agree. I think it's excessive because I'm  
9 sure I can't remember his name, I'm sure he didn't mean  
10 to do this, if it was -- if it was a death, maybe it  
11 would be a little bit more to pay that kind of money,  
12 but he I'm sure he didn't mean to -- to cause the  
13 accident.

14 MR. CLOWARD: Sure. I appreciate that., sir.  
15 Tell me Mr. Mr. Evans 012.

16 PROSPECTIVE JUROR NO. : yes.

17 MR. CLOWARD: Tell me your thoughts.

18 PROSPECTIVE JUROR NO. : I'm just assuming  
19 that most of that's pain and suffering. Which I don't  
20 agree such a big lump sum should be paid out for pain  
21 and suffering. I think if you have to continue on in  
22 life and perform your job you were doing before and you  
23 cannot because of it then yeah maybe some pain and  
24 suffering, but I think millions of dollars I think is  
25 unnecessary.

1 MR. CLOWARD: You have a hard time with that.

2 PROSPECTIVE JUROR NO. : I do.

3 MR. CLOWARD: I appreciate that I really do.

4 I saw some other handses. Let me let's go with

5 Mrs. One way or another No. 28 and then I will come

6 back to you folks.

7 PROSPECTIVE JUROR NO. : I think it's a

8 bit excessive too, because's an accident. Nobody

9 intends to harm nobody. So that for me too much.

10 MR. CLOWARD: Okay. So you would have a hard

11 time.

12 PROSPECTIVE JUROR NO. : yes.

13 MR. CLOWARD: Okay. Mr. Unger, 006. Tell me

14 your thoughts.

15 PROSPECTIVE JUROR NO. : well, I agree

16 with the people who have also spoken with similar I was

17 in two car accidents rear ended both times and did not

18 pursue legal action against the person insurance

19 covered some work that I needed for neck help but other

20 than that, I didn't believe in pain and suffering. I

21 had employees who have been in car accidents who I have

22 gone after a lot of money in accidents, for pain and

23 suffering, and for medical expenses that I thought were

24 at the time I couldn't Judge my employees, but I

25 thought it was above and beyond, what the the incident

1 was.

2 MR. CLOWARD: Okay. Thank you Mr. Unger.

3 Sir, Mr. Runz.

4 PROSPECTIVE JUROR NO. : 001.

5 MR. CLOWARD: Tell me your thoughts.

6 PROSPECTIVE JUROR NO. : I agree, without

7 knowing the facts of \$2 million just for a car accident

8 just seems excessive.

9 MR. CLOWARD: Seems excessive you have a hard

10 time just with the thought of that.

11 PROSPECTIVE JUROR NO. : yes.

12 MR. CLOWARD: Okay. I appreciate the

13 thoughts. Mr. Bulosan I believe in your in your

14 questionnaire you also indicated that you felt that way

15 can you tell me about that.

16 PROSPECTIVE JUROR NO. : badge No. 17.

17 MR. CLOWARD: Okay.

18 PROSPECTIVE JUROR NO. : well,, got

19 involved in a car accident went two therapy, so when

20 the to couple of doctors.

21 MR. CLOWARD: Okay.

22 PROSPECTIVE JUROR NO. : I think that

23 amount of money asking for is excessive too, but mine

24 had settled add little bit, but quite not too high, and

25 I think I agree with what they say.



1 MR. CLOWARD: So you would have a difficult  
2 time just the amount \$2 million being.

3 PROSPECTIVE JUROR NO. : yes.

4 MR. CLOWARD: It's just too much you wouldn't  
5 feel comfortable.

6 PROSPECTIVE JUROR NO. : yes.

7 MR. CLOWARD: I appreciate it, Thank you.  
8 Who else who else agrees with these folks that that  
9 they have those feelings Mr. Young tell me a little  
10 about it 009.

11 PROSPECTIVE JUROR NO. : 009 I also agree  
12 with Mr. Unger over there, my wife got into a car  
13 accident pretty badly, and she hurt her back and her  
14 neck had to go to therapy about four or five months, we  
15 didn't take any legal action against the person, even  
16 though that person ended up running away, but we just  
17 had just went after basically the fees for therapy,.

18 MR. CLOWARD: Okay.

19 PROSPECTIVE JUROR NO. : and nothing  
20 beyond that.

21 MR. CLOWARD: I appreciate that. Is there a  
22 reason tell me why a little bit more about that is  
23 there a reason why you didn't you didn't pursue  
24 anymore.

25 PROSPECTIVE JUROR NO. : well I mean,

1 after all the therapy she was fine, so it's not like,  
2 you know, her life was altered because of the accident  
3 even though it wasn't her fault even though he ran the  
4 red light, you know it is what it is.

5 MR. CLOWARD: Right. I appreciate that.  
6 Mr. Unger, can you tell me a little bit more about I  
7 think you mentioned something about, you know, pain and  
8 suffering, you know, that you specifically have a heard  
9 time with that issue. Itself.

10 PROSPECTIVE JUROR NO. : I'm not clear  
11 what you're asking.

12 MR. CLOWARD: When I I asked you can the  
13 question about the \$2 million being excessive I think  
14 maybe maybe it was someone else correct me if I'm  
15 wrong, but I thought you said I am assuming the  
16 majority of that is pain and suffering, oh, that was.

17 PROSPECTIVE JUROR NO. : that was me  
18 ^KRISTY CHECK Evans-i I'm sorry sorry.

19 PROSPECTIVE JUROR NO. : 002.

20 MR. CLOWARD: Thank you Mr. Evans tell me  
21 about that.

22 PROSPECTIVE JUROR NO. : I just think  
23 that's for pain and suffering I don't think pain and  
24 suffering justifies money I really don't.

25 MR. CLOWARD: At all.

1 PROSPECTIVE JUROR NO. : I don't.

2 MR. CLOWARD: I appreciate that how come?

3 PROSPECTIVE JUROR NO. : I think a lawsuit  
4 should be for -- for loss. Whatever damages to your  
5 vehicle or to your health to your house whatever  
6 property's damage, and medical bills and whatever time  
7 lost from work, all that should be covered, but I don't  
8 think it should go above and beyond that. I don't  
9 think you should be an instant millionaire.

10 MR. CLOWARD: Sure and I appreciate that and,  
11 you know, some folks they I have heard in a lot of  
12 times when I have done this process some folks say hey  
13 you know money won't make the pain go away, and in  
14 wrongful death indication money won't make the person,  
15 you know, it's not going to bring someone back. You  
16 know who here, you know, who here agrees with Mr. Evans  
17 that you just have a belief that someone shouldn't get  
18 money for pain and suffering because it doesn't change  
19 anything and people should only be able to bring bring  
20 a suit for, you know, like medical bills or property  
21 damage things like that.

22 PROSPECTIVE JUROR NO. : now you mentioned  
23 wrongful death, there's a death involved that person  
24 will make certain amount of money through their  
25 lifetime to support their children, to everything

1 they're going to do in life, now, in that case, I think  
2 that should be compensated for, but pain and suffering,  
3 no that's different.

4 MR. CLOWARD: Sure I appreciate that, no, I  
5 do. Who here who here shares the same feeling or the  
6 same views as Mr. Evans that, you know, they would have  
7 a hard time with pain and suffering just the concept of  
8 it? And keep in mind you know, there's no bad opinions  
9 good opinions, we're just having a discussion here.  
10 Who who has those feelings? Ma'am, Ms. Vera, 008 tell  
11 me your thoughts.

12 PROSPECTIVE JUROR NO. : I just I agree  
13 that any losses that you suffered, medical bills,  
14 property damage, pain and suffering, I don't think you  
15 can I don't think you should put a value on it so that  
16 you know, maybe you don't have to work anymore.

17 MR. CLOWARD: Sure. It's just too hard to  
18 value anything else that you feel and then we'll go to  
19 Ms. Agnor.

20 PROSPECTIVE JUROR NO. : I just think of,  
21 you know, my sister she was in a car accident, Guy ran  
22 a light and hit her. She didn't get anything for pain  
23 and suffering. She's 60 years old she's still out  
24 there working, and that's how I feel.

25 MR. CLOWARD: Sorry that she had that



1 experience.

2 Ms. Agnor, tell me tell me your thoughts.

3 PROSPECTIVE JUROR NO. :

4 PROSPECTIVE JUROR NO. : 033. I think  
5 pain and suffering is -- there's a big difference. You  
6 got pain and suffering on one hand clear to the other  
7 end. I mean, clear to when you're disabled for pain  
8 and suffering, so there's a big difference in how much  
9 you're going to get from this ends to a disability to  
10 where you're not going to be able to work anymore.

11 MR. CLOWARD: Yeah.

12 PROSPECTIVE JUROR NO. , but even if you  
13 can't work, \$2 million is a lot.

14 MR. CLOWARD: Just the amount of money being  
15 asked for is just.

16 PROSPECTIVE JUROR NO. ; it's  
17 astronomical.

18 MR. CLOWARD: Astronomical there's been quite  
19 a bit of discussion on that on that, and and loft you  
20 folk versus shared that opinion, and and I appreciate  
21 it it. Anyone else that I haven't talked to that  
22 shares that feeling, that, you know, what, just  
23 Mr. Cloward you saying your client is suing for  
24 \$2 million that bothers me, and and it is just too  
25 much? Anyone else that shares that feeling, sir?



1 Mr. Frasier.

2 PROSPECTIVE JUROR NO. : my ex-wife was  
3 involved in an accident, and I think that's what we're  
4 talking about is an accident. Not something that's  
5 intentional.

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NO. : with the  
8 resulting in a if a fatality, and our insurance company  
9 paid the policy limits, and and nothing else ever  
10 happened. And I think that's why there are policy  
11 limits is to cover what the insurance company says  
12 they're going to pay. And although we can never  
13 Judge pain and suffering, but I guess the figures a  
14 little exorbitant for me too.

15 MR. CLOWARD: A little bit difficult.

16 PROSPECTIVE JUROR NO. : yes.

17 MR. CLOWARD: Anyone else feels that way that  
18 just, you know, me being brutally honest about, you  
19 know, what my client she's going to sue you know she's  
20 suing for in excess of 2 million that people just they  
21 have a hard time with that and I do appreciate it I  
22 appreciate everybody's thoughts on that. Anyone else  
23 Mrs. Brown tell me your thoughts.

24 PROSPECTIVE JUROR NO. : I think that it  
25 is a little excessive I know my mom was in an accidents

1 and she is disabled now because of that accident years  
2 ago, and I do feel like she should be compensated for  
3 it. But I think it is a little excessive.

4 MR. CLOWARD: A little too much, okay anybody  
5 else before we anyone? Okay..

6 THE COURT: Let's go ahead and take our break  
7 now Mr. Cloward.

8 MR. CLOWARD: Thanks Judge.

9 THE COURT: Ladies and gentlemen, I'm going  
10 to give you the admonition again. Like I told you,  
11 those of you that get seated as jurors you're going to  
12 hear this a lot every time we take a break during our  
13 break.

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

1 You're not to form or express any opinion on any  
2 subject connected with this trial until the case is  
3 finally submitted to you.

4 Let's plan on coming back about five after  
5 1:00. Randy will meet you in the hall.

6 THE BAILIFF: All rise.

7 (Whereupon jury the courtroom.)

8 THE COURT: We're outside the presence of the  
9 jury. Anything we need to take up, gentlemen.

10 MR. JAFFE: One brief thing, Your Honor.  
11 When we were arguing motions in limine we were talking  
12 about the whole concept of putting numbers out there  
13 obviously I was very concerned about that slippery  
14 slope, but what this is now doing is getting into  
15 another area which is insurance I think it's time to  
16 tell these people that they're not to worry about or  
17 consider insurance as part of this, .

18 THE COURT: I think it was a response a that  
19 got into insurance I don't think it was the question.

20 MR. JAFFE: But I know the concept is now  
21 being thrown out there and three of these potential  
22 jurors have already addressed insurance and insurance  
23 limits and things of that nature I'm just concerned if  
24 it gets any further along these lines we're going to  
25 need to admonish these people.

1 THE COURT: I mean, there's going to be to be  
2 an instruction that they're not to take that into  
3 consideration, but.

4 MR. JAFFE: Okay. I guess we'll see how it  
5 goes I don't know where else Mr. Cloward is going with  
6 this.

7 THE COURT: I think every trial that I have  
8 done there has been some discussion among the jurors  
9 about insurance it's just something that always comes  
10 up in response to questions in voir dire.

11 MR. JAFFE: Of course.

12 THE COURT: The fact that the jurors have  
13 bring it up is not a problem for me.

14 MR. CLOWARD: And I just briefly want to put  
15 on the record that, that it was a response as the Court  
16 pointed out to a question, and I didn't follow up on  
17 the question, so just want to make sure the record is  
18 clear on that.

19 MR. JAFFE: I and I understand, but that's  
20 part of this whole the slippery slope that we're not  
21 encounters by bringing up the concepts of numbers in  
22 the first place that's my whole point.

23 THE COURT: Okay.

24 MR. JAFFE: Thank you, sir.

25 THE COURT: See you back in an hour.

1 MR. CLOWARD: Thanks, Judge.

2 THE COURT: Off the record.

3 (Whereupon a lunch recess was taken.)

4 THE BAILIFF: All rise.

5 (Whereupon jury the courtroom.)

6 THE COURT: All right. Go ahead and be  
7 seated welcome back folks hope you all found something  
8 good to eat back on the record Case No. 636515. I  
9 believe we were in the middle of Mr. Cloward's  
10 questions so we'll turn the back over to him.

11 MR. CLOWARD: Thank you, Your Honor.  
12 Mr. Evans, before the break, we had an opportunity talk  
13 to you about pain and suffering, you indicated that  
14 you have fundamental core beliefs that and values that  
15 you, you know, you just don't believe in pain and  
16 suffering is that fair,

17 PROSPECTIVE JUROR NO. : yes that's pretty  
18 fair.

19 MR. CLOWARD: Or you know, compensating  
20 somebody for pain and suffering, money damages for pain  
21 and suffering.

22 PROSPECTIVE JUROR NO. : I don't  
23 necessarily think they shouldn't get everything for  
24 pain and suffering, but I don't think it should be  
25 millions of dollars.



1 MR. CLOWARD: Sure, and you have a hard time  
2 I guess with just the -- with the general idea much  
3 giving money for pain and suffering is that fair.

4 PROSPECTIVE JUROR NO. : yes that's fair.

5 MR. CLOWARD: Okay. And, you know, I  
6 appreciate that. And like I said earlier this is  
7 brutal honesty, no wrong answers, you know, just like  
8 me with cherry pie or my aunt Nancy or my mother in law  
9 Nancy, we're all entitled to our own views and beliefs,  
10 and so forth. So you agree you've had this belief or  
11 this value or a long time you didn't just form it as  
12 you waked into court today.

13 PROSPECTIVE JUROR NO. : I think the first  
14 time I ever thought that's ridiculous was when  
15 McDonald's was sued for the hot coffee.

16 MR. CLOWARD: Sure.

17 PROSPECTIVE JUROR NO. : that kind of  
18 set -- setted the stage for my belief on that.

19 MR. CLOWARD: Sure. And so then that I  
20 believe that case was quite a while ago so you had that  
21 belief for quite a while.

22 PROSPECTIVE JUROR NO. : yeah I think  
23 people need to be accountable for their own actions and  
24 if you buy hot coffee you should know you're getting  
25 hot coffee.

1 MR. CLOWARD: Sure, and I appreciate that.  
2 And you know that's -- just like me with with a pie or  
3 you know, nobody did anything, you know, my wife's not  
4 going to say hey Ben please just like cherry pie. I  
5 just feel that way about it you agree you have the  
6 feelings on pain and suffering that you have.

7 PROSPECTIVE JUROR NO. : yeah, I have the  
8 same opinion on good drivers in Clark County. I  
9 believe they're all crazy.

10 MR. CLOWARD: Sure.

11 PROSPECTIVE JUROR NO. : except for me of  
12 course.

13 MR. CLOWARD: Yeah that's what all of us  
14 thought. But you know nothing I'm going to say or  
15 nothing Mr. Jaffe is going to say or your neighbor or  
16 anybody that anyone's going to say, is going to change  
17 that core value, and that belief that you have.

18 PROSPECTIVE JUROR NO. , right.

19 MR. CLOWARD: Okay. And I appreciate that.

20 Let me ask you, you know, Question supposing  
21 that, you know, there's a hypothetical hypothetical  
22 case, and your -- you're actually bringing the case,  
23 and you and your attorney I know you have a hard time  
24 you do have a hard time with pain and suffering, but  
25 assume for me that your attorney, and you are going to

1 ask for a substantial amount in the verdict, for pain  
2 and suffering. You agree with me that you would  
3 project feel or you would feel uncomfortable having  
4 someone with your core values your beliefs sit on your  
5 specific jury.

6 PROSPECTIVE JUROR NO. : yes.

7 MR. CLOWARD: Okay. And I I appreciate that.

8 PROSPECTIVE JUROR NO. , but I don't think  
9 I would go that far personally.

10 MR. CLOWARD: You just wouldn't file.

11 PROSPECTIVE JUROR NO. : somebody's got to  
12 the pay that money, and I don't deserve that money I  
13 don't feel I should get that money somebody's paying  
14 for it.

15 MR. CLOWARD: Yeah. I appreciate that. But  
16 you would you would have you would feel uncomfortable  
17 having someone I know you wouldn't file the lawsuit.

18 PROSPECTIVE JUROR NO. : if it was my  
19 lawsuit, and I was getting a million dollars and I  
20 thought it was okay to do that, I definitely wouldn't  
21 want anybody with my beliefs on the panel.

22 MR. CLOWARD: Sure, and I appreciate that.  
23 And again this is brutal honesty and, and, you know, I  
24 really thank you for your opinions. And, again, you  
25 know well all have different views and that's okay.

1 You would agree that on this just this very specific  
2 issue of pain and suffering, you are probably not a  
3 right fit for this case knowing that my client is going  
4 to ask for an amount above 2 million for pain and  
5 suffering.

6 PROSPECTIVE JUROR NO. : if it's all pain  
7 and suffering, yeah. No, I'm not the right person for  
8 this panel.

9 MR. CLOWARD: Okay. I appreciate that. And  
10 you would agree with me that on this just this specific  
11 issue, the parties are are probably not starting at a  
12 fair — fair place Mr. Khoury is probably starting a  
13 little bit a ahead of my client on this just this one  
14 issue. You agree that right?

15 PROSPECTIVE JUROR NO. : I don't know.  
16 I'm not educated enough on this case I don't think.

17 MR. CLOWARD: Sure. Well, I'm talking just  
18 about, you know, just about like if if the issue of of  
19 pain and suffering and and, you know, having to insert  
20 that amount into the verdict, your core values and your  
21 beliefs that you that you hold would favor Mr. Khoury  
22 just a little bit and so that Mr. Khoury would start  
23 off just a little bit different.

24 PROSPECTIVE JUROR NO. : he would start.

25 MR. JAFFE: Your Honor I have to object.



1 This is -- this is, you know, badgering the juror he's  
2 already answered the question.

3 THE COURT: Overruled.

4 PROSPECTIVE JUROR NO. : he's probably a  
5 little ahead of the game.

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NO. : if this jury was  
8 full of me replicated all the way down he would be  
9 ahead of the game I would say.

10 MR. CLOWARD: Sure, and I really do I  
11 appreciate that. And, again, you know, no -- no bad  
12 answers, just you know that's the way it is. And and  
13 serve entitled to their own -- their own beliefs.  
14 Ms. Vera I wanted to ask you you also indicated you you  
15 share the same view on pain and suffering. You have  
16 fundamental kinds of core values, beliefs, regarding  
17 pain and suffering you agree with that.

18 PROSPECTIVE JUROR NO. : uh-huh.

19 MR. CLOWARD: Is that a yes?

20 PROSPECTIVE JUROR NO. : yes.

21 MR. CLOWARD: Okay. The nice reporter she  
22 types everything down so if I say is that a yes or no  
23 I'm not trying to be rude or it's just so she can get  
24 yes otherwise she'll type uh-huh or huh-uh. But plus  
25 she'll get mad at me if I don't do that. So, but



1 regarding just this one narrow issue of of pain and  
2 suffering, you agree like Mr. Evans that, you know, if  
3 you brought a case, and you knew your attorney was  
4 going to ask for pain and suffering, you would feel  
5 uncomfortable having a juror with your same frame of  
6 mind sitting on, you know, a case that you were asking  
7 for that.

8 PROSPECTIVE JUROR NO. : yes.

9 MR. CLOWARD: Okay. And that's just because  
10 you have core beliefs and values that you have had for  
11 a long time and that's just.

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

13 THE COURT: Sure.

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

16 THE COURT: Go ahead.

17 MR. CLOWARD: Mrs. Vera, so back to, you  
18 know, your beliefs and your opinions, those are those  
19 are beliefs that you have you had for prior to just  
20 wake up today you would agree.

21 PROSPECTIVE JUROR NO. : yes.

22 MR. CLOWARD: You had those for a long time.

23 PROSPECTIVE JUROR NO. : yes.

24 MR. CLOWARD: And you know nothing that I'm  
25 going to say or nothing that Mr. Jaffe is going to say

1 or your neighbor is going to say is going to change the  
2 way that you have those beliefs and those values right.

3 PROSPECTIVE JUROR NO. , correct.

4 MR. CLOWARD: Okay. And let me just ask  
5 the -- the the same question did I ask if you were  
6 sitting object on a hypothetical jury like Mr. Evans  
7 whether you would feel comfortable with is someone with  
8 your frame of mind sitting on that jury?

9 PROSPECTIVE JUROR NO. : no, I would not  
10 feel comfortable.

11 MR. CLOWARD: Okay. You would not feel  
12 comfortable. And you you would agree with me that just  
13 on this very narrow just on pain and suffering, just on  
14 that issue alone, you -- you would not be a good fit  
15 for this specific case right.

16 PROSPECTIVE JUROR NO. , correct.

17 MR. CLOWARD: Okay. And the parties on that  
18 just on just that specific issue wouldn't have a fair  
19 fight on just that specific issue the defendant would  
20 start just a little bit ahead of the plaintiff, you  
21 agree with that right.

22 PROSPECTIVE JUROR NO. : I agree.

23 MR. CLOWARD: All right. Thank you I  
24 appreciate it.

25 Mr. Walker, I forgot where's.

1                   PROSPECTIVE JUROR NO.           : right here.  
2                   MR. CLOWARD: I'm sorry Mr. Walker. I  
3 changed my notes around wrote some notes kind of going  
4 off them instead of my seating chart. You talked about  
5 you were kind enough you were the first person when I  
6 asked hey, you know, if you knew my client was going to  
7 ask for, you know, in excess of \$2 million whether who  
8 would feel uncomfortable you you were kind enough  
9 before the break you were kind of enough to raise your  
10 hands and share those beliefs and so I had some of the  
11 same questions for you, regarding the amount of of, you  
12 know, \$2 million and so forth. You know on that very  
13 specific issue, assume that you were, you know, you  
14 brought a lawsuit. You were injured you hired an  
15 attorney, and the attorney, you know, was was doing  
16 jury selection kind of like this, and you knew that  
17 there was someone that shared your same core values and  
18 your same beliefs that was sitting on the jury on that  
19 very specific issue of the amount of money being asked,  
20 you would agree with me that you would be uncomfortable  
21 having someone with your same core values and beliefs  
22 on the jury?

23                   PROSPECTIVE JUROR NO.           : I don't have a  
24 feeling one way or another. Doesn't matter to me what  
25 somebody else thinks because I myself have my own

1 thoughts, and I brought that to your attention. What  
2 everybody else thinks doesn't really matter to me.

3 MR. CLOWARD: Sure. Would you agree with me  
4 that that in that specific case, though,, in the  
5 specific specification with your core values and your  
6 beliefs, that knowing that, you know, my client's going  
7 to ask for an amount in excess of 2 million, that your  
8 core values and your beliefs that my client would not  
9 get a fair fight just on that very.

10 PROSPECTIVE JUROR NO. : I have no idea if  
11 your client would get a fair fight or not I could just  
12 tell you what I feel about it.

13 MR. CLOWARD: Sure tell me a little more  
14 about how you feel about.

15 PROSPECTIVE JUROR NO. : well, I think  
16 it's I mean, in all honesty I think you're wasting  
17 people's times by going over what above what insurance  
18 companies pay. I didn't see any limbs missing from the  
19 person that was in here, that was your client. I don't  
20 know what other kind of damage someone might have. But  
21 personally, I think it's a waste of people's time to  
22 ask for something above and beyond what they have  
23 already received.

24 MR. CLOWARD: Okay. And assuming for assume  
25 with me for a moment that you can't consider insurance,



1 and you can't consider insurance at all. Would you  
2 have a hard time even jaws little bit.

3 PROSPECTIVE JUROR NO. : I think I made  
4 that clear already.

5 MR. CLOWARD: Okay. So you would have a hard  
6 time inserting an amount above 2 million into the --

7 PROSPECTIVE JUROR NO. : I wouldn't even  
8 go to 2 million. way, amount I guess is.

9 MR. JAFFE: Objection. Your Honor objection,  
10 Your Honor, this is now asking for a verdict based upon  
11 hypothetical facts, it's in violation of Rule 7.70.

12 MR. CLOWARD: Your Honor we we talked about  
13 this.

14 THE COURT: It's not based on any  
15 hypothetical facts let me just instruct you folks  
16 because it has come up with several different jurors  
17 the issue of insurance is not something you can  
18 consider okay whether or not somebody was or was not  
19 insured's going to get an instruction at the very ends  
20 that's not something you can take into consideration  
21 that's not something you can talk in the deliberation  
22 room it's not something you can consider during the  
23 trial will you get an instruction in more detail on  
24 that later on but just because it keeps coming up, I  
25 figure I will tell you that now.



1 MR. CLOWARD: Thank you, Your Honor.

2 Mr. Wakerrer.

3 MR. CLOWARD: Just one question would you  
4 agree with me that regardless of what the evidence is  
5 you personally would not be willing to insert an amount  
6 above \$2 million into the verdict form? Is that a fair  
7 statement.

8 MR. JAFFE: Your Honor again I have to  
9 object, Rule 770 prohibits questions touching on the  
10 verdict a juror would return based upon hypothetical  
11 facts.

12 THE COURT: We already discussed this in  
13 the pre trial motion it's overruled.

14 MR. CLOWARD: You agree that's a fair  
15 statement.

16 PROSPECTIVE JUROR NO. : I don't even know  
17 what the statement is any more I'm sorry. It's.

18 MR. CLOWARD: That happens a lot. A lot of  
19 things are lost in translation. You would agree you  
20 have expressed you were the first person to raise your  
21 hands-on \$2 million. When I said that you, you know,  
22 you raised your hand and I appreciated that Mr. Waker I  
23 appreciated your brutal honesty, because I want want to  
24 get a fair fight. Especially the question is you agree  
25 with me that you would not award you would have a hard

1 time you would not award fundamentally an amount above  
2 \$2 million regardless of of what the evidence showed  
3 just based on your beliefs and your core values.

4 PROSPECTIVE JUROR NO. :

5 A. I can't even say. It's -- is it -- I don't  
6 know that it's up to me to award anybody anything.  
7 You're asking me something that I don't have I can't  
8 give somebody \$2 million. You're asking me to make a  
9 judgment. I don't know. I don't know the facts of the  
10 case. I can't tell you what my answer's going to be on  
11 Thursday.

12 MR. CLOWARD: Okay. I'm just trying to  
13 follow-up because earlier you indicated that, you know,  
14 you you would not be able to award an amount above  
15 2 million. When I said.

16 PROSPECTIVE JUROR NO. : I -- you're  
17 asking for something that I can't answer. I don't  
18 know. I just said I think it's ridiculous amount that  
19 that you're asking for. That's all I said. That's the  
20 only thing that I did say. I can't tell you whether I  
21 would give that amount or not. I have no idea. I  
22 don't know the facts of the case.

23 MR. CLOWARD: Okay. You agree you felt this  
24 way for a long time, you know, about the amounts and.

25 PROSPECTIVE JUROR NO. : yes.

1 MR. CLOWARD: In other cases that's not  
2 something that you -- you formed as you walked in.

3 PROSPECTIVE JUROR NO. : no, it's not I  
4 have always felt like that.

5 MR. CLOWARD: Okay, I appreciate that. Let  
6 me ask Mrs. Agnor, you shared an opinion earlier you  
7 would have a hard time awarding an amount above  
8 \$2 million, is that correct.

9 PROSPECTIVE JUROR NO. : correct.

10 MR. CLOWARD: Okay. And would you tell  
11 knowing anything about the facts of the case, you agree  
12 with me that you would you would have a hard time that  
13 would be something that you would just due to your  
14 fundamental beliefs your core beliefs you would have a  
15 hard time doing is that true.

16 PROSPECTIVE JUROR NO. : I think so unless  
17 that person was physically disabled or missing a limb,  
18 or.

19 MR. CLOWARD: Sure.

20 PROSPECTIVE JUROR NO. :

21 MR. CLOWARD: Sure.

22 PROSPECTIVE JUROR NO. : couldn't go on  
23 with life in a normal way.

24 MR. CLOWARD: Sure. And you saw my client in  
25 the courtroom earlier. Correct?

1 PROSPECTIVE JUROR NO. , right.

2 MR. CLOWARD: Do you feel that you have  
3 already made an opinion regarding her ability or  
4 disability one way or another, and it would be hard for  
5 to award an amount above 2 million.

6 PROSPECTIVE JUROR NO. : I think I would  
7 have a hard time awarding 2 million, but why I see her  
8 stand why I see her walk, you know, there was no  
9 interaction or anything to see her how she can  
10 function. I don't know.

11 MR. CLOWARD: Yeah, how long have you had the  
12 belief that, you know, 2 million is just a number that  
13 you kind of, you know, would be difficult.

14 PROSPECTIVE JUROR NO. : well, I think for  
15 any of us two millions dollars is kind of unfathomable  
16 we can't imagine that kind of money having or just  
17 giving to somebody. So to me, that is so much money,  
18 that somebody is hurt, by an accident, which I'm sure  
19 he didn't cause or create knowingly, but yeah, that  
20 would be a lot of money to give to a woman.

21 MR. CLOWARD: I pry appreciate that and  
22 knowing that about yourself, you know, assume  
23 hypothetically, you know, you were A injured, and you  
24 brought a lawsuit, and your attorney was asking for an  
25 amount above 2 million, or in excess of 2 million,

1 knowing that about you and you're frame of mind would  
2 you feel uncomfortable having someone with your frame  
3 of mind sit on the jury?

4 PROSPECTIVE JUROR NO. : I would.

5 MR. CLOWARD: You would.

6 PROSPECTIVE JUROR NO. : I would.

7 MR. CLOWARD: Okay. Thank you. And.

8 PROSPECTIVE JUROR NO. : I would hope I  
9 wouldn't be to the point to where I would ask for that  
10 much money.

11 MR. CLOWARD: Sure. I appreciate that.  
12 Would you agree with me that you know, just on this  
13 specific issue, just the amount that we have talked  
14 about just that specific issue, you would not be a good  
15 fit for this particular case on just that specific  
16 issue.

17 PROSPECTIVE JUROR NO. , correct.

18 MR. CLOWARD: Okay. And you agree that the  
19 parties wouldn't start on a fair or on not a fair, but  
20 at a level field on that specific issue.

21 PROSPECTIVE JUROR NO. , right.

22 MR. CLOWARD: And that's because you have  
23 these beliefs and these core values that you're fine to  
24 have, but you've had those and you didn't form those  
25 today right.



1 PROSPECTIVE JUROR NO. , right.

2 MR. CLOWARD: And nothing that I say or  
3 Mr. Jaffe says or you know your neighbor says or a  
4 fellow juror says is going to change your mind right.

5 PROSPECTIVE JUROR NO. : I would doubted  
6 it, but like was already brought up we don't know what  
7 happened. We don't know any of the situation that has  
8 happened.

9 MR. CLOWARD: Sure. But just the  
10 preliminary, you know, without knowing any of the facts  
11 it would be difficult for you and you wouldn't want  
12 someone with your frame of mind on a hypothetical jury  
13 if it was and you against the plaintiff right.

14 PROSPECTIVE JUROR NO. , right.

15 MR. CLOWARD: All right. I appreciate that.  
16 Mr. You think or Ms. You think I'm sorry. My notes.  
17 Ms. You think you also indicated you felt like you the  
18 amount is is just outrageous it's too much you agree  
19 with that.

20 PROSPECTIVE JUROR NO. : yes, I do.

21 MR. CLOWARD: And, you know, assuming the  
22 same hypothetical, would you you would feel  
23 uncomfortable having someone with your core values and  
24 your beliefs sitting on jury, if it was you as the  
25 plaintiff, right?

1 PROSPECTIVE JUROR NO. : yes.

2 MR. CLOWARD: All right. And in fact, you  
3 know you would agree that just on -- and we're just  
4 talking about just this one specific issue, you know,  
5 remember how I talk about the pie baking and all you  
6 know versus the chocolate cake you know, where you  
7 might be on one issue versus another issue, but I'm  
8 talking, you know, just this is specific issue of of,  
9 you know, in excess of 2 million, you would not be the  
10 right the right fit for this specific case right.

11 PROSPECTIVE JUROR NO. : I won't be yeah  
12 because I will be biased evidently.

13 MR. CLOWARD: You know, I appreciate that.  
14 And it's okay. Bias isn't bad word. It's not a bad  
15 word.

16 And you you've had these beliefs for a long  
17 time you didn't wake up.

18 PROSPECTIVE JUROR NO. : a long time I  
19 even put it in my questionnaire I don't believe in  
20 those class lawsuits because I think some of them are  
21 just for making money.

22 MR. CLOWARD: Sure.

23 PROSPECTIVE JUROR NO. : because I work in  
24 the healthcare field which is it's like every move you  
25 have to take you have to be cautious because of

1 lawsuits.

2 MR. CLOWARD: Be really careful.

3 PROSPECTIVE JUROR NO. : so you don't get  
4 to the practice sometimes you forget what you're  
5 supposed to do because you're scared to touch, because  
6 they might be suing you.

7 MR. CLOWARD: I can definitely understand  
8 that my brother's dentist, and he he talks about that.

9 PROSPECTIVE JUROR NO. : yes, uh-huh.

10 MR. CLOWARD: I appreciate that. And nothing  
11 that I'm going to say or, you know, Mr. Jaffe or even  
12 the judge is going to say is going to change the way  
13 that you view that that's a belief you have had for a  
14 long time right.

15 PROSPECTIVE JUROR NO. : yes..

16 MR. CLOWARD: Okay. Thank you very much.  
17 Mr. Runs are. You also indicated you, you know, you  
18 had a problem it would be difficult 2 million is just  
19 too much money, you know, you agree with with Ms. You  
20 think, and Mrs. Agnor that you know, having someone  
21 with your frame of mind if it was hypothetically if it  
22 was your case you were if the plaintiff, and you were  
23 bringing a lawsuit, and you knew someone was on there  
24 with with your state of mind you would be feel  
25 uncomfortable having them on just, and I'm just talking

1 about this one specific issue not the whole thing just  
2 this one specific issue you agree that you would feel  
3 uncomfortable having that person on your jury.

4 PROSPECTIVE JUROR NO. : not necessarily.  
5 I would feel that, you know, I would, you know, they  
6 would make the right decision at the the end. You  
7 know.

8 MR. CLOWARD: Sure. Do you think that they  
9 might have a little bit of a bias kind of like of have  
10 a bias with cherry pie?

11 PROSPECTIVE JUROR NO. : yes.

12 MR. CLOWARD: Okay. And you agree that you  
13 would have a bias on just that one specific issue.

14 PROSPECTIVE JUROR NO. : yes.

15 MR. CLOWARD: Okay. And so maybe, you know,  
16 just on that one specific issue you might not be the  
17 right fit for this particular case right.

18 PROSPECTIVE JUROR NO. , right.

19 MR. CLOWARD: And you agree that on just just  
20 talking just this one issue, just that particular  
21 issue, the parties are not starting out at the same  
22 place right.

23 PROSPECTIVE JUROR NO. : right.

24 MR. CLOWARD: Okay. And I appreciate that.  
25 And you felt this way for a long time right.



1 PROSPECTIVE JUROR NO. : a long time.

2 MR. CLOWARD: Sure. And, you know, our our  
3 biases our beliefs our core values, the way that we  
4 feel about things, you know those don't happen  
5 overnight they happen you know over a long period of  
6 time, and that's okay. That's what makes us human.  
7 And, but you agree with me that nothing that I say you  
8 know, is going to change way you feel, your -- your  
9 values your beliefs, right?

10 PROSPECTIVE JUROR NO. : that's correct.

11 MR. CLOWARD: Nothing Mr. Jaffe says is going  
12 to change that right.

13 PROSPECTIVE JUROR NO. : that's correct.

14 MR. CLOWARD: Okay. Nothing in fact that  
15 even the judge or you know maybe your neighbor, or your  
16 dad is going to say, or you know someone in your family  
17 member is going to say is going to change way you feel  
18 right.

19 PROSPECTIVE JUROR NO. , correct.

20 MR. CLOWARD: All right. Thank you.  
21 Mr. Bulason, and just on this this one specific issue,  
22 just that the million you know in excess of 2 million,  
23 that's the only thing I'm asking, you know do you agree  
24 you know, with Mr. Runs, and Mrs. One way or another I  
25 never changed that in my outline. Mrs. One way or



1 another, and Mrs. Agnor that, you know, on just that  
2 specific issue, you would feel you would also feel  
3 uncomfortable if you were the plaintiff, in this  
4 hypothetical case and there was jurors that had your  
5 same frame of mind you would feel uncomfortable with  
6 them on your jury.

7 PROSPECTIVE JUROR NO. : yes.

8 MR. CLOWARD: You agree that just on that one  
9 just that one slender issue, you're not the right fit  
10 for this particular case.

11 PROSPECTIVE JUROR NO. : yes.

12 MR. CLOWARD: Okay. Is that a yes.

13 PROSPECTIVE JUROR NO. : yes.

14 MR. CLOWARD: Okay. And you agree that just  
15 again, and we're just talking that specific issue the  
16 parties are not on the same, you know, they don't start  
17 in the same place maybe the defendant starts just a  
18 little bit ahead of the plaintiff.

19 PROSPECTIVE JUROR NO. : yes.

20 MR. CLOWARD: Okay. And you felt this way  
21 for a long time right?

22 PROSPECTIVE JUROR NO. : yes.

23 MR. CLOWARD: I mean, you didn't you didn't  
24 wake up today get the jury summons and say, hey you  
25 know what I'm going to form this belief or this core

1 value this is something you felt for a long time right.

2 PROSPECTIVE JUROR NO. : I think so yes.

3 MR. CLOWARD: Okay. And you agree that  
4 nothing that I say or nothing that Mr. Jaffe says is  
5 going to change way you feel right.

6 PROSPECTIVE JUROR NO. : uh-huh, yes.

7 MR. CLOWARD: Okay. Thank you. Mr. Young,  
8 on the same issue, do you agree you would also feel  
9 uncomfortable having someone with your frame of mind  
10 sit on the jury for that specific issue of the amount  
11 you feel uncomfortable right.

12 PROSPECTIVE JUROR NO. : yeah.

13 MR. CLOWARD: And you agree that you know, on  
14 just that specific narrow issue, you're not the right  
15 fit for this particular case?

16 PROSPECTIVE JUROR NO. : no, I wouldn't  
17 be.

18 MR. CLOWARD: Because you have that bias or  
19 that core belief that value, and Mr., you know,  
20 Mr. Khoury would start off in just a little bit  
21 different place than my client right.

22 PROSPECTIVE JUROR NO. , correct.

23 MR. CLOWARD: And you felt this way.

24 PROSPECTIVE JUROR NO. : long time.

25 MR. CLOWARD: Long time. And nothing that I

1 say will change that right.

2 PROSPECTIVE JUROR NO. : no, sir.

3 MR. CLOWARD: Nothing Mr. Jaffe says will  
4 change that right.

5 PROSPECTIVE JUROR NO. : no, sir.

6 MR. CLOWARD: Nothing the Judge says will  
7 change that right.

8 PROSPECTIVE JUROR NO. :

9 (Witness shakes head.)

10 MR. CLOWARD: All right. Thank you. Mr.  
11 walker, on this issue, I just can I level with you and  
12 just ask you, you know, based on what you have told us  
13 about, you know, not the amount the award 2 million,  
14 you would have a hard time with that, you feel it's  
15 just way too much, just want to level with you, is is  
16 my client going to get a fair fight on that specific  
17 issue?

18 PROSPECTIVE JUROR NO. : I can't answer  
19 that are you talking about from me myself.

20 MR. CLOWARD: From you from you.

21 PROSPECTIVE JUROR NO. : well, I think I  
22 made myself clear when I said, I think it's ridiculous  
23 that the amount you're asking for, so I can't see how I  
24 can be fair and say, oh, yeah I'm just going to give  
25 her whatever she wants.

1 MR. CLOWARD: I appreciate that. So on just  
2 that specific issue my client would not get a fair  
3 fight.

4 PROSPECTIVE JUROR NO. : that's all I know  
5 about right now so that's all I can say.

6 MR. CLOWARD: Okay. So I appreciate it.  
7 Thank you. Mrs. Brown, in your jury questionnaire, you  
8 you indicated you know that you you wouldn't have a  
9 problem with the multimillion dollar or I think that's  
10 the questionnaire said multimillionaire, but today you  
11 kind of expressed a little bit of maybe hesitancy can  
12 you tell me how you file.

13 PROSPECTIVE JUROR NO. : I think it would  
14 depend on the extent of her injuries.

15 MR. CLOWARD: Okay.

16 PROSPECTIVE JUROR NO. : like one of the  
17 other ladies said depending on if it's life changing if  
18 if she's not able to get back to her life as she  
19 usually would.

20 MR. CLOWARD: Sure.

21 PROSPECTIVE JUROR NO. : now if that was  
22 the case I feel she should get compensated.

23 MR. CLOWARD: , so you don't agree with maybe  
24 like Mr. Walker where just you just kind of have a  
25 feeling that you know that, amount is I think



1 Mr. Walker said it's just rid clues includes you don't  
2 feel that way just on first blush.

3 PROSPECTIVE JUROR NO. : no.

4 MR. CLOWARD: Okay. Thank you Mr. Frasier  
5 same thing I think in your questionnaire you said you  
6 know, no, you wouldn't have a problem, but then today,  
7 you know you talked a little bit about, you know, you  
8 talked a little bit I'm sorry. Maybe you wouldn't have  
9 a problem, so are you are you more like Mr. Mr. Walker  
10 where you know what, you just have a problem with  
11 2 million is just ridiculous or are you more like  
12 Mrs. Mrs. Brown here. Can you tell me a little bit  
13 that.

14 PROSPECTIVE JUROR NO. : I think probably  
15 when I went through that excuse me that questionnaire I  
16 wasn't little bit haphazardlily, you know, why you kind  
17 of want to get it over with that's project what I did,  
18 but I will say two things I was an expert witness for a  
19 case, where the people were asking for twin tee a  
20 million dollars, and I was supposed to be on the  
21 plaintiffs side and I really had a hard time like  
22 fulfilling my obligation with that just based on that  
23 will figure because I figure -- after reading the case  
24 and everything else, that was way over the top, and I  
25 think that a lot of times that is the case, that



1 there's significant amount of money, that's being asked  
2 for that's over and above what actually the defendant  
3 or the plaintiff needs or deserves.

4 MR. CLOWARD: Okay. Can I ask what kind of  
5 an expert are you?

6 PROSPECTIVE JUROR NO. : it was for a well  
7 because I coach it was a situation where some coaches  
8 were being sued.

9 MR. CLOWARD: Got you what do you coach.

10 PROSPECTIVE JUROR NO. : football and  
11 wrestling.

12 MR. CLOWARD: Cool. I did a little of both  
13 in high school, but so let me just see if I understand.  
14 In that case it was 20 million you just felt like, holy  
15 smokes that's way out there, you know and I can tell  
16 you that's not -- what in this case.

17 PROSPECTIVE JUROR NO. , right.

18 MR. CLOWARD: But do you have a problem, you  
19 know, with with 2 million like for instance if you were  
20 on a hypothetical juror -- jury, can you tell me a  
21 little bit more or if you were a hypothetical  
22 plaintiff, and you had a lawsuit and you knew your  
23 attorney was going to ask for -- for in ex sills of  
24 2 million, would you feel comfortable knowing what you  
25 know about about your opinions and your beliefs and

1 your core values would you have a problem having that  
2 person sit on your jury?

3 PROSPECTIVE JUROR NO. : I think I got  
4 that twisted. I guess-if I were if I were the  
5 plaintiff,.

6 MR. CLOWARD: If you were the plaintiff,.

7 PROSPECTIVE JUROR NO. : I wouldn't ask  
8 for that much money.

9 MR. CLOWARD: Okay.

10 PROSPECTIVE JUROR NO. : period.

11 MR. CLOWARD: Just I know you wouldn't. But  
12 just assume for me that you did, just for me that you  
13 did, and would you feel uncomfortable having a jury  
14 with your frame of mind, sit on the, you know, on the  
15 panel on that just that specific issue? Just, you  
16 know, not talking about everything else but just that  
17 one little issue? Would you feel uncomfortable.

18 PROSPECTIVE JUROR NO. : yeah.

19 MR. CLOWARD: Okay. I appreciate that. You  
20 know, I do. I do. Thank you.

21 You agree in on that specific issue, you  
22 would not be a good fit.

23 PROSPECTIVE JUROR NO. : I would not. and  
24 the parties, you know, they're not going to get a good  
25 or a fair fight on just that issue, the defendant is

1 going to start off just a little bit ahead of the  
2 plaintiff.

3 PROSPECTIVE JUROR NO. : absolutely.

4 MR. CLOWARD: Okay. Thank you. I appreciate  
5 your -- your brutal honesty. And you you felt that way  
6 nothing that I say will change that right?

7 PROSPECTIVE JUROR NO. : no.

8 MR. CLOWARD: Nothing that Mr. Jaffe says is  
9 going to change that right.

10 PROSPECTIVE JUROR NO. : absolutely not.

11 MR. CLOWARD: Nothing that, you know, your  
12 fiance, correct congratulations by the way your fiance  
13 or Mr. Orr I mean, Mr. I'm sorry Judge, or the judge  
14 going to say is ask going to change that right.

15 PROSPECTIVE JUROR NO. : no.

16 MR. CLOWARD: Okay. And that's just a core  
17 value core belief that you hold.

18 PROSPECTIVE JUROR NO. , correct.

19 MR. CLOWARD: Thank you very much.

20 THE COURT: Somebody needs a break already?

21 MR. CLOWARD: I'm sorry judge may we approach  
22 briefly.

23 THE COURT: Sure.

24 MR. CLOWARD: I'm sorry Judge.

25 /////

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

3 THE COURT: All right. Folks. Let's go  
4 ahead and take a quick break. During our break, you're  
5 instructed not to talk with each other.

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

21 Take about ten minutes.

22 THE BAILIFF: All rise.

23 THE COURT: Everybody use the bathroom now so  
24 we don't have to take another break.

25 (Whereupon jury the courtroom.)



1 THE COURT: All right. We're outside the  
2 presence of the jury. You guys want to make a record  
3 on Mr. Jaffe, did you want to make a record on that  
4 conference.

5 MR. JAFFE: Yeah, Your Honor, I believe many  
6 of these questions are in violation of Rule 7.70,  
7 especially subsection C, which are questions touch  
8 willing on the verdict a juror would return when based  
9 upon hypothetical facts. and that that's what this  
10 whole line has been. Not when we were arguing in  
11 limine about the whole prospect of how much money is  
12 too much or a dollar figure, but what he's asking is  
13 whether the jurors can return a verdict for that pain  
14 and suffering amount that he's asking for, and it's  
15 basically a hypothetical fact predicated upon what  
16 they've not heard all they have done is heard what  
17 we've had to say about the case and seen his client.

18 THE COURT: And I think that's why he got the  
19 response he did from Mr. Walker. That he was unable to  
20 tell him what he would do because he doesn't know the  
21 facts of the case.

22 SKWBAO: I understand that but the point is  
23 counsel was -- was -- was asking questions in such a  
24 way, that were that was more indoctrine Nateing than  
25 anything else with respect to the case not an



1 opportunity to learn what their feelings are, and Your  
2 Honor, I believe that that is in violation of land  
3 versus State, 251P third 700, 2011 it's a Nevada  
4 Supreme Court case, and it says the purpose of voir  
5 dire is to discover whether a jury Juror will consider  
6 and decide the facts impartially and consciously apply  
7 the law as charged by court. But that indoctrination  
8 questions are not supposed to be brought out, and  
9 that's also there's case law throughout Nevada talking  
10 about that. The whole purpose is, the purpose of voir  
11 dire and this is now I'm looking at another case,  
12 Whitlock versus salmon 104 Nevada 24 purpose of voir  
13 dire to determine whether a prospective juror can and  
14 will render a fair and impartial verdict on the  
15 evidence presented and apply the facts, as he or she  
16 find them to the law given. Your Honor, this is going  
17 well beyond that it's going to indoctrination.

18 MR. CLOWARD: Your Honor if I May R may  
19 respond.

20 THE COURT: Sure.

21 MR. CLOWARD: Briefly. It seems as though we  
22 have a moving objection first it's a violation forever  
23 O for touching upon want facts, second it's a violation  
24 for indoctrination. First, there was not a specific a  
25 single fact. Mr. Jaffe for the record did not illicit

1 a single fact that was given by Mr. Cloward by me  
2 during my voir dire, I did not ask the jurors like hey,  
3 this is a personal injury case where my client got this  
4 and this and this surgery you can award \$5 million?  
5 That's just not what happened. The the multimillion  
6 dollar was a question that Mr. Jaffe stipulated to  
7 which was in the jury questionnaire I'm entitled to  
8 follow up on that and the second part of the purpose of  
9 voir dire from the case that was just cited by  
10 Mr. Jaffe the Whitlock versus salmon is second for  
11 trial to gather information for an intelligent exercise  
12 of preemptory challenges. Nothing that I asked was in  
13 violation of either the local rule cited by counsel or  
14 any of the case authority, and No. 3, the lamb case is  
15 is clearly factually distinguishable it dealt with the  
16 criminal case, and has nothing it's not applicable to  
17 this current situation.

18 MR. JAFFE: Your Honor, first off, I did not  
19 stipulate to the multimillion dollar verdict question  
20 the only reason, we agreeded to it going in there, was  
21 bombs the Court had already ruled on the motion in  
22 limine, and we specifically stated that it was in no  
23 way deemed a waiver of our objection to that line  
24 irrespective. That's No. 1.

25 No. 2, Your Honor, this I believe this is

1 indoctrination, and whether the lamb case does or does  
2 not apply, because it's a criminal case is  
3 inconsequential because lamb does discuss what is and  
4 is not appropriate voir dire from a general  
5 perspective. So Your Honor, similar ply saying that I  
6 believe these questions go well over the line. Thank  
7 you.

8 THE COURT: Okay. You made your record. I  
9 don't think they do I don't think we're talking about  
10 hypothetical facts, and I think that's what the pre  
11 trial ruling was as well. I don't think that there's  
12 been indoctrination, the question is -- some of the  
13 questions that were recently asked were more close  
14 ended, but they were follow ups from prior questions  
15 that were more open ended where the jurors did offer  
16 opinions based on a very general open-ended question  
17 so.

18 MR. JAFFE: And, Your Honor, I do have to add  
19 in there because I feel like many of those questions  
20 were specifically phrased with counsel putting the  
21 words into the juror's mouths as to what their beliefs  
22 were and as to what their core values were, et cetera,  
23 rather than learning from the jurors their beliefs, so  
24 that we can make the intelligent voir dire decision  
25 which is exactly what the Nevada Supreme Court wants.

1 THE COURT: Okay.

2 MR. JAFFE: Thank you, Your Honor.

3 THE COURT: We want to make any other record  
4 do you want to make your challenge for cause I'm going  
5 to let him.

6 MR. EGLET: No, I figure you would let him  
7 ask questions, but we can go ahead and make them.

8 MR. CLOWARD: And we're going to make them in  
9 a very specific order as well. So the first the first  
10 challenge for cause is Clifford Frasier, Juror badge  
11 No. 020049. And he says that he would need significant  
12 he says that hypothetically he would be a uncomfortable  
13 sitting on the jury if it was if it was him, he also  
14 said he flat out would not be a good fit on that  
15 specific issue. He also said that the parties would  
16 not be at the same starting point, but Mr. Khoury would  
17 be starting off a little bit ahead of Ms. Seastrand on  
18 that very specific narrow issue. And that no one is  
19 going to change his view, not me, not Mr. Jaffe, not  
20 the Court,.

21 THE COURT: You got several of them to say  
22 the same thing, so I guess my question is do you need  
23 to make a record on it now or should we wait until I  
24 mean you're going to have to make the same record later  
25 on.



1 MR. CLOWARD: Correct.

2 THE COURT: Let's wait until he asks his  
3 questions and then make your motions I'm guessing that  
4 you're going to move to exclude more than that just on  
5 cause. You're going to get to some other issues.

6 MR. CLOWARD: My thought is just that if  
7 if -- if they've already expressed, views that are  
8 bias,.

9 THE COURT: I know.

10 MR. CLOWARD: Rather than leave them there  
11 let some other folks come up so we can ask the new.

12 THE COURT: If the Supreme Court had passed  
13 that bill, then you would be right. But the -- or not  
14 the supreme court the legislature. If the legislature  
15 had passed that bill that eliminated the ability of the  
16 judge to look at any other information, you would be  
17 right, but they didn't pass that one in session, so.

18 MR. CLOWARD: But it's my understanding that  
19 Jitnan allows for the Court to do that and look at that  
20 information.

21 THE COURT: It does, and so does the article  
22 that Mr. Eglet published in the -- in the magazine. I  
23 read it, but -- but I'm going to -- I'm going to let  
24 other side get a chance.

25 MR. CLOWARD: Sure. Do you want me to tell



1 you who in the order that they're who I would be making  
2 the record on.

3 THE COURT: If you would like.

4 MR. CLOWARD: Okay. So the second would be  
5 Christopher Evans, badge Nos. 020012, the third would  
6 be Gary Walker, badge No. 020034; the fourth would be  
7 Mark Runz, badge No. 020001; the fifth is Margaret  
8 Vera, badge No. 0200 '08; the sixth is Leticia Ong,  
9 badge No. 020028; the seventh is Paul Jeung, badge  
10 No. 020009; the eighth is Joey Bulason, badge  
11 No. 020017. And the ninth is Ms. Patty Agnor, badge  
12 No. 020033, Your Honor.

13 THE COURT: Okay.

14 MR. JAFFE: Your Honor.

15 THE COURT: I think I'm still going to let  
16 the defense question beforehand I excuse anybody for  
17 cause on that issue.

18 MR. JAFFE: So am I going to traverse now or.

19 THE COURT: No, I think we let the plaintiff  
20 keep going.

21 MR. JAFFE: Okay.

22 THE COURT: Okay. Anything else?

23 MR. CLOWARD: No.

24 THE COURT: Let's take a break for a little.  
25 Off the record.

1 (Whereupon a short recess was taken.)

2 THE BAILIFF: All rise.

3 (Whereupon jury the courtroom.)

4 THE COURT: All right. Go ahead and be  
5 seated folks. Welcome back ladies and gentlemen we're  
6 back on the record in Case No. 636515. Go ahead  
7 Mr. Cloward, .

8 MR. CLOWARD: Thank you.

9 THE COURT: You may continue.

10 MR. CLOWARD: Thank you.

11 Before I, you know, before I I move on I  
12 wanted to just get everyone one last opportunity if  
13 they had an opinion or a view on the amount that we  
14 talked about in excess of 2 million and then also pain  
15 and suffering, does anyone else have any views on those  
16 that they didn't get to share that they care to share?  
17 Everyone okay? Okay.. Thank you. So along the lines  
18 of the next question I want to ask you is who's heard  
19 the term, you know, frivolous lawsuit Jack pot justice,  
20 things like that, and Mrs. Brown, you're smiling tell  
21 tell me your thoughts.

22 PROSPECTIVE JUROR NO. : I think that  
23 there are there are a lot of frivolous lawsuits. and  
24 people who think that they can get rich quick because  
25 of car accidents and things.

1           MR. CLOWARD: Sure. And you use a lawsuit as  
2 a way to I think someone said a golden parachute kind  
3 of thing. You agree with that.  
4           PROSPECTIVE JUROR NO.           : yep ^KRISTY CHECK  
5 Frasier.  
6           PROSPECTIVE JUROR NO.           : yes absolutely.  
7           MR. CLOWARD: Who who -- who else has heard  
8 of some people some folks talked about the McDonald's  
9 case raise your hand if you have heard that case.  
10 Anyone not heard of that case? Okay.. What about was  
11 there a case involving Wendy's where you know someone  
12 said there was.  
13           PROSPECTIVE JUROR NO.           : finger ^KRISTY  
14 CHECK Brown the finger in I forget what the finger was  
15 in.  
16           MR. CLOWARD: In the Chile, yeah. Who here  
17 agrees that there's just too many some folks think, you  
18 know, the way that our process or our system was set  
19 up, there's just too many frivolous lawsuits it's just  
20 gotten out of hand? You know, okay. Raise your hand  
21 if everybody if you feel like, you know, what's the  
22 just gotten out of hand. Okay. Mr. Bulason, do you  
23 feel like it's gotten out of hand anyone feel like it's  
24 not gotten out of hand? Mr. Karepenko.  
25           PROSPECTIVE JUROR NO.           : yeah it's

1 Nicholas Karepenko 025.

2 MR. CLOWARD: You are in the military thank  
3 you for your service. Tell me what you feel like you  
4 don't share that same view or opinion.

5 PROSPECTIVE JUROR NO. : well, you asked  
6 the question, if there's too -- too many of these cases  
7 in there, it made me think of like, if there's anybody  
8 who has a I guess a legitimate case that isn't able to  
9 get their business taken care of. And if they can do  
10 what they got to do, then that's why this whole thing  
11 is here in the first place.

12 MR. CLOWARD: Okay. So you you feel like  
13 that by let me see if I got you right. That you know,  
14 that when people do have a legitimate case they need to  
15 have a forum, whereby they can bring and get take care  
16 of their issue is that fair.

17 PROSPECTIVE JUROR NO. : that's fair.

18 MR. CLOWARD: Okay. Does anyone also share  
19 that same view that Mr. Karepenko? Please talk to me.  
20 Ms. Temple on it, tell me your thoughts.

21 PROSPECTIVE JUROR NO. : well, it's --  
22 it's that's the system, and if you have a complaint or  
23 a problem, then you bring it before the Courts, and  
24 that's how our system is set up. That you should be  
25 able to do that. I'm sorry. Elizabeth temple on it 08

1 teen.

2 MR. CLOWARD: Okay. Thank you. Ms. Johnson  
3 010 tell me your thoughts.

4 PROSPECTIVE JUROR NO. : I believe the  
5 media sensationallizes frivolous lawsuits and that's  
6 what you hear about a lot, and you do not hear about  
7 the rest of the lawsuits that are legitimate, so what  
8 you are hearing, people think their lawsuits are out of  
9 the control it's because the media sensationlizing  
10 those cases that are.

11 MR. CLOWARD: Sure who agrees with that that  
12 just a general statement that hey you annoy what, the  
13 media sensationlizes, lawsuits like Mr. Cloward  
14 McDonald's the Wendy's one I also heard about a dry  
15 cleaner lawyers suing for millions of dollars for  
16 something Mr. Evans you raised your hand tell me your  
17 thoughts.

18 PROSPECTIVE JUROR NO. : I think the media  
19 overdoes everything, but, I think there's a lot of  
20 people out there that try to go after free money.

21 MR. CLOWARD: Sure.

22 PROSPECTIVE JUROR NO. : that don't  
23 deserve it and I think if if you're case is just  
24 totally ridiculous, and seen in court I think you  
25 should get a fine for wasting our time. Absolutely.



1 MR. CLOWARD: Okay. I appreciate that.  
2 Mr. Runs, you also raised your hand tell me your  
3 thoughts.

4 PROSPECTIVE JUROR NO. : yeah, the media  
5 definitely influences, you know, .

6 MR. CLOWARD: Why do you think Mr. Runs that  
7 the media only talks or you know why do you think  
8 there's a perception that the media only talks about  
9 like cases like McDonald's, you know, you never hear in  
10 a case of hey someone filed a lawsuit, and the jury  
11 gave them zero.

12 PROSPECTIVE JUROR NO. : yeah because it  
13 sells newspapers or it's a story.

14 MR. CLOWARD: Would everyone agree with that?  
15 Ms. Ms. Agnor tell me, you know, do you agree with that  
16 do you agree with the --

17 PROSPECTIVE JUROR NO. : well, I think  
18 it's not only the media, I think it's all of the lawyer  
19 commercials that you see on TV.

20 MR. CLOWARD: Sure.

21 PROSPECTIVE JUROR NO. : been in an  
22 accident, call so and so, we can get you lots of money.

23 MR. CLOWARD: Sure.

24 PROSPECTIVE JUROR NO. : I think I think a  
25 I think lot I think a lot of it comes from their from

EXHIBIT 5

1 CASE NO. A-11-636515-C

2 DEPT. NO. 30

3 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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\* \* \* \* \*

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9 MARGARET G. SEASTRAND,

10 Plaintiff,

11 vs.

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

14 Defendants.

15

16

REPORTER'S TRANSCRIPT

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OF

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JURY TRIAL

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A.M. SESSION

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BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED FRIDAY, JULY 19, 2013

23

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

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I N D E X

WITNESS:	PAGE
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1 future low back surgery.

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

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

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

9 A. The records and the films --

10 Q. Okay. Yes.

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

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

14 A. Correct.

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

17 A. I do.

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

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

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

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

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

1 she was doing well when she saw you?

2 A. She was improving.

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

6 A. I saw that.

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

10 A. That's his idea.

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

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

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

19 MR. JAFFE: Let me double check.

20 THE COURT: Come up, guys.

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

23 THE COURT: Objection's overruled.

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

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

4 THE WITNESS: The answer's no.

5 BY MR. CLOWARD:

6 Q. Why not?

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

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

18 A. Yes.

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

24 A. No.

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

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

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

11 A. No, not at all.

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

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

21 MR. CLOWARD: Judge, may we approach.

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

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

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

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

9 MR. CLOWARD: Thank you.

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

13 JUROR: Yes. Thank you.

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



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

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

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

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

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

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

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

**EXHIBIT 6**

**JA 4376**

1 CASE NO. A-11-636515-C

2 DEPT. NO. 30

3 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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9 MARGARET G. SEASTRAND,

10 Plaintiff,

11 vs.

12 RAYMOND RIAD KHOURY, DOES 1  
13 through 10; and ROE ENTITIES  
14 11 through 20, inclusive,

15 Defendants.

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REPORTER'S TRANSCRIPT

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OF

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JURY TRIAL

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BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED FRIDAY, JULY 19, 2013

23

24

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

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1 of \$1,880.

2 A. Also appropriate.

3 Q. So the total amount was 433,213.02. However,  
4 that needs to be revised to 430,213.02, correct?

5 A. Yes.

6 Q. Doctor, is it your opinion to a reasonable  
7 degree of medical probability on a more likely than not  
8 standard that the charges of \$430,213.02 is usual and  
9 customary for charges in the Las Vegas community?

10 A. Yes.

11 Q. And it was -- and those charges are  
12 reasonable and necessary for the treatment that she  
13 provided -- or that she received?

14 A. Yes.

15 Q. And the treatment that she received was  
16 necessary and was caused by the motor vehicle collision  
17 dated March 13, 2009?

18 A. Yes, it was.

19 Q. Now, Doctor, just a couple follow-up  
20 questions and then I will -- I will be done.

21 You've had an opportunity to review the  
22 defense experts' reports, have you not?

23 A. I have.

24 Q. I'm going to ask you a couple of questions  
25 about that.

EXHIBIT 7

JA 4381

1 CASE NO. A-11-636515-C

2 DEPT. NO. 30

3 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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8

9 MARGARET G. SEASTRAND,

10 Plaintiff,

11 vs.

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

14 Defendants.

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REPORTER'S TRANSCRIPT

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OF

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JURY TRIAL

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED WEDNESDAY, JULY 24, 2013

23

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
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13 \* \* \* \* \*



1 Q. Okay. I would like to focus on those for a  
2 bit.

3 MR. JAFFE: And, Your Honor, if we could have  
4 the ability to use the screen.

5 THE WITNESS: I can either pull them up from  
6 here or from my computer which would be.

7 BY MR. JAFFE:

8 Q. What we're going to do is this: We have  
9 already got them downloaded. We'll put them on the  
10 screen. They'll be on the screen in front of you. If  
11 you want to refer to them on your computer as well,

12 A. If it's on the screen, that's fine.

13 Q. Okay.

14 A. Thank you.

15 MR. JAFFE: Your Honor, I'm going to -- I had  
16 the wrong designation. I was thinking JJ, but it's  
17 actually Exhibit J that I want.

18 You know, Judge, I'm just going to use the  
19 ELMO. Thank you, sir.

20 BY MR. JAFFE:

21 Q. Showing Exhibit JJ -- or J rather, J7. And,  
22 Doctor, I'm going to put this up and this is a visit  
23 from October 27th, 2008; is that correct, sir?

24 A. Yes.

25 Q. Now, would you explain to us your

1 interpretation of why the plaintiff was seen that day  
2 and what the results were.

3 A. She had been having chest pain with  
4 associated numbness and tingling into both arms and  
5 shooting pain in the left arms, no shortness of breath,  
6 and it was actually going away with -- with exercise.  
7 It said -- it says, with numbness and then below, under  
8 the assessment, they recommended an X ray of the neck.  
9 So concern was with -- two concerns there. One with  
10 the chest pain, concern is always it may be a cardiac  
11 issue. But it was pretty atypical for cardiac pain to  
12 go away with exercise. The other concern was of -- of  
13 a neck issue. And so they ordered an X ray of the  
14 neck.

15 Q. Now, sir, do you believe that this was a  
16 cardiac event that she was ultimately seen for in terms  
17 of the cause of the visit?

18 A. No, I don't think so.

19 Q. Why is that?

20 A. The workup was -- was negative for that. I  
21 mean, she wasn't -- didn't end up getting any cardiac  
22 treatment. She was sent to a cardiologist and had some  
23 testing, but it didn't suggest that she'd had had a  
24 cardiac event. And there was some findings on the  
25 X ray that were consistent with some cervical processes

1       A.   Well, you -- you can imagine placing a larger  
2 needle into any structure in your body would produce  
3 more pain than putting a smaller structure in your  
4 body. So the -- my assumption is, yes, I don't have  
5 any study to prove that, but just general knowledge of  
6 placing needles in patients larger ones tend to cause  
7 more pain.

8       Q.   Do you do diskography?

9       A.   Do I.

10      Q.   Is that part of your practice?

11      A.   To put the same size needles in each of the  
12 disks that I'm testing, yes. I'm not to put different  
13 size needles in each of the disks.

14      Q.   Now, as part of a diskography is it critical  
15 to elicit a pain response consistent with the type of  
16 pain that the patient typically experiences?

17      A.   Should be exactly like the pain that the  
18 patient typically experiences in a very specific  
19 pressure range. So measuring pressures during the  
20 diskography is very important. Pressures in a  
21 particular range validate the study, pressures outside  
22 that range can cause pain in a disk that don't mean  
23 anything. Because you could cause the pain even in a  
24 normal disk that particular pressures.

25      Q.   So if we're using a general anesthetic, and

1 we're using larger needles, what does that say about  
2 the ability to obtain a proper response in order to  
3 have an accurate diskography?

4 A. It's questionable at best.

5 Q. If that's the case, does it raise questions  
6 about whether the plaintiff actually did have a  
7 positive diskography before undergoing this plasma disk  
8 decompression.

9 A. It raises questions in my mind, yes.

10 Q. Is that consistent with the type of the  
11 manner in which you have seen Dr. Belsky perform this  
12 procedure in the other cases?

13 A. Every other time.

14 Q. Every other time?

15 A. Yes.

16 Q. And had it not been positive, then it would  
17 raise questions as to the propriety of the plasma disk  
18 decompression?

19 A. It would become unnecessary.

20 Q. Okay. Doctor, really there any other issues  
21 that is you have evaluated and that you have addressed  
22 at our request?

23 A. There was some billing issues, associated  
24 with that office as well.

25 Q. Okay. What are your concerns about billing?

1       A.   Dr. Belsky's billing tends to be  
2 approximately 50 percent higher than the community  
3 standard. Assuming that the procedure she performed  
4 were reasonable and related, they, they would have been  
5 50 percent higher. So I'm not making any judgments as  
6 to the reasonableness of those or the necessity of  
7 those particular procedures, that were performed by her  
8 and the bills generated at the time I was critical of  
9 the billing that she performed. She's an  
10 anesthesiologist as I am, and there's a society called  
11 the American society of anesthesiologist which is  
12 associated with something called the ASA which is the  
13 initials for that. And they said for billing standards  
14 as far as what should be billed, and what shouldn't be  
15 billed. There are a couple of procedures that she  
16 performed in approximate which use live X ray, and  
17 that's why question do them at a surgery center so we  
18 can identify the particular area, it's -- makes  
19 perfectly acceptable to bill for that, but billing for  
20 the injection of dye associated with that, is what we  
21 call unbundling you assume you're going to inject some  
22 dye, when you perform these so there was some  
23 unnecessary billing associated with -- with that  
24 particular portion of the procedures. And then,  
25 there's an anesthesiologist involved in every single



1 procedure performed by Dr. Belsky who happens to be her  
2 husband, that is present which if propofol the general  
3 anesthetic agent wasn't used that billing would become  
4 unnecessary as well.

5 Q. How many times have you heard of a wife  
6 accusing their husband of not doing their job, right?  
7 Other than taking out the trash, and emptying the  
8 dishwasher?

9 A. Outside of the home, never.

10 Q. Doctor, let's -- let's turn to another area.  
11 Did you also address an issue called  
12 secondary gain?

13 A. I did, yes.

14 Q. As a doctor, is secondary gain something that  
15 you're concerned about when people have a case that's  
16 in litigation?

17 A. It is.

18 Q. Okay. What is the concept of secondary gain  
19 generally?

20 A. Secondary gain in general, is a person who  
21 receives some perceived benefit from acting or  
22 portraying themselves in a particular way or they evade  
23 or avoid something that would be considered to be bad  
24 for them, so you're basically gaining something good or  
25 avoiding something bad by acting a particular way or

1 portraying yourself in a particular way. And that may  
2 be a conscious thing or it may be unconscious.  
3 Sometimes you have no way of telling the difference  
4 between the two. Whether it's conscious or  
5 unconscious.

6 Q. Is secondary gain something that you are  
7 concerned about when treating patients involved in  
8 litigation?

9 A. I'm concerned about that with -- with a lot  
10 of patients that I see. But until they demonstrate  
11 that they actually have some factors associated with  
12 it, I don't necessarily label people as having that,  
13 but you know, let's face people come to -- to me  
14 oftentimes for medication for injections for time off  
15 work for things of that nature. So I always have to  
16 kind of keep that in the back of my mind, but I don't  
17 really label somebody as having concerns for secondary  
18 gain until they have demonstrated that there is a  
19 potential for that behavior.

20 Q. Do you have any opinions regarding secondary  
21 gain in this case?

22 A. I do.

23 Q. What are those?

24 A. I believe there are factors associated with  
25 secondary gain other than the medical legal context of

1 this claim. I mean, that could be said of anybody that  
2 files a lawsuit so I don't necessarily hold that  
3 against Ms. Seastrand, but there is that sort of factor  
4 associated with secondary gain that's associated with  
5 anybody who files a lawsuit. But he sites that, the  
6 complaints of hers what we call the subjective  
7 complaints, outweighed the objective findings or the  
8 testing that was done, she appeared to have minimized  
9 or omitted some of the facts regarding her long history  
10 of neck and back pain in the past. Although, she did  
11 fill that out on one particular form from a radiology  
12 facility that she had had pack pain for 26 years. She  
13 told the police officer that she had a history of neck  
14 and back pain from prior accidents, she commented to  
15 the chiropractor that a couple of times, a week or a  
16 month, I think two to four times a month that she would  
17 have neck or back symptoms. But she didn't relay that  
18 information to all of the providers involved. So that  
19 they could take that into consideration when they were  
20 offering her treatment, and so for those reasons, I --  
21 I feel she has some secondary gain behavior that was  
22 exhibited during my review of the records that I have  
23 had the opportunity explore over the past year or so.

24 Q. Are you in any way implying whether that was  
25 intentional or an involuntary act?

1           A.    I assume it was an unconscious act, but I  
2 don't have any other way if I knew that it was a  
3 conscious act, and that there was intent I would use  
4 the word malingering, but I don't think that applies  
5 here because I don't think that intention has been  
6 exhibited or documented.

7           Q.    Okay. Doctor, have all the opinions you have  
8 stated today been to a reasonable degree of medical  
9 probability as a board certified anesthesiologist  
10 subspecializing in pain management?

11          A.    Yes.

12               MR. JAFFE: Thank you. I have no further  
13 questions, Your Honor.

14               THE COURT: Folks, we're going to take a  
15 little bit of a late lunch today so we can try to get  
16 through Dr. Schifini's testimony. So I will still give  
17 you a lunch. Don't worry about that. Just take it a  
18 little bit later.

19               Go ahead and cross, Mr. Cloward.

20               MR. CLOWARD: Same thing. Can I have a  
21 minute to set up?

22               THE COURT: Yep.

23  
24               /////

25               /////

**EXHIBIT 8**

JA 4393



## JOHN B. SIEGLER, M.D.

### SPINE AND PAIN MANAGEMENT

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Phone: (702) 45-SPINE (457-7463)  
Fax: (702) 878-7463

July 12, 2012

Steven T. Jaffe  
Hail Jaffe & Clayton, LLP

Re: Khoury adv. Seastrand  
Date of Loss: March 13, 2009

Dear Mr. Jaffe,

Per request, I have reviewed the provided records on Margaret Seastrand and recorded my opinions below.

#### Records Reviewed:

01-19-2005	I reviewed a dictation from Dr. Lambert. Diagnosis of postconcussive headache, low blood pressure.
01-25-2005	I reviewed a dictation from Dr. Lambert recommending starting Florinef.
03-11-2005	I reviewed records from Dr. Lambert. Recommended adjusting medications.
03-15-2005	I reviewed a dictation from Dr. Diez. Evaluation for posttraumatic headaches.
05-16-2005	I reviewed an EKG report. Mild to moderate changes.
06-23-2005	I reviewed records from Dr. Lambert. Clear to return to Weight Watchers.
	I reviewed pharmacy records from CVS Pharmacy.
01-19-2006	I reviewed a note from Dr. Lambert recommending Holter monitoring and salt loading.

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Margaret Seastrand

Date of Loss: March 13, 2009

03-22-2006 I reviewed a note from Dr. Lambert who is treating mitral valve prolapse and neurogenic syncope.

11-07-2007 I reviewed notes. Hallux valgus bilaterally from Affiliated Podiatry.

02-12-2008 I reviewed a note. Suture removal.

02-21-2008 I reviewed a procedure note from Dr. Leavitt. Bunion deformity, excision of exostosis.

10-27-2008 I reviewed a dictation from Dr. Kernani. Presented with complaint of chest pain.

11-21-2008 I reviewed a dictation from Dr. Lally. Chest pain and shortness of breath. Recommended a stress test.

12-15-2008 I reviewed a stress test read by Dr. Taylor. No reverse defects noted.

03-13-2009 I reviewed a State of Nevada Traffic Accident Report describing the accident where Ms. Seastrand was stopped at the time she felt the impact. There is a note in the report that Ms. Seastrand reported prior neck and back injuries. Vehicle 1 had minor damage to the front. Vehicle 2 had minor damage to the rear and was the vehicle of Ms. Seastrand.

I reviewed colored photographs of what appears to be a red vehicle with damage to the rear.

I reviewed hospital clinical report. Notes history of neck pain, degenerative disc disease and concussion, complaints of headache and neck pain. She was given morphine and Zofran and was discharged with Lortab and Soma.

I reviewed a history and physical by Physician Assistant Knauff. Recommended for rehabilitation, trigger point injections. She was given Fioricet and Valium.

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Date of Loss: March 13, 2009

03-13-2009	I reviewed a Fire and Rescue EMS report. Complained of neck, back and pelvic pain noted.
03-20-2009	I reviewed records from Dr. Lurie. Complaining of headache, neck pain, midback pain, low back pain, bilateral shoulder pain.
03-25-2009	I reviewed a progress note from Dr. Olmstead, chiropractor. Modalities performed.
03-27-2009	I reviewed a progress note from Dr. Olmstead. Modalities. No change in symptoms. Continue chiropractic treatment.
03-30-2009	I reviewed a progress note from Dr. Olmstead. Continued treatment.
03-31-2009	I reviewed records from Dr. Olmstead recommending MRI of the cervical and lumbar spine.
04-03-2009	I reviewed a progress note from Dr. Olmstead recommending chiropractic treatment.
04-08-2009	I reviewed a chiropractic progress note from Dr. Fisk.
04-15-2009	I reviewed a note by Dr. Olmstead.
04-17-2009	I reviewed a chiropractic progress note by Dr. Fisk.
04-21-2009	I reviewed a chiropractic progress note by Dr. Weekes.
04-24-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
04-28-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-01-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-05-2009	I reviewed a note by Dr. Belsky recommending injections in the cervical and lumbar spine.



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Margaret Seastrand

Date of Loss: March 13, 2009

05-06-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-11-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-13-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-15-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-18-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
05-20-2009	I reviewed a procedure note from Dr. Belsky. Dr. Belsky did a bilateral L5-S1 epidural and L4-5 facet injection.
05-26-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
06-01-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
06-03-2009	I reviewed a chiropractic progress note by Dr. Olmstead.
07-21-2009	I reviewed a chiropractic progress note by Dr. Webber.
07-22-2009	I reviewed a chiropractic progress note by Dr. Webber.
08-04-2009	I reviewed records from Dr. Belsky recommending a cervical epidural.
08-24-2009	I reviewed an initial evaluation by Dr. Muir recommending discography and a cervical injection.
08-26-2009	I reviewed records from Dr. Belsky. Performed a right C5-6 epidural steroid injection.
08-28-2009	I reviewed a dictation from Dr. Muir recommending plasma disc decompression for the lumbar spine.
09-16-2009	I reviewed a procedure note, discography by Dr. Belsky. No pain at L3-4, L4-5 concordant pain, L5-S1 concordant pain.

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Margaret Seastrand

Date of Loss: March 13, 2009

09-16-2009	I reviewed records. Plasma disc decompression L4 through S1 performed by Dr. Muir.
09-22-2009	I reviewed a dictation from Dr. Belsky. Prescription written for Ms. Seastrand.
09-29-2009	I reviewed a note from Dr. Muir recommending Medrol Dose Pack and CBC.
10-06-2009	I reviewed a visit with Dr. Muir. Increase in leg pain noted. A new MRI ordered.
10-06-2009	I reviewed a dictation from Dr. Belsky. Medications prescribed.
10-13-2009	I reviewed a dictation from Dr. Belsky. Medications prescribed.
10-21-2009	I reviewed records. Caudal epidural steroid injection by Dr. Belsky.
11-02-2009	I reviewed a note from Dr. Belsky. No relief following the injection. Medications adjusted.
11-02-2009	I reviewed a dictation from Dr. Muir recommending Toradol, TENS unit and medications.
11-17-2009	I reviewed a dictation from Dr. Muir recommending continue medications and electrodiagnostic studies.
11-20-2009	I reviewed a dictation from Dr. Belsky. Medications prescribed.
12-09-2009	I reviewed a procedure note from Dr. Belsky. A caudal epidural steroid injection was done.
12-10-2009	I reviewed a dictation from Dr. Shah who notes electrodiagnostic studies showing minimal active denervation potentials.
12-15-2009	I reviewed a dictation from Dr. Belsky recommending continue meds.





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Margaret Seastrand

Date of Loss: March 13, 2009

12-15-2009	I reviewed a dictation from Dr. Muir recommending a fusion of the neck.
01-07-2010	I reviewed a dictation from Dr. Shah recommending electrodiagnostic studies in the lower extremities which was positive for subacute L5 radiculopathy.
01-20-2010	I reviewed a dictation from Dr. Muir recommending proceeding with a fusion.
02-02-2010	I reviewed a progress note from Dr. Muir. Status post fusion. Reports improvement of cervical pain.
02-16-2010	I reviewed a dictation from Dr. Muir. Continue to monitor. Avoid activity.
03-05-2010	I reviewed a dictation from Dr. Muir recommending a lumbar fusion.
04-02-2010	I reviewed an evaluation from Dr. Langolis.
04-14-2010	I reviewed electrodiagnostic studies in the lower extremities performed and were negative.
04-29-2010	I reviewed a dictation from Dr. Khaykin recommending consideration of surgery at the L4 through S1 level.
05-2010	I reviewed nursing notes, progress notes, physician orders, medication administration records for May 2010 hospitalization for the lumbar fusion.
05-12-2010	I reviewed records. L4-5 and L5-S1 interbody fusion performed by Dr. Grover.
06-08-2010	I reviewed a progress note from Dr. Khaykin. Follow-up status post lumbar fusion, improvement of low back pain.

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Margaret Seastrand

Date of Loss: March 13, 2009

01-05-2011	I reviewed physical therapy progress note from Matt Smith Physical Therapy. Initial evaluation.
01-05-2011	I reviewed a plan of care from Matt Smith Physical Therapy.
01-07-2011	I reviewed a daily note from Matt Smith Physical Therapy. Recommended continue with current treatment plan.
01-10-2011	I reviewed a physical therapy progress note from Matt Smith Physical Therapy recommending continued rehab plan.
01-11-2011	I reviewed a physical therapy progress note from Matt Smith Physical Therapy. Continue with recommended continue therapy.
01-13-2011	I reviewed a physical therapy progress note from Matt Smith Physical Therapy recommending continue with rehab.
01-20-2011	I reviewed a physical therapy progress note from Matt Smith recommending continue with rehab.
01-20-2011	I reviewed a note from Dr. Langolis who recommended therapy and adjusted medications.
01-24-2011	I reviewed a physical therapy progress note from Matt Smith recommending continue with rehab.
01-27-2011	I reviewed a Matt Smith Physical Therapy progress note recommending continue with rehab.
01-31-2011	I reviewed a Matt Smith Physical Therapy progress note recommending advancement to home exercise program.
	I reviewed defendant's initial disclosure as well as answer to complaint.

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Margaret Seastrand

Date of Loss: March 13, 2009

#### Imaging Studies Reviewed:

- 03-13-2009 I reviewed x-ray reports read by Dr. Gorczyca. Negative.  
I reviewed a CT report of the brain read by Dr. Blake. Negative.
- 04-03-2009 I reviewed an MRI report of the cervical spine. Degenerative changes at C5-6 with a disc protrusion. Also evidence of a bone contusion at the C5-6 level.
- 04-03-2009 I reviewed an MRI report of the lumbar spine. Annular tear at L4-5 and L5-S1 read by Dr. Lewis.
- 10-13-2009 I reviewed a lumbar MRI report. Protrusions at L4-5 and L5-S1.

#### Charges Reviewed:

- I reviewed a ledger from the Neck and Back Clinic.
- I reviewed charges from City of Las Vegas EMS.
- I reviewed charges from Mountain View Hospital.
- I reviewed charges from Radiology Specialist, Ltd.
- I reviewed charges from CHW Nevada Imaging.
- I reviewed vehicle estimates totals repair, \$1672.33 for car belonging to Ms. Seastrand.
- I reviewed charges from Fremont Emergency Services.
- 03-20-2009 I reviewed charges from Primary Care Consultants.
- 03-20-2009 through 07-22-2009 I reviewed charges from Dr. Olmstead for 23 visits.

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Date of Loss: March 13, 2009

I reviewed a ledger from Dr. Belsky.

I reviewed charges from Surgery Center of Southern Nevada.

I reviewed charges from Summerlin Medical Center.

I reviewed charges from Dr. Russell Shah.

#### Clinical Summary:

Ms. Seastrand was injured 03-13-09 in a rear-end accident and developed headache and neck pain. She followed up with The Neck and Back Clinic and underwent chiropractic treatment. She was noted to have low back pain and pain radiating to both legs at that time. The symptoms continued and she was referred to Dr. Belsky who performed a lumbar discogram on 09-16-09 followed immediately by a plasma disc decompression procedure by Dr. Muir.

Ms. Seastrand's developed an increase in leg pain and continued to see Dr. Belsky. She underwent epidural injections in the lumbar spine as well as the cervical spine and continued to see Dr. Muir. She was recommended for consideration of surgery and underwent a fusion at L4-5 and L5-S1 by Dr. Grover.

#### Diagnoses Secondary to Motor Vehicle Accident of March 13, 2009

1. Exacerbation of cervical pain.
2. Exacerbation of lumbar pain.
3. Cervicogenic headache.



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Margaret Seastrand

Date of Loss: March 13, 2009

#### Discussion:

Ms. Seastrand has had two previous motor vehicle accidents and a documented history of cervical and lumbar pain. Back pain with flare ups is documented in 2007 and in 2008 she was seen for numbness and tingling radiating to both arms and shooting pain into the left arm.

Imaging studies documented disc pathology was in the cervical as well as the lumbar spine, however, there is nothing to indicate that the pathology is acute. Given Ms. Seastrand's history of pain and previous trauma, there is significant likelihood that the disc findings may be pre-existing.

#### Appropriateness of Treatment:

Given the increased pain after the subject motor vehicle accident, chiropractic treatment was reasonable, appropriate and performed as a result of the 03-13-09 motor vehicle accident.

The injection therapy administered by Dr. Belsky was problematic. On 05-20-09, both epidurals injections and facet injections were done at the same time. This is inappropriate. The purpose of a facet injection is to test the hypothesis as to whether or not a specific facet joint is a pain generators. By combining this diagnostic injection with an epidural injection at the same time, the clinical utility of the facet injected is negated.

On 09-16-09, provocative discography was done and was followed immediately by a plasma disc decompression. It appears that the total time documented in which both procedures were performed was from 7:38 to 8:02.

Prior to the discogram, the clinic notes document that Ms. Seastrand received a significant amount of both propofol and fentanyl. This renders interpretation of the results of the discogram problematic, as problematic as sedation will confound the patient's ability to express pain and describe the pain when the discs are stimulated.



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Margaret Seastrand

Date of Loss: March 13, 2009

Plasma disc decompression is a procedure indicated primarily for radicular pain that is occurring at one level. As a discogram is done to diagnose discogenic pain, not radicular pain, it is unclear why the decompression is being done in conjunction with the discogram. The discogram results are irrelevant as to clinical decision making as to whether or not a plasma disc decompression is indicated.

Provocative discography is a presurgical test, and plasma disc decompression is utilized once conservative treatment has been exhausted. Given that only one set of injections were done prior to the discogram and plasma disc decompression, it would appear that implementation of these procedures was not indicated at that time.

The subsequent fusion done to address discogenic pain was based upon the problematic data from the discography thus the discography, plasma disc decompression and the subsequent lumbar fusion were not medically necessary.

The opinions above are expressed to a reasonable degree of medical probability. If additional information becomes available I would be willing to review it including if Ms. Seastrand would be available to conduct a history or physical examination. Please note the opinions expressed above may be subject to change depending on information that is obtained.

Respectfully,



John B. Siegler, M.D.

JBS/lfpd

EXHIBIT 9

JA 4405

[www.controlpain.com](http://www.controlpain.com)

**JOSEPH J. SCHIFINI, M.D., LTD**

Diplomate of the American Board of Anesthesiology  
Practice of Anesthesiology and Pain Medicine

August 25, 2012

Steven T. Jaffe, Esq.  
Hall, Jaffe & Clayton, LLP  
7455 W. Washington Avenue, Suite 460  
Las Vegas, NV 89128

Claimant: Margaret Seastrand  
RE: Khoury adv. Seastrand  
DOL: March 13, 2009

Dear Mr. Jaffe:

This letter will serve to summarize my opinions/conclusions following my review of approximately 700 pages of medical records regarding Ms. Seastrand. You have asked me to me review these records as a medical expert and provide opinions following my review. Attached to the end of this document will be more formal records review. Below, you will find a listing of the categories of records reviewed in preparation of this document.

1. Complaint
2. Answer to Complaint
3. Plaintiff's Response to Request for Admissions
4. Plaintiff's Response to Interrogatories
5. Plaintiff's Response to Second Set of Interrogatories
6. Traffic Accident Report - Bates No. CF-00196 - CF-00201
7. Five color photos of vehicle damage taken at scene of accident by Mr. Khoury - Bates No. Khoury-00001 - Khoury-00005
8. 32 color photos of vehicle damage from State Farm Insurance Claim File - Bates No. CF-00220 - CF00251
9. 10/27/08 x-ray report of cervical spine, Michael A. Baron, M.D., LTD (we were not able to obtain these films) - Bates No. CF-00998
10. Medical and billing records from Integrated Pain Specialists, Marjorie Belsky, M.D. - Bates No. IPS-00001 - IPS-00029

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JA 4406

Claimant: Margaret Seastrand  
August 25, 2012  
Page 2

11. Medical and billing records from Las Vegas Radiology --  
Bates No. LVR-00001 - LVR-00009
12. Medical and billing records from William Muir, M.D. -  
Bates No. WMMD-00001 WMMD-00199
13. Medical and billing records from Nevada Imaging Centers  
- Bates No. NICS-00001 - NICS-00018
14. Medical records from Summerlin Hospital:
  - A. Discharge Summary, Enad Soumi, M.D. - Bates No.  
SHMC-00093
  - B. History & physicals, Enad Soumi, M.D. - Bates No.  
SHMC-00094 - SHMC-00095
  - C. Pre-Op history & physical, William Muir, M.D. -  
Bates No. SHMC-00096 - SHMC-00097
  - D. Operative report, William Muir, M.D. - Bates No.  
SHMC-00098 - SHMC-00099
15. Medical records from Surgery Center Of Southern Nevada  
- Bates No. SCSN-00001 - SCSN-00110
16. Deposition of Margaret Seastrand, 5/31/12

Although there was only one record which was provided which predates the events of March 13, 2009, there are mentions and descriptions of multiple previous accidents involving Ms. Seastrand. In 1981, she was involved in a single vehicle rollover accident which occurred on the freeway in Idaho. She was traveling as a passenger without a seat belt. A result of this accident, she was taken by ambulance to a hospital in Idaho complaining of neck and knee pain. She states that she received holistic care for this 1981 motor vehicle accident. In 1985, Ms. Seastrand was involved in another motor vehicle accident while stopped at a light. Apparently, the front of her vehicle was struck by a trailer which became unhitched. She describes treatment to her spine including neck, low back and shoulders as a result of this accident. In September of 2004, Ms. Seastrand suffered a concussion when she bumped her head on the hatchback of her vehicle requiring treatment with a neurologist. Approximately two months later, she struck her head on a towel dispenser at her church and also feels she suffered a concussion as a result of this second head trauma as well. There are no other accidents to report which predate the

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events of March 13, 2009. On October 27, 2009, Ms. Seastrand underwent x-ray studies of her cervical spine and chest as ordered by her primary care physician. The chest x-ray was normal, and the x-ray of the cervical spine showed mild rightward flexion of the spine compatible with muscle spasm as well as spondylolytic changes of a mild degree at C5-6. There are no other records to review which predate the 03/13/09 date of injury.

On March 13, 2009, Ms. Seastrand was the restrained driver of her vehicle stopped at light when she was rear-ended by another vehicle causing a "jolt" to her vehicle. She was reportedly taken by ambulance to MountainView Hospital. A police report was filed. I appear to be missing records from MountainView Hospital, as well as subsequent treatment from Dr. Benjamin Lurie, Dr. Olmstead and Dr. Koka. I am also missing records which occur later in Ms. Seastrand's treatment from Dr. Leo Langlois, Dr. Jorg Rosler, Dr. Yevgenly Khavkin, and Dr. Jaswinder Grover. Ms. Seastrand appeared to have a gap in care from March 13, 2009 through April 3, 2009, which likely represents a gap in produced medical records rather than a true gap in care. On April 3, 2009, Ms. Seastrand underwent an MRI of the cervical spine which shows evidence of chronic C5-6 degenerative disc disease, disc osteophyte complex and neuroforaminal narrowing as well as straightening of the cervical lordosis. On the same day, an MRI of the lumbar spine was ordered and demonstrated L4-5 and L5-S1 annular tearing, L4-5 disc bulging and neuroforaminal narrowing, L5-S1 disc protrusion and multi-level lumbar facet joint arthropathy extending from L3-4 through L5-S1. While undergoing these MRI studies at Nevada Imaging, Ms. Seastrand was asked "how long have you had back pain?" Ms. Seastrand's answer was "26 years".

After obtaining MRIs, Ms. Seastrand was referred to Dr. Marjorie Belsky, a pain management physician, for her complaints of neck and right upper extremity pain as well as her complaints of low back pain. As a result of this initial evaluation on May 5, 2009, Ms. Seastrand was diagnosed with cervical pain strain and radiculopathy, discogenic cervical



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pain, lumbar pain/sprain and radiculopathy as well as lumbar disc displacement. It was recommended by Dr. Belsky that Ms. Seastrand undergo bilateral L4 and L5 transforaminal epidural steroid injections under fluoroscopic guidance and bilateral L4-5 facet joint injections as well as right C5-6 transforaminal epidural steroid injection to be performed on a different day. On May 20, 2009, Ms. Seastrand underwent bilateral L4-5 and L5-S1 transforaminal selective epidural steroid injections under fluoroscopic guidance along with bilateral L4-5 facet joint injections. Although the Visual Analog Pain Scale scores before and after the procedure were not documented in Dr. Belsky's notes, it was noted in the nursing notes that Ms. Seastrand claimed a reduction in her Visual Analog Pain Scale scores from an eight out of ten to a seven out of ten. Upon return to Dr. Belsky after an apparent 2.5 month gap in care, she continued to recommend a right C5-6 transforaminal epidural injection as well as a surgical consultation.

A surgical consultation was obtained with Dr. William Muir on August 24, 2009. On this date, Mr. Muir recommended lumbar discography as well as plasma disc decompression at L4-5 and L5-S1. Upon return to Dr. Belsky's office on August 26, 2009, a right C5-6 transforaminal epidural steroid injection was performed under Propofol, Fentanyl and Versed sedation, similar to the prior lumbar injections. There were no Visual Analog Pain Scale scores noted in Dr. Belsky's notes, but my review of the nursing notes note a reduction in Ms. Seastrand's Visual Analog Pain Scale scores from a six out of ten to a zero out of ten. Ms. Seastrand followed up with Dr. Muir following this cervical injection by Dr. Belsky where once again plasma disc decompression was recommended at L4-5 and L5-S1.

On September 16, 2009, Ms. Seastrand underwent L3-4, L4-5 and L5-S1 provocation discography followed by plasma disc decompression. The L3-4 disc was felt to be negative with pressurization from 30 PSI to 81 PSI. The L4-5 and L5-S1 discs had 17 gauge ArthroCare cannulas placed. These discs exhibited concordant pain patterns at anywhere from 10 to 50

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PSI above the opening pressure. The L4-5 disc exhibited a concordant pain pattern at 15 PSI above the opening pressure, but continued to be pressurized to 50 PSI above the opening pressure. The L5-S1 disc exhibited a concordant pain pattern at 10 PSI above the opening pressure, but was continued to be pressurized up to 25 PSI over the opening pressure. The ArthroCare cannulas were left in place. Dr. Belsky performed analgesic discography and Dr. Muir completed the plasma disc decompression at L4-5 and L5-S1. Upon a follow up visit with Dr. Belsky on September 22, 2009, medications were dispensed. On this same day, Ms. Seastrand was reevaluated through Dr. Muir's office and noted an increase in her pain, which was now rated as a nine out of ten. By September 29, 2009, Dr. Muir's office stated that Ms. Seastrand had a poor result with plasma disc decompression. Continued medication management, a lumbar MRI and a right L5 selective nerve root block were recommended. Ms. Seastrand followed up with Dr. Belsky's office who continued medication management. Medication management was also prescribed through Dr. Muir's office. Dr. Belsky recommended Ms. Seastrand undergo a caudal epidural steroid injection due to her continued symptoms. An update MRI of the lumbar spine was also ordered and reviewed on October 13, 2009, which showed evidence of L4-5 disc bulging, facet joint hypertrophy and mild spinal stenosis. The L5-S1 disc exhibited a disc protrusion, facet joint hypertrophy and left neuroforaminal narrowing.

Ms. Seastrand returned to the care of Dr. William Muir on October 16, 2009, who recommended lumbar epidural injections. On October 21, 2009, Ms. Seastrand underwent her first caudal epidural steroid injection under fluoroscopic guidance, which reduced her Visual Analog Pain Scale score from an eight out of ten to a five out of ten. Following the initial caudal epidural steroid injection, Ms. Seastrand followed up with Dr. Belsky who continued to provide medication management. Ms. Seastrand also received medications and a TENS unit from Dr. Muir's office. On November 17, 2009, Dr. Muir's office recommended continued medication management as well as neurodiagnostic studies of the right upper extremity.

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Upon return to Dr. Belsky's office, she recommended continued medication management and a repeat caudal epidural steroid injection under fluoroscopic guidance. This second caudal injection was performed on December 9, 2009, which resulted in a reduction in Ms. Seastrand's Visual Analog Pain Scale scores from a five out of ten to a zero out of ten. These reductions in Visual Analog Pain Scale scores were not reported on Dr. Belsky's procedure notes, but were available in the nursing notes. This injection was performed similarly to the previous injections under Propofol, Fentanyl and Versed sedation. On December 10, 2009, Dr. Russell Shah performed neurodiagnostic studies on Ms. Seastrand and demonstrated a subacute right C6 radiculopathy. Ms. Seastrand continued to treat through Dr. Belsky's office as well as through the office of Dr. Muir. On December 15, 2009, Dr. Muir's office recommended a neurodiagnostic study of the right lower extremity as well as an anterior cervical discectomy and fusion at C5-6. On January 7, 2010, Dr. Russell Shah performed neurodiagnostic studies of the bilateral lower extremities which showed evidence of mild subacute bilateral L5 radiculopathy. Dr. Muir's office continued to recommend cervical fusion which was completed on January 25, 2010, in the form of a C5-6 anterior cervical discectomy and fusion. It was noted that Ms. Seastrand was doing well following her surgery. Unfortunately, on February 16, 2010, Ms. Seastrand's pain returned. She was continued on medication management. By March 15, 2010, Dr. Muir was recommending L4-5 and L5-S1 anterior fusion. I appear to be missing records from March 5, 2010 through September 23, 2010.

During the gap in medical records from March 5, 2010 through September 23, 2010, Ms. Seastrand has clearly undergone lumbar fusion from L4 through S1. There was a disc bulge at L2-3 measuring 2 mm. There appears to be persistent disc bulges at L4-5 and L5-S1. There are no medical records to review beyond September 23, 2010.

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After having the opportunity to review all provided medical records, it is clear that I am missing records from multiple providers including billing records. In either case, based on what I have had the opportunity to review, I have formulated several opinions regarding the care, appropriateness of care, necessity of care and relatedness of care provided to Ms. Seastrand following the 03/13/09 date of loss. It is clear that Ms. Seastrand has been involved in multiple prior motor vehicle accidents in 1981 and 1985. She also has had two episodes of head injury causing concussion. All of these accidents and/or injuries required treatment for complaints of headache, neck pain, shoulder pain and low back pain. An x-ray of the cervical spine performed on October 27, 2008, demonstrated C5-6 degenerative changes and evidence of spasm within six months of the 03/13/09 accident, which was known to have caused only minor damage to both involved vehicles. On an intake form from Nevada Imaging from April 3, 2009, Ms. Seastrand admitted to a 26 years history of "back pain". Based on the described mechanism of injury, review of all produced medical records, and the preexisting nature of Ms. Seastrand's complaints, if injury is assumed, more likely than not, these injuries would have been limited to a temporary exacerbation of preexisting conditions or development of soft tissue injuries. These injuries would have resolved within four to eight weeks of the minor 03/13/09 motor vehicle accident. The reporting police officer on March 13, 2009, documented that "Seastrand told officers that she had prior neck and back injuries caused by a previous vehicle accident years before. These injuries claimed by Seastrand are not consistent with being caused during this collision". Treatment beyond May 13, 2009, should be considered unrelated to the events of March 13, 2009.

In reference to secondary gain, I have found a few issues of concern. Ms. Seastrand's subjective complaints often outweigh the objective findings. Throughout the medical records there are omissions or minimization of Ms. Seastrand's prior conditions. The medicolegal context of these complaints are also suspicious for secondary gain behavior.



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Certain individuals may minimize, withhold, exaggerate or embellish facts for personal gain. Secondary gain is defined in the DSM IV as "external benefits [are] obtained or noxious duties or responsibilities [are] evaded." (DSM IV, Page 453). However, the concept of "secondary gain" is endowed with different meaning depending on the context. For example if a patient's disease/symptoms allow him or her to miss work, gains him or her sympathy, allows for potential financial gain or avoids a jail sentence.

At this point, based on the records I have had the opportunity to review, there appears to be early ordering of the cervical and lumbar MRIs from April 3, 2009. Dr. Marjorie Belsky performed multi-level and multi-site lumbar injections on May 20, 2009, the combination of which reduced the diagnostic usefulness of these injections. Diagnostic usefulness was further reduced by the lack of consistent inclusions of pre-procedure and post-procedure Visual Analog Pain Scale scores. The lumbar discography performed on Ms. Seastrand had a truly negative disc at L3-4, a likely indeterminate disc at L4-5, and either a concordant or indeterminate disc at L5-S1, depending on which pressure one believes. There is no reason to continue pressurizing lumbar discs once a reliable pain reproduction is achieved. During the discography, a #22 gauge 5 inch spinal needle was easily placed into the center of the L3-4 disc, but #17 gauge ArthroCare cannulas were placed at L4-5 and L5-S1, the suspected positive levels. Plasma disc decompression was performed in ten minutes or less through these indwelling cannulas immediately following the discography. Plasma disc decompression is considered experimental by most insurers and is considered non-standard in the Southern Nevada medical community. Neurodiagnostic testing performed by Dr. Shah was likely unnecessary and demonstrated "subacute" findings, which Dr. Shah previously has previously defined as an age of occurrence between three to nine months prior to the performance of the test, which would indicate that on a more likely than not basis the upper extremity and lower extremity findings are unrelated to the events of March 13, 2009. I am unclear as to the logic used in making the decisions to operate



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on Ms. Seastrand's cervical and lumbar spines. I did not have the opportunity to review these records regarding the pending lumbar surgery. All injections performed by Dr. Belsky were performed under deep sedation using Versed, Fentanyl and Propofol. It was not uncommon for the recovery room nurses to have documented an altered state of consciousness following the injections performed by Dr. Belsky which raises questions about the diagnostic usefulness of these injections. Versed, a benzodiazepine, is commonly used for conscious sedation and is safe and reversible. Versed also provides no pain relief during the performance of these injections. Its main purpose is to provide anxiolysis. Fentanyl, a potent opiate medication, has no role in the performance of diagnostic spinal injections, as this medicine is capable, independent of the performed procedure, to cause reduction in pain, decreasing the diagnostic usefulness of these injections. Propofol, a sedative hypnotic, general anesthetic agent, increased the cost of these procedures as well as increased the risk to the patient. The increased cost of the procedure is secondary to the required presence of a second anesthesia provider to administer this medication known to cause unconsciousness when conscious sedation is the goal. The increased risk associated with the use of Propofol is due to positioning concerns and decreased ability or inability to respond to noxious stimuli. I am unaware of any reputable medical organization which supports or promotes the use of Propofol for the purposes of conscious sedation for the performance of these complex spinal procedures.

As a member of ISIS (International Spine Intervention Society), Dr. Belsky should be familiar with the ISIS Practice Guidelines of Spinal Diagnostic & Treatment Procedures, which contains the following opinions on the use of General anesthetic agents during the performance of delicate spinal procedures: "Sedation is not indicated for any of the procedures described in these Guidelines. Notwithstanding practices and instructions to which practitioners in the USA may have been accustomed, elsewhere

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in the world these procedures have been conducted, and continue to be conducted, without sedation. There are no features of any of the procedures covered by these Guidelines that warrant preemptive or routine sedation." Whenever sedation is used, however, the patient must always be sufficiently alert so as to be able to recognize and warn of any impending misadventure by reporting any unexpected, unfamiliar, or undesired sensations. Under no circumstances should any of the procedures be performed under general anesthesia. For diagnostic procedures, using general anesthesia defeats the very purpose of the investigation. For procedures that rely on provocation, the patient must be awake in order to report the production of pain and be able to describe its intensity, quality and distribution. For diagnostic blocks, the patient must be awake and mobile immediately after the procedure in order to assess the response. For ablative procedures, the patient must be awake in order to report any impending misadventure. Although not reported in the literature, cases have arisen in the medicolegal arena of neurological injuries that should not have occurred during lumbar and cervical radiofrequency neurotomies, and which would have been avoided had general anesthesia not been used. (ISIS Guidelines Page XX)

There are some comments regarding the reviewed billing in this matter which are necessary. My comments on the billing are not meant in any way to justify the billed charges as being related to the events of March 13, 2009. There are multiple missing records including billing records from providers discussed above. I am also missing records from Surgery Center of Southern Nevada. The reviewed billing from Nevada Imaging fits well within the usual and customary ranges seen in the Southern Nevada medical community. The billing through Dr. Muir's office in general fits within the usual and customary ranges seen in the Southern Nevada medical community. Dr. Muir's bill for plasma disc decompression using CPT Code 62267 of \$11,000 is quite steep considering this procedure took ten minutes or less to perform. This fee should be significantly less, as this

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procedure is considered experimental by most insurers, requiring practitioners to bill an unlisted CPT Code rather than 62287. My review of Dr. Belsky's billing in this matter exhibited abnormalities as well. Dr. Belsky, as an anesthesiologist, bills utilizing the guidelines of the American Society of Anesthesiologists (ASA). Anesthesiologists bill utilizing ASA units. The most common billed charges per ASA unit in the Southern Nevada medical community is \$75 to \$100 per ASA unit. Dr. Belsky's office prefers to bill at \$146.25 per ASA unit. Dr. Belsky, as an anesthesiologist, should understand that billing for closed fluoroscopy and epidurography is considered unbundling. One or the other should be billed, but not both. Most commonly, fluoroscopy is billed as epidurography requires a separate, lengthy report, describing, in detail, the epidural anatomy. I found no such report, and therefore, epidurography was inappropriate to have billed. Dr. Belsky's office does not appropriately utilize the bilateral modifier (-50). The appropriate use of the bilateral modifier would have reduced the billed charges of a second side of a bilateral procedure by (50%). During the performance of lumbar provocation discography, Dr. Belsky chose to infuse local anesthetic into the discs she considered to have exhibited concordant pain patterns. Since no separate needle was utilized to perform this procedure, these billed charges should be eliminated as a separate procedure was not performed. As discussed above the inclusion of a second anesthesiologist during these injections was unnecessary, and these charges should be eliminated. As additional medical billing becomes available, I would be happy to review these billed charges. If these criticisms of the reviewed billing are taken into account, the billed charges will fit better within the Southern Nevada medical community.

In reference to Ms. Seastrand's future, at this point, her future is guarded. I would need to review the latest records for a more complete discussion on Ms. Seastrand's future needs. I do not anticipate any decreased work life capacity

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on permanent impairment for Ms. Seastrand based on what I have reviewed thus far. No future care related to the events of March 13, 2009, is anticipated.

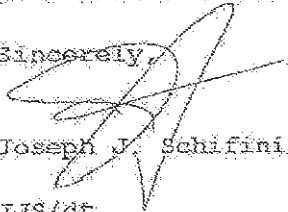
I, Joseph J. Schifini, M.D., do hereby affirm that I am a physician licensed to practice the full scope of medicine and surgery in Nevada and California; that I have an unrestricted license to prescribe every class of medication issued by the FDA; that I am Board Certified by the American Board of Anesthesiology and the American Board of Pain Medicine, and that I am a Diplomate of the American Academy of Pain Management.

I do further affirm that my opinions are derived from a review of the records provided and based on multiple factors including my experience in addition to my knowledge and familiarity with current evidence based medicine. The opinions/conclusions presented above are based on the records reviewed and/or performance of a history and physical examination, and may or may not be supplemented or changed upon presentation of additional materials not presently available for review. The opinions above were derived only after reviewing the entirety of the records submitted and/or examining the patient. No assumptions of validity or invalidity were made prior to an actual review of the materials provided. Unless noted otherwise, all presented opinions are rendered to a reasonable degree of medical probability on a more likely than not basis. The derived opinions expressed herein are the author's alone and have not been modified or skewed on the basis of any prejudice, financial consideration, or secondary influence other than an analysis of the available data, including provided medical records, photographs, radiographs, video surveillance, history and physical examination, etc. The opinions stated above would remain the same based upon the evidence provided regardless of the parties involved or the agent or agency requesting this review and/or examination.

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If further clarification of these opinions is necessary,  
please do not hesitate to contact me.

Sincerely,



Joseph J. Schifini, M.D.

JJS/at



EXHIBIT 10

12/15/2009 1:35 PM FAX: Fax To: 702-395-8400, , FROM: 902-07-007

RECEIVED: MAY 11 2009 1:35 PM FAX: 702-395-8400, , FROM: 902-07-007

Follow-up visit:

Name:

Date of visit: 12/15/09

Date of initial visit: 08/24/09

Date of birth: 12/27/1961

Age: 47 years old

Gender: female

Type of injury: MVA

Date of injury/onset: 03/13/09

Description of injury: Patient was rear-ended by another vehicle

Chief complaint(s):

neck and back pain

General update:

The patient is here for follow-up appointment with Dr. Muir. The patient is status post plasma disc decompression at the L4-5 and S1 and was done on September 16, 2009. Subsequently she developed a severe right L5 radiculitis which was intolerable. She's had 2 epidural steroid from Dr. Belsky which has provided some temporary relief. Though the pain has slightly decreased it still considered severe.

Due to the severity of the right leg pain the neck problems have been somewhat ignored. Nevertheless the neck pain and arm pain have worsened. Initially after her epidural injection she has some relief but that has worn off. She describes her neck pain and arm pain is quite severe.

Patient wishes to discuss: follow up

Status:

Over-all: worsening

VAS:

Now: 8/10

Last visit: 8-10/10 low back and buttocks pain

4/10 right leg pain

Initial visit: 7-10/10

Studies/tests:

New since last visit:

none

Pending:

EMG of the right upper extremity

Previous:

MRI scan cervical and lumbar 04/03/09

X-rays:

Diskogram by Dr. Belsky 09/10/09: Positive at L4-5 and L5-S1 and negative at L3-4

Treatments:

New since last visit:

none

Pending:

none

Ongoing:

Medications:

Completed:

Injections by Belsky: Lumbar

chiropractor with no adjustments. Discontinued since he was no longer helping

Cervical injection approximately September 2009 by Dr. Belsky: Fairly significant improvement

plasma disc decompression L4-5 and L5-S1 9/10/09

Lumbar transforaminal epidural injection on the right at L5-S1 by Dr. Belsky in October 2009 and December 2009

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Report Date: December 15, 2009 Patient No.

LJS: 12/15/09

Medications (all current):

Medrol dose pack

Motrin

Naprosyn

Tylenol

Ultram

Present Problem(s) :

Pain:

cervical: worsening, intermittent, mild, aching, pain on the right side down the arm  
arm: worsening, constant, moderate, pain on the right side  
lumbar: worsening, constant, severe, aching, stabbing pain on the both sides down the right leg  
leg: unchanged, constant, severe pain on the right side

Sensory:

arm/hand: numbness and tingling on the right side equally  
leg/foot: numbness and tingling on the right side

Motor:

arm/hand: weakness on the right side  
leg/foot: weakness on the right side equally

Occupation and work status:

occupation: self  
type of work: moderate  
work status: part time

Recent injuries (new since last visit):

None

Medical History:

Previous injuries	MVAs 1981 and 1985 resulting in the neck pain and low back pain that completely resolved by 1987. Thereafter the patient remained asymptomatic until recent MVA in March 2009.
Previous spine surgeries	none
Limitations in ADL's	reviewed and there have been no changes
Review Of Systems	reviewed and there have been no changes
Past, Family, and Social History	reviewed and there have been no changes
Allergies:	No Known Drug Allergies

Physical Examination:

(Re-examined today)

GENERAL:

Height: 5'6.5"  
Weight: 189 lbs 0 oz  
Blood pressure: B/P: 0/0  
Pulse: No Data for Pulse  
HEENT: unremarkable. PERRLA. Lungs: clear. Heart: RRR. Abdomen: benign. GU: Deferred.  
Extremities: pulses equal, no edema. SKIN: normal without lesions. Psychiatric: unremarkable.  
LYMPH NODES: normal. MUSCULOSKELETAL/NEUROLOGICAL: abnormal/normal pertinent areas to problem areas detailed below, other body areas WNL.

Lumbar Spine examination:

Range of Motion

Flexion: 40% of normal and painful  
Extension: 5% of normal and painful  
Lateral flexion: 10% of normal and painful

Neurological

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DOB: 12/15/09

Report Date: December 15, 2009 Patient: ... DOB: 12/15/09

#### Reflexes:

Patellar (L3, L4): 3+  
Achilles (L5, S1): 2+

Sensory: Slight decrease on the right down in the L5 and S1 pattern to light touch  
Straight leg raise: negative  
Clonus: negative  
Babinski: negative

#### Motor

Hip flexors (L2, L3): 5/5  
Hip abductors (L5): 5/5  
Hip adductors (L4): 5/5  
Knee extensors (L3, L4): 5/5  
Knee flexors (S1): 5/5  
Dorsiflexors (L5): 5/5 on the left, 4+/5 in the right  
Plantar flexors (S1): 5/5

#### Palpation

Tenderness to palpation:  
Moderate in the paraspinal muscles bilaterally.  
Muscle tightness to palpation:  
Moderate in the paraspinal muscles bilaterally.  
Spinous Process Over-Pressure test (localization of problems):  
L4 and to a lesser degree L5

#### Psychological

Waddell's: 0/5

#### Cervical Spine examination:

##### Range of Motion

Flexion: 50% normal and painful  
Extension: 60% of normal and painful  
Lateral flexion: 50% of the right to 70% of the left of normal and painful  
Rotation: 60% of the right at an 80% of the left of normal and painful

#### Neurological

##### Reflexes:

Biceps (C5, C6): 2+  
Brachioradialis (C6): 2+  
Triceps (C7): 1+

Sensory: Decreased down the right arm and hand to light touch  
Hoffman's: Positive bilaterally  
Spurling's: Positive on the right resulting in paresthesias into the middle and ring finger greater than the other fingers.  
Clonus: negative  
Babinski: negative  
Balance: intact

#### Motor

Shoulder abduction (C5): 5/5  
Biceps (C5, C6): 5/5 on the left, 4+/5 on the right

12/15/2009 1:35 PM 2009, Fax TO: 702-345-9400, FAX: 304 02 007

THE FOLLOWING INFORMATION IS FOR YOUR INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE.

Report Date: December 15, 2009 Patient ID: 12/15/09

**Discogram:**

Date: 9/16/09

Provider: Dr. Belsky

Findings: Positive at L4-5 and L5-S1, negative at L3-4

**Impression:**

1. MVA 3/13/09
2. Status post PDD 9/16/09 with poor results to date
3. Internal disc disruption syndrome L4-5 and L5-S1 per a discogram
4. Severe right-sided L5 radiculitis
5. C5-6 disc protrusion, mild deformation of the spinal cord, disc protrusion is in the foramina bilaterally, apex of reversal of normal lordotic curve.
6. Right to C6 and possibly C7 radiculopathy/radiculitis.

**Causation:** It is my opinion that the patient's symptoms for which I am seeing the patient are directly related to the accident described above. It is my opinion that the treatments rendered thus far are reasonable and necessary in frequency and duration. These opinions are stated to a reasonable medical probability. These opinions are based on the patient's history, physical examination, imaging studies, and medical records thus provided. My opinion could change with additional information provided to me in the future.

**Diagnosis:**

- 722.0-CERVICAL DISC DISPLACMNT
- 723.4-CERVICAL RADICULITIS
- 722.2-DSPLOMT DISC SITE UNS W/O MYELOPHY
- 724.4-LUMBAR RADIULITIS

**Prognosis:**

1. good

**Discussion:**

1. **Lumbar spine:** The patient's low back pain is due to the internal disc disruption syndrome of L4-5 at L5-S1. There degenerative changes seen best on the axial images as compared to the other levels. The patient underwent plasma disc decompression at L4-5 and L5-S1 on 9/16/09. She awoke with increased back pain for which she was given morphine. This resulted in multiple times of severe vomiting after which her symptoms significantly worsened. Her back and particularly right leg pain which follows a L5 pattern and has finally started to resolve since late October 2009. Her principle complaint is back pain. I would like to let more time pass to see if this improves with time. However with the degree of pain that she has presently if she is not improved over the next couple months then a two level lumbar fusion would be offered. The other option would be to consider a spinal cord stimulator. Both the back pain and the leg pain is quite severe. The updated MRI scan does not show any significant impingement on the L5 nerve root. The patient would like to go on with her life and consider surgery at this time however before any final plans are made like to get an EMG of the right lower extremity from Dr. Shah.

2. **Right leg radiculitis:** The neuritis was very severe but appears to be resolving. The pattern fits and L5 or S1 nerve distribution. The patient did not have radicular pain immediately after the plasma disc decompression and Discogram but this developed rapidly after severe vomiting five to six hours later. The radiculitis may be due to chemical irritation on the L5 or S1 nerve roots on the right but is unlikely that the disc is compressing on the nerves to resulted in a severe neuritis. Most likely this will settle down spontaneously and needs to be treated with adequate medications and selective nerve root blocks. Dr. Belsky is managing the medications and has been increasing the Neurontin.



12/15/2009 1:35 PM FROM: FAX TO: 702-385-9283... PAGE: 007 OF 007

Report Date: December 15, 2009 Patient: ... JOS: 12/15/09

3. Cervical spine: The patient has a disc protrusion at C5-C6 with mild deformation of the spinal cord seen on axial images, mild hypermobility on flexion/extension x-rays, disc protrusions into the foramina bilaterally seen best on sagittal T2-weighted images, and mild spondylosis. She does have paresthesias down the right arm but is consistent more with this C7 pattern but does have components of the C6 pattern as well. Initially the patient did have weakness in her biceps and triceps however regarding the manual muscle testing this has declared itself to be a C6 problem. There is weakness the biceps on the right consistent with a C6 radiculopathy. The EMG shows subacute C6 radiculopathy with minimal active theater bathing potentials. He also stated that due to the recent steroid injection next to the nerve the problem may be worse than the EMG findings. Her symptoms in the neck and arm were mild after the injection at this has worn off and they are again quite severe. Due to the ongoing severity of the subjective and objective findings the patient would like to proceed with ACDF at C5-6.

*The use and dangers of narcotics were discussed with the patient in detail.  
Treatment options, including conservative treatments, were explained and discussed with the patient in detail.*

Plan:

1. Continue present medications per Dr. Belsky including Neurontin
2. ACDF at C5-6 in January
3. EMG right lower extremity from Dr. Shah
4. Return in one month

*W.S. Muir, MD*

William S. Muir, M.D.  
Orthopedic Spine Surgeon  
Diplomate, American Board of Orthopedic Surgeons  
Fellow, American Academy of Orthopedic Surgeons

Referred by: MARJORIE BELSKY, MD  
Other Treating Physician(s): Marjorie Belsky M.D.  
Attorney: Richard Harris

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**EXHIBIT 11**

**JA 4425**

DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET G. SEASTRAND,

Plaintiff,

vs.

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

Defendants.

)  
)  
)  
) Case No.  
) A-11-636515-C

DEPOSITION OF WILLIAM SQUIRES MUIR, MD

Taken on Tuesday, November 27, 2012

At 4:02 o'clock p.m.

At 653 North Town Center Drive, Suite 210

Las Vegas, Nevada 89144

Reported by: Ann Salisbury, RPR, CCR 185

2 (Pages 2 to 5)

2 (Pages 2 to 5)

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<p>1 APPEARANCES: 2 For the Plaintiff: RICHARD A. HARRIS, ESQ. 3 ALISON BRASIER, ESQ. 4 Richard Harris Law Firm 5 801 South Fourth Street 6 Las Vegas, Nevada 89101 7 (702)444-4444</p> <p>8 For Defendant: STEVEN T. JAFFE, ESQ. 9 Raymond Riad Khoury: Hall Jaffe &amp; Clayton, LLP 10 7425 Peak Drive 11 Las Vegas, Nevada 89128 12 (702)316-4111</p>	<p>1 A. Yes. 2 Q. If you don't and you give us an answer, we 3 will presume that the question was completely understood 4 and clear, and you would not be able to come back later, 5 such as at a trial, to indicate to me that the question 6 was unclear at the time. Do you understand that? 7 A. I understand what you're saying, yes. 8 Q. Pardon? 9 A. I understand what you're saying, yes. 10 Q. And you understand that instruction? 11 A. Yes.</p>
<p>12 INDEX 13 Witness Direct Cross Red. Rec. 14 William Squires Muir, MD 15 (By Mr. Jaffe) 3 78 16 (By Mr. Harris) 72</p> <p>17 EXHIBITS 18 Number Description Page 19 Def's A Personal Data of 5 20 William S. Muir, M.D. 21 Def's B Clinical chart 78 22 Def's C Billing records 78 23 (Original exhibits attached to original transcript.) 24 25</p>	<p>12 Q. Okay. Doctor, at the conclusion of the 13 deposition, I'm going to ask if you want to read and 14 sign the transcript or waive your signature. If you 15 elect to read and sign and you make changes, I will have 16 the right to use the original as well as a changed 17 answer, and I would also have the right to raise 18 questions about your motives for making any changes, as 19 well as to argue your believability, honesty, and 20 credibility. Do you understand that? 21 A. Yes. 22 Q. Okay. Doctor, is that your most current CV? 23 A. Yes. 24 Q. May I have that so that we can mark it as an 25 exhibit?</p>
Page 3	Page 5
<p>1 (NRCF Rule 30(b)(4) was waived by the 2 parties.) 3 (At the commencement of the deposition, 4 present in the room with the court 5 reporter were Mr. Jaffe, Ms. Brasier, 6 and the witness, Dr. Muir.) 7 Thereupon-- 8 WILLIAM SQUIRES MUIR, MD, 9 was called as a witness by Defendant Raymond Riad 10 Khoury, and having been first duly sworn, testified as 11 follows: 12 DIRECT EXAMINATION 13 BY MR. JAFFE: 14 Q. Please state your full name for the record. 15 A. William Squires Muir, MD. 16 Q. And, Dr. Muir, you've been deposed several 17 times in the past? 18 A. Yes. 19 Q. Do you need me to go through the normal 20 instructions of admonitions or do you feel comfortable 21 proceeding without them? 22 A. No, I feel comfortable. 23 Q. Two that I will restate. If I ask a question 24 which is unclear, either in all or in part, will you 25 tell me so that I can fix it?</p>	<p>1 A. Yes. 2 MR. JAFFE: Let's mark this as Exhibit A. 3 (Defendant's Exhibit A marked for 4 identification.) 5 Q. (BY MR. JAFFE) Doctor, is that your most 6 current CV? 7 A. That's my understanding, yes. 8 Q. Well, would you please take a look at it and 9 let me know if there's anything about the CV which would 10 have to be modified, added, or deleted to it to make it 11 more current? 12 A. There may be additional clinical research 13 experience because I'm involved in a couple of studies 14 presently. 15 Q. What do those studies involve? 16 A. Coagulation associated with a form of 17 Thrombin. 18 Q. What is Thrombin? 19 A. It's a medication that's commonly used for 20 hemostasis. 21 Q. Okay. And is that as relates to spinal 22 surgery or in a broader context? 23 A. Both. 24 Q. Okay. Any other studies you're presently 25 involved in?</p>

Page 6	Page 8
<p>1 A. There's a few that we're looking at but not 2 that I recall now. 3 Q. Okay. So that would be the only modification 4 to the CV that you can think of? 5 A. Yes. 6 Q. What I'd like to do is -- 7 A. Well, the only modification up to now, I 8 haven't finished going through it. 9 Q. Fair enough. 10 While you're going through that, let me also 11 ask you do you maintain a testimonial history? 12 A. This is included. 13 Q. Oh, it's included on that document? 14 A. Yes. 15 Q. Okay. I didn't look at it. 16 A. And there's been several additional -- what 17 was that -- no, it does look current. 18 Q. Okay. So there's no other -- there's no 19 additional testimony that comes to mind that would be 20 added to that to make that more current? 21 A. None that I recall. 22 Q. Okay. Let's also then reserve an Exhibit B 23 for the transcript for a complete copy of your clinical 24 chart. Would that be okay with you, sir? 25 A. Yes.</p>	<p>1 A. Most likely they're the ones that arranged the 2 deposition. 3 Q. Oh, so they would have called your office to 4 say that your deposition was going to be taken in a 5 particular case? 6 A. I'm not sure. They look like mainly 7 plaintiff -- plaintiffs' attorneys. 8 Q. Right. And I was going to say the majority of 9 your medical-legal practice involves testifying on 10 behalf of your patients who are typically plaintiffs? 11 A. Yes. 12 Q. Okay. So the greater likelihood is the name 13 of the attorney is the attorney who was representing 14 your patient as opposed to the people who actually were 15 conducting your deposition? 16 A. Yes, but I'm a little confused because I see 17 your name for 11/15 and I don't remember you hiring me. 18 Q. No, but, you know what? That was a case that 19 looks like -- I remember that going to court as a 20 binding arbitration. Because I remember that one. That 21 was a case where your car got hit in the middle of the 22 arbitration and we got called out of it. 23 A. I recall that. 24 Q. So I don't remember the circumstances around 25 that one either, around that particular piece of</p>
Page 7	Page 9
<p>1 Q. I'd also like to reserve Exhibit C for a 2 complete copy of your billing records. Would that be 3 okay with you, sir? 4 A. As far as the medical records and the billing, 5 what's typically done, if the court reporter could 6 contact Joy tomorrow, she can make arrangements to get 7 those records. 8 MR. JAFFE: That's great. And she'll do that. 9 (Mr. Harris enters the room.) 10 Q. (BY MR. JAFFE) Now, in looking at this, I 11 note that you indicate the attorney on the -- where it 12 says Depositions With Dr. William S. Muir, is the 13 attorney the person taking the deposition or the person 14 who hired you? 15 A. I believe it's the person that requested the 16 deposition. 17 Q. Well, because, for example, there's three in a 18 row here where Richard Harris is the person listed. 19 Would that be the person, again, who hired you in those 20 cases or would that have been the person who took the 21 deposition? Or if you're not sure, just tell me. 22 A. I'm not sure but -- 23 Q. Because I see quite a number of cases here 24 with Mr. Harris' name, or other attorneys in his office, 25 just on this one particular page.</p>	<p>1 testimony. 2 But anyway, who would be the person preparing 3 this document? 4 A. Joy would be the best one, the same -- the 5 administrator. In fact, would you like me to bring her 6 in to clarify that? 7 Q. No, that's not necessary at this point. If -- 8 if it became necessary, we can deal with that at a later 9 date. I don't anticipate that being -- 10 Because then I do see -- at least in some of 11 these I see my name on here as a person who did take 12 your deposition in some of these cases so -- 13 A. We might need to straighten that out because 14 my understanding is that the ones that were listed were 15 the ones that requested it, but obviously those -- that 16 wouldn't be the case on that last page. Maybe they 17 switched that. I'm not sure. 18 Q. Okay. Do you get referred patients from 19 Mr. Harris' office from time to time? 20 A. Yes, I have. 21 Q. Can you estimate the frequency with which you 22 do receive referrals from Mr. Harris' office? 23 A. No. I don't keep track of statistics 24 regarding who refers patients to me. 25 Q. Do you refer patients at any time to attorneys</p>



4 (Pages 10 to 13)

Page 10	Page 12
<p>1 if they've asked for a referral?</p> <p>2 A. Rarely patients will ask for referrals. Then</p> <p>3 I typically place three names.</p> <p>4 Q. Is Mr. Harris' office a name which you have</p> <p>5 given in the past when giving three names?</p> <p>6 A. Yes.</p> <p>7 Q. Do you ever socialize with Mr. Harris or</p> <p>8 anybody from his firm?</p> <p>9 A. Yes. I've known Mr. Harris for 30, 40 years.</p> <p>10 MR. HARRIS: Not that long.</p> <p>11 THE WITNESS: Thirty years?</p> <p>12 MR. HARRIS: Twenty-six years.</p> <p>13 THE WITNESS: Twenty-six?</p> <p>14 Q. (BY MR. JAFFE) Okay, Mr. Harris indicates</p> <p>15 it's 26, 30 --</p> <p>16 Would you tell me the nature and extent of any</p> <p>17 social interaction you've had with Mr. Harris or anybody</p> <p>18 from his firm, let's say over the last five years?</p> <p>19 A. As far as phone conversations, too? I don't</p> <p>20 recall phone conversations.</p> <p>21 Q. No, I'm just talking about, you know, being</p> <p>22 together in a social setting where you intentionally</p> <p>23 socialized with each other, not where you happened to</p> <p>24 cross each other's paths at a place where you were both</p> <p>25 mutually invited.</p>	<p>1 Mr. Harris' office?</p> <p>2 A. Yes.</p> <p>3 Q. On approximately how many occasions?</p> <p>4 A. I recall one. I don't recall the other ones.</p> <p>5 They should be on my CV.</p> <p>6 Q. So on the CV it would indicate trial testimony</p> <p>7 as well?</p> <p>8 A. Yes.</p> <p>9 Q. So on this particular page of your testimonial</p> <p>10 history discussing trials, would that be the name of the</p> <p>11 person who called you at trial or the person who</p> <p>12 cross-examined you?</p> <p>13 A. Person that -- associated with the -- with my</p> <p>14 patients.</p> <p>15 Q. Okay. Well, I may want to point out to you</p> <p>16 that there's a mistake on here at least because for one</p> <p>17 on there, a Shalaya Wilson, 9/1/2010, Michael Hall is</p> <p>18 listed on that. Mike and I were in that trial together,</p> <p>19 and you were called in that one by Bob Vannab's office</p> <p>20 who's -- I cross-examined you in that trial.</p> <p>21 A. Then that's not completely the plaintiffs.</p> <p>22 Any clarification can be made by Iby.</p> <p>23 Q. Okay. Well, I'm just pointing it out.</p> <p>24 How was it that you came to treat</p> <p>25 Margaret Seastrand?</p>
Page 11	Page 13
<p>1 A. In San Francisco I went to a chorus and</p> <p>2 Mr. Harris was there, and we got together afterwards.</p> <p>3 And then there's a trip that we took with a number of</p> <p>4 people to Napa; Mr. Harris was on that -- on that, too.</p> <p>5 And any trips I've gone we -- I've not received any</p> <p>6 payment or monies from Mr. Harris or vice versa. We've</p> <p>7 kept all our finances separate.</p> <p>8 Q. Do the two of you ever go out to dinner</p> <p>9 together or socialize in any other way?</p> <p>10 A. Yes; we do get together.</p> <p>11 Q. How frequently?</p> <p>12 A. Most likely about twice a month.</p> <p>13 Q. Is that for dinner or some other type of</p> <p>14 meeting?</p> <p>15 A. Just socializing.</p> <p>16 Q. Like each other's homes or some other place?</p> <p>17 A. Typically elsewhere.</p> <p>18 Q. Like restaurants, nightclubs, something like</p> <p>19 that?</p> <p>20 A. I don't recall any nightclubs.</p> <p>21 Q. Restaurants?</p> <p>22 A. My wife typically does not let me go to</p> <p>23 nightclubs.</p> <p>24 Restaurants.</p> <p>25 Q. Okay. Have you ever testified in trial for</p>	<p>1 A. Let me refer to my notes.</p> <p>2 Q. And if you're looking at any particular page</p> <p>3 of your notes, since you're looking on an iPad, would</p> <p>4 you please be kind enough to tell us what page it is</p> <p>5 you're referring to for the record?</p> <p>6 A. Yes. This is a -- my initial evaluation on</p> <p>7 9/24/09. On page six at the bottom, it indicates</p> <p>8 referred by Marjorie Belsky, MD.</p> <p>9 Q. You said 9/24. You mean 8/24?</p> <p>10 A. I do.</p> <p>11 Q. Okay. For what reason was she referred to</p> <p>12 you?</p> <p>13 A. For evaluation and treatment of the neck and</p> <p>14 low back.</p> <p>15 Q. During that initial evaluation, what were --</p> <p>16 let's talk about the cervical spine first. What were</p> <p>17 her subjective reported symptoms in the cervical spine?</p> <p>18 A. She complained of worsening, constant,</p> <p>19 moderate to severe, aching, sharp pain on the right side</p> <p>20 radiating down the right arm, with numbness and tingling</p> <p>21 on the right and weakness on both sides. She also</p> <p>22 complained of limitations of activities of daily living</p> <p>23 and pain with certain activities associated with the</p> <p>24 neck and low back.</p> <p>25 Q. Well, with respect to the neck, what were the</p>

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 mechanical aggravating factors?</p> <p>2 A. In this particular note, there's no</p> <p>3 differentiation regarding the limitations of activities</p> <p>4 of daily living between the neck and the low back.</p> <p>5 Q. Of the ones that she identified, would any of</p> <p>6 them be more likely to produce symptoms through</p> <p>7 mechanical activity in the cervical spine or would they</p> <p>8 all be types of activities that would potentially relate</p> <p>9 to both areas?</p> <p>10 A. Potentially they can relate to both areas.</p> <p>11 Typically sitting is more of a low back than a neck</p> <p>12 aggravating situation.</p> <p>13 Q. Okay. And under the -- are you looking under</p> <p>14 the -- well, what part of your -- of the initial visit</p> <p>15 are you looking at to refresh your recollection about</p> <p>16 these subjective symptoms? What's it identified as?</p> <p>17 A. On page two.</p> <p>18 Q. Present Problems?</p> <p>19 A. Under Present Problems, Pain, Sensory, Motor.</p> <p>20 Also Visual Analog indicating that her neck pain on that</p> <p>21 particular day or that period of time was seven over ten</p> <p>22 on a scale of zero to ten, zero being no pain, ten being</p> <p>23 the worst pain.</p> <p>24 Then on the limitations of activities of daily</p> <p>25 living, again, those are found on page two.</p>	<p>1 Q. I just want the names of the facilities. I</p> <p>2 don't need a chronological list of each record.</p> <p>3 A. Marjorie Belsky, MD; Russell Shah, MD -- both</p> <p>4 for the cervical and lumbar -- Summerlin Hospital;</p> <p>5 Quest Laboratories; Surgery Center of Southern Nevada;</p> <p>6 Radar Medical Group, that's Dr. Shah's. And I believe</p> <p>7 that's the extent.</p> <p>8 Q. Did you speak with or meet with anybody at all</p> <p>9 to prepare for today's deposition?</p> <p>10 A. No.</p> <p>11 Q. Have you reviewed any medical reports</p> <p>12 submitted by the defense in this case?</p> <p>13 A. No.</p> <p>14 Q. And I believe you said you have not received</p> <p>15 or reviewed Ms. Seastrand's deposition transcript?</p> <p>16 A. Correct.</p> <p>17 Q. How about depositions of any other witnesses</p> <p>18 in the case?</p> <p>19 A. No.</p> <p>20 Q. Depositions of any experts or treating</p> <p>21 providers?</p> <p>22 A. No, other than -- oh, depositions, no.</p> <p>23 Q. Okay. How about have you spoken with anybody</p> <p>24 from Mr. Harris' office or met with anybody from</p> <p>25 Mr. Harris' office to prepare for today's deposition?</p>
Page 15	Page 17
<p>1 Q. So that would be the further subjective</p> <p>2 symptoms, correct, or subjective reporting?</p> <p>3 A. Yes, it is.</p> <p>4 Q. By the way, I forgot to ask you, what did you</p> <p>5 do to prepare for today's deposition?</p> <p>6 A. I reviewed my medical records.</p> <p>7 Q. Have you ever reviewed her deposition?</p> <p>8 A. No.</p> <p>9 Q. Have you ever reviewed records of any other</p> <p>10 providers?</p> <p>11 A. Yes.</p> <p>12 Q. What other providers' records have you</p> <p>13 reviewed?</p> <p>14 A. Let me refer to my notes.</p> <p>15 Nevada Imaging Centers, their MRI report on</p> <p>16 the cervical spine on 4/3/09; Nevada Imaging Centers,</p> <p>17 MRI --</p> <p>18 Q. Actually just -- I just want the providers'</p> <p>19 names. You don't need to run down each particular</p> <p>20 record. I just want to know what providers.</p> <p>21 A. Well, these are providers and that they were</p> <p>22 the MRI scans.</p> <p>23 Q. I understand. But Nevada Imaging Centers, I</p> <p>24 understand you've reviewed some of their records?</p> <p>25 A. Yes.</p>	<p>1 A. No.</p> <p>2 Q. Did you speak with Ms. Brasier at all before</p> <p>3 today's deposition?</p> <p>4 A. No.</p> <p>5 Q. I walked in about two minutes of 4:00 and she</p> <p>6 was here. What time did she arrive?</p> <p>7 A. I don't know.</p> <p>8 Q. What time did you walk into the room with her?</p> <p>9 A. Two minutes to 4:00.</p> <p>10 Q. During the initial evaluation, did you conduct</p> <p>11 a medical examination?</p> <p>12 A. I did of her low back.</p> <p>13 Q. What about the cervical spine?</p> <p>14 A. That was evaluated the subsequent visit.</p> <p>15 Q. Which would have been what date, sir?</p> <p>16 A. 8/28/09.</p> <p>17 Q. Okay. At the first visit, do you know if she</p> <p>18 signed a lien to be treated on a lien?</p> <p>19 A. I don't recall. I can look at my medical</p> <p>20 records. Typically patients who have accidents sign</p> <p>21 lien forms.</p> <p>22 In preparing for the deposition, I thought I</p> <p>23 saw a lien form signed. There's information regarding</p> <p>24 insurance companies.</p> <p>25 Q. As you sit here, you don't know if she signed</p>

Page 18	Page 20
<p>1 a lien?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay.</p> <p>4 A. Here it is. She did sign a lien dated</p> <p>5 8/24/09.</p> <p>6 Q. Which would have been the date of the first</p> <p>7 visit?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So has all of your treatment rendered</p> <p>10 to Margaret Seastrand been on a lien?</p> <p>11 A. I'm not sure. That would be clarified under</p> <p>12 the billing records. But I believe that she at least</p> <p>13 used part, if not all -- at least part on her insurance.</p> <p>14 Q. Okay. So on 9/22/09 would have been the first</p> <p>15 evaluation of the cervical spine?</p> <p>16 A. It was the first physical examination of</p> <p>17 the -- of the cervical spine on 8/28/09. Initial</p> <p>18 evaluation was 8/24/09.</p> <p>19 Q. I'm sorry. 8/28/09?</p> <p>20 A. Yes.</p> <p>21 Q. During that examination I note that at least</p> <p>22 on the third page of the clinical chart note is a</p> <p>23 heading Cervical Spine Examination. Would that contain</p> <p>24 all of your findings during that exam?</p> <p>25 A. That would contain my physical examination of</p>	<p>1 a predominantly right-sided problem or one that's more</p> <p>2 involved in the right. And that corresponded with her</p> <p>3 subjective complaints, sensory changes, Spurling's test,</p> <p>4 as well as a manual muscle test.</p> <p>5 Q. Okay. Well, let's talk about the neurologic</p> <p>6 testing. Reflexes, at least at the biceps and</p> <p>7 brachioradialis, were noted to be normal?</p> <p>8 A. Yes, both the biceps and the brachioradialis</p> <p>9 were normal.</p> <p>10 Q. And triceps, what was found to be the problem</p> <p>11 there?</p> <p>12 A. There's no problem.</p> <p>13 Q. It's normal?</p> <p>14 A. Yes.</p> <p>15 Q. At one plus?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Obviously a reflex test is inherently a</p> <p>18 completely objective test?</p> <p>19 A. Yes, unless someone tightened up against the</p> <p>20 reflex. But essentially it's --</p> <p>21 Q. Such as muscle guarding?</p> <p>22 A. It's a possibility in that for a good reflex</p> <p>23 the patient should be relaxed.</p> <p>24 Q. But generally -- okay. By and large this is</p> <p>25 not a test that's going to be altered by somebody</p>
Page 19	Page 31
<p>1 the cervical spine.</p> <p>2 Q. So, for example, range-of-motion testing was</p> <p>3 performed; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Is that passive or active testing?</p> <p>6 A. Active.</p> <p>7 Q. So you would have moved her head?</p> <p>8 A. No.</p> <p>9 Q. Oh, I'm sorry, okay. So you're relying on her</p> <p>10 to move and demonstrate the motions to the best of her</p> <p>11 ability, correct?</p> <p>12 A. Correct.</p> <p>13 Q. When you ask a patient to do range-of-motion</p> <p>14 testing, how do you direct them to do so?</p> <p>15 A. Typically I instruct them in a specific</p> <p>16 direction and indicate that I would like them to move as</p> <p>17 far as they can without causing excessive amount of pain</p> <p>18 or as far as they can without hurting themselves.</p> <p>19 Q. Would you agree that there is a subjective</p> <p>20 component then to this test?</p> <p>21 A. Yes.</p> <p>22 Q. Is it entirely subjective?</p> <p>23 A. No. There's an objective aspect to it. For</p> <p>24 example, the patient had limited lateral flexion and</p> <p>25 rotation to the right, and that's indicative of a -- of</p>	<p>1 subjectively if they were so inclined?</p> <p>2 A. Certainly could be in that if someone, for</p> <p>3 example, didn't relax on one side, it would tend to</p> <p>4 alter the reflex, the response to the reflex.</p> <p>5 Q. Sensory relies on the subjective response by</p> <p>6 the patient?</p> <p>7 A. Yes.</p> <p>8 Q. What are the Hoffman's and the Spurling's</p> <p>9 tests?</p> <p>10 A. These are both neurological tests. And the</p> <p>11 Hoffman's, which is purely an objective test, is an</p> <p>12 indication of impingement or damage or irritation to the</p> <p>13 central nervous system.</p> <p>14 Q. How is the test performed?</p> <p>15 A. The patient's asked to incline their head as</p> <p>16 far as they can in a flex position. The examiner takes</p> <p>17 the hand and asks the patient to relax as much as</p> <p>18 possible. Then the examiner will rapidly flip the</p> <p>19 middle finger to see if there's response -- involuntary</p> <p>20 response in the fingers. If so, then that's indicative</p> <p>21 of a -- of an irritation or damage to the central</p> <p>22 nervous system and consistent with their disc herniation</p> <p>23 abutting the spinal cord.</p> <p>24 Q. I'm sorry, you say that this was indicative of</p> <p>25 an irritation?</p>



7 / Dated 22 to 25

7 (Pages 22 to 25)

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<p>1 A. Or damage to the central nervous system.</p> <p>2 Q. Meaning to the cord?</p> <p>3 A. Cord or brain, that's the central nervous</p> <p>4 system.</p> <p>5 Q. Did you ever find any indication that she'd</p> <p>6 suffered brain damage as a result of this accident?</p> <p>7 A. No, that's not my opinion.</p> <p>8 Q. Do you have an opinion that she suffered cord</p> <p>9 damage as a result of this accident?</p> <p>10 A. What? Core damage?</p> <p>11 Q. Cord.</p> <p>12 A. Not permanent damage. It was more of an</p> <p>13 irritation. And that's based upon her excellent</p> <p>14 response to the surgery once the herniated disc was</p> <p>15 removed from the spinal cord.</p> <p>16 Q. What is the Spurling's test?</p> <p>17 A. Spurling's test is the patient's asked to</p> <p>18 extend and rotate both to the right and then later to</p> <p>19 the left to see if that -- and what that does is it</p> <p>20 pushes a disc back towards the spinal cord. Also</p> <p>21 narrows the foramina on the side that they're rotated.</p> <p>22 And that's to see if there's any aggravation or</p> <p>23 irritation to the nerves or spinal cord.</p> <p>24 Q. There was no evidence of any long tract signs?</p> <p>25 A. Correct.</p>	<p>1 Q. You found that there was no abnormality at</p> <p>2 C6-7?</p> <p>3 A. I put unremarkable. I notice in the report he</p> <p>4 talked about a disc protrusion at C4-5, but my reading</p> <p>5 was it was unremarkable.</p> <p>6 Q. So then what's listed there is not a</p> <p>7 radiologist's interpretation of the films but your own?</p> <p>8 A. Correct.</p> <p>9 Q. So the only disc level that you found to have</p> <p>10 any abnormality morphologically was at C5-6?</p> <p>11 A. The only level that I found that had a</p> <p>12 remarkable abnormality was at C5-6 yes.</p> <p>13 Q. When you say "remarkable", does that mean they</p> <p>14 might have abnormalities but they're just consistent</p> <p>15 with the age?</p> <p>16 A. Yes, or very small findings.</p> <p>17 Q. I mean with a woman of her age, it's not out</p> <p>18 of the question to find some degenerative condition at</p> <p>19 various levels of the spine, right?</p> <p>20 A. Yes. And she did have some preexisting</p> <p>21 degenerative changes at the pathological level of the</p> <p>22 neck and the two levels in the lumbar spine.</p> <p>23 Q. Okay. Well, we'll come back to the lumbar</p> <p>24 spine later. But with respect to neck, then, you did</p> <p>25 note a spondylosis which would be indicative of a</p>
Page 23	Page 25
<p>1 Q. Babinski was normal so that was indicative of</p> <p>2 no cord damage in the cervical spine?</p> <p>3 A. You can have damage in the cervical spine with</p> <p>4 a normal Babinski. It's an upper motor neuron test.</p> <p>5 Q. Okay. So it looks like you found a mild motor</p> <p>6 dysfunction on the right side?</p> <p>7 A. Yes. She had weakness on the right side both</p> <p>8 in the C6 and C7 innervated muscles.</p> <p>9 Q. Okay. How was that determined?</p> <p>10 A. By manual muscle test.</p> <p>11 Q. In other words, you would push and ask her to</p> <p>12 resist?</p> <p>13 A. I put her -- the limb that I'm testing in a</p> <p>14 neutral position and then slowly apply resistance,</p> <p>15 asking the patient not to let me move -- move that</p> <p>16 particular limb or portion of the limb. And then that</p> <p>17 way I'm testing the amount of resistance that's against</p> <p>18 the resistance that I apply.</p> <p>19 Q. Now, there is then some subjective component</p> <p>20 to that test?</p> <p>21 A. Yes. Also -- yes. However, the patient</p> <p>22 doesn't typically know which muscles are innervated by</p> <p>23 which nerves.</p> <p>24 Q. Now, you reviewed the MRI; is that correct?</p> <p>25 A. Yes.</p>	<p>1 degenerative condition, correct?</p> <p>2 A. Yes. She had more degenerative changes at</p> <p>3 that level than the other levels.</p> <p>4 Q. And that's actually what I was going to ask</p> <p>5 you next. Given the fact that you made this as a</p> <p>6 notation and in fact put it in bold, would that be</p> <p>7 suggestive that the finding was more than you would</p> <p>8 normally or typically expect for a person of that age at</p> <p>9 that level?</p> <p>10 A. No, not at all. The highlighting of that</p> <p>11 level is because that's the most significant level. And</p> <p>12 the significant component, the most significant</p> <p>13 component by far of the C5-6 was the disc protrusion</p> <p>14 resulting in deformation of the spinal cord or where it</p> <p>15 is actually touching and minimally deforming the spinal</p> <p>16 cord. And that's in a neutral position. In addition,</p> <p>17 the apex of the reversal of the normal lordotic curve</p> <p>18 was at that level indicative of a problem in that</p> <p>19 general area.</p> <p>20 Q. May I assume you don't have any films with you</p> <p>21 today?</p> <p>22 A. I do not.</p> <p>23 Q. Okay. When you say deformation of the cord,</p> <p>24 does that mean that there was a protrusion that was</p> <p>25 actually pushing through the dura into the canal and</p>

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<p>1 abutting up into the cord?</p> <p>2 A. Yes, and that there's mild changes in the</p> <p>3 shape of the cord at that level as compared to the</p> <p>4 levels above and below.</p> <p>5 Q. Have you seen circumstances where people</p> <p>6 placed in an MRI tube can be placed in such a position</p> <p>7 as to produce a deformation of the cord from a</p> <p>8 protrusion at a disc level?</p> <p>9 A. Typically not in this position. This is a</p> <p>10 neutral position. So in flexion/extension MRI scans</p> <p>11 those are sometimes obtained because they'll accentuate</p> <p>12 in a more physiological nature or condition --</p> <p>13 physiological condition what may be the source of the</p> <p>14 pain.</p> <p>15 Q. Well, does a neutral position mean that she</p> <p>16 had a pillow under her head?</p> <p>17 A. No, the neutral position refers to not being</p> <p>18 in extension or flexion.</p> <p>19 Q. Okay.</p> <p>20 A. Typically the head is supported.</p> <p>21 Q. Okay. Do you know that there was a support in</p> <p>22 there or would you presume that there was some support</p> <p>23 for the head then during this MRI?</p> <p>24 A. I would presume that there's some support,</p> <p>25 whether it be -- well, some type of support.</p>	<p>1 neck pain and arm pain that she did not have prior to</p> <p>2 the surgery. This was most consistent with a C6 pattern</p> <p>3 based upon the MRI scan, based upon physical</p> <p>4 examination, based upon the EMG, based upon the response</p> <p>5 to the injection and -- as well as response to the</p> <p>6 surgery.</p> <p>7 In addition to this, let me go to my</p> <p>8 Operative Report. This is my -- I'm referring to the</p> <p>9 Operative Report of Summerlin Hospital on January 25,</p> <p>10 2016. Procedure in Deraid, number 2, line five. The</p> <p>11 patient did have a disc herniation posteriorly which was</p> <p>12 relatively small.</p> <p>13 Q. Okay. There's nothing in there that indicates</p> <p>14 anything suggestive that the herniation in and of itself</p> <p>15 must have come about as a result of the accident, would</p> <p>16 that be true? And I'm referring to your</p> <p>17 Operative Report.</p> <p>18 A. The Operative Report does not alone indicate</p> <p>19 that it was from the accident.</p> <p>20 Q. There's no way you can tell simply from</p> <p>21 looking at the disc itself while you're doing the</p> <p>22 surgery to indicate that it is a product of a traumatic</p> <p>23 episode as opposed to some sort of ongoing degenerative</p> <p>24 condition, would that be fair to say?</p> <p>25 A. Correct.</p>
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<p>1 Q. Okay. Doctor, you've treated patients in the</p> <p>2 past who come to you without any report of any traumatic</p> <p>3 episode that produces pain yet they've got pain in their</p> <p>4 cervical spine?</p> <p>5 A. Yes.</p> <p>6 Q. And in those circumstances, you have treated</p> <p>7 some people who have had MRIs which showed degenerative</p> <p>8 disc conditions even to the point of impinging on a</p> <p>9 cord?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Would you agree with me that the only</p> <p>12 indication that you have that this accident produced</p> <p>13 a -- well, let me back up.</p> <p>14 Do you have an opinion as to whether this</p> <p>15 accident produced the bulge?</p> <p>16 A. Yes, the accident did cause a protrusion,</p> <p>17 actually a herniated portion. And that was confirmed at</p> <p>18 the time of surgery by direct observation.</p> <p>19 Q. What is it that you observed that led you to</p> <p>20 conclude that the disc herniation derived from the</p> <p>21 accident?</p> <p>22 A. My understanding is that prior to the motor</p> <p>23 vehicle accident the patient was essentially</p> <p>24 asymptomatic regarding the cervical spine and</p> <p>25 immediately after or very shortly thereafter she had</p>	<p>1 Q. Okay. And you also note that she had some</p> <p>2 spurs in there, correct?</p> <p>3 A. Yes, she had some minimal spurring.</p> <p>4 Q. Okay. Would that -- would the spurs be what</p> <p>5 would commonly be known as osteophytes?</p> <p>6 A. Yes.</p> <p>7 Q. And we can agree that the osteophytes</p> <p>8 generally don't come about over a short duration?</p> <p>9 A. Correct.</p> <p>10 Q. They typically take a longer period of time to</p> <p>11 evolve?</p> <p>12 A. Yes.</p> <p>13 Q. And do you believe that the osteophytes you</p> <p>14 found would have been consistent with nine months</p> <p>15 duration -- or nine, ten months duration, or would they</p> <p>16 have taken longer?</p> <p>17 A. She had an MRI scan before the accident</p> <p>18 showing that she had some mild degenerative changes,</p> <p>19 some spurring at that level. So they would have -- the</p> <p>20 spurring would have preexisted -- would have preexisted</p> <p>21 the accident because that's a short period of time.</p> <p>22 Q. Okay.</p> <p>23 A. It's -- literature is -- it's documented in</p> <p>24 the literature that after car accidents it's not unusual</p> <p>25 to have increased acceleration of degenerative changes.</p>



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<p>1 but nevertheless those spurs were seen on the first MRI 2 scan and most likely predated the accident. 3 Q. I've had some spinal surgeons who have 4 testified in the past that spurs are a means by which 5 the body attempts to heal itself when there has been a 6 compromise to a disc, among other reasons. Would you 7 agree with that? 8 A. We all form spurs which typically start at a 9 relatively young age. And the osteophytes are a way to 10 stabilize or decrease motion at a particular level. And 11 they're indicative of either traumatic or degenerative 12 changes to a disc, joint, ligaments, or some 13 combination. 14 Q. So given the fact that there were osteophytes 15 there, there was some -- there was likely some 16 destabilizing force in play at that C5-6 level predating 17 this accident? 18 A. She had some increased degenerative changes at 19 the C5-6 which would have predated the accident. 20 Q. Right, but -- okay. You're certainly not 21 going to in any way imply to a jury that this was a 22 pristine disc at the time of the accident, are you? 23 A. No, I would testify today that she did have 24 some mild spondylosis prior to the accident. 25 Q. Okay. Spondylosis is basically a medical term</p>	<p>1 everybody just for the purposes of diagnostic 2 approaches. So given that, is the MRI the next best 3 thing in looking at the soft tissues? 4 A. Next best thing to what? 5 Q. Opening somebody up. 6 A. Not necessarily. 7 Q. Okay. 8 A. Oftentimes not. Oftentimes it's -- as far as 9 making a diagnosis, and what I'm referring to is the 10 source of one's pain, there's multiple tools that we 11 utilize. And in some situations -- they're more 12 important in some situations than the other. Sometimes 13 it's history alone, sometimes it's subjective complaints 14 alone, sometimes it's physical examination, EMGs, 15 responses to injections, discograms. There's many 16 different components, and it varies -- 17 Q. You're switching the question on me. You're 18 talking about pain generators. I'm talking about 19 morphological abnormalities visible or capable of being 20 interpreted prior to a surgery. And what I'm looking at 21 is this. Would you agree that if one wanted to best 22 determine whether there was a morphological abnormality 23 changed or made worse or altered as a result of a 24 traumatic episode, the best means of making that 25 determination would be to have an MRI predating the</p>
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<p>1 suggesting degeneration, right? 2 A. Of the disc and joint. 3 Q. Okay. Would it be fair to say that to 4 appreciate the nature of any aggravation or increase to 5 the morphological abnormality of the disc and 6 intervertebral space, one would need a pre-accident MRI 7 and a post-accident MRI to best draw that conclusion? 8 A. As far as any changes on the MRI scan, that's 9 correct. However, the MRI scan is only one piece of the 10 puzzle. It's not unusual to have MRI scans being very 11 similar before and after an accident yet the patient was 12 asymptomatic prior and due to the accident that 13 particular level became -- became symptomatic. So the 14 MRI scan is not showing us all the damage that's done on 15 a microscopic level that can induce pain. But just on 16 the MRI scan alone, one can have no change whatsoever. 17 I'm not sure if I answered your question or not. 18 Q. Well, I guess you sort of did, but what I'm 19 trying to say is -- let's sort of back it up. 20 Obviously looking -- opening somebody up and 21 looking inside their neck is really the best way to see 22 what the disc -- what the disc and the condition of the 23 spine looks like? 24 A. Correct. 25 Q. But we're not going to sit here and flay</p>	<p>1 accident and another one postdating the accident to 2 compare and contrast the two? 3 A. If we're talking about discs -- 4 Q. Yeah. 5 A. -- then morphologically on a macro basis, yes. 6 Q. Okay. And my -- the next point then would be 7 that would you be in any position to offer testimony in 8 front of the jury that this car accident actually caused 9 a morphological abnormality to the disc as opposed to 10 that abnormality that you saw on the MRI actually being 11 the condition of the disc as it predated the accident? 12 A. My testimony that I give now or to a jury is 13 that she did have some mild spondylosis prior to this 14 accident, but the disc herniation that I found at the 15 time of the surgery most likely is directly related to 16 the automobile accident rather than degenerative 17 changes. 18 Q. Why do you say that? 19 A. Taking into consideration the patient's 20 symptomatology, the history of the car accident, having 21 immediate symptomatology, and then finding the disc 22 herniation at that same level and then the response to 23 the surgery, all those are indicative of a new problem 24 as opposed to a degenerative problem. Could she have 25 had just a natural degeneration and the disc split apart</p>

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<p>1 and some of the disc herniate, push backwards just due 2 to degenerative changes? That's a possibility. But in 3 this present particular scenario, it's more likely it's 4 due to the accident as opposed to degenerative changes. 5 Q. You're aware of a significant body of 6 literature where various groups have given MRIs to 7 people that were asymptomatic and never reported being 8 in any traumatic episode yet show abnormalities to discs 9 in their various spinal levels? 10 A. I myself have had that experience. 11 Q. Okay. And have you -- 12 A. Meaning I've seen that experience, seen that 13 happen. 14 Q. Right. I assumed you weren't offering 15 testimony about your own personal physical condition. 16 A. Yes. I just wanted to clarify. 17 Q. That's the way I took it. 18 And I mean I know the New England Journal of 19 Medicine has done studies on this, various neurological 20 and orthopedic groups have done these studies, medical 21 schools as well. It is -- there are people out there 22 who have got everything, including herniated discs 23 impinging upon the central nervous system and nerve root 24 structures, who never even know it and they don't feel 25 any symptoms?</p>	<p>1 today, if need be? 2 A. I can go to 6:00. 3 Q. Okay, great. Then this way we can get this 4 finished today. Thank you. 5 Were there any other diagnostic procedures 6 done in the cervical spine to isolate the C5-6 level as 7 the pain generator other than the MRI, the physical 8 examination you performed, and her subjective reported 9 symptoms? 10 A. Yes. And I've already discussed those, but 11 let me refer to my notes so I don't leave anything out. 12 Q. That's fine. Let's run through them. 13 A. What I'm referring to is my office note on 14 12/15/09 which predated her neck surgery. And on page 15 six -- I'll wait until you find that. 16 Q. Okay, I'm there. 17 A. If you look under Discussion under number 3, 18 Cervical spine, on page six -- 19 Q. Yeah. 20 A. -- "The patient has a disc protrusion at C5-6 21 with mild deformation of the spinal cord." 22 Q. And that's based on the original MRI that you 23 read at the -- in August of that year? 24 A. Right. Seen on the axial images. Mild 25 hypermobility on flexion/extension x-rays that I look</p>
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<p>1 A. That's true. 2 Q. Okay. And you've indicated that you have even 3 had patients on your own who have fallen into that same 4 class? 5 A. Yes, I've seen abnormalities on MRI scans 6 where the patient is asymptomatic. 7 Q. Despite having, you know, maybe even an 8 impingement upon a nerve root at the foramen or at the 9 lateral recesses? 10 A. Yes. 11 Q. What about even to the point there's a 12 herniation or some disc abnormality impinging upon the 13 cord? 14 A. Yes. 15 Q. Okay. I'm assuming you're not going to be 16 available past five o'clock today, would that be fair to 17 say? 18 A. I can go longer if you wish. 19 Q. Okay. The only reason is because I do -- if 20 not, I would just cut off at the cervical spine today 21 and come back, and then obviously we'll -- if we can go 22 longer, you can fax a bill tomorrow to my office and 23 I'll get you paid immediately. 24 A. Sure. 25 Q. Just so we're clear, how late can you go</p>	<p>1 Meaning that her disc protrusion abuts the spinal cord 2 and then with flexion/extension motion there is some 3 additional motion that most likely would aggravate her 4 symptoms of that condition. 5 Q. Would that -- let's hit that one before we go 6 on to the rest. Would that be indicative of an 7 instability at that level? 8 A. No, it's not an instability. One could call 9 it clinical instability, and often some providers do. 10 But a true instability would be four millimeters or more 11 translation of motion with myopathic signs or a greater 12 than 11-degree change in flexion/extension x-rays. 13 Q. So then what's the significance of the 14 hypermobility on the flexion/extension x-rays? 15 A. Of all the levels that she had, she had no 16 motion, which is normal. And this one level did have 17 some excessive motion, extra motion. So it does not 18 besit the instability, but it may be -- in this 19 particular case, the greatest significance is an 20 indication that that disc protrusion can result in more 21 impingement with certain motions of the neck than would 22 normally be the case in a level that has no 23 hypermobility. 24 Q. So you said it can result not that it 25 necessarily did?</p>



1 A. No, typically it would. It would.  
 2 Q. Okay. And is that your opinion in this case?  
 3 A. Yes.  
 4 Q. In this circumstance?  
 5 A. Most likely it would.  
 6 Q. So then what's the next diagnostic test?  
 7 A. Again, an MRI finding is that there are disc  
 8 protrusions in the foramina bilaterally, and that's best  
 9 seen on the T2-weighted images. So with the  
 10 hypermobility and the disc protrusions in the foramina,  
 11 this would increase the ability of having a  
 12 radiculopathy or irritation to the nerve.  
 13 Then she has paresthesias down the right arm,  
 14 which is actually -- they were more consistent with a C7  
 15 pattern, but she had a C6 pattern as well. Then  
 16 initially the patient did have weakness in the biceps  
 17 and the triceps, which fits a C6 and C7 pattern.  
 18 There's weakness on the biceps on the right which is  
 19 consistent with a C6 radiculopathy. The EMG shows a  
 20 subacute, which refers to an ongoing process. C6  
 21 radiculopathy with minimal -- and it's probably active  
 22 fibrillations or most likely polyphasic -- I'd have to  
 23 look at that -- but abnormal potentials.  
 24 Q. Okay.  
 25 A. She also had a C5-6 injection which was very

1 diagnostic. She had excellent therapeutic response to  
 2 the injection indicative of a problem at that particular  
 3 level.  
 4 So those would be the findings and the  
 5 physical examination.  
 6 Q. Now, looking at the EMG result, test results  
 7 from Dr. Shah which were done five days before that  
 8 visit, it looks like there were various muscle groups  
 9 which were innervated by the C6 nerve root that were  
 10 actually normal. Would you agree with that?  
 11 A. Well, I think you're misinterpreting the --  
 12 the EMG. Because though that's an accurate statement,  
 13 typically you don't get changes at all the nerves.  
 14 Q. You mean all the muscles?  
 15 A. All the nerves that innervate that  
 16 particular -- all the -- all the muscles that are  
 17 innervated by that particular nerve.  
 18 Q. Okay. So then the EMG obviously in and of  
 19 itself is not a complete diagnostic tool for warranting  
 20 surgery; it's just one piece to look at?  
 21 A. Well, it varies on case to case. It depends  
 22 on the particular -- particular findings and the  
 23 severity of the findings.  
 24 Q. Can we agree that in this particular  
 25 circumstance you would not have operated on her based

1 solely on an EMG?  
 2 A. Correct.  
 3 Q. Now, with respect to the injection which  
 4 showed a positive result, that would have been performed  
 5 by who? Dr. Belsky?  
 6 A. Correct.  
 7 Q. Do you know what type of injection it was?  
 8 A. It was a transforaminal at C5-6.  
 9 Q. Do you know if she injected others at that  
 10 same time?  
 11 A. Let me refer to my notes. I don't recall at  
 12 this time.  
 13 What I'm referring to is Dr. Belsky's notes  
 14 that were dictated on 5/21/09. 5 -- no, this one was  
 15 5/5/09. It says C5-6 on the right, transforaminal  
 16 epidural injection. So it was specific to that level  
 17 and specific to that side.  
 18 (Recess taken.)  
 19 Q. (BY MR. JAFFE) Do you believe that a better  
 20 candidate for surgery -- for fusion surgery is one with  
 21 pain and neurologic symptoms or one with only reports of  
 22 pain, mechanical pain or axial pain rather?  
 23 A. Well, that's a very general question. It  
 24 depends on a number of factors. For example, if someone  
 25 had very mild radicular pain and no axial pain, they are

1 probably not as good a candidate as a patient with  
 2 severe, incapacitating neck pain, assuming that you have  
 3 the source identified.  
 4 Q. Okay. Well, typically if there's a -- a  
 5 morphological abnormality in the spine, notably a disc  
 6 that's consistent with a neurological symptom, is that  
 7 typically somebody who is going to have a better outcome  
 8 from fusion surgery than one who solely complains of  
 9 axial pain?  
 10 A. Some would agree with that generality, but it  
 11 really depends on how accurate one is in identifying the  
 12 source of the pain.  
 13 Q. All right. Well, okay, presuming that, you  
 14 know, the source of the pain is -- rather the pain is  
 15 consistent with morphological abnormalities shown on a  
 16 disc -- I mean if somebody is complaining about pain  
 17 radiating down to their thumb and you got a C5-6  
 18 herniation on that same side, that would be a pretty  
 19 good consistency, right?  
 20 A. The finding of changes in the thumb typically  
 21 would be the index and the thumb. But in the thumb  
 22 would be consistent with C6, which is consistent with  
 23 the C5-6 level. So if someone has radicular  
 24 symptomatology, it may be easier to identify the major  
 25 pain generator.

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<p>1. Q: In that type of a circumstance, would that 2. person likely be a better -- or have a better result 3. from spinal surgery than somebody who has no radicular 4. symptoms and is just complaining about axial pain?</p> <p>5. A: There's many factors to consider, such as how 6. long the impingement has been in place, how much damage 7. is done, the degree of -- the severity that the 8. particular patient has. There's a number of factors to 9. consider.</p> <p>10. Q: Okay. And in these cases, I mean something 11. like the duration for the abnormality having existed is 12. not always something that's readily apparent unless 13. you've got radiologic films going back for various 14. stages of time?</p> <p>15. A: Not true. For example, if a patient says, I 16. was doing fine until this certain period of time, then 17. all of a sudden I've developed this pain and particular 18. pattern, and you identify where that pain -- and they've 19. had it for two to three years, then -- then that becomes 20. very significant even though you may not have MRI scans 21. to compare before and afterwards.</p> <p>22. Q: Okay. But the duration of the abnormality 23. then is not something that can be foretold simply by 24. subjective reports of the patient?</p> <p>25. A: Their symptomatic response to that abnormality</p>	<p>1. and my index and every time I bring my head back and 2. tilt towards this side I've got numbness here and 3. weakness in my biceps as well, then that's very clearly 4. indicative of a C6 problem.</p> <p>5. Q: All right.</p> <p>6. A: Which there's other causes other than a disc 7. herniation, such as a spur, but that's very indicative 8. of a problem coming from that particular level.</p> <p>9. Q: Right. But the point is the -- the length of 10. time that the abnormality at that level may have existed 11. is not something that you can tell simply from that 12. examination? Like you said, you've had patients who 13. have come in and had abnormalities at levels that are 14. asymptomatic their whole life?</p> <p>15. A: Yes, a patient can have an asymptomatic 16. condition finding -- morphological finding on the MRI 17. scan, become -- go from an asymptomatic to a symptomatic 18. situation, but my opinion is that, more likely than not, 19. the disc herniation impinging on the spinal cord was due 20. to the accident rather than a preexisting condition.</p> <p>21. Q: Okay. That wasn't -- okay. I appreciate 22. that. I wasn't quite asking that. We were talking 23. about some other generalities about the -- purely 24. academically about the existence of an abnormality. You 25. can't tell that without radiology -- radiologic</p>
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<p>1. can.</p> <p>2. Q: But not the actual existence of the 3. morphological abnormality itself?</p> <p>4. A: Well, are you talking about MRI scans alone 5. or -- because you can have -- it's common to have damage 6. within a disc that doesn't show up on an MRI scan. And 7. so it depends if you're talking about on a macro 8. level --</p> <p>9. Q: You're talking about like IDD?</p> <p>10. A: Pardon?</p> <p>11. Q: You're talking about an IDD?</p> <p>12. A: Yes, that's an example.</p> <p>13. Q: I mean obviously that does not necessarily 14. show up on a disc -- or rather on an MRI rather, right? 15. Or it might not?</p> <p>16. A: It might not.</p> <p>17. Q: But the point is to see a disc, to determine 18. the existence of any morphological abnormality, you need 19. some sort of radiologic analysis?</p> <p>20. A: Typically that's true.</p> <p>21. Q: I mean you can't look at me right now and say 22. that -- that I likely have a herniated disc at C6-7 23. simply by my appearance, right?</p> <p>24. A: Not by your appearance or the color of your 25. shirt. But if you say, I've got numbness in my thumb</p>	<p>1. findings?</p> <p>2. A: What abnormality do you have in mind? It's 3. difficult --</p> <p>4. Q: Disc abnormality.</p> <p>5. A: We're talking about generalities.</p> <p>6. Q: A disc abnormality.</p> <p>7. A: A disc abnormality? If you have a specific 8. disc, it can -- and it impinges on the nerves or it 9. irritates the nerves, which could even be a chemical 10. irritation, that -- those signs other than -- objective 11. and subjective complaints other than objective findings 12. on MRI scan can be indicative of a particular disc 13. herniation. For example, in this particular case, if we 14. had no disc -- if we had no MRI scan and I had all the 15. other information, I would say most likely the patient 16. has a disc herniation at C5-6.</p> <p>17. Q: Okay. Generally speaking, is it your 18. experience that people don't get x-rays of their spine 19. or any sort of -- let me withdraw the question.</p> <p>20. Is it your experience that people don't have 21. radiologic interpretations of their spines without some 22. symptomalogical complaint?</p> <p>23. A: Radiological interpretations, are you 24. meaning --</p> <p>25. Q: Radiological --</p>



13 (Pages 46 to 49)

13 (Pages 46 to 49)

Page 46	Page 48
<p>1 A. Or do you mean obtaining an MRI scan without</p> <p>2 complaints?</p> <p>3 Q. MRIs, x-rays, any sort of film.</p> <p>4 A. Typically those are not ordered without</p> <p>5 complaints. Yet I saw a patient today that was friends</p> <p>6 with a chiropractor who said, "Let's get an MRI scan of</p> <p>7 your low back," without having any symptoms.</p> <p>8 Q. Do you generally order films on patients who</p> <p>9 come in without complaints?</p> <p>10 A. Typically not. On the -- typically they're</p> <p>11 not going to present if they don't have complaints. But</p> <p>12 I've had some patients that due to their physical</p> <p>13 examination, despite their complaints, I've ordered MRI</p> <p>14 scans, particularly if there's impingement on the spinal</p> <p>15 cord or signs of impingement on the spinal cord.</p> <p>16 Q. So, for example, an x-ray can actually show</p> <p>17 degenerative conditions in the cervical spine suggestive</p> <p>18 of a disc abnormality, right?</p> <p>19 A. The x-rays do not show disc herniations, but</p> <p>20 they can show degenerative changes due to when there's a</p> <p>21 loss of disc height, for example.</p> <p>22 Q. Right. And they can also show spurs, which</p> <p>23 might be suggestive of instability due to a disc</p> <p>24 problem?</p> <p>25 A. Or it could be ligaments or it could be</p>	<p>1 showing a spur or spurs at the C5-6 level.</p> <p>2 A. So this patient had mild spurs, yes.</p> <p>3 Q. Okay. Well, there's some spurs shown on an</p> <p>4 x-ray.</p> <p>5 A. Yes.</p> <p>6 Q. Maybe even some loss of disc space height,</p> <p>7 okay?</p> <p>8 A. Okay.</p> <p>9 Q. The vertebrae are narrower than normally would</p> <p>10 be expected, right?</p> <p>11 A. All right.</p> <p>12 Q. And later on an MRI shows that there is a</p> <p>13 spondylitic change of the disc at that same level.</p> <p>14 A. You're talking about facets or disc?</p> <p>15 Q. Disc.</p> <p>16 A. Okay. Because spondylitic typically is</p> <p>17 referring to both discs and facets. Sometimes it's used</p> <p>18 just for discs, but the definition, typically it's both.</p> <p>19 Q. Would a spondylitic change show up on an x-ray</p> <p>20 as well?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So if -- then let's say somebody's got</p> <p>23 an x-ray showing a spondylitic change at a particular</p> <p>24 level. Later on an x-ray confirms -- rather an MRI</p> <p>25 confirms that there's a spondylitic change at that same</p>
Page 47	Page 49
<p>1 joints.</p> <p>2 Q. Right. But, again, the simple fact is that a</p> <p>3 spur can be shown on a plain x-ray, right?</p> <p>4 A. Yes. That's not what you asked me. Yes. And</p> <p>5 to that question, yes.</p> <p>6 Q. And the -- we've already discussed that the</p> <p>7 existence of the spur can be, among other things,</p> <p>8 indicative of an instability at that level due to a</p> <p>9 compromise of the disc?</p> <p>10 A. It's possible.</p> <p>11 Q. And it's certainly not an unreasonable</p> <p>12 interpretation, right?</p> <p>13 A. If you see spurs, you don't -- it typically</p> <p>14 would infer that the disc is not in a completely healthy</p> <p>15 status.</p> <p>16 Q. And especially if an MRI later confirms that</p> <p>17 there is a problem related to a disc or a morphological</p> <p>18 abnormality related to the disc at the same level where</p> <p>19 you've got the spurs, that could further suggest that</p> <p>20 the --</p> <p>21 A. I'm going to stop you here if you don't mind.</p> <p>22 Could you rephrase that? Maybe I lost you because it's</p> <p>23 late in the day, but I don't understand that question.</p> <p>24 Q. Got it.</p> <p>25 Hypothetically a patient comes in, has x-rays</p>	<p>1 level showing the spurs, showing a degenerative disc.</p> <p>2 Would that increase the likelihood that at the time the</p> <p>3 x-ray was taken there was an instability due to a</p> <p>4 problem -- a morphological abnormality related to that</p> <p>5 disc?</p> <p>6 A. Potentially clinical instability, but not the</p> <p>7 definition of instability that's the accepted</p> <p>8 definition.</p> <p>9 Q. Okay. Are you aware of a -- of Ms. Seastrand</p> <p>10 having undergone any radiologic -- having any films</p> <p>11 taken of her prior to the accident that we're here for?</p> <p>12 A. Not that I recall.</p> <p>13 Q. If you were made aware of any, presented with</p> <p>14 any to review, would you have noted that in your</p> <p>15 records?</p> <p>16 A. Yes. If she would have brought in x-rays</p> <p>17 prior to the motor vehicle accident, I would have</p> <p>18 reviewed those.</p> <p>19 Q. How did she do as a result of the surgery?</p> <p>20 A. Excellent. At least as of the last visit on</p> <p>21 3/5/10. Meaning a 90-percent improvement from -- from</p> <p>22 preoperative condition.</p> <p>23 Q. In other words, what she subjectively</p> <p>24 reported?</p> <p>25 A. Yes.</p>



14 (Pages 50 to 53)

14 (Pages 50 to 53)

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<p>1 Q. Which would include things such as pain and 2 numbness? 3 A. That's just overall, which would include -- 4 let me look at my note. 5 It just states that there's a 90-percent 6 improvement, does not differentiate all her symptoms. 7 Q. Do you agree with me that before surgery takes 8 place or is warranted there needs to be a lesion or 9 abnormality capable of being repaired by surgery? 10 A. Yes. 11 Q. Which would be an objective indication for the 12 surgery, is that correct? 13 A. I've never looked at it as an objective reason 14 for surgery, but you need to have a source of the pain 15 that you feel that by addressing surgically that source 16 that you can live -- you can alleviate at least part of 17 the patient's symptomatology. 18 Q. And would a spondylitic instability at a 19 spinal level be the type of morphological abnormality 20 which would warrant surgery as long as symptoms were 21 consistent with it? 22 A. Well, it depends on the degree of 23 symptomatology and if the patient's had an adequate 24 course of treatment and depends on the length of this 25 symptomatology as well.</p>	<p>1 A. Yes. 2 Q. Okay. 3 A. Also she indicated -- again, I'm referring to 4 page two under Present Problems, the Visual Analog 5 Scale, regarding the cervical and lumbar spine, that 6 prior to the injury it's zero to ten. Granted there's 7 some latitude in interpretation of what that meant, 8 whether it meant the day before, the month before, or 9 the whole life, but that's another indication that she 10 was doing fine before the accident. 11 Q. But, again, that's all based upon her 12 subjective reports? 13 A. Yes. 14 Q. Okay. Has she ever returned since -- strike 15 that: 16 I assume you saw her in follow-up to the 17 lumbar fusion? 18 A. I didn't fuse her lumbar spine. 19 Q. Oh, okay, I'm sorry. You did a -- an anterior 20 cervical discectomy? 21 A. Yes, and fusion. 22 Q. And fusion? 23 A. Yes. 24 Q. Oh, you know what? If I asked about lumbar a 25 moment ago, I apologize.</p>
Page 51	Page 53
<p>1 Q. Okay. So in this case she had a spondylitic 2 instability at C5-6, right? 3 A. At this -- in this case the patient had damage 4 to the C5-C6 disc that resulted in her symptomatology. 5 She had an underlying mild spondylosis. 6 Q. Okay. And it was those findings that 7 warranted the surgery? 8 A. It was the findings that I previously 9 testified warranted the surgery with her associated 10 symptomatology. 11 Q. Okay. When you first met with Ms. Seastrand, 12 did you ask her if she had had any prior episodes of 13 neck symptoms predating the accident? 14 A. I'm referring to my initial evaluation note 15 that's on 8/24/09. This patient indicated that they had 16 previous injuries or accidents in the past which were 17 reviewed, but the patient had been symptom free for 23 18 years prior to the motor vehicle accident for the 19 problems which she was being seen. 20 Q. Symptom free, you said? 21 A. Essentially symptom free, yes. 22 Q. And that's based upon the history process 23 involving both her filling out paperwork at your office 24 as well as you interviewing her and asking her that 25 information?</p>	<p>1 Did she see you in follow-up for her anterior 2 cervical discectomy and fusion? 3 A. Yes. And those answers were in 4 relationship -- or relating to the neck, the 90-percent 5 improvement and so forth. 6 Q. When was she discharged from active care for 7 her neck? 8 A. The last time I saw her was on 3/5 in '10. 9 And she had had surgery -- let me look at my note -- on 10 1/25/10, so less than three months. So typically I 11 would want the patient to come back for one final x-ray, 12 which she did not return. 13 Q. Okay. So she was never -- you never actually 14 discharged her from care? 15 A. Correct. 16 Q. She simply stopped returning to see you? 17 A. Yes. 18 Q. Do you know why that was? 19 A. No. 20 Q. Are you aware that she later began treating 21 with Dr. Grover? 22 A. No. 23 Q. Are you aware that Dr. Grover fused her lumbar 24 spine? 25 A. No, not till now.</p>

15 (Pages 54 to 57)

15 (Pages 54 to 57)

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<p>1 Q. You've certainly never seen any records from</p> <p>2 Dr. Grover or any of his other practitioners or clinics,</p> <p>3 right?</p> <p>4 A. No, I -- regarding this patient?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. You treated her lumbar spine, correct?</p> <p>8 A. Yes.</p> <p>9 Q. What were her subjective reports and</p> <p>10 complaints related to the lumbar spine?</p> <p>11 A. At what particular date?</p> <p>12 Q. Initially.</p> <p>13 A. I'm referring to my initial evaluation on</p> <p>14 8/24/09. She complained at that time of worsening,</p> <p>15 constant, severe, aching, and stabbing pain on both</p> <p>16 sides radiating down the legs and the feet. And I</p> <p>17 believe it's principally on the right leg more than the</p> <p>18 left. She complained of severe low back pain again with</p> <p>19 limitations of activities of daily living and pain with</p> <p>20 certain activities, as we discussed before.</p> <p>21 Q. Okay. So she complained about both axial and</p> <p>22 radicular pain?</p> <p>23 A. Yes.</p> <p>24 Q. And, I'm sorry, were there other radicular</p> <p>25 symptoms that she complained about? If you mentioned</p>	<p>1 the L4-5 and L5-S1 and negative at the control disc,</p> <p>2 L3-4.</p> <p>3 Q. So, I'm sorry, it was positive at which</p> <p>4 levels?</p> <p>5 A. L4-5 and L5-S1. Negative at L3-4.</p> <p>6 Q. Is plasma disc decompression appropriate for</p> <p>7 axial pain as well as for radicular pain?</p> <p>8 A. Yes.</p> <p>9 Q. Do you find in any way that patients are</p> <p>10 likely to get a better result with one type of</p> <p>11 symptomatology versus the other?</p> <p>12 A. I haven't broken those down on the results of</p> <p>13 my patients so I'm not sure. I've seen many numerous</p> <p>14 patients improve both with radial problems and axial</p> <p>15 problems that have been treated by plasma disc</p> <p>16 decompression.</p> <p>17 Q. Are you aware of any literature one way or</p> <p>18 another which describes the -- whether plasma disc</p> <p>19 decompression is generally more beneficial for axial</p> <p>20 versus radicular symptoms?</p> <p>21 A. I'd have to review the literature at this</p> <p>22 time, I mean to answer that question. Because there's</p> <p>23 certainly literature indicating it's used for both.</p> <p>24 Q. Anecdotally or historically, based upon your</p> <p>25 patient base that undergoes lumbar plasma disc</p>
Page 55	Page 57
<p>1 that, I apologize, because I missed it.</p> <p>2 A. She had some numbness and tingling down the</p> <p>3 legs.</p> <p>4 Q. Bilaterally?</p> <p>5 A. Yes.</p> <p>6 Q. Were you ever able to isolate the parts of the</p> <p>7 spine that you believe were producing those symptoms?</p> <p>8 A. The back pain or the leg pain?</p> <p>9 Q. Okay. Well, were they different?</p> <p>10 A. The back pain was generated from the L4-5 and</p> <p>11 L5-S1 discs. The leg pain was principally or</p> <p>12 predominantly a right L5 nerve root.</p> <p>13 Q. Okay. Now, I -- this lady underwent at least</p> <p>14 one discography; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. How many did she actually undergo?</p> <p>17 A. I only know of one.</p> <p>18 Q. Was it the same day as the plasma disc</p> <p>19 decompression surgery?</p> <p>20 A. Yes.</p> <p>21 Q. Was one done before that by Dr. Belsky?</p> <p>22 A. Not that I recall.</p> <p>23 Q. What were the results of the lumbar</p> <p>24 discography?</p> <p>25 A. The disc -- the major pain generator was from</p>	<p>1 decompression, do you find that there's a better result</p> <p>2 from axial versus radicular or vice versa?</p> <p>3 A. Not that I know of.</p> <p>4 Q. Is it anything that you've ever taken notice</p> <p>5 of one way or another?</p> <p>6 A. No, other than I think I've already answered.</p> <p>7 it in that I've had patients with axial pain, have had</p> <p>8 patients with -- well, I've had patients with low back</p> <p>9 pain, I've had patients with leg pain, I've had patients</p> <p>10 with both, and all have had good responses from plasma</p> <p>11 disc decompression.</p> <p>12 Q. What were this lady's results from the plasma</p> <p>13 disc decompression?</p> <p>14 A. She had no improvement.</p> <p>15 Q. How do you explain that?</p> <p>16 A. Not all procedures help all patients.</p> <p>17 Q. What was it that made her a legitimate</p> <p>18 candidate for plasma disc decompression then?</p> <p>19 A. She was a candidate for plasma disc</p> <p>20 decompression because she had failed with conservative</p> <p>21 care to date, including injections, chiropractic</p> <p>22 treatment. Her back pain and leg pain were worsening</p> <p>23 with time. On the MRI scan she had normal appearing or</p> <p>24 unremarkable appearing discs other than the two levels</p> <p>25 at 4-5 and 5-1 which both had annular tears in the</p>

16. (Pages 58 to 61.)

16. (Pages 58 to 61.)

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<p>1 discs. And the discogram was positive at those two 2 levels. She also had injections that were diagnostic. 3 Q: Okay. Before she had the plasma disc 4 decompression, did you instruct her that she was going 5 to be also undergoing a discography? 6 A: I always do. I always explain to the patient 7 that the plasma disc decompression will be done based 8 upon not only the previous findings but the results of 9 the discogram. 10 Q: I know you haven't had the benefit of reading 11 her deposition, but I'm looking at page 161 of her 12 deposition transcript, and I'd like to read you a 13 portion of that. 14 A: Of the patient's? 15 Q: Yes, Ms. Seastrand. And this was a deposition 16 taken on May 31, 2012, and Mr. Harris was present for 17 it. 18 Now, she had told me that she had had another 19 discography prior to the day that she went for the 20 discography and plasma disc decompression, so I'm just 21 qualifying that because it places this first question. 22 The question asked her was: Okay. Did you 23 have another discography or discogram immediately before 24 the plasma disc decompression? 25 Answer: Not that I know of.</p>	<p>1 negative discogram, if they have -- if they do not have 2 concordant pain produced. So discograms, some patients 3 will say it was a horrible experience and others will 4 say it was not bad at all. 5 Q: You don't have any personal understanding 6 about how this particular patient reacted to the 7 discography, do you? In other words, whether it was a 8 horribly painful experience or whether it was, you know, 9 just another test? 10 A: I don't recall. 11 Q: That's not something that's typically 12 documented, correct? 13 A: Correct. Other than I would document the 14 findings of the discogram in my notes. 15 Q: You're talking about the data as opposed to 16 the subjective, you know, response by the patient as to 17 how she was generally feeling? 18 A: That's correct. 19 Q: In other words, that if was a concordantly 20 painful disc -- 21 A: Yes. 22 Q: -- when adequately pressurized? 23 A: Yes. 24 Q: Now, did she return to you to discuss the 25 lumbar spine after the discogram -- or rather the plasma</p>
Page 59	Page 61
<p>1 Question: Certainly nobody told you that you 2 were doing -- that you were going to have one? 3 Answer: No. It wasn't part of the procedure 4 as far as I understood. 5 Question: And when you say as far as you 6 understood, that's based upon what Dr. Muir explained to 7 you about what would happen that day? 8 Answer: Yes. 9 So you would dispute that testimony, is that 10 correct, sir? 11 A: Absolutely. 12 Q: Have you observed people undergo discography? 13 A: Yes. 14 Q: Is it generally deemed a very painful 15 procedure? 16 A: It can be, especially if there's abnormal 17 pathology, if there's a source -- a discogenic source to 18 the pain. For example, on this patient at L3-4 the 19 patient did not have any -- any pain yet there was a -- 20 there was significant pain at the pathological levels. 21 Q: Which would suggest that the discography would 22 typically be very painful to the patient at that time? 23 A: It doesn't suggest that, but I'm just saying 24 if there's abnormal pathology -- if a discogram is 25 negative, then -- if one has no pain, then it's a</p>	<p>1 disc decompression was of no value? 2 A: Multiple times. 3 Q: Did you discuss a treatment plan with her? 4 A: We discussed treatment options and the pros 5 and cons of each option. 6 Q: In other words -- and we're talking about the 7 lumbar spine now, right? You're aware of that? 8 A: Right, I am. 9 Q: And unless we say otherwise, that's all I'm 10 talking about now. 11 So then what treatment options did you 12 propose? 13 A: Let me refer to my notes. 14 Q: And would you please tell me which note you're 15 referring to? 16 A: Would be multiple notes. I don't know if we 17 can go through all of them, but let me refer to this one 18 here in -- this one I just pulled up. 19 Sorry, I lost it. Give me a moment. 20 Well, I can find -- I can continue to look. 21 but the note I was looking at -- there's multiple notes 22 that discuss the options, but the note I was looking at 23 stated that due to the lack of -- 24 Q: Which date? 25 A: I'm looking for it.</p>



17 (Pages 62 to 65)

17 (Pages 62 to 65)

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1 Q. I'm sorry, you said you were looking at the  
2 one in particular?  
3 A. Right, but I lost which one that was. I'm  
4 trying to find it.  
5 Q. Oh, okay.  
6 A. But I do recall the essence of the note. It  
7 states there's three general options. One, she could  
8 continue with conservative care as required. And this  
9 may not be to the exact words, but these are the three  
10 general options. The second -- and then treat  
11 conservatively as required. The other option would be  
12 to undergo a lumbar fusion. And the other option would  
13 be a spinal cord stimulator.  
14 Q. Okay. With respect to the lumbar fusion, did  
15 you propose any particular type of fusion or explain  
16 what the fusion would likely involve?  
17 A. I always do when it comes up and is  
18 appropriate.  
19 Q. In this case was that discussed?  
20 A. Yeah, I always do. In discussing a lumbar  
21 fusion as an option, I'll tell the patient that -- the  
22 pros and the cons. And I'll talk about the different  
23 approaches, the anterior/posterior versus a posterior  
24 approach and their pros and cons.  
25 Q. Well, in this case which ones did you discuss

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1 A. Actually the anterior/posterior lumbar fusion.  
2 yes, L4 and S1. Most patients choose just posterior.  
3 Can we go off the record for three minutes?  
4 MR. JAFFE: Of course.  
5 (Recess taken.)  
6 Q. (BY MR. JAFFE) I'm sorry, before I went off  
7 the record, did you say she did agree to the  
8 anterior/posterior approach?  
9 A. Yes.  
10 Q. Was there any discussion about inserting a rod  
11 as part of that surgery?  
12 A. We talked -- well, I discussed the surgery  
13 with the patient, including posterior screws and  
14 anterior cages. Rods go along with the pedicle screws.  
15 Sometimes those aren't mentioned, but you need to have  
16 rods connecting the pedicle screws.  
17 Q. That's part of any fusion surgery?  
18 A. No.  
19 Q. Okay. Well, if you're going to do a cage and  
20 the pedicle screws, would you always have a rod?  
21 A. Use pedicle screws, you have rods. And  
22 typically it would be very rare that it's -- in a  
23 description of the surgery that the rods are not  
24 mentioned.  
25 Q. Would you believe that a strictly anterior

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1 with her?  
2 A. I would have discussed all of them.  
3 Q. So anterior/posterior and just the posterior  
4 approach?  
5 A. Well, looking at my notes, without going  
6 through all these, I discuss -- you know, here's the  
7 note that -- that I was trying to find. It's 3/5/10,  
8 under Treatment options.  
9 Q. So that would have been the last time you saw  
10 her?  
11 A. Yes. Says due to the degree of -- due to the  
12 degree and ongoing severity of her back pain, she's a  
13 candidate for an L4-S1 fusion. However, she's also a  
14 candidate for a spinal cord stimulator, which would  
15 address the back and the leg pain. The other option  
16 would be continue medications and hope that she'd  
17 improve with time.  
18 After lengthy discussion, the patient would  
19 like to proceed with a lumbar fusion. And then if a  
20 patient chooses a lumbar fusion, I discuss with all my  
21 patients the pros and cons of an anterior/posterior  
22 approach, unless one is much better than the other for a  
23 particular patient.  
24 Q. Did you -- which approach did she opt, the  
25 anterior/posterior?

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1 approach would be an appropriate surgery for this  
2 patient?  
3 A. I wouldn't do it personally. However, there  
4 are surgeons that do that and you can have good results.  
5 Q. Why would you feel remiss about recommending  
6 or performing a strictly anterior surgery for this  
7 patient?  
8 A. Well, I have done strictly anterior fusions.  
9 However, I could probably count it on one hand. I'm  
10 concerned about a nonunion with a stand-alone anterior  
11 fusion and then subsequent symptomatology associated  
12 with that.  
13 Q. Why is there a greater risk of nonunion with  
14 just an anterior approach?  
15 A. It's -- it would be similar to putting glue on  
16 both sides of a cracked board rather than glue on one  
17 side. Biomechanically it's more of a stable construct.  
18 You have more surface area to create a fusion.  
19 Just to go off the record.  
20 (Discussion held off the record.)  
21 Q. (BY MR. JAFFE) And I said before that it was  
22 Dr. Grover who did the surgery. It may have actually  
23 been Dr. Khavkin, but same facility.  
24 A. Yes.  
25 Q. Did she tell you that she was not going to go

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RAYMOND RIAD KHOURY,

Appellant,

vs.

MARGARET SEASTRAND,

Respondent.

Supreme Court Case No. 64702

Supreme Court Case No. 65007  
Electronically Filed  
Nov 13 2014 08:27 a.m.

Supreme Court Case No. 65172  
Tracie K. Lindeman  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County

The HONORABLE JERRY WEISE, District Court Judge

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

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**APPELLANT'S APPENDIX**

**VOLUME XXIII**

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Exhibit 54 Exhibits 5 through page 1-237 of  
Exhibit 13 of Opposition to  
Defendant's Motion for New Trial

JA 4365-4598